

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of John W. Ball, Eagle, Nebraska,	)	FORMAL COMPLAINT 1242
	)	
Complainant,	)	
	)	
vs.	)	DISMISSED
	)	
The Lincoln Telephone and Telegraph Company, Lincoln, Nebraska,	)	
	)	
Respondent	)	ENTERED: January 24, 1995

APPEARANCES

For the Complainant:

John W. Ball, pro se  
3737 South 27th Street  
Lincoln, NE 68502

For the Respondent:

Paul M. Schudel, Esq.  
206 South 13th Street  
Suite 1500  
Lincoln, NE 68508

BY THE COMMISSION:

O P I N I O N   A N D   F I N D I N G S

By Formal Complaint filed September 2, 1994, John W. Ball of Eagle, Nebraska, has complained with regard to the announced plan of Lincoln Telephone Cellular, a division of the Lincoln Telephone and Telegraph Company (hereinafter "Lincoln Cellular"), to change the cellular number assigned to Complainant's cellular telephone without Complainant's permission or consideration.

A copy of the Complaint was served on Lincoln Cellular pursuant to the provisions of the Commission's Rules and Regulations. On November 4, 1994, Lincoln Cellular filed its Answer to the Formal Complaint.

Hearing on the Formal Complaint was held December 6, 1994, in the Commission Hearing Room, with appearances as shown above.

At the outset of the hearing, legal counsel for Lincoln Cellular moved to dismiss the Formal Complaint based upon the Commission's lack of subject matter jurisdiction pursuant to Neb.Rev.Stat. Section 86-808 (Reissue 1987). Section 86-808 provides, in pertinent part, that: "The Commission shall not regulate the following: . . . (2) mobile radio services, radio paging services, and cellular services." The Hearing Officer took the Motion to Dismiss under advisement and proceeded to accept evidence.

Complainant testified that he became a subscriber to cellular telephone service from Lincoln Cellular in 1988 and at that time was assigned a cellular telephone number with the prefix 437. Complainant is engaged in the real estate business and uses his cellular telephone as his primary business telephone.

In August 1994, Complainant received a letter from Lincoln Cellular which announced the intention of Lincoln Cellular to change the prefix of its cellular customers who had been assigned a 437 prefix to a 430 prefix. The last four digits of each assigned cellular number were to remain unchanged. Complainant's telephone was included among those cellular telephones for which assigned numbers would be changed. The reason for this change stated by Lincoln Cellular, was to minimize fraud losses.

Substantial additional evidence was received at the hearing, both from the Complainant and from Respondent's representative, Mr. William J. Ashburn. Mr. Ball testified the change in his cellular prefix would require extreme costs to correct his advertising, stationary and business cards. Further, he stated he could potentially lose former real estate clients who did not have his new number.

Mr. Ashburn explained Lincoln Cellular has offered Mr. Ball remote call forwarding to his new number for a fee of \$11.00 per month until December 1997. This feature would allow callers to access Mr. Ball by dialing both the 430 and 437 prefixes. Further, the number change will not be implemented until December 1995, thereby allowing Mr. Ball time to correct his advertising and business literature. Lastly, an intercept will be installed on the 437 prefix, which automatically tells caller the new number. The intercept will be operative for all customers who were "call forwarding" as of December 1997 until December, 1998.

It is clear that Mr. Ball's complaint centers on his cellular service and unfortunately, at this time, the Commission does not regulate the cellular industry. The operations of Lincoln Cellular are so closely intertwined, with Lincoln Telephone and Telegraph, the state regulated entity, it is illogical the companies are treated dissimilarly.

From the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds that the subject matter of the Formal Complaint filed herein is limited solely to cellular services and pursuant to Neb.Rev.Stat. Section 86-808, the Commission is without subject matter jurisdiction to rule upon this Formal Complaint. Therefore, Respondent's Motion to Dismiss shall be sustained and this Formal Complaint shall be dismissed.

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O R D E R

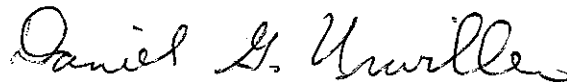
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that FC-1242 be, and it is hereby dismissed.

MADE AND ENTERED AT Lincoln, Nebraska, this 24th day of January, 1995.

NEBRASKA PUBLIC SERVICE COMMISSION

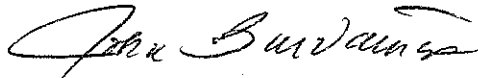
COMMISSIONERS CONCURRING:

//s//Lowell C. Johnson  
//s//Rod Johnson  
//s//Frank E. Landis  
//s//James F. Munnelly  
//s//Daniel G. Urwiller



Chairman

ATTEST:



Deputy Director