

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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|---------------------------|---|-----------------------|
| Mid America Pay Phones of |) | Formal Complaint |
| Omaha, Nebraska, |) | No. FC-1306 |
| |) | |
| Complainants, |) | |
| vs. |) | ORDER GRANTING RELIEF |
| |) | |
| ALLTEL Communications of |) | |
| Lincoln, Nebraska, |) | |
| |) | |
| Respondent. |) | Entered: July 8, 2003 |

APPEARANCES:

For the Complainants:

David Gilfillan
Mid America Pay Phones
14775 Grover Street
Omaha, NE 68144

For the Commission:

Chris A. Post
300 The Atrium
1200 N Street
Lincoln, NE 68508

For the Respondent, ALLTEL:

Paul M. Schudel
Woods & Aitken, LLC
301 South 13th Street, Suite 500
Lincoln, NE 68508

BY THE COMMISSION:

B A C K G R O U N D

Introduction

1. The Nebraska Public Service Commission (Commission) has before it for resolution a formal complaint filed by Mid America Pay Phones of Omaha, Nebraska vs. ALLTEL Communications of Nebraska, Inc.

2. Generally, the Complainant alleges that ALLTEL has improperly assessed Enhanced Local Calling Area (ELCA) charges on calls placed on payphones operated by Mid America.

3. ALLTEL denies the allegations raised by the Complainants. In doing so, ALLTEL also denies that any relief is warranted.

4. For the reasons stated herein, we direct ALLTEL to provide free ELCA services to third-party payphone providers until such time that ALLTEL demonstrates to this Commission that all of ALLTEL's payphones are capable of assessing ELCA charges in a nondiscriminatory fashion.

Procedural Summary

5. On October 3, 2002, Mid America Pay Phone initiated Formal Complaint No. FC-1306 by the filing of a formal complaint with the Commission.

6. ALLTEL Communications filed its Answer in response thereto on October 22, 2002.

7. The public hearing on the complaint was held on December 9, 2002. Although the issue of damages was initially raised by Mid America in its petition, at the request of legal counsel for ALLTEL, the issue of damages was withdrawn and dismissed by the Commission.

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

Commission Jurisdiction Over these Dockets

8. It is clear that the Commission's jurisdiction to resolve the issues raised in this Complaint is derived from the authority we have been granted by the Legislature.¹ Based on our governing statutes, we find that the procedures created and the authority specifically granted to the Commission by the Legislature to receive, hear and dispose of complaints by persons, including carriers, pursuant to Sections 75-131, 75-132, 75-132.01, 75-118.01, 75-119 and 86-123, confer jurisdiction on the Commission to adjudicate complaints in accordance with due process requirements of such statutes. We also find that this grant of jurisdiction and authority by the Legislature includes our ability to receive, hear and dispose of complaints such as is presented herein.

¹ Neb. Const. Art. IV, Sec. 20 provides: "The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law."

9. In *Neb. Rev. Stat. Sec. 75-131* (Reissue 1996), the Legislature provides that "[a]ny person who complains of anything done or omitted to be done by any common or contract carrier may request that the commission investigate and impose sanctions on such carrier by filing a petition which briefly states the facts constituting the complaint." *Neb. Rev. Stat. Sec. 75-132* (Reissue 1996) directs that " . . . the commission shall convene a hearing on the matters complained of pursuant to its rules of procedure and shall give the parties written notice of the time and place for such hearing." Section 75-132 further directs that following such hearing, "the commission shall make such order with respect to the complaint as it deems just and reasonable." Rule 005 of the Commission Rules of Procedure sets forth the specific procedures governing the filing and disposition of formal complaints before the Commission.

10. Similar to the foregoing grant of authority, the Legislature, through *Neb. Rev. Stat. Sec. 75-132.01* (2002 Cum. Supp.), specified that " . . . the commission shall have exclusive original jurisdiction over any action concerning a violation of any provision of . . . the Nebraska Telecommunications Regulation Act"

11. In addition to the foregoing Legislative directives, *Neb. Rev. Stat. Sec. 75-118.01* (Reissue 1996) provides in pertinent part that " . . . the commission shall have original exclusive jurisdiction to determine the . . . scope or meaning of a . . . tariff" and *Neb. Rev. Stat. Sec. 75-119* (Reissue 1996) provides in pertinent part that " . . . [w]hen any common carrier . . . petitions the commission alleging that . . . an existing . . . rate is unreasonably high or low, unjust, or discriminatory, notice shall be given to the common carriers affected in accordance with the commission's rules for notice and hearing." We also note that Section 75-119 requires, that if the matter in question is disputed, that matter shall proceed to hearing and the Commission shall issue an order granting or denying the petition.

12. Based upon the foregoing constitutional, statutory and case law authorities, the Commission finds that it has jurisdiction over this complaint. Moreover, we find that we possess all necessary and requisite authority to make these findings and conclusions and those required to adjudicate the issue raised in this complaint.

Evidence

13. Mr. Gilfillan testified on behalf of Mid America about a number of issues that were raised in its complaint. First of all, Mid America expressed its dissatisfaction with ALLTEL charging for detailed billing. Second, Mr. Gilfillan indicated that requiring Mid America to subscribe to the local exchange routing guide (LERG) is absurd when ALLTEL knows the basis of the service it is selling and refuses to voluntarily divulge this information to the customers it serves. Third, in Mid America's opinion, ALLTEL's costly custom call screening alternative fails to address the real issue. Mr. Gilfillan indicated that ALLTEL customers, such as Mid America, should not have to employ extraordinary costly measures to unearth the details of the charges that comprise their monthly statement.

14. Mr. Gilfillan further stated that ALLTEL's fourth affirmative defense, which was that ALLTEL times all calls made on its payphones and charged pay telephone users on a timed basis, was applied inconsistently. According to testing completed by Mid America, ALLTEL phones located in Plattsmouth, Nebraska handled the treatment of ELCA calls in different fashions. ALLTEL charges for ELCA calls ranged from 3 1/3 cents per minute to 10 cents per minute, despite the fact that ALLTEL's tariff provides for a rate of 12 cents per minute for the same calls. Mid America alleged that before this complaint was brought before the Commission, ALLTEL was giving the ELCA calls away untimed for the cost of the local call. Mr. Gilfillan indicated that the result is that ALLTEL is selling the same service to ALLTEL payphone users at a much lower rate than what ALLTEL sells it to Mid America.

15. Steve Meradith, staff manager of government affairs, testified on behalf of ALLTEL. Mr. Meradith testified that ALLTEL does, in fact, provide Mid America with local exchange telephone service in the form of customer-owned coin-operated telephone service (COCOTS) lines. However, according to Mr. Meradith, he did not believe that Mid America subscribed to the optional ELCA service and associated block of minutes.

16. Mr. Meradith testified that ALLTEL generally charges 50 cents per call for a payphone call. Furthermore, such rates include ELCA for a payphone user without an additional charge. Mr. Meradith indicated that it is ALLTEL's practice to time payphone calls whenever they have the capability, however, he acknowledged that not all of ALLTEL's payphones currently have

that capability. Nonetheless, Mr. Meradith stated that ALLTEL is in the process of reviewing the continued use of such non-timable payphones and to remove or replace them as time permits.

17. Mr. Meradith acknowledged that ALLTEL had denied Mid America's request that ALLTEL discontinue the provision of ELCA on its payphones, indicating that ALLTEL did not feel that it would be in the public interest to do so.

Grant of Relief to the Complainants

18. Based on the record before this Commission, we find that a grant of relief is necessary to ensure that all customers are treated in a nondiscriminatory fashion. We find this action is not only consistent with applicable state law and the underlying policies established therein, but also the Telecommunications Act of 1996 (the Act) and prudent public policy. Accordingly, for the specific reasons stated herein and the specific opinions and findings of facts made herein, we grant relief and direct ALLTEL to take such action necessary to implement the following.

19. Within 30 days of the entry of this order, the Commission directs ALLTEL to provide free ELCA services to third-party payphone providers until such time that ALLTEL demonstrates to this Commission that all of ALLTEL's payphones are capable of assessing ELCA charges in a nondiscriminatory fashion.

20. For the reasons stated herein, we find that such directives are just and reasonable, and are required to ensure nondiscriminatory provisioning of ELCA services via payphones. Furthermore, such action will ensure that the public interest associated with competitive end-user service provisioning within the state of Nebraska is served.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the foregoing Opinion and Findings are hereby, adopted.

MADE AND ENTERED in Lincoln, Nebraska on this 8th day of
July, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director