

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

HERBERT SHERDON, Director, Communi-) cations and Accounting Department,) Nebraska Public Service Commission,) Complainant,)	FORMAL COMPLAINT NO. 1078
vs.)	COMPLAINT DISMISSED
JERRY DANN and WILLARD FRIEDMAN,) d/b/a BEN FRANKLIN MOTEL, Omaha,) Nebraska,) Defendant.)	Entered: December 29, 1975

BY THE COMMISSION:

OPINION AND FINDINGS

The order of the Nebraska Public Service Commission entered April 15, 1974, in the case of Herbert Sherdon, Director, Communications and Accounting Department, Nebraska Public Service Commission vs. Jerry Dann and Willard Friedman, d/b/a Ben Franklin Motel, Omaha, Nebraska, Formal Complaint No. 1078 was sustained on the grounds that the Defendant was offering telephone service through an interconnection system without a certificate of public convenience and necessity. Thereupon the Commission issued a cease and desist order. An appeal to the Supreme Court was perfected by the defendants.

Pursuant to a Mandate of the Nebraska Supreme Court, in which the Court reversed and dismissed the Commission's order issued pursuant to Formal Complaint 1078, Herbert Sherdon, Director vs. Jerry Dann and Willard Friedman, d/b/a Ben Franklin Motel, Omaha, Nebraska, the Commission is obligated to reverse it's order and dismiss the complaint.

The Court found that the exercise of jurisdiction by the Federal Communications Commission over the terms and conditions governing the interconnection of customer-provided telephone equipment to the nationwide telephone network has established the primacy of federal authority and preempts conflicting or inconsistent state regulation. The intrastate interconnection system, in this case, is so intertwined with interstate traffic that a conflict with federal statutes arises, and therefore deprives the Nebraska Public Service Commission of jurisdiction.

In addition, the Court believed that to require a motel to obtain a certificate of public convenience and necessity while allowing other Nebraska customers of Northwestern Bell to operate in-house telephone systems of their own without a certificate was arbitrary. For the Nebraska Public Service Commission to enjoin the operation because the defendants do not have a certificate of public convenience and necessity, which they have never had, and which they cannot obtain in the present state of the facts and law, is both arbitrary and discriminatory.

ORDER

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1078, Herbert Sherdon, Director, Communications and Accounting Department, Nebraska Public Service Commission vs. Jerry Dann and Willard Friedman, d/b/a Ben Franklin Motel, Omaha, Nebraska, is hereby dismissed as per the Mandate of the Nebraska Supreme Court.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Formal Complaint No. 1078

Page 2

MADE AND ENTERED at Lincoln, Nebraska, this 29th day of December, 1975.

NEBRASKA PUBLIC SERVICE COMMISSION

Eric Rasmussen
Chairman

ATTEST:

Carolyn G...
Secretary

COMMISSIONERS CONCURRING:

Duane D. Gay
Shirley S. Gant
Jack Remar
W. F. Munn