

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Central National Insurance Company )  
of Omaha, and Tele-Sound, Incorporated, ) FORMAL COMPLAINT NO. 1094  
Omaha, Nebraska, )  
 )  
COMPLAINANTS, )  
 )  
vs. ) DISMISSED  
 )  
Northwestern Bell Telephone Company, )  
Omaha, Nebraska, )  
 ) Entered July 21, 1975.  
DEFENDANT. )

APPEARANCES: Victor J. Toth, Attorney  
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Washington, D.C.  
Appearing for Complainants

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Omaha, Nebraska  
Appearing for Complainants

Allan L. Grauer, Attorney  
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Omaha, Nebraska  
Appearing for Defendant

BY THE COMMISSION:

OPINION AND FINDINGS

This matter arises upon complaint of Central National Insurance Co., Omaha, Nebraska, (hereinafter C.N.I.) and Tele-Sound, Inc., also of Omaha, Nebraska, against the Northwestern Bell Telephone Company, (hereinafter Bell). The gravamen of the complaint set forth the refusal by Bell to provide twelve (12) business lines requested by C.N.I. for interconnection of a privately-owned Private Branch Exchange (PBX) the company had acquired from co-complainant Tele-Sound, Inc.

The issues as framed by counsel center upon the proper interpretation of the tariff filed by Bell with the Commission covering the interconnection of customer-owned equipment. The particular section involved was as follows:

The customer shall subscribe to telephone company facilities which are in parity with the operating characteristics of the customer-provided facilities.  
Section 25, Paragraph A-1-b(5)

The Complainant urges that the proper construction of tariff Section 25, Paragraph A-1-b(5) is that it sets out the criteria for any line which will be interconnected with customer-owned equipment and that those criteria are technical in nature; that when it requires "operating characteristics" of the equipment to be in "parity" with those of the access line, it is mandating technical compatibility between the equipment and the line.

Complainant further urges that if the Commission does not agree that this meaning is clear from the face of the tariff section, we are obligated by law to interpret the tariff in favor of the Complainant. In support of this proposition, the Complainant relies upon United States v. Gulf Refining Co., 268 U.S. 542, 546 (1925). That case held that where an article might be properly described as

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unrefined naphtha or gasoline, the lower grade tariff could be properly applied.

Relying again upon the Gulf Refining case and upon Kent State University v. Ohio Bell Telephone Co., (Case No. 73-3Y2-T, April 18, 1975), the Complainant urges that where two tariff provisions could be applicable, the customer is entitled to the one which offers him the lowest rate. The Court in Gulf said:

"(W)here two descriptions and tariffs are equally appropriate, the shipper is entitled to have applied the one specifying the lower rate".

The argument is that since the Reliable 1223 PBX used by C.N.I. will function on the loop start, it can take advantage of the lower priced business lines.

The Defendant argues that the proper interpretation of the tariff is that "parity" of the line and equipment does not refer to technical compatability, but to the nature of use. It is the position of the Defendant Bell that technical compatability is required by tariff Section 25A(2)(b)(2) which conditions the use of customer-owned equipment so that it not "interfere with the proper functioning ..." of the telephone equipment or facilities.

With the issues so framed, a crucial question is the nature of a business line and a PBX trunk - whether they are technically different services or simply differently priced services.

The issue of technical differences between a business line and a trunk line is readily disposed of by the testimony that indicates that Bell can provide trunk lines upon either a ground start or a loop start basis. Thus the fact that the Reliable equipment owned by C.N.I. operates on a loop start system does not compel its linkage with either the normally loop start business line or the trunk line which is either loop or ground start. Similarly, there was no disagreement among the parties that the customer-owned PBX would function if connected to a business line rather than a trunk.

The witness for Bell stated that the difference in the PBX trunk and the business line was that the trunk met higher transmission requirements and received special channel conditioning. The Complainant urged that it had not been proven that this had occurred at the various installations nor that it was necessary.

The Defendant submitted Exhibit 7 which indicated that the average use of a PBX trunk is considerably greater than the average use of a business line which results in increased costs and central office usage. The following exchange upon interrogation illuminates this point:

Q: So then, do I understand correctly then that what you're saying is that because of this, because of what you believe to be increased costs due to trunk lines as a class, that's why you have them priced on a different basis than business lines?

A: Yes. I said that, that the increased costs, due to the conditioning of the circuits, the usage, and the inherent value of service, if you will, were the three elements that went into the increased cost of trunks over business lines." (Bell witness Corey) (T. 226-227)

The testimony established that a service line, known as a trunk and billed at a trunk rate is all that is provided by Bell Telephone to its PBX customers. The PBX owned by C.N.I. performs the same essential functions as the PBX supplied by Bell Telephone. It would thus appear that Bell is obligated, by statute, to provide the line to customer-owned PBX's on the same basis as that provided to Bell-supplied PBX customers. Any other treatment would be discriminatory. (See R.R.S. 1943, § 75-126)

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An example of discrimination of this type is found in State ex rel De Paul Hospital School of Nursing v. Public Service Commission, 464 S.W. 2d 737 (Mo. Ct. of Appeals, 1970). In that case, a special Commissioner found that Southwestern Bell was illegally discriminating against the nursing school by charging it at a commercial rate rather than a hotel rate. The commercial rate was discriminatory because:

"(T)he overwhelming weight of the evidence is to the effect that the service rendered to complainant was of the character and under virtually the same conditions as . . . those other customers mentioned in the evidence."

It is the obligation of this Commission to settle disputes arising between common carriers and their customers. This is particularly true when the issue is one involving the proper interpretation of the tariff item.

Although there exists precedent that tariff interpretation should construe any ambiguity in the tariff against the utility, in this case, we believe the appropriate course of conduct is set forth in the case of Building Industries Exhibit, Inc. v. Public Utilities Commission, 150 Ohio St. 251, 80 N.E. 2d 836 (1948). That case requires the words to be construed in light of the purpose of the tariff.

The construction offered by Defendant appears to be more consistent with the purpose of the tariff. First, tariff Section 25 (A)(2)(b)(2) does provide for technical compatibility by requiring that customer-owned interconnections not interfere with the proper functioning of the telephone network.

Second, if we would construe the tariff as Complainant urges, Bell would be required to furnish a line to its own PBX customers at a rate higher than it would furnish a line for the connection of customer-owned PBX equipment. This would be a direct violation of R.R.S. 1943, § 75-126. When two constructions of a tariff are possible, that which would lead to an illegal result should be rejected. (See State v. Public Service Commission of Washington, 94 Wash. 274, 162 P. 523).

The more logical interpretation of the questioned tariff provision is that "parity" refers to type of use rather than technical compatibility. Thus, the section would mean that C.N.I. must subscribe to a line which is in parity with the nature of use of the equipment. It must then subscribe to a trunk line to interconnect its PBX just as the Bell PBX customer must subscribe to a trunk line. The function of the lines is the same as is the nature of the demand placed upon the line by the PBX equipment.

It is true, however, that the language of the tariff could be clearer and more precise. To prevent this type of dispute from arising in the future, we will require Bell to file with us a revised tariff sheet amending Section 25, Paragraph A-1(b)(5) in accordance with this decision.

Therefore, the Commission finds:

1. That the Complainant C.N.I. ordered from the Defendant Bell Telephone twelve (12) business lines to interconnect a customer-owned PBX.
2. That the Defendant Bell Telephone refused to provide said lines, but stands ready, willing and able to provide either ground start or loop start trunk lines for the purpose of interconnecting Complainant's equipment.
3. That such refusal by the Defendant was lawful and correct under the terms of the tariff, Section 25, Paragraph A-1-b(5).
4. That the Defendant should be ordered to file a revised tariff sheet with the Commission eliminating any possible ambiguity in accordance with the opinion attached hereto.

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5. That the Complaint of Central National Insurance Company of Omaha, and Tele-Sound, Inc. should be, and is, dismissed.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1094 be, and is hereby, dismissed.

IT IS FURTHER ORDERED that Northwestern Bell Telephone Company be, and is hereby, directed to file a revised tariff sheet in accordance with this decision within thirty (30) days.

MADE AND ENTERED at Lincoln, Nebraska, this 21st day of July, 1975.

NEBRASKA PUBLIC SERVICE COMMISSION

*Eric Rasmussen*  
Chairman

ATTEST:

*Ernest H. Green*  
Secretary

COMMISSIONERS CONCURRING:

*James D. Gay*  
*Robert T. Mott* and  
*Ann G. Munn*