

2. Defendant, The Lincoln Telephone and Telegraph Company (LT&T), is engaged in the telecommunications business as a common carrier subject to the jurisdiction of this Commission and provides telecommunications service in 137 exchanges in Nebraska including Lincoln and Wahoo.

3. Four witnesses testified for complainants and one for defendant. Larry Coffey testified that he is the president and owner of Gas 'N Shop which owns the store in question in Wahoo, Nebraska; that Gas 'N Shop has authorized ADS to act as its agent in dealing with LT&T; that a pay phone owned and operated by LT&T is located on the outside of the Wahoo premises pursuant to an oral agreement between Gas 'N Shop and LT&T; that Gas 'N Shop makes no payments to LT&T for this pay phone; that Gas 'N Shop is paid a commission by LT&T for locating the pay phone on its premises; and that ADS operates pay phones at Gas 'N Shop's Lincoln stores. Mr. Coffey testified that he needs revenue information for the Wahoo pay phone in order to decide which would be in his best interest, an LT&T or an ADS pay phone.

4. Duane Dana testified: He is Executive Vice President of Engineered Systems, Inc.; ADS is in the business of providing pay phones on a sales or revenue sharing basis; as Gas 'N Shop's authorized representative, ADS requested revenue information from LT&T to permit ADS to make a proposal to Gas 'N Shop to show if it is "better off" with ADS or LT&T; the percent of commission ADS pays premise owners is based on the volume of usage of the pay phone. Mr. Dana indicated that ADS could install a pay phone next to LT&T's pay phone and compete.

5. Roger Stricklett, Sales Representative of ADS testified: He met with Mr. Coffey to discuss pay phones; that Mr. Coffey was interested in increasing Gas 'N Shop's revenue from pay phones and that he requested a written proposal for the stores in Lincoln, Wahoo and Fremont. Mr. Stricklett told him that ADS didn't serve Fremont and "...we had no idea of what amount of revenue to expect out of a pay phone in a small town." (T. p.35). In July, 1987 an agreement was made to put ADS phones in Lincoln but leave Wahoo alone until revenue data was available. The agreement with Gas 'N Shop was for a two year period. Mr. Stricklett further testified that ADS has both written and oral contracts with premise owners.

6. David Gilfillan, Vice President of Engineering for Engineered Systems testified: He feels that the definition of customer in the Commission rules includes the premise owner; that Rule 002.18A requiring telephone companies to provide customers information applies to enable Gas 'N Shop to choose between public and semi-public service; and that competition will be enhanced if the revenue information is provided. ADS considers a "good phone" one which generates total cash revenue of \$100.00 or more per month. ADS requests the cash and non-cash revenue shown separately for a 12 to 13 month period. He indicated on cross-examination that ADS has installed pay phones in Lincoln without revenue information.

7. William J. Ashburn, Industry Relations Manager for LT&T testified for defendant: The pay phone at the Wahoo Gas 'N Shop was installed August 2, 1984 pursuant to an oral agreement, the terms of which include LT&T installing the telephone, access line and half-booth at LT&T's cost. The telephone in question is a public pay station installed under the provisions of Section 28, Second Revised Sheet 1 of defendant's tariff (Exhibit No. 12).

8. The crux of this matter is the interpretation of Commission Rule 001.01L of Chapter 5: "Customer or Subscriber shall mean any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency or any other entity provided with telecommunications service by a telephone company." The evidence indicates that the telephone service in question is public telephone service installed at the sole discretion of defendant, LT&T, with the permission of the premise owner, Gas 'N Shop. Gas 'N Shop pays nothing for the pay phone but instead receives a commission for permitting the installation on its property pursuant to an oral agreement. The evidence shows that Gas 'N Shop is not the "entity provided with telecommunications service" and is therefore not a customer of LT&T because it is not purchasing goods or services from LT&T but rather leasing space on its premises for a public telephone. As applied to public pay station service we interpret this rule to mean that the customer is the public using the telephone to make calls and not the premise owner.

9. Title 291 Chapter 5 Rule 002.18A provides: "Each exchange carrier shall, upon request, provide its customers with such information and assistance as is necessary so that they may secure the most desirable grades of service." Notwithstanding that Gas 'N Shop is not a customer, the reference to grades of service refers to 1-party, 2-party, 4-party and multi-party and is intended that customers be aware of all services available from the regulated local exchange company and does not apply to public pay station service.

10. It further appears from the evidence that the oral agreement between Gas 'N Shop and LT&T may be cancelled at any time by either party. Gas 'N Shop may also allow the installation of an ADS coin telephone on its premises along with or in place of the LT&T coin telephone. Competition is not adversely affected by a lack of revenue information for the LT&T telephone since ADS or any other competitor may place a coin telephone at any location with permission of the premise owner. In fact, ADS has placed coin telephones in Lincoln locations and is actively competing with LT&T without the benefit of revenue information.

11. The formal complaint should be dismissed.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Formal Compliant No. 1221 be and it is hereby dismissed.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of February, 1989.

NEBRASKA PUBLIC SERVICE COMMISSION

Daniel G. Urwiller

Chairman

COMMISSIONERS CONCURRING:

Duane D. Gay

//s//Frank E. Landis, Jr.

//s//James Munnely

//s//Eric Rasmussen

//s//Daniel G. Urwiller

ATTEST:

John R. Spring
Executive Director