

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Executone Business Telephone Inc., ) Formal Complaint No. 1227  
Scottsbluff, Nebraska, )  
Complainant )  
vs. ) SUSTAINED IN PART  
)  
United Telephone Company of the )  
West, Scottsbluff, Nebraska )  
Defendant ) Entered: July 31, 1990

APPEARANCES: For the complainant  
Paul E. Hofmeister, Attorney  
1904 First Ave.  
Scottsbluff, Nebraska

For the Defendant  
Thomas A. Grimaldi, Attorney  
5454 West 110th St.  
Overland Park, Kansas

OPINION AND FINDINGS

BY THE COMMISSION:

By formal complaint filed March 8, 1990, Executone Business Telephones, Inc., Scottsbluff, Nebraska charged that United Telephone Company of the West, Scottsbluff, Nebraska had failed to offer flat rate service for COCOT lines.

A copy of the formal complaint was served upon the defendant as provided by the Commission's Rules and Regulations.

Pursuant to notice required by law, public hearing was held on the formal complaint on May 31, 1990, at 9:00 a.m. in the Scotts Bluff County Administration Building, Gering, Nebraska with appearances as shown.

Upon consideration of the formal complaint, the evidence adduced at the hearing and being fully advised, the Commission is of the opinion and finds that:

1. Complainant Executone Business Telephones, Inc. is a corporation engaged in the business of selling and servicing telephone systems and related equipment and owns and operates coin telephones. Complainant is a subscriber to telephone service provided by defendant, United Telephone Company of the West.

2. Defendant is a common carrier under the jurisdiction of this Commission with its principal place of business at Scottsbluff, Nebraska. It provides local exchange telephone service in thirteen exchanges in western Nebraska.

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3. Joe Nichols, President of Executone testified that they currently operate 25 coin telephones in Scottsbluff, Gering, Morrill and Mitchell, Nebraska. Executone is billed at measured rates for the coin phones in Scottsbluff, Gering and Morrill and at a flat rate for the phones in Mitchell. Executone has requested United Telephone to bill it at flat rates for all of its coin phones but has been refused; that the reason given for such refusal is that the business rate is below cost and is therefore subsidized by others. Mr. Nichols asks that in addition to being allowed to pay for service at flat rates, United be ordered to refund to Executone the difference between flat and measured rates since May, 1987 when measured service was first offered.

4. Mr. Nichols also testified that Executone is required to pay a charge of \$1.75 per month for each of its pay phones for non-published number service. He feels that since Executone is assessed the multi line access charge rate, it should also be treated as a multi-line customer for the purpose of the non-published number charge and assessed only one such charge.

5. As a third part of its complaint, Mr. Nichols testified that Executone seeks to be allowed to connect more than one payphone to each of its COCOT lines. He indicated that present day technology has eliminated the need to have a separate line for each payphone and cited as example the case of a business with PBX service.

6. Victor Dobras, Director of Revenue for United testified that its tariff approved by the Commission in application C-597 establishes that rates for COCOT lines in exchanges where measured service is offered shall be the measured line rate. The reason such rate is applied is because the business one party rate is less than its cost based upon 1984 company cost studies. Mr. Dobras states that it is not appropriate for United to charge a rate below cost to a customer in competition with it. He indicated that although no new cost studies have been made he felt that the business one party rate continues to be below cost today. Mr. Dobras testified that the \$6.00 end user access charge for multi line customers is assessed based upon rules established by the Federal Communications Commission.

7. Mr. Dobras testified that the charge for non-published number service is applied to all business 1 party and semi-public customers. He indicated that the company was concerned about access of the public to emergency services and that it complied with Commission rules with regard to requiring a separate line for each COCOT instrument. He also testified that United's semi-public customers may connect a second telephone to the line for use of the business.

8. Based upon the evidence of record, we find that United has not violated its filed tariffs or the rules and regulations of this Commission. In the matter of flat versus measured rates for COCOT lines we find that Nebr. Rev. Stat. §86-803 enacted in 1986 provides that the Commission "...may order that flat rate services shall be available whenever measured service is implemented...". The Commission finds that LB 835 is applicable in this situation. There is no evidence to establish the added cost of furnishing a COCOT line as opposed to a business one party line other than Mr. Dobras' statement that: "We do go through some additional expense associated with investigation of toll calls of what we call centralized toll investigation to prevent toll fraud from those lines." The Commission finds, therefore, that based on the record in this complaint, there is no evidence justifying a rate different than the business one party rate for COCOT service, and that COCOT subscribers should be offered the choice of flat rate business one party or measured business one party rates in exchanges where measured service is offered by United.

9. Since United was following approved tariffs, no refund should be allowed. All customers are subject to the same charges for non-published service therefore non-published service charges should apply to Executone's COCOT lines.

10. Mr. Nichols' testimony that technological changes would permit revision of the Commission's rule requiring a separate line for each COCOT phone is not sufficiently specific to warrant a proceeding to revise said rule at this time. The Commission would consider Executone's request for a rule change with proper notice to all interested parties and a hearing on the matter; however, the formal complaint procedure does not give adequate notice to the citizens and common carriers in the state.

11. Having considered all of the evidence, the Commission finds that the formal complaint should be sustained in part and defendant should be required to offer COCOT subscribers a choice of flat or measured business one party service in exchanges where measured service is offered and other parts of the complaint should be overruled.

## ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1227 be and it is hereby sustained in part and defendant United Telephone Company of the West be and it is hereby ordered to offer COCOT subscribers a choice of flat or measured business one party service in exchanges where measured service is offered.

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IT IS FURTHER ORDERED that except as set forth above, the formal complaint be and it is hereby overruled.

MADE AND ENTERED at Lincoln, Nebraska, this 31st day of July, 1990.

NEBRASKA PUBLIC SERVICE COMMISSION

*Daniel G. Urwiller*

Chairman

COMMISSIONERS CONCURRING:

*Quane D. Gay*

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

//s//James Munnelly

//s//Eric Rasmussen

//s//Daniel G. Urwiller

ATTEST:

*Pat R. King*  
Executive Director