

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Thomas A. Marsh,)	Formal Complaint No. 1263
Complainant,)	
)	
vs.)	GRANTED
)	
Aliant Communications Company,)	
Respondent.)	Entered: March 2, 1999

BY THE COMMISSION:

On July 2, 1998, Thomas A. Marsh (Complainant) filed a Formal Complaint (Complaint) against Aliant Communications Company (Aliant or Respondent) regarding the charges of connecting telephone service to his rural home. Aliant filed an answer to the Complaint on July 23, 1998. A public hearing was held on October 26, 1998, in the Commission Hearing Room in Lincoln, Nebraska. Respondent was represented by Paul Schudel of Lincoln, Nebraska. Complainant appeared pro se.

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

In the fall of 1997, Complainant requested telephone service to their home located in the northernmost corner of the Shelby exchange. Aliant's engineer prepared a quote for this connection which proposed serving the household from an extension of new cable being fed west of the Complainant's location. Although cable had been laid at some earlier time from the east, there are currently no spare pairs available to serve the Marsh residence. Aliant's engineer determined that it would be necessary to go back 6800 feet to build plant to the Marsh residence. After applying a short allowance, 9.8/10 mile was determined to be the distance to be covered. Under the terms of the General Tariff then on file with this Commission, at \$135/tenth of a mile of construction, the bill came to approximately \$1400.

It should be noted that Aliant has since filed a tariff which prices such connection at \$345/tenth of a mile of construction. However, Aliant had made a prior offer to Complainant using the lower tariff, even after the effective date of the new tariff, and this Commission's order is consistent with the prior tariff and offer.

Complainant indicated in his testimony that he understood that a line which was located near him to his father-in-law's house would be adequate for Complainant's use. His father-in-law, and later his brother-in-law, who live nearby, were connected by Aliant at no cost. This understanding cannot be found in the written document embodying the connection of service to the Complainant's father-in-law. Complainant testified that his wife was present when Aliant made this representation to the father-in-law.

Respondent has since repriced the quote for connection by measuring from Aliant's closest physical presence, located to the east of Complainant's property. Using this new measurement and multiplying by the then-filed tariff price, the new quote came to \$769.50. Respondent testified that other methods of supplying connection were contrary to engineering principals. Both parties concur that the area is not likely to be subject to immediate further development although Complainant's mother is restoring a mobile home in the area which may require a phone connection.

Respondent further testified that the present line does not have the capacity to serve the Marsh household. Currently, the Complainant uses cellular service from another company for his telephone needs.

Respondent, in support of its contention that Complainant should be assessed special construction charges, entered as exhibits two separate parts of its tariff filed with the Commission. The General Tariff details the fact that construction charges shall be applicable where "unusual" costs would be incurred. In the tariff governing at the time of the service request, four conditions were listed, any of which the tariff explains support the assessment of construction charges to the potential subscriber. A fifth was added in the tariff which became effective in February 1998. Although, for reasons discussed in the next paragraph, we do not consider the second tariff, we will examine all five conditions listed in the tariff of February 1998 in this order.

The second part of the tariff entered as an exhibit is titled in its subsection as "EXTENSIONS AND/OR ADDITIONS FOR RURAL LINE SERVICE" and was issued by Aliant in February 1998. It became effective on February 19, 1998. The tariff specifically covers construction charges for extensions into rural areas and provides that construction charges apply. Insofar as the tariff addition was entered and became effective after the date of the time that Complainant requested service and as Respondent has already agreed in principal to reference the tariff in existence at the time of the request for service in the setting of rates, we decline to consider this addition to the tariff in this matter.

In returning to the first part of the tariff explaining the conditions for the assessment of construction charges, we examine if any of these five conditions are applicable in the present case. Of these five conditions, four were listed in the tariff at the time of the service request. A fifth condition was added after the date of the subscriber's request for service. Two of these conditions, requirement of additional services (condition 3) and requested expedited service (condition 4), can be dismissed without discussion as not relevant to the instant case.

The first of the conditions which merits discussion is that charges would apply when the company "has no other requirement for the facilities requested." Although it is true that no other pre-

sent demand exists for additional service, the Complainant has indicated that another relative is restoring a mobile home for inhabitation some time in the future. Respondent, in its hearing testimony, concedes that it has no mechanism to rebate construction costs at the time that future demands for service in the area served by the proposed construction. We agree that such a mechanism would be unwieldy and cumbersome. However, we cannot conclude that there will be no future requirement for services.

The tariff also indicates that construction charges will apply when the service to be furnished would follow a route "other than that which the Telephone Company would normally utilize in furnishing the requested service." Although Respondent has refined its quote for costs to the Applicant using a different route than will be actually used to provide service, the Respondent concedes in its testimony that this revision was based upon normal company practice. It should be noted that the Respondent will, in fact, use the identical route that it has used in the previous provision of service along that road.

Finally, the tariff provides that construction charges may apply when the service is considered to be temporary. It seems unlikely that the Complainant, having located near two of his family members in the same quarter section of land, will make the service a fleeting one. In any case, the Respondent can protect its interests through a one-year service contract. A similar contract was entered with his father-in-law in 1991 when the line was first placed.

We cannot conclude that the tariff in effect at the time of the request for service conclusively placed Mr. Marsh on notice that he would be liable for the relatively high cost of having basic telephone service provided.

An examination of the equities in the situation suggests that the formal complaint be upheld. Aliant placed the original line in 1991. No extra construction costs were required of the father-in-law at that time. That the number of paired lines proved inadequate some years later is not the fault of the Complainant. It was not the Complainant that made the initial request or decisions on the capacity of the line to be placed.

Further, if Aliant builds with the possible (and likely) need for additional hook-ups, there will be an opportunity for them to recover their costs. Respondent may also be able to recover these costs in another manner. Under the proposed Nebraska Universal Service Fund, Aliant will be eligible for reimbursement from the fund for the high cost of servicing rural customers.

From a review of the tariff provisions in effect at the time of the request for service and of the balance of the equities in this case, we find that the Complainant's formal complaint should be upheld.

We are aware of the concessions that the Respondent has made to the Complainant and we do not intend to imply that the Respondent acted in less than good faith. Nor does our order here prevent the Respondent from assessing and collecting the normal charges to initiate service or from requiring a term contract to insure that the Complainant requires other than just temporary service. While we decline to anticipate how the new tariff provisions would effect the results in a future case, we do find the charge for construction in this case to be excessive. For these reasons, we find that the Complainant should not be charged the construction charges that have or would be assessed against Complainant.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1263 be, and it is hereby, granted.

MADE AND ENTERED in Lincoln, Nebraska, this 2nd day of March, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chairman

ATTESTS:


Executive Director


//s//Lowell C. Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller