

P-427/D-90-480 DENYING RELIEF

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of a Complaint by Gordon
Hedlund Against the Sherburne County Rural
Telephone Company

ISSUE DATE: November 8, 1990

DOCKET NO. P-427/D-90-480

ORDER DENYING RELIEF

PROCEDURAL HISTORY

On June 27, 1990, Gordon Hedlund filed a complaint alleging that Sherburne Rural Telephone Company (Sherburne or the Company) had violated Minn. Stat. §§ 237.06, 237.081, and 237.68 (1988) by refusing to provide him with central office services which would enable him to establish a private telecommunications system within a mobile home park he was developing. Mr. Hedlund alleged that Minn. Stat. § 237.68 (1988) authorized him to provide private shared telecommunications service within the mobile home park.

On July 10, 1990, the Commission issued its ORDER TO RESPOND TO COMPLAINT OR TO GRANT THE RELIEF IT REQUESTS. Pursuant to the agreement of the parties, that Order required the Company to file its answer by July 17 and to serve copies on a list of potentially interested persons. The list, made up of persons known to have an interest in the meaning and application of Minn. Stat. § 237.68 (1988), was compiled by the parties and Commission staff. Persons on the list were notified that they could file written comments for ten days from the filing of the answer.

The Company filed an answer on July 19, 1990. The Company denied that Mr. Hedlund's proposed telecommunications system would constitute private shared telecommunications service within the meaning of Minn. Stat. § 237.68 (1988). The Company stated Mr. Hedlund was requesting service which would violate its lawfully established tariff.

The Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) intervened in the proceeding. Both parties argued that the private telecommunications system Mr. Hedlund proposed did not meet the statutory definition of "private shared telecommunications services."

Northwestern Bell Telephone Company and the Minnesota Independent Coalition filed comments arguing that Mr. Hedlund's telecommunications system did not qualify as a private shared telecommunications system under the statute.

The matter came before the Commission on October 16, 1990.

FINDINGS AND CONCLUSIONS

In 1987 the legislature enacted Minn. Stat. § 237.68 (1988), which allows parties other than traditional telephone companies to offer private shared telecommunications services under specific circumstances. The definitional portion of that statute reads as follows:

Definition. For the purposes of this section, "private shared telecommunications services" means the provision of telephone services and equipment within a user group located in discrete private premises, in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to long-distance telephone companies.

Minn. Stat. § 237.68, subd. 1 (1988).

The issue before the Commission is whether the telecommunications system proposed by Mr. Hedlund qualifies as "private shared telecommunications services" under the statute. The Commission believes that it does not.

The facts in this case are not in dispute. Mr. Hedlund owns property within the City of Zimmerman, which he plans to develop into a 240-lot mobile home park. He plans to lease these 240 home sites to individuals who will supply their own mobile homes. He proposes to install a private telecommunications system within the park, with connections to Sherburne's local exchange facilities.

For the proposed telecommunications system to qualify as private shared telecommunications services under the statute, the mobile home park would have to constitute a discrete private premises, a building complex, a campus, or a high-rise building. Minn. Stat. § 237.68, subd. 1 (1988). Mr. Hedlund argues that the mobile home park would qualify either as a discrete private premises or a campus. The Commission disagrees.

The Mobile Home Park is Not a Discrete Private Premises

Mr. Hedlund points out that he owns the large undivided tract of land on which all the mobile homes will be located. He argues that the entire tract therefore constitutes one discrete private premises. The Commission finds it is more reasonable to view each mobile home site within the park as a discrete private premises.

Mr. Hedlund's ownership of the underlying land may make the land itself "private premises." The statute, however, uses the more restrictive term "discrete private premises." The word "discrete" is

commonly understood to mean "constituting a separate thing; distinct."¹ Of the private premises involved here, those which are separate and distinct (discrete), are the 240 individual mobile homes. Each will be the home of a separate and distinct household. It is these separate and distinct homes which will be receiving telephone service, not the underlying land.

This interpretation is consistent with the Commission's historical practice of treating mobile home owners in the same manner as owners of traditional single family homes, except where there are clear and relevant differences.² Mobile homes are no less "discrete private premises" than traditional single family homes, which few would argue are anything other than discrete private premises. The fact that these homeowners will lease, rather than own, the land on which their homes stand, does not keep them from sharing traditional homeowner expectations of autonomy, privacy, and community. Leasing, rather than owning, the underlying land does not make these homes less separate and distinct (i.e., "discrete") than traditional single family homes.

This view is also consistent with state policy toward manufactured housing generally. Even a cursory examination of Minn. Stat. Chapter 327C demonstrates a legislative intent to extend to mobile home owners as many of the protections of traditional homeownership as possible. The Commission finds that there are no differences between mobile homes and traditional single family homes which would justify treating the two types of housing differently in this case.

For the reasons set forth above, the Commission finds that the mobile home park is not a discrete private premises and that each mobile home within the park is.

The Mobile Home Park is Not a Campus

Mr. Hedlund also contends that the mobile home park is a "campus" and is therefore eligible to receive private shared telecommunications services. The Commission disagrees.

The dictionary defines campus as "the grounds of a school, college, or university."³ The mobile home park is clearly not a campus under this definition.

Mr. Hedlund also suggests a more expansive definition, reflecting a recent trend to call health care

¹ The American Heritage Dictionary, Second College Edition, (Boston: Houghton Mifflin Company, 1985).

² See, for example, In the Matter of the Complaint Against Northwestern Bell Telephone Company by Michael Ives, Docket No. P-421/C-87-680, which dealt with whether Northwestern Bell should be required to establish a separate demarcation point for each mobile home within a mobile home park. The Commission required separate demarcation points, primarily to avoid treating mobile home owners less favorably than traditional single family homeowners. The case is not controlling, but it does demonstrate the equitable concerns which have influenced Commission policy in this area.

³ The American Heritage Dictionary, Second College Edition, (Boston: Houghton Mifflin Company, 1985).

complexes and similar clusters of buildings campuses: "a parcel of property upon which a number of facilities or buildings are placed and within which a series of related activities take place." Without adopting the proposed definition, the Commission finds that the mobile home park fails to meet it.

It is true that the mobile home park will constitute a parcel of property upon which a number of facilities or buildings, i.e. mobile homes, will be placed. It is not true, however, that "related activities" will take place within these mobile homes. Each mobile home will be the residence of a separate and distinct household. The activities of these households will not be "related" to one another any more significantly than the activities of households in other neighborhoods. The mobile home park therefore does not meet Mr. Hedlund's expansive definition.

Mr. Hedlund correctly perceives that any expanded definition of campus necessarily includes the notion of interrelated activities. Since that feature is notably absent from the mobile home park, it cannot qualify as a campus under Minn. Stat. § 237.68 (1988).

The Policies Underlying the Statute Do Not Require Granting Relief

The Commission has found above that the clear language of the statute does not support Mr. Hedlund's claim that Minn. Stat. § 237.68 (1988) authorizes him to provide private shared telecommunications services within his mobile home park. The Commission also finds that the underlying statutory goals do not support his claim.

The statute defines private shared telecommunications services as services provided "through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to long-distance telephone companies." This definition presupposes that providers of private shared telecommunications services will offer more than dial tone and long distance access; they are also expected to offer data processing and information management services.

Clearly, private shared telecommunications services were authorized to allow end users with specialized or sophisticated telecommunications needs to outfit their buildings or campuses for that purpose. Examples are banks, which may transmit financial data over telephone lines, hospitals, which may require specialized links with other medical centers, and similar establishments. Private homes, whether in traditional residential developments or mobile home parks, do not have such telecommunications needs. Therefore, in this case there is no need to look beyond the literal meaning of the statute to accommodate underlying policy goals.

Conclusion

For the reasons set forth above, the Commission concludes that Minn. Stat. § 237.68 (1988) does not authorize Mr. Hedlund to provide private shared telecommunications services within the mobile home park he is developing. The Commission will deny the relief he seeks in his complaint.

ORDER

1. The complaint filed by Gordon Hedlund against Sherburne Rural Telephone Company on June 27, 1990 is found to be without merit and accordingly, relief is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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