

NEBRASKA SUPREME COURT

In re Application No. C-4973 of Keith Skrdlant; Windstream Communications, Inc. v. Nebraska Public Service Commission and Keith Skrdlant; In re Application No. C-4960 of Jason Poppe et al.; Windstream Communications, Inc. v. Nebraska Public Service Commission et al.

305 Neb. 635 (2020) · No. Nos. S-18-877, S-18-878 · Decided April 23, 2020

SUMMARY

The Nebraska Supreme Court dismissed Windstream Communications' appeals from Nebraska Public Service Commission orders because Windstream's motions for rehearing were not timely filed. The court held that filing under Nebraska Revised Statute § 75-134.02 requires the motion to be in the Commission's possession within 10 days after the order's effective date, and that the Commission's July 23 file stamps established the filing date absent meaningful contrary evidence. Because the motions did not suspend the appeal period, the notices of intention to appeal filed on September 13, 2018, were untimely and the court lacked jurisdiction.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Miller-Lerman, J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.; Heavican, C.J., participating on briefs
JURISDICTION	Nebraska
DECIDED	April 23, 2020
DOCKET	Nos. S-18-877, S-18-878
DISPOSITION	dismissed
PROCEDURAL POSTURE	Windstream appealed Nebraska Public Service Commission orders granting applications to revise telecommunications exchange boundaries. The Nebraska Court of Appeals issued orders to show cause regarding appellate jurisdiction, allowed the appeals to proceed while reserving the jurisdictional issue, and the Nebraska Supreme Court later moved the cases to its docket.
STANDARD OF REVIEW	A jurisdictional question not involving a factual dispute is reviewed as a matter of law, independently of the lower court's decision.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Windstream Communications, Inc. v. Nebraska Public Service Commission, Keith Skrdlant, Jason Poppe et al., Nebraska Public Service Commission et al.

TOPICS

appellate jurisdiction

administrative law

judicial review of agency action

statutory interpretation

standard of review

PRACTICE AREAS

administrative law

appellate procedure

telecommunications regulation

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had jurisdiction over Windstream's appeals when Windstream's motions for rehearing were file stamped more than 10 days after the effective date of the PSC orders.
2. Whether transmission by email or mailing on July 20 constituted filing of the motions for rehearing within the statutory 10-day period.
3. Whether the file stamp on the PSC's copies of the motions was entitled to a presumption of regularity.

HOLDINGS

1. For purposes of suspending the time to appeal a PSC order, a motion for reconsideration is filed only when it is in the possession of the PSC within 10 days after the order's effective date.
2. An agency file stamp is presumed regular and, absent meaningful contrary evidence, establishes the date on which the document was received by and in the possession of the agency for filing.
3. Mailing a motion on the deadline does not establish timely filing with the PSC, and service of a motion on opposing counsel under a civil pleading rule does not establish filing with the PSC. The record also did not establish that email attachments were an authorized method of filing with the PSC.
4. Because Windstream's motions for rehearing were filed on July 23 rather than within 10 days of the July 10 effective date, they did not suspend the appeal period, and the September 13 notices of intention to appeal were untimely. The Nebraska Supreme Court therefore lacked jurisdiction.

KEY QUOTATIONS

“The file stamp is durable proof of filing unless overcome by meaningful evidence to the contrary.” (641)

“These rules appear to end any uncertainty over whether filings with the PSC can be accomplished via email.” (644)

FACTUAL BACKGROUND

Keith Skrdlant and ten other applicants sought changes to existing telecommunications exchange boundaries so they could receive advanced telecommunications services from Hamilton Telecommunications rather than Windstream. The PSC granted Skrdlant's application and the applications of four applicants in the related case, while denying six other applications. The PSC made both orders effective July 10, 2018. Windstream's motions for rehearing were file stamped July 23, more than 10 days after the effective date, and Windstream filed notices of intention to appeal on September 13.

PROCEDURAL HISTORY

The PSC entered orders effective July 10, 2018, granting the relevant boundary-change applications. Windstream's motions for rehearing were file stamped as received by the PSC on July 23, 2018, and the PSC denied them on August 21. Windstream filed notices of intention to appeal on September 13, 2018. The Nebraska Supreme Court held that the rehearing motions were untimely, did not suspend the appeal period, and that the notices of intention to appeal were filed outside the statutory 30-day period.

DISPOSITION

dismissed

CASES CITED

- Green v. Seiffert, 304 Neb. 212, 933 N.W.2d 590 (2019)
- Creighton St. Joseph Hosp. v. Tax Equalization & Review Commission, 260 Neb. 905, 620 N.W.2d 90 (2000)
- State v. Hess, 261 Neb. 368, 622 N.W.2d 891 (2001)
- State v. Dill, 300 Neb. 344, 913 N.W.2d 470 (2018)
- Lozier Corp. v. Douglas County Board of Equalization, 285 Neb. 705, 829 N.W.2d 652 (2013)
- Strode v. Saunders County Board of Equalization, 283 Neb. 802, 815 N.W.2d 856 (2012)
- Hanson v. Shaker Heights, 152 Ohio App. 3d 1, 786 N.E.2d 487 (2003)