BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own Motion, seeking to Determine Access Costs for US West.	)	Application No. NUSF-17 FINDINGS AND CONCLUSIONS Entered: September 24, 2002

APPEARANCES:

For Qwest Corporation:
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For the Rural Independent Companies:
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BY THE COMMISSION:

1. By order on its own motion, the Nebraska Public Service Commission (Commission) opened the above-captioned docket seeking to determine access costs for U S West (n/k/a Qwest Corporation). Notice of the docket was originally published in The Daily Record, Omaha, Nebraska, on October 15, 1999. On April 30, 2002, Qwest filed its transition plan seeking a reduction in intrastate switched access and additional NUSF support. Notice of Qwest's filing was published in The Daily Record, Omaha, Nebraska, on May 6, 2002.

2. A prehearing conference on this application was held in the Commission Hearing Room on May 14, 2002. A prehearing conference order was entered by the hearing officer on May 17, 2002, setting the hearing on July 24, 2002. On June 12, 2002, the Hearing Officer entered an order which limited the scope of the hearing and ruled that testimony and evidence regarding the implementation of an intrastate subscriber line charge was beyond the scope of this investigation. By stipulation filed on July 23, 2002, all parties agreed to permit the direct testimony of Ms. Sue Vanicek and any questioning of this witness to be conducted via telephone. A copy of this stipulation was entered into the record as Exhibit 4.

E V I D E N C E

3. We note as a procedural matter that Ms. Vinjamuri moved to withdraw the testimony of Jeffrey H. Rohlfs citing the fact that Dr. Rohlfs was not present to testify and his testimony mainly centered on Qwest's suggestion to add an intrastate subscriber line charge which the hearing officer had ruled was not within the scope of the proceeding. Mr. Schudel objected to this motion in part and moved to have portions of Dr. Rohlf's testimony to be received into the record. Finding that portions of Dr. Rohlfs testimony should not be entered on a piecemeal basis, the Commission permitted all of the prefiled testimony into the record. No further objection to this testimony was offered. Dr. Rohlf's testimony was marked and entered into the record as Exhibit 5.

4. Qwest presented Mr. Scott McIntyre, Director of Product and Market Issues, as its witness. Mr. McIntyre testified that he filed direct and rebuttal testimony in this matter pursuant to the Commission's procedural schedule. This testimony was accepted into the record as Exhibits 7 and 8.

5. Mr. McIntyre testified that Qwest had seen changes in how the Telecommunications Act of 1996 has been interpreted and implemented by the FCC. The FCC has taken additional steps to reduce switched access, remove implicit subsidies and drive those rates closer to cost. He testified that it was reasonable to make the same kind of conclusion with respect to intrastate rates. Mr. McIntyre testified that he believed Qwest's transition plan was in line with the trend in the industry and with the decisions by the FCC. It is perfectly reasonable, he stated, for the Commission to come to the same conclusion that the proposed reduction is in the public interest.

6. Mr. McIntyre further provided that even though Qwest has removed the clearly identifiable subsidies, Qwest believes further reductions in intrastate switched access rates are necessary in order to further the Commission's stated goal of moving the state switched access charge structure toward the interstate switched access structure.[1] Qwest believes that further restructuring of intrastate switched access is necessary in order to reduce jurisdictional pricing disparity and to promote rational pricing.[2]

7. Qwest noted five benefits to restructuring switched access rates. Restructuring switched access would, reduce the

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[1] Direct Testimony of Scott A. McIntyre, filed June 7, 2002, at 2:16-21.
[2] *Id.* at 6:20-23.

incentive for uneconomic bypass of the switched network; remove economic penalties for carriers that rate average their toll plans; reduce the confusion to customers who have to deal with many rate plans driven by a wide variety of switched access rates; eliminate toll usage rate support for end-user NTS flat-rated costs; and eliminate the hidden support that all users of the network pay, but in various and incalculable ways.[3]

8. Upon questioning, Mr. McIntyre, stated that reducing switched access charges promotes capital investment because carriers would be more willing to invest in a market that looks like a free market opportunity than one that has obvious subsidies built into it that are ultimately going to change and therefore waste investments. The obvious subsidy to Mr. McIntyre is that intrastate switched access rates are higher than the FCC interstate rates when the two services are virtually identical and provide the same service to the same end-users. Mr. McIntyre further provided that there is evidence to suggest that the FCC has made decisions based on the fact that they believed there were implicit subsidies in interstate switched access rates.

9. Mr. McIntyre testified that a stand-alone cost study by itself does not really prove anything. With a stand-alone cost study, you can definitively prove the existence of a subsidy if the price is above stand-alone. However, stand-alone cost study can not prove that a subsidy does not exist. Moreover, Mr. McIntyre testified, no prudent company in a competitive market would offer its services above its stand-alone costs. Mr. McIntyre believed that there was a policy-generated implicit subsidy still existing in switched access rates.

10. Ms. Sue Vanicek testified on behalf of the rural independent companies (RIC). She testified that the proper method to be used in determining whether access rates contain implicit subsidies is to determine if access rates generate revenue in excess of the stand-alone cost of providing service. She testified further that Dr. Taylor and Dr. Rosenbaum testified in the Commission’s C-1628 hearing that stand-alone cost is the appropriate standard to use in determining whether rates contain implicit subsidies. Ms. Vanicek testified that incremental costs are irrelevant to the question of whether service is providing if the rate for a service is below stand-alone cost.

[3] *Id.* at 8-9.

11. Ms. Vanicek further provided that the Commission should not align the public policies listed in Qwest's testimony with the goals in the NUSF Act. The issue of reducing arbitrage is not found in the NUSF principles or the proposed NUSF goals. Ms. Vanicek cautioned the Commission against following the FCC's policy of promoting competition through the setting of rates. Ms. Vanicek stated that the Commission should seek out what is in the best interests of consumers. She did not believe that the evidence reflected that it would be in the best interest of consumers to reduce access rates.

12. Upon questioning, Ms. Vanicek stated that if a service is being provided below its stand-alone economic cost it could also be providing a subsidy to another service.[4] Ms. Vanicek testified that she had never conducted a stand-alone cost study. She has never reviewed a stand-alone cost study and she was not aware of any telecommunications company that has actually conducted a stand-alone cost study. Ms. Vanicek stated that there could be disagreement regarding what is proper to include in stand-alone cost study; however, these problems would be similar with any cost study.

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

13. By virtue of its Transition Plan filed April 30, 2002, Qwest seeks to further restructure switched access by reducing intrastate switched access an additional $6.1 million on a revenue neutral basis through a proportionate offset from the NUSF. Qwest maintains that this plan takes into account the Commission's policy goals set forth in Application No. C-1628 (January 13, 1999). In that order, the Commission held that "[t]he intrastate access charge structure for non-rurals should approximate the interstate access charge structure except for the primary interexchange carrier charge (PICC) and the transport interconnection charge (TIC)." The rural independent companies, on the other hand, argue that Qwest should not be permitted to collect a proportionate offset from the NUSF because Qwest presented no evidence that implicit subsidies exist. The rural independent companies, quoting the same order, remind the Commission that, "[d]uring the transition periods, an eligible carrier's NUSF support shall equal the implicit support it has removed through changes in access charges . . . ." The rural independent companies assert that the Commission must conduct stand-alone cost studies in order to determine whether implicit subsidies still exist in access charges.

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[4] Transcript at 65:17, 70:4-14 and 73:18-19.

14. From the evidence adduced at the hearing and the testimony filed in this matter, we find that Qwest's transition plan should be approved. The Commission finds that Qwest's transition plan is consistent with the policies and goals set forth in C-1628 and with the CALLS Order adopted by the FCC.

15. The rural independent companies assert that the proper means of determining whether implicit subsidies exist in Qwest's access prices is a stand-alone cost study. Although, they recommended that the Commission utilize a stand-alone cost study approach, the rural independent companies admitted that they had never seen the FCC or any state commission use stand-alone cost studies to determine whether implicit subsidies have been removed.

16. The RIC points out, in strict economic terms, a service can only be providing a cross-subsidy if that service is priced above its stand-alone cost. However, the Commission finds one cannot simply determine stand-alone cost without consideration to cost averaging and the manner in which costs are passed on to consumers. When costs are averaged across a given area, it is possibly and in some cases likely, that the resulting rates will exceed the stand-alone costs for certain customers. This situation can also occur when costs are not recovered in the manner in which they are incurred (i.e. recovering non-traffic sensitive costs on a traffic sensitive basis). Moreover, the removal of implicit subsidies is not the sole task with which the Commission is charged with respect to universal service. The Commission is charged with ensuring that all telecommunications providers make an equitable and non-discriminatory contribution to universal service. Requiring one segment of telecommunications users, such as toll users, to provide a greater subsidy to the provision and maintenance of the telecommunications network in the state would violate this requirement. Further, by simply allowing telecommunications providers to price services, subject to universal service requirements, between the service's stand-alone and incremental costs, the Commission would not be carrying out its required oversight to ensure that rates remain affordable and the comparability between urban and rural rates. Accordingly, simply examining geographically averaged stand-alone access costs provide no guidance to the Commission in this manner.

17. In May of 2000, the Federal Communications Commission (FCC) issued its Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, its Report and Order in CC Docket No. 99-249 and its Eleventh Report and Order in CC Docket No. 96-45 (hereinafter

the CALLS Order).[5] The CALLS Order was the result of a lengthy investigation on access charge reform and a year long review of an agreement reached between various interexchange carriers and price cap local exchange carriers termed “the CALLS proposal”. In the CALLS Order, the FCC found that “by simultaneously removing implicit subsidies from the interstate access charge system and replacing them with a new interstate access universal service support mechanism . . . this Order allows us to provide more equal footing for competitors in both the local and long-distance markets, while still keeping rates in higher cost areas affordable and reasonably comparable with those in lower cost areas.” [6]

18. Based on the evidence adduced at the hearing and upon consideration of the CALLS Order, the Commission finds that there is adequate reason to believe that implicit subsidies exist in Qwest’s intrastate switched access charges. The Commission further believes that the reductions in access should be recovered through the NUSF. The Commission does not believe that a stand-alone cost study is necessary for the purposes of this hearing. Although the Intervenors attempted to prove that implicit subsidies could not be proven without performing a stand-alone cost study, Ms. Vanicek admitted that one service could still be providing a subsidy to another service even if both are being provided at or below stand-alone cost. The Commission therefore finds that just because implicit subsidies cannot each be specifically identified in Qwest’s access charges does not mean that implicit subsidies do not exist in Qwest’s access rates. Moreover, performing a stand-alone cost study would create greater administrative burdens which would delay the benefits of access reduction and pass-through to consumers.

19. We have considered Qwest’s Transition Plan at length and compared its request to reduce access charges and offset that reduction with explicit support against our state universal service policy objectives. We agree with Mr. McIntyre’s testimony that it was reasonable to conclude that implicit subsidies exist in intrastate access charges as they do in interstate access charges. In making this conclusion we rely upon the resources and the expertise of the FCC. Even though the method for determining recovery for reductions in switched access was the product of an agreement, the finding that implicit subsidies existed in interstate access rates was based on the expertise of the FCC and the information received during the course of its investigations. We believe it is reasonable

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[5] *Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd 12962 (2000)(Calls Order).
[6] CALLS Order at ¶ 3.

to conclude that intrastate rates for substantially the same service likewise contain implicit subsidies.[7]

20. We further agree that Qwest's transition plan was in line with the trend in the industry and with the decisions by the Commission and the FCC. We have previously stated that for the non-rural carriers, the intrastate switched access structure should mirror the interstate rate structure.[8] The ongoing implementation of this policy reduces jurisdictional disparities, promotes rational pricing and reduces opportunities for arbitrage. Moreover, we conclude that permitting the support to be recovered explicitly through the NUSF is consistent with the structure and policies set forth in the Telecommunication Act of 1996, the NUSF Act and with Commission orders entered in C-1628. In so finding, the Commission concludes that it is appropriate to offset the requested $6.1 million of access charge reductions with explicit support from the NUSF.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Qwest's Transition Plan for 2002, filed in the above-captioned matter should be and it is hereby approved and implemented by Qwest and the NUSF Department.

IT IS FURTHER ORDERED that the findings and conclusions as set forth above be and they are hereby adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 24th day of September, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

[7] See also CALLS Order at ¶ 11.
[8] See C-1628 (January 13, 1999).