

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-25
Public Service Commission, on)	Progression Order No. 18
its own motion, seeking to)	
establish guidelines for the)	
purpose of certifying the use)	
of federal universal service)	
support.)	
)	
In the Matter of the)	Application No. C-3415
Commission on its own motion)	
seeking to establish an)	
interim policy on eligible)	ORDER
telecommunications carrier)	
standards.)	Entered: May 30, 2007

BY THE COMMISSION:

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

1. On May 15, 2007, the Commission entered Progression Order No. 17 in Application No. NUSF-25 adopting a filing requirement for all eligible telecommunications carriers (ETCs) receiving state and federal high cost universal service support. These filing requirements were intended to replace the self-certification requirements previously used by the Commission for ETCs to certify their use of federal high cost universal service support. In this Order, the Commission clarifies the obligations with respect to the September 1 and October 1 filing requirements previously adopted by the Commission.

2. On June 28, 2005, the Commission established an interim policy on ETC standards which applied to ETCs seeking federal high cost support. That policy was adopted in Application No. C-3415. Subsequently, this interim policy, with a few minor changes, was codified in Rule and Regulation No. 165. These rules became effective on April 10, 2006 and are codified in Title 291, Chapter 5, Section 009 of the Telecommunications Rules and Regulations.

3. First, the Commission clarifies that the filing requirements adopted on May 15, 2007 were intended to supersede the filing requirements previously adopted by the Commission in NUSF-25, Progression Order Nos. 1 and 5. The Commission now, by virtue of its findings in Progression Order

No. 17, will require an annual detailed filing which will be due annually in June. As previously indicated by the Hearing Officer Order issued on May 15, 2007, the first filing is due June 15, 2007. The annual filing will be due hereafter on the 1st business day in June. No September 1 filing is required of ETCs.

4. Second, the Commission is aware that some ETCs may believe this filing to be redundant to the filing requirement codified in Title 291, Chapter 5, Rule 009.04 of the Commission's Telecommunications Rules. The annual reporting requirement adopted in this docket on May 15, 2007 does not entirely supersede the filing requirements adopted in that section, however, in light of the information required to be filed with the Nebraska Telecommunications Infrastructure and Public Safety Department (NTIPS Department) annually, the Commission finds it appropriate to waive the filing requirement in section 009.04A1 of the Commission's Telecommunications Rules and Regulations. The Commission has the power to waive its own rules and regulations when it determines that the rule serves as a "mere aid to guide the exercise of agency discretion" and where such waiver would not cause a party substantial prejudice. *In re Application of Jantzen v. Diller Telephone Co.*, 245 Neb. 81, 511 N.W.2d 504 (1994). Here we find that section 009.04A1 of the Commission's Telecommunications Rules and Regulations provides a rule which is used as a guide in the exercise of agency discretion. Such rules were not required to be promulgated, but rather used in an overall mechanism to provide the Commission with information to oversee the use of federal high cost universal service support. In addition, the Commission does not believe that any ETC will be prejudiced by the Commission's waiver of section 009.04A1. Rather, such waiver will relieve ETCs of an additional filing requirement.

5. We emphasized that ETCs must still file the information and certifications required by sections 009.04A2 through 009.04A8 of the Commission's Telecommunications Rules and Regulations on an annual basis on or before October 1 or April 30 as designated by the carrier's election.

6. Finally, the Commission clarifies that the information filed pursuant to the requirements in the Commission's May 15, 2007 Order will be kept under seal if marked "confidential" or "proprietary". The Commission emphasizes that such information must be marked as "confidential" or "proprietary" to receive

such treatment. The Commission believes much of the information is commercially sensitive and may fall within the exception of the public records requirements described in Neb. Rev. Stat. § 84-712.05. If a request for information is received, the Commission will review such request under § 84-712 to determine whether such information should be released.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a waiver to Title 291, Chapter 5, Rule 009.04A1, is hereby granted to all ETCs subject to that rule.

IT IS FURTHER ORDERED that the requirements for eligible telecommunications carriers be and they are hereby clarified as provided above.

MADE AND ENTERED at Lincoln, Nebraska this 30th day of May, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director