

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Application No.
		NUSF-28
Public Service Commission, on its	)	
own motion seeking to conduct an	)	ORDER INITIATING DOCKET
investigation of intrastate	)	
access charges for rural ILECs	)	Entered: April 23,
		2002

BY THE COMMISSION:

On January 13, 1999, the Commission entered its findings and conclusions in Application No. C-1628/NUSF (the "C-1628 Order") to implement a Nebraska Universal Service Fund ("NUSF") and to implement access charge reform. The Commission established reductions in access charge rates for rural ILECs and prescribed a time line for adoption of such reductions. As a general principle, the Commission stated in the C-1628 Order that "the state access charge structure should approximate the interstate access charge structure as detailed in this Order." Revenue losses for rural ILECs caused by access charge reductions have been replaced, where appropriate, with explicit support from the NUSF.

As a result of issues that arose following the entry of the C-1628 Order, on September 12, 2000, the Commission entered Progression Order #11 in Application No. C-1628/NUSF, seeking to clarify several issues relating to access charges. Following the receipt of comments and public hearings on the issues, the Commission entered Progression Order #15 which addressed several access issues including Transport Interconnection Charge ("TIC") phase-out, CLEC and CMRS provider access rates and the mirroring of interstate rates. Specifically, with regard to the latter point, the Commission determined that rural ILECs should not be required to automatically update their state traffic sensitive rates when interstate traffic sensitive rates change. The Commission further found because of the evolving regulatory climate that currently existed, that it would continue to monitor access charges within the state.

On August 21, 2001, the Commission opened Application No. NUSF-26. To date, the focus of Application No. NUSF-26 has been on moving from a transitional NUSF to a permanent NUSF structure. A significant amount of comments have been received relating to the issues identified in the Order Initiating NUSF-26, and hearings have been held on such issues. However, the Commission did not wish to focus on the level or structure of access charges for rural ILECs in the context of NUSF-26. Rather, the Commission delayed any further consideration of access reform pending the imminent ruling on the issue from the Federal Communications Commission ("FCC").

On November 8, 2001, FCC released its Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 ("MAG Order"). That Order largely completed the interstate access charge and universal service support reforms the FCC initiated following the passage of the Telecommunication Act of 1996 ("the Act"). The MAG Order, inter alia, required the phase-out of Carrier Common Line ("CCL") and TIC rate elements, increased Subscriber Line Charge ("SLC") caps, and created a new universal service support mechanism, Interstate Common Line Support. The MAG Order will result in significant reductions in rural ILEC interstate access rates and when implemented, will again lead to a significant disparity between state and interstate access rates.

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

1. The purpose of this docket is to investigate the following issues relating to the current rural ILEC access charge structure and rates, and to generally outline the procedures applicable to this investigation.

2. The current federal and state access charge structures and rates for rural ILECs differ significantly. Accordingly, the Commission requests input on the following issues:

a. Should the Commission, for purposes of state access charges, adopt the interstate access rate structure and/or rate levels for rural ILECs?

b. Does the existing state access charge structure and/or rate levels for rural ILECs contain implicit subsidies? If so, how can the implicit subsidies be identified and measured?

3. The Commission believes that when similar services are priced in a significantly different manner and level, perverse incentives are created. To avoid this situation, if the Commission would adopt a state access charge structure or rate levels that is different from the interstate jurisdiction for rural ILECs, how can the Commission ensure that access usage is reported and billed correctly?

4. The Commission recognizes that significant changes have occurred in the provision of telecommunications services since the creation of access charges. The widespread availability of wireless, paging, Internet and other new telecommunications services have and will continue to have a significant impact on the telecommunications landscape and therefore must be taken into account in the development of telecommunications policy. Given that the NUSF surcharge is billed and collected by all telecommunications providers, while access charges are only paid by long distance providers, the Commission seeks input on how, on a going forward basis, costs, traditionally assigned to access charges should be recovered. Specifically:

a. Should any portion of loop cost recovery incorporated in the CCL rate element, in the rural ILEC access charge structure, be shifted to an NUSF component?

b. Should any portion of the recovery of the rural ILECs' local switching costs incorporated in the local switching access charge element, in the rural ILEC access charge structure, be shifted to an NUSF component?

c. Should any portion of the recovery of transport costs associated with the TIC rate element, in the rural ILEC access charge structure, be shifted to an NUSF component?

d. Should any portion of any other rural ILEC access charge element be shifted to an NUSF component?

e. Should any reductions in rural ILEC access charges be recovered through increases in basic rates instead of through NUSF support?

5. In Application No. C-1628/NUSF, Progression Order No. 15, the Commission found that section 332 (C)(3) of the Communications Act of 1934 as amended, preempted this Commission's ability to set or prescribe a CMRS provider's state access rates. At that time, no CMRS provider was designated as an ETC by this Commission. However, now that the Commission expects one or more CMRS providers will be seeking NUSF support, there is an open question as to whether the ETC status changes the Commission's ability to review access rates of CMRS providers which are also designated ETCs. Therefore, in the event that a CMRS provider seeks to draw support from the NUSF, can and should the Commission, as a prerequisite to the receipt of NUSF support, require CMRS providers to either charge the access rates of the competing ILEC or demonstrate that its access rates are cost-based on those lines for which they receive support?

6. Given the existing market conditions of measured toll service, is the requirement to flow-through access charge reductions still appropriate? To what extent should an interexchange carrier that demonstrates to the Commission's satisfaction that its MTS retail price is below its cost for access service be required to flow-through any access charge reductions it may receive?

7. What benefits, if any, can the Commission reasonably expect consumers to realize from further reductions in rural ILEC access charges? In this regard, how can the Commission verify that any access charge reductions required of rural ILECs will be flowed through to Nebraska consumers?

8. Parties may provide comment on any other issues that are germane to the matters set forth in this proceeding in their pre-filed testimony. Any comments concerning the eligibility for NUSF support, except as set forth above, will be addressed in NUSF-26. The Commission prefers to keep the questions of eligibility for NUSF support and access separate. Therefore, the Commission requests that parties restrict their comments to how the above questions relate to access charge reform only.

9. The Commission will set a pre-hearing conference on **June 4, 2002** at 2:30 p.m. in the Commission Hearing Room, Lincoln, Nebraska, for the purposes stated in Rule 020 of the Rules of Commission Procedure, and to establish a schedule for submission of pre-filed testimony and reply testimony, for the hearing on this matter and for the submission of post-hearing briefs and proposed orders.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the investigation of intrastate access charges for rural ILECs be, and it is hereby, opened.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that the foregoing Opinion and Findings are hereby adopted.

IT IS FURTHER ORDERED that a pre-hearing conference be scheduled on this matter **June 4, 2002** at 2:30 p.m. in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

MADE AND ENTERED in Lincoln, Nebraska on this 23rd day of April 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director