

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-50
Public Service Commission, on)	Progression Order No. 3
its own motion to make)	
adjustments to the universal)	
service fund mechanism)	
established in NUSF-26.)	
In the Matter of the Nebraska)	Application No. C-3554/
Public Service Commission, on)	PI-112
its own motion, seeking to)	
investigate whether the zones)	ORDER ON IMPLEMENTATION
established in Docket C-2516 are)	
appropriate in light of NUSF-26)	
findings and conclusions.)	Entered: May 24, 2011

BY THE COMMISSION:

On February 19, 2010, the United States District Court for the District of Nebraska entered its remand order relative to implementation of the Commission's decision the above-captioned matter.¹

To assist with implementation, the Commission scheduled a workshop on May 3, 2010. Interested carriers were invited to attend and discuss any concerns or issues with implementation. The Commission and carriers discussed options for implementing the unbundled network element (UNE) zone changes as well as the timing for those changes. The Commission held a second workshop to discuss implementation issues on June 24, 2010.

On September 15, 2010, the Commission held a hearing to receive recommendation on the implementation methodology and possible cost recovery. Mr. George Baker Thomson, Jr. appeared for Qwest Corporation. Mr. Mark Fahleson appeared for Nebraska Technology and Telecommunications, Inc. (NT&T). Mr. James Overcash appeared on behalf of the rural independent companies (RIC). Mr. Loel Brooks appeared on behalf of Allo Communications. Shana Knutson appeared on behalf of the Commission.

Qwest presented two witnesses, Renee Albersheim and Peter Copeland. Ms. Albersheim testified that Qwest's Information Technologies Division came up with a methodology that is both technically feasible and complies with the Commission's Order. She then described the methodology supported by Qwest which uses Municipal Tax Code information to determine in-town customer locations. She testified that Qwest expects to complete this project in the third quarter of 2011.

¹ *Qwest Corporation v. Boyle et al.*, Civil Case 8:07CV430.

Mr. Copeland testified that they proposed to use Tax Area Rate codes or TAR codes that signify the municipal tax application for each customer location. This will allow Qwest to determine these locations within and without municipal boundaries and roughly approximate the in-town and out-of-town geographic areas. Mr. Copeland stated that Qwest has identified some very small municipal areas that look more like out-of-town areas than in-town areas. For those locations, Qwest has provided maps and listings of which municipalities would be considered in-town versus out-of-town. Mr. Copeland suggested that Qwest should be given cost recovery for implementing this change, either through reimbursement from the universal service fund (NUSF), or through an additional charge on the UNE loop rates imposed on competitors.

Mr. Michael Orcutt testified for NT&T. NT&T was not opposed to using the municipal tax code methodology referred to by the Commission. NT&T will need time to contact its customers that will be affected by the change. NT&T would oppose cost recovery for Qwest in the form an increase in the loop rate.

Mr. James Overcash made a statement on behalf of RIC. His clients do not have an objection to the use of the Municipal Tax Code methodology proposed by Qwest. The RIC objected to the use of NUSF monies as a source for cost recovery.

Mr. Brad Moline testified that he agreed with the use of the municipal tax code methodology Qwest presented. Allo also agreed with the time frame for implementation. Mr. Moline supported using the NUSF if cost recovery was determined to be appropriate. Mr. Moline did not oppose making a determination after the proceeding on an appropriate cost recovery mechanism imposed on unbundled loop elements but cautioned that 68 cents a loop was too high.

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

The Commission finds that Qwest should implement the Commission's October 10, 2007 Order by utilizing the municipal tax code methodology proposed by Qwest in the workshops and at the hearing. The Commission finds this methodology is consistent with the findings in the Commission's October 10, 2007 Order.

According to Qwest's proposal, Qwest will use Tax Area Rate or "TAR" codes to disaggregate subscribers into in-town and out-of-town areas. Qwest provided a table of wire centers and TAR

codes to the Commission and interested parties in its June 16, 2010 filing. If a retail customer is served by a loop that is subject to a TAR code, the loop would, according to Qwest's proposal be treated as in-town. If there is no TAR code, the loop would be treated and priced as out-of-town. In some wire centers, there is more than one municipality and thus more than one TAR code. Some of the smaller municipalities with TAR codes in the Qwest area would appear to meet the in-town criteria but others contain only a few households or square blocks and would be considered out-of-town. Qwest proposed to treat those wire centers and municipalities based on the example provided in its June 16, 2010 filing. No party at the hearing opposed the use of this methodology for identifying in-town and out-of-town subscribers.

In addition, Qwest and the Commission have given affected carriers the opportunity, through the workshops and the public hearing, to ask questions related to Qwest's proposed municipal tax code methodology and identifying wholesale customer locations. Based on the testimony regarding timing of implementation we find that Qwest should be able to commence implementation of the Commission's Order on or before September, 2011. A status report detailing the progress of implementation shall be filed on or before December 31, 2011.

Cost recovery was also addressed at the hearing. The Commission finds that it would be inappropriate to utilize state high-cost universal service program funds towards carrier cost recovery for the implementation of appropriate de-averaged UNE zone rates. It is the Commission's belief that the cost of providing carrier billing is recognized in the appropriate de-averaged UNE zone rates. Further, it is the Commission's preliminary belief that any extemporaneous cost will be minimized or offset with savings due to synergies realized in the merger of Qwest and CenturyLink. Thus, the Commission believes carrier implementation costs of the Commission's October 10, 2007 order should be absorbed by the carrier. If, however, Qwest seeks recovery of the costs associated with implementation of the Commission's decision, specific plans for cost recovery should be submitted to the Commission for approval, demonstrating costs beyond those currently recognized or synergistically minimized.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Qwest's proposed municipal tax boundary

methodology shall be implemented consistent with the Commission's findings in its October 10, 2007 Order.

IT IS FURTHER ORDERED that implementation of the in-town and out-of-town zones shall commence in September 2011.

IT IS FURTHER ORDERED that a progress report on the implementation of the Commission's order shall be filed on or before December 31, 2011.

IT IS FURTHER ORDERED that consistent with the Commission's findings, Qwest's proposal for cost recovery is denied. Any specific demonstration of cost beyond that which is currently recognized in the UNE rate or which cannot be otherwise absorbed should be submitted to the Commission for approval.

MADE AND ENTERED at Lincoln, Nebraska, this 24th day of May, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Chairman

ATTEST:

Executive Director