

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-57
Public Service Commission, on) Progression Order No. 2
its own motion, seeking to)
administer the Nebraska) ORDER
Telehealth Program.)
)
) Entered: March 24, 2009

BY THE COMMISSION:

Background

On July 9, 2004 the Nebraska Hospital Association (NHA) filed a motion seeking approval of its statewide telehealth plan. At that time the Commission directed all NETCs and the NHA to work with the NUSF to develop a specific plan for support of this program. On September 8, 2004, the Commission entered an order approving the Telehealth Plan filed. The Order was entered following a comment cycle and a public hearing on the proposed Telehealth Plan.

On June 13, 2006 the Commission entered an order approving a modified Telehealth plan. The order was entered following a comment cycle and public hearing on the modified plan. The approved plan detailed the mechanics of how the program would work; with USAC buying down the cost of the connections in rural areas to the urban to rural difference, the hospital being responsible to pay \$100.00 per month for the costs of their connections and the Commission providing funding for the difference, not to exceed the amounts listed in the attachment to the order approving the plan.¹ The plan also included the Commission providing funding for the costs of the connections to the hub hospitals.

Since that time, the Commission opened NUSF-57 for the ongoing administration of the Telehealth Program.²

¹ See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism*, Transcript of Proceedings, Exhibit 4, (May 15, 2006) ("Amended Telehealth Plan"). The hospitals are required to pay this amount on a monthly basis. Qwest's statement that "[a]fter the USAC reimbursement is received, the medical facility pays nothing until the resulting credit is exhausted" is technically not correct. See Qwest Corporation's Comments in Response to Progression Order No. 2 (January 20, 2009) at 1.

² The Commission incorporated scattered portions of the record in NUSF-26 into this docket.

On October 29, 2008, the Commission sought comments on whether the Commission should establish minimum requirements for the filing of Universal Service Administration Company (USAC) forms and contract processes between the hospitals and the telecommunications carriers for the Telehealth Program. Comments were received from Action Communications (Action), Qwest Communications (Qwest), and the Nebraska State Telehealth Network (NSTN).

The Commission posed questions on the following issues:

1. How the Commission could assist in making sure that the USAC forms are filed timely and that obligations are met by hospitals and telecommunications carriers.
2. What should be the consequence for failure to timely file the appropriate forms with USAC or for failure of the telecommunications carriers to provide any required information necessary to the process in a timely manner.
3. Whether there should continue to be any weight given to the existence of an executed letter of agreement (LOA), or should such provisions be included in the contractual relationship between the two parties.

Summary of Comments Filed

The NSTN stated that in order to ensure timely filing of USAC forms and alleviate delays in reimbursement to carriers, it has designated an individual to handle filings for all sites in the Telehealth Network. The NSTN also recommended that an amended version of the LOA be incorporated into a more legally binding contract between the carrier and the health care provider; providing timelines for filing and recourse for the parties if timelines are not met. The NSTN also noted that there are certain delays that are out of either party's control, but merely a function of USAC processing.

Action recommended that the Commission assume the responsibility for the USAC filing process for the NSTN, or consider contracting this duty to one entity. Action recommended that the Commission impose consequences for failure to timely file USAC forms or provide required information. Action stated that any consequence for late filing should be defined and included in the contracts, and would recommend the addition of penalty clauses

in the contracts. An option to impose consequences on hospitals would be for the Commission to withhold NUSF support or USAC support for the entire support year if hospitals do not timely file USAC forms. As for carriers, Action stated that the Commission could withhold monthly payments to the carriers if they do not meet their obligations in the process.

Qwest recommended that the health care provider be responsible to pay their bill in full each month until USAC funding is received. Qwest does not believe that the LOA should be included in the contracts as they believe these terms do not fit well as part of the typical contract for service, as the health care providers purchase services out of tariffs and under contracts applicable to many other customers.

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

After considering the comments, the Commission finds that consistent, in part, with the suggestion of Action, consequences for late filing should be defined and included in the contracts signed between the carrier and health care provider. The language in the contracts should be similar to the language in the current LOA, modified to meet the needs of the specific parties involved. The Commission also enters this Order to give guidance and place limits on the penalties for missing a USAC filing deadline.

In certain circumstances, the Commission believes it would be appropriate to permit telecommunications carriers to charge health care providers a late fee when the health care provider is at fault in missing a USAC deadline which triggers the disbursement of federal support. However, late fees should not be so exorbitant as to disrupt the Telehealth Network nor detract from the affordability for the site to connect to the Telehealth Network. Excessive late fees would contradict the overall purpose of the Telehealth Program which is to provide reasonable comparability and affordability of rates and services. Requiring health care providers to pay their bill in full would not be feasible for many of the smaller institutions. We also decline to adopt the recommendation to withhold state and federal universal service support.³ Rather, we find the potential imposition of late fees will serve as an incentive for the health care providers to timely file the required USAC paperwork.

³ The Commission would not have the ability to withhold federal support even if the Commission would decide to withhold state universal service support.

If assessed, the late fee should be a flat amount and must not exceed five percent of the remaining monthly recurring charge on the T-1 connection excluding any other services or features. Carriers should refrain from assessing late fees until after the first quarter of the funding year. Thereafter, the late fee could continue to be assessed monthly until USAC reimbursement is available.

The Commission is reviewing potential revisions for the language to be included in the contract, which will replace the current LOAs, and will seek comment on these proposed revisions at a later date. For a telecommunications carrier to have the ability to assess late fees as described above, these terms must be included in the contract, or as an addendum to the contract, between the two parties.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the findings and conclusions set forth above are hereby adopted.

MADE AND ENTERED at Lincoln, Nebraska this 24th day of March, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director