

# SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,  
on its own motion, seeking to  
review and approve requests for  
modification of the funding  
calculation for the Nebraska  
Universal Service Fund.

) Application No. NUSF-7  
)  
) WAIVER REQUESTS GRANTED  
) IN PART AND DENIED IN PART  
) & RECONSIDERATION  
)  
) Entered: January 23, 2001

BY THE COMMISSION:

### B A C K G R O U N D

1. On May 18, 1999, the Commission opened this docket to consider requests for additional funding from the Nebraska Universal Service Fund (NUSF) made by a number of rural incumbent local exchange carriers (ILECs).<sup>1</sup> These rural carriers sought a modification of the funding mechanism set forth in C-1628/NUSF.<sup>2</sup>

2. A public hearing was held on December 9, 1999, and again on January 11, 2000. Both hearings took place in the Commission hearing room in Lincoln, Nebraska. Each company was given the opportunity to testify in support of its waiver request. In addition, post-hearing briefs were filed and accepted for Commission consideration.<sup>3</sup>

3. On September 6, 2000, this Commission entered an order denying the waiver requests of several applicants.<sup>4</sup>

<sup>1</sup> In the Matter of the Commission, on its own motion, seeking to review and approve requests for modification of the funding calculations for the Nebraska Universal Service Fund. Application No. NUSF-7, Order Initiating Docket (May 18, 1999) and In the Matter of the Commission, on its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund (NUSF). Application No. NUSF-7, Order Adding Parties (May 26, 1999).

<sup>2</sup> In the Matter of the Application of the Nebraska Public Service Commission, on its own motion seeking to conduct and investigation into intrastate access charge reform. Application No. C-1628, Findings and Conclusions (January 13, 1999) ("C-1628/NUSF").

<sup>3</sup> In the Matter of the Commission, on its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund (NUSF). Application No. NUSF-7, Order Setting Hearing (November 30, 1999).

<sup>4</sup> In the Matter of the Commission, on its own motion, seeking to review and approve request for modification of the funding calculation of the funding calculation for the Nebraska Universal Service Fund. Application No. NUSF-7,

4. On September 18, 2000, Arlington Telephone Company, Blair Telephone Company and Eastern Nebraska Telephone Company filed Motions for Rehearing of the September 6, 2000, Order.<sup>5</sup> Oral arguments were held on October 12, 2000, and the Commission granted leave to present argument on the merits of such Motions, but deferred such arguments to a later date.<sup>6</sup>

5. On September 26, 2000, this Commission entered an order establishing the Commission's methodology to evaluate requests for additional NUSF funding and the modification of the NUSF funding mechanism set forth in C-1628/NUSF. The Commission's order also denied in part and granted in part the waiver requests of several applicants.<sup>7</sup>

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

6. This Order addresses the remaining waiver requests filed in the first year of the NUSF transition ("1998 Waiver Requests") by companies previously made parties to this docket, Stanton Telecom Inc. ("Stanton") and Plainview Telephone Company ("Plainview").

Waiver Requests Denied in Part (September 6, 2000).

<sup>5</sup> In the Matter of the Application of Arlington Telephone Company for Issuance by the Commission of an Order Waiving Certain Requirements In the Opinion and Findings in C-1628 Associated with the NUSF Support Calculation in the Transition Period. Application No. NUSF-7, Motion for Rehearing and Request for Oral Argument (September 18, 2000); and In the Matter of the Application of Blair Telephone Company for Issuance by the Commission of an Order Waiving Certain Requirements In the Opinion and Findings in C-1628 Associated with the NUSF Support Calculation in the Transition Period. Application No. NUSF-7, Motion for Rehearing and Request for Oral Argument (September 18, 2000); and In the Matter of the Application of Eastern Nebraska Telephone Company for Issuance by the Commission of an Order Waiving Certain Requirements In the Opinion and Findings in C-1628 Associated with the NUSF Support Calculation in the Transition Period. Application No. NUSF-7, Motion for Rehearing and Request for Oral Argument (September 18, 2000).

<sup>6</sup> In the Matter of the Applications of Arlington Telephone Company, The Blair Telephone Company and Eastern Nebraska Telephone Company For Issuance by the Commission of an Order Waiving Certain Requirements In the Opinion and Findings in C-1628 Associated with the NUSF Support Calculation in the Transition Period. Application No. NUSF-7, Stipulation (October 12, 2000).

<sup>7</sup> In the Matter of the Commission, on its own motion, seeking to review and approve request for modification of the funding calculation for the Nebraska Universal Service Fund. Application No. NUSF-7, Waiver Requests Granted In Part and Denied In Part (September 26, 2000) ("Methodology Order").

including a business office, and the upgrade to additional network facilities.<sup>10</sup>

12. Within the Commission's Methodology Order, the Commission found it would grant additional NUSF funding to companies for "plant investment", provided the amount "...does not raise that company's rate of return above ten percent."<sup>11</sup> Consistent with the Commission's Methodology Order, the Commission determines any grant of additional NUSF funding to Plainview, causes a rate of return greater than the Commission's ten percent cap and, therefore, Plainview's waiver is hereby denied.

### 1999 Waiver Requests

13. On May 11, 2000, Dalton filed the 1999 NUSF-EARN form, with the Commission, which included an informal request for additional NUSF support due to an earnings shortfall caused by outside plant upgrades. On November 8, 2000, Dalton filed a formal Application detailing Dalton's request for additional NUSF support.<sup>12</sup>

14. On May 12, 2000, Glenwood filed the 1999 NUSF-EARN form, with the Commission, which included an informal request for additional NUSF support due to an earnings shortfall caused by ongoing outside plant upgrades.

15. On January 5, 2001, Huntel filed an Application in NUSF-7 with this Commission requesting additional NUSF funding. In addition, Huntel indicated upon the Commission's grant of such waiver request, it requested to withdraw the Motions for Rehearing filed in connection with the Commission's September 6, 2000, Order entered in this docket.<sup>13</sup>

<sup>10</sup> In the Matter of the Commission on its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund (NUSF). Application No. NUSF-7, (Hearing on December 9, 1999 and January 11, 2000). TR 84: 5-11.

<sup>11</sup> Methodology Order at 3.

<sup>12</sup> In the Matter of the Application of Dalton Telephone Company, Inc. for Issuance by the Commission of an Order Waiving Certain Requirements in the Opinion and Findings in Application No. C-1628 Associated with the NUSF Support Calculation in the Transition Period. Application No. NUSF-7, Application (November 8, 2000) ("Dalton Application").

<sup>13</sup> In the Matter of the Application of Arlington Telephone Company, the Blair Telephone Company, Eastern Nebraska Telephone Company, and Rock County Telephone Company for Issuance by the Commission of an Order Waiving Certain Requirements in the Opinion and Findings in Application No. C-1628 Associated

7. In addition, this Order addresses waiver requests filed by companies in the second year of the NUSF transition ("1999 Waiver Requests"); Arlington Telephone Company, Blair Telephone Company, Eastern Nebraska Telephone Company and Rock County Telephone Company (collectively, "Huntel"), Dalton Telephone Company ("Dalton"), Glenwood Telephone Membership Corporation ("Glenwood"), and Keystone-Arthur Telephone Company ("Keystone-Arthur"). The Commission shall grant or deny, in full or in part, the 1999 Waiver Requests consistent with the Commission's Methodology Order.

8. As such 1999 Waiver Requests are similar, in nature, to the 1998 Waiver Requests, the Commission finds it appropriate that said companies' request be considered under this docket.

#### 1998 Waiver Requests

9. On its own motion, the Commission hereby reconsiders in part its findings in the Stanton Order as it relates to Stanton.<sup>8</sup> Stanton requested a modification of the NUSF funding mechanism set forth in C-1628/NUSF due to the conversion to intralata dialing parity on November 14, 1998.

10. In the Stanton Order, the Commission determined, and continues to find it appropriate to calculate an intrastate access revenue decrease by making an adjustment to the underlying minute-of-use ("MOU") demand on the NUSF-REV form.<sup>9</sup> However, the Commission reconsiders the use of the above-calculated adjustment on the NUSF-EARN form. The Commission finds the amount to be included as an adjustment to revenue on the NUSF-EARN form to be the change in revenue related to a change in intrastate MOU demand only. Thus, the Commission finds, upon the reconsideration, that Stanton's request should be granted in part.

11. Plainview requested a modification of the NUSF funding mechanism set forth in C-1628/NUSF. Specifically, Plainview requested the Commission waive an earnings adjustment for 1999 due to expenditures incurred to fund the building of two new structures,

<sup>8</sup> In the Matter of the Commission on its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund. Application No. NUSF-7, Withdrawn at Applicant's Request and Waiver Granted in Part (November 8, 2000) ("Stanton Order")

<sup>9</sup> Stanton Waiver at 12.

16. The Huntel and Dalton Applications cite a "...significant outside plant investment..." as the need for additional NUSF funding support.<sup>14</sup> Further, both applications indicate the plant investments were contained in NUSF-EARN forms, submitted to the Commission in May 2000, and began prior to the Commission's Methodology Order entered September 26, 2000. Therefore, the companies argue they are not subject to the Commission's notice requirement as set forth in the Methodology Order.<sup>15</sup>

17. In addition, the Huntel and Dalton Applications claim, should the Commission not approve the pending NUSF-7 waiver requests for additional NUSF funding, each company "...will be subject to unjust, unreasonable and confiscatory rates..." and "...denied a fair and reasonable rate of return..." that results in violations of the United States and Nebraska Constitutions.<sup>16</sup>

18. The Commission takes this opportunity to reemphasize the notice requirement, contained in the Methodology Order, advising companies "...to submit a waiver request for additional NUSF funding prior to their making the stated investment."<sup>17</sup> Any future waiver requests for additional NUSF support submitted to the Commission shall be subject to the requirements as stated above and contained in the Methodology Order. As such, the Commission's findings, contained in this Order, shall, in no way, hold precedential value or have a binding effect on any future actions taken by this Commission.

19. The Commission agrees that the plant investment related to the 1999 waiver requests began prior to the implementation of the Commission's notice requirement. As such, the Commission finds Huntel, Dalton, and Glenwood's request for additional NUSF support may be addressed here. Upon full consideration, the Commission finds the 1999 waiver requests, of Huntel, Dalton, and Glenwood, are not subject to the Commission's notice requirement.

20. As stated in the Commission's Methodology Order, "The Commission is mindful of the fact that providing telecommunication

*with the NUSF Support Calculation for Base Year 1999 of the Transition Period.* Application No. NUSF-7, Application (January 5, 2001) ("Huntel Application").

<sup>14</sup> Huntel Application at ¶ 5 and Dalton Application at ¶ 6.

<sup>15</sup> Huntel Application at ¶ 3 and Dalton Application at ¶ 3.

<sup>16</sup> Huntel Application at ¶ 9 and Dalton Application at ¶ 10.

<sup>17</sup> Methodology Order at 4.

services in a rapidly changing environment requires upgrades in plant."<sup>18</sup> As such, the Commission finds Huntel, Dalton, and Glenwood's waiver requests consistent with the Commission's earlier findings. Therefore, upon application of the Commission's additional funding methodology as set forth in the Methodology Order, the Commission finds, based on the financial information provided by the companies, the waiver requests filed by Huntel, Dalton, and Glenwood should be granted in part. Additionally, pursuant to the Commission's partial grant of Huntel's 1999 waiver request, the Commission finds it appropriate for Huntel to fund plant upgrades with earnings identified in the 1999 NUSF-EARN form.

21. The Commission further notes that a grant in part of the Huntel and Dalton Applications is in no way an admission with respect to the allegations contained in the Huntel and Dalton Applications where the applicants allege that,

"In the event that the Commission does not approve the additional NUSF support requested by the Applicant herein, Applicant{s} will be subject to unjust, unreasonable and confiscatory rates and Applicant{s} will be denied a fair and reasonable rate of return on its investment comparable to companies with similar business risks and operating in a geographic area similar to Applicant, resulting in deprivation of Applicant's property in violation of the provisions of the United States and Nebraska Constitutions."<sup>19</sup>

22. Inasmuch as Huntel and Dalton have not been properly before the Commission at hearing nor provided the Commission with evidence to make a full and complete record for determination of this issue, the Commission cannot agree with the allegation that Huntel and Dalton would be subject to unjust, unreasonable and confiscatory rates. Nor can the Commission agree with the allegation that either Huntel or Dalton would be denied a fair and reasonable rate of return on investment.

23. The Commission, being fully informed of the premises herein, is of the opinion and finds that the request to withdraw the Motions for Rehearing filed by Arlington Telephone Company, Blair Telephone Company and Eastern Nebraska Telephone Company should be granted.

<sup>18</sup> Methodology Order at 2.

<sup>19</sup> Huntel Application at ¶ 9 and Dalton Application at ¶ 10.

24. Keystone-Arthur filed a waiver request for a known and measurable change due to a NECA prior period adjustment. The Commission agrees it is reasonable in this case to allow Keystone-Arthur to make adjustments for this significant known and measurable event. Therefore, the Commission finds this request for a known and measurable change due to a prior period adjustment is reasonable and should be granted.

25. The financial information submitted by Stanton, Huntel, Dalton, and Glenwood has been labeled as confidential. Therefore, the Commission approved additional funding amounts will be made available to these companies through separate confidential attachments.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the November 8, 2000, Order entered in the above captioned docket, shall be and is hereby, reconsidered as it relates to Stanton Telecom Inc.

IT IS FURTHER ORDERED that the request for adjustment due to a known and measurable event filed by Stanton Telecom Inc., shall be, and is hereby granted in part.

IT IS FURTHER ORDERED that the request for waiver of an earnings adjustment for 1999 filed by Plainview Telephone Company, shall be, and is hereby denied.

IT IS FURTHER ORDERED that the requests for additional Nebraska Universal Service Fund support made by Arlington Telephone Company, Blair Telephone Company, Eastern Nebraska Telephone Company and Rock County Telephone Company, Glenwood Telephone Membership Corporation, and Dalton Telephone Company, shall be, and are hereby granted in part.

IT IS FURTHER ORDERED that the requests to withdraw the Motions for Rehearing filed by Arlington Telephone Company, Blair Telephone Company and Eastern Nebraska Telephone Company, shall be, and are hereby granted.

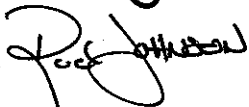
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IT IS FURTHER ORDERED that the request for adjustment due to known and measurable events filed by Keystone-Arthur Telephone Company, shall be, and is hereby granted.

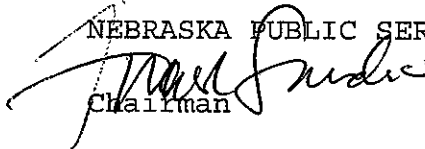
MADE AND ENTERED at Lincoln, Nebraska, this 23<sup>rd</sup> day of January, 2001.

COMMISSIONERS CONCURRING:

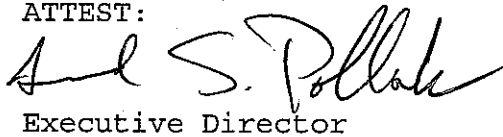


//s//Frank E. Landis  
//s//Daniel G. Urwiller

NEBRASKA PUBLIC SERVICE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director