

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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| In the Matter of the Nebraska |) | Application No. NUSF-99 |
| Public Service Commission, on |) | |
| its Own Motion, to Administer |) | |
| the Universal Service Fund |) | |
| High-Cost Program. |) | |
| |) | |
| In the Matter of the Nebraska |) | Application No. NUSF-50 |
| Public Service Commission, on |) | |
| its own motion, seeking to make |) | ORDER DENYING MOTIONS AND |
| adjustments to the universal |) | RULING ON DISCOVERY |
| service fund mechanism |) | |
| established in NUSF-26. |) | Entered: December 15, 2015 |

BY THE HEARING OFFICER:

On November 17, 2015, the Nebraska Public Service Commission ("Commission") entered an Order to reconsider its October 20, 2015, Order Authorizing Payments in NUSF-99 and NUSF-50. In those Orders, the Commission budgeted and released Nebraska universal service fund support amounts for price cap and rate-of-return carriers for calendar year 2016. The Commission's November 17, 2015 Order established a procedural schedule and detailed a list of issues for reconsideration.

On December 2, 2015, Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink ("CenturyLink") filed data requests on the Commission. CenturyLink also filed a Motion for Protective Order.

On December 8, 2015, Windstream Nebraska Inc. ("Windstream") and Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska ("Frontier") filed an Expedited Joint Motion to (1) Sever CenturyLink's Disbursement Dispute, (2) Hold other Issues from the November 17 Order in Abeyance, and (3) Lift the "Interim" Designation from 2016 Disbursements.

On December 9, 2015, CenturyLink filed a Motion in Limine to Exclude Extraneous Issue, requesting the Commission exclude a question posed by the Commission in its November 17, 2015 Order.

On December 10, 2015, CenturyLink filed a Response to the Expedited Motion of Windstream and Frontier requesting, among other things, the Commission vacate the current comment,

testimony, and hearing schedule as the Commission may deem appropriate and advisable.

CenturyLink Motion in Limine

As Hearing Officer, I deny CenturyLink's Motion in Limine to exclude one of the Commission-listed issues as extraneous. CenturyLink requested the Commission strike its own question related to whether any adjustments in NUSF-7 support should be made in light of federal high-cost support received by the price cap carriers to prevent over-recovery. I find the Motion in Limine is not appropriate and seeks to prevent the Commission and its staff from examining relevant information. Accordingly, the motion should be denied.

CenturyLink Data Requests

I further find the data requests in the form of interrogatories and requests for production propounded on the Commission staff were an improper use of discovery and should be stricken. Neb. Ct. R. Disc. § 6-333 limits the use of interrogatories to parties to an action.¹ Neither the Commission nor the Commission staff is a party in the present proceeding. The Commission staff advises the Commission and may provide recommendations in the form of comments and testimony and may elicit testimony to develop a record where the Commission finds it helpful. However, the Commission staff has no substantial interest in the proceeding apart from the Commission's interest.² The Commission staff has no right to seek judicial review of a decision of the Commission. In

¹ Neb. Admin. Code Title 291, Ch. 1, § 016.11 provides the use of depositions and discovery in proceedings before the Commission is governed by the rules and regulations of the Nebraska Supreme Court.

² See e.g., *In Re: Application of St. Johns Service Company for Increased Water and Sewer Rates in St. Johns County, Florida*, Docket No. 860960-WS, Order No. 17910, WL 1371731, ORDER DENYING MOTION TO COMPEL ANSWERS TO REQUEST FOR ADMISSIONS AND MOTION FOR PROTECTIVE ORDER (Fla.P.S.C. 1987)(finding Commission staff was not a party and therefore discovery would not be compelled). See also, *Arkansas Oklahoma Gas Corp. v. Scott*, ORDER 2006 WL 3337347 (Ark.P.S.C. 2006.)(Neither the three Commissioners, the Commissioners' Chief of Staff, the Utility Staff Executive Director nor the Utility Staff General Counsel, who the Respondents request to depose, is a party to Docket No. 06-021-C as an individual or as an employee of the Commission). See also *Public Service Commission of Montana et al., v. District Court of First Judicial Dist. In and For Lewis and Clark County*, 162 Mont. 225 (Mont.P.S.C. 1973)(Denying discovery served upon the Commission whose decisions are being reviewed.)

addition, there are a variety of other ways to obtain the information CenturyLink seeks without compelling the Commission staff to answer discovery requests. The Commission staff had previously indicated to CenturyLink that it would provide responses informally or through a public records request. Consequently, I find CenturyLink's discovery requests were improper and will not be compelled against the Commission and its staff.

Windstream and Frontier Joint Motion

As Hearing Officer, I deny the Joint Motion filed by Windstream and Frontier. The Commission is unable to bifurcate the consideration of high-cost support for one carrier when a change in support may necessarily have an impact on another carrier's support amounts. In addition, until CenturyLink's issues can be considered to be resolved and a final order can be entered, support amounts must remain interim and subject to true-up for 2016.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer in the above-captioned matter that the Data Requests served on the Commission staff are deemed an improper use of discovery and will not be compelled against the Commission staff.

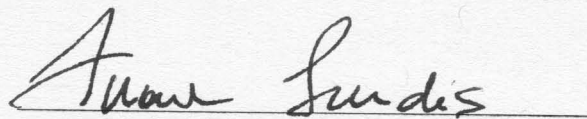
IT IS FURTHER ORDERED the Motion in Limine to Exclude Extraneous Issue filed by CenturyLink is hereby denied as provided herein.

IT IS FURTHER ORDERED the Motion to Sever, CenturyLink's Disbursement Dispute, Hold other Issues from the November 17 Order in Abeyance, and Lift the Interim Designation from 2016 Disbursements is hereby denied as provided herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 15th day of December, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

By:



Frank E. Landis
Hearing Officer