

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. C-5461/PI-244  
Public Service Commission, on )  
its own motion, to adopt safe ) ORDER OPENING DOCKET AND  
harbor market rates for the ) SEEKING COMMENT  
leasing of dark fiber by )  
agencies or political )  
subdivisions of the state. ) Entered: December 6, 2022

BY THE COMMISSION:

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

The Nebraska Public Service Commission ("Commission") initiates this proceeding on its own motion to adopt guidelines for the leasing of dark fiber by agencies or political subdivisions of the state ("Entity" or "Entities") pursuant to Neb. Rev. Stat. §§ 86-574 - 86-578. Pursuant to Neb. Rev. Stat. § 86-577(4), the Commission is required to establish a safe harbor range of market rates for all dark fiber leases using a competitive price determination comparison.<sup>1</sup>

#### Statutory Requirements

The process for dark fiber leasing by agencies or political subdivisions of the state is set forth in Neb. Rev. Stat. § 86-577. An Entity may lease dark fiber it owns to a lessee that is a certificated telecommunications common carrier, a permitted telecommunications contract carrier, or an internet service provider. The lease terms must be fair, reasonable, and nondiscriminatory.

Before a lease becomes effective, it must be filed with the Commission.<sup>2</sup> The Commission will then publish notice of the lease, including the lease rates. The lease will become effective fourteen days after the publication of the notice unless a protest is filed with the Commission. If a protest is filed, the Commission will

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<sup>1</sup> The term "dark fiber" is defined in Neb. Rev. Stat. § 86-574 as "any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal."

<sup>2</sup> Neb. Rev. Stat. § 86-577(3)(a).

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. C-5461/PI-244

Page 2

consider the lease a contested matter.<sup>3</sup> Among the matters that may be contested is the allocation of served and unserved locations in the lease. Served and unserved locations are determined at the time a lease is filed with the Commission. Served locations must be able to receive minimum speeds of 25/3 Mbps; unserved locations are those not receiving and not able to receive at least 25/3 Mbps at the time a lease is filed with the Commission.<sup>4</sup>

If a lease utilizes rates within the safe harbor range established by the Commission, those rates may not be contested. Once a lease is finalized, fifty percent of the profit earned by the Entity for the lease of dark fiber to a served location must be remitted to the Nebraska Telecommunications Universal Service Fund ("NUSF").<sup>5</sup>

Under Neb. Rev. Stat. § 86-577(4)(a), the Commission must establish a safe harbor range of market rates for all dark fiber leases using a competitive price determination comparison. The Commission hereby opens this docket for the purpose of determining what the safe harbor range will be.

## Issues for Comment

### **1. Basis for a Competitive Price Determination Comparison**

In conducting a competitive price determination comparison, the Commission may consider rate schedules, interconnection agreements, other documents within its regulatory oversight, and other market rate information. The Commission seeks guidance on what documents should be consulted in this determination, and the relative weight which should be placed on each type of document. What market rate information is available which the Commission might consult? Are there other sources of information which should be considered?

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<sup>3</sup> Contested proceedings are governed by the Commission's Rules of Procedure, found at 291 Neb. Admin. Code, Chapter 1.

<sup>4</sup> Neb. Rev. Stat. § 86-577(1).

<sup>5</sup> "Profit" is defined in Neb. Rev. Stat. § 86-577(4)(b) as "the lease price less the cost of infrastructure deployment."

**2. Regional or Statewide Rates**

The Commission seeks input as to whether it should set the safe harbor rates on a statewide basis. Would it be more appropriate to set safe harbor rates on a regional basis? If so, what regional boundaries might the Commission set?

**3. Current Market Rates**

The Commission seeks information as to what current market rates are for the leasing of dark fiber. Commenters are encouraged to submit information for the Commission's consideration, including but not limited to quotes, contracts, and other documentation of recent leases for dark fiber.

Additionally, how often should current market rates be reassessed? Should the Commission update the safe harbor market rates on an annual basis? How might the Commission assess market conditions in future years? What resources, such as market analyses, currently exist which the Commission might use to reassess market rates? Can annual adjustments be automatically determined?

Commenters should be advised that should they seek confidential treatment of information submitted in this docket they should submit with the filing a motion for protective order for the Hearing Officer's consideration. If a filing is labeled confidential but is not covered by an existing protective order, the filer will be given an opportunity to withdraw the filing prior to it being made publicly available.

**4. Served and Unserved Areas**

On what basis should the Commission make the determination of whether a lease encompasses "served" or "unserved" locations as defined Neb. Rev. Stat. § 86-577(a) and (b)? What information should the Commission rely on to make that determination? Should the Commission require applicants to define or disclose the area served by the lease? If so, how should that area be defined? Should applicants be required to file plant maps showing the location of the dark fiber, or would shapefiles showing the locations to be served be sufficient?

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5461/PI-244

Page 4

**5. Other Issues**

The Commission welcomes additional comments and suggestions regarding the above topics. If there are other considerations which need to be addressed, interested parties are encouraged to bring them forward in comments.

Comments and Reply Comments

The Commission requests that interested parties provide comments responsive to the issues raised above on or before **January 6, 2023, at 5:00 p.m. Central Time**. Reply comments may be filed on or before **January 27, 2023 at 5:00 p.m. Central Time**. Commenters should be filed electronically, with service to [psc.telecom@nebraska.gov](mailto:psc.telecom@nebraska.gov).

A hearing on these issues may be scheduled after the Commission receives comments and reply comments.

O R D E R

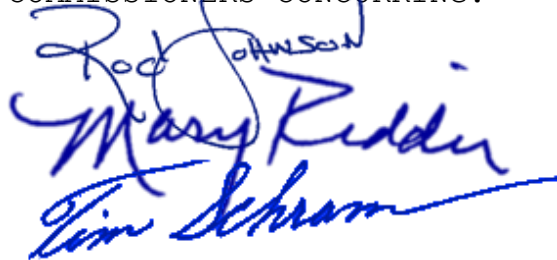
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be, and it is hereby, opened.

IT IS FURTHER ORDERED that comments and reply comments may be filed on or before January 6, 2023 and January 27, 2023 as prescribed herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 6th day of December, 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:





Chair

ATTEST:

  
Executive Director