

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application                    ) Application No. C-1128  
of the Nebraska Public Service                    ) Progression Order No. 3  
Commission, on its own motion, to                    )  
set guidelines for the mediation,                    ) ORDER AND REQUEST FOR  
arbitration, and review of negoti-                    ) COMMENTS  
ated agreements under the Tele-                    )  
communications Act of 1996.                    ) Entered: April 6, 1999

BY THE COMMISSION:

On August 20, 1996, the Commission entered a policy governing mediation and arbitration to carry out the mandates of Section 252 of the Federal Telecommunications Act of 1996 (Act). That order was subsequently modified on August 27, 1996, March 4, 1997, and May 28, 1997.

OPINION AND FINDINGS

On January 25, 1999, the United States Supreme Court handed down its decision in the AT&T Corp. et al. v. Iowa Utilities Board et al., 119 S.Ct. 721 (1999), which reinstated and upheld the Federal Communications Commission's interpretation of Section 252(i) of the Act, commonly referred to as the "pick and choose rule."

Based on that decision, the Commission now seeks comments to clarify the appropriate procedure for the Commission to adopt to approve Section 252(i) interconnection agreements which utilize the new "pick and choose" interpretation. Interested parties are invited to comment on issues surrounding new interconnection agreements under Section 252(i) including, but not limited to:

1. What procedures should be adopted by the Commission for "pick and choose" agreements that differ from the procedures currently employed under regular Section 252(i) agreements;
2. What time frame the Commission should adopt in making a determination on the approval of proposed agreements utilizing the "pick and choose" provisions; and,
3. Whether such "pick and choose" agreements should be captioned differently from agreements approved prior to the AT&T Corp. decision.
4. What contractual period should apply to a "pick and choose" agreement.

Interested parties must submit comments prior to 5:00 p.m. on Monday, May 3, 1999. There will not be an opportunity for reply comments absent a future Commission decision to request reply comments.

The Commission finds that the current period for review of submitted interconnection agreements may be inadequate to handle the scope, complexity and number of new proposed agreements in the near future. Because future agreements will most likely incorporate provisions

from many different filed agreements, additional staff time will be required to review and make recommendations about such agreements.

Accordingly, the Commission finds, and hereby declares, that the current policy under which Section 252(i) agreements become effective ten days after submission to the Commission is held in abeyance for those interconnection agreements utilizing a "pick and choose" approach. Until further order of this Commission, all Section 252(i) agreements submitted with "pick and choose" provisions will not become effective until thirty (30) days after submission to the Commission unless the Commission otherwise disposes of the proposed agreement. Applications requesting approval of an interconnection request adopting a single integrated agreement using Section 252(i) provisions will continue to be processed using the ten day review.

The Commission continues to find that Section 252(i) requests should be handled in an efficient manner. Therefore, the Commission reserves the right to reconsider this time period for review and to change it, if needed, in the future upon proper public notice.

The Commission further finds that parties who have relied on public, published Commission policy should not be compromised by this change in review period. Accordingly, all Section 252(i) requests submitted to the Commission prior to the approval of this order shall be processed according to the policy and the time of review in effect prior to this, namely, the ten-day period of review detailed in prior orders under this docket.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that comments on the issues set forth herein are to be submitted on or before 5:00 p.m. on May 3, 1999.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that interconnection agreement requests submitted pursuant to Section 252(i) of the Federal Telecommunications Act of 1996 be handled according to the findings contained in this order including:

(a) Holding in abeyance the Commission policy granting approval to Section 252(i) interconnection agreements using "pick and choose" provisions ten days after submission. However, Section 252(i) requests adopting a single approved interconnection agreement not utilizing a "pick and choose" approach will continue to be processed according to current policy; and

(b) Providing that Section 252(i) interconnection agreements shall be approved thirty (30) days after submission to the Commission unless the Commission otherwise disposes of the request.

MADE AND ENTERED in Lincoln, Nebraska, on this 6th day of April, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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