

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. C-1128
Public Service Commission, on its) Progression Order No. 6
own motion, seeking to conduct an)
investigation into defining the)
term "Telecommunications Carrier") Policy Approved
as it relates to the obligation of)
incumbent local exchange carriers)
under Sections 251 and 252 of the)
Telecommunications Act of 1996.) Entered: December 16, 1997

BY THE COMMISSION

On September 3, 1997, the Commission, on its own motion, opened Docket C-1128, Progression Order No. 6 to investigate further defining the term, telecommunications carrier. The Commission seeks to clarify the definition of "telecommunications carrier" by defining "provider" of telecommunications services. A tentative definition of "provider" was set forth and comments thereon were invited from all interested parties. Initial comments were due on or before September 23, 1997. Reply comments were due on or before September 30, 1997. Initial comments were filed by the Nebraska Independent Telephone Association, the Nebraska Telephone Association, AT&T of the Midwest and US West Communications. Reply comments were filed by the Nebraska Independent Telephone Association and MCI.

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

Upon reviewing the comments filed herein, we make the following findings:

A state may use authority under Section 253(b) of the Telecommunications Act of 1996 (the Act) to impose, on a competitively neutral basis . . . requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

This Commission has authority under state law and under Section 253(b) to require that only certificate holders may request interconnection from rural companies. We believe this decision is appropriate in order to prevent the Commission, as well as the rural incumbent local exchange carriers, from devoting substantial time and resources in a rural exemption proceeding with carriers who may never be authorized to provide telecommunications services in Nebraska.

To obtain certification, carriers must file an application demonstrating financial, technical and managerial fitness. We have established competitively neutral rules to process local exchange applications. To date, thirteen carriers have been approved to provide competitive local exchange ser-

vice and several other applications remain pending. Therefore, the decision herein to require that certification be obtained prior to negotiating with rural carriers does not pose a barrier to entry under Section 253 of the Act. In fact, it does not preclude entry, it merely makes the process orderly, efficient and predictable.

Every party must file for and receive certification before they can provide service in Nebraska. Thus, this decision is competitively neutral. It applies to all parties seeking to enter the territory of any rural carrier.

We take notice that the Federal Communications Commission (FCC) in CC Dockets 97-163, 97-164 and 97-165, concluded that the state commissions of Georgia, South Carolina and Illinois did not act improperly in dismissing Low Tech Designs Inc.'s petition for arbitration since Low Tech Designs was not a telecommunications carrier engaged in providing telecommunications services. We believe our decision herein comports with the decisions made in those other states and by the FCC.

We find that the policy herein should be applicable solely to rural carriers for the requirements contained in Sections 251 and 252 of the Telecommunications Act of 1996.

Based upon the comments filed herein, we find the FCC's definition of telecommunications carrier should be further clarified by defining 'provider' of telecommunications services insofar as it applies to rural carriers only as:

Any entity that has been certificated to provide telecommunications services in Nebraska.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the policy herein be, and is hereby, approved.

MADE AND ENTERED at Lincoln, Nebraska, this 16th day of December, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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