

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of the ) APPLICATION NO. C-1273  
Nebraska Telephone Association (NTA) and )  
its members who seek authority for )  
approval of revised access service ) APPLICATION DENIED  
tariffs for Nebraska local exchange )  
carriers and for implementation of a )  
State Subscriber Line Charge. ) ENTERED: MAY 14, 1996

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BY THE COMMISSION:

OPINION AND FINDINGS

By application filed December 22, 1995, NTA and 19 of its member telephone companies filed with the Commission a request to lower intrastate access charges and to implement a State Subscriber Line Charge. On December 26, 1995, notice of the application was published in the Omaha Daily Record pursuant to the rules of the Commission. Hearings on the application were held March 4, 1996, in Lincoln, on March 5 via videoconference to several communities throughout the state, and on March 6 in Omaha. Appearances were as shown. The applicants produced six witnesses.

THE EVIDENCE

Dwight Winingier testified: He is president of the NTA. The purpose of the application is to provide a mechanism whereby intrastate long distance rates can be reduced by lowering access charges paid by long distance companies. The long distance companies have indicated to the NTA that they will then reduce prices to the end user in an amount equalling the reduction in access charges. The proposal would reduce access charges revenues for the petitioners by approximately \$19 million. The applicants would recover the loss of that income by implementing a \$2 Subscriber Line Charge (SLC). A significant disparity exists between rates for intrastate

interexchange and interstate long distance services provided to businesses and residents in Nebraska. Consumers are frustrated. Many rural residents depend heavily on long distance service to call schools, businesses and government services. Consumers have attempted to cope with this problem in the form of petitions for extended area service and expanded local calling areas. High intrastate long distance rates hinder economic development. Lowering intrastate toll rates would assist businesses in rural areas. Historically, Nebraska telephone companies utilize intrastate long distance revenue to support their basic local exchange service. A federally-mandated SLC has been imposed on interstate long distance rates. Reduction of the interstate access charge by local phone companies has enabled them to reduce their interstate long distance rates. The Federal SLC of \$3.50 has offset the reduction in interstate toll charges. The application is designed to be revenue neutral for the applicants based on 1993 data. The proposed SLC would not be mandatory for all local exchange carriers. Companies representing 97% of the access lines in Nebraska will implement the charge. Applicants used 1993 financial data because that was the most current data available when the application was being negotiated by NTA members and the interexchange carriers. The second reason is that the 1993 statements permit the largest access reduction. More current numbers would not have allowed for as large an access reduction. Applicants arrived at the \$2 charge by balancing what may have been needed and what would hopefully keep people from dropping off the network. A \$2 charge seemed to be a reasonable amount to provide reasonable rate relief without making it an onerous charge. No cost studies were done. Applicants have been assured by interexchange carriers Sprint, MCI and AT&T that there will be a dollar-for-dollar flow through of any reduction in access charges. The application has not been discussed with resellers. Some members of NTA are going to lower access charges, but not seek to implement the \$2 SLC. Some member companies, very few, will not lower access charges at all. He cannot guarantee revenue neutrality for all customers. This application was filed because of a lack of agreement on line charges. There has been a continuing dispute on access charges between interexchange carriers and the local exchange industry which culminated in the filing of this application. This application will not ultimately resolve the dispute. It will solve it for the short term.

Barbara M. Wilcox testified: She is the director of product and market issues with responsibility for intrastate switched access service for US West Communications Group, Inc. She proposes a 69% decrease to the price of the Carrier Common Line (CCL) charge as part of the intent of this filing to move recovery of local loop costs from toll and access services to the SLC. The decrease will allow price reductions to consumers for their long distance services. Interstate and intrastate access charges were first put into effect in 1984. Nebraska access prices have been reduced since then, but the decreases in Nebraska have not kept pace with the decreases in the interstate rates. The elements of switched access service include Local Switching, Local Transport, and Carrier Common Line. All of these rates are charged per minute of use. The Local Switching Charge compensates US West for switching the call. Local Transport Charge

compensates US West for transporting the call between the central office serving the end user and the end office. The CCL provides revenue to US West's Nebraska operations in support of basic telephone service. When the rate element was first established, it was designed to recover the non-traffic sensitive local loop costs. Introduction of the \$2 SLC will generate \$10.8 million annually for US West based on the 1993 test year quantities of basic exchange access lines. The SLC revenue would be offset by revenue decreases in access and long distance services. Of the funds, 58% or approximately \$6.2 million would be assigned to access, with the remaining \$4.5 million assigned to long distance. US West will experience other savings because the access charges it pays to other Nebraska local exchange companies will also be reduced. To offset those cost savings, US West proposes to reduce its long distance prices by an additional \$2.1 million. The average rate per minute for the total switched access service will decline by 30% from 6.09 cents per minute to 4.24 cents per minute. Access charges comprise 40% to 50% of a long distance carrier's cost of doing business. Access prices should be more closely aligned with the incremental costs of providing the service. Reduction in access prices now will set the stage for competition to develop on an economic basis. By instituting the SLC and reducing the long distance and switched access prices, US West is making changes that more closely align prices with the manner in which costs are incurred. The \$2 charge was derived through negotiation among the parties. The price was not based on cost studies. It was based on a study of prices and revenues. The charge was modeled on the interstate jurisdiction wherein both businesses and residence customers pay an end user charge. A state SLC is not in place in any other states served by US West. It is beyond what any telephone company can do to see how many people will benefit and how many people will be harmed by this proposal. The reason the application is before the Commission is that there was not complete agreement amongst the parties. The filing is not based on costs. Switched access service has its own direct costs, but it makes use of a local switch network which supports a lot of different products in many different ways. The rates will contribute to provide support for overall telephone company operations. It will help support some products that may be priced below their costs. After various reductions that have taken place in access charges, and after this proposed reduction as well, US West's switched access charges will remain in excess of the direct cost of providing the service.

On rebuttal: The application is revenue neutral based on the 1993 test year. In response to the staff's request to look at the 1995 impact of the changes contained in the application, the data reveals the application is revenue negative to US West. When changes to long distance and access prices and implementation of the SLC are applied to 1995 data, US West has a loss of \$1,600,000 compared with the revenue it actually received in 1995. The reason is the widely disparate growth rates between growth of basic telephone lines and growth of switched access traffic. There is no guarantee that stimulation of switched access traffic would actually occur and even if it did, the effect would not be large enough to eliminate the negative effect seen in the 1995 numbers. Within the next three

years, the activity in competition for long distance services and limited competition for other telephone services can be expected to change dramatically with increased competition for basic telephone services. It is difficult, if not impossible, to predict what changes this will cause in long distance price elasticities. US West will not experience an increase in revenues due to the implementation of the prices proposed. She expects a decrease. US West would be willing to commit that for one year following adoption of the lower rates proposed by the application, the composite average rate per minute for switched access would not be raised. She believes that the most likely outcome of the rate increase will be revenue negative to the other local exchange applicants.

Bryan McCormick testified: He works for US West as product manager, long distance services, with responsibility for consumer markets. The \$2 SLC will generate approximately \$10.8 million to US West annually. That gain is being offset by revenue decreases in switched access and intraLATA long distance services. Four and a half million dollars is being assigned to intraLATA long distance, with the remainder assigned to switched access. The remaining \$6.2 million reduction is being applied to US West's switched access. Local exchange carriers are also supporting this application to reduce their access charges. Reductions by the local exchange carriers should save US West \$2.2 million annually. US West's total long distance price reduction will be \$6.7 million, which is the sum of \$4.5 million from the SLC and an estimated \$2.1 million from the local exchange carrier reductions. Overall, prices will fall since the net effect of the proposal is to deliver a long distance rate reduction of 15.9%. It is possible, although unlikely, that some customers may see an increase. Those would be consumers whose calls were generally long, placed at night or on weekends, and terminated within 55 miles. With the recommended 15.9% decrease, simple arithmetic would show that a customer would have to spend \$12.58 per month on intrastate toll to save money on the proposed rates.

Bill Ashburn testified: He is industry relations manager of Lincoln Telephone Company (LT&T). LT&T's access charge residual rate is \$0.0295 per minute of use. As a participant in this application, it would propose to reduce the charge to \$0.0080 per minute of use. Based upon 1993 calling volume, the reduction would cause an annual revenue reduction of \$5,167,654. The company proposes to implement the \$2 SLC which, based upon the 1993 Subscriber Line data, would result in an additional revenue to LT&T of \$5,167,654. The \$2 per month per access line charge was selected in order to provide the interexchange carriers with the maximum access charge reduction which the local exchange carriers felt was reasonable at this time while at the same time keeping the increase in the customer's monthly bill at a level which the LEC's believe is unlikely to cause customers to disconnect from the network. LT&T also proposes to reduce its intraLATA long distance rates by 10%. That would result in an overall revenue loss. The overall effect of the company's rate changes would be a revenue loss of approximately \$574,000 per year. If the proposed rates are applied to 1995 data, the result is revenue negative. The \$0.0080 per minute of use would need to be about 1.2 cents per minute

of use to reach revenue neutrality on 1995 figures. Customers who place calls within their enhanced local area will not see a rate reduction. All of their reductions will be passed to interexchange carriers including Lincoln Telephone Long Distance. Semi-public pay phone providers will be assessed the SLC, but public pay phones will not. Centrex customers will be required to pay the charge on a trunk equivalency basis but only those who have contracts. Those would be the University of Nebraska and the State of Nebraska. Other Centrex customers will be charged the \$2 SLC on a one-for-one basis. Cellular customers will not be required to pay the SLC. LT&T employees would pay 50% of the line charge. The company does not have a cost study to support the proposed rates. Customers who call within a 25-mile radius would not see any reduction.

On rebuttal: LT&T will cap its rates at eight tenths of a cent per minute of use for the access charge residual rate and \$2 per month access line SLC. If an adjustment in the \$2 rate is needed, LT&T would approach the Commission with a request for an increase. The cap would be in effect for at least one year.

Howard Bell testified: He is state government affairs manager for AT&T. The NTA proposal is in the public interest because it represents a significant step toward bringing access charges in line with their underlying economic cost of service. Loop costs are the costs of the physical facilities associated with the communication pathway that begins at the point where the network interfaces at a customer's premises to the local switch. Those costs do not vary with the level of the customer's usage. Those are non-traffic sensitive costs; and by shifting a portion of the recovery of the loop costs support from the traffic-sensitive access charge to a flat rate paid by the end user, the cost recovery will track the manner in which costs are incurred. A non-traffic sensitive cost is recovered by means of a flat rate rather than one which is traffic sensitive. Recovery of local loop costs from toll service provides an inaccurate signal to consumers regarding the costs that they impose upon society in getting the local loop for their usage. The present system violates the fairness principle in that the cost causers do not pay for the costs that they cause to be incurred as a result of the services they utilize. Currently, toll rates are artificially inflated so as to recover access charges which are not related in any way to the economic costs of providing access services, but are simply intended to serve as a fund transfer vehicle to take revenues from toll service users and provide it for use in connection with local service. AT&T plans to reflect access reductions in the prices that it charges to its Nebraska customers. The dollar amount to be reflected in the business and residential switched toll services will be allocated between the two groups in proportion to their relative quantity of switched-access minutes. AT&T has been trying to get access charges reduced ever since divestiture because it wants to offer lower toll rates for the consumer's benefit. The charges that are being levied in this application still exceed economic costs by a sizable margin. Access charges should be pretty close to the economic costs of providing the service. Funding of additional reductions in access charges could come from a number of sources. In Minnesota

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access charge reductions were recovered by additional charges in connection with some of the optional services associated with local service. AT&T is going to pass through dollar-for-dollar the savings it realizes from the reduced access charges by reducing intrastate toll rates. In Minnesota there was a specific monthly line charge, but whether it was treated as a SLC on the bill or rolled into the local rate he does not know; but from a customer standpoint, it is the same. The local loop is a stand-alone service, and it is best to think of it as that which provides connectivity from the customer to the network.

Al Bergmann testified: He is director of state marketing strategies for US West. He would commit on behalf of US West that for the long distance services covered in this application, for at least a year, the aggregate average rate per minute will not increase. There would be no increase in any SLC without coming back to the Commission.

Protestant Herbert Sherdon testified: He is an individual living in Lincoln. Applicants seek approval of the access service rate reductions to apply to interexchange carriers under § 75-609 of the Nebraska Statutes. The applicants do not, however, make any allegations that such proposed rates will be fair and reasonable based upon the cost of providing such access service. Section 75-609(2) says, "Except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual cost." It is obvious from the testimony that there have been no costs presented, nor are there costs available to support access charge reductions. The application and the answers to interrogatories make clear that the sole basis for the amount of the access charge reduction is the revenue to be realized from the \$2 SLC. The Commission should not establish a SLC because such a charge would not be subject to the Commission's jurisdiction. No SLC should be established. If additional revenue is necessary, the charge should be deemed basic local service revenue subject to the Commission's jurisdiction. If the Commission were to establish a SLC of \$2, there would be nothing to prevent an increase in that charge unilaterally by any of the companies in the state. AT&T testified that it proposes to pursue additional reductions in access line charges. There has been no showing of any change in the cost of access. There has been no showing of any cost to apply to a SLC that has changed that caused this application to be filed. In connection with his questions asked of Mr. Ashburn, he established that there would be 240,356,000 minutes that were used in the 1993 study. Multiplying that by eight tenths of a cent yields \$1,922,848. The Commission could order reductions in access charges as a result of this application and not order any offsetting SLC and let each company determine how it wants to recover that reduced revenue, if any, and let them do it on an individual basis.

On behalf of the Commission staff, John Burvainis testified: He is a staff accountant at the Commission. First, the staff cannot determine whether the proposed access charge residual rates are fair

and reasonable. Applicants say there is no cost data that was calculated to generate CCL rates that are proposed. Cost studies were furnished for the revenue requirement established in 1987. Second, the proposal is not a statewide uniform plan. Some companies will implement the SLC, some will not. Some will lower access charges, others will not lower access charges. Not every Centrex user is treated the same. Third, there is no assurance that the plan is revenue neutral and no means is proposed to review the revenue neutrality of the plan if it is implemented. There are a hundred other carriers that are not going to provide any information to show any revenue neutrality because they are not part of the case. US West uses a stimulation factor of 3.6%. LT&T, on the other hand, uses a stimulation factor of approximately 6.3%. For every minute of toll, there is a minute of access. No one has used a stimulation of minutes of access and determined where this proposal is revenue neutral. Using LT&T's stimulation factor, there would be a \$3,200,000 windfall which has not been considered. Interrogatories answered by US West show that revenues from access charges between 1993 levels and 1995 have grown 36% in spite of losses of access charges to competition. The staff would never have anticipated that kind of increase in access revenue with US West. Fourthly, there is no assurance that all interexchange carriers will restore 100% of the resulting access charge reductions to the end user. Fifth, some of the companies have agreed to absorb the access charge reductions in their earnings. The staff contends that all companies can absorb these access charge reductions without the need for implementing a SLC.

Joe Zugmier testified: He is an accountant for the Commission. He compiled Exhibit 16 which shows that Nebraska's instate toll rates are higher than the states surrounding it.

The State of Nebraska as an informal intervenor produced one witness, Bill Gries, who testified: He is the telecommunications manager for the State. The State has contracted with major carriers for 14,540 Centrex lines which it uses across the state. Those lines include service provided to Wayne State College, Chadron State College, a number of county governments, and some cities along the way who share the rates that the State has negotiated. The State also has approximately 540 other business lines in smaller communities. If the \$2 SLC is imposed on all lines that it utilizes, the State will see an approximate \$362,000 annual increase in its costs. One vendor has indicated it may charge something other than the \$2 charge. There have been discussions that indicate the carriers might treat the State's Centrex service on a ten-to-one basis, i.e. 20 cents per Centrex line as opposed to \$2 which would equate closely to what it pays for network access registers for network access. Even on that basis, the State is looking at a \$48,000 annual increase in costs. The State has negotiated intrastate calling rates with the carriers. Those rates are less than what is being proposed at the present time. His figures are based on 1995 experience. Most of the State's contracts will be up for renewal this year; therefore, the cost would not necessarily be long term.

As a formal intervenor in this proceeding, the University of Nebraska produced one witness, Judy M. Roots, who testified: She is associate general counsel to the University of Nebraska. The SLC would result in a financial increase to the University that will not be offset by any corresponding decrease in reduced intraLATA toll rates because the University's rates are already lower than the proposed toll rates. However, the carriers have negotiated a reduced SLC for Centrex and Centranet services. They will be reduced as testified previously by Mr. Gries. There are 168 direct in dial trunks at the University of Nebraska at Omaha and the University medical center used only for incoming calls so they will be subject to the full \$2 charge, \$336 per month, as well as 141 central office trunks that will be subject to the \$2 charge for another \$282 per month. Those trunks carry local traffic only. Thirty-two business lines at UNO serve a student telephone registration system and are used only for incoming calls. Those will be subject to the \$2, costing another \$64 a month. No long distance calls are placed over those lines. The University contracts apart from the State of Nebraska. Its contracts were signed in 1995. They have nearly five years to run.

Wallace Richardson testified: He is an attorney for AT&T Communications of the Midwest. AT&T supports the application for four reasons: (1) Long distance rates within Nebraska will be lower. (2) Lower rates will permit a greater realization of the benefits associated with the developing information age such as on-line services and alternative sources of information through expanded networks. (3) The lower rates will provide a positive impact on rural economic development by overcoming the historical handicap of distance and by providing improved access to market information. (4) The lower rates will encourage competition for both local and long distance services.

After witnesses for the parties testified, the Commission heard testimony from the public.

Lee Anderbery testified: He represents the Farmers State Bank of Avoca, Weeping Water and Bennett. He also speaks as a residential subscriber of LT&T. He is opposed to the proposal for five reasons: (1) LT&T has invoked its proprietary information privilege and, therefore, the consumer is not given any clear definition of the true long distance rate decrease the company has promised. (2) An article in the Lincoln Journal Star refers to a 10% to 15% decrease in long distances charges. As he sees it, the typical consumer would have to spend approximately \$20 per month on instate long distance calls to make this a break-even proposal from the consumer's standpoint. He does not spend that much on instate long distance service. (3) The proposal goes against the principles of free enterprise in that it allows telephone companies that already have a natural monopoly to subsidize their long distance rates by raising monthly service fees on all accounts. Other long distance providers would not be offered this luxury and, therefore, could be forced out of the market. (4) Telephone companies have not given notice to their customers about this change through the same process in which the banking industry is



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required to do through monthly statements whenever it has a change in service charges. (5) This proposal does not offer a rate reduction for enhanced local calling area customers. In 1991 all LT&T customers were put on a level playing field in which the phone rates were standardized throughout its territory. That put an additional service charge on the LT&T customers.

Bill Bremer testified: He works with Business Telecommunication Systems (BTS) in Grand Island. It represents customers in Norfolk, Grand Island, North Platte in US West territory, Kearney, Columbus in GTE territory, and Hastings in LT&T territory. BTS serves about 1,200 communications equipment customers in outstate Nebraska. The chances of people in Golden Age Village in Grand Island, who are living on \$300 a month, recovering the \$2 through reduced long distance charges is remote. The economic impact of the \$2 line charge would be \$653,000 per year for Grand Island.

Michael Hooper testified: He is a reporter with the Grand Island Independent. (He then posed questions that were answered by parties whose testimony is already in the record.)

Jim Brenneman testified from Norfolk: He is retired and living on a fixed income. He spends approximately \$100 a year for intrastate long distance calling, \$8 to \$9 per month. If he were to receive a 20% discount in long distance rates, he would be spending \$24 a year to recover \$9. That does not seem economical nor feasible for an individual on a fixed income. He opposes the access fee.

Doris Sandberg testified from Kearney: It sounds as if applicants have a hidden agenda which they are not revealing. She and her husband are firmly against the proposal.

Betty Herbst testified: She lives in North Platte. She is opposed to the application. She is a senior citizen on a fixed income.

Myra Wertz testified: She lives in Columbus. She is a subscriber through GTE. Local service should not subsidize intrastate long distance. Intrastate calls are unusually expensive compared to interstate toll calls, but do not tax the local subscriber for calls that the subscriber may or may not make or benefit from. Let each subscriber pay for what is used and from which benefit is derived.

Eugene Herron testified: He lives in North Platte. He feels that the user should be paying telephone costs. He does not feel that he should be called upon to subsidize someone else's calls.

R. G. Brown testified: He lives in Omaha. He is against everybody paying a \$2 access fee for people that use long distance inside the state. Those who make long distance phone calls should have to pay the increase as a user and not average it out and spread it across the public. Some people do not use long distance calls within the state.

Stanley Nabb testified (Omaha): He thinks the proposed rate is a tax. He thinks there are places within the telephone company that could pay the \$2 they are looking for. He has a bill in front of him that consists of eight pages. Paper is not cheap.

Hugh Marymee testified: He lives in Omaha. He thinks it is ridiculous that the applicants are considering a \$2 charge against every phone in the state in order to subsidize the long distance calling of businesses and people who make a lot of intrastate phone calls. He does not see how the Commission could possibly go along with charging people who do very little long distance calling in order to transfer their money to businesses and people who do a lot of it.

Dave Gilfillan testified: He lives in Bellevue. He is an employee of Mid America Pay Phones (MAPP) of Omaha. He also appears as a citizen and rate payer. Nebraska is one of the few states, perhaps the only state, that has not seen local exchange rates for basic service decline as a result of technological advances and increased business efficiency. Local exchange carriers in Nebraska continue to post record profits year after year while Nebraska's rate payers have seen no corresponding decrease in their monthly rates for basic services. The \$2 SLC proposed by applicants will cost MAPP approximately \$2,000 per month. Its clients are paid on a margin between the cost of the calls placed and the money received from the caller. In order to break even, a subscriber would have to make in excess of \$20 per month in intrastate interexchange long distance calls. On average, MAPP's 1,000 accounts do not come close to that volume. On average, MAPP's clients make less than \$9 per month in intrastate interexchange calls. Pay phones are probably the purest form of telephone usage. The caller pays for what he uses. No one is asked to subsidize the call. It should remain that way. He questions whether US West and LT&T will charge themselves \$2 per month for each coin operated pay telephone they service. Assessing private pay telephone service providers per month will serve to eliminate competition which will ultimately hurt consumers. He proposes that private pay phone service providers receive an exemption from the SLC. There are no guarantees that all of the interexchange carriers will pass savings on to the business and residential rate payers. The SLC is voluntary. Some of Nebraska's local exchange carriers won't bill their customers for the charge. Others will bill their customers selectively. Great Plains Communications is an example. As a personal subscriber, he does not make enough intrastate calls to realize the break-even point on the \$24 annual charge. Recent federal legislation will allow local exchange carriers to compete with interexchange carriers for long distance service. This would allow NTA members to demonstrate firsthand how competition will lower intrastate long distance charges. Competition in the local exchange market should result in lower intrastate access charges without the need for a SLC. He suggests that the SLC is requested by NTA members to provide them with guaranteed income in the face of increased competition.

Tom Baye testified (Omaha): He appears on behalf of Nebraska Conservatives for Freedom. His organization agrees with the staff.

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It is up to local telephone companies, as well as long distance companies, to get lean and mean to see what they can do to compete and not try to stick it on the rate payers.

Mike Jacobsen testified: He lives in Omaha. He sees the fee as a tax. Call it a user fee, call it an access fee; he sees it as a flat tax. Citizens in Nebraska are tired of being taxed \$2 here, 10 cents here, 2 cents here. He hopes that the application will not be granted.

#### DISCUSSION

This is the first rate application filed with this Commission since the passage of LB 835 in 1986 which invokes the Commission's jurisdiction. That act made extensive changes in Commission jurisdiction over rates of telephone companies and provided new procedures and standards for review of rate applications which are brought before the Commission. In view of the fact that this is virtually a case of first impression, we must carefully analyze this application and the law so as to not only arrive at the proper conclusion in this matter, but to provide definitions, standards and guidelines for future applicants.

#### Jurisdiction

This application purports to invoke the jurisdiction of this Commission pursuant to Neb. Rev. Stat. § 75-119 and § 75-609(2) (Supp. 1994). Section 75-119 says:

When any common carrier or other interested person petitions the commission alleging that a rate, rule, or regulation should be prescribed when none exists or alleging that an existing rule, regulation, or rate is unreasonably high or low, unjust, or discriminatory, notice shall be given to the common carriers affected in accordance with the commission's rules for notice and hearing. The minimum notice to be given under this section shall be ten days. The order granting or denying the petition or application shall be mailed to the parties of record. If a petition or application is not opposed after notice has been given, the commission may act upon such petition or application without a hearing.

Section 75-609(2) says:

(2) Access charges imposed by telecommunications companies for access to a local exchange network for the purposes of provision of interexchange services shall be as agreed to by the telecommunications companies involved. Any affected telecommunications company may, by application, cause review of such charges by the commission. Upon such application and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing thereon within sixty days of the

filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange telecommunications company but may order discounts where there is not available access of equal type and quality for all interexchange telecommunications companies, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange telecommunications company from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange telecommunications company in providing such access services.

It is clear that § 75-119 is a general statute which could, except for Neb. Rev. Stat. § 86-803(1) (Reissue 1994), apply to all rate regulation over which the Commission has jurisdiction: motor carrier rates, warehouse rates and, conceivably, telephone rates, although much more specific legislation affects the Commission's jurisdiction over telephone rates.

This application attempts to combine a request for authority to adjust two categories of rates: (1) access charges which applicants suggest are reviewable by the Commission under § 75-609 and (2) what has been denominated a Subscriber Line Charge by the applicants. The statutes are silent on Subscriber Line Charges, but the charge is in substance a basic local exchange rate increase which is controlled by Neb. Rev. Stat. § 86-803(2) and (3) (Reissue 1994).

Neb. Rev. Stat. § 86-802(1) (Reissue 1994) provides the following definition:

(1) Basic local exchange rate shall mean the flat monthly charge for an access line, whether the service is provided on a flat or measured basis, imposed by a telecommunications company for basic local exchange service, but shall not include any charges resulting from action by a federal agency or taxes imposed by a governmental body which are billed by a telecommunications company to its customers.

Dr. Bell, an applicant witness, testified that whether a charge is treated as a SLC or rolled into the local rate, from the customer's standpoint it is the same (178:10).

The record does not disclose any effort on the part of the applicants to comply with § 86-803(2) which sets forth the procedure for obtaining Commission jurisdiction and consideration of a basic local exchange rate increase.

If we accept applicants' position that this is not an increase in the basic local exchange rates, then the Commission would have no jurisdiction in light of Neb. Rev. Stat. § 86-803(1) (Reissue 1994) which provides:

Except as provided in sections 86-801 to 86-811, telecommunications companies shall be subject to regulation by the commission. Telecommunications companies shall not, however, be subject to any rate regulation by the commission and shall not be subject to provisions as to rates and charges prescribed in Chapter 75, articles 1 and 6. Telecommunications companies shall, instead, file rate lists for their telecommunications services which shall be effective after ten days' notice to the commission with the exception of monthly rates for basic local exchange services. (Emphasis supplied.)

If we are to entertain this application, clearly we must proceed under § 86-803(4) which provides:

A telecommunications company may at any time file an application with the commission requesting the commission to prescribe fair, just, and reasonable rates for the company or such telecommunications company may elect to proceed, if eligible, under section 75-609.01. Such proceedings shall be governed by Chapter 75, articles 1 and 6, and shall not be limited by subsection (2) of this section. Any rate so set may thereafter be adjusted as provided in subsections (1) and (2) of this section.

Under any other statute, the application would have to be dismissed. Section 86-803(1) precludes regulation of phone rates under Chapter 75, article 1 which includes § 75-119, one of the sections applicants cite for jurisdictional foundation for their application, and under Chapter 75, article 6 which includes § 75-609, the only other section applicants cite for jurisdiction, but § 86-803(4) does not preclude consideration of access charges. The test in § 75-609 is fair and reasonable, virtually the same as the fair, just and reasonable standard required by § 86-803(4).

#### Standards of Proof

Assuming that the applicants meant to comply with § 86-803(4) and that they are asking the Commission to approve a basic local exchange rate increase, they have not complied with Bluefield Co. v. Pub. Serv. Comm., 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923), and Power Comm'n v. Hope Gas Co., 320 U.S. 591, 64 S. Ct. 281, 88 L. Ed. 333 (1944), which the Nebraska Supreme Court has cited as controlling for rate cases in KN Energy, Inc. v. City of Scottsbluff, 233 Neb. 644, 447 N.W.2d 220 (1989), and in KN Energy, Inc. v. Cities of Broken Bow et al., 244 Neb. 113, 505 N.W.2d 102 (1993).

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public. This record contains no evidence of the value of the property devoted to the services for which applicants ask us to fix rates, and no evidence of risk nor reasonable rate of return was submitted. The Scottsbluff case, *supra*, requires that costs should be allocated to those customers who cause the utility to incur the costs. No effort has been made to address the costs associated with the services for which applicants seek compensation.

The access charges issue raised by the application which would have been subject to Commission jurisdiction under § 75-609(2) but for the language in § 86-803(1) must be shown to be fair, just and reasonable. However, the record is deficient to permit the Commission to approve any change in the access charges presently in place whether we were to accept jurisdiction under § 75-609(2) or § 86-803(4). There are many recognized factors entering into the determination of fair and reasonable rates, among them being cost of transportation to the carrier, value of property devoted to the service, value of service to the public, earnings, operating expense, competition, and others. South Bay Motor Freight Co. v. Schaaf, 101 P.2d 584, 586, 3 Wash. 2d 466 (1940).

#### Compliance with the Law

Applicants have not presented any evidence on those elements which would support such a finding of fairness and reasonableness. Dr. Bell testifying on behalf of AT&T stated that access charges "should be pretty close to the economic cost of providing the service." (171:21). He also said that other states have tackled the issue of intrastate access by making changes in the rate structure as opposed to use of a SLC (178:11-15).

Although the case In re Application of Northwestern Bell Tel. Co., 223 Neb. 415, 390 N.W.2d 495 (1986), antedates the limitations on Commission regulation of rates imposed by LB 835 in 1986, the case stands for the proposition that the Commission cannot approve a rate unless it has before it an adequate record to support its findings. The record in this case contains no factual evidence of the effect the proposed rates would have on the carriers; only broad opinions, unsubstantiated with accounting data, customer surveys or expert opinion on the dynamics of the proposed rate changes, have been offered. The applicants have failed to show that any proposed reduction in access charges would reduce their returns to such an extent that any rate increase would be necessary. As we have observed, the application for a \$2 increase in the basic local exchange rate must be tested against each applicant's rate base.

What evidence the Commission can glean from this record only goes to show that the proposed rates would not be evenly applied and that they would be discriminatory. MCI testified that it would return "substantially" all of the access charge decrease to the customer, while AT&T said it would return the increase "dollar for dollar". AT&T also indicated that not all of its customers would see the

benefits of reduced access rates. Furthermore, neither Sprint, LDDS, LTLD nor any of the other 163 certificated telecommunications providers in Nebraska offered any evidence as to what they would do with the savings they stand to gain from the proposed reduction in access charges. None of those carriers has offered the Commission specific rate reduction schedules nor any explicit assurance that their subscribers would receive any benefit from the access charge reduction by way of lower long distance charges.

Another example of the discriminatory implementation of the proposed plan is found in the published notice of the application wherein one of the parties treats its business customers differently than the business customers of all other parties are treated. Another discriminating aspect of the proposed plan is the treatment of Centrex customers. Some customers, including the University of Nebraska and the State of Nebraska, will be assessed the "SLC" on a trunk equivalency basis. Other Centrex customers will be assessed \$2.00 per number. There is no evidence to show how nor why the rate differential among Centrex customers is equitable. Furthermore, the application, filed on behalf of only 19 companies, purports to apply to 23 other companies who serve more than 35,000 customers. They are not before the Commission. There is no possible way for the Commission to conclude nor feel assured that the proposed rates would be fair and reasonable as they would apply to companies who are not parties to the application. Even if all of Nebraska's 42 local exchange carriers had joined in the application and elected to submit the application on the record made by the 19 who joined in the application, we would be guided by § 75-609(2) which prohibits the Commission from entering an order which would cause the annual revenue to be realized by each local exchange from all interexchange carriers to be less than the annual costs as determined from evidence adduced at a hearing. In this case the companies who seek to invoke the lower rate have produced no evidence of their annual costs and, in fact, refused to allow any introduction of such evidence during the hearing. Unreasonable discrimination in charges, it has been recognized, can occur in the form of lower prices for equivalent service or enhanced service for equivalent prices. Competitive Telecommunications Ass'n v. F.C.C., CA, 998 F.2d 1058, 1062, 302 U.S. App. D.C. 423 (1993). Either form should be prohibited.

This Commission would be acting contrary to Legislative policy set forth in Neb. Rev. Stat. § 86-801(3) (Reissue 1994) if it were to approve this application.

#### Observation

We cannot endorse the NTA's approach in this application; however, we do commend the NTA and its members who joined in this application for making an effort to reduce intrastate toll rates. We are mindful that we have taken the industry to task for the past several years in our annual reports to the Legislature for industry's reluctance to take the initiative to adjust long distance rates and access charges. We encourage applicants to review their approach and

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offer alternatives which will be in harmony with (1) our jurisdiction, (2) cost of service pricing, and which moves toward (3) the reduction of support mechanisms in access pricing.

For this Commission to enter a valid order under Section 86-803(4), there would, at a minimum, need to be some showing of the cost of any service for which the applicant is requesting a rate. Lacking this essential ingredient, it would be impossible for the Commission to craft a fair, just and reasonable rate as required under the aforesaid section.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Application No. C-1273 of the Nebraska Telephone Association and its members be, and it is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day May, 1996.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Lowell C. Johnson  
//s//Frank E. Landis  
//s//James F. Munnelly

Chairman

ATTEST:

*Robert B. Logsdon*  
Executive Director

COMMISSIONERS DISSENTING:

//s//Rod Johnson  
//s//Daniel G. Urwiller