

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service ) Application No.  
C-1628 )  
Commission on its Own Motion to Conduct an )  
Investigation into Intrastate Access Charge Reform ) Progression Order  
#1 )  
and Intrastate Universal Service Fund. )  
 ) Entered:  
September 15, 1997

BY THE COMMISSION:

1. In the months since the Telecommunications Act of 1996 (the "Act") became law on February 8, 1996, this Commission has considered many issues relating to the implementation of local exchange telecommunications service competition in Nebraska. Among these issues, none is more important than the consideration and determination of the support mechanisms necessary to ensure that consumers, including low income consumers and consumers in rural, and high cost areas, have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.

2. On May 2, 1995, this Commission initiated Application No. C-1176 to investigate the desirability of establishing a Nebraska Universal Service Fund ("NEUSF"). In connection therewith, on April 30, 1996, we established a Nebraska Universal Service Task Force (the "Task Force") to compile public comment and to develop a plan for the implementation of NEUSF. In July 1997, the Task Force presented its Initial Report to the Commission. One of the key findings of the Task Force is as follows:

Nebraska has not needed to develop a state universal service fund primarily because intrastate access rates have allowed local exchange companies to keep local rates low, thereby ensuring universally available service throughout Nebraska. To the extent that intrastate access revenues are reduced, these reductions may need to be replaced by the NEUSF. However, it is impossible to determine at this time what level of state funding will be required without knowing the degree to which intrastate access rates will be reduced.

3. In the Act, Congress not only directed that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service" (47 U.S.C. sec. 254(b)(5)), but also specified that such support should be "explicit".

In the Joint Explanatory Statement of the Committee of the Conference, it is stated that "[t]o the extent possible, . . . any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today." S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 131 (1996).

4. Further, the Nebraska Legislature has adopted the Nebraska Telecommunications Universal Service Fund Act (the "Nebraska Act") "to authorize the commission to establish a funding mechanism which supplements federal universal service support mechanisms and ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices." One of the principles identified by the Legislature as supporting the Nebraska Act is that "[t]he implicit support mechanisms in intrastate access rates throughout the state may be replaced while ensuring that local service rates in all areas of the state remain affordable." Nebraska Act, sec. 4(7).

5. Intrastate access charges and the establishment of a NEUSF are inextricably inter-related. It is clear to the Commission that it is now necessary to initiate an investigation of the structure of intrastate access charges through the initiation of this docket and to integrate considerations of universal service funding and establishment of NEUSF with this docket.

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

6. Neb. Const. Art. IV, sec. 20, in pertinent part, provides: "The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law. But, in the absence of specific legislation, the commission shall exercise the powers and perform the duties enumerated in this provision."

7. Neb.Rev.Stat. sec. 75-609(2) (Reissue 1996) further provides: "The Commission shall set an access charge structure for each local exchange carrier . . . 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, as determined by the Commission based upon evidence received at hearing,

incurred or which will be incurred by the local exchange carrier in providing such access services."

8. Neb.Rev.Stat. sec. 86-803(1) and (2), as amended by 1997 Neb. Laws LB 660, SEC. 7, provides: "Telecommunications companies shall not be subject to rate regulation by the Commission except as provided in sections 75.609.01 and 86-801 to 86-811. . . . In an exchange in which local competition does not exist, telecommunications companies shall file rate lists which, for all telecommunications service except basic local exchange rates, shall be effective after ten days' notice to the Commission."

9. In State ex rel. Spire v. Northwestern Bell Tel. Co., 233 Neb. 262, 277-278, 445 N.W.2d 284 (1989), the Nebraska Supreme Court held: "LB835 [which enacted sec. 75-609(2)] does not totally divest the PSC of jurisdiction over telecommunications companies, completely preclude the PSC's regulation of telecommunications companies, or transfer regulatory control to a governmental agency, body of government, or branch of government except the Legislature. Instead, LB835 restricts the situations and manner in which the PSC may exercise its regulatory power over rates of telecommunications companies."

10. The Legislature, in sec. 75-609(2), has provided that the Commission has the power and duty to "set an access charge structure for each local exchange carrier" operating in Nebraska. However, in sec. 86-803, the Legislature has restricted the Commission's rate making authority to setting "basic local exchange rates." Pursuant to current statutory provisions, the Commission is authorized to establish access charge rates for a local exchange carrier only in the event it is presented with an application by an "affected carrier" pursuant to the procedure provided in the first four sentences of sec. 75-609(2).

11. Based upon the foregoing authorities, the Commission finds that it possesses authority to commence this investigatory proceeding pursuant to Neb. Admin. R. & Regs. tit. 291, ch.1, sec. 012, to investigate the rate elements which should properly be included in intrastate access charges, and ultimately set an access charge structure for each local exchange carrier which the Commission has certificated to conduct business in Nebraska.

12. The Commission further finds that based upon the provisions of the Act, the Nebraska Act and the findings of the Task Force, all as above-referenced, intrastate access charge reform cannot be prudently considered by this Commission separate from universal service funding and issues relating to the establishment of NEUSF. Therefore, pursuant to Neb. Admin. R. & Regs. tit. 291, ch. 1, sec. 018.08, the Commission finds that Application No. C-1176 should be consolidated with this docket and that all further proceedings in Application No. C-1176 shall be consolidated with this investigation of the structure of intrastate access charges.

13. Due to the importance of the issues to be considered in this investigation, the Commission deems all local exchange carriers and interexchange carriers which, as of this date, hold a certificate of convenience and necessity issued by this Commission, to be parties to this proceeding and shall be entitled to participate in this proceeding in accordance with Neb. Admin. R. & Regs. tit. 291, ch.1, sec. 015.01. Any other persons or entities that desire to participate in this proceeding are entitled to do so in accordance with the Rules of Commission Procedure.

14. The complexity of the issues of intrastate access charge reform and state universal service funding require that not only the substantive, but also the procedural aspects of this docket receive careful consideration. The Commission finds that as soon as reasonably possible following the last day for filing of petitions to intervene in this docket, the Commission will hold a Prehearing Conference pursuant to Neb. Admin. R. & Regs. tit. 291, ch. 1, sec. 020 for the purposes inter alia of identifying specific issues to be addressed in this investigation, setting time frames and procedures for submission of written comments on such issues and establishing procedures for public hearings on this investigation. The issues to be addressed shall include, but not be limited to a determination of the standards and procedures to develop, implement and operate NEUSF.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that based upon the legal authorities referenced above, this docket is initiated to investigate the structure of intrastate access charges.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that the structure of intrastate access charges cannot and should not be investigated separate from universal service funding and issues relating to the establishment of NEUSF, and therefore, Application No. C-1176 is ordered consolidated in this docket, and all further proceedings in Application No. C-1176 shall be consolidated in this docket. Accordingly, C-1176 is hereby closed.

IT IS FURTHER ORDERED that each local exchange carrier and interexchange carrier which, as of this date, holds a certificate of convenience and necessity issued by this Commission shall be a party to this proceeding, entitled to participate herein pursuant to Neb. Admin. R. & Regs. tit. 291, ch. 1, sec. 015.01.

IT IS FURTHER ORDERED that as soon as reasonably possible following the last day for filing of petitions to intervene in this docket, a Prehearing Conference shall be scheduled and held pursuant to Neb. Admin. R. & Regs. tit. 291, ch. 1, sec. 020 for the purposes described hereinabove.

MADE AND ENTERED at Lincoln, Nebraska this 15th day of September, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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