BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform.	)	Application No. C-1628
	)	Findings and Conclusions
	)	Entered: January 13, 1999

BY THE COMMISSION:

On September 15, 1997, the Commission opened this docket for the purpose of investigating the structure of intrastate access charges and establishing a Nebraska Universal Service Fund (NUSF). Public notice of this docket was published in the Daily Record, Omaha, Nebraska, on September 17, 1997. All certificated interexchange and local exchange carriers were named as parties in this matter. Formal interventions were filed by the Nebraska Independent Telephone Association and the Nebraska Telephone Association.

After receiving comments from interested parties and reviewing the Nebraska Universal Service Task Force Initial Report dated July 1997, the Commission issued a prehearing conference order and requested further substantive comments and reply comments. Such comments have been received and have been given careful study by the Commission.

On May 22, 1998, a petition was filed with the Nebraska Secretary of State (Initiative 414) seeking certification to place a measure on the November ballot which would generally require the Commission to (a) eliminate implicit subsidies contained in access charges as of the effective date of the statutory amendment set forth in the petition; (b) establish access charges based on forward-looking economic costs; (c) develop competition in the access services marketplace; (d) adopt rules and regulations requiring incumbent local exchange carriers to provide access services on a cost-based, competitively-neutral and nondiscriminatory basis; (e) establish and maintain a library for tariffs filed by providers of access; and, (f) average prices in the aggregate for intrastate long-distance services to reflect the reduction of access charges applicable to such long-distance services. The petition was rejected by voters on November 3, 1998.

A further development impacts this docket. On July 17, 1998, the Federal Communications Commission (FCC) entered an order effectively delaying the implementation of the Federal Universal

Service Fund for non-rural local exchange carriers until July 1, 1999 (FCC Order).

Based upon the foregoing developments, on August 11, 1998, the Commission entered Progression Order No. 2 in this docket and requested further comments from interested parties concerning the impact of 1) Initiative 414, if approved, and 2) the FCC Order. The Commission received such comments on September 15, 1998, and has reviewed them.

The Commission conducted legislative hearings from October 27 through October 29, 1998. Testimony was presented by Floyd Olson of the Nebraska Universal Service Advisory Board, the Nebraska Telephone Association, the "Independents", US West Communications, Inc., the Commission's Economic Advisor Dr. David Rosenbaum, GTE Midwest, Inc., Sprint Communications/United Telephone Co. of the West, Aliant Communications Co., MCI Telecommunications Corp. and AT&T Communications Corp. Twelve parties filed post-hearing briefs on November 24, 1998.

Based upon (a) the comments submitted to the Commission in this docket; (b) the provisions of the Telecommunications Act of 1996 (the Act); (c) the mandate to continue and enhance universal service as required by Section 254 of the Act; (d) the provisions of the Nebraska Universal Service Act (the State Act); (e) the recommendation of the Nebraska Universal Service Task Force; (f) the FCC's July Order; (g) the testimony elicited at the hearing on October 27-29, 1998; and, (h) the post-hearing briefs received in this docket, the Commission issues the following Findings and Conclusions.

FINDINGS AND CONCLUSIONS

The concept of universal service is not new. In the past, universal service has been funded through a conscious policy of pricing certain incumbent local exchange carriers' (ILEC) services such as access service, toll service and local business service at levels that support primarily residential service. The "implicit subsidies" contained in these charges are and have been used to keep local residential exchange rates affordable for all subscribers. This policy was adopted by both federal and state regulators and implemented by the telecommunications industry.

Due to the opening of ILEC markets to competition, this subsidization practice is no longer desirable. As a result, the rates for services that provide implicit support should be reduced. The lost support may, over a reasonable period of time, be replaced through increases in rates and by state and federal universal service funds.

The Commission has been investigating the need for lowering access rates and creating a state universal service fund for some time. In early 1996, the Commission opened Docket C-1176 which established a Nebraska Universal Service Task Force (Task Force) to compile public comment and to develop a plan for the implementation of a NUSF. The Task Force concluded, and the Commission agrees, that quality services should be made available at just, reasonable and affordable rates to consumers in all regions of Nebraska. Furthermore, low-income consumers and those in rural, insular and high-cost areas should have services that are comparable to those provided in urban areas and at rates that are reasonably comparable to urban rates.

This Commission is the proper regulatory body to determine the level of support needed by Nebraska subscribers. The Commission finds that the NUSF should support basic service for all customer access lines whether business or residential. The current supported services should consist of: single-party service; touch-tone; standard "white page" (or alpha directory) listing; access to directory assistance; access to interexchange services; access to emergency services such as 911 or E911; access to operator services; and, toll blocking for qualifying low-income consumers. The Commission may add advanced services as supported services in future proceedings.

A change of this magnitude takes time and a concerted effort on behalf of all parties involved. Therefore, the Commission proposes a transition period for adoption of the goals addressed in this Order. Each carrier shall file a transition plan with this Commission on or before March 31, 1999, for Commission approval. Said plans shall detail any and all rate adjustments during the applicable transition period. Companies may seek authority to modify such plans during this transition to reflect market or regulatory changes. The transition plan shall include an annual tariff filing to be made on or before July 1 of each year during the transition period. The carrier shall also detail the level of access, toll and local exchange service charges and the magnitude of the changes being made to these charges in its annual tariff filings.

Each telephone company's transition plan shall identify any annual local rate increases necessary to transition the carrier from current local rates to rates that are at or above the lower of the local rate rebalancing target or cost. In each annual filing, companies shall have the option of (1) increasing local service rates by the maximum percentage permitted by Neb. Rev. Stat. §§ 86-803 and 75-609.01 until such time as the rates meet the local rate rebalancing targets; or, (2) increasing local service rates annually at an amount approved by the Commission but less than the allowable statutory maximum so that, at the end of the transition period, residential and business rates are at or above the lower of the local rate rebalancing target or cost, unless otherwise approved by this Commission.

Should an access charge complaint be filed against an ILEC, the Commission intends to give considerable weight to the fact that (a) the company has a Commission-approved transition plan, and (b) the carrier has met or exceeded its commitments during the transition period.

The Commission will administer the NUSF. As the body statutorily charged with establishing the NUSF in accordance with the State Act, the Commission has the authority to establish requirements as a gateway to the NUSF. Only carriers that have implemented compliant transition plans will be eligible for NUSF support. A compliant transition plan, including the implementation of the access charge restructuring and rate rebalancing objectives contained in this Order, shall be a gateway for NUSF eligibility.

For purposes of NUSF determination, a service area for non-rural carriers shall be a carrier's certificated exchange. The service area for a rural telephone company may be either its exchange(s) or its study area. To be eligible for NUSF support provided under permanent plans, a carrier must be a facilities-based carrier, commit to serve an entire service area that is acceptable to the Commission, be designated a state Eligible Telecommunications Carrier (ETC), offer the supported universal services throughout its service area and meet all demand for supported services throughout its service area. Carriers other than ILECs will be designated as state ETCs only if they meet the criteria set forth in Section 102 of the Act and if the Commission finds it to be in the public interest.

For this Order to remain in effect after June 30, 1999, the Nebraska Legislature must repeal the sunset provisions found in Neb. Rev. Stat. § 86-1411 (1998 Cum. Supp).

The Commission finds that the permanent NUSF shall be portable among ETCs. The Commission further finds that during the interim, the NUSF shall be accessible to all ETCs. For the interim NUSF, ILECs will be eligible for interim funding as set forth in this Order. Additional carriers other than ILECs will be eligible for interim funding after they have applied for and have been granted state ETC designation pursuant to Commission guidelines and existing law and have provided documentation acceptable to the Commission on the amount of support they should receive on an interim basis for providing service to high-cost customers. As additional carriers are granted ETC designation and it is determined that they are eligible for support from the interim fund, fund size and the surcharge will be adjusted accordingly.

The NUSF will be funded via a surcharge on retail, end-user revenues from telecommunications services. The annual surcharge rate will be determined by dividing the total amount required for the NUSF by the total retail, end-user revenues subject to the NUSF surcharge. Each individual end-user's surcharge amount will then be calculated as the surcharge rate multiplied by that end-user's revenues subject to the NUSF surcharge. The resulting surcharge amount shall be displayed explicitly on each customer's bill.

The surcharge will be assessed on all interstate and intrastate telecommunication services regardless of the underlying technology used in the provisioning of these services. This surcharge will not apply to intermediate services, such as access, that are provided to another company as long as that company collects the universal service surcharge from the retail service it provides to end-users. For example, a local exchange carrier (LEC) will not levy the surcharge on access services provided to an interexchange carrier (IXC); instead, the IXC will collect the surcharge on its retail toll services. This will prevent double billing of the universal service surcharge on retail end-users. The retail services that are provided to that service provider by a LEC or other carrier will be subject to the universal service surcharge.

Considering the potential impact upon consumers across the state, the Commission reserves the right to modify, after notice and hearing, any and all adopted NUSF requirements at any time should the Commission deem it to be in the public's best interest.

It is clear that the Telecommunications Act of 1996 requires the local exchange market to change. The transition to competition while maintaining and advancing universal service will be challenging and there may not be a "one size fits all" methodology of changing current methods of cost recovery, particularly as it relates to rural telephone companies.

Generally, the state access charge structure should approximate the interstate access charge structure as detailed in this Order. Carriers not in compliance with the Commission's findings regarding the structure of access charges shall not be eligible for NUSF support. Non-rural and rural companies will be defined as set forth in Section 3(a)(47) of the Telecommunications Act of 1996.

Initially, the Commission agrees with the analysis provided by the Task Force concerning the residential local rate rebalancing target. At the outset we select $17.50 per month as this target rate. This residential target rate does not include any surcharges such as, but not limited to, the federal subscriber line charge, the 911 surcharge and the relay surcharge. While the Commission has little evidence before it regarding the appropriate local rate rebalancing target for single-line business service, we find at this time that $27.50, not including surcharges, should be utilized.

The Commission believes that in order to fulfill its obligation under the Act, business lines should be supported in a manner similar to residential lines. The local rate rebalancing target adopted herein reflects the greater ability, on average, of a business to pay higher rates. The Commission will re-evaluate the level of the local rate rebalancing targets within two years from the date of this Order.

The Commission expects that the NUSF will eventually be sized in a manner similar to the following: For each service area, (a) develop the per-line cost to provide supported services to meet all needs within each "costing" area; (b) determine the support level within each costing area by subtracting the benchmark price selected by the Commission from the per-line cost to provide supported services within a costing area; (c) determine the support amount within each costing area by multiplying the costing area support level by the number of supported lines served within each costing area; and, (d) determine the service area support by totaling support amounts in all costing areas. The total amount of the NUSF shall then be the sum of each service area's support.

By the end of the transition period, the Commission will have determined the cost per line to provide supported services and the benchmark above which costs will be eligible for universal service funding. The Commission has not yet adopted a method for determining costs for rural carriers. It will open a docket to address this issue. However, this docket may be postponed until the FCC makes its decision on costing methodologies for rural carriers.

For non-rural carriers, the Commission finds that costs for supported services shall be based upon forward-looking direct costs and a reasonable share of forward-looking joint and common costs, including a reasonable profit. In Docket No. C-1633, the Commission reviewed forward-looking cost models for universal service purposes. The Commission recommended that the FCC adopt the Benchmark Cost Proxy Model (BCPM) uncapped version 3.1 with Commission-determined inputs for determining federal universal service support for the non-rural carriers in Nebraska. The Commission believes that the BCPM uncapped version 3.1 is the most appropriate model for determining Nebraska non-rural carrier forward-looking costs. Hence, the BCPM will be used for those purposes within this docket. If, at some future date, the Commission believes that the BCPM uncapped version 3.1 may no longer be the most appropriate model for these purposes, it will open a new docket to address that matter.

Each Eligible Carrier's (EC) total actual support is its total eligible support adjusted for rate of return and any failure to adequately rebalance local rates. Total eligible support will be calculated in the following manner. The Commission shall establish support areas for purposes of disbursing NUSF funds. The Commission shall determine the monthly forward-looking cost per line for providing service in each support area. The support per line will then be calculated as the larger of either zero or the cost per line minus the benchmark. Each EC's area-wide funding will be calculated as the support per line multiplied by the number of supported lines the EC serves within the support area. Each EC's total eligible support will be the aggregate of area-wide funding over all support areas served by the EC.

Total eligible support amounts will then be adjusted for rate of return. For this purpose, rate of return will be calculated as the sum of the EC's net operating income over the test period divided by the EC's net rate base over the same period. Net operating income will consist of total operating revenues less total operating expenses and operating taxes. A company which has elected to be taxed under Subchapter S of the Internal Revenue Code will have a corporate income tax imputed at statutory corporate rates and the Commission shall include imputed tax in the company's revenue requirement. Net rate base shall include gross plant in service, short-term construction, materials and supplies, accumulated depreciation and deferred income taxes. The financial information used for this calculation will be acquired from the Annual Report to the Commission pursuant to Neb. Rev. Stat. § 86-807. An EC may elect to supplement this information to focus the rate of return review to a jurisdictional or supported services basis. The information used to focus the rate of return review shall be subject to Commission approval. Once an EC makes any of the above-described elections, such elections can only be changed with Commission approval.

Under the permanent non-rural carrier NUSF plan, the rate of return adjustment is a true-up of previous payments from the NUSF. Hence, in the first year of the permanent plan, there is no test or true-up period and there is no rate of return adjustment. In all following years, the test period will be the immediately preceding year.

Rate of return adjustments will be made in the following manner. The actual support for an EC with a rate of return no greater than 12 percent over the test period will equal its total eligible support. For ECs earning a rate of return greater than 12 percent over the test period, actual support will be the total eligible support less the reduction in revenue required to lower the rate of return over the test period to 12 percent.

One other adjustment is made to NUSF payments. Carriers not using either (a) the maximum flexibility permitted by statute, or (b) a Commission approved plan to increase rates to the local rate rebalancing targets described above will receive a reduced amount of interim universal support. The reduction shall equal the revenue forgone by not rebalancing rates by the full amount as required by this Order. The sum of all ECs' adjusted explicit support shall be the size of the fund.

The intrastate access charge structure for non-rurals should approximate the interstate access charge structure except for the primary interexchange carrier charge (PICC) and the transport interconnection charge (TIC). A PICC recovers loop costs from IXCs and the Commission does not currently believe this is competitively neutral in light of interconnection requirements contained in the Act. This access structure requires that carriers implement local transport restructure (LTR). Additionally, non-rural carriers shall bifurcate the local switching element into a per call setup element and a per minute element unless otherwise specifically approved by the Commission. This bifurcation will more accurately reflect the manner in which costs are incurred.

With regard to terminating access, the Commission finds that rates for this service should be set no higher than originating rates. These rates shall not include access charge residuals (ACR) or residual or transition interconnection charges (RIC or TIC) associated with the local transport restructure. The Commission adopts this same finding for originating access. Consistent with this finding, effective July 1, 1999, non-rural carriers will be required to eliminate the ACR charges from their rate structures. The RIC/TIC charges shall be phased out during the transition period.

The Commission recognizes that significant shifting of revenues and costs may occur under this plan and therefore will allow carriers transition periods to reach the goals of the plan. During the transition periods, an eligible carrier's NUSF support shall equal the implicit support it has removed through changes in access charges and basic local service rate reductions, less the implicit support obviated through basic local service rate increases and any support received from the federal fund to expressly offset intrastate implicit support. Explicit support will be adjusted for rate of return and rate rebalancing in the manner previously discussed. However, the rate of return adjustment will be made in each and every year of the transition. A company shall select either the previous one or three years for its test period. Once a company makes the above-described election, such election can only be changed with Commission approval.

Non-rural carriers shall have a three-year transition period during which the NUSF will be established, the carrier common line (CCL) will be eliminated and flowed through, implicit subsidies will be removed from intraLATA toll rates and basic rates will be rebalanced. The Commission fully expects that all access-related subsidies will be removed within the first two years of the transition period and that the third year will be utilized to ease the impact of rate rebalancing if necessary.

Based on the above findings, the Commission adopts the following time line:

1. By March 31, 1999

   * ILECs file transition plans.

2. By May 1, 1999

   * The Commission will size the NUSF; and,
   * The Commission will start collection of universal service surcharge.

3. By June 1, 1999

   * IXCs file tariffs to be effective July 1, 1999, that reduce intrastate long distance service rates to reflect the reduction in access charges and which generally spread the reductions across all consumers.

4. By July 1, 1999

   * ILECs eliminate ACR (CCL) charge;
   * ILECs adopt the interstate local transport restructure (LTR);
   * ILECs bifurcate local switching unless otherwise specifically approved by the Commission; and,
   * Distributions from NUSF commence.

Rural telephone companies will be allowed a transition period of four years. A compliant transition plan for a rural telephone company shall comply with all of the requirements set forth above unless they elect to substitute one or more of the following:

1. Establish a CCL Element with the following rate caps:
   - Originating Rate Cap = $.02/min. (Maximum)
   - Terminating Rate Cap = $.02/min. (Maximum)

2. Adopt LTR with TIC phased to other Transport Rate Elements over four years.

3. Elect not to bifurcate switching.

4. Adopt Interstate July 1, 1998, Traffic Sensitive Rate Levels with an adjustment for interstate settlements by a factor of 1.25 where appropriate.

The interstate settlements factor will better balance state access reductions and NUSF size for the transition period and is designed to reflect rates that would more closely accommodate the total interstate traffic sensitive access cost requirement for rural Nebraska companies participating in the National Exchange Carrier Association (NECA) pool. It will be utilized only to derive state traffic sensitive access rates for NECA tariff companies. Companies filing their own traffic sensitive tariff with the FCC will utilize the FCC tariffed rate levels for state traffic sensitive rates. The use of this or a similar factor will be reviewed upon the submission of each company's transition plan and will be approved by this Commission on a company by company basis; however, under no circumstance will this factor be approved where the result would cause an increase in a company's access revenue.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a copy of this Order be served upon each of the parties to this docket.

IT IS FURTHER ORDERED that all telecommunications providers shall comply with all applicable foregoing Findings and Conclusions.

IT IS FURTHER ORDERED that should any court of competent jurisdiction determine any part of this Order to be legally invalid, the remaining portions of this Order shall remain in effect to the full extent possible.

IT IS FURTHER ORDERED that the provisions of this Order are contingent on the Nebraska Legislature lifting the sunset provisions on the Nebraska Universal Service Fund Act. Should the State Act be allowed to expire, the provisions of this Order shall be null and void.

MADE AND ENTERED at Lincoln, Nebraska, this 13th day of January, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson

Anne C. Boyle

Daniel G Urwiller

Lowell C Johnson

Chairman

Robert B. Logsdon

Executive Director

//s//Lowell C. Johnson
//s//Frank E. Landis