BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to conduct an investigation into intrastate access charge form and intrastate universal service fund.	)	Application No. C-1628/NUSF Progression Order #20 FINDINGS AND CONCLUSIONS Entered: December 17, 2002

BY THE COMMISSION:

1. On January 13, 1999, the Commission entered its findings and conclusions in this docket for the purpose of reducing implicit subsidies that exist in Incumbent Local Exchange Carrier (hereinafter "ILEC") charges for various telecommunications services and to implement the Nebraska Telecommunications Universal Service Fund (NUSF) Act. (C-1628 Order). Subsequently, the Commission ordered in the NUSF-1 and NUSF-27 dockets that NUSF support be apportioned on an exchange basis for non-rural carriers and that NUSF support should be made available to a CLEC, Nebraska Technology & Telecommunications, respectively.

2. On October 16, 2002, the Commission entered Progression Order No. 19 in the above-captioned proceeding and solicited responses to the following questions:

> 2.a. Should a carrier's transitional support be reduced to the extent such support is provided to a competing carrier? Why or why not?
>
> 2.b. In the alternative, should the Commission put a cap on the transitional support amount for each support area? Why or why not?
>
> 3.a. The Commission also seeks comments on how it can properly verify the number of access lines that have been submitted by a carrier for the purpose of receiving NUSF support for all carriers?
>
> 4.a. Should the Commission policy that costs be determined separately for each provider apply for the remainder of the transition period?
>
> 4.b. Should NUSF support for each carrier be determined in the same manner as its costs are actually incurred?

3. Responses in the form of comments were filed MCI/WorldCom (WorldCom) through its attorney, Steve Seglin; by the Rural Independent Companies through its attorney, Paul Schudel; by Qwest Corporation (Qwest) through its attorney, Jill Vinjamuri; by ALLTEL

under the signature of Pamela Fuller; and by NT&T through its attorney, Mark Fahleson.

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

I. Question 2.a.

A. Background

The first issue was whether a carrier's transitional support should be reduced to the extent that such support is provided to a competing carrier. WorldCom and NT&T filed comments in the affirmative. ALLTEL opposed a corresponding reduction in support. The rural independent companies also answered in the negative but acknowledged that to the extent that an ILEC receives payments for Unbundled Network Element Platform (UNE-P) or Unbundled Network Elements (UNEs) from competing carriers, NUSF support may be offset to the extent of such payments received. Qwest responded that its answer depends on the circumstances. Qwest recommended that the Commission draw a distinction between "captured" lines and "new" lines. In instances where unbundled network elements are used to provide the supported services in high cost areas, the CETC would, in most instances be eligible for the NUSF support or a portion thereof. Qwest stated that today's federal rules allow competitive eligible telecommunications carriers (CETCs) using UNEs to receive support up to the price of the UNEs, with the remainder going to the ILEC eligible telecommunications carrier (ETC). Qwest further commented that when a CETC purchases UNEs at a price less than the high cost benchmark, the CETC does not actually have high cost loops. Thus, according to Qwest, any support to the CETC is not being used for the intended purposes. Qwest thus recommended that the Commission find that a competitor is not eligible for support if the Commission determined UNE price is less than the target benchmark. If the Commission determined UNE price is greater than the target benchmark prices, the CETC would receive support for the difference between the target price and the UNE price.

B. Discussion

We agree with the comments filed by WorldCom and NT&T on this issue. While it is true that in C-1628 and NUSF-27 reduction of NUSF support was not contemplated, we find it is the better public policy approach in the transitional period to reduce a carrier's support to the extent that such support is provided to a competing carrier. This approach would conserve funds in the NUSF and promote stability during the remaining duration of the transition period. By not making a corresponding reduction in support, the NUSF would continue to fund an ETC for a customer in an area that it no longer serves.

II. Question 2.b.

A. Background

Question 2.b. was posed as an alternative path aimed at capping the amount of support given to carriers serving high cost areas to conserve the NUSF and ensure an appropriate allocation of support during the transition period. WorldCom responded that the Commission should provide a timetable for a transition to forward-looking cost methodologies and setting an explicit process for developing and implementing a forward-looking cost-based mechanism. However, in the transition period, WorldCom supported the proposed cap in order to prevent the creation of a larger fund than is necessary. Qwest stated that if the Commission wishes to ensure that the transitional fund does not increase without constraints, then the fund could be capped. The rural independent companies responded in the negative stating its belief that it is not possible to cap support for each support area during the transitional period. NT&T and ALLTEL also responded that a cap should not be required.

B. Discussion

Upon consideration of this alternative, we agree with the parties responding in the negative to question 2.b. Capping support in the high cost areas would be time consuming and burdensome which would only prolong the development and implementation of a more permanent support mechanism through NUSF-26. We find that it would not be necessary to cap interim support at the present time given our finding in response to Question 2.a.

III. Question 3.a.

A. Background

The Commission next sought comments on how it could properly verify the number of access lines that have been submitted by a carrier for the purpose of receiving NUSF support. Qwest responded that the requirements in the statutes should be sufficient. NT&T responded that the question can be easily answered by verifying the competing carrier’s wholesale bill or verifying the respective carriers’ customer account records. The Rural Independent Companies stated that there has been no historical problem and no current issue with regard to ILEC access line counts. However, the concerns seem to be particular to competing carriers entering a NUSF support area. The rural independent companies thus recommended that the Commission institute a certification requirement. In the event that there are questions involving the accuracy of the reported data, a prompt investigation should be conducted. ALLTEL also supported a certification process similar to the one required on the federal level for corporation financial information. WorldCom responded that the Commission should require the LECs to comply with similar audit requirements for those carriers whose revenues, subject to the NUSF surcharge, exceed $1,000,000 in a fiscal year.

B. Discussion

Upon consideration of the comments filed, we find that a certification process should be implemented. Currently, the Commission receives access line counts from carriers. We find that the accuracy of these line counts must be certified by an officer or authorized company representative at the time of filing. Should the accuracy of the reported access lines be in question, a complaint or investigative proceeding will be initiated. Further, we find that upon the execution of a non-disclosure agreement, a company may examine the access line counts provided by another company which provides services that receive NUSF support.

IV. Question 4.a.

A. Background

Question 4.a. asked whether the Commission policy that costs be determined separately for each provider apply for the remainder of the transition period. WorldCom responded in the negative. WorldCom averred that any process in which support is determined separately for each provider violates state and federal principles of competitive neutrality and portability. WorldCom further stated that any unequal funding could discourage competitive entry in high-cost areas and stifle a competitor’s ability to provide service at rates competitive to those of the incumbent. NT&T stated that discussions and hearings associated with any appropriate reduction of carrier support could include additional studies by the carriers and would likely lengthen the process. ALLTEL noted that the Commission has already determined in NUSF-26 (long-term mechanism) that cost should be determined separately for each provider. ALLTEL believed that it would not be efficient to make changes to the interim NUSF support currently received by the ILECs. The interim NUSF support the ILECs receive now is based on each individual company’s rates, revenues and costs. As such, interim changes are not necessary. Qwest urged the Commission to reconsider its decision to determine costs separately for each provider. Instead, Qwest stated, the most efficient provider should be determined and made available to all ETCs. Qwest recommended using BCPM for all providers during the transition period. The rural independent companies stated that the Commission’s January 13, 1999 order in this proceeding indicates that a CETC’s costs are determined separately for each CETC that applies for NUSF support during the transition period. The rural independent companies also stated that costs are to be determined separately for each provider under NUSF-26. With regard to the ILECs' interim support, the rural independent companies recommend that no changes to the interim support be made.

B. Discussion

With respect to this issue, we find that CETCs' costs should be determined separately for each provider during the remainder of the transition period. The Commission finds that this is the most efficient and accurate method on which to base NUSF support for the transitional period. This method will prevent carriers from receiving a windfall of support for costs they have not and do not incur.

V. Question 4.b.

A. Background

Question 4.b. asked whether NUSF support for each carrier should be determined in the same manner as its costs are actually incurred. WorldCom responded in the negative, stating that the common methodology for determining support is the forward-looking cost model. The FCC has determined that the forward-looking cost model is the most accurate method for determining levels of high-cost support in areas served by non-rural carriers. ALLTEL stated that the interim NUSF support the ILECs receive now is based on each individual company's rates, revenues and costs. ALLTEL further states that since the long-term NUSF policy for this issue has already been determined and the interim NUSF will transition to the long-term NUSF in the near future, changes in the interim NUSF are not necessary. The Rural Independent Companies stated that no change to the ILECs interim support methodology is necessary at this point. NT&T stated that additional studies and hearings would be necessary and that such a direction would significantly lengthen the timeframe for resolution of this docket. Qwest commented that embedded cost mechanisms encourage inefficiencies. However, if an embedded cost is used, certain overhead rates should be capped to avoid rewarding gross wastefulness.

B. Discussion

Upon consideration of the comments received and the current methodology being used in the support of carrier networks, we find support should be calculated in the manner in which costs are incurred. Using this methodology, we preserve the fund to support the higher costs associated with the provision of telecommunications services. Tying support to the manner in which costs are incurred will ensure that the NUSF support is being used for the intended purposes. For example, when CETCs are providing service through averaged UNE-P prices, such a company's NUSF support should be averaged in the same manner in which the UNE-P prices are averaged. As the findings in C-1628/NUSF entered January 13, 1999, imply, the Commission should determine on a case by case basis, after a competing carrier provides "documentation acceptable to the Commission on the amount of support they should receive on an interim basis for providing service" the level of support that should be received based on their costs of providing service. Such support may be averaged in order to prevent carriers from selecting to serve only the highest cost exchanges and in order to encourage competition in all areas on an equal basis.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the findings and conclusions herein be and they are hereby adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 17th day of December 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director