

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. C-1878/PI-23
on its own motion, to determine)
appropriate policy regarding)
access to residents of multiple) PROGRESSION ORDER NO. 2
dwelling units (MDUs) in Nebraska)
by competitive local exchange)
telecommunications providers(CLECs)) Entered: March 6, 2001

BY THE COMMISSION:

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

On December 8, 2000, the Nebraska Supreme Court issued its ruling in In Re Application of Nebraska Public Service Commission. While the Court's opinion affirmed a majority of the Commission's final order in Docket No. C-1878, the cost determination mechanism regarding use of the campus wire was remanded for reexamination in accordance with the Court's opinion. The Court's decision mandated that any Commission cost finding conform to the requirements set forth in Iowa Utilities Board vs. FCC, 219 F.3d 744, 751 (8th Cir. 2000).

In compliance with the Court's directive, the Commission entered Progression Order No. 1 on February 6, 2001, adopting a schedule for conducting a reexamination of the cost determination mechanism originally set out in Docket No. C-1878.

On February 16, 2001, the Commission held a workshop to define and clarify the issues remanded by the Nebraska Supreme Court. The workshop resulted in the compilation of several questions upon which the Commission seeks comments. Interested parties may file pre-filed testimony or comments on or before March 30, 2001, on the following issues:

- When and how, if at all, should the Commission's review be
 - expanded to include other carrier's elements, in addition to
 - Qwest's, as they relate to C-1878? (i.e., ALLTEL, Citizens,
 - Sprint, etc.)
-
- Please define the exact network element or elements to be
 - priced in this docket. Include technical specifications as
 - necessary. (i.e., loop/subloop/MDU access)

- Is campus wire subloop the same as the distribution subloop?
- How should the campus wire subloop be priced? Is there any
- necessity or benefit to pricing the intra-building cabling
- portion of the subloop separately?
- Do the element(s) defined in (2) above include both
- residential and commercial locations? In light of recent
- Federal Communications Commission (FCC) action in the area of
- commercial Multiple Tenant Environments (MTEs), should the
- Commission consider expanding its initial findings in C-1878
- to include commercial situations as well?

(6) What parameters should the Commission use in costing the element? Is a cost model necessary, or may (must) the Commission employ other means of determining costs that may comply with Total Element Long Run Incremental Cost (TELRIC)?

- Is it appropriate to charge the same rate for the campus wire
- subloop as for the distribution subloop since pricing the
- campus wire subloop lower than the distribution subloop may
- result in an increase in the price of the distribution subloop
- and thereby cause a potential disincentive to competition for
- all customers not located in an MDU including single family
- dwellings?
- Given that both AT&T's Hatfield (HAI) cost model and Qwest's
- Benchmark Cost Proxy Model (BCPM) cost model assume that a

- forward-looking network includes one "box" in both MDU and
 - non-MDU architectures (making the campus wire subloop and the
 - distribution subloop one and the same) and that they both
 - produce a distribution subloop rate that blends MDU and non-MDU architectures, what
 - justification is there for a campus
 - wire rate that differs from the distribution subloop rate?
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- Is the Commission required to use the TELRIC cost methodology?
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- Discuss relevant FCC and Federal court decisions and how they
 - will affect costs in this docket.
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- When a final rate is determined, should that rate be framed in
 - terms of a nonrecurring charge, a recurring charge, or both?
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- When a final rate is determined, should that rate be expressed
 - in terms of: per wire pair, per foot, or another way
 - altogether?
-
- How does the rate arrived at in this docket affect the
 - remaining parts of C-1878 that were upheld by the Nebraska
 - Supreme Court? Since the Supreme Court order would appear to
 - have upheld every issue decided by the Commission in the MDU

- docket with the single exception of campus wire rate, are
- there parts of that docket that need to be modified in light
- of the decision on cost or in light of subsequent federal
- court or FCC decisions?

- Should the title for intra-building wire revert to the
- property owner with the caveat that such title exists
- specifically for the benefits of the tenants? Do existing FCC
- orders make it clear that intra-building wire is already owned
- by whoever owns the property, not the incumbent local exchange
- carrier (ILEC)?

- Should the title for inter-building (campus) wire revert to
- the property owner with the caveat that such title exists
- specifically for the benefits of the tenants?

- If the title, with the caveats above, for inter- or intra-
- building wire reverts to the property owner, should that
- property owner be limited with respect to charges to carriers
- for access to that wire?

- In either case, if the above title reverts to the property
- owner is it necessary to assure equal and non-discriminatory
- access to the wire by any carrier chosen by the tenants of the
- property to serve them?

Following pre-filed comments or testimony, the Commission will hold a hearing in this matter on **April 13, 2001**, in the Commission Hearing Room. Parties should note the hearing will be begin at **9:00 a.m.** instead of 10:00 a.m., as earlier proposed.

The Commission may limit the scope of the hearing upon review of the pre-filed comments or testimony. Parties not wishing to testify, may, if represented by an attorney, conduct limited cross-examination of the witnesses at hearing.

In an effort to conserve resources and limit unnecessary confusion, the Commission desires to revise and update its service list in this docket. While the Commission encourages any and all interested parties to participate, said parties must notify the Commission of their desire to participate in the continuation of this proceeding by March 15, 2001. As representatives from Qwest, ALLTEL, Citizens and Cox participated in the workshop in this matter, said companies will be made parties without further action on their part.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that interested parties may file pre-filed testimony or comments on or before March 30, 2001, on the issues outlined above.

IT IS FURTHER ORDERED that interested parties, with the exception of Qwest, ALLTEL, Citizens and Cox, must notify the Commission of their desire to participate in the continuation of this proceeding by March 15, 2001.

IT IS FINALLY ORDERED that the Commission will hold a hearing in this matter at 9:00 a.m. on April 13, 2001, in the Commission Hearing Room.

MADE AND ENTERED at Lincoln, Nebraska, this 6th day of March, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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