

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. C-2199
on its own motion, seeking to) ORDER ADOPTING PROCEDURAL
determine statewide costs to) SCHEDULE AND SEEKING
establish rates for campus wire) COMMENTS
at multiple dwelling units.) Entered: January 26, 2000

BY THE COMMISSION:

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

The issue of competition for multiple-dwelling units (MDU's) has been formally before this Commission since May 27, 1998, when Cox Nebraska Telcom II, LLC (Cox) filed a formal complaint against US West Communications, Inc. (US West) regarding service at MDUs. Cox withdrew its complaint when the Commission opened a docket to determine a "policy regarding access to residents of MDU's in Nebraska by competitive local exchange carriers (CLECs) (*Order Opening Investigation and Requesting Comments*, Application No. C-1878/PI-23, August 25, 1998). After the Commission held hearings and received several rounds of written comments, we issued an order designed to give MDU residents a choice of telephone providers as contemplated by the Federal Telecommunications Act of 1996 (Act). (*Order Establishing Statewide Policy for MDU Rehearing Denied and Statewide Policy for MDU Access Clarified in Part*, Application No. C-1878/PI-23, April 20, 1999). This order is presently being appealed by US West in both the Nebraska Appellate Court as well as the Federal District Court.

The primary dispute between the parties remains centered on the "campus wire" or the wire that runs from the property line to one or more buildings in a MDU property. Campus wire is not to be confused with the "riser cable," or the wire inside a building that runs from a terminal in the basement of a building to the outside of each individual unit, nor should it be confused with "inside wire" or the wire inside of each individual unit. This proceeding is focused solely on the current construction cost of unbundled network element (UNE) campus wire which is a part of the loop or "sub-loop".

The Federal Communications Commission's (FCC) recent order (*In the Matter of Implementation of the Telecommunications Act of 1996*, FCC 99-238, CC Docket No. 96-98) held that sub-loops were unbundled network elements. According to the Act, prices for UNEs are set by state commissions.

In our March 2, 1999 order, we determined that CLECs connecting within three years from the date of the move's completion may use the incumbent local exchange carrier's (ILECs) campus wire for a one-time fee of 25 percent of the current construction charges of the campus wire based on an "average cost per foot calculation." The average cost per foot calculation shall be

derived from a sample of recently completed ILEC construction work orders for MDUs. For three years after the move's completion, connecting CLECs shall contribute on a pro rata basis to the one-time 25 percent charge. In the April 20, 1999 order, we asked ILECs to provide samples of recently-completed MDU construction jobs or work orders to find both an average distance calculation, as well as an average cost per foot calculation. Once both numbers are derived, the two shall be multiplied to determine an average cost for MDU properties that shall be used as "current construction charges" for MDU properties. This is the rate we intend to determine in this proceeding.

The Act was designed to open up the telecommunications market to competition. The Act authorized both the FCC and individual states to implement the procedures necessary to implement this monumental change. Both the FCC and the State of Nebraska implemented rules and statutes effectuating the Act. Neb. Rev. Stat. §75-109(2) authorizes the Commission to "do all things reasonably necessary and appropriate to implement the [Act]" while noting that "the authority granted to the Commission pursuant to this section shall be broadly construed in a manner consistent with the [Act]."

The Act itself also uses extremely broad language in granting states, not the FCC, the primary power to enforce the Act (See §§251(d)(3), 251(f)(1), 252(b)(4), 252(c), 252(d) of the Act). Section 251(d)(3), for example, states that the FCC "shall not preclude the enforcement of any regulation, order, or policy of a state commission that (a) establishes access and interconnection obligations of [ILECs]." More important, as the Supreme Court recently affirmed in *AT&T Corp. v. Iowa Utilities Bd.*, 526 U.S. 366 (1999), section 251(c)(2)(D) places upon ILECs the duty to provide interconnection "on rates, terms, and conditions that are just, reasonable and nondiscriminatory." That section also mandates that ILECs provide UNEs, such as campus wire, under the same terms and conditions. Finally, Section 251 works in concert with Section 252(c), which says that state commissions shall establish rates for UNEs. The Act and Nebraska law allow this Commission to give requesting carriers access to an ILEC's facilities and establish prices for that access. In short, state and federal law give this Commission the power to set this rate.

As such, the Commission believes that it is crucial to proceed with the development of an average-cost, per-foot calculation in an expeditious fashion. Such prompt action is necessary despite the pending appeal. Should the Commission's order be upheld, the procedures outlined under this docket will have kept the process envisioned in Docket No. C-1878 moving. While on the other hand, should the Commission's order be overturned, the Commission will have initiated the process toward developing accurate costs for pricing of unbundled sub-loops as necessitated by the FCC. In either case, the creation of this docket moves us toward more

effective competition in the most timely fashion.

Based on the foregoing, the Commission hereby requests the following to aid it in setting rates for campus wire:

- Interested parties shall file samples of recently-completed MDU construction jobs or work
- orders for use by
- the Commission to develop both an average distance calculation as well as an average cost per
- foot calculation.
- Any party that intends to submit such information to the
- Commission, shall do so by February 28, 2000.

- o Furthermore, interested parties shall file comments on
- o the proposed methodology for calculating the average cost
- o per foot for current constructions charges as they relate
- o to MDU campus wire. All such comments shall be filed
- o with the Commission on or before February 28, 2000.

- o Reply comments shall be filed on or before March 28,
- o 2000.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the procedural schedule and format set forth above be, and hereby is adopted.

IT IS FURTHER ORDERED that interested parties shall file comments in this matter as set forth above. Parties filing comments should file five paper copies and one electronic copy in

WordPerfect 6.0 (or newer) format.

MADE AND ENTERED at Lincoln, Nebraska, this 26th day of
January, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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