

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. C-2199/
on its own motion, seeking to) PI-35
determine statewide costs to) ORDER CLOSING DOCKET
establish rates for campus wire)
at multiple dwelling units.) Entered: August 8, 2000

BY THE COMMISSION:

The issue of competition for multiple dwelling units (MDUs) 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. However, Cox withdrew its complaint when the Commission opened a docket to determine a policy regarding access to residents of MDUs 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). Our 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 at a MDU property. This docket was created to focus solely on the current construction cost of unbundled network element (UNE) campus wire which is a part of the "loop" or "sub-loop."

In our March 2, 1999 order, we determined that CLECs connecting within three years from the date of the minimum point of entry (MPOE) 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 was to be derived from a sample of recently completed ILEC construction work orders for MDUs. Finally, for three years after the move's completion, connecting CLECs were to 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 were derived, the two were to be multiplied to determine an average cost for MDU properties that would be used as "current construction charges" for MDU properties. This is the rate we originally intended to determine

in this proceeding.

In our effort to determine said rates, we opened this docket, Application No. C-2119/PI-35 in which we requested interested parties to file comments and reply comments on the proposed methodology for calculating the average cost per foot for the placement of MDU campus wire. Comments were received from the Nebraska Telephone Association; Aliant Communications d/b/a ALLTEL; US West Communications, Inc.; Sprint Communications Company L.P.; United Telephone Company of the West, d/b/a Sprint; and Cox Nebraska Telecom, LLC. Reply comments were received from Nebraska Telephone Association; Aliant Communications, d/b/a ALLTEL; and Cox Nebraska Telecom, LLC.

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

Upon review of the comments received, it is clear that this Commission cannot establish rates for campus wire at multiple dwelling units in this docket. While the Commission believes that it is necessary to foster competition and to provide residents of MDUs with a realistic opportunity to select their preferred telecommunications provider, we must do so in a way that is consistent with the Act.

While it is true that the Commission initially sought comment from any interested party regarding the proposed methodology and their associated costs to determine statewide costs and to establish rates for campus wire at multiple dwelling units, the Commission recognizes that it must act within the limitations set forth by Congress and the Federal Communications Commission (FCC).

The Commission agrees with the commenters who noted that the Act specifies that all UNE rates should be based on carrier-specific costs, as determined through negotiation or arbitration. It was never the intention of this Commission to apply the rates developed in this docket to all companies across the state. Any actual determination of costs, and setting of the associated rates, will only occur on a company-specific basis. Furthermore, the Commission will only establish said rates in a cost proceeding or arbitration proceeding pursuant to Section 252 of the Act and in accordance with a FCC costing methodology.

Therefore, the Commission will utilize the construction costs submitted in this proceeding to establish price guidelines for such unbundled network elements. Recognizing the potential variations in prices related to special facilities and other factors, the prices will only be used as a guideline for comparability purposes.

Accordingly, this Commission believes that the setting of such

rates for campus wire at MDUs in US West's territories would best be addressed within the current Commission Docket No. C-1415 which was opened to investigate US West Communications' cost studies and to establish rates for interconnection, unbundled elements, transport and termination and resale services. Companies that either, 1) are not interconnecting with US West, or 2) desire more immediate action, are encouraged to negotiate in good faith with the respective incumbent carrier, and if necessary, request the Commission to initiate arbitration proceedings. In so doing, the Commission will be well within its jurisdiction to establish such rates should they remain unresolved by the effected parties.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the costs submitted by interested parties in this matter will be solely utilized as a guideline for comparability purposes in any future rate proceeding.

IT IS FURTHER ORDERED that as the purpose for this docket has been completed, the docket should be, and is hereby, closed.

MADE AND ENTERED at Lincoln, Nebraska, this 8th day of August, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Deputy Director

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