

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Appli-) Application No. C-2248/PI-37
cation of the Commission, on)
its own motion, to seek)
Comment on the establishment,)
implementation and monitoring) FINDINGS AND CONCLUSIONS
of service quality standards in)
the provisioning of wholesale)
services by incumbent local)
exchange carriers to their)
wholesale customers.) Entered March 20 , 2001

BY THE COMMISSION:

On March 21, 2000, the Commission opened this docket for the purpose of investigating the issues and decisions necessary for implementation of wholesale service performance standards for incumbent local exchange carriers (ILECs). Public notice of this docket was published in The Daily Record, Omaha, Nebraska, on March 23, 2000. Interested parties were directed to file initial comments by April 12, 2000. Interested parties were then provided an opportunity to file reply comments by April 27, 2000.

Additionally, during the months of September and October of 1997, the Commission had previously taken comments on this subject matter under Docket No. C-1128, Progression Order No. 5. The comments from that proceeding were incorporated into this proceeding and Docket No. C-1128, Progression Order No. 5 was closed. Parties who responded to that docket were allowed to supplement, amend or rescind the comments made then and do so under the aegis of this docket. Comments in this proceeding were filed by ALLTEL, Nebraska Independent Telephone Association (NITA), Nebraska Telephone Association (NTA), AT&T and Rhythms (joint comments), McLeod USA, US West (n/k/a Qwest) and Sprint Communications/United Telephone Company.

Based upon: (a) the comments submitted to the Commission in this docket; (b) the comments submitted to the Commission in Docket No. C-1128, Progression Order No. 5; and (c) the provisions of the Telecommunications Act of 1996 (the Act), the Commission issues the following Findings and Conclusions.

F I N D I N G S A N D C O N C L U S I O N S

The quality of service that ILECs provide to their wholesale competitive local exchange customers (CLECs) is a critical component in the overall picture of improving the competitive environment. Without adequate service to wholesale customers, even the best efforts of a CLEC to compete could be harmed. Held, delayed and lost orders can damage a competitor's reputation and customer goodwill resulting in reverse migration of the customer back to the incumbent carrier. The prompt, accurate and adequate provisioning of services to wholesale CLEC customers is as important as other aspects of the competitive market such as

pricing and customer access. The purpose of establishing wholesale service quality standards is to further the public interest of local exchange competition and ensure adequate levels of service quality for all Nebraskans. As such, the Commission is the proper regulatory body to oversee wholesale service quality standards.

The Commission finds that promulgating detailed statewide industry standards is not the most appropriate method for ensuring that wholesale service quality is adequate. Differences between large and small local exchange carriers make adoption of uniform measurements of wholesale service an impractical endeavor. Adopting statewide standards would also fail to take advantage of efforts already underway. For example, because of its obligations under Section 271 of the Act, Qwest has worked collaboratively with its Regional Oversight Committee (ROC) and has developed extensive performance measures and standards.

The Commission also finds that it is not appropriate or necessary at this time to establish wholesale performance standards for CLECs. The Act does not place the same wholesale service obligations on CLECs as those required from ILECs⁽¹⁾.

Furthermore, at this point, it is not evident that any providers are substantially dependent on the wholesale services provided by CLECs in offering their services to end-users. Unlike ILECs, CLECs may depend, at least in part, on facilities owned by an ILEC to serve their customers. The Commission will consider the need for wholesale service quality standards for CLECs when, and if, it appears they are necessary.

The focus of the wholesale service quality standards considered in this docket is limited to standards that will promote local exchange competition. Therefore, the Commission finds that switched access services generally shall not be subject to wholesale service quality standards.

Development and implementation of individualized wholesale service quality standards for each carrier requires great effort by all parties involved. In light of this and the fact that competition is developing at different rates within the service areas of the various ILECs, the Commission finds that a phased-in process is appropriate. The Commission finds that the three largest ILECs: Qwest, ALLTEL and Citizens, should develop service quality performance plans to be submitted by September 1, 2001, for Commission approval. The plans should allow a wholesale service customer to attain parity as compared to the ILEC's retail customer or satisfy the applicable sections of the Commission's Rules and Regulations on retail service quality, whichever is a higher standard. The plans should also provide for sufficient levels of reporting to ensure compliance with the intent of this order. These criteria shall apply to wholesale service quality plans submitted by all ILECs. An application seeking approval of the ILEC's plan shall be submitted in accordance with the Rules of Commission Procedure.

With respect to Qwest, the Commission would expect that the

results of the ROC process⁽²⁾ which has created a comprehensive set of performance indicator definitions and standards would constitute the wholesale service quality plan it would submit either as a distinct plan or as a modification to its Statement of Generally Available Terms and Conditions (SGAT). Where Qwest's service quality plan is contained in an interconnection agreement, the Commission will give great deference to agreements reached in the ROC process which provide remedies for inadequate service and therefore we may elect to not exercise our fining authority.

Although the Commission is not determining at this time what minimum standards should be included in the service quality performance plans, the Local Competition Users Group (LCUG)⁽³⁾ standards submitted by Sprint as exhibits in this proceeding may provide some guidance for ILECs other than Qwest.

For all other ILECs the Commission finds that they should submit wholesale service quality performance plans shortly after competition enters their respective areas. Thus, such ILEC plans shall be submitted to the Commission within three months after the first interconnection agreement with a CLEC, whether negotiated or arbitrated, is approved by the Commission.

An ILEC that serves less than five percent of the aggregate statewide subscriber lines may request, through an application, that the Commission accept an interconnection agreement that addresses the intent of this order, in lieu of an independent wholesale service quality plan.

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 local exchange carrier in this state.

IT IS FURTHER ORDERED that each incumbent local exchange carrier develop an individualized wholesale service quality performance plan consistent with the Commission's findings and conclusions in this proceeding.

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 allowed by law.

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of March, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONER CONCURRING:

Chairman

ATTEST:

Executive Director

1. 1 Obligations are imposed on incumbent local exchange carriers under §251(c) in addition to the duties required of all local exchange carriers under §251(b).

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