

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission)	Application No. C-2408/
on its own motion, to conduct an)	PI-42
investigation of interim policies)	
and requirements regarding con-)	ORDER OPENING DOCKET
tract carriers and applications by)	AND SEEKING COMMENT
political subdivisions with re-)	
spect to fiber optics.)	Entered: October 18, 2000

BY THE COMMISSION:

B A C K G R O U N D

On May 3, 1999, this Commission, on its own motion, opened a docket to conduct an investigation for the determination of requirements for implementation of the contract carrier provisions contained in Legislative Bill 150 (1999). Subsequently, in that docket, the Commission requested comments on a series of 21 questions for the purpose of implementing comprehensive telecommunications contract carrier rules. Shortly thereafter, the Commission held a "roundtable discussion" between staff and the interested parties. The Commission entered an order on January 11, 2000, finding that the leasing of dark fiber shall be regulated to the extent required by the FCC. The Commission also found that our order was not permission for, nor an endorsement to any political subdivision wishing to lease excess dark fiber capacity.

On September 26, 2000, the Commission held an informational workshop to determine how to proceed with our contract carrier rules and with requests made by political subdivisions wishing to lease or provide dark fiber in competition with certificated local exchange telecommunications carriers. The need for an interim policy to handle applications made by contract carriers requesting to provision dark fiber was discussed.

During the course of the workshop, questions stemming from our May 12, 1999, and January 11, 2000, orders as well as new issues were raised. Moreover, the Nebraska Legislature has issued a resolution to carry out a study on the issues of investor-owned utilities and municipalities operating in Nebraska offering excess fiber optic capacity and other telecommunications-related services and products. Because the Commission is now faced with these critical issues and because it wishes to be responsive to the Legislature's interim study, the Commission has concluded that it is necessary and appropriate to open this docket to seek comment on some of the outstanding concerns. The Commission does not wish to preclude new issues from becoming a part of this docket, nor does the Commission intend to forego acting upon the issues raised in Application No. C-2044. Therefore, an additional comment cycle may be added to address any issues which may be adduced from the comments, Commission hearing or issues subsequently raised by the

Nebraska Legislature.

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

The Commission hereby opens this investigation, on its own motion, to conduct an investigation of the general requirements for telecommunications contract carriers and investigate what requirements, if any, should be imposed on public power companies and other political subdivisions operating within the state of Nebraska seeking to provide or lease excess capacity fiber optics.

- What is this Commission's jurisdiction over the provisioning
- of dark fiber by a municipality or a public utility doing
- business in Nebraska?

- Should the Commission make a distinction between the selling
- and the leasing of dark fiber?

- At what point should the Commission determine such an
- offering
- is a "telecommunications service?"

- Should the telecommunications contract carrier rules mirror
- the transportation contract carrier rules? (Our contract
- carrier rules require that the applicant show that it will be
- meeting a special or distinct need of an individual or class
- of individuals contracting with the applicant. See, e.g.,
- Neb. Rev. Stat. § 75-311(b)(Reissue 1996)).

a) If we do so, then, since incumbent local exchange carriers are required to offer dark fiber to any requesting carrier, could dark fiber still be construed as

a distinct service offered to an individualized customer for a particular purpose?

- At what point, as a practical matter, should we determine that
- this type of entity needs common carrier authority as opposed
- to a contract carrier permit?

- Should we apply the same contract carrier rules to an entity
- which does not serve the end user?

- The Commission desires to "preserve the integrity of a
- ubiquitous network, to preserve and advance universal service,
- and to ensure the delivery of essential and emergency
- telecommunications services" in
- accordance with Legislative policy.

- o If the Commission grants one political subdivision permission
- o to offer dark fiber, or in the alternative, telecommunications
- o services as a contract carrier, what
- o are
- o the policy implications for other Nebraska political
- o subdivisions wishing to provide dark fiber or
- o other forms of
- o telecommunications-related offerings?

- o How would the Commission be furthering or deviating from
- o the foregoing legislative goal?

- Should political subdivisions offering telecommunications
- services as a contract carrier be held to the same quality of
- service standards to which certificated common carriers are
- held? Further, what can the Commission do to this type of
- entity in the event it is not meeting those standards?

- If the Commission finds that the municipality or other
- governmental entity is not in compliance with state law, Commission
- rules or Commission
- regulations, can the Commission
- impose fines on these entities. Should the Commission, as a
- public policy matter, impose fines on these entities?

- What environmental quality control issues could potentially
- surface?

- How should the Commission process telecommunications
- contract
- carrier applications in the interim until permanent rules and
- regulations are established?

a) What, in addition to showing managerial, technical and financial competency should the Commission require from the applicant? Since the entity would not be responsible to the public at large, should the Commission take into account any public interest considerations?

b) Does the answer change when the applicant is a political subdivision of the state?

- As our rules initially proposed, should the Commission require
- the contract carrier to obtain a separate permit for each
- contract it enters into?

- If the Commission requires contracts to be filed by the
 - contract carrier, what criteria should the Commission use to
 - evaluate these contracts?
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- Should the Commission look at whether municipality or other
 - political subdivision possesses legal authority to provide the
 - requested telecommunications service before we evaluate the
 - applicant's managerial, technical and financial competency?
-
- Interested parties are encouraged to raise other issues that
 - are not addressed herein.

Interested parties may file written comments to the questions and issues raised above on or before November 3, 2000. After receiving comments on the issues identified above, the Commission will permit reply comments to be filed on or before November 13, 2000. Following the comment cycles, the Commission will hold a hearing in legislative format whereby the interested parties will have the opportunity to testify. Meanwhile, the staff will continue in its efforts to propose comprehensive rules for the Commission to consider in a formal rulemaking process as set forth in Application No. C-2044 and Rule and Regulation No. 146.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that interested parties may file written comments to the questions and issues raised above no later than November 3, 2000. Reply comments may be submitted on or before November 13, 2000.

IT IS FURTHER ORDERED that the parties shall identify the responses with the corresponding numbers as set forth herein.

IT IS FURTHER ORDERED that parties filing comments shall submit five copies of such comments, along with one electronic copy in WordPerfect format 5.0 or later.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of October, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Chairman

ATTEST:

Executive Director

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