

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

The Commission, on its own) Docket No. C-2534/PI-50
motion, to examine the)
potential noncompliance with) ORDER OPENING DOCKET
Commission orders entered in)
Docket No. C-1878/PI-23.) Entered: May 23, 2001

BY THE COMMISSION:

On August 5, 1998, the Commission, on its own motion, opened Docket No. C-1878/PI-23 to determine appropriate policy regarding access to residents of multiple dwelling units (MDU) in Nebraska by competitive local exchange carriers (CLECs). On March 2, 1999, an Order for Establishing Statewide Policy for MDU Access was entered by the Commission. On April 20, 1999, the Commission entered an order in this docket clarifying previously-established policy for residential multiple dwelling unit access and also denied the motion of US West Communications (US West) for rehearing and clarification.

US West filed a Notice of Appeal of the Commission's order on May 19, 1999, to the Nebraska Supreme Court. 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/PI-23, 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 v. FCC, 219 F.3d 744, 751 (8th Cir. 2000).

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

While conducting a review of recent testimony before the Commission, a possible violation of the Commission's March 2, 1999, order in Docket No. C-1878/PI-23 was discovered. In light of the testimony and other evidence before the Commission, the Commission is disturbed that some telecommunications carriers in Nebraska may still be utilizing contracts with MDUs that contain exclusive access and/or exclusive marketing provisions in apparent blatant disregard of prior orders of this Commission, as well as the Federal Communications Commission.¹

In consideration of the potential violations, the Commission hereby opens this investigatory docket to examine the potential noncompliance with our Commission's March 2, 1999, order.

¹See First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket 88-57 (Adopted October 12, 2000).

As such, all certificated carriers are hereby ordered to submit to the Commission, for its review, copies of all contracts that such carriers have entered into with multiple dwelling units. Such contracts shall be filed with the Commission on or before June 15, 2001. Said contracts may be filed under seal with all such material being kept strictly confidential.

Upon the completion of its review, the Commission may find it necessary to have certain carriers appear before the Commission to further explore questions or concerns that remain. However, if such action is necessary, the Commission will provide appropriate notice prior to said hearings.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a docket to examine the potential noncompliance with the Commission's orders in C-1878/PI-23 is hereby opened.

IT IS FURTHER ORDERED that all certificated carriers shall submit to the Commission, copies of all contracts that such carriers have entered into with multiple dwelling units. Such contracts shall be filed with the Commission on or before June 15, 2001.

MADE AND ENTERED at Lincoln, Nebraska this 23rd day of May, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director