

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,)	Application No. C-3012
on its own motion, seeking to)	
conduct a critical cost analysis)	
for Aliant Communications Co.,)	ORDER DENYING QWEST
d/b/a ALLTEL as a result of the)	CORPORATION'S MOTION TO
Nebraska Technology & Telecom-)	INTERVENE
munications, Inc. and ALLTEL)	
arbitration conducted in)	
Application No. C-2648.)	Entered: November 25, 2003

BY THE COMMISSION:

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

On October 21, 2003, Qwest Corporation (QC) and Qwest Communications Corporation (QCC) filed a Petition For Formal Intervention in the above-captioned matter. In support of its petition, both QC and QCC stated that they were interested parties in this matter because the "appropriate rates" for Alltel to charge for services will apply to the Qwest affiliates if either of them seeks to opt into the provisions of the Alltel and NT&T agreement.

On October 29, 2003, Alltel filed a Motion to Deny and Strike Qwest's Petition for Formal Intervention, stating that Qwest was not an "interested party" in this docket. QCC subsequently withdrew its request for intervention.

The Commission conducted an oral argument on the Motions on November 13, 2003, in the Commission Hearing Room, Lincoln, Nebraska. Appearances were entered by Tom Snyder, on behalf of QC and QCC; Paul Schudel, on behalf of Alltel; and Mark Fahleson on behalf of NT&T.

At the oral argument, Tom Snyder argued that QC had a legal right to intervene in this proceeding pursuant to Rule 15.01 of the Commission's Rules of Procedure. Mr. Snyder stated that QC had an interest in the Alltel cost analysis because the rates to be determined would be available for opt-in pursuant to 47 USC 251(i.)

Mr. Snyder also indicated that if QC's request for intervention was denied, then the Commission may be required to conduct two Alltel cost dockets, and that such duplication would not be a good use of Commission or staff time.

Finally, Mr. Snyder expressed that QC was very concerned that the rates established in this proceeding would be

precedential for other competitive local exchange carriers (CLECs.) If that were to be the case, Mr. Snyder indicated, QC must be allowed to participate to protect its rights.

Mark Fahleson, counsel for NT&T, indicated that NT&T supported QC's intervention as long as such intervention did not unnecessarily delay the proceeding. Mr. Fahleson indicated that such intervention could be beneficial to the Commission's effort in conducting its critical cost analysis.

Paul Schudel, counsel for Alltel, indicated that in Alltel's opinion, the Commission does not have independent jurisdiction outside of Section 252 of the Telecommunications Act of 1996, to establish Alltel's costs in a generic cost docket. Mr. Schudel also distinguished the present case from the Qwest cost docket in that Qwest falls under a different set of rules as a Regional Bell Operating Company (RBOC.)

Mr. Schudel pointed out that the present proceeding is a direct result of the NT&T/Alltel arbitration. As such, it needs to remain a bilateral process between Alltel and NT&T.

Upon review of the pleadings and the oral argument held thereon, the Commission is of the opinion that QC's Petition For Formal Intervention should be denied. While QC may, in fact, be interested in the current proceeding, the Commission initiated this proceeding as the direct result of the NT&T/Alltel arbitration, and accordingly, will only be addressing the limited number of unresolved issues contained therein.

Should Qwest desire to opt-in to the final agreement that is a result of the above-captioned proceeding, they are certainly entitled to do so under Section 252(i) of the Telecommunications Act. Or, if QC prefers, it may elect to commence independent negotiations with Alltel at any time.

If QC elects the latter and ends up in arbitration before this Commission, neither the Commission, nor any arbitrator, will consider the results of this critical cost analysis precedential against a party that does not participate in this proceeding. A separate analysis should be completed with independent determinations of costs.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Qwest Corporation's Petition For Formal Intervention should be, and is hereby, denied.

IT IS FURTHER ORDERED that if Qwest Corporation or another competitive local exchange carrier elects to negotiate with Alltel and ends up in arbitration before this Commission, neither the Commission, nor any arbitrator, will consider the results of this critical cost analysis precedential against a party that does not participate in this proceeding.

MADE AND ENTERED at Lincoln, Nebraska, this 25th day of November, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director