

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. C-3535/PI-111  
Public Service Commission, on )  
its own motion, seeking to )  
establish procedures for the ) PROGRESSION ORDER NO. 1  
treatment of commercial )  
agreements not subject to the )  
filing requirements of § 252 )  
of the Telecommunications Act )  
of 1996. ) Entered: June 6, 2006

BY THE COMMISSION:

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

On January 18, 2006, the Commission opened the above-captioned investigation seeking comment on the treatment of commercial agreements not subject to the § 252 filing requirements of the Telecommunications Act of 1996. Comments were filed on or before April 14, 2006, by Qwest Corporation (Qwest), the Rural Independent Companies (RIC), Alltel Nebraska, Inc. (Alltel) and Cox Nebraska Telecom, L.L.C. (Cox). In its comments Cox asked the Commission to clarify the scope of this docket and to define the term "commercial agreement".

The Commission issues this order to narrow the focus of its investigation to commercial agreements as they relate to unbundled network elements (UNEs) that were de-listed as a result of the FCC's Triennial Review Order (TRO)<sup>1</sup>, the Triennial Review Remand Order (TRRO)<sup>2</sup>, and as a result of the Omaha Forbearance Order<sup>3</sup>. In this investigation we limit the term "commercial agreements" to agreements between an incumbent local exchange carrier and a competitive local exchange carrier as it relates to UNEs that have been de-listed as a result of the TRO and TRRO and where Qwest's UNE obligations have been changed by the Omaha Forbearance Order.

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<sup>1</sup> *In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978 (rel. August 21, 2003)(TRO).

<sup>2</sup> *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313, Order on Remand, 20 FCC Rcd. 2533 (rel. Feb. 4 2005)(TRRO).

<sup>3</sup> *In the Matter of the Petition of Qwest Corporation for Forbearance pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 2005 WL 3287482 (September 16, 2005)(Omaha Forbearance Order).

After the issuance of the TRO and the TRRO, the Commission received several agreements which were not filed for Commission approval purposes but for information only. The Commission staff reviewed them on a case-by-case basis and made a determination whether an application was necessary in each case. The Commission has also begun receiving informational filings as a result of the Omaha Forbearance Order.

Qwest stated in its comments that the Commission, as a threshold matter must determine the "standard to apply to determine whether an agreement should be submitted for the Commission's review and approval."<sup>4</sup> Qwest also states the authority of state commissions to review and approve interconnection agreements is limited to agreements that involve ongoing 251(b) and (c) obligations.<sup>5</sup>

The RIC group's comments emphasize the importance of the submission of interconnection agreements because "disclosure of interconnection agreements is the basis upon which other carriers become aware of the terms and conditions or rates contained in those agreements."<sup>6</sup> The RIC stated that the FCC has given a broad construction to Section 252(a)(1) of the Act.

The Commission seeks reply comments in this proceeding based on the initial comments provided. The Commission also requests comment on a process for these types of commercial agreements when filed on an "informational" basis. Qwest suggests that the Commission adopt some guidelines in association with its Mediation and Arbitration Policy. The Commission seeks comment on whether there should be a bright line rule or whether review of these types of commercial agreements should be handled on a case-by-case basis would be more appropriate.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the scope of this investigation be clarified as provided herein.

IT IS FURTHER ORDERED that interested parties may file reply comments responsive to this Order on or before July 21, 2006. Parties filing comments are required to file five (5) paper copies as well as one (1) electronic copy in Word or PDF

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<sup>4</sup> Qwest Corporation's Initial Comments, (April 14, 2006) at 2.

<sup>5</sup> *Id.*

<sup>6</sup> Comments of the Rural Independent Companies, (April 13, 2006) at 2.

format. Electronic copies may be sent via electronic mail to [anne.bogus@psc.ne.gov](mailto:anne.bogus@psc.ne.gov).

MADE AND ENTERED at Lincoln, Nebraska this 6th day of June, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director