

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application Nos. C-3945/
Public Service Commission to) NUSF-60.02/
conduct an investigation of) PI-138
Qwest Corporation's Proposed)
Switched Access Charge Rates.) ORDER ON MOTION TO COMPEL
) REGARDING INFORMAL
) INTERVENTORS AND NOTICE OF
) ORAL ARGUMENT
)
) Entered: September 19, 2008

BY THE HEARING OFFICER:

On September 17, 2008, Qwest Corporation ("Qwest") filed Motions to Compel responses to discovery requests in regards to Formal Intervenor and Informal Intervenor in the above-captioned docket. Qwest also requested a hearing on both motions.

Motion to Compel Informal Intervenor

The Nebraska Supreme Court rules and regulations govern discovery in matters before the Commission.¹ Qwest issued discovery requests on both Nebraska Technology and Telecommunications, Inc. ("NT&T") and Sprint Communications Company L.P., d/b/a Sprint; Sprint Spectrum L.P., d/b/a Sprint PCS; Nextel West Corporation, d/b/a Nextel, and NPCR, Inc., d/b/a Nextel Partners (jointly "Sprint"). Both NT&T and Sprint asked leave to informally intervene and were granted the status of informal intervenors in the above-captioned docket² pursuant to Commission rules and regulations.³

Both NT&T and Sprint objected to the discovery requests on the grounds that as informal intervenors neither are a party to the above-captioned proceeding and therefore to serve discovery on non-parties to an action, Qwest must comply with the procedural requirements of the Nebraska Discovery Rules.⁴

The Commission's Rules of Procedure provide,

If leave is granted by the Commission, the petitioner becomes an informal intervenor but

¹ Neb. Admin. Code, Title 291, Ch. 1 § 016.11 (1992).

² See *In the Matter of the Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates*, Order Granting Informal Intervention (August 26, 2008); and, Hearing Officer Order Granting Informal Intervention (August 26, 2008).

³ Neb. Admin. Code, Title 291, Ch. 1 § 015 (1992).

⁴ See Rule 34A of Nebraska Discovery Rules for All Civil Cases.

does not become a party to the proceeding.⁵
(Emphasis added).

Therefore, when NT&T and Sprint were granted leave to informal intervene they did not become parties to the above-captioned proceeding. Pursuant to the Nebraska Discovery Rules, discovery can only be served upon nonparties with ten (10) days written prior notice on all other parties and issuance of a subpoena.⁶

Qwest did not file notice of intent to serve a subpoena on the other parties of the above-captioned proceeding and did not request a subpoena be issued to the Informal Intervenor pursuant to the provisions of Rule 34A of the Nebraska Discovery Rules regarding serving discovery on nonparties. In its Motion to Compel Qwest seeks to remedy this failure to comply with the Rules of Discovery by requesting that the Commission consider Qwest's discovery requests to the informal intervenors to be requests for subpoenas, and to issue subpoenas to the informal intervenors.

The filing of discovery requests does not constitute notice of subpoena and a subpoena was neither requested nor issued in accordance with the Nebraska Discovery Rules. Qwest cannot now go back in time and change its filing to a notice of subpoena pursuant to the Discovery Rules. Further, as per the procedural schedule agreed to by the parties to this proceeding and adopted in my order of August 22, 2008, Qwest's opportunity to issue discovery, including a notice of subpoena to non-parties has past. Therefore, the hearing officer finds that Qwest did not comply with the requirements of Rule 34A of the Nebraska Discovery Rules in all Civil Cases and therefore, Qwest's Motion to Compel should be denied as to the Informal Intervenor.

Oral Arguments

The Hearing Officer finds that an oral argument on the Motion to Compel regarding Formal Intervenor shall be scheduled for **Thursday, 25, 2008, at 10:30 a.m.** in the Commission Hearing Room at 300 The Atrium, 1200 N Street, Lincoln, Nebraska and via telephone conference at **(877) 229-1563, code 09250858**. Parties wishing to argue shall be prepared to provide information as to how the discovery requests at issue are or are not reasonably calculated to lead to the discovery of admissible evidence within the scope of the above-captioned docket.

⁵ Neb. Admin. Code, Title 291, Ch. 1 §015.02B (1992).

⁶ See Rule 34A(a) of Nebraska Discovery Rules for All Civil Cases.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application Nos. C-3945/NUSF-60.02/PI-138

Page 3

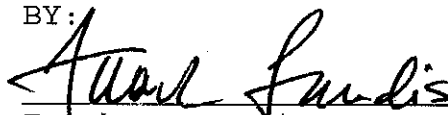
O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Motion to Compel regarding Informal Intervenors filed by Qwest Corporation be, and is hereby, denied.

IT IS FURTHER ORDERED that an oral argument on Qwest Corporation's Motion to Compel regarding Formal Intervenors shall be scheduled for **Thursday, September 25, 2008, at 10:30 a.m.** in the Commission Hearing Room at 300 The Atrium, 1200 N Street, Lincoln, Nebraska and via telephone conference at (877) 229-1563, code 09250858.

MADE AND ENTERED in Lincoln, Nebraska, on this 19th day of September, 2008.

BY:



Frank E. Landis

HEARING OFFICER

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