BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates.	) Application Nos.	C-3945/ NUSF-60.02/ PI-138
	) ORDER	
	) Entered:	February 3, 2009

BY THE COMMISSION:

B A C K G R O U N D

On July 9, 2008, Qwest Corporation ("Qwest") filed a Notice of Intent to File Catalog with Increased Switched Access Rates with the Nebraska Public Service Commission ("Commission"). Qwest filed the catalog page with the rate increase on July 21, 2008, with the new rates to become effective on August 1, 2008. On July 10, 2008, Qwest supplemented that filing with the "Exhibit A" information referenced in its July 9, 2008, pleading.

On July 16, 2008, pursuant to Neb. Rev. Stat. § 86-140 (Cum. Supp. 2006), MCI Communications Services Inc. d/b/a Verizon Business Services ("Verizon") filed a protest and a request for review by the Commission of Qwest's proposed access rate increase. On July 29, 2008, the Commission entered an order suspending the effective date of Qwest's access rate increase, opening the above-captioned investigation, and setting a deadline to formally intervene of August 11, 2008. Notice of the docket was published in The Daily Record, Omaha, Nebraska, on July 30, 2008.

Petitions for Formal Intervention were timely filed by Verizon, the Rural Independent Companies ("RIC"), AT&T Communications of the Midwest, Inc. and TCG Omaha (collectively "AT&T"), McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services ("PAETEC"), Windstream Nebraska, Inc. ("Windstream"), United Telephone Company of the West, d/b/a Embarq ("United"), the Rural Telecommunications Coalition of Nebraska ("RTCN"), and the Communications Department and Nebraska Telecommunications Infrastructure and Public Safety Department of the Commission (collectively "Commission Staff"). Petitions for Informal Intervention were timely filed by 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 Corp., d/b/a

Nextel; and NPCR, Inc., d/b/a Nextel Partners (collectively "Sprint Nextel").

A planning conference was held on August 21, 2008. All the parties at the planning conference orally stipulated and agreed to waive the deadline set in Neb. Rev. Stat. § 86-140(1)(Cum. Supp. 2006), to conduct a hearing within 90 days of the filing of the access charge increase. William A. Haas, counsel for PAETEC, agreed to the extension via electronic mail on August 22, 2008.

On September 17, 2008, Qwest Corporation ("Qwest") filed Motions to Compel responses to discovery requests in regard to the Formal Intervenors in the above-captioned docket. Oral arguments on Qwest's pending Motions to Compel were held on September 25, 2008, in the Commission hearing room. A Hearing Officer Order entered on September 26, 2008, denied Qwest's motions to compel and limited the scope of the above-captioned proceeding to Qwest's revenues and costs and whether the access rates Qwest is proposing are fair and reasonable in light of its annual revenues and annual costs.[1]

On September 26, 2008, Commission Staff filed a motion to stay the proceedings to allow the parties to engage in negotiations. All parties agreed to negotiations and an extension of the procedural schedule to accommodate said negotiations. On October 15, 2008, a motion was filed by Commission Staff requesting approval of a stipulated agreement ("Stipulation") filed with the Commission by all parties to the above-captioned docket. The Stipulation included terms whereby all parties agreed to recommend to the Commission that the stipulated access rate charge structure, or alternatively, a Commission-imposed rate set after hearing, should be made effective no later than January 1, 2009. The Commission entered an order approving the Stipulation on October 21, 2008.

A Hearing in this matter was held on December 4, 2008.

E V I D E N C E

At the hearing in the above-captioned docket, Qwest presented testimony from two witnesses in support of its access rate increase, Ms. Lisa Hensley Eckert and Mr. Bradley K. Yerger.

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[1] *See* Application No. C-3945/NUSF-60.02/PI-138, *In the Matter of the Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates*, Hearing Officer Order Denying Motions to Compel Regarding Formal Intervenors (August 26, 2008).

Ms. Hensley Eckert, the Staff Director in the Public Policy Organization at Qwest, testified that she filed direct and rebuttal testimony in this matter. Ms. Hensley Eckert's testimony was accepted into the record as Exhibits 4 and 5, respectively. Ms. Hensley Eckert testified that Qwest believes the reductions it made to its intrastate switched access rates in response to the creation of the Nebraska Universal Service Fund ("NUSF") are no longer revenue neutral. Therefore, Ms. Hensley Eckert testified, it is fair and reasonable for Qwest to raise its access rates to recover some of the implicit subsidies lost in response to decreasing NUSF distributions.[2] Ms. Hensley Eckert further testified that other Competitive Local Exchange Carriers ("CLECs") and other carriers competing directly with Qwest in the marketplace, charge access rates that are higher than Qwest's rates.[3]

Finally, Ms. Hensley Eckert testified that due to competitive market distortions that exist because of the different access rates charged by carriers across the state, Qwest should be allowed to raise its access rate to the proposed levels. In the alternative, Ms. Hensley Eckert testified at the hearing that the requested increase should be only an interim or temporary rate and the Commission should conduct a statewide review of switched access rates.[4] Upon cross-examination, Ms. Hensley Eckert testified that Qwest had not petitioned the Commission to conduct a statewide investigation of access rates, and had instead filed for an access rate increase because a statewide investigation would be a lingering process and impose a heavy burden on Qwest as a carrier-by-carrier analysis was conducted.[5]

Qwest next called Mr. Bradley K. Yerger, a Manager in the Finance organization at Qwest. Mr. Yerger testified that he filed direct and rebuttal testimony in this matter. Mr. Yerger's testimony was accepted into the record as Exhibits 7 and 8, respectively. Mr. Yerger testified concerning Qwest's intrastate switched access revenue history, including the changes that occurred since the inception of NUSF, and data concerning Qwest's current receipts from the NUSF High Cost Fund.

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[2] *See* Application C-3945/NUSF-60.02/PI-138 Transcript, Direct Testimony of Lisa Hensley Eckert, Exhibit No. 4, p. 3.

[3] *See* Application C-3945/NUSF-60.02/PI-138 Transcript, Direct Testimony of Lisa Hensley Eckert, Exhibit No. 4, p. 5 and Transcript, 6:20 – 7:5 (Hereinafter "Tr page number:line number").

[4] Tr 7:11-19.

[5] Tr 12:13 – 13:2.

Mr. Yerger testified as to the reductions to intrastate switched access rates Qwest initiated in response to the creation of NUSF and as per its transition plan filed in accordance with the Commission's order in Docket No. C-1628.[6] Mr. Yerger outlined the NUSF payments the company has been receiving and retaining from the NUSF High Cost Fund, as well as, the reductions in NUSF support received by Qwest, including $14,000,000 less in 2008 than was received by Qwest in 2007.[7] Mr. Yerger further testified that due to these reductions in NUSF support, the Commission has departed from its underlying original premise to facilitate access charge reductions by replacing implicit subsidies in intrastate access rates with explicit subsidies from NUSF. Therefore, Qwest is seeking an intrastate access rate increase in response to the reductions in support from NUSF. Upon cross-examination, Mr. Yerger testified that Qwest's access rate revenues have declined also due to the loss of switched access lines.[8]

AT&T offered the testimony of three witnesses at the hearing, Ms. Wauneta Browne, Mr. Daniel Rhinehart, and Mr. Lawrence Bax.

Ms. Browne, the Regional Vice President of Legislative and Regulatory Affairs for AT&T and Mr. Bax, a member of AT&T's National Access Management organization, both testified as to why AT&T believes that Qwest's proposed access rate increase is not fair and reasonable and not in the public interest. Ms. Browne testified at the hearing that, in her opinion, Qwest is asking the Commission to allow it to increase rates on toll customers so that Qwest can lower its local rates to enable it to compete in the local exchange market with its competitors.[9] Ms. Browne argued it is not in the public interest to allow Qwest to burden toll customers to enable Qwest to better compete in the local exchange market.

Mr. Bax testified as to his policy analysis of the Commission's orders and actions establishing the NUSF and initiating access reform in Nebraska. Mr. Bax concluded that raising access rates as Qwest proposes, would be a "step backward" from the goal of a non-discriminatory, competitively

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[6] *See* Application No. C-1628, *In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform,* Findings and Conclusions (January 13, 1999) and Application No. NUSF-17, *In the Matter of the Nebraska Public Service Commission, on its own Motion, seeking to Determine Access Costs for US West*, Findings and Conclusions (September 24, 2002).

[7] *See* Application C-3945/NUSF-60.02/PI-138 Transcript, Direct Testimony of Bradley K. Yerger, Exhibit No. 7, p. 10 and Tr 23:1-15.

[8] Tr 32:5-22.

[9] Tr 62:6-18.

neutral marketplace,[10] and urged the Commission against allowing the proposed access rate increase by Qwest.

AT&T also offered the testimony of Mr. Rhinehart, a financial analyst for AT&T. Mr. Rhinehart testified as to his own pro forma financial analysis of Qwest's access rate proposal using information gleaned from Qwest's NUSF EARN forms and Discovery responses in the current proceeding. Mr. Rhinehart testified that with the proposed access rate increases, Qwest would realize an increased rate of return, and that at its current access rate levels, without an increase, Qwest will earn a positive rate of return.[11] Upon cross-examination, Mr. Rhinehart testified that his calculations were based on inferences, but that he had no knowledge of Qwest's actual costs for providing intrastate access services.[12]

Verizon offered the testimony of one witness, Mr. Don Price, the Director of State Regulatory Policy in the Verizon Business Regulatory and Litigation Department. Mr. Price testified concerning his view of the policy implications surrounding Qwest's proposed access rate increase. Mr. Price testified that allowing the rate increase as Qwest proposes would "completely overturn" the steps taken by the Commission to reduce implicit subsidies in intrastate access charges.[13]

Commission Staff offered the testimony of Ms. Sue Vanicek, the Director of the Nebraska Telecommunications Infrastructure and Public Safety Department of the Commission. Director Vanicek urged the Commission to reject Qwest's assertions regarding using the increases in intrastate access rate revenues as "replacement revenue" for the reductions in NUSF support received by Qwest.[14] Director Vanicek then testified that the staff was not taking a position on Qwest's proposed access rate increases. Director Vanicek urged that if the Commission allows some increase in Qwest's access rates, those increases be interim only, and that the Commission open a comprehensive proceeding to investigate access rate charges across the state and competitive neutrality between carriers.[15]

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[10] *See* Application C-3945/NUSF-60.02/PI-138 Transcript, Response Testimony of Lawrence J. Bax, Exhibit No. 15, p. 3,6.
[11] Tr 101:5-17.
[12] Tr 105:9 – 106:16.
[13] Tr 139:16-23.
[14] *See* Application C-3945/NUSF-60.02/PI-138 Transcript, Testimony of Sue Vanicek, Exhibit No. 17, p. 4-5.
[15] Tr 162:14 – 163:2.

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

Qwest proposes to increase its intrastate switched access rates from the previous weighted average of approximately $0.021 per minute of use ("mou") to approximately $0.048 per mou. The Commission opened this investigation pursuant to Neb. Rev. Stat. § 86-140, which in pertinent part states:

> The commission may … enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange carrier … except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services. Any actions taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority.[16]

In the Order opening the above-captioned investigation,[17] the Commission outlined three areas of inquiry for this proceeding: 1) to determine whether Qwest's filings comply with the provisions of 86-140; 2) whether the proposed rates are fair and reasonable; and 3) whether implicit subsidies have been removed from Qwest's intrastate access rates, referencing Neb. Rev. Stat. §86-323(7).[18]

Implicit Subsidies

Section 86-323 contains the policy statement of the state of Nebraska regarding Universal Service. Subsection seven provides:

> The implicit support mechanisms in intrastate access rates throughout the state may be replaced while ensuring that local

[16] Neb. Rev. Stat. § 86-140 (1) (Cum. Supp. 2006).

[17] *See* Application No. C-3945/NUSF-60.02/PI-138, *In the Matter of the Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates,* Order Opening Docket, Suspending Rates and Setting Procedural Schedule (July 29, 2008).

[18] *See* Neb. Rev. Stat. § 86-323(7)(Cum. Supp. 2006).

> service rates in all areas of the state remain affordable.[19]

In 1999, the Commission issued an order in Docket No. C-1628, regarding the use of implicit subsidies in intrastate access rates. In that docket, we concluded the use of implicit subsidies through high access rates was no longer desirable and the rates for services that include such implicit subsidies should be reduced. Rates for services were to move toward a more cost reflective system. All Incumbent Local Exchange Carriers ("ILECs"), including Qwest, were ordered to file transition plans to reduce or remove implicit subsidies from access charge rates. A benchmark rate was established so residential exchange service in high cost areas moved closer to the cost of providing that service, but would not exceed an affordable rate. Instead companies serving rural high cost areas would receive explicit subsidies from a state universal service fund funded by all telephone users.[20]

On September 24, 2002, the Commission entered an order approving the transition plan filed by Qwest that included reductions in Qwest's intrastate access charge rates.[21] Qwest's own witness in support of its Docket No. NUSF-17 transition plan testified that reductions in intrastate switched access rates are in the public interest.[22]

Qwest now proposes to increase its intrastate switched access rates. Qwest admits that its current access rates and the proposed increased access rates are set above cost and include implicit subsidies.[23] Thus, raising the access rates to the proposed level would further increase the gap between actual costs and access rates revenues, and increase the implicit subsidies contained in the access rate. Such a result is directly contrary to the Commission's stated goal of access reform.[24] We therefore find implicit subsidies have not been removed from Qwest's intrastate access rates and with the

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[19] *Id.*

[20] See Application No. C-1628, *In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform,* Findings and Conclusions (January 13, 1999).

[21] *See* Application No. NUSF-17, *In the Matter of the Nebraska Public Service Commission, on its own Motion, seeking to Determine Access Costs for US West,* Findings and Conclusions (September 24, 2002).

[22] *Id.* at 2-3.

[23] Tr 49:3-17; Application C-3945/NUSF-60.02/PI-138 Transcript, Direct Testimony of Daniel P. Rhinehart, Exhibit No. 13, Attachment DPR-1.

[24] See Application No. C-1628, *In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform,* Findings and Conclusions (January 13, 1999).

proposed access rate increase, Qwest seeks to increase the implicit subsidies contained in the access rate.

Qwest argues that the Commission must maintain a status of revenue neutrality as it relates to access charges. Since Qwest's NUSF receipts have decreased, the Commission must therefore allow Qwest to raise its access rates as proposed. Qwest offers two main arguments for revenue neutrality. First, the Commission is required by §86-323(7) to replace the implicit subsidies removed from its access rates with NUSF support[25] and second, the Commission in our initial NUSF support model for access rate reform, set objectives whereby any reductions made by a carrier to intrastate access rates would be replaced dollar for dollar by NUSF support.[26] Qwest maintains the Commission has departed from its original intentions in access reform. The reductions in NUSF support received by Qwest, show that NUSF support is no longer revenue neutral, therefore, Qwest should be allowed to increase access rates, to make up for its losses in NUSF support.[27]

The provisions of 86-323(7) read, "the implicit support mechanisms in intrastate access rates throughout the state ***may*** be replaced,"[28] indicating no mandatory or required replacement of implicit subsidies. In our order in C-1628, the Commission clearly outlined that NUSF support was to be a temporary mechanism to assist companies in transitioning away from the support received through implicit subsidies contained in the intrastate access rates to a more cost reflective mechanism.[29] NUSF support was never intended to be the sole means for carriers to replace the implicit subsidies they had been receiving through intrastate access rates. The Commission directed carriers to raise rates for services that had been set below cost and subsidized, to assist in replacing some of the revenue lost from lowering intrastate access rates and removing the implicit subsidies. We stated,

> Each telephone company's transition plan shall identify any annual local rate increases necessary to transition the

[25] *See* Application C-3945/NUSF-60.02/PI-138 Transcript, Direct Testimony of Lisa Hensley Eckert, Exhibit No. 4, p. 3-4; Direct Testimony of Bradley K. Yerger, Exhibit No. 7, p. 4, 12-13; Tr 6:17-7:5; Tr 13:17 – 14:16; Tr 24:4-17.

[26] *See* Application C-3945/NUSF-60.02/PI-138 Transcript, Direct Testimony of Bradley K. Yerger, Exhibit No. 7, p. 8-9

[27] Tr 23:1-24:17.

[28] Neb. Rev. Stat. § 86-323(7)(Cum. Supp. 2006)(emphasis added).

[29] See Application No. C-1628, *In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform,* Findings and Conclusions (January 13, 1999) at 3.

> carrier from current local rates to rates that are at or above the lower of the local rate rebalancing target or cost.[30]

Furthermore, the Commission has already rejected the idea of revenue neutrality in regard to NUSF support. We explicitly stated in Docket No. NUSF-26, the docket establishing a long-term universal service funding mechanism, there is no guarantee of cost recovery from NUSF support. Instead of adopting a policy of revenue neutrality through NUSF replacement as Qwest advocated, we found,

> The NUSF should not guarantee all providers a specific rate of return as that would place a significant burden on the NUSF and the size of the fund as well as place a burden on the ratepayers contributing to the NUSF.[31]

We went on in NUSF-26, and stated, "All providers should be afforded an opportunity and not a guarantee to recover their costs."[32]

Qwest's attempts to characterize our orders regarding NUSF, and §86-323(7) to argue the Commission must replace Qwest's losses in revenues with NUSF support, are misplaced. As we said above, the statute contains permissive language and we have already rejected the idea of revenue neutrality. Qwest once again argues for a guarantee of revenue neutrality and we once again reject the idea that any carrier is entitled to revenue replacement from NUSF. Our policy goals and concerns in this area have not changed.

Compliance with 86-140

Significant time was spent in this proceeding interpreting and arguing the requirements, intent, and the meaning of Neb. Rev. Stat. § 86-140.[33] Qwest argues that § 86-140 only requires cost information be used to ensure any access rate set by the Commission is not below Qwest's costs for providing the service. Beyond that Qwest would have us rely solely on what it chooses to offer to show its proposed rates are fair and reasonable.

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[30] *Id.*

[31] *See* Application No. NUSF-26, *In the Matter of the Nebraska Public Service Commission on its own motion, seeking to establish a long-term universal service Funding mechanism.*, Progression Order No. 2, (August 27, 2002) at 8.

[32] *Id* at 9.

[33] Neb. Rev. Stat. § 86-140 (1) (Cum. Supp. 2006).

In our analysis of §86-140, we are not inclined to interpret the statute's provisions as loosely as Qwest advocates. Once a carrier stipulates that its proposed rates are above cost, the result would be an undefined, vague, subjective standard based on what any given carrier seeking an increase would choose to present as evidence.

Section 86-140 directs the Commission to conduct an analysis of the evidence presented at hearing and set an access rate that is fair and reasonable. The statute then outlines the minimum rate that can be set by the Commission, the cost to the carrier of providing the access service. Qwest admitted, as stated above, that its current access rates and the proposed rates are above its costs for providing the switched access service. So our determination in this proceeding now becomes how much *above* cost can the rate be set and still be considered fair and reasonable? The statute contemplates the Commission making a determination based upon the evidence received at hearing, namely annual revenues and annual costs. To interpret the statute as not requiring any offer of cost data to determine a fair and reasonable rate is to ignore the clear intent of the statute.

The Commission is not advocating or seeking a return to full rate cases with comprehensive cost studies and rate-of-return analysis. Qwest's rebuttal testimony seems to indicate that the offering of any cost data at hearing would require a full rate-of-return analysis.[34] We do not agree. Requiring carriers seeking access rate increases to show some kind of revenue and cost data as a minimum requirement to prove fair and reasonableness, is hardly a return to full rate regulation and rate case proceedings. Further, a traditional rate case proceeding is clearly not contemplated by the statute. The statute includes a 90 day time limit on the proceeding conducted by the Commission regarding access rate filings, making a rate case proceeding with a full cost study analysis practically impossible.

We are concerned by the lack of financial evidence Qwest offered at the hearing to show why the increased access rate it proposes is fair and reasonable. They offered no evidence on whether increased access revenue is necessary to the company to maintain a reasonable rate of return. Qwest provided no evidence that it had explored other avenues of revenue generation in Nebraska prior to filing an access rate increase.

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[34] *See* Application C-3945/NUSF-60.02/PI-138 Transcript, Rebuttal Testimony of Bradley K. Yerger, Exhibit No. 8, p. 2; Tr 24:17-25:5.

A carrier should seek revenue generation from its own customers first, examining local rates in both urban and rural rate areas, prior to seeking access rate increases that generate revenue on the backs of other ratepayers. We find that some minimal level of financial analysis, including a showing revenues and costs, needs to be provided by any applicant seeking access rate increases under §86-140. However, we desire to seek input from the industry and other interested parties concerning the minimum objective criteria that should be implemented to establish a finding of fair and reasonable in these types of proceedings.

Fair and Reasonable Analysis of Proposed Rates

Qwest offers two main reasons why its proposed access rates are fair and reasonable: 1) the increased rates will restore revenue neutrality and 2) the competitive disadvantage Qwest is under in the marketplace due to market distortions. We discussed Qwest's arguments regarding revenue neutrality above. We now turn to Qwest's argument of competitive disadvantage. Qwest would have us consider the intrastate switched access rates charged by other carriers within the state in comparison to Qwest's in our fair and reasonableness analysis. Qwest maintains that many carriers in direct competition with Qwest charge higher intrastate access rates than Qwest. Qwest argues that this puts them at a competitive disadvantage. Therefore, Qwest argues, it should be allowed to increase its intrastate access rates to enable it to keep its local rates competitive. In a Hearing Officer's Order issued on September 26, 2008, the Hearing Officer found as follows:

> The relevant inquiry before the Commission is *Qwest's* proposed access rates, not the access rates, history, rate structure, or implementation procedure of any other carrier. The scope of our review set forth in § 86-140 is confined to Qwest's revenues and costs and whether the rates Qwest is proposing are fair and reasonable in light of its annual revenues and annual costs. The introduction of access rate information regarding other carrier's operating in Nebraska is irrelevant and immaterial to our review of Qwest's proposed access rates.[35]

We agree. Simply pointing out that other carriers have higher access rates than Qwest offers no substantive basis for

[35] *See* Application No. C-3945/NUSF-60.02/PI-138, *In the Matter of the Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates*, Hearing Officer Order Denying Motions to Compel Regarding Formal Intervenors (August 26, 2008) at 2.

finding Qwest's proposed access rate is fair and reasonable. Each carrier's revenues and expenses could potentially be different, allowing for many different intrastate access rates, all of which could be fair and reasonable in relation to that individual carrier. Likewise, Qwest's proposed access rates could potentially be fair and reasonable in light of its revenues and expenses; however, we were presented with no evidence on which to make such a finding.

We are not unsympathetic to the position many carriers, including Qwest, find themselves in the current telecommunications marketplace. Budgets are tight and revenue sources are limited. We therefore make no finding today regarding whether Qwest's proposed rates are or are not fair and reasonable, and we will not speculate on what our final determination might have been had Qwest offered us any financial data upon which to make a fair and reasonable determination. We do find, however, neither of Qwest's arguments regarding revenue neutrality and competitive disadvantage, sufficient for purposes of Neb. Rev. Stat. § 86-140.[36]

Statewide Investigation

Many parties to this proceeding have advocated for a statewide investigation into the switched access rates charged by all carriers. We found in our C-1628 proceeding, "absent a demonstration of costs, a CLEC's access charges, in aggregate, must be reasonable comparable to the ILEC with whom they compete."[37] Qwest requests that we grant them a temporary increase, open a statewide investigation into the switched access rates of every carrier, and freeze the access rates of all other carriers while we conduct such investigation.

We are not inclined to open such a broad docket as Qwest and other parties envision. We do not find a statewide investigation into the access rates of all carriers is warranted or justified based on the unsubstantiated allegations and anecdotal evidence included in the current proceeding. Any carrier may petition us to investigate or, in the alternative, file a compliant with this Commission to consider access rates that are not competitively priced. In addition, allowing an increase in access rates for Qwest while freezing switched access rates of all others during what Qwest itself characterized as a lengthy statewide investigation is unfair.

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[36] Neb. Rev. Stat. § 86-140 (1) (Cum. Supp. 2006).

[37] *See* Application No. C-1628/NUSF, *In the Matter of the Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform and intrastate universal service fund.* Progression Order #15, (February 21, 2001) at 3.

More timely and cost efficient courses are available to all parties, including Qwest. We therefore decline to open a statewide docket to investigate and set intrastate switched access rates of all carriers in Nebraska at this time.

However, the Commission does intend to open an investigatory docket to examine the issues raised in this proceeding regarding the appropriate evidentiary standard and minimum criteria required under Neb. Rev. Stat. §86-140 to prove a proposed access rate is fair and reasonable. We do not desire a full cost study, nor do we interpret the statute to require such a time-consuming and costly analysis. Yet, as we stated above, we find that some level of financial analysis and cost evidence is contemplated under Neb. Rev. Stat. §86-140. Therefore, we intend to solicit input from interested parties to establish the minimum criteria required to support a finding of fair and reasonable under Neb. Rev. Stat. §86-140.[38]

We further find that in light of the dynamic environment that is today's telecommunications marketplace, any investigation should also consider the structure of access rates, an evaluation of our progress in relation to our stated goals and intentions since initiating access rate reform in 1999, and the policy of access rate reform and regulation on a going forward basis.

Conclusion

We therefore find that Qwest failed to comply with the requirements of Neb. Rev. Stat. §86-140(1)(Cum. Supp. 2006), by not including any form of a cost analysis in this proceeding. Consequently, we have insufficient evidence upon which to make a finding as to whether or not Qwest's proposed access rate is fair and reasonable. We find an investigation should be conducted into what the objective minimum criteria should be to establish any proposed rate under Neb. Rev. Stat. §86-140(1)(Cum. Supp. 2006), is fair and reasonable and the other objectives as outlined above. Finally, based on Qwest's own statements, implicit subsidies still exist in its intrastate switched access rates; therefore, increasing Qwest's access rates as proposed would in turn increase the implicit subsidies inherent in the rates.

[38] Neb. Rev. Stat. § 86-140 (1) (Cum. Supp. 2006).

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Qwest Corporation's filing for a proposed increase in its intrastate switched access rate in Nebraska to the weighted average of approximately $0.048 per minute of use, be, and is hereby, denied.

IT IS FURTHER ORDERED that Qwest Corporation's current intrastate switched access rate in Nebraska remain at the current weighted average of approximately $0.021 per minute of use.

MADE AND ENTERED in Lincoln, Nebraska, on this 3rd day of February, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

O R D E R

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Executive Director

//s// Frank E. Landis