

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,)	Application No. C-4165/PI-150
on its own motion, seeking to)	
investigate whether it is)	ORDER GRANTING MOTION
appropriate for)	TO COMPEL IN PART
telecommunications companies to)	AND DENYING MOTION IN PART
assess intrastate transit)	
charges on Extended Area Service)	
Traffic.)	ENTERED: October 13, 2009

BY THE HEARING OFFICER:

By Order entered on April 28, 2009, the Commission opened this investigation to address the issues raised by a Petition for Declaratory Ruling filed by several rural independent local exchange carriers. The Commission, in the Order opening the investigation, found the issues raised by the rural independent companies raised issues of statewide commercial concern. Notice of this proceeding appeared in the Daily Record, Omaha, on April 29, 2009.

A Petition for Formal Intervention was filed by the following rural independent companies: Arapahoe Telephone Company, Arlington Telephone Company, Blair Telephone Company, Eastern Nebraska Telephone Co., and Rock County Telephone Company (all of such companies d/b/a American Broadband); Hamilton Telephone Company; Glenwood Telephone Membership Corp.; Hemingford Cooperative Telephone Company; Nebraska Central Telephone Company; and Northeast Nebraska Telephone Company (the "Rural Companies"). Qwest Corporation filed a Petition for Intervention on June 12, 2009, which I granted as Hearing Officer.

By Hearing Officer Order on June 30, 2009, a procedural schedule was established. That schedule was modified by Hearing Officer Order entered on September 28, 2009. On September 25, 2009, a Motion to Compel Qwest Corporation to Respond Fully to Discovery Requests (Motion to Compel) was filed for discovery requests propounded by the Rural Companies. On October 2, 2009, Qwest filed a response to the Rural Companies' Motion to Compel (Opposition). On October 6, 2009, oral argument was held on the motion.

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

The Nebraska Supreme Court rules and regulations govern discovery in matters before the Commission.¹ Generally, "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action" and "appears reasonably calculated to lead to the discovery of admissible evidence."² The Commission is not bound by the strict rules of evidence and therefore the admissibility of evidence is typically liberally interpreted by the Commission.

Based on the written Motion to Compel, the Opposition, and the arguments presented by counsel in this matter I find as follows:

Request No. 6:

The Motion to Compel for Request No. 6 is granted. I find the Rural Companies are requesting a full and complete response and I do not agree that this constitutes a supplemental question as Qwest argued. Qwest must provide the Rural Companies with a full and complete response either confirming the basis of the Diagram on Page 6 of the Linse Presentation or explaining why such facts cannot be confirmed. Qwest is required to explain in what situations the facilities do or do not carry traffic that is subject to interstate or intrastate exchange access charges. If the diagram described in the Linse Presentation is a hypothetical network, Qwest must explain that in its response.

Request Nos. 13, 17 and 18:

The Motion to Compel for Request Nos. 13, 17 and 18 is denied. As hearing officer, I find that Qwest's objection should be sustained. I find these three requests seek Qwest counsel's identification of legal authorities or legal theories which are more appropriate for argument and briefing in this proceeding. There will be an opportunity for all parties to brief these issues when evidence has been presented.

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

² Neb. Ct. R. Disc. § 6-326(b)(1). (Emphasis added).

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Rural Companies' Motion to Compel is hereby granted in part and denied in part as described herein.

IT IS FURTHER ORDERED that compelled responses must be served on the Rural Companies no later than ten (10) days following the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 13th day of October, 2009.

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By: _____
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O R D E R

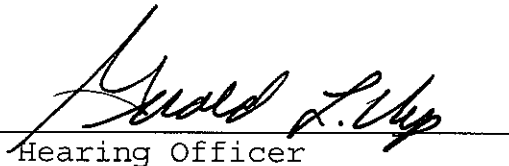
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NEBRASKA PUBLIC SERVICE COMMISSION

By:


Hearing Officer