BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to investigate whether it is appropriate for telecommunications companies to assess intrastate transit charges on Extended Area Service Traffic.	)))))))	Application No. C-4165/PI-150 ORDER ENTERED: August 3, 2010

APPEARANCES:

For: The Rural Companies[1]
Paul M. Schudel
James A. Overcash
Woods & Aitken LLP
301 South 13th St., Suite 500
Lincoln, NE 68508
and
Thomas J. Moorman
Woods & Aitken LLP
2154 Wisconsin Avenue, N.W.,
Suite 200
Washington, D.C. 20007

For: Qwest Corporation
George B. Thomson, Jr.
Qwest Corporation
1801 California
Suite 1000
Denver, CO 80202
and
Jill Vinjamuri-Gettman
Gettman & Mills, LLP
10250 Regency Circle,
Suite 200
Omaha, NE 68114

For: Arapahoe Telephone Company
Jack W. Besse
Knapp, Fangmeyer, Aschwege,
Besse & Marsh, P.C.
P.O. Box 10
Kearney, NE 68848-0010

For: Nebraska Public Service Commission
Shana Knutson
300 The Atrium
1200 "N" Street
P.O. Box 94927
Lincoln, NE 68509-4927

BY THE COMMISSION:

I. Procedural History

1. On April 7, 2009, the Rural Companies filed a Petition for Declaratory Ruling (the "Petition") with the Commission seeking a ruling that Qwest Corporation ("Qwest") is not authorized to assess intrastate transit charges on

[1] 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").

Extended Area Service ("EAS") traffic originated by customers of the Rural Companies.[2] In the Petition, the Rural Companies requested that the Commission direct Qwest to cease and desist from (a) blocking or threatening to block delivery of such EAS traffic; (b) requiring the Rural Companies to enter into Section 259 infrastructure sharing agreements with Qwest as a condition to continued delivery of such EAS traffic; or (c) imposing a new charge for local EAS transiting. Further, in the Petition the Rural Companies contended that a question of statewide commercial importance was presented in the Petition, and requested that the Commission institute an investigative proceeding pursuant to *Neb. Admin. Code,* Title 291, Chap. 1, § 019.05.

2. By Order dated April 28, 2009, the Commission opened this docket to investigate and to determine whether it is appropriate for telecommunications companies to assess intrastate transit charges on EAS traffic. Petitions for Formal Intervention were filed by the Rural Companies and by Qwest and were granted by the Hearing Officer. Each of the intervenors is a corporation and an incumbent local exchange carrier ("ILEC" or "incumbent LEC") that has been certificated by the Commission to provide basic local exchange and other telecommunications services in certain local exchange service areas in the State of Nebraska.

3. On July 1, 2009, the Hearing Officer entered an Order Establishing Procedural Schedule which scheduled a Technical Workshop for August 3, 2009, as well as a comprehensive schedule for this docket. At the workshop, a number of technical and network matters were discussed. Based upon the mutual consent and agreement of counsel for the parties, the issues for the hearing and for Commission decision in this docket (set forth below) were identified. On September 28, 2009, the Hearing Officer entered an Order Modifying Procedural Schedule which established that the hearing would be held commencing on January 26, 2010.

4. Following the hearing, the parties filed Proposed Orders with the Commission on April 2, 2010, and Reply Comments or Briefs on May 3, 2010.

5. Subsequently, Counsel for the Rural Companies filed a Motion to Strike, requesting that a portion of Qwest Corporation's Brief be stricken. In the alternative, the Rural Companies requested permission to file Surreply

[2] The Commission designated the Petition as Docket C-4162/DR-0004.

Comments. The Hearing Officer denied the Motion to Strike but permitted Surreply Comments which were filed by both parties on June 7, 2010.

II. Issues

6. The following four issues were agreed upon by Counsel for the parties and were approved by the Hearing Officer as the issues for resolution in this docket:

> Issue 1. How should extended area service (EAS) calls be routed to and from competitive carriers operating in areas which have EAS calling with an RLEC (e.g. trunk groups, switching, interconnection points, etc.)?
>
> Issue 2. How should the costs (e.g., additional trunking and switching) of routing EAS traffic to and from competitive carriers be recovered?
>
> Issue 3. What form and substance of EAS intercarrier terms and conditions should govern the relationships between and among Qwest, the RLECs, and carriers competing with Qwest?
>
> Issue 4. What is the extent of the Commission's jurisdiction to address and resolve the above-referenced issues?

III. Summary of the Testimony

7. The parties in this case pre-filed written direct and reply testimony of their witnesses which were made exhibits in the record. At the hearing, the witnesses then provided summaries of their testimony and were subject to cross-examination. To the extent that we find it relevant, a description of the testimony and the parties' positions are summarized and restated below.

Summary of Qwest's position:

8. Qwest's Director of Wholesale Advocacy, William R. Easton, explained that transit traffic is traffic that originates from an end user on one carrier's network, transits Qwest's network and terminates to an end user on a

third carrier's network.[3] A transit traffic arrangement allows a competitive local exchange carrier ("CLEC") or wireless service provider ("WSP") to exchange traffic with a terminating carrier without establishing direct interconnections with the terminating carrier. This indirect interconnection and transit arrangement is used when the volume of traffic may not justify a CLEC or WSP directly interconnecting with the terminating carrier such as one of the Rural Companies.[4] Mr. Easton testified that the Rural Companies use Qwest as a transit provider in order to deliver calls placed by customers of the Rural Companies to customers of CLECs and WSPs that have indirect interconnection arrangements at the Qwest tandem switch.[5] Mr. Easton further stated that transit service and EAS are two entirely different concepts that should not be combined.[6]

9. According to Mr. Easton, Qwest's position is that Qwest has not been compensated for the provision of transit service for calls originated by customers of the Rural Companies that terminate to customers of CLECs or WSPs that do not have direct connections to the independent company in question.[7] Mr. Easton stated that the relative percentage of EAS traffic that the Rural Companies are terminating to customers of third party carriers operating in Qwest EAS exchanges has increased to 78% with only 22% of such traffic terminating to Qwest customers, based upon July 2009 usage data.[8] Qwest's position is that transit service is properly provided to the Rural Companies pursuant to Section 259 infrastructure sharing agreements (Exhibit 32, pp. 8-9) and under the "Calling Party Network Pays" principle established by the Federal Communications Commission ("FCC").[9]

10. Mr. Philip Linse, the Director of Qwest's network organization, also testified for Qwest. Mr. Linse described the current network architecture and routing of EAS traffic, Qwest's requested changes in such architecture made to

---

[3] *See* Exhibit 32 at 3; Hearing Transcript 167-168 (January 26, 2010)("Hrg. Trans. __").
[4] Exhibit 32 at 4-5.
[5] Exhibit 32 at 5-6; Hrg. Trans. 168-169.
[6] Exhibit 32 at 9-12.
[7] Exhibit 32 at 6.
[8] Exhibit 32 at 6-8; Exhibit WRE-1. At the hearing, Mr. Easton offered a correction to his pre-filed direct testimony (Exhibit 32) which removed "EAS" from lines 1 and 5 on page 7 thereof. *See* Hrg. Trans. 166. The Rural Companies objected to this correction and such objection was overruled by the Hearing Officer. *See* Hrg. Trans. 201.
[9] Exhibit 32 at 13; Exhibit 33 at 9-10; Hrg. Trans. 178, 217-219).

certain of the Rural Companies and the benefits of such requested changes.[10] Mr. Linse explained the meaning and purpose of EAS and provided an exhibit listing the EAS arrangements between Qwest and the Rural Companies.[11] Mr. Linse testified that the Rural Companies and Qwest have mutually agreed to provide the cable facilities to "meet points" for the provision of EAS.[12] Qwest does not seek any change in the network configuration by which EAS traffic is exchanged between customers of the Rural Companies and those of Qwest's customers.[13] However, Qwest objects to the current routing to Qwest's end offices of EAS traffic originated by customers of a Rural Company that terminates to a third party carrier's customers.[14]

11. Rather, Mr. Linse testified that Qwest seeks to have certain of the Rural Companies modify routing of transit traffic so that such traffic is routed to Qwest's tandem switches rather than Qwest's end office switches. According to Mr. Linse, this modification would increase switching efficiency and reduce blocking probability.[15] Mr. Linse also stated that there are no technical limitations that prevent the accomplishment of this modification.[16] Mr. Linse acknowledged that the network modifications that Qwest is seeking are a separate issue from the implementation of transit charges by Qwest and that implementation of transit charges would be a new cost to be borne by the Rural Companies.[17]

Summary of the Rural Companies' Position:

12. Mr. Steven Watkins, a self-employed tele-communications management consultant, testified on behalf of the Rural Companies. Mr. Watkins testified to the significance of the existing "meet point" between the Rural Companies' respective networks and that of Qwest. He indicated that this meet point not only establishes the point where the Rural Companies' network responsibility ends but that this meet point also establishes the basis for the cost recovery associated with EAS service through fixed rate

[10] *See* Exhibit 38 at 2.
[11] *See* Exhibit 38 at 2-3; Exhibit PL-1.
[12] Exhibit 38, pp. 4-5.
[13] *See id.* at 6.
[14] *See id.* at 9-10.
[15] *See id.* at 11.
[16] *See id*. at 12.
[17] *See* Hrg. Trans. 270-271, 276.

additives to the incumbent LEC's local exchange rates.[18] In response to Qwest witness Linse's statements regarding Qwest's desire to modify the routing of EAS transit traffic, Mr. Watkins confirmed that the Rural Companies are willing to discuss routing and trunking changes with Qwest in order to address all parties' concerns and interests.[19] However, he stated that such discussions have not been possible in the past due to Qwest's demand that the Rural Companies pay for transit services that are not the responsibility of the Rural Companies. Qwest's demand that the Rural Companies execute Section 259 infrastructure sharing agreements that impose these charges on the Rural Companies has been unacceptable to some of the Rural Companies.[20]

13. Mr. Watkins testified that the imposition of transit charges as proposed by Qwest would require the Rural Companies to provide a more costly and superior form of EAS network arrangement than the existing EAS arrangement between the Rural Companies and Qwest. Mr. Watkins stated that such an arrangement would be contrary to Section 251(c)(2) of the Communications Act of 1934, as amended (the "Act") and would require that the Rural Companies establish an interconnection point beyond their networks, also contrary to Section 251(c)(2).[21]

14. Mr. Watkins also disagreed with Qwest witness Easton's position that the "calling party network pays" ("CPNP") concept requires the Rural Companies to compensate Qwest for transit relating to EAS calls originated by Rural Companies' customers. Mr. Watkins testified that (a) the CPNP concept relates to the FCC's intercarrier compensation proposals and interconnection rules which do not necessarily apply to intrastate EAS; (b) imposition of transit charges for EAS calls is inconsistent with existing EAS responsibilities; and (c) the CPNP concept remains embroiled in an unresolved debate in the FCC's intercarrier compensation proceeding.[22]

15. In response to Qwest's position that alternatives to Qwest's proposed Section 259 infrastructure sharing agreements for transit service exist, Mr. Watkins stated that the Rural Companies have no way to force CLECs to connect

[18] *See* Exhibit 9, pp. 9, 18, 27-28, 37.
[19] *See* Exhibit 10, pp. 11-12; Hrg. Trans. 32-33.
[20] *See* Exhibit 9, pp. 11-12; Hrg. Trans. 24-27.

[21] *See* Exhibit 9 at 40-47; Exhibit 10 at 13-14; Hrg. Trans. 27-28.
[22] Hrg. Trans. 27-28, 51; Exhibit 10 at 16-17, 19-20.

their networks directly with the Rural Companies because they cannot require CLECs to negotiate interconnection arrangements. Further, although interconnection may be requested with WSPs, the subject of direct connections is one for negotiation/arbitration.[23] However, Qwest established interconnection terms with CLECs and WSPs through bilateral negotiations of the interconnection arrangement, including transit service, and the Rural Companies were not notified of or allowed to participate in such negotiations. Mr. Watkins testified that notwithstanding the foregoing, Qwest takes the position that the Rural Companies must bear transit service costs.[24]

16. Tom Van Slyke, the Central Office Manager of the American Broadband Companies,[25] testified that the Blair and Arlington Telephone Companies have two-way EAS with Qwest's Omaha Metropolitan Area Exchanges, including Elkhorn and Fremont.[26] EAS calls originated by customers in the Blair and Arlington Exchanges are routed to Qwest's tandem switch (the "meet point" with Qwest); however, neither of these Companies has entered into a Section 259 infrastructure sharing agreement with Qwest. EAS traffic originated by Blair and Arlington users to either Qwest or third party carriers' customers is exchanged through a meet point arrangement with Qwest.[27]

17. In response to Qwest witness Linse's testimony, Mr. Van Slyke testified that the American Broadband Companies have not experienced any network blocking issues due to the volume of EAS traffic exchanged with Qwest. Further, he confirmed that the American Broadband Companies have not threatened to block any Qwest EAS traffic in relation to network changes requested by Qwest.[28]

18. Mr. Van Slyke also questioned the accuracy of the calling data set forth in Confidential Exhibit WRE-1 stated that it set forth minutes of use ("MOU") for Eastern Nebraska and Rock County Telephone Companies, neither of which have

[23] Hrg. Trans. 30-31, 40; Exhibit 10 at 23.
[24] Exhibit 9 at 24-27; Exhibit 10 at 5-6.
[25] The operating local exchange companies of American Broadband in this docket are: Arlington Telephone Company, Blair Telephone Company, Eastern Nebraska Telephone Co. and Rock County Telephone Company (the "American Broadband Companies").
[26] Exhibit 11 at 2.
[27] *See id.* at 3-4.
[28] Exhibit 12 at 2.

EAS with Qwest, and fails to show any MOU for Arlington Telephone which does have EAS with Qwest Exchanges.[29] Thus, in Mr. Van Slyke's view, the traffic percentages set forth in Exhibit WRE-1 were unreliable.

19. John E. Koller, Vice President and General Manager of Arapahoe Telephone Company ("Arapahoe"), addressed several areas in his testimony. He stated that as a consequence of his Company's 1997 purchase of several former Qwest Exchanges, his company has two-way EAS routes with Qwest through an established meet point with Qwest. Arapahoe's responsibility for such traffic begins and ends at the meet point with Qwest.[30] Mr. Koller confirmed that, at the time of this purchase in 1997 as well as subsequently, two-way EAS traffic originated by Arapahoe customers was terminated not only to Qwest customers but to third party carrier customers through the use of EAS trunks jointly provisioned by Arapahoe and Qwest which routed this EAS traffic to Qwest end offices.[31]

20. Notwithstanding these pre-existing network arrangements, Mr. Koller testified that Qwest demanded that Arapahoe change the existing EAS network arrangements and that Arapahoe re-route this EAS traffic to Qwest's tandem switch and begin paying Qwest's transit charges.[32] Specifically, in conjunction with Arapahoe's switch upgrade project, Mr. Koller testified that Qwest demanded that EAS traffic be re-routed and that Arapahoe begin payment of transit charges to Qwest of $0.0045/MOU by executing a Section 259 infrastructure sharing agreement with Qwest.[33] Mr. Koller testified that Qwest advised his Company that unless such an agreement was signed, EAS traffic originated by Arapahoe customers would not be allowed to transit on the EAS trunks when the termination of that traffic was to customers of third parties carriers with numbers rated to the relevant Qwest EAS exchange.[34]

21. Mr. Koller stated that as a consequence of Qwest's position, Arapahoe's ability to place its new switching system in operation was delayed.[35] Therefore, Arapahoe

---

[29] Hrg. Trans. 61-62; Exhibit 12 at 3.
[30] Exhibit 15 at 3.
[31] *See id*. at 3-5; Exhibit 16 at 2; *see also* Hrg. Trans. 69-71.
[32] *See* Exhibit 15 at 5.
[33] *See* Hrg. Trans. 78-82.
[34] *See* Exhibit 16 at 3.
[35] *See* Hrg. Trans. 77-78, 81-82.

determined to seek the guidance of the Commission with regard to Qwest's attempt to impose transit charges.[36]

22. Stan Rouse, General Manager of Glenwood Telephone Membership Corporation ("Glenwood"), testified that his company also has two-way EAS arrangements with Qwest exchanges. Historically, Glenwood customers originated EAS calls not only to Qwest customers, but also to third party carriers' customers with numbers rated to the Qwest EAS exchange by means of jointly provided EAS trunks; Glenwood's responsibility for such traffic begins and ends at the meet point with Qwest.[37] However, in 2006, in conjunction with Glenwood's implementation of a new switching platform, Qwest refused to allow certain EAS traffic originated by Glenwood's customers to be routed over the EAS trunks in the manner it had been routed for over 30 years. Mr. Rouse testified that Qwest demanded that Glenwood execute a Section 259 infrastructure sharing agreement with Qwest to institute transit charges of $0.0045/MOU.[38]

23. Mr. Rouse testified that Glenwood contacted WSPs with which Glenwood exchanged EAS traffic and requested that direct trunking be established, however, these carriers refused. Absent any other viable alternative, Mr. Rouse stated, Glenwood acceded to Qwest's demand that Glenwood execute a Section 259 infrastructure sharing agreement and to the payment to Qwest of transit charges as a condition to the network changes needed by Glenwood to cut over its new switch into service.[39] Mr. Rouse testified that no traffic congestion existed that posed a blocking threat which would have justified this routing change.[40]

24. Like Mr. Van Slyke, Mr. Rouse also questioned the accuracy of the calling data set forth in Confidential Exhibit WRE-1. Mr. Rouse testified that the Glenwood-specific data included in this Qwest Exhibit was inaccurate. Thus, in Mr. Rouse's view, the traffic percentages set forth in Exhibit WRE-1 were unreliable.[41]

25. Gary Warren, the Assistant Secretary of Hamilton Telephone Company ("Hamilton"), testified that his company

---

[36] *See* Hrg. Trans. 82.
[37] *See* Exhibit 18 at 3-5.
[38] *See* Exhibit 18 at 5-6; Hrg. Trans. 88-90.
[39] *See* Hrg. Trans. 90, 94-96.
[40] *See* Exhibit 19 at 2; Hrg. Trans. 96.
[41] *See* Exhibit 19 at 3-4 GTMC-1; and Hrg. Trans. 97-98.

has two-way EAS with certain Qwest exchanges and Hamilton's responsibility for such traffic begins and ends at the meet point with Qwest.[42] Although Hamilton customers originate EAS traffic to customers of third party carriers with numbers rated to the Qwest EAS exchanges, Qwest has not asked Hamilton to change the routing of such traffic from EAS trunks to Qwest transit service, nor has Qwest requested Hamilton to execute a Section 259 infrastructure sharing agreement.[43] Further, Hamilton has not experienced any traffic blocking issues due to congestion on the EAS trunks.[44]

26. Tonya Mayer, the Co-General Manager for Hemingford Co-Operative Telephone Company ("Hemingford"), presented testimony. Her Company has two-way EAS with Qwest's Alliance Exchange.[45] EAS traffic originated by Hemingford's customers is routed over EAS trunks that are jointly provided by Hemingford and Qwest for termination through use of Qwest's Alliance end office to Qwest customers as well as third party carriers' customers with numbers rated to the Alliance Exchange.[46] Ms. Mayer also testified that Hemingford's responsibility for EAS traffic begins and ends at the meet point with Qwest.[47] No network blocking or other quality of service issues have been experienced by Hemingford customers as a consequence of the existing network EAS configuration.[48]

27. Ms. Mayer testified that on June 9, 2008, without prior notice, Qwest instituted blocking of EAS calls originated by Hemingford customers to numbers of third party carrier customers in Alliance, principally Alltel Wireless customers. Contrary to testimony by Qwest witness Linse, Ms. Mayer stated that this blocking was not due to any action or inaction by Hemingford, but rather was the result of unilateral action taken by Qwest.[49] Following service restoration by Qwest, Hemingford, over a period of time, attempted to cause Alltel Wireless to establish direct connections for exchange of EAS traffic, but Alltel refused. The only alternative to continued use of existing EAS trunks that Qwest proposed was that Hemingford execute a Section 259

[42] *See* Exhibit 21 at 2-3.
[43] *See* Hrg. Trans. 105-107.
[44] *See* Exhibit 22 at 2.
[45] *See* Exhibit 23 at 3.
[46] *See id.* at 4.
[47] *See id*. at 2-3.
[48] *See* Hrg. Trans. 111.
[49] *See* Hrg. Trans. 111-114.

infrastructure sharing agreement with Qwest which included transit charges of $0.0045/MOU being due and owing to Qwest.[50]

28. Emory Graffis, General Manager of Northeast Nebraska Telephone Company ("Northeast"), testified that as a consequence of his Company's acquisition of several exchanges from Qwest's predecessor, U S West, in 1997, several two-way EAS routes exist between Northeast and Qwest.[51] In the purchase agreement (Exhibit 28), the companies agreed that the EAS calling scope in existence at the acquisition date should continue. That EAS arrangement included the ability of Northeast customers to place EAS calls to customers of third party carriers with numbers rated to the Qwest EAS exchange over EAS trunks jointly provided by Northeast and Qwest and switched through Qwest's applicable end office.[52] Under this arrangement, Northeast's network and cost responsibility begins and ends at the meet point with Qwest.[53]

29. Mr. Graffis stated that Northeast has not received any request from Qwest to re-route EAS traffic to a Qwest tandem switch over transit facilities. Further, he stated that Northeast customers have not experienced any call blocking as a result of traffic congestion relating to the existing network arrangement whereby EAS traffic originated by Northeast customers is routed over EAS trunks to Qwest end office switches.[54]

30. Andrew D. Jader, Vice President Administration, of Nebraska Central Telephone Company ("Nebraska Central") also testified that as a result of his company's acquisition of several exchanges from Qwest's predecessor, U S West, in 1997, it has several two-way EAS routes with Qwest.[55] At the date of acquisition, customers of Nebraska Central placed EAS calls to customers of third party carriers with numbers rated to the Qwest EAS exchanges over EAS trunks jointly provided by Qwest and Nebraska Central. Section 5.1.H of the purchase agreement (Exhibit 28) provided that EAS arrangements in existence on the date of acquisition should be continued. Like Northeast, Mr. Jader testified that Nebraska Central's

---

[50] See Exhibit 23 at 6-7; Exhibit 24 at 2; *see also* Hrg. Trans. 114-115, 120.

[51] *See* Exhibit 26 at 3-4.
[52] *See id*. at 4-5; Hrg. Trans. 128-129.
[53] Exhibit 26 at 3-4.
[54] Exhibit 27 at 2-3; Hrg. Trans. 130-131.
[55] Exhibit 29 at 3-4; Hrg. Trans. 139-141.

network and cost responsibility begins and ends at the meet point with Qwest. [56]

31. Similar to Arapahoe and Glenwood, Mr. Jader testified that in February 2006 Nebraska Central notified Qwest that it intended to upgrade its switching platform, and trunk arrangements were requested to facilitate this upgrade. After over eleven months passed, in January 2007, Mr. Jader testified that Qwest advised Nebraska Central that Qwest would not make the requested trunk rearrangements unless Nebraska Central executed a Section 259 infrastructure sharing agreement with Qwest and agreed to pay Qwest transit charges of $0.0045/MOU.[57] Nebraska Central acceded to Qwest's demand in order to proceed with the switch cutover.[58]

32. Mr. Jader also presented testimony and Confidential Exhibits NCTC-1 and NCTC-2 that set forth measured EAS usage data that directly contradicts Qwest Exhibit WRE-1.[59] Mr. Jader's position was that this measured usage data confirmed that Qwest overstated the percentage of EAS MOUs originated by NCTC to customers of third party carriers and understated the percentage of EAS MOUs originated by NCTC to Qwest customers.

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

A. Commission Jurisdiction

33. Although the parties identified Commission jurisdiction over this matter as Issue No. 4, we will address this issue first.

34. In pertinent part, Article IV, § 20 of the Nebraska Constitution assigns to the Commission powers and duties to include "the regulation of rates, service and general control of common carriers as the Legislature may provide by law." *Neb. Rev. Stat.* § 75-109.01(7) prescribes that the Commission has jurisdiction over telecommunications carriers pursuant to the Nebraska Telecommunications Regulation Act (§§ 86-101 through 86-163), among other legislative enactments. *Neb. Rev. Stat.* § 86-123 establishes the jurisdiction of the Commission to regulate quality of service and rates. As a

[56] Exhibit 29 at 3-4.

[57] *See* Hrg. Trans. 146-150; *see also* Exhibits 31 and 32.
[58] *See* Hrg. Trans. 150, 152-153.
[59] *See* Exhibit 29 at 5; *see also* Exhibit 30 at 3-4.

uniquely intrastate service, the Commission has enacted a comprehensive regulation that addresses the establishment, discontinuation and general requirements relating to EAS.[60]

35. The Commission's jurisdiction over EAS in Nebraska is comparable to the recent cases before the Minnesota and Oregon Commissions involving Qwest's provision of transit service in connection with intrastate EAS transit traffic. The Minnesota Public Utilities Commission found:

> The Commission has broad authority and the obligation under Minn. Stat. §§ 237.06, 237.07, 237.12 and 237.081 to ensure just and reasonable rates for intrastate telecommunications services. This authority applies to Qwest's intrastate EAS and local transit service. . . .
>
> The Commission finds that Qwest has failed to demonstrate that Congress has preempted state regulation of intrastate EAS transit traffic. Neither Congress nor the FCC has undertaken the kind of comprehensive regulation of intrastate transiting services that would demonstrate an attempt to 'occupy the field.'[61]

36. Similarly, in a case involving Qwest's transit service concerning EAS traffic, the Public Utility Commission of Oregon held:

> In the absence of any evidence or authority to the contrary, we conclude that transiting intrastate traffic is an 'intrastate service' under section 152(b) of the Act. We therefore conclude that we have jurisdiction. . . .[62]

37. In addition to the Commission's jurisdiction under state law as discussed above, the actions taken in this Order are also consistent with certain federal principles and FCC directives. For example, the FCC has explicitly acknowledged state commission jurisdiction and the expectation that state commissions will, in the first instance, establish the

---

[60] *See Neb. Admin. Code*, Title 291, Ch. 5 § 002.27.

[61] *In the Matter of the Petition of Frontier Communications of Minnesota, Inc., et al.,* Dockets No. P-407, 405, 421/C-08-1056, Minnesota Public Service Commission, Order Finding Jurisdiction, etc. at pp. 9-10 (Dec. 29, 2008)("*Minnesota Order*").

[62] *Citizens Telecommunications Company of Oregon, d/b/a Frontier Communications of Oregon v. Qwest Corporation,* Public Utility Commission of Oregon, Docket UCB 35, Order at p. 5 (Mar. 31, 2009)("*Oregon Order*").

geographic parameters of local calling areas for purposes of implementing the directives of § 251(b)(5) of the Act. As a result, we may establish the geographic areas within which the reciprocal compensation regime applies between CLECs and an ILEC.[63]

38. Likewise, the Commission has continuing jurisdiction over Qwest and other carriers based on its authority to enforce its policy determinations made in connection with approval of various interconnection agreements. Courts have explicitly acknowledged this continuing jurisdiction.[64]

39. We conclude that we have jurisdiction to address and resolve the issues identified in paragraph 6, above.

B. Routing of EAS Calls

40. The next issue we address, as identified by the parties as Issue One above, is how extended area service (EAS) calls should be routed to and from competitive carriers operating in areas which have EAS calling with an RLEC.

41. Neb. Rev. Stat. § 86-109 (Reissue 2008) defines EAS as,

> [A] telecommunications service which groups two or more exchanges to allow subscribers of one exchange in the group to place and receive two-way switched communications to and from subscribers in one or more other exchanges in the group without an interexchange toll charge.

42. Basically, EAS exists for the benefit of subscribers which are then permitted to call a community of interest for the price of local calling plus one flat rate charge rather than incurring a toll charge for each call placed to that community.[65] Subscribers can petition the Commission to

---

[63] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order,* CC Docket No. 98-96, 11 FCC Rcd 15499 (1996) (“*FCC Order*”) ¶ 1035.

[64] *See Southwestern Bell Tel. v. Connect Communications Corp.,* 225 F.3d 942, 946 (8th Cir. 2000).

[65] In some instances where the EAS route exists solely within the territory of a single local exchange carrier there is no additional flat rate charge or EAS additive placed on the telephone bill of subscribers.

establish an EAS calling route. The Commission then commences a process as described in *Neb. Admin. Code*, Title 291, Chapter 5 § 002.27.[66]

43. During the EAS petition process, the telecommunications carriers are required to conduct a usage study to determine if sufficient traffic between the two communities exists. If so, the telecommunications carriers file proposed rates, the EAS additive to recover the cost of making the toll call a local call, along with relevant information used in computing the rates. The subscribers then vote by ballot on whether the plan, including the EAS rate, is acceptable.

44. Currently, each of the Rural Companies delivers and receives EAS traffic via an agreed upon meet point with Qwest. Many of these agreed upon meet point arrangements (EAS agreements) have been in place for over two decades. The meet point, in turn, determines the allocation of cost responsibility and cost recovery that each party has the opportunity (but not obligation) to recover from their respective end users.[67]

45. Nothing precludes the Rural Companies and Qwest to mutually agree upon an alternative meet point arrangement. However, we do not believe that the fact that a new entrant enters a Qwest EAS exchange and competes for end users within that Qwest exchange should change the structure of existing EAS network arrangements.[68] If the new entrant desires to provide its customers with EAS calling to and from an exchange with which Qwest has EAS, then the new entrant could establish an equivalent meet point arrangement with the Rural Company involved.

46. While Qwest would like the Rural Companies to modify the routing arrangement so that transit traffic is routed to Qwest's tandem switches rather than Qwest's end office switches, the Commission finds no rational basis for making

---

[66] There is also a Commission prescribed process for discontinuing EAS routes.

[67] *See, e.g.,* Exhibit 9 at 9, 18, 27-28, 37; and Exhibit 38 at 4-5.

[68] We also note that the structure is not dependent on how the new entrant obtains numbering resources within the Qwest EAS exchange. Thus, the Commission-prescribed structure is *not* altered based on whether the new entrant seeks new numbering resources assigned to the Qwest EAS exchange, a thousands block of existing numbers in that Qwest EAS exchange, or ports in a telephone number (or telephone numbers) from Qwest or another carrier where that telephone number(s) is assigned to the Qwest EAS exchange.

this a requirement. In its testimony, Qwest stated that this modification would improve efficiency and would reduce blocking probability. However, other than Qwest's statements that the chances of blocking could be decreased, we could find no tangible evidence in the record that call blocking is actually an issue caused by the existing network configuration. Qwest's testimony was largely theoretical on this point. We cannot find based on the testimony that this arrangement would create any network efficiencies for any party other than Qwest.

47. That being said, there is no restriction against the parties making modifications to network arrangements based on mutual agreement.[69] We would expect the parties to negotiate these arrangements in good faith and not impose any burden which would translate to increased costs to the end user.

48. We are troubled by the statements in the record which indicate that Qwest forced companies to agree to network modifications through call blocking, impeding switch upgrades or threats to that effect.[70] The use of these self-help measures at the subscriber's expense is categorically contrary to public interest and is not permitted.

C. Recovery of Costs for Routing Calls

49. No party in this proceeding has asked the Commission to engage in a cost determination or rate-setting analysis. Rather, the Commission is being asked to determine whether Qwest can impose transit rates upon the Rural Companies for this type of traffic, and if so, how Qwest should go about establishing a transit rate.[71]

50. Qwest argued that outgoing calls that originate in the Rural Companies' territory and transit Qwest's network bound for termination to a CLEC or WSP customer should be subject to a transit charge. Qwest has imposed or attempted to impose on the Rural Companies a usage sensitive transit charge which is $.0045 per minute of use (MOU). Qwest argued that currently CLECs and WSPs pay a transit charge when their customers originate a call that transits Qwest's network and is delivered to the Rural Companies for termination to their customers. The transit charge in that instance is lower than

[69] Mr. Watkins stated the rural companies would be willing to discuss routing and trunking changes with Qwest in a negotiation process.
[70] *See* Hrg. Trans. 78-82.
[71] *See* Issue No. 2 ¶ 6 *supra*.

the charge Qwest seeks to impose on the Rural Companies.[72] Qwest asserts that the Commission lacks jurisdiction to set or review its transit rates.[73]

51. In addition, Qwest argued that it provides the Rural Companies a service when it transits calls from the Rural Companies' customers to CLECs and WSPs and they should be compensated for that service.[74] Qwest also argued that traditional reciprocal compensation principles should be applied in this case. Qwest asserts that those principles burden the "cost causer" or "calling party network pays" principle where the originating carriers' customers with the costs of completing the call.[75]

52. In the alternative, Qwest stated, the Rural Companies have the option of requiring CLECs and WSPs to directly connect with their network, thus bypassing Qwest's network entirely.[76] Qwest noted that Mr. Watkins' testimony confirmed that direct trunking was an alternative available to the Rural Companies.

53. The Rural Companies argued they should bear no responsibility for costs beyond delivering their outgoing traffic to Qwest at the existing meet points. The Rural Companies' position is that their compensation and network responsibilities should not change regardless of how Qwest performs transit service functions for Qwest's competitors. The Rural Companies also argue their costs and obligations should not depend on whether an EAS call is destined for a Qwest end user or an end user of a Qwest competitor in the same EAS exchanges.

54. The Rural Companies disagreed with Qwest's cost causer analysis; and while they did not disagree Qwest provides a service, the Rural Companies argued Qwest provides a service to the CLECs and WSPs not to the Rural Companies. The Rural Companies further argued that the calling party network pays concept does not support Qwest's attempt to shift the Rural Companies' financial responsibility for transport beyond their respective networks.[77] Accordingly,

---

[72] *See* Hrg. Trans. 204.
[73] *See* Qwest Corporation's Proposed Order at 7.
[74] *See* Hrg. Trans. 162.
[75] *See* Qwest Corporation's Proposed Order at 6; *see also* Qwest Corporation's Brief at 1-2.
[76] *See* Exhibit 33 at 8; Hrg. Trans. 222, 223.
[77] *See* Rural Companies' Surreply Comments at 4.

Qwest should seek cost recovery from the CLECs and WSPs for transiting calls on Qwest's side of the meet point.

55. In response to Qwest's alternative argument, the Rural Companies reply that they cannot simply force WSPs or CLECs into a direct connection agreement. The Rural Companies seek an Order from the Commission establishing a framework for carriers where traffic levels make direct connection a more efficient network alternative. A discussion of the Rural Companies' request is set forth more fully below.

56. Finally, the Rural Companies argue the transit rate sought by Qwest in Section 259 agreements cannot stand as such agreements were not the product of fair negotiations. Rather, the Rural Companies were faced with a decision to delay switch upgrades or the blocking of their customer's calls or execute a Section 259 agreement with the $0.0045/MOU transit rate.

57. Based on the facts in the record and legal arguments presented, the Commission finds that Qwest improperly imposed or sought to impose transit costs upon the Rural Companies. Section 259 agreements should not be used to establish transit rates for EAS traffic.

58. In addition, the Commission finds traditional reciprocal compensation rules to be distinguishable. The "cost causer" or the "calling party network pays" principle is most commonly linked to the FCC's reciprocal compensation rules. In its post-hearing comments Qwest relies on the reciprocal compensation rules in support of its case and states the Rural Companies' position that it recover transit costs from the CLECS and WSPs runs afoul of these rules.[78] Qwest cites to 47 C.F.R. §§ 51.703(b) and 51.701(in the case of intraMTA wireless traffic) to support its theory. Section 51.703(b) provides,

> (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.
>
> (b) A LEC may not assess charges on any other telecommunications carrier for

[78] *See* Qwest Corporation's Brief at 2-3.

> telecommunications traffic that originates on the LEC's network.

59. Qwest also cites to the 8th Circuit Court of Appeals decision in *Alma Communs. Co. v. Mo. PSC*, 490 F.3d 619 (8th Cir. 2007)("*Alma*") to argue that reciprocal compensation mandates collection of transport charges from the carrier originating a local call.

60. The Commission disagrees with Qwest's analysis and finds the decision in *Alma* is distinguishable. In *Alma*, the Court discussed carriers' obligations to establish reciprocal compensation arrangements to comply with the duty in 47 U.S.C. § 251(b). The question presented in this case is not whether the RLECs have an obligation under § 251(b).[79] Rather, the question presented is whether the Rural Companies have an obligation to pay Qwest a transit rate above and beyond the EAS rates and reciprocal compensation arrangements already in place.

61. Reciprocal compensation is defined as an arrangement between *two carriers* where each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.[80]

62. In addition, the FCC has distinguished the application of reciprocal compensation rules from circumstances such as this one where there is a third party transiting carrier involved.[81] In the *Intercarrier Compensation Further NPRM*, the FCC stated, "The reciprocal compensation provisions of the Act address the exchange of traffic between two carriers, but does not explicitly address the intercarrier compensation to be paid to a transit provider for carrying section 251(b)(5) traffic."[82]

63. The FCC defines transiting as a situation where two carriers that are not directly interconnected exchange non-

---

[79] At least, in this record, it would appear that Qwest denies that the transiting service at issue in this case is a § 251 service. Rather, Qwest argues it is providing a § 259 infrastructure sharing service. *See* Exhibit 32 at 8. On the other hand, if Qwest were to consider this a section 251 service, then certain pricing standards would apply.
[80] *See* 47 C.F.R. § 51.701(e).
[81] *See Intercarrier Compensation Further NPRM*, CC Docket No. 01-92, FCC 05-33 (March 3, 2005) ¶ 132.
[82] *Intercarrier Compensation Further NPRM* ¶ 132.

access traffic by routing the traffic through an intermediary carrier's network.[83] The FCC further explained that reciprocal compensation rules do not directly address the intercarrier compensation to be paid to a transit service provider and how a bill-and-keep regime might affect such calls. The FCC sought comment on whether carriers have an obligation to provide transit service, how they should be compensated and whether regulation should be applied to encourage direct connection when traffic levels warrant it.[84] Accordingly, we find the rules identified by Qwest and the theory of "calling party network pays", is inapplicable to the EAS transit traffic at issue here.

64. Recently, two state commissions in Qwest's service territory had the occasion to review these issues in complaint proceedings. In 2008, the Minnesota Public Utilities Commission considered a complaint between Frontier Communications of Minnesota, Inc. and Citizens Telecommunications Company of Minnesota, LLC (collectively Frontier) and Qwest Corporation.[85] The MPUC found it had jurisdiction over the subject matter and directed Qwest to handle local EAS transit traffic without an additional charge.[86] In terms of the EAS arrangement, the MPUC found,

> Qwest's attempt to revise its existing compensation arrangement and impose an additional compensation arrangement for performing the tandem switching or transiting function of local EAS traffic without the agreement of Frontier, or Commission review and approval violates Minn. Stat. § 237.12, subd. 1, which provides:
>
> In case of failure of the telephone companies concerned to allow or agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, application may be made to the commission for an order requiring such connection and fixing the compensation, terms and conditions thereof, and if after investigation and hearing the commission shall find that such physical connections will not result in

[83] *See id.* ¶ 120.
[84] *See Intercarrier Compensation Further NPRM* ¶¶ 125-133.
[85] *See Minnesota Order*.
[86] *See id.* at 12.

> irreparable injury to such telephone properties, the commission shall by order direct that such connections be made, and prescribe reasonable conditions and compensation therefore and for the joint use thereof, and by whom the expense of making and maintaining such connection or connections shall be paid.[87]

65. In Oregon, Citizens Telecommunications Company of Oregon d/b/a Frontier Communications of Oregon (Frontier) brought a complaint against Qwest Corporation for charging Frontier for transiting local and local EAS traffic at a rate of $.0045 per minute.[88] The Oregon Public Utility Commission (PUC) found that a Section 259 agreement was an improper mechanism since the traffic involved was intrastate in nature.[89] The Oregon PUC found Qwest violated state statutes by charging Frontier for transiting local and EAS traffic without a Commission approved tariff or agreement.

66. Qwest asked the Commission to consider the Florida Public Service Commission (PSC) decision, *In re: Joint petition by TDS Telecom d/b/a TDS Telecom et al.*, Docket No. 050119-TP, Order No. PSC-06-0776-FOF-TP (September 18, 2006) as persuasive authority. In that case, a number of small LECs objected to BellSouth's transit traffic tariff. The BellSouth transit tariff applied to carriers which had not negotiated terms and conditions for the provision of transit service. In that Order, the Florida PSC found the BellSouth transit tariff should be rendered invalid and cancelled 71 days after the date the Order was issued. However, the Florida PSC also found using the calling party network pays analysis that the originating carrier should enter into a transit arrangement with BellSouth and should compensate BellSouth for providing the transit service. The Florida PSC declined to set the rates for transit service and required the parties to negotiate appropriate rates. We have reviewed the Florida PSC case Qwest used to support its argument that the Rural Companies should pay transit to Qwest for completing calls on third party carrier networks; however, we are not persuaded to adopt this approach.[90]

---

[87] *Minnesota Order* at 11.

[88] *See Oregon Order* at 1.

[89] *See id.* at 5.

[90] We note that there are other state commissions that have reached the opposite conclusion. *See, e.g., In re Ellerbe Telephone Company*, Docket Nos. P-21, Sub 71, P-35, Sub 107, P-61, Sub 95, 2008 WL 5456092 (N.C.U.C.

67. Based on the record and arguments presented by the parties, the Commission is of the opinion and finds the method by which Qwest attempted to impose transit traffic rates was inappropriate. We agree with the Minnesota and Oregon Commissions which found that Section 259 infrastructure sharing agreements are not the proper vehicle for resolution of EAS traffic arrangements. There is nothing in the record or in text of Section 259 which would demonstrate the transit traffic involved here falls within the scope of Section 259. Rather, we believe, as in the other cases, Qwest used Section 259 in an attempt to remove state jurisdiction over the subject matter.[91] Accordingly, we find that Section 259 agreements should not be used to establish transit rates for EAS traffic at issue here.

68. Qwest pointed to no specific federal rule which conferred a right of recovery from the Rural Companies in this instance. This is mainly because the FCC has not established clear recovery obligations for transit traffic other than to distinguish it from traditional reciprocal compensation arrangements and to ask whether it needs to establish rules.

69. However, it is clear that the traffic involved in this case is local traffic. As the decisions by the Minnesota and Oregon Commissions make apparent, states traditionally have jurisdiction over the intrastate traffic arrangements at issue, particularly over EAS traffic arrangements. A consistent theme in all of these cases is that network arrangements and responsibilities should be mutually negotiated. Carriers are required to negotiate EAS traffic arrangements in good faith. If carriers cannot reach agreement, then such carriers can petition state commissions to resolve disputes over local traffic arrangements.

70. We are persuaded by the decisions of state commissions that have found carriers' financial obligations

---

2008)(Finding the RLECs were not responsible for payment of transit charges assessed by third parties when CMRS providers used third party provider's network facilities to indirectly interconnect with the RLECs and declining to require the RLECs to pay the transiting provider directly for costs associated with terminating traffic to the CMRS providers' networks.)

[91] *See Oregon Order* at 5; *see also Minnesota Order* at 10.

are to deliver traffic to the agreed upon meet point.[92] That notwithstanding, nothing precludes the Rural Companies and Qwest from mutually altering their traditional compensation agreements to account for costs associated with the traffic on the network as long as the agreements are based upon a reasoned application of network responsibilities.

D. Terms and Conditions of Traffic Exchange

71. The Rural Companies argued that the Commission should establish a threshold by which third party carriers, the CLECS and wireless carriers, must directly interconnect with Rural Companies rather than using shared transport via an indirect interconnection through Qwest. In support of this, the Rural Companies cite a New York Public Service Commission (NYPSC) decision which established the use of a DS1 threshold with respect to EAS traffic.[93] In that decision, the NYPSC found that "it would be inefficient for [CLECs] to physically interconnect with Independents for the exchange of relatively small amounts of traffic" however, "if call volumes between an Independent and a CLEC go beyond the small volume level, the CLEC should be responsible for establishing direct trunking."[94] In addition, the NYPSC found "parties may, of course, decide a different level is appropriate an in a negotiated agreement."[95]

72. We do not disagree with the NYPSC's position as a guiding principle, and we would also encourage companies to negotiate agreements which promote efficient interconnection. However, we also recognize our responsibility to implement the provisions of the Telecommunications Act of 1996 in a way

---

[92] See e.g., *In the Matter of a Petition for Arbitration by Sprint Commc'ns Co. L.P. v. CenturyTel of Mountain Home, Inc.,* Docket No. 08-031-U (Ark. Pub. Serv. Comm'n July 18, 2008) at 4-6 (finding network responsibilities of the incumbent carrier ended at the network boundary); *See also In re Ellerbe Telephone Company*, Docket Nos. P-21, Sub 71, P-35, Sub 107, P-61, Sub 95, 2008 WL 5456092 (N.C.U.C. 2008)(Finding the RLECs were not responsible for payment of transit charges assessed by third parties when CMRS providers used third party provider's network facilities to indirectly interconnect with the RLECs and declining to require the RLECs to pay the transiting provider directly for costs associated with terminating traffic to the CMRS providers' networks).

[93] *See Proceeding on Motion of the Commission to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies, Order Establishing Requirements For the Exchange of Local Traffic* (December 22, 2000)("NYPSC Order").

[94] NYPSC Order at 6-7.

[95] *Id.*

that encourages competition. Section 251 of the Act requires telecommunications carriers to permit both direct and indirect interconnection at any technically feasible point.

73. In balance, we find that parties should be in a position to negotiate interconnection terms which are most technically and economically advantageous. If the negotiating parties cannot agree or if a carrier is denied the ability to establish an efficient interconnection framework, then the Commission at that time, may be called upon to arbitrate a particular arrangement on a case-by-case basis.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the foregoing Opinion and Findings are hereby adopted.

MADE AND ENTERED in Lincoln, Nebraska, on this 3rd day of August 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

that encourages competition. Section 251 of the Act requires telecommunications carriers to permit both direct and indirect interconnection at any technically feasible point.

73. In balance, we find that parties should be in a position to negotiate interconnection terms which are most technically and economically advantageous. If the negotiating parties cannot agree or if a carrier is denied the ability to establish an efficient interconnection framework, then the Commission at that time, may be called upon to arbitrate a particular arrangement on a case-by-case basis.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the foregoing Opinion and Findings are hereby adopted.

MADE AND ENTERED in Lincoln, Nebraska, on this 3rd day of August 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

//s// Frank E. Landis
//s// Gerald L. Vap