

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-4347
of Nebraska Public Power)
District, Columbus, seeking)
authority to lease dark fiber to) ORDER
Pinpoint Communications, Inc.,)
Cambridge.) Entered: May 17, 2011

BY THE COMMISSION:

By application filed April 4, 2011, Nebraska Public Power District ("NPPD" or "Applicant"), Columbus, Nebraska, seeks authority to lease dark fiber to Pinpoint Communications, Inc. ("Pinpoint"), Cambridge, Nebraska.

Notice of the application was published in The Daily Record, Omaha, Nebraska, on April 7, 2011. No protests were filed; therefore, this application is processed pursuant to the Commission's Rule of Modified Procedure.

E V I D E N C E

Pursuant to the application filed with the Commission, NPPD proposes to lease two dark fibers that are situated between McCook and North Platte to Pinpoint. Pinpoint and NPPD agreed to a lease price of \$425 per mile per fiber, for a total of \$59,032.50 per year. The parties reached what they felt to be a fair rate based upon the fact that it met the needs of both parties and based upon comparison to other dark fiber lease rates.

According to the terms of the lease, NPPD will own the fiber and will operate and maintain the fiber that is the subject of this proposed lease. The proposed lease is for a term of one year, renewable for additional one-year terms. The lease will be automatically renewed each year unless terminated by either party by 90 days written notice.

The Applicant has installed 1,115 miles of fiber optic cable throughout the state of Nebraska in and around various communities including: South Sioux City, Norfolk, Columbus, Seward, Lincoln, Beatrice, McCook, North Platte, Grand Island, Kearney, Holdrege and Hastings among others. NPPD has installed 24 fibers for a total of 26,760 fiber miles.

The application included financial documents regarding the actual costs of NPPD's fiber optic system, including installation and debt service associated with the fiber. The documents included the costs of transmission structures used to support the fiber optic cable, direct burial costs for fiber

that is underground, and costs of easements, steel/concrete poles and wood pole structures. All documents were attached to the application as Schedule 1 with Attachments A, B and C.

Regarding cost of debt, NPPD determined its debt cost was 4.50 percent over a 20-year payback period.

The proposed lease, which is part of application, is silent on when payments to the Nebraska Internet Enhancement Fund will be made, however, Pinpoint will make an annual payment to NPPD for access to the fiber.

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

Leasing of dark fiber facilities owned by an agency or political subdivision of the state is governed by *Neb. Rev. Stat.* §§ 86-2301 to 86-2305 (Reissue of 2008) and the Nebraska Public Service Commission's ("Commission") Rules and Regulations, 291 NAC Ch. 5, Sec. 007 (2002). Dark fiber is any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal.¹

Pursuant to statute, any agency or political subdivision of the state may lease its dark fiber if certain conditions are met.² Each condition set forth in the statute and the Commission's findings with regard to each condition are delineated below.

Certificated Carrier.

Section 86-2304(1) requires that the lessee be a certificated telecommunications common carrier or a permitted telecommunications carrier pursuant to *Neb. Rev. Stat.* § 75-604 or an Internet service provider. Pinpoint is a telecommunications carrier certificated by the Nebraska Public Service Commission pursuant to § 75-604.

Lease Price.

Section 86-2304(2)(a) provides:

The commission shall not approve any lease price which is less than the market rate for leasing such fiber as determined by the commission. The market rate is the price associated with similar unbundled network elements that may be available

¹ *Neb. Rev. Stat.* § 86-2301 (Reissue of 2008).

² *Neb. Rev. Stat.* § 86-2304 (Reissue of 2008).

from the incumbent local exchange carrier or the price of any other private entity leasing dark fiber optic facilities serving the same or similar territory where the leased equipment is located.³

Also,

When conducting a competitive price comparison, the commission in its discretion shall use rate schedules, interconnection agreements, or other documents within its regulatory oversight and shall gather other market rate information as deemed necessary.⁴

Commission staff used schedules, agreements and gathered information regarding dark fiber lease rates. Based on the information the market price of dark fiber is dependent upon many different factors including segment mileage, fiber count, availability, and whether the fiber is located in rural or urban areas. The Commission finds that the market rate for dark fiber is within a range between \$300 and \$500, per fiber, per year for shorter, rural fiber routes. The Commission further finds that NPPD's proposed lease price of \$425 per fiber, per mile, per year, is within this range and is not less than the market rate.

Fiber Maintenance.

Section 86-2304(2)(b) provides that the Commission shall not approve any lease price unless the lease requires that the agency or political subdivision be solely responsible for the maintenance of its dark fiber and that the lessee be responsible, on a pro rata basis, for any such maintenance costs.

The lease, filed as part of the application, state "[NPPD] shall be solely responsible for the maintenance of Lessee's dark fibers and the Lessee shall be responsible, on a pro-rata basis, for the cost of such maintenance." The Commission finds the lease language complies with the requirement that Pinpoint be responsible, on a pro rata basis, for maintenance costs.

Costs and Profit Distribution.

Section 86-2304(2)(c) provides:

³ Neb. Rev. Stat. § 86-2304(2)(a) (Reissue of 2008).

⁴ Id.

The commission shall not approve any lease unless fifty percent of the profit earned by the agency or political subdivision under the lease is remitted to the Nebraska Internet Enhancement Fund. Profit earned by the agency or political subdivision is the lease price less the cost of infrastructure overbuilding. Before entering into a lease, each agency or political subdivision shall file a request with the commission to determine the cost of overbuilding its fiber optic infrastructure. For purposes of this subdivision, cost of infrastructure overbuilding means the cost of each leased optic fiber, including the cost, on a pro rata basis, associated with the agency's or political subdivision's installation of such fiber....⁵

In its application, NPPD states that its cost of fiber optic infrastructure is \$2,206,462, or \$82.45 per mile. The Commission finds that NPPD's cost of infrastructure overbuilding is reasonable and should be approved.

Furthermore, the Commission finds that the total profit under the lease is \$47,581. Fifty percent of this figure is \$23,790.50, and must be remitted to the Nebraska Internet Enhancement Fund. Pursuant to Rule 007.09B3, profits must be remitted within 60 days of receipt of payment pursuant to a lease.⁶

Interconnection Agreement.

Section 86-2304(3) requires that any interconnection agreement required to provision service under the lease be approved by the Commission.⁷ No interconnection agreement is required by the arrangement between NPPD and Pinpoint, therefore, no such interconnection agreement needs to be approved by the Commission.

Fiber Activation.

Finally, Section 86-2304(4) requires the lessee to make every reasonable effort to activate the maximum amount of the leased fiber possible within one year after entering into the lease, unless good cause is shown. Furthermore, Section 007.11A of the Commission's Rules and Regulations regarding dark fiber

⁵ Neb. Rev. Stat. § 86-2304(2)(c) (Reissue of 2008).

⁶ See 291 NAC 5, Sec 007.09B3 (2002).

⁷ Neb. Rev. Stat. § 86-2304(3) (Reissue of 2008).

leasing provides that "[t]he lessee shall report to the Commission its efforts to activate dark fiber within one year of the Commission's approval of a lease price and profit distribution."⁸

The Commission finds that the lessee, Pinpoint, should report to the Commission on or before November 17, 2011, detailing its efforts to activate both strands of dark fiber proposed to be leased under the arrangement that is the subject of this application. If Pinpoint reports that all such fiber is not activated, Pinpoint should report to the Commission again on or before May 17, 2012.

C O N C L U S I O N

In conclusion, the Commission finds that NPPD's proposed lease rate of \$425 per fiber, per mile, per year, should be approved for the lease of dark fiber from McCook to North Platte to Pinpoint. The Commission finds that NPPD's cost of infrastructure overbuilding is \$82.45 per mile, and that the profit distribution to the Nebraska Internet Enhancement Fund should be \$23,970.50 per year.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the dark fiber lease rate and profit distribution calculation proposed by NPPD be, and is hereby, approved.

IT IS FURTHER ORDERED that the lessee shall report to the Commission, on or before November 17, 2011, detailing its efforts to activate dark fiber leased pursuant to the agreement that is the subject of this application.

⁸ See 291 NAC 5, Sec 007.11A (2002).

IT IS FURTHER ORDERED that if the lessee reports that all fiber has not been activated by November 17, 2011, lessee shall report to the Commission again on May 7, 2012, detailing its efforts to activate dark fiber leased pursuant to the agreement that is the subject of this application.

MADE AND ENTERED at Lincoln, Nebraska, this 17th day of May, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

Application No. C-4347


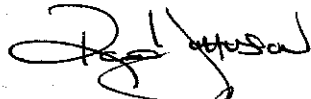
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IT IS FURTHER ORDERED that if the lessee reports that all fiber has not been activated by November 17, 2011, lessee shall report to the Commission again on May 7, 2012, detailing its efforts to activate dark fiber leased pursuant to the agreement that is the subject of this application.

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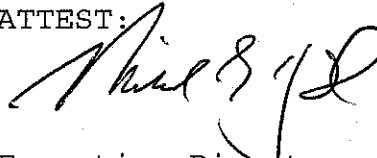


//s//Tim Schram



Chairman

ATTEST:



Executive Director