

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application     ) Application No. C-4717  
of Nebraska Public Power             )  
District, Columbus, seeking         )  
authority to enter a second         ) ORDER  
lease agreement of dark fiber to    )  
Pinpoint Communications, Inc.,     )  
Cambridge.                            ) Entered: November 13, 2014

BY THE COMMISSION:

By application filed September 25, 2014, Nebraska Public Power District ("NPPD" or "Applicant"), Columbus, Nebraska, seeks authority to enter a second lease agreement for dark fiber with Pinpoint Communications, Inc. ("Pinpoint"), of Cambridge, Nebraska.

Notice of the application was published in The Daily Record, Omaha, Nebraska, on September 30, 2014. 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 Gothenburg and North Platte to Pinpoint. Pinpoint and NPPD have a current lease agreement that was approved by the Commission on May 17, 2011, in Docket C-4347.<sup>1</sup> The proposed lease agreement contains the same terms and conditions as the current approved lease agreement between Pinpoint and NPPD, including the lease price of \$425 per mile per fiber, for a total of \$37,961 per year. The parties agreed to the same price, terms and conditions as the approved lease agreement and agree the price remains fair and meets the needs of both parties.

The terms of the second lease agreement, as before, state NPPD will own the fiber and will operate and maintain the fiber that is the subject of the proposed lease. As with the first lease, the second proposed lease is for a term of one year, renewable for additional one-year terms. Both leases will be automatically renewed each year unless terminated by either party by 90 days written notice.

The Applicant has installed miles of fiber optic cable throughout the State of Nebraska in and around various

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<sup>1</sup> See Docket C-4347, *In the Matter of the Application of Nebraska Public Power District, Columbus, seeking authority to lease dark fiber to Pinpoint Communications, Inc., Cambridge*, Order (May 17, 2011).

communities including: South Sioux City, Norfolk, Columbus, Seward, Lincoln, Beatrice, McCook, North Platte, Gothenburg, Grand Island, Kearney, Holdrege and Hastings among others.

The Applicant states the second proposed lease agreement mirrors the first approved lease agreement and contains the same financial implications, costs and debt structure and is therefore reasonable.

#### 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.<sup>2</sup>

Pursuant to statute, any agency or political subdivision of the state may lease its dark fiber if certain conditions are met.<sup>3</sup>

#### 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 from the incumbent local exchange carrier or the price of any other private entity leasing dark fiber optic facilities serving the same or

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<sup>2</sup> *Neb. Rev. Stat. § 86-2301* (Reissue of 2008).

<sup>3</sup> *Neb. Rev. Stat. § 86-2304* (Reissue of 2008).

similar territory where the leased equipment is located.<sup>4</sup>

Commission staff used schedules, agreements and gathered information regarding the lease rate in effect in the first lease which is identical to the lease rate proposed in the second lease for which the Applicant seeks approval. The Commission previously found that NPPD's proposed lease price of \$425 per fiber, per mile, per year, was within a reasonable range and not less than the market rate. The Commission again finds the proposed lease price of \$425 per fiber, per mile, per year, to be reasonable and 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 second lease includes the provision that 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:

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,

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<sup>4</sup> Neb. Rev. Stat. § 86-2304(2)(a) (Reissue of 2008).

associated with the agency's or political subdivision's installation of such fiber....<sup>5</sup>

As with its previous application, NPPD's cost of fiber optic infrastructure is \$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 \$30,597. Fifty percent of this figure is \$15,298.50, 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.<sup>6</sup>

#### Interconnection Agreement.

Section 86-2304(3) requires that any interconnection agreement required to provision service under the lease be approved by the Commission.<sup>7</sup> 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 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."<sup>8</sup>

The Commission finds that the lessee, Pinpoint, should report to the Commission on or before May 13, 2015, 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 November 13, 2015.

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

<sup>6</sup> See 291 NAC 5, Sec 007.09B3 (2002).

<sup>7</sup> Neb. Rev. Stat. § 86-2304(3) (Reissue of 2008).

<sup>8</sup> See 291 NAC 5, Sec 007.11A (2002).

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 second lease of dark fiber between Gothenburg and 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 \$15,298.50 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 May 13, 2015, detailing its efforts to activate dark fiber leased pursuant to the agreement that is the subject of this application.

IT IS FURTHER ORDERED that if the lessee reports that all fiber has not been activated by May 13, 2015, lessee shall report to the Commission again on November 13, 2015, 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 13<sup>th</sup> day of November, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

## C O N C L U S I O N

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MADE AND ENTERED at Lincoln, Nebraska, this 13<sup>th</sup> day of November, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Ann Doyle*  
*Tim Schram*  
*Paul Foster*  
*Gerald Llop*

*James J. Landis*  
Chairman

ATTEST:

*Steve Meradith*  
Executive Director

//s//Frank E. Landis