BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Cox Nebraska Telcom, LLC and Illuminet Complainants, v. Qwest Communications, Inc. Respondent.	)	Formal Complaint No. FC-1296
ALLTEL Nebraska, Inc., ALLTEL Communications of Nebraska, Inc. and Illuminet, Inc., Complainants, v. Qwest Corporation, Respondent.	)	Formal Complaint No. FC-1297
	)	ORDER GRANTING RELIEF
	)	Entered: December 17, 2002

APPEARANCES:

For the Complainants:

Illuminet, Inc. Inc.
Thomas J. Moorman
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington D.C. 20037

Cox Nebraska Telcom, LLC
Jon C. Bruning
Bruning Law Office
2425 S 144th Ave., Ste. 201
Omaha, NE 68144

ALLTEL Nebraska, Inc. and
ALLTEL Communications of Nebraska, Inc.
Paul M. Schudel
Woods & Aitken LLC
301 South 13th Street, Suite 500
Lincoln, NE 68508

For the Respondent Qwest Corporation:

Jill A. Vinjamuri
Kutak Rock LLP
1650 Farnam Street
Suite 4700
Omaha, NE 68102-2186

Stephanie Boyett-Colgan
Qwest Corporation
1801 California Street,
Denver, CO 80202

For: The Nebraska Public Service Commission

Chris A. Post
300 The Atrium
1200 N Street
Lincoln, NE 68508

BY THE COMMISSION:

B A C K G R O U N D

Introduction

1. The Nebraska Public Service Commission (Commission) has before it for resolution two formal complaints, combined for record purposes and resolution. As discussed in more detail below, the Complainants are Cox Nebraska Telcom, LLC (Cox); Illuminet, Inc. (Illuminet); ALLTEL Nebraska, Inc.; and ALLTEL Communications of Nebraska, Inc. (together ALLTEL).

2. Generally, the Complainants allege that Qwest Corporation (Qwest) has improperly implemented the restructuring of Qwest's intrastate Signaling System No. 7 (SS7) services pursuant to a revision in Qwest's Nebraska Access Catalog that became effective June 6, 2001 (the Access Catalog). More specifically, the Complainants allege that Qwest, in its effort to establish separate charges for transport of SS7 signaling (which the parties have referred to as efforts to "unbundle" SS7 message charges, i.e., SS7 charges have been unbundled from the local switching and tandem switching rate elements associated with exchange access traffic), has implemented its Access Catalog structure in a manner that assesses SS7 message charges for all end-user traffic regardless of whether that end-user traffic is properly subject to the access charges. Accordingly, the Complainants requested this Commission to order Qwest to refund any improper charges assessed by Qwest under its unbundled SS7 rate structure, and that Qwest be ordered to withdraw this unbundled SS7 message rate structure unless and until Qwest properly implements it. Proper implementation of the unbundled SS7 rate structure at issue, according to the Complainants, would require Qwest to disaggregate billing of the various SS7 messages that it delivers and receives, and thereafter, to implement a billing mechanism (including bill detail) to ensure that the Access Catalog's SS7 message rates

are assessed only upon those SS7 messages associated with the intrastate end-user toll calls for which access charges are properly applied pursuant to the Access Catalog.

3. Qwest denies the allegations raised by the Complainants. In doing so, Qwest also denies that any relief is warranted.

4. For the reasons stated herein, we grant the relief Complainants request. As more fully described below, we direct Qwest to withdraw the Access Catalog terms that are at issue in this proceeding within five business days of the entry of this order, and within 10 days of this order, refund or credit all applicable intrastate SS7 message charges billed to date to the Complainants that are in dispute. Until such time as it can properly implement an intrastate unbundled SS7 message rate structure, Qwest shall not file any other Access Catalog revisions regarding SS7 rate structures or rates. To ensure this specific directive is achieved, and as more fully explained herein, we also direct Qwest to work with the Complainants in order to coordinate Qwest's election between the two options provided herein as to how it elects to implement properly its intrastate SS7 message rate structure within the Access Catalog.

Procedural Summary

5. On March 5, 2002, Cox and Illuminet initiated Formal Complaint No. FC-1296 by the filing of a formal complaint with the Commission. On March 26, 2002, ALLTEL initiated Formal Complaint No. FC-1297 by filing of a formal complaint with the Commission.

6. The Commission held a pre-hearing conference on May 14, 2002, after due notice to the interested parties. On May 22, 2002, the Commission entered a pre-hearing conference order consolidating these complaints for hearing and disposition. In addition, such order established a schedule for this matter, set hearing procedures and established a briefing schedule.

7. On May 24, 2002, ALLTEL and Illuminet filed an Amended Formal Complaint in Formal Complaint No. FC-1297. Qwest filed its Amended Answer in response thereto on June 5, 2002. Previously, Qwest had filed its Answer to the Formal Complaint in Formal Complaint No. FC-1296 on March 20, 2002.

8. On June 14, 2002, the Complainants jointly filed a Motion to Cease and Desist, requesting that the Commission enter an order requiring Qwest to discontinue any and all activity associated with its threats to suspend all service order activity and/or disconnect Complainants' connections to Qwest's SS7 signaling network. On July 12, 2002, and on July 15, 2002, respectively, the Complainants and Qwest filed separate Motions for Protective Order. The Commission held oral arguments relating to the aforementioned motions on July 22, 2002, and on July 23, 2002, the Commission entered Progression Order No. 1 in these dockets granting Complainants' Motion to Cease and Desist, and granting Complainants' Motion for Protective Order with modifications. In addition, the Commission modified the schedule established in the prehearing conference order. Subsequently, on September 11, 2002, pursuant to the agreement of the parties, the Commission entered Progression Order No. 2 that further revised the schedule pertaining to these dockets.

9. The public hearing on these dockets was held on October 22 and 23, 2002. At the outset of the public hearing in these dockets, legal counsel for ALLTEL made a motion to exclude evidence that might be offered by Qwest on the issue of the revenue neutrality of Qwest's unbundling of its SS7 services pursuant to the Access Catalog amendments that became effective June 6, 2001 (Exhibit 12). In support of such motion, ALLTEL offered Exhibits 1 through 11 which were received into evidence by the Commission and which described ALLTEL's efforts to obtain complete and timely responses to ALLTEL Discovery Request Nos. 2, 3, 6 and 41, among other discovery requests. Such discovery requests sought demand calculations and rate and revenue reduction data in connection with Qwest's unbundling of its SS7 services.[1] After

[1] The Commission notes that in Qwest's Supplemental Answers and Objections (Exhibit 7), "Response to Interrogatory No. 5" on page 5 thereof, Qwest states: "Confidential attachment A [Exhibit 2] is the documents [sic] Qwest used to reduce its access revenues and contains these demand calculations and the rate and revenue reductions. No other documents were used in this calculation." We further note that in the Surrebuttal Testimony of Scott A. McIntyre filed with the Commission on October 15, 2002, Mr. McIntyre states at page 18 " . . . Qwest disclosed to the Complainants all demand data regarding SS7 in its response to ALLTEL Request No. 41." However, at 4:14 p.m. on October 21, 2002, the afternoon before this hearing began, Qwest transmitted a facsimile to Complainants containing demand and revenue data (Exhibit 10) without any explanation for the untimely submission of this data.

a brief recess of the October 22 hearing, the Commission granted the motion made by ALLTEL, directing that the record be expunged of any evidence that Qwest would propose offering regarding whether the unbundled SS7 rate structure filed in the Access Catalog was revenue neutral to Qwest. We now affirm that ruling and provide our reasoning for it.

10. In granting the relief requested by ALLTEL, the Commission is mindful of the guidance from the Supreme Court of Nebraska that it "will not permit litigants to impede an opponent's legitimate discovery efforts through unfounded recalcitrance," and further that "playing games with the court will not be tolerated." *Stanko v. Chaloupka*, 239 Neb. 101, 103, 474 N.W.2d 470 (1991). Similarly, in *Schindler v. Walker*, 256 Neb. 767, 778, 592 N.W.2d 912 (1999) the Supreme Court stated that "[w]hile there is no applicable rule or statute governing a trial court's exclusion of evidence, a trial court's exclusion of evidence can be sustained as an exercise of a trial court's inherent powers."

11. As the parties to this proceeding are aware, Commission Rule of Procedure 016.11 makes the Nebraska Supreme Court's Rules of Discovery for Civil Cases applicable to proceedings before this Commission. Supreme Court Rule 26(e)(2) requires a party to seasonably amend a prior discovery response in certain circumstances as enumerated therein. Supreme Court Rule 37(b)(2)(C) provides for the imposition of sanctions in certain circumstances. In light of the directives and discretion granted triers of fact by the Supreme Court, we find that, based on the specific circumstances presented to us, Qwest failed to comply with Rule 26(e)(2), and that the parties' resolution of the discovery dispute concerning the ALLTEL Discovery Requests in question pursuant to the letter to the Hearing Officer (Exhibit 4) brings this matter within the ambit of Rule 37(b)(2)(C). The record demonstrates Qwest's failure to fulfill its obligations pursuant to applicable Commission rules. Accordingly, any evidence that might have been offered by Qwest on the issue of the revenue neutrality of Qwest's unbundling of its SS7 should be and hereby is excluded from the record that the Commission considers in deciding the merits of these Complaints.

12. We also had three additional procedural matters left unresolved at the hearing. The first matter concerns whether the Commission should entertain evidence by Qwest with respect

to the proper interpretation of its interconnection agreement (ICA) with ALLTEL. As indicated in the transcript of this matter, ALLTEL objected to this evidence provided by Qwest witness McIntyre on the basis of the lack of foundation.[2] The Commission overrules the objection. While the Commission acknowledges that such testimony appears to be hearsay and speculative in nature, no party invoked the rules of evidence applicable in district court. Furthermore, the Commission has historically accepted such testimony from individuals with general corporate knowledge and oversight of the circumstances being described in an effort to eliminate the need for a multitude of witnesses. Had ALLTEL, or for that matter any other party, chosen to part from the Commission's normal practice in allowing such testimony, they should have invoked the rules of evidence pursuant to *Neb. Rev. Stat.* § 84-914. Therefore, while the Commission recognizes ALLTEL's concern regarding the inability for ALLTEL to cross-examine those individuals from Qwest actively involved in the ICA drafting and negotiation process, the Commission will admit the testimony but give it the appropriate weight it deserves.

13. The second matter addresses a dispute regarding Qwest's efforts to submit certain testimony and a cost study, labeled for identification purpose as Exhibits 37 and 38, purportedly demonstrating the costs of Local Interconnection Service ("LIS") trunks. In essence, the issue before the Commission is whether Qwest should be able to introduce this evidence at the hearing. Our Progression Order #1, page 2, made clear that all exhibits except for rebuttal exhibits were required to be exchanged by the parties at the time of filing pre-filed testimony. Thus, Qwest was on notice that it would be required to exchange any exhibits with the Complainants at the time it exchanged its pre-filed testimony. The record indicates it did not. The only additional explanation provided was that the proffer was to rebut ALLTEL witness Fuller's responses to cross-examination questions that purportedly indicated her belief regarding SS7 allocated costs in LIS trunks. As to this Qwest assertion, we have reviewed the transcript of her cross-examination and we can find no specific reference to support Qwest's alternative theory.[3] We also note that, if Qwest's proffer of Exhibits 37 and 38 was to rebut Ms. Fuller's responses, there has been no explanation as to why Qwest did not proffer

[2] Tr. 328:22-329:5.
[3] Tr. 162:3-220:14.

Exhibits 37 and 38 at the time of the questioning of Ms. Fuller, or at least to offer some indication at that time that Qwest believed it possessed evidence rebutting Ms. Fuller's response. Accordingly, to ensure the integrity of the Commission's processes and to ensure that parties can properly rely upon the procedural directives of the Commission, we find that Exhibits 37 and 38 will be excluded from the record in this proceeding.

14. The final procedural matter relates to Illuminet's October 31, 2002, request for acceptance of late-filed Exhibit 42. This request was made to correct inadvertent factual inaccuracies regarding Illuminet witness Florack's response to his recollection of a meeting he and others held with Qwest regarding issues similar to those raised in the Complaints. We note that no party has objected to this request, and we find that acceptance of this late-filed exhibit will ensure the integrity and accuracy of the record before us. Accordingly, Illuminet's Late-Filed Exhibit 42 will be accepted and made part of the record.

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

Commission Jurisdiction Over these Dockets

15. It is clear that the Commission's jurisdiction to resolve the issues raised in the Complaints is derived from the authority we have been granted by the Legislature.[4] Based on our governing statutes, we find that the procedures created and the authority specifically granted to the Commission by the Legislature to receive, hear and dispose of complaints by persons, including carriers, pursuant to Sections 75-131, 75-132, 75-132.01, 75-118.01, 75-119 and 86-803(7), confer jurisdiction on the Commission to adjudicate Complainants' property rights described in the Complaints in accordance with due process requirements of such statutes. We also find that this grant of jurisdiction and authority by the Legislature includes our ability to receive, hear and dispose of complaints such as are presented herein.

16. In *Neb. Rev. Stat.* Sec. 75-131 (Reissue 1996), the Legislature provides that "[a]ny person who complains of

[4] *Neb. Const.* Art. IV, Sec. 20 provides: "The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law."

anything done or omitted to be done by any common or contract carrier may request that the commission investigate and impose sanctions on such carrier by filing a petition which briefly states the facts constituting the complaint." *Neb. Rev. Stat.* Sec. 75-132 (Reissue 1996) directs that " . . . the commission shall convene a hearing on the matters complained of pursuant to its rules of procedure and shall give the parties written notice of the time and place for such hearing." Section 75-132 further directs that following such hearing, "the commission shall make such order with respect to the complaint as it deems just and reasonable." Rule 005 of the Commission Rules of Procedure sets forth the specific procedures governing the filing and disposition of formal complaints before the Commission.

17. Similar to the foregoing grant of authority, the Legislature, through *Neb. Rev. Stat.* Sec. 75-132.01 (2001 Supp.), specified that " . . . the commission shall have exclusive original jurisdiction over any action concerning a violation of any provision of (a) Section 75-109, 75-604, 75-609, 75-609.01, or 86-801 to 86-810 by a telecommunications company. . . ." To this end, we note that Complainants have asserted that Section 75-609(2) is a basis for the Commission's jurisdiction of these matters, and as discussed in further detail below, Section 75-109(2) is also relevant to the resolution of the disputes in these formal complaints.

18. In addition to the foregoing Legislative directives, *Neb. Rev. Stat.* Sec. 75-118.01 (Reissue 1996) provides in pertinent part that " . . . the commission shall have original exclusive jurisdiction to determine the . . . scope or meaning of a . . . tariff" and *Neb. Rev. Stat.* Sec. 75-119 (Reissue 1996) provides in pertinent part that " . . .[w]hen any common carrier . . .petitions the commission alleging that . . . an existing . . . rate is unreasonably high or low, unjust, or discriminatory, notice shall be given to the common carriers affected in accordance with the commission's rules for notice and hearing." We also note that Section 75-119 requires, that if the matter in question is disputed, that matter shall proceed to hearing and the Commission shall issue an order granting or denying the petition.

19. With respect to Section 75-118.01, we note that upon complaint by any common carrier to determine the validity, scope or meaning of a tariff (we believe that the Access Catalog is a substantive equivalent of a tariff), the Commission shall give notice of such complaint, hear evidence and argument on the

complaint and thereafter render its decision on the matter. Our ability to do so has been confirmed by the Supreme Court. See *Nebco, Inc. v. Burlington Northern, Inc.,* 212 Neb. 804, 808, 326 N.W.2d 167 (1982) (The Nebraska Legislature has provided the Commission with the authority to review tariffs pursuant to Section 75-118.01.); and *Nebraska Public Service Commission v. A-1 Ambassador Limousine, Inc.*, 264 Neb. 298, 308, 646 N.W.2d 650 (2001) (Section 75-118.01 provides the Commission with authority to determine the scope and meaning of a tariff.).

20. Also applicable to the Commission's jurisdiction of these formal complaints is *Neb. Rev. Stat.* Sec. 75-109(2) (2000 Cum. Supp.) that specifies: "The commission is authorized to do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996 (the Act), Public Law 104-104, including Section 252 of the Act which establishes specific procedures for negotiation and arbitration of interconnection agreements between telecommunications companies." As alleged by Cox and ALLTEL, the Commission approved the ICAs at issue, and Qwest is attempting to unilaterally alter their terms through Qwest's implementation of the SS7 message charge revisions to the Access Catalog. While we will address the merits of this claim later, we note that our ability to oversee the ICAs at issue is subject to the express grant of authority to the Commission pursuant to Section 75-109(2) and 47 U.S.C. Section 252.

21. We further note that *Neb. Rev. Stat.* Sec. 86-803(1) (2000 Cum. Supp.) is certainly relevant to this proceeding. This section provides that, subject to certain exceptions, telecommunications companies are not subject to rate regulation, and that telecommunications companies shall file rate lists, which for all telecommunications service except for basic local exchange rates, shall be effective after ten days' notice to the commission. While the constitutionality of this restriction in the Commission's rate regulation authority was sustained in *State, ex rel. Spire v. Northwestern Bell Tel. Co.,* 233 Neb. 262, 445 N.W.2d 284 (1989), the Supreme Court also found that the Commission's jurisdiction continued to extend to quality of service regulation, and Section 86-803(7) provides for a complaint procedure. Moreover, in *Spire,* the Supreme Court held that "a ratepayer's right to a fair and reasonable rate, a right which has emerged from the decisions of this court, is properly classified as a "property" entitlement protected by the due process clauses of the U.S. and Nebraska Constitutions." *Id.* at 283. In order to protect this property entitlement, it is cri-

tical that this Commission exercise its jurisdiction to receive, hear and dispose of complaints such as the Complaints filed herein.

22. Based upon the foregoing constitutional, statutory and case law authorities, the Commission finds that it has jurisdiction over each of the Complaints. Moreover, we find that we possess all necessary and requisite authority to make these findings and conclusions and those required to adjudicate the property rights of the parties raised in the Complaints.

A Primer on SS7 Signaling

23. Due to the importance of the issues raised by Complainants, we also take this opportunity to provide a brief description of the components of the SS7 network relevant to the issues vis-à-vis the traffic that is carried over the voice network.[5] We note at the outset that there is little disagreement between the parties regarding the configuration of the various SS7 components, or the prerequisite for the SS7 message generated by certain of those components (the charges for which are at issue in this case) to allow the establishment of calls between end users.

24. As the record reflects, the components that comprise the SS7 network allow for the setting up and tearing down of the voice network connections required for end-user traffic to be completed.[6] Prior to "out-of-band" signaling, the network functions required to establish end-user calls were done through "in-band" signaling such as multi-frequency signaling that actually used the same facilities to set up and transmit the end-user call.[7] By establishing "out-of-band" signaling through the SS7 network components,[8] the facilities required to carry the voice traffic are not put into service unless and until it is

---

[5] For purposes of our discussion and findings, we make reference at times to the "voice network" and "voice traffic" although we recognize that data is likewise carried such as in the case of Internet connections. Similarly, we use the terms "end-user traffic" and "end-user calls" interchangeably as they both reflect the exchange of communications between customers such as through local or intrastate toll calls.

[6] See, e.g., O'Neal Testimony, Exhibit 27, 4:2; O'Neal Rebuttal, Exhibit 28, 3:14-18; McIntyre Rebuttal, Exhibit 34, 5:21-6:2; Craig Rebuttal Testimony, Exhibit 40, 7:21-8:5; Tr. 114:2-5.

[7] See, Lafferty Testimony, Exhibit 24, 6:3-5; Florack Testimony, Exhibit 31, 6:20-22; Tr. 377:13-17.

[8] See, e.g., O'Neal Testimony, Exhibit 27, 3:7-10; Lafferty Testimony, Exhibit 24, 5:18-20; Florack Testimony, Exhibit 31, 6:20-22.

clear that those facilities are available to carry the call.[9] Moreover, the record reflects that this set-up and tear down of calls is faster than, and otherwise provides for features and functions that are not available with, "in-band" signaling.[10] Accordingly, all parties seem to agree that the use of the SS7 signaling network is more efficient than in-band signaling, and the Commission likewise agrees with this conclusion.

25. Attached to the testimonies in this proceeding were various diagrams that depict how the typical SS7 components are configured.[11] For purposes of our decision, we need only address those elements required to set-up and tear down calls, since those are the functions for which Qwest has established discrete SS7 message charges.

26. The first SS7 component is the "Service Switching Point" (SSP). As described by the various witnesses, the SSP is part of the local switch of a Local Exchange Carrier (LEC).[12] In the SS7 environment, the SSP generates the signaling messages that are transported through the remaining components of the SS7 network.[13] It is these SS7 messages that establish the end-user call, i.e., the process required to set-up or tear down a call.[14] Each SSP has a unique address in the SS7 network identified through a "point code" assignment. The SS7 network, in turn, ensures that the SS7 messages are properly routed to the SSP that is associated with a given point code.[15] For our purposes, we also note that Illuminet owns no SSPs; its carrier/customers do.[16]

27. SSPs are connected to "Signal Transfer Points" (STPs) through redundant, bi-directional facilities called "A-links."[17]

---

[9] See, e.g., Tr. 381:10-20.

[10] Accord, O'Neal Testimony, Exhibit 27, 3:15-22; Florack Testimony, Exhibit 31, 8:3-9.

[11] See O'Neal Testimony, Exhibit 27, Attachment; Florack Testimony, Exhibit 31, Exhibit A; Craig Rebuttal, Exhibit 40, attached Exhibit 1.

[12] See, e.g., O'Neal Testimony, Exhibit 27, Attachment; Florack Testimony, Exhibit 31, 7:15-18; Tr. 114:25 to Tr. 115:6; Tr. 127:14-17; Tr. 132:19-23.

[13] Tr. 379:21-25.

[14] See, e.g., O'Neal Testimony, Exhibit 27, 4:17-19, 5:9 through 6:10; Florack Testimony, Exhibit 31, 7:20-24; Craig Rebuttal, Exhibit 40, 9:20-10:17.

[15] See, Tr. 141:21-142:6; Tr. 379:6-20; Tr. 381:2-9, See also, Florack Testimony, Exhibit 31, 6:22-26.

[16] Accord, Florack Testimony, Exhibit 31,7:24-27; Craig Rebuttal, Exhibit 40, 15:13-16.

[17] See, Florack Testimony, Exhibit 31, 7:18-22.

STPs act like "traffic cops," routing (in conjunction with other STPs) the SS7 messages to the SSP operated by the carrier who provides service to the called party (in the case of a local call, for example), or another carrier that serves the end user (such as in the case of a pre-subscribed intra local access and transport area (LATA) toll call for an entity other than that which owns the SSP).[18]

28. The third and fourth components of the SS7 network that are relevant to these complaints are the bi-directional facilities that connect STPs, which are called "B-links," and the physical connection of those B-links to an STP called a "port."[19] These specific links and ports and the charges for them are not at issue in this proceeding because Illuminet, the SS7 network provider for Cox and ALLTEL, has paid and continues to pay these charges to Qwest.[20] Nonetheless, the discussion of these facilities and connections is important because they provide the physical connection of the Cox and ALLTEL SSPs to the various SSPs of Qwest, over which the various SS7 messages are exchanged between Cox and Qwest and between Qwest and ALLTEL.[21]

29. The record reflects two ways in which carriers deploy an SS7 network. Like Qwest, a carrier can deploy its own SS7 network (the SSPs and STPs as well as the A-links and B-links) necessary to connect directly to other SS7 networks.[22] ALLTEL has deployed its own SS7 network that creates call setup signaling and exchanges messages with Qwest.[23] Alternatively, a carrier can utilize a third party SS7 network provider such as Illuminet to provide certain portions of the SS7 network (such as the STPs and B-links and ports) required to connect that carrier's SSPs to other SS7 networks, or to connect its STPs to the STPs of Illuminet.[24] Regardless of the method of deployment, however, when examining the SS7 networks for purposes of call set-up and tear down, the SS7 networks have no independent func-

---

[18] Tr. 114:10-115:15; Tr. 380:18-381:1.

[19] See, e.g., Florack Testimony, Exhibit 31, 7:11-13 and 25:21-22; Tr. 240:2-6.

[20] See, e.g., Florack Testimony, Exhibit 31, 25:2-4 and 21-23; Tr. 337:4-9.

[21] See, e.g., Lafferty Testimony, Exhibit 24, 13:7-12; O'Neal Testimony, Exhibit 27, 5:9 through 6:10; Tr. 379:10-17.

[22] See generally, Craig Rebuttal, Exhibit 40, attached Exhibit 1.

[23] See, e.g., Tr. 116:12-20.

[24] See generally, O'Neal Testimony, Exhibit 27, Attachment; Florack Testimony, Exhibit 31, attached Ex. A.

tion other than to provide a method to transport the various carrier SSP-initiated SS7 messages required for end-user calls to be completed.[25]

30. With respect to Illuminet, it purchases SS7 connections with Qwest via the links and ports available in Qwest's Access Catalog.[26] These connections, as the record confirms, provide a valuable consolidation of SS7 network capability to smaller carriers.[27] Even Qwest acknowledges the value of the economy of scale and scope that a third party SS7 network provider such as Illuminet brings to carriers that elect to limit their direct SS7 network investment and deployment.[28] The record is also clear that Qwest benefits from such arrangements through minimization of the maintenance, monitoring and actual number of facilities required to interconnect its SS7 network to other carriers.[29] Ultimately, however, it is clear that in those instances where SS7 has been implemented (such as here), no end-user traffic would be completed without the SS7 messages being generated.[30] Therefore, all carriers operating SSPs, that either receive or generate the SS7 messages, do benefit since the end users served can complete and receive calls.[31]

Positions of the Parties

31. Mr. Wayne Lafferty submitted pre-filed testimony and testified at the hearing on behalf of Cox. At the outset, we note that Cox is a certificated competitive local exchange carrier (CLEC) and provides as a common carrier, a variety of facilities-based end-user services in areas of Nebraska.[32] Mr. Lafferty described six issue areas that Cox believes define its complaint. First, Cox contends that an SS7 message is an inseparable component of a call.[33] Mr. Lafferty pointed out that

---

[25] See, e.g., Lafferty Testimony, Exhibit 24, 18:1-2; O'Neal Rebuttal, Exhibit 28, 3:14-18; Tr. 116:5-11.

[26] See, Florack Testimony, Exhibit 31, 25:21-23.

[27] See, Lafferty Testimony, Exhibit 24, 10:10-13; O'Neal Testimony, Exhibit 27, 5:1-6; Florack Testimony, Exhibit 31, 8:12-10:21.

[28] See, McIntyre Rebuttal, Exhibit 34, 11:10-12.

[29] See, Tr. 382:8 to 383:17; See also O'Neal Testimony, Exhibit 27, 6:20-7:3; Florack Testimony, Exhibit 31,10:25-11:7.

[30] See, Tr. 116:5-7; Tr. 315:10-17; See also Florack Rebuttal, Exhibit 33, 2:6-8.

[31] Accord, Tr. 335:19 to Tr. 336:2; Florack Rebuttal, Exhibit 33, 22:20-23:6.

[32] See, Cox Complaint, Para. 4, Exhibit 22.

[33] Lafferty Rebuttal, Exhibit 25, 11:16-22; Tr. 48:11-15. Mr. Lafferty also filed Direct Testimony in this matter (Ex. 24) on Aug. 30, 2002.

while SS7 is a unique technology, it is a critical function for set up, delivery and take down of calls. Second, Cox argued that Qwest was misapplying the SS7 message charges so as to violate existing regulatory policies by ignoring existing interconnection agreements between the companies.[34] Third, Mr. Lafferty contended on behalf of Cox that Illuminet was clearly authorized to act as the agent for Cox for SS7 network services, and discussed a "letter of agency" (LOA) that verifies that fact.[35] Fourth, Cox asserts that there is not and has not been a pricing arbitrage opportunity as contended by Qwest due to the "bill and keep" mechanism that exists in the companies' ICA to account for the transport and termination of local traffic.[36] Fifth, Cox contends the misapplied SS7 message charges provide a subsidy to Qwest.[37] Finally, Cox disagrees with Qwest's allegation in its Answer to the Cox Complaint that the SS7 message charge revisions in Qwest's Access Catalog are revenue neutral in Nebraska.[38]

32. We further note that ALLTEL Nebraska, Inc. is an incumbent local exchange carrier (ILEC) certificated to provide facilities-based local exchange, extended area service (EAS), enhanced local calling area service (ELCA), intraLATA and interLATA telecommunications services in this state.[39] ALLTEL Communications of Nebraska, Inc. is a provider of wireless telecommunications services in this state.[40] Mr. George O'Neal, Staff Manager, SS7, for ALLTEL, also submitted pre-filed testimony and testified at the hearing.[41] ALLTEL agrees with Cox that voice and SS7 networks must rely upon each other for the completion of messages for end-user customers.[42] ALLTEL further pointed out that, in almost all cases, the SS7 network is required to transport the call set up or teardown messages between the called and calling party local switches.[43] Mr. O'Neal also described how carrier billing systems and the application of compensation mechanisms, such as bill-and-keep, are dependent on the jurisdiction of a call since the

---

34 Tr. 48:16-20.
35 Tr. 48:21-23.
36 Tr. 48:24-49:3.
37 Tr. 49:4-7.
38 Tr. 49:8-21.
39 Amended Complaint, Paras. 3 and 4, Exhibit 23.
40 *Id.*
41 O'Neal Testimony, Exhibit 27 and O'Neal Rebuttal, Exhibit 28.
42 O'Neal Rebuttal, Exhibit 28, 3:7-22; Tr. 115:8 through 116:16.
43 Tr. 115:5-16.

jurisdiction dictates how much compensation is applied.[44] In fact, Mr. O'Neal stated that Qwest could measure SS7 messages by jurisdiction and call type if it chose to do so,[45] or it could utilize a percent interstate usage (PIU) factor, and either a percentage local usage (PLU) factor or a percent non-chargeable usage (PNU) factor[46] to allocate SS7 message charges in proportion to the category of the underlying end-user traffic. ALLTEL also noted that it, too, had designated Illuminet as its agent to establish connectivity with Qwest's SS7 signaling network.[47]

33. The final witness for ALLTEL was Ms. Pamela S. Fuller, Staff Manager, State Government Affairs. As was done by Messrs. Lafferty and O'Neal, Ms. Fuller also submitted pre-filed testimony and testified at the hearing.[48] ALLTEL argues that existing ICAs continue to apply to wireless traffic within a Major Trading Area (intraMTA) and ILEC extended area service (EAS) and local traffic.[49] Ms. Fuller described details of the ICA between ALLTEL and Qwest that demonstrated that Qwest and ALLTEL had agreed to include the exchange of SS7 signaling messages within the reciprocal compensation terms and rates of the ICAs.[50] Ms. Fuller also expressed ALLTEL's view that Qwest's Access Catalog SS7 message rates do not apply to wireless intraMTA traffic[51] and ILEC EAS/ELCA SS7 messages and calls.[52] Ms. Fuller indicated that the only way Qwest may unbundle SS7 rates, as contemplated by the Federal Communications Commission (FCC), would be to properly measure and then properly bill pursuant to the applicable agreement covering the end-user traffic associated with the SS7 message, which ALLTEL contends Qwest is unwilling to do.[53] Finally, ALLTEL noted that it does not actually purchase intraMTA, local or EAS SS7 message signaling from Illuminet, nor does it purchase any call setup from Illuminet. ALLTEL, through its own SS7 network, creates its own call setup

---

44 O'Neal Rebuttal, Exhibit 28, 6:15-7:12; Tr. 117:4-9.

45 O'Neal Rebuttal, Exhibit 28, 7:13-22; Tr. 117:10-19.

46 Tr. 118:13-20.

47 O'Neal Rebuttal, Exhibit 28, 8:4-9:5.

48 Fuller Testimony, Exhibit 29 and Fuller Rebuttal, Exhibit 30.

49 Fuller Rebuttal, Exhibit 30, 4:19-6:5; Tr. 155:9-156:6.

50 *Id*.

51 IntraMTA CMRS traffic has been deemed by the FCC to be "local" for purposes of applying terminating compensation requirements. See, 47 C.F.R. § 51.701(b)(2).

52 Fuller Rebuttal, Exhibit 30, 6:20-7:14.

53 Tr. 159:14-160:6. See also, *Access Charge Reform*, Report and Order, CC Docket No. 96-262, (12 FCC Rcd 15982, 16046(para. 147) 1997).

signaling, and purchases transport of those SS7 messages from Illuminet.[54]

34. Mr. Paul Florack submitted pre-filed testimony and testified on behalf of Illuminet.[55] Mr. Florack is Vice President for Network Services in Product Management and Development at Illuminet. As indicated by the other Complainant witnesses, Illuminet agrees that without SS7 signaling messages, no end-user traffic would be completed. As such, according to Mr. Florack, the SS7 signaling is an integral and essential part of voice traffic.[56] Moreover, Illuminet notes that only Illuminet carrier/customers carry end-user traffic and only those customers generate SS7 message signals for which Qwest has been assessing access charges under its Access Catalog.[57] Illuminet, like Cox and ALLTEL, asserts that Qwest has not properly implemented the Access Catalog because of Qwest's unwillingness to properly measure the type and jurisdiction of SS7 message charges, capabilities that are in fact available, and to provide the detail necessary to verify that billings are correct. Thus, Illuminet requests that the Commission direct Qwest to withdraw its Access Catalog amendment that took effect June 6, 2001 (Exhibit 12).[58]

35. Illuminet also went into significant detail to describe Qwest's recovery of SS7 costs from all services using the SS7 network, in accordance with FCC directives.[59] Mr. Florack described how the jurisdiction of the SS7 message is relevant because it naturally follows the voice traffic it supports.[60] Finally, Mr. Florack agreed with Cox and ALLTEL that the LOAs provided by each company to Illuminet authorize Illuminet as their agent for purposes of SS7 message transport. Mr. Florack pointed out that "while Qwest may rely upon that LOA for Qwest's own internal network security purposes, that limited use does not limit the scope of the authority Illuminet has been given as the agent of its carrier/customers.[61]

---

54 Fuller Rebuttal, Exhibit 30, 8:16-9:10; Tr. 157:17-158:10.

55 Florack Testimony, Exhibits 31 and 32, and Florack Rebuttal, Exhibit 33.

56 Florack Rebuttal, Exhibit 34, 2:5-12.

57 *Id.*

58 Florack Rebuttal, Exhibit 34, 3:16-4:3.

59 Florack Rebuttal, Exhibit 34, 6:5-7:12. See also, *Provision of Access for 800 Service*, Report and Order, CC Docket No. 86-10, 4 FCC Rcd 2824, 2832 (1989)(core costs of SS7 should be borne by all network users).

60 Florack Rebuttal, Exhibit 34, 7:18-10:4.

61 Florack Rebuttal, Exhibit 34, 13:7-14:14.

36. Mr. Scott A. McIntyre, Director of Product and Market Issues for Qwest, also submitted pre-filed testimony and testified at the hearing.[62] According to Mr. McIntyre, Qwest has merely unbundled the SS7 message price out of the switching cost, lowered the switching rates and created a separate signaling rate.[63] Qwest also contends that the Complainants have the choice to purchase signaling through their ICAs, through the Qwest catalog, or through a third-party provider.[64] In the past, Qwest believes Complainants had a competitive advantage over other carriers who did not use third-party providers.[65] Now, however, with Qwest's new SS7 message rates in the Access Catalog, Qwest contends costs are more aligned with the cost causer.[66] Mr. McIntyre asserts that the rate structure is proper because it was modeled after that approved by the FCC and establishes rates for the SS7 network that is separate from the voice network. [67]

37. Qwest also asserts that the ICAs between the companies are irrelevant in this case as Illuminet, not Cox or ALLTEL, is Qwest's customer for SS7 services.[68] Qwest further asserts that the LOAs discussed by the Complainants were only created to allow Qwest to open point codes in its switches, and that Complainants were attempting to expand the authority granted by the LOAs.[69]

38. The sixth and final witness in the case, Mr. Joseph P. Craig, Director of Technical Regulatory in the Local Network Organization for Qwest, also submitted pre-filed testimony and testified at the hearing.[70] Through Mr. Craig's testimony, Qwest described how the SS7 network is an out-of-band signaling network, separate from the network that carries voice calls or traffic.[71] Qwest also claimed that the distinction between local and exchange access calls is not applicable to SS7 messages.[72] Finally, Mr. Craig opined that the Cox and ALLTEL LOAs are only

---

62 McIntyre Rebuttal, Exhibit 34, McIntyre Surrebuttal, Exhibit 36, Erratum Testimony, Exhibit 35.
63 Tr. 301:11-302:1.
64 Tr. 303:11-18.
65 McIntyre Rebuttal, Exhibit 34, 10:8-12.
66 McIntyre Rebuttal, Exhibit 34, 11:14-18.
67 McIntyre Rebuttal, Exhibit 34, 6:16-7:5.
68 McIntyre Rebuttal, Exhibit 34, 31:5-20.
69 McIntyre Rebuttal, Exhibit 34, 32:4-36:7; Tr. 306:1-307:20.
70 Craig Rebuttal, Exhibit 40, and Erratum Testimony, Exhibit 41.
71 Craig Rebuttal, Exhibit 40, 3:3-18; Tr. 366:16-22.
72 Craig Rebuttal, Exhibit 40, 9:4-16.

valid to open Qwest point codes, not to allow Illuminet to act as either Cox's agent or ALLTEL's agent for purposes of purchasing SS7 signaling services.[73] Mr. Craig agrees with Mr. McIntyre that the SS7 network is separate from the voice network, going so far as to state that the SS7 network is "completely separate" from the voice network.[74]

SS7 is an Integral Component of End-user Traffic

39. At the outset, one of the fundamental policy issues for us to resolve is whether, as Qwest contends, the Commission should treat the SS7 messages and the network that carry them independently of the voice traffic.[75] If we were to agree with this contention, we would also, by necessity and logic, need to conclude that the regulatory treatment of the voice traffic has no relevance to the application of the SS7 message charges at issue in this proceeding. Complainants, however, offer a far different position. Complainants allege that the SS7 message is an integral component of the end-user traffic it supports and, accordingly, the interconnection agreements in place between the carriers of end-user traffic (such as those between Cox and Qwest and those between Qwest and ALLTEL) determine whether and how SS7 message charges should be assessed. We accept the latter conclusion as not only being supported in the record, but also being consistent with common sense and other regulatory decisions.

40. First, although we recognize the attractive simplicity of the "separate" network theory raised by Qwest,[76] we find that theory sorely lacking in fact and substance. While it is true that the SS7 network includes components different from those used to carry voice traffic, the record is abundantly clear that, where SS7 has been implemented (as in the case), there would be no voice traffic if the SS7 messages at issue were not exchanged between SSPs or if the SS7 network were not operating.[77] The record also confirms that the SSP that generates the SS7 message is part of the local switch, and the SSP effectively communicates with that switch to establish and

---

[73] Craig Rebuttal, Exhibit 40, 14:13-16:4; Tr.371:20-372:12.

[74] Craig Rebuttal, Exhibit 40, 3:4.

[75] See, e.g., Craig Rebuttal, Exhibit 40, 16:9-12; Tr. 315:10-17.

[76] See, Craig Rebuttal, Exhibit 40, 8:21-22, 9:6-9; Tr. 51:16-18; Tr. 381:10-382:7.

[77] See, e.g., Fuller Rebuttal, Exhibit 30, 12:12-15; O'Neal Rebuttal, Exhibit 28, at 3:14-18, 5:13-15, 6:7-11; Florack Testimony, Exhibit 31, 12:13-16; Florack Rebuttal, Exhibit 33, 2:6-9; Tr. 116:5-11; Tr. 370:10-16.

release the voice path so that the call can be set up and subsequently completed.[78] Further, the record reflects that, for purposes of the charges at issue in this proceeding, the SS7 network has no independent purpose but to transport the SS7 messages,[79] and, again, that those messages must be sent and received by the SSPs (which are at least a part of the local switch owned by the LEC or CMRS provider) in order for the end-user call to be completed. Functionally, therefore, we see no basis for suggesting, as Qwest witness Craig did in his written testimony summary, that the SS7 network is separate from the voice network, let alone "completely separate" from the voice network.[80] Rather, the record is clear that the voice network must rely upon the SS7 network to initiate the SS7 messages required for any end-user traffic to be completed.

41. Second, we find no rational basis to suggest, as Qwest does,[81] that the jurisdiction of the voice traffic associated with SS7 messages is irrelevant to our inquiry. We find this suggestion to be interesting since it is clearly contradicted by the fact that Qwest "jurisdictionalizes" its SS7 message traffic (albeit not to the level Complainants seek),[82] and it relied upon its interstate message traffic in establishing the interstate SS7 message rates filed with the FCC.[83] Qwest's interstate tariff and Qwest's arguments here also establish that Qwest agrees with the principle that, at least for purposes of separating interstate SS7 messages from intrastate SS7 messages, it is appropriate for regulators and customers to look to the underlying voice or data message.[84] We note that Qwest's SS7 charges are an unbundling of the rate elements associated with voice traffic – the SS7 rate elements have not been divorced from the traffic, they've simply been unbundled from the local

---

[78] See, e.g., O'Neal Testimony, Exhibit 27, 4:17-19, 5:9-6:10; Florack Testimony, Exhibit 31, 7:20-24; Craig Rebuttal, Exhibit 40, 9:20-10:17.

[79] See, e.g., O'Neal Rebuttal, Exhibit 28, 3:18-21; Florack Testimony, Exhibit 31, 12:3-16; Florack Rebuttal, Exhibit 33, 19:2-10.

[80] See, Craig Rebuttal, Exhibit 40, 3:4.

[81] See, e.g., McIntyre Rebuttal, Exhibit 34, 29:22-30:2; Craig Rebuttal, Exhibit 40, 12:22-23.

[82] See, McIntyre Surrebuttal, Exhibit 36, 19:8-10.

[83] See, McIntyre Rebuttal, Exhibit 34, 6:17-20; See also Lafferty Testimony, Exhibit 24, 27:8-17; O'Neal Rebuttal, Exhibit 28, 6:22-7:2; Florack Rebuttal, Exhibit 33, 9:14-16.

[84] We agree with the Complainants that the FCC's decision regarding Qwest's interstate tariff structure does not preempt this Commission's authority to decide the matter pursuant to Nebraska law and the record evidence in this proceeding (See, e.g., Lafferty Testimony, Exhibit 24, 11:21-12:9), and we do not read Qwest's testimony to suggest otherwise.

switching and tandem switching rate elements associated with that traffic. Accordingly, we find no plausible reason (and Qwest has provided none) as to why the jurisdiction of the SS7 messages was proper in the context of the federal tariff filing,[85] but not relevant in the context of the various intrastate end-user traffic types (such as local and EAS/ELCA) to which the Complainants allege that Qwest is improperly applying the Access Catalog rates. While Qwest may be correct that the SS7 network does not differentiate between the jurisdiction of the SS7 messages that are transported across the SS7 network,[86] Qwest's position would effectively negate the Commission's duty to take into account the distinct categories of intrastate end-user traffic (and its component parts), even though the determination of the proper category is one of our fundamental considerations in establishing the proper rate design and rate structure to be applied.[87] Finally, Qwest has not contested the fact that, in some situations, it jurisdictionalizes SS7 messages based on the jurisdiction of the associated voice traffic. For example, pursuant to its Statement of Generally Available Terms and Conditions ("SGAT"), Qwest's compensation arrangement for SS7 messages is driven by the compensation arrangement for the messages' associated traffic.[88]

42. Third, we find persuasive Complainants' position that, if the SS7 network were truly separate and apart from the voice network, there would have been no reason for the FCC to find that its costs should be treated as a "general network upgrade" by Qwest for cost recovery purposes.[89] In an earlier decision, the FCC addressed the regulatory treatment of SS7 capability that was then beginning to be deployed. The FCC determined that:

> SS7 represents a new network infrastructure that will not only support a number of new interstate and state services, but will also increase the efficiency with which LECs provide existing services, basic and non-basic. As such, CCS7 represents a general network upgrade, the core costs of which should be borne by

---

[85] Tr. 316:16-317:5.

[86] See, Craig Rebuttal, Exhibit 40, 9:13-14.

[87] Accord, O'Neal Rebuttal, Exhibit 28, 4:9-18; Fuller Testimony, Exhibit 29, 5:19-6:2; Florack Rebuttal, Exhibit 33, 7:22-8:5.

[88] See, Lafferty Rebuttal, Exhibit 25, 12:16-18, 13:1-6 and footnote 5.

[89] Accord, Lafferty Rebuttal, Exhibit 25, 14:22-26 and 21:8-19; Florack Rebuttal, Exhibit 33, 6:14-7:4.

> all network users . . . . The costs of CCS7 components that will be used to support other services should be apportioned in accordance with existing rules for other network services.[90]

We need not determine whether the FCC's decision regarding the accounting and cost allocation of SS7 costs is binding on this Commission or on Qwest's intrastate services, but we do agree with the FCC's principle that regulated carriers must allocate their SS7 costs among the services supported by SS7. Given that cost allocation, the normal and expected practice would be that cost recovery should follow cost allocation, with the result that SS7 costs should be recovered from the users of the services supported by SS7.[91] Indeed, Qwest attempts (albeit improperly as discussed below) to justify its unbundling of SS7 charges on this "cost causation" principle.[92]

43. Finally, we note that the Access Catalog itself exposes the infirmities of Qwest's suggestion that the voice traffic and jurisdiction are irrelevant. As indicated in Illuminet's testimony, Qwest has used the voice traffic as a surrogate for applicability of the SS7 charges at issue where actual measurement by Qwest of the SS7 messages is not available.[93] Since Qwest has chosen not to implement actual measurement,[94] the voice traffic (and the necessity of its jurisdiction) becomes relevant based on Qwest's chosen implementation methodology. As such, we find unpersuasive Qwest's suggestion that Illuminet, as the customer, must be charged for all SS7 messages since it purchased the links and ports through the FCC tariff.[95] The record is clear that Illuminet carries no voice traffic; its carrier/customers do.[96] And, as found earlier, it is the voice traffic that requires the SS7 messages to be generated, and those messages are generated by the SSPs owned by the Illuminet carrier/customer and not Illuminet. Accordingly, it would not only be proper from a policy perspective but also based on the record before us, that the implementation of the Access Catalog revisions take into account the various and distinct intrastate end-user traffic

---

90 *Provision of Access for 800 Service*, Report and Order, CC Doc. No. 86-10, 4 FCC Rc'd 2824, 2832 (1989) (internal citations omitted).

91 Accord, Florack Rebuttal, Exhibit 33, 8:14-19.

92 See, McIntyre Rebuttal, Exhibit 34, 6:6-14.

93 See, Florack Rebuttal, Exhibit 33, 9:6-10.

94 See, McIntyre Rebuttal, Exhibit 34, 23:16-18.

95 See, e.g., *Id.* at 9:1-4, 22:20-22, 31:7-10, 35:16-17 and 38:10-12.

96 See, Florack Testimony, Exhibit 31, 7:24-25, 8:22-27.

types when considering whether the SS7 message charges associated with those traffic types are properly chargeable under the Access Catalog.[97]

Proper Construction of the Access Catalog Should Avoid Windfalls to Qwest

44. Two final matters bear discussion. We are mindful of the facts presented by the Complainants with respect to their position that Qwest is receiving a windfall under the Access Catalog, and we are troubled by the casual approach that Qwest apparently believes the Commission should take with respect to Qwest's implementation of the Access Catalog. We agree with Complainants that Qwest's interpretation of its Access Catalog to apply to all SS7 messages is improper since Qwest cannot apply the Access Catalog unilaterally to non-exchange access traffic for which compensation arrangements are included in preexisting agreements. Absent this approach, Qwest would continue to gain a windfall under the SS7 message charges it currently assesses to Illuminet (which then passes through the charges without mark-up to its carrier/customers[98]) because those charges relate to end-user traffic addressed in other agreements in place between Qwest and the Illuminet carrier/customers which included compensation for the entire exchange of traffic between Qwest and those carrier/customers.[99]

45. Similarly, we also cannot ignore, regardless of Qwest's assertions to the contrary, the anti-competitive effects arising from Qwest's implementation of its intrastate SS7 Access Catalog revisions. The testimony of Mr. Lafferty and Mr. O'Neal reveals that Qwest's billings to Cox and ALLTEL represent additional annualized revenues nearly double the total additional revenue that Qwest claims to result from the unbundling of SS7 signaling. The Cox witness, Mr. Lafferty, testified that as a consequence of Qwest's application of its amendment to the Access Catalog to Cox's non-access SS7 messages, Cox has experienced an increase to Cox's net cost of operations of $90,000 per month or over $1 million annually arising from the pass-through of Qwest's SS7 message charges by Illuminet.[100] The ALLTEL witness, Mr. O'Neal, testified that the

---

97 Accord, O'Neal Rebuttal, Exhibit 28, 7:3-12.

98 See, Florack Testimony, Exhibit 31, 26:13-18.

99 See, e.g., Lafferty Testimony, Exhibit 24,14:1-16:3, 20:2-21:2, and 22:7-24:25; Fuller Testimony, Exhibit 29, 9:1-5 and Exhibit A.

100 See, e.g., Tr. 63:13-25 and 104:24-105:1.

data contained in Exhibit 10 confirmed Qwest's discovery response that approximately $1,081,000 was Qwest's calculated amount of the reduction in local and tandem switching revenues and the increase in SS7 revenues due to unbundling.[101] Mr. O'Neal further testified that for the past 12 months, ALLTEL alone had received billings (passed through by Illuminet) of $939,738 for charges by Qwest under the revised Access Catalog, and that while ALLTEL only handles a small portion of the total SS7 messages that would be subject to charges under Qwest's revised Access Catalog, ALLTEL's billing increase equaled nearly 90 percent of the annual revenue increase that Qwest states will result from its unbundling of SS7 charges in Nebraska.[102] Illuminet's witness, Mr. Florack, testified that Illuminet has been billed approximately $2.9 million by Qwest since the effective date of Qwest's amendment to the Access Catalog pertaining to SS7 signaling which, as noted above, are passed through to its carrier/customers without charge. Additional billings to other carriers for SS7 message charges are unknown.

46. These charges are, in our view, significant and directly arise from Qwest's improper implementation of its intrastate SS7 message rate structure. That implementation, in turn, has the effect of unilaterally increasing the costs of Cox and ALLTEL (which will be recovered through rates they assess to their ratepayers and other carriers) from those costs that Cox and ALLTEL agreed to pay pursuant to their negotiated agreements with Qwest. When viewed in this light, we must conclude that the effect of Qwest's intrastate SS7 message rate structure is to deter competition by an improper increase of the costs to a competitor or at least a shift of Qwest's costs to other carriers, thus providing Qwest an improper competitive advantage vis-à-vis those carriers with which it does compete. In either instance, we will not allow that result to occur.

47. Further, we reject Qwest's contention that this result is somehow permissible because Qwest has properly implemented its intrastate SS7 structure pursuant to applicable FCC directives.[103] Even though the FCC's directives are not necessarily controlling on our implementation of the *intrastate* SS7 message structure at issue, Qwest has failed to comply with them. Specifically, the underlying FCC decision upon which Qwest relies, in part, for justifying its intrastate implementation of

---

101 Tr. 118:21-120:2.

102 Tr. 120:3-22.

103 See, e.g., McIntyre Surrebuttal, Exhibit 36, 5:5–6:12.

the SS7 message structure required Qwest to "acquire the appropriate measuring equipment as needed to implement such a plan,"[104] but only where a carrier has elected to implement that structure.[105] Since it is clear that Qwest elected to make the revisions at issue, the only remaining question is whether the "measuring equipment" has been put in place to "implement" that election. The record is clear that Qwest has not,[106] as is confirmed by the lack of the billing detail required to properly identify (and thus measure) the SS7 messages associated with various intrastate end-user traffic types. [107] Therefore, Qwest cannot rely upon the FCC's SS7 rate unbundling pronouncements to support its efforts to cause this Commission to ignore the effects of the improper implementation of its intrastate SS7 message rate structure.[108]

48. ALLTEL and Cox, as common carriers, have challenged Qwest's application of its unbundling of SS7 message signaling charges as set forth in the amendment to Qwest's Access Catalog as improper and unjust. Pursuant to Section 75-119, it is the duty of the Commission to make a determination of such claims and pursuant to Section 75-118.01, the Commission has the duty to determine the scope or meaning of a tariff. The Commission finds that the lack of revenue neutrality in Qwest's unbundling of SS7 signaling warrants a finding that the revisions to Qwest's Access Catalog (Exhibit 12) are not fair, just and reasonable and that such Catalog provisions should be declared

---

104 *Access Charge Reform*, First Report and Order, 12 FCC RC'd 15982, 16090 (para. 253) (1997) ("Access Charge Reform Order").

105 See, *id*. (Para. 252).

106 See, McIntyre Rebuttal, Exhibit 34, 23:16-19.

107 See, Florack Testimony, Exhibit 31, 13:26-29 citing to Confidential Exhibit B.

108 We also note that Qwest relies, in part on the FCC's decision that permitted Qwest to unbundle its *interstate* SS7 costs. See, e.g., McIntyre Rebuttal, Exhibit 34, 6:16-7:8; see also, *US West Petition to Establish Part 69 Rate Elements for SS7 Signaling*, Order, CCB/CPD 99-37, DA 99-1474, released December 23, 1999 ("Order"). That decision, however, notes Qwest's ability "to assess rate elements on *each switched access originating or terminating call attempt . . .*" Order at para. 6 (emphasis added). We agree with the Complainants, however, that in the interstate jurisdiction the "calls" are typically interstate toll carried by IXCs, which is confirmed by the FCC's reference to a "switched access . . .. call attempt," and the fact that switched access is exchange access. See, e.g., Lafferty Testimony, Exhibit 24, 6:21–7:1 citing to Access Charge Reform Order, 12 FCC Rc'd at 16042 (para. 138); Florack Rebuttal, Exhibit 33, 11:7-10. In the *intrastate* jurisdiction, however, there are more discrete "call types" that must be accounted for in any proper SS7 unbundling efforts. See, e.g., Florack Testimony, Exhibit 31, 23:9-21.

null and void. Further, pursuant to the Commission's authority pursuant to Section 75-109(2), the Commission finds that the implementation of Qwest's Access Catalog is inconsistent with the policies of the Telecommunications Act of 1996 because Qwest has implemented its intrastate SS7 message rate structure in a manner that permits Qwest to assess such charges for traffic that is otherwise subject to its ICAs with Cox and with ALLTEL, and does so for end-user traffic that Qwest initiates (a violation of applicable reciprocal compensation rules and policies as noted by Mr. Lafferty).[109]

49. Lastly, we are also concerned by Qwest's unilateral efforts to alter the concept of "cost causation."[110] As the record reflects, no changes occurred in the exchange of SS7 messages between Cox and Qwest and between ALLTEL and Qwest except for the new rate structure imposed by Qwest's revisions to the Access Catalog.[111] However, the undeniable fact is that, as a result of these revisions, Qwest is assessing (albeit though Illuminet) charges to Cox and ALLTEL for SS7 messages associated with calls made by another carrier's end-users (such as in the case of originating and terminating pre-subscribed toll calls of an interexchange carrier (IXC) carried by Qwest and Cox or ALLTEL in a 'meet point billed' arrangement) or all calls where Qwest is the initiating carrier. Thus, the "causer" of the SS7 messages in these instances is not ALLTEL or Cox, and therefore, no SS7 message charges should be assessed by Qwest.[112] Accordingly, we reject in its entirety Qwest's overly broad construction of cost causation espoused in this proceeding and we specifically reject Qwest's suggestions that the Complainants have taken advantage of some pricing "loophole" or have been subsidized by other carriers.[113] Nothing changed in the cost causation principles in place prior to the unbundling of SS7 message charges by Qwest, and Qwest has shown no rational basis as to why it should be allowed to unilaterally change such principles. This is particularly true where, as here, any

---

[109] See, Lafferty Rebuttal, Exhibit 25, 6:10-7:18.

[110] See, Lafferty Testimony, Exhibit 24, 17:16-19; Lafferty Rebuttal, Exhibit 25, 18:15-19:12.

[111] Tr. 149:17-21

[112] Accord, Lafferty Rebuttal, Exhibit 25, 6:13-16; Florack Rebuttal, Exhibit 33, 4:7-15.

[113] See, e.g., McIntyre Rebuttal, Exhibit 34, iii, 9:9-17. Contrary to Qwest's suggestion, this case is not about "options" regarding the SS7 connectivity (see McIntyre Surrebuttal, Exhibit 36, 8:9-9:4) in that each "option" either requires a carrier to rely upon Qwest for the provision of SS7 network, or requires that carrier to be subject to an intrastate SS7 message rate structure that has not been properly implemented by Qwest.

additional costs shifted to another provider will be reflected in that provider's cost of providing service via its end-user rates. Increasing a competitor's costs of providing service by an improper application of cost causation principles or, as here, an improper construction and application of the Access Catalog is the antithesis of rational public policy.

50. Accordingly, for purposes of our remaining analysis, we agree with the Complainants that our decisions can and should be governed by the simple, common sense principle they have articulated that no carrier should implement a revision in its tariff or pricing catalog such that its inappropriate billing of other carriers results in a revenue windfall to such carrier. This principle is particularly appropriate where the application of such tariff or pricing catalog has the effect of unilaterally altering the compensation arrangements included in negotiated pre-existing agreements. Specifically, we agree with the Complainants that the SS7 message is an integral component of the end-user traffic it supports,[114] and the arrangements that govern the compensation of the end-user traffic equally govern the treatment of the SS7 signaling messages associated with that traffic.[115] Thus, if SS7 signaling messages are associated with intrastate toll end-user traffic, and intrastate toll is subject to the Access Catalog, the Access Catalog applies. If SS7 signaling messages are associated with intrastate toll end-user traffic and the exchange access associated with such intrastate toll is subject to some arrangement other than the Access Catalog, the terms of that arrangement should apply. Similarly, if SS7 signaling messages are associated with local end-user traffic, CMRS intraMTA traffic, Qwest-originated toll or jointly provided exchange access, and such traffic is subject to an ICA or other contract, the agreement or contract applies to the SS7 signaling messages for such traffic. As applied here, the fact that Cox and ALLTEL have chosen an intermediary to transport SS7 message signals between themselves and Qwest should produce no different result than if Qwest and Cox and/or Qwest and ALLTEL directly connected their own SS7 networks. The cost saving efficiencies that the Illuminet transport provides and its associated benefits to Qwest,[116] should not be denied to the rate paying public. This is especially true where, as here, the

---

[114] See, e.g., Lafferty Rebuttal, Exhibit 25, 11:19-22.

[115] Accord, Florack Testimony, Exhibit 31, 19:20-20:3.

[116] See, Lafferty Testimony, Exhibit 24, 10:10-13; O'Neal Testimony, Exhibit 27, 5:1-6; Florack Testimony, Exhibit 31, 8:12-10:21; McIntyre Rebuttal Testimony, Exhibit 34, 11:10-12; Tr. 382:8-383:17

facts demonstrate that the arrangement between Illuminet and its carrier/customers is well known to Qwest,[117] and as discussed below, proper agency authorizations have been provided regarding the point codes to which SS7 message signals are transported. We expect Qwest and all carriers subject to our jurisdiction to encourage network efficiencies, not create roadblocks with no apparent purpose other than to enhance their own revenues and/or disadvantage their competitors.

Illuminet is the Agent of Cox and ALLTEL for SS7 Transport Services

51. As indicated above, our analytical construct requires that we examine the arrangements in place between the carriers for the handling of end-user traffic. Although the application of this construct is made somewhat more difficult because Illuminet offers no end-user services,[118] the record is clear that Illuminet's carrier/customers do offer such services. Accordingly, we must address whether, in fact, Illuminet "stands in the shoes" of its carrier/customers for purposes of the SS7 messages that are components of its carrier/customers' end-user and exchange access service offerings, i.e., that Illuminet is the agent for its carrier/customers with respect to the SS7 messages Illuminet transports for them.

52. Under Nebraska law, whether agency exists depends on the facts underlying the relationship of the parties irrespective of words or terminology used by the parties to characterize or describe their relationship. *See, e.g., Kime v. Hobbs,* 252 Neb. 298, 562 N.W.2d 705 (1997). Using this as our guidepost, the record reflects that a LOA provided by Cox and dated July 2, 2001, was sent to Qwest indicating that "Cox Communications is authorizing Illuminet to conduct all negotiations and issue orders for (all services) point codes listed below for all US West LATAs; 001-218-140." (Exhibit 15). The very language of the LOA reveals that Cox made a general grant of agency authority to Illuminet relative to SS7 services in Qwest (formerly US West) LATAs, and that the agency relationship would continue until "rescinded in writing by Cox." Furthermore, as Mr. Lafferty testified for Cox, agency is a

---

[117] See, e.g.. Florack Testimony, Exhibit 31, attached Ex. E. We specifically find that, at least as of November 2000, Qwest was on notice of the specific relationship that Illuminet had with its carrier/customers, and that Qwest presumably ignored that relationship and the consequences arising there from when it elected to file its intrastate SS7 message rate structure.

[118] Tr. 233:10-13; Tr. 239:13-18.

common method of transacting business by telephone companies. For example, Cox hires agents to help with collocation, and Qwest allows those agents, who are not Cox employees, access to Cox's collocation cage.[119]

53. Similarly, a LOA provided by ALLTEL dated April 5, 2001, was sent to US West stating: "ALLTEL is authorizing Illuminet to conduct all negotiations and issue orders for all services for the point codes listed below, for all US West LATAs." (Exhibit 14). This LOA also provided that it "will remain in effect until rescinded in writing by ALLTEL." Mr. O'Neal testified that the ALLTEL LOA "is authorizing Illuminet to conduct all negotiations and to issue an order for all services for the point codes listed below."[120] Consistent with the Cox LOA, the language used by ALLTEL demonstrates that Illuminet was designated by ALLTEL to act as their agent with regard to SS7 services in Qwest (formerly US West) LATAs.

54. Accordingly, under the test in *Kime*, we find that the LOAs do, in fact, establish Illuminet as the agent of Cox and ALLTEL generally, and, therefore, Illuminet stands in the shoes of Cox and ALLTEL with regard to the SS7 message charges at issue. In addition to this clear grant of agency, our finding is also independently supported by the record evidence that Qwest has been fully aware of the relationship between Illuminet and its carrier/customers (including the issues associated with the instant dispute),[121] and the fact that the concept of "agency" is not a novel idea. For example, the Cox/Qwest ICA, approved by this Commission in Application No. C-1473, mentions the word "agent" 33 times, testament to the fact that Qwest knew Cox would, like many new entrants, use agents to handle many of its needs. Mr. Lafferty's pre-filed testimony discussed this concept in depth, contending that only through third party vendors could a new entrant manage all the tasks required of it as it grows a business while also quoting from two of the 33 provisions in the Qwest/Cox ICA that discuss agency.[122] Similarly, the ALLTEL ICAs (Exhibits 16 and 17) contain numerous references to agents and agency. Based on the above-quoted LOAs and the evidence in the record, the Commission finds that Illuminet is the agent of Cox and of ALLTEL for SS7 messages at issues here within the Qwest LATAs.

---

119 Tr. 56:20-57:2.
120 Tr. 145:14-17.
121 Florack Testimony, Exhibit 31, 9:8-15, 13:18-26, and 26:21-25.
122 *Id*., Lafferty Rebuttal, Exhibit 25, 26:11-28:15.

55. In making this finding, we specifically reject Qwest's contention that its use of the LOA somehow limits the specific agency relationship established between Cox and Illuminet and between ALLTEL and Illuminet.[123] The record demonstrates facts that specifically identify the scope of and activities encompassed within the agency relationship established between Cox and Illuminet and between ALLTEL and Illuminet.[124] Similarly, we reject Qwest's inference that, regardless of the LOA, Illuminet would be a "third party" beneficiary of the ICAs that Qwest has with the Illuminet Co-Complainants.[125] We recognize that under Nebraska case law, a third party beneficiary's rights depend upon, and are measured by, the terms of the contract between the promisor and promisee, *see, Marten v. Staab*, 249 Neb. 299, 304, 543 N.W.2d 436 (1996), and the ICAs have provisions stating that there shall be no third party beneficiaries to the ICAs. However, just as *Marten* recognizes the distinction between agency and third party beneficiaries in the context of the facts in that case, *see id.*, so also in the instant matters, the LOAs constitute Illuminet as the agent for Cox and ALLTEL, respectively, and Illuminet's rights flow from the agency status and not from third party beneficiary status. Moreover, Qwest has provided no facts that would establish that Illuminet is seeking a benefit under the ICAs in question. Rather, the charges at issue are flowed through to Cox and ALLTEL without mark-up, as the record demonstrates. Accordingly, we specifically reject Qwest's theory that third party beneficiary rights are at issue in this proceeding.

56. We also reject Qwest's suggestion that the concept of "agency" as established between Cox and Illuminet and between ALLTEL and Illuminet is inconsistent with the Communications Act of 1934, as amended. Far from violating such Act, the FCC has embraced the very basis for its application established here. Provided that an agent acts in a manner consistent with the terms and conditions established in the underlying interconnection agreement between its carrier principal and a LEC, the FCC has found that:

> [W]hen a CLEC or an IXC (having entered an interconnection agreement with the relevant LEC) designates a DA provider to act as their agent, that competing DA

---

123 See, e.g., McIntyre Rebuttal, Exhibit 34, 32:19-21.
124 See, e.g., Florack Testimony, Exhibit 31, 8:12-10:11.
125 See, e.g., McIntyre Surrebuttal, Exhibit 36, 16:9-17:12.

> provider is entitled to nondiscriminatory access to the providing LECs' local DA database. Naturally, the DA provider's database access will be consistent with the terms of the relevant interconnection agreement and with the terms of the DA providers' separate agreements with its carrier principal.[126]

57. While the above-quoted decision does not directly address the facts and circumstances presented in the instant complaints (which is acknowledged by Illuminet[127]), the FCC's decision nonetheless recognizes that the Communications Act of 1934 supports the same policies that the record demonstrates are present herein. For example, the FCC made clear that "interexchange carriers and competing LECs may not have the economies of scale to construct and maintain directory assistance platforms of their own,"[128] and that "the presence of such DA providers allows many carriers to offer a competitive directory assistance product without being forced either to go to the substantial expense of maintaining their own database or to purchase the service from the incumbent LECs."[129] These same FCC-recognized concepts are equally applicable herein.

58. The record reflects that Illuminet provides economies of scale and scope to its Co-Complainants,[130] which is at least acknowledged by Qwest.[131] Likewise, and as is the case with CLECs and IXCs *vis-à-vis* the provision of directory assistance, Illuminet's carrier/customers utilize Illuminet because of the expense and effort involved in acquiring and deploying all of the components required to provide connectivity to the SS7 networks. It is likewise clear that Qwest is the dominant provider of local exchange service and the associated SS7 signaling.

59. Finally, we reject Qwest's assertion that it has "no direct relationship" with Cox and with ALLTEL regarding SS7.[132] The interconnection agreements between Qwest and Cox and between Qwest and ALLTEL require that SS7 connectivity be implemented,

---

126 Provision of Directory Listing Information, 16 FCC Rc'd 2736, 2748 (para. 27)(2001).
127 See, Florack Rebuttal, Exhibit 33, 15:13-14.
128 16 FCC Rc'd. at 2748 (para. 26) (footnote omitted).
129 *Id*. (para. 27).
130 See, Lafferty Testimony, Exhibit 24, 10:10-13; O'Neal Testimony, Exhibit 27, 5:1-6; Florack Testimony, Exhibit 31, 8:12-10:21.
131 See, McIntyre Rebuttal, Exhibit 34, 11:10-12.
132 *Id.* at 35:19.

and the LOAs establish that Cox and ALLTEL have each separately designated Illuminet as their agent for this connectivity with Qwest. As confirmed by the fact that call set-up and teardown is being accomplished, there has been no allegation that the actions of Illuminet on behalf of either Cox or ALLTEL are inconsistent with the terms and conditions required for their respective SS7 connectivity with Qwest.

60. Accordingly, based on the entire record before us, we are confident that our decision regarding the existence and application of the agency relationship between Illuminet and Cox and between Illuminet and ALLTEL complies with the proper legal mandates and is otherwise consistent with the underlying policies of the Communications Act of 1934 as interpreted by the FCC.

The ICAs at Issue Do Not Permit Separate SS7 Message Charges to be Assessed By Qwest

61. Having found that Illuminet is acting as the agent for its respective Co-Complainants, we next turn to whether the SS7 message charges being assessed that relate to the various intrastate voice traffic types are proper under the two ICAs before us. Both Cox and ALLTEL provided their understanding of whether SS7 message charges are proper under their respective ICAs for such traffic types.[133] We note, however, that each of the Complainants agree that only the SS7 message charges assessed by Qwest for terminating both intraLATA toll originated by an end user pre-subscribed to Cox and that originated by an end user pre-subscribed to ALLTEL are proper.[134] Therefore, we need not address this type of end-user traffic.

62. Cox and ALLTEL maintain that the terms of their respective ICAs with Qwest include SS7 signaling as a part of the services that the parties agreed to provide reciprocally to one another.[135] A determination of the validity of this position turns on certain key provisions of the ICAs. In the Cox/Qwest ICA (Exhibit 26), those key provisions are section 6.7.4, which states that where available, all interconnection trunks will be

---

[133] See, Lafferty Rebuttal, Exhibit 25, 4:4-15, 5:13-18, 6:21-7:3; Fuller Testimony, Exhibit 29, 5:1-6:6, 7:4-8:12.

[134] See, Lafferty Testimony, Exhibit 24, 14:1-5; Fuller Testimony, Exhibit 29, 10:8-10; Florack Testimony, Exhibit 31, 25:4-7.

[135] See, e.g., Tr. 47:21-25 and 155:9-19.

equipped with SS7 capabilities,[136] Section 5.13, which discusses Meet Point Billing (MPB)[137], and Section 5.5.1.2, which mandates a "Bill-and-Keep" arrangement for the termination of local traffic.[138] Cox has testified that no attempt has been made by Qwest to amend the terms of the Cox/Qwest ICA in order to change the compensation arrangement for SS7 messages.[139] In the ALLTEL/Qwest Reciprocal Compensation Agreement for Extended Area Service (Exhibit 17), those key provisions are Section 4.2 that provides that the parties will use SS7 signaling in the interconnection of their networks,[140] and Section 3.1 that discusses reciprocal compensation for transport and termination of EAS traffic.[141] In the ALLTEL/Qwest Wireless ICA (Exhibit 16), those key provisions are Article V.G.5 that provides that the parties will provide common channel signaling to one another (defined in Article III.L as SS7 signaling protocol),[142] and Article IV.A.1 that discusses reciprocal compensation for local traffic exchanged between the parties.[143] ALLTEL has established

---

[136] Section 6.7.4 states: "The parties will provide Common Channel Signaling (CCS) to one another, where available, in conjunction with all Local/EAS Trunk Circuits. All CCS signaling parameters will be provided including calling party number (CPN), originating line information (OLI), calling party category, charge number, etc. All privacy indicators will be honored." CCS is another term for SS7 signaling.

[137] Meet Point Billing (MPB) is a revenue-sharing agreement where Cox and Qwest have agreed to jointly provide access service to IXCs under separate access tariffs.

[138] Section 5.5.1.2 states: "If the exchange of local/EAS traffic between the Parties is within +/- 5% of the balance, the Parties agree that their respective call terminating charges will offset one another and no compensation will be paid."

[139] See, Lafferty Rebuttal, Exhibit 25, 4:22-23.

[140] Section 4.2 states: "To the extent available, the parties will interconnect their networks using SS7 signaling where technically feasible and available as defined in FR 905 Bellcore Standards including ISDN user part ("ISUP") for trunk signaling and transaction capabilities application part ("TCAP") for common channel signaling based features in the interconnection of their networks."

[141] Exhibit 1 to the ALLTEL/Qwest ICA provides the rates for this reciprocal compensation, and Exhibit 2 to the ALLTEL/Qwest ICA provides the exchanges subject to the reciprocal compensation arrangement.

[142] Article V.G.5 states: "The Parties will provide Common Channel Signaling (CCS) to one another, where available, in conjunction with all Local/EAS Trunk Circuits. All CCS signaling parameters will be provided including calling party number (CPN), originating line information (OLI) calling party category, charge number, etc. All privacy indicators will be honored."

[143] Article IV.A.1 states in pertinent part: "Reciprocal traffic exchange addresses the exchange of traffic between Carrier subscribers and USWC end users. If such traffic is local, the provisions of this Agreement shall

that neither ALLTEL nor Qwest have amended the terms of the ALLTEL/Qwest ICAs in order to alter the compensation for SS7 messages.[144] It is fundamental that these ICAs are not subject to unilateral amendment by only one party. Thus the compensation terms of each ICA remain in effect.

63. Based on our review of the record and the ICAs at issue, the conclusion must be made that recovery of the costs of the SS7 message charges are included within the reciprocal compensation rates or bill-and-keep arrangements included in the ICAs. Consistent with our finding that the SS7 message is an integral component of the end-user traffic, the ICAs reflect no separate charges for SS7 messages associated with the treatment of the end-user traffic types addressed in the ICAs. Any other conclusion would allow a party to unilaterally alter the terms and conditions of an ICA, which we will not allow a party to do. Since Qwest has purportedly unbundled its SS7 rate in the SGAT, and such separate rates have not been included in the ICAs, we further find that it is more plausible that the compensation arrangements for SS7 messages were included in the reciprocal compensation rates or bill and keep construct. This latter finding is further supported by our expectation that carriers negotiate contracts in an effort to recover their costs and the fact that Qwest has not sought to renegotiate the ICAs. If however, Qwest neglected to account for these SS7 costs when it negotiated the ICAs, it is not free to simply impose these costs by unilateral changes in its Access Catalog, but rather, must follow the existing procedures and schedules to obtain revision of the ICAs.

Grant of Relief to the Complainants

64. Based on the record before this Commission, we find that a grant of the relief requested in the Complaints is necessary to ensure that the Access Catalog is applied in a fair and reasonable manner. We find this action is not only consistent with applicable state law and the underlying policies established therein, but also the Act and prudent public policy. Accordingly, for the specific reasons stated herein and the specific opinions and findings of facts made herein, we grant the Complainants the relief they seek and direct Qwest to take such action necessary to implement the following three directives.

---

apply. Reciprocal traffic exchange covered by this Agreement is for Wireless interconnection for CMRS carriers only in association with CMRS services.

[144] See Tr. 155:21-156:1; Tr. 208:23- 209:4.

65. Within five business days of the entry of this order, the Commission directs Qwest to withdraw the Access Catalog revisions that are the subject to these Complaints and re-institute the SS7 rates, terms and conditions that had been in effect prior to June 2001 (including, should Qwest so wish, filing revised intrastate switched access rates), and not to re-file any "unbundled" SS7 rate structure within the Access Catalog until it can comply with the third directive below. We make clear that we do not expect Qwest to alter any SS7 facility charges (the links and port charges) since those charges are not the subject of the Complaints. We specifically note that any efforts by Qwest to modify such charges would call into question Qwest's effort to properly implement the directives of this order.

66. We direct that within 10 days of the issuance of this order, Qwest refund or credit all SS7 message charges and associated late charges or penalties, if any, that have been assessed under the June 6, 2001, Access Catalog revisions to Illuminet, both on the disputed non-access traffic of its Co-Complainants, Cox and ALLTEL, and on similar non-access traffic of Illuminet's other Nebraska carrier/customers. Subject to the Complainants' discretion, this refund may take the form of either a direct payment from Qwest or credits to be applied in a manner determined by the Complainants.

67. Finally, we direct Qwest not to file any further Access Catalog SS7 rate structure revisions that attempt to implement separate facilities and SS7 message charges without a substantial demonstration to this Commission that Qwest can properly segregate, identify and properly bill, and refrain from improperly billing, the SS7 message charges associated with the distinct types of intrastate end-user traffic its network currently carries (i.e., local, EAS/ELCA, intraMTA CMRS, Qwest-originated toll and Qwest-terminated toll), and jointly-provided exchange access (that service required for third-party IXCs to originate and terminate their respective end-user intrastate toll traffic via multiple LECs). This demonstration must be made prior to any effort to implement such structure within the Access Catalog, and must include, at a minimum, a demonstration that the implementation of such structure has been coordinated with the Complainants in this proceeding. The Commission finds that Qwest may fulfill this directive either though direct measurement or the adoption of one or more factors within Qwest's Access Catalog, the latter of which would exclude the SS7

messages related to intrastate traffic for which the Access Catalog does not apply (i.e., local, EAS, ELCA, intraMTA CMRS, Qwest-originated toll and jointly-provided exchange access). We also direct that Qwest apply its chosen methodology in a manner that Qwest's billing properly disaggregates and segregates those messages that are not subject to the charges included within the Access Catalog. Should any issues regarding proper implementation of such unbundled SS7 rate structure remain, Qwest shall provide a list of those issues and shall address efforts it has taken to resolve those concerns. With respect to this specific directive, we find that coordination among the parties to these Complaints will assist the Commission in determining good faith compliance by Qwest as well as avoid any unnecessary expenditure of resources by the Commission and the parties.

68. For the reasons stated herein, we find that each of these three directives is not only required to ensure a fair and reasonable application of the Access Catalog by Qwest, but is necessary to ensure that the public interest associated with competitive end-user service provisioning within the state of Nebraska is served.

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 17th day of December, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director