

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Formal) Application No. FC-1346
Complaint of Great Plains)
Communications, Inc. and Great)
Plains Broadband, Inc., Blair,)
v. Sprint Communications) ORDER GRANTING IN PART,
Company, L.P., Overland Park,) DENYING IN PART, MOTION TO
Kansas, alleging failure to pay) COMPEL
for intrastate switched access)
services.)

In the Matter of the Formal) Application No. FC-1347
Complaint of Sprint)
Communications Company, L.P.,)
Overland Park, Kansas, v. Great)
Plains Communications, Inc. and)
Great Plains Broadband, Inc.,)
Blair, alleging unfair and)
unreasonable intrastate switched)
access rates and inefficient)
network architecture.)
) Entered: December 15, 2010

BY THE HEARING OFFICER:

On September 17, 2010, a Formal Complaint was filed with the Nebraska Public Service Commission ("Commission") by Great Plains Communications, Inc. and Great Plains Broadband, Inc., (collectively "Great Plains") against Sprint Communications Company, L.P., ("Sprint") and docketed as Application No. FC-1346. An Answer was timely filed by Sprint. On November 8, 2010, Sprint filed a Formal Complaint against Great Plains with the Commission that was docketed as Application No. FC-1347. An Answer was timely filed by Great Plains.

On November 10, 2010, the Hearing Officer issued an order granting Sprint's Motion to Consolidate the above-captioned proceedings pursuant to Commission Rules of Procedure.

On December 13, 2010, both Great Plains and Sprint filed Motions to Compel responses to discovery requests in the above-captioned docket. Both parties also requested a hearing on the motions.

Oral arguments on the pending Motions to Compel were held on December 14, 2010, at the Commission. The parties had met and resolved many of the outstanding objections. During the oral arguments many of the remaining discovery responses and objections were agreed to between the parties and are therefore not addressed in this order. The remaining data requests at

issue are Sprint's Data Request Nos. 7, 8, 16, and 17 and Great Plains' Data Request Nos. 21, 23, 24, 26, 27, 28, 29, 30, 37, and 38. Some of the data requests are related in subject matter and were discussed together, therefore, those same data requests will be discussed together in this order.

O P I N I O N

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

Sprint Data Requests

Nos. 7 & 8

In these data requests Sprint seeks the expenses, capital investments, and revenues relating to the provisioning of Broadband Services by Great Plains from 2005 to the present.

Great Plains objects arguing the current proceeding is not a review of Great Plains' access rate contained in its tariff on file with the Commission, but rather the access charges billed to Sprint. Great Plains pointed out the access rate contained in Great Plains' tariff is the same rate that was approved in the Docket No. C-1628/NUSF proceeding and has not changed.³ Therefore, Great Plains argues the data requests seek data that is not relevant to the current proceeding.

Sprint maintains that information about the possible use of access revenue to subsidize other services provided by Great Plains, namely broadband services, is important to the issue of reasonableness of the access charges at issue.

I find that the information sought by Sprint in these data requests is beyond the scope of this proceeding and therefore not relevant or reasonably calculated to lead to the discovery of admissible evidence. Sprint is seeking information to

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

² Neb. Ct. R. Disc. § 6-326(b)(1).

³ See Application No. C-1628/NUSF, *In the Matter of the Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform and intrastate universal service fund*. Progression Order No. 11, (September 12, 2000), at p. 2.

conduct a ratemaking type analysis of Great Plains' tariffed access rate which is not the purpose of this proceeding. Therefore, the motion to compel regarding Data Request Nos. 7 and 8 are denied.

Nos. 16 & 17

In Data Request Nos. 16 and 17 Sprint seeks financial information, including balance sheets, income statements, and statements of cash flow, and information regarding all revenue sources, including access revenue, of Great Plains and its affiliates from 2005 through the present. Counsel for Sprint clarified that the request for the information to be provided for Great Plains' affiliates refers to Great Plains Broadband, the company that is a party to the above-captioned Formal Complaint.

Great Plains objects on the grounds that 5 years worth of data is beyond the time period at issue in the proceeding, with Sprint's complaint looking back to July of 2008. Further, Great Plains argued this proceeding is not an access rate increase proceeding under Neb. Rev. Stat. § 86-140 requiring an analysis of access expenses verses access revenues, therefore, the information sought is not relevant to the above-captioned complaint.

I find that in a more limited fashion, some of the information sought by Sprint in these requests is relevant to the proceeding. Financial statements and information regarding the revenues generated by access charges, including mileage charges, is relevant. Great Plains need provide financial statements only, not balance sheets, income statements, and statements of cash flow. I further find that the time period requested by Sprint is not overly burdensome. Therefore, Sprint's Motion to Compel Data Request No. 16 and 17 is granted for the limited purpose of Great Plains providing financial statements and information regarding the revenues generated by access charges, including mileage charges for the years requested in the data requests.

Great Plains Data Requests

Data Request No. 21

Great Plains is seeking information from Sprint regarding TEOCO Corporation which it believes has an arrangement with Sprint to monitor and/or dispute access charges of local exchange carriers like Great Plains. Great Plains is seeking confirmation of such arrangement and any relevant documents

evidencing such arrangement. Great Plains further states redacted versions of any such documents would be sufficient.

Sprint argues any arrangements it may or may not have with any entities not party to this proceeding are irrelevant and beyond the scope of the proceeding.

I find that the information sought by Great Plains in this data request regarding TEOCO Corporation and any relationship or arrangement it may have with Sprint is irrelevant and not calculated to lead to the discovery of admissible evidence and therefore the motion to compel regarding Data Request No. 21 is denied.

Data Request Nos. 23, 24, 27 & 28

In these data requests Great Plains is seeking information regarding Least Cost Routing and other network arrangements and routing practices of Sprint. Counsel for Great Plains further explained that Great Plains is seeking to know if self-help techniques such as choking and blocking traffic terminating in Great Plains' exchanges are being utilized by Sprint.

Sprint argues that Great Plains never included any allegations in its complaint regarding such practices and Sprint's network arrangements and traffic routing practices are irrelevant to the current proceeding.

I find the evidence sought by Great Plains in these data requests to be irrelevant and beyond the scope of this proceeding. No allegations were made in either complaint regarding the use of these self-help techniques, they are beyond the pleadings filed by the parties and therefore they are irrelevant to the inquiry in the above-captioned Formal Complaints. The Motion to Compel regarding Discovery Request Nos. 23, 24, 27 and 28 is denied.

Data Request No. 26

Great Plains is seeking information and documents regarding communications between Sprint and any other third parties including interexchange carriers, wireless service providers, competitive local exchange carriers, transport providers, or consultants regarding the above-captioned Formal Complaints.

Sprint argues any such communications are irrelevant to the current proceeding.

I agree with Sprint and find that such communications as sought by Great Plains in this data request are irrelevant and

not reasonable calculated to lead to the discovery of admissible evidence. The Motion to Compel Data Request No. 26 is denied.

Data Request Nos. 29, 37 & 38

Great Plains in these data requests seek information regarding network changes Sprint has made as a result of the re-homing of Great Plains and Great Plains Broadband to the Blair Tandem. Specifically, Great Plains counsel stated that Great Plains is seeking information on cost savings realized by Sprint as a result of the re-homing arrangement.

Sprint objects on the basis that the structure of Sprint's network is unrelated to the issues in this proceeding. These complaints are not about balancing Sprint's costs and savings.

I find that the costs and savings to Sprint as a result of the re-homing arrangement to the Blair tandem by Great Plains and its affiliate is directly relevant to this proceeding and Great Plains Motion to Compel Data Request Nos. 29, 37 and 38 is granted.

Data Request No. 30

Great Plains is seeking information regarding Access Service Requests (ASRs) Sprint has provided to Qwest since January 1, 2003. Specifically, Great Plains seeks to explore the service quality of the network provided to Sprint by Qwest prior to the re-homing to the Blair tandem.

Sprint argues that any improvements to the network realized as a result of the re-homing to the Blair tandem is not relevant to the access charges being billed to Sprint.

I find the service quality and other benefits realized by the re-homing to the Blair tandem by Great Plains and Great Plains Broadband is relevant to this proceeding and could reasonable be viewed as leading to the discovery of admissible evidence. Therefore, I find that the Motion to Compel Data Request No. 30 should be granted.

Conclusion

After a thorough examination of all the filings, motions, and arguments in the current proceeding, I find that Sprint's Data Request Nos. 16 and 17, as limited, and Great Plains' Data Request Nos. 29, 30, 37, and 38, seek information relevant to the above-captioned proceeding and are reasonably calculated to lead to the discovery of admissible evidence and should be granted. I further find Sprint's Data Request Nos. 7 and 8, and

Great Plains' Data Request Nos. 21, 23, 24, 26, 27, and 28 seek information irrelevant to the above-captioned proceeding and should therefore be denied.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Motion to Compel filed by Sprint Communications Company, L.P. regarding Data Request Nos. 16 and 17 as limited above, be and are hereby, granted.

IT IS FURTHER ORDERED that the Motion to Compel filed by Sprint Communications Company, L.P. regarding Data Request Nos. 7 and 8 be, and are hereby, denied.

IT IS FURTHER ORDERED that the Motion to Compel filed by Great Plains Communications, Inc. and Great Plains Broadband, Inc. regarding Data Request Nos. 29, 30, 37, and 38 be, and are hereby, granted.

IT IS FURTHER ORDERED that the Motion to Compel filed by Great Plains Communications, Inc. and Great Plains Broadband, Inc. regarding Data Request Nos. 21, 23, 24, 26, 27, and 28 be, and are hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska this 15th day of December, 2010.

BY:

Frank E. Landis
HEARING OFFICER