

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Formal)	Application Nos. FC-1348
Complaint of AT&T Communications)	
of the Midwest, Inc., Denver,)	
Colorado, v. Arapahoe Telephone)	
Company, Blair; Benkelman)	
Telephone Company, Inc.,)	
Benkelman; Cambridge Telephone)	
Company, Cambridge; Cozad)	
Telephone Company, Cozad; Diller)	
Telephone Company, Diller;)	
Eastern Nebraska Telephone)	
Company, Blair; Great Plains)	
Communications, Inc., Blair;)	
Hartington Telecommunications)	
Company, Inc., Hartington;)	ORDER GRANTING IN PART, DENYING
Hartman Telephone Exchanges,)	IN PART, MOTIONS TO COMPEL
Inc., Benkelman; Henderson)	
Cooperative Telephone Company,)	
Henderson; Hershey Cooperative)	
Telephone Company, Hershey;)	
Hooper Telephone Company, Hooper;)	
Northeast Nebraska Telephone)	
Company, Jackson; Rock County)	
Telephone Company, Blair;)	
Southeast Nebraska)	
Communications, Inc., Falls City;)	
Three River Telco, Lynch; and)	
Wauneta Telephone Company,)	
Benkelman; alleging unfair and)	
unreasonable intrastate switched)	
access rates and inefficient)	
network architecture.)	
)	
In the Matter of the Formal)	Application No. FC-1350
Complaint Cambridge Telephone)	
Company, Cambridge, Nebraska, v.)	
AT&T Communications of the)	
Midwest, Inc. a/k/a AT&T, Olathe,)	
Kansas, alleging failure to pay)	
for intrastate switched access)	
services.)	
)	
In the Matter of the Formal)	Application No. FC-1351
Complaint Eastern Nebraska)	
Telephone Company, Blair,)	
Nebraska, v. AT&T Communications)	
of the Midwest, Inc. a/k/a AT&T,)	
Olathe, Kansas, alleging failure)	
to pay for intrastate switched)	
access services.)	
)	
In the Matter of the Formal)	Application No. FC-1352
Complaint Great Plains)	

Communications, Inc., Blair,
Nebraska, v. AT&T Communications
of the Midwest, Inc. a/k/a AT&T,
Olathe, Kansas, alleging failure
to pay for intrastate switched
access services.

In the Matter of the Formal
Complaint Hartington
Telecommunications Company, Inc.,
Hartington, Nebraska, v. AT&T
Communications of the Midwest,
Inc. a/k/a AT&T, Olathe, Kansas,
alleging failure to pay for
intrastate switched access
services.

In the Matter of the Formal
Complaint Hooper Telephone
Company, Remsen, Iowa, v. AT&T
Communications of the Midwest,
Inc. a/k/a AT&T, Olathe, Kansas,
alleging failure to pay for
intrastate switched access
services.

In the Matter of the Formal
Complaint Northeast Nebraska
Telephone Company, Jackson,
Nebraska, v. AT&T Communications
of the Midwest, Inc. a/k/a AT&T,
Olathe, Kansas, alleging failure
to pay for intrastate switched
access services.

In the Matter of the Formal
Complaint Rock County Telephone
Company, Blair, Nebraska, v. AT&T
Communications of the Midwest,
Inc. a/k/a AT&T, Olathe, Kansas,
alleging failure to pay for
intrastate switched access
services.

Application No. FC-1353

Application No. FC-1354

Application No. FC-1355

Application No. FC-1356

Entered: June 8, 2011

BY THE HEARING OFFICER:

On November 17, 2010, a Formal Complaint was filed with the Nebraska Public Service Commission ("Commission") by AT&T Communications of the Midwest, Inc. ("AT&T"), Denver, Colorado, against Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cambridge Telephone Company; Cozad Telephone Company; Diller Telephone Company; Eastern Nebraska Telephone Company; Great Plains Communications, Inc.; Hartington Telecommunications Company, Inc.;

Hartman Telephone Exchanges, Inc.; Henderson Cooperative Telephone Company; Hershey Cooperative Telephone Company; Hooper Telephone Company; Northeast Nebraska Telephone Company; Rock County Telephone Company; Southeast Nebraska Communications, Inc.; Three River Telco; and Wauneta Telephone Company, alleging unfair and unreasonable intrastate switched access rates and inefficient network architecture. That Formal Complaint was docketed by the Commission as Application No. FC-1348.

On December 21, 2010, the Respondents represented by Mr. Troy Kirk,¹ ("Kirk Respondents") filed a Statement of Satisfaction with the Commission. On December 22, 2010, AT&T filed a Statement of Acceptance and a Motion to Dismiss the Kirk Respondents. The Commission entered an order on January 4, 2011, dismissing the Kirk Respondents from the above-captioned complaint. Answers were timely filed by the remaining Respondents.

On January 18, 2011, the Hearing Officer entered an order granting informal interventions to Sprint Communications Company, L.P. d/b/a Sprint and MCI Communications Services, Inc. d/b/a Verizon Business Services.

On February 24, 2011, Southeast Nebraska Communications, Inc. ("SNCI") and Three Rivers Telco ("TRT") filed a Statement of Satisfaction with the Commission. On the same date AT&T filed a Statement of Acceptance and a Motion to Dismiss SNCI and TRT from the above-captioned complaint. The Commission entered an order on March 1, 2011, dismissing SNCI and TRT from the above-captioned complaint.

The following Respondents remain in the above-captioned complaint: Cambridge Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Company, Inc., Hooper Telephone Company, Northeast Nebraska Telephone Company, and Rock County Telephone Company, (collectively "RLECs").

On February 4, 2011, formal complaints were filed with the Commission by the RLECs against AT&T, all alleging failure by AT&T to pay for intrastate access services provided by the RLECs. Those complaints were docketed as Docket Nos. FC-1350 through FC-1356. AT&T timely filed answers in all seven of the RLEC complaints.

On May 2, 2011, the Hearing Officer entered an order consolidating the above-captioned complaints finding them to be factually and legally related.

¹ Respondents represented by Mr. Kirk include: Arapahoe Telephone Company, Benkelman Telephone Company, Inc., Cozad Telephone Company, Diller Telephone Company, Hartman Telephone Exchanges, Inc., Henderson Cooperative Telephone Company, Hershey Cooperative Telephone Company, and Wauneta Telephone Company.

On May 27, 2011, both AT&T and the RLECs filed Motions to Compel responses to discovery requests in the above-captioned docket.

Oral arguments on the pending Motions to Compel were held on June 2, 2011, at the Commission. The data requests at issue are AT&T's Data Request Nos. 14, 16, 17, 18, 20, and 23 and the RLECs' Data Request Nos. 14, 20, and 21. 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.² 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."³ The Commission is not bound by the strict rules of evidence and therefore the admissibility of evidence is typically liberally applied by the Commission.

RLEC Data Requests

Data Request No. 14

In this data request the RLECs seek a statement from AT&T regarding what level of rate differentials it deems acceptable, referencing comments filed by AT&T with the FCC. In their Motion to Compel the RLECs state AT&T's complaint in this proceeding contains the allegation that the RLECs' access transport charges are "exorbitant." The RLECs claim, "this allegation incorporates the concept that the charges are too high when compared to other charges."⁴ The RLECs seek information on what AT&T deems acceptable in response to the characterization by AT&T of the RLECs' transport rates.

AT&T objects on the grounds of relevancy. AT&T argues the FCC comments referenced by the RLECs in the data request were taken out of context and are not related to the subject matter of the above-captioned proceeding.

I find the information sought by the RLECs on what AT&T deems an acceptable rate level or differential between rates is not relevant to this proceeding. I fail to see how an answer from AT&T regarding its concept of an acceptable rate is reasonably calculated to lead to admissible evidence. It calls for a conclusion that ultimately resides with the Commission. Therefore, the Motion to Compel regarding Data Request No. 14 is denied.

² Neb. Admin. Code, Title 291, Ch. 1 § 016.11 (1992).

³ Neb. Ct. R. Disc. § 6-326(b)(1).

⁴ Docket No. FC-1348/FC-1350-56, Motion to Compel Responses to Consolidated Interrogatories and Requests for the Production of Documents and Things, (May 27, 2011), at pg. 3.

Data Request Nos. 20 & 21

In these data requests the RLECs seek information regarding AT&T's experiences with the legacy tandems, namely Windstream and Qwest Tandems. The RLECs seek notices provided to AT&T by either Qwest or Windstream regarding tandem exhaust, network quality, and outages. Further, the RLECs seek information on documents prepared by AT&T regarding any service quality issues AT&T experienced with either the Qwest Tandems or the Windstream Tandem.

AT&T objects arguing the information sought by the RLECs is not relevant to the current proceeding. AT&T states it is not challenging the RLECs' ability, authority, or right to make changes to their respective networks. It further argues AT&T's experience with the legacy tandems is not relevant to the proceeding as AT&T does not challenge the RLECs' decisions regarding their networks.

AT&T states they do not challenge the RLECs' authority to restructure their networks. However, AT&T's complaint contains allegations of unjust enrichment. Therefore, I find the information sought by the RLECs regarding the service quality of the legacy tandems could be reasonably calculated to lead to admissible evidence rebutting the allegations. Therefore, the Motion to Compel as to Data Request Nos. 20 and 21 is granted.

AT&T Data RequestsData Request Nos. 17 & 18

In these data requests AT&T seeks information regarding how the mileage component was used to arrive at the access rate approved by the Commission in Docket No. C-1628⁵ for the RLECs. AT&T argues that the mileage element was an integral part of developing the ultimate rate that was approved, and it seeks the work papers and documents on how the mileage element was used in that proceeding. Counsel for AT&T at the arguments offered to accept a more narrow response to satisfy the data request, stating that AT&T would accept the documents regarding the RLECs transition plans the RLECs were ordered to file with the Commission.

The RLECs argue that the C-1628 proceeding was 12 years ago and AT&T is seeking data which the RLECs may or may not possess. Further, the RLECs argue AT&T is information regarding the RLECs' draw from a universal service fund which is determined by a Commission designed and applied model. Additionally, such information is not in the possession of the RLECs. Finally, such information has no nexus to this proceeding.

⁵ See Application No. C-1628, *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*, Findings and Conclusions, (January 13, 1999).

The Commission's findings and conclusions in C-1628 are a matter of public record. I also find the transition plans sought are readily available to AT&T currently. Therefore, Data Request Nos. 17 and 18 are denied.

Data Request Nos. 14, 16, 20, and 23

In these data requests AT&T seeks information regarding the alleged financial enrichment by the RLECs as a result of the network change by the RLECs to the Blair tandem. AT&T is seeking aggregate access revenues of the RLECs, expenses and capital investments incurred by the RLECs in relation to the use of the Blair tandem, five years worth of financial statements for the RLECs and any affiliates, including balance sheets, income statements, and cash flow statements, and finally information on the differences between the RLECs' costs of providing intrastate access services verses interstate access services. AT&T states it is looking to establish a full record for the Commission.

The RLECs argue that the above-captioned proceeding is not a rate case or a policy proceeding on access rates, intrastate or interstate. They also point out the Complaint filed by AT&T in FC-1348 initiating this proceeding states, "AT&T does not question Defendant's effective switched access rates."⁶

AT&T notes a previous ruling of the Hearing Officer on Motions to Compel discovery requests in a different complaint proceeding, arguing the issues are similar enough to warrant a similar ruling on the current discovery requests. However, the Formal Complaint referenced by AT&T specifically challenged the access rates of the LEC involved.⁷ AT&T in its complaint in the current proceeding states clearly they are not challenging the access rates of the RLEC Defendants, instead, "[AT&T] challenges the Defendants' attempt to impose unreasonably high and unjust transport mileage charges."⁸

Most of the information sought by AT&T in the data requests at issue here is designed to challenge the reasonableness of the RLECs' access rates. AT&T cites specifically the issues of implicit subsidies, costs of providing access services, comparing interstate and intrastate access service costs and seeks income statements, cash flow statements, and balance sheets. The information sought is only relevant if AT&T seeks to challenge the existing access rates of the RLECs, which by its own admission it does not seek to do. Only Data Request No. 16, seeking information on the expenses and capital investments directly related to the utilization of the Blair Tandem is

⁶ Docket No. FC-1348, Formal Complaint, (November 17, 2010), at pg. 2.

⁷ See Docket No. FC-1347, *In the Matter of the Formal 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*. Formal Complaint, (November 5, 2010).

⁸ *Supra*, Docket No. FC-1348, Formal Complaint, (November 17, 2010), at pg. 2.

directly related to allegations made by AT&T regarding unjust enrichment by the RLECs.

All of the information except that sought in Data Request No. 16, is not relevant if AT&T does not question the RLECs' current access rates. Therefore, the Motion to Compel regarding Data Request Nos. 14, 20, and 23, are denied, and the Motion to Compel regarding Data Request No. 16 is granted.

Conclusion

After a thorough examination of all the filings, motions, and arguments in the current proceeding, I find that the RLECs' Data Request Nos. 20 and 21 and AT&T's Data Request No. 16, 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 the RLECs' Data Request No. 14 and AT&T's Data Request Nos. 14, 17, 18, 20, and 23 are not relevant 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 the RLECs regarding Data Request No. 14, be, and is hereby, denied.

IT IS FURTHER ORDERED that the Motion to Compel filed by the RLECs regarding Data Request Nos. 20 and 21, be, and is hereby, granted.

IT IS FURTHER ORDERED that the Motion to Compel filed by AT&T regarding Data Request Nos. 14, 17, 18, 20, and 23, be, and are hereby, denied.

IT IS FURTHER ORDERED that the Motion to Compel filed by AT&T regarding Data Request No. 16, be, and is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska this 8th day of June, 2011.

BY:

Frank E. Landis
HEARING OFFICER

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directly related to allegations made by AT&T regarding unjust enrichment by the RLECs.

All of the information except that sought in Data Request No. 16, is not relevant if AT&T does not question the RLECs' current access rates. Therefore, the Motion to Compel regarding Data Request Nos. 14, 20, and 23, are denied, and the Motion to Compel regarding Data Request No. 16 is granted.

Conclusion

After a thorough examination of all the filings, motions, and arguments in the current proceeding, I find that the RLECs' Data Request Nos. 20 and 21 and AT&T's Data Request No. 16, 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 the RLECs' Data Request No. 14 and AT&T's Data Request Nos. 14, 17, 18, 20, and 23 are not relevant 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 the RLECs regarding Data Request No. 14, be, and is hereby, denied.

IT IS FURTHER ORDERED that the Motion to Compel filed by the RLECs regarding Data Request Nos. 20 and 21, be, and is hereby, granted.

IT IS FURTHER ORDERED that the Motion to Compel filed by AT&T regarding Data Request Nos. 14, 17, 18, 20, and 23, be, and are hereby, denied.

IT IS FURTHER ORDERED that the Motion to Compel filed by AT&T regarding Data Request No. 16, be, and is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska this 8th day of June, 2011.

BY:


Frank E. Landis
HEARING OFFICER