

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Formal)	Application No. FC-1349
Complaint of Sprint)	
Communications Company LP,)	
Overland Park, Kansas, v.)	
Arapahoe Telephone Company,)	
Blair; Benkelman Telephone)	
Company, Inc., Benkelman;)	
Cambridge Telephone Company,)	
Cambridge; Cozad Telephone)	
Company, Cozad; Diller Telephone)	ORDER DENYING MOTION FOR
Company, Diller; Hartman)	CONSOLIDATION AND GRANTING
Telephone Exchanges, Inc.,)	INFORMAL INTERVENTION
Benkelman; Henderson Cooperative)	
Telephone Company, Henderson;)	
Hershey Cooperative Telephone)	
Company, Hershey; Southeast)	
Nebraska Communications, Inc.,)	
Falls City and Wauneta Telephone)	
Company, Benkelman; alleging)	
unfair and unreasonable)	
intrastate switched access rates)	
and inefficient network)	
architecture.)	Entered: January 18, 2011

BY THE HEARING OFFICER:

On December 14, 2010, Sprint Communications Company, L.P., ("Sprint") filed a Formal Complaint against Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cambridge Telephone Company; Cozad Telephone Company; Diller Telephone Company; Hartman Telephone Exchanges, Inc.; Henderson Cooperative Telephone Company; Hershey Cooperative Telephone Company; Southeast Nebraska Communications, Inc.; and Wauneta Telephone Company, (collectively "Respondents"), alleging unfair and unreasonable intrastate switched access rates and inefficient network architecture. The Commission docketed the Formal Complaint as Application No. FC-1349.

Commission Rules of Procedure set a deadline for the Respondents to file a Statement of Satisfaction or an Answer to a Formal Complaint.¹ On December 29, 2010, the Hearing Officer entered an order extending the dates to respond to the Formal Complaint.

On December 14, 2010, Sprint filed a Motion to Consolidate seeking consolidation of Application No. FC-1349 ("FC-1349")

¹ See Neb. Admin. Code, Title 291, Ch. 1 § 05.08(A), (B), and (C).

with Application Nos. FC-1346 and FC-1347 ("FC-1346/1347")² and Application No. FC-1348 ("FC-1348").³ The Hearing Officer previously issued an order consolidating FC-1346/1347.⁴ The Respondents represented by Mr. Paul Schudel⁵ ("Schudel Respondents") in FC-1349 filed an Opposition Sprint's Motion to Consolidate and requested oral arguments on the issue.

On December 30, 2010, AT&T Communications of the Midwest, Inc. ("AT&T") filed a Petition for Formal Intervention in the above-captioned matter. On November 30, 2010, Respondents Cambridge Telephone Co. and Southeast Nebraska Communications, Inc. ("Cambridge and Southeast") filed an Objection and Motion to Strike AT&T's Petition for Formal Intervention and requested oral arguments on the issue.

Oral arguments were held on January 6, 2011, in the Commission Hearing Room on all pending Motions, Petitions, Objections and Oppositions.

Subsequent to the oral arguments, on January 13, 2011, the Commission also received a Petition for Formal Intervention from MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon") in the above-captioned Formal Complaint.

² See Application No. FC-1346, *In the Matter of the Formal Complaint of Great Plains Communications, Inc. and Great Plains Broadband, Inc., Blair, v. Sprint Communications Company, L.P., Overland Park, Kansas, alleging failure to pay for intrastate switched access services* and Application 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*.

³ See Application No. FC-1348, *In the Matter of the Formal 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; Hartman Telephone Exchanges, 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*.

⁴ See Application No. FC-1347, *Order Granting Motion to Consolidate* (November 10, 2010).

⁵ Respondents represented by Mr. Schudel include: Cambridge Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Company, Inc., Hooper Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Southeast Nebraska Communications, Inc., and Three River Telco.

Consolidation

Sprint seeks consolidation of the above-captioned Formal Complaint it filed against 10 Local Exchange Carriers ("LECs") with the Formal Complaint filed by Sprint against Great Plains Communications, Inc. and Great Plains Broadband, Inc., (collectively "Great Plains")⁶ that was subsequently consolidated with the Formal Complaint filed by Great Plains against Sprint⁷ and the Formal Complaint filed by AT&T against 17 LECs.⁸

Commission Rule of Procedure 018.08 allows for dockets that are factually and legally related to be heard on a consolidated record.⁹ Rule 018.08 states:

Unless any party would be prejudiced, proceedings that are legally or factually related may be heard on a consolidated record.¹⁰

Sprint states in support of its motion that the complaints focus on the same base question and supports a case management plan filed by AT&T in FC-1348.¹¹ The Schudel Respondents point out in their opposition to the consolidation motion that, the facts at issue in the two proceedings vary and that FC-1346/1347 are significantly further along procedurally than FC-1348 and FC-1349.

Consolidation is a tool to enable the Commission to efficiently manage its dockets and proceedings. Clearly, it is not to be utilized if it would prejudice a party to the proceedings. I agree with the Schudel Respondent's that the delay that would ensue with consolidation of the dockets as sought by Sprint would be significant. FC-1349 was filed almost three months after FC-1346 was initiated and has yet to have a planning conference. In contrast, FC-1346/1347 has completed a planning conference and has completed the first round of discovery. Sprint argues it would be more efficient to consolidate all the proceedings into one, but I find that the potential efficiencies are outweighed by the prejudicial affect of the significant delays that would likely occur to parties of the other complaints.

⁶ *Id.* FC-1346.

⁷ *Id.* FC-1347, Order Granting Motion to Consolidate (November 10, 2010).

⁸ *Id.* FC-1348

⁹ Neb. Admin. Code, Title 291, Ch. 1 § 018.08 (1992).

¹⁰ *Id.*

¹¹ *Id.* FC-1348, AT&T's Motion to Consolidate and Proposed Case Management Plan, (December 13, 2010).

The Commission's use of consolidation has primarily been in dockets where the two proceedings arose out of substantially the same occurrence. For example, in FC-1346/1347, both Great Plains and Sprint filed formal complaints against the other regarding the same charges billed by Great Plains to Sprint for access services.¹²

In the current instance, if Sprint's motion was granted, an entirely new party, AT&T, with no connection to either Great Plains or Sprint would be added to the proceeding as a complainant along with multiple new defendants, some in FC-1348 and some in FC-1349, with different allegations and remedies sought by different complainants.

The provision allowing for consolidation is permissive and clearly within the discretion of the Commission. I understand the argument to have the similar legal issues with potentially statewide impact before the Commission in one proceeding, however, that argument does not overcome the fact that consolidation would prejudice parties in FC-1346/1347 and FC-1348.

Further, hearing the complaints on a consolidated record is not necessary to consolidate proceedings or schedules. I propose to have similar procedural schedules for FC-1348 and FC-1349 and to efficiently bring those complaints before the Commission. The Commission has in other dockets jointly scheduled hearings involving similar parties without formally consolidating into one large record. I therefore find the Motion to Consolidate Application Nos. FC-1346, FC-1347 and FC-1348 should be denied.

Formal Intervention

Both AT&T and Verizon seek Formal Intervention in the above-captioned proceeding. Cambridge and Southeast filed an objection to Sprint's petition for formal intervention. Arguments contained in Verizon's petition are similar to the arguments made in its Petition for Formal Intervention in the FC-1348 matter on which I heard arguments during the oral

¹² See also Application Nos. FC-1332, *In the Matter of the Formal Complaint of Orbitcom, Inc., Sioux Falls, South Dakota, seeking a determination that AT&T Communications of the Midwest, Inc., Denver, Colorado, failed to pay intrastate access charges billed by Orbitcom in accordance with Orbitcom's intrastate switched access tariff* and Application FC-1335, *In the Matter of the Formal Complaint of AT&T Communications of the Midwest, Inc., Denver, Colorado, seeking a determination that OrbitCom, Inc., Sioux Falls, South Dakota, failed to negotiate Intrastate Access Charges and that OrbitCom's tariffed Intrastate Switched Access Rates are unfair and unreasonable.*

arguments on January 6, 2011. Therefore, I will deal with both AT&T and Verizon's petitions in this order.

AT&T stated in support of its petition that it obtains intrastate switched access service from numerous carriers identified as Respondents in this proceeding and therefore had a direct interest in the proceeding. Similarly, Verizon states in support of its petition that it is an interexchange carrier in Nebraska and it originates and terminates interexchange traffic to the Respondents and therefore has a direct interest in the proceeding.

Both AT&T and Verizon raise the principle legal issues underlying the complaints and the desire to address the Commission on those issues. Both state they have experienced increases in bills issued to their company for access services provided by some or all of the Respondents, but have no interest in the specific facts regarding the bills issued by the Respondents to Sprint for access services.

Commission Rules of Procedure allow for two types of intervention in proceedings, formal and informal. Those seeking formal intervention become parties to the proceeding with full participation in the proceeding including conducting discovery, eliciting testimony and cross-examining witnesses.¹³ Informal intervention does not grant party status but does allow interested parties to offer the testimony of a witness and participate in brief submission.¹⁴

While both AT&T and Verizon do business with the Respondents, formal complaint proceedings involve specific allegations leveled against specific entities with specific damages and redress sought. Verizon and AT&T both indicated they are not interested in the facts specific to the bills being disputed by Sprint from which the complaint arose. Their interest instead lies in having the opportunity to address the Commission on the underlying legal issues raised by the complaint.

Allowing outside entities that seek no part in making specific allegations or defenses to become parties in a formal complaint proceeding is problematic. If AT&T and Verizon indeed just want an opportunity to address the Commission on the underlying legal issues in the complaint, in my opinion neither AT&T nor Verizon require formal party status to accomplish that goal. Informal intervention grants them the opportunity to

¹³ See Neb. Admin. Code, Title 291, Ch. 1 § 015.01 (1992).

¹⁴ See Neb. Admin. Code, Title 291, Ch. 1 § 015.02 (1992).

participate and be heard on the principle legal issues raised by the Complaints.

Therefore, the Petitions by AT&T and Verizon for Formal Intervention are denied, but I do grant them Informal Intervenor status. AT&T and Verizon shall be entitled to present the testimony of a witness and be heard regarding the issues in which they have interest.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Motion by Sprint Communications Company, L.P. to Consolidate the above-captioned proceeding with Application Nos. FC-1346, FC-1347 and FC-1348 be, and is hereby, denied.

IT IS FURTHER ORDERED that the Petitions for Formal Intervention filed by AT&T Communications of the Midwest, Inc. and MCI Communications Services, Inc. d/b/a Verizon Business Services be, and are hereby, denied.

IT IS FURTHER ORDERED that AT&T Communications of the Midwest, Inc. and MCI Communications Services, Inc. d/b/a Verizon Business Services shall be granted Informal Intervention in the above-captioned proceeding.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of January, 2011.

BY:

Frank E. Landis
HEARING OFFICER