

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. NUSF-27
Nebraska Technology &)
Telecommunications, Inc. of Lincoln,)
requesting Universal Service support) GRANTED
for supported services provided in)
Qwest and Citizens exchanges.)
) Entered: June 5, 2002

APPEARANCES:

For Nebraska Technology
& Telecommunications, Inc.:

Mark A. Fahleson
Rembolt Ludtke & Berger LLP
1201 Lincoln Mall,
Suite 102
Lincoln, Nebraska 68508

For Qwest Corporation:

Jill Vinjamuri
Kutak Rock LLP
The Omaha Building
1650 Farnam Street
Omaha, Nebraska 68102

For the Commission:

Shanicee Knutson
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

For ALLTEL Nebraska, Inc., Arlington
Telephone Company, Blair Telephone
Company, Cambridge Telephone Company,
Clarks Telecommunications Co.
Consolidated Telephone Company,
Consolidated Telco Inc., Eastern
Nebraska Telephone Company, Great
Plains Communications, Inc., Hamilton
Telephone Company, Hartington
Telecommunications Co., Inc., Hershey
Cooperative Tele-phone Company,
Inc., Hooper Telephone Company, K&M
Telephone Company, Inc., Nebcom, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska
Telephone Company, Pierce Telephone
Co., Rock County Telephone Company,
Southeast Nebraska Telephone Co.,
Stanton Telephone Co., Inc., and Three
River Telco:

Paul M. Schudel
Woods & Aitken, LLP
301 South 13th Street,
Suite 500
Lincoln, Nebraska 68508

BY THE COMMISSION:

By Application filed November 6, 2001, Nebraska Technology & Telecommunications, Inc. (NT&T or Applicant) of Lincoln, Nebraska requests support from the Nebraska Universal Service Fund for supported services provided in Qwest and Citizen exchanges. Notice of the application was published in The Daily Record, Omaha, Nebraska, on November 8, 2001. Petitions for Formal Intervention were timely filed by ALLTEL and a collective grouping of independent rural telephone companies specifically identified above (Independents) on December 7, 2001. A Petition for Formal Intervention was also filed by Qwest Corporation on January 9, 2002. By order entered February 5, 2002, the Hearing Officer in this proceeding denied the petition finding that it was not timely filed. Petitions of Informal Intervention were filed by Cox Nebraska Telcom, L.L.C. and by Qwest Corporation.

The Hearing Officer held a prehearing conference on January 9, 2002 in order to frame the issues and set forth a procedural schedule. The prehearing conference order was entered by the Hearing Officer on January 29, 2002.

A hearing on this application was held on February 25, 2002, in the Commission Hearing Room in Lincoln, Nebraska with appearances as shown above. Mr. Dale Musfeldt and Mr. Michael Orcutt testified on behalf of the applicant. No witnesses testified on behalf of any Intervenor. Mr. Fahleson moved a protective order to be entered. This motion was granted by the hearing officer. On March 19, 2002, the protective order covering the confidential information filed in the above-captioned application was entered.

Mr. Musfeldt, Chief Executive Officer of NT&T testified as follows:

In Application Nos. C-1523 and C-1627, NT&T was granted a certificate of public convenience and necessity to provide local exchange and interexchange telecommunications services in areas served by Qwest, ALLTEL, Citizens and United Telephone Company of the West. NT&T currently provides local telecommunications services in various exchanges in Nebraska. NT&T provides local telecommunications services as a reseller of the incumbent local exchange carrier's (ILEC's) services as well as through a combination of network elements that it leases from the ILECs and additional services offered by the ILEC that NT&T resells.

NT&T offers voice-grade access to the public switched network, local usage for both data and voice, dual tone multi-frequency signaling, single party service, access to emergency service, access to operator service, equal access to interexchange service, access to directory assistance and toll limitation for qualifying low-income consumers. NT&T ensures that its customers have the option of receiving a standard "white page" listing through separate agreements with ILECs and/or their directory publishers.

On May 8, 2001, NT&T filed an application with the Commission seeking designation as an eligible telecommunications carrier (ETC) for the purpose of federal universal service support. That application was docketed as Application No. C-2528. On October 4, 2001, the Commission entered an order granting NT&T such designation.

Mr. Musfeldt testified that the present application is strictly limited to NT&T's request for NUSF support for high-cost customers it serves in Qwest and Citizens exchanges in Nebraska. In the event that NT&T begins serving customers in ALLTEL or United exchanges on an unbundled network element platform (UNE-P) or other facilities basis, NT&T may, at that time, file a separate application seeking NUSF support for those customers. Mr. Musfeldt also testified that he agreed with the Director of the NUSF department that the present application should be limited to the transition period only and that the Commission's final order in NUSF-26 should supersede any order in the present application.

Mr. Musfeldt testified that the Commission should look to FCC regulations, the proposed rules in Rule and Regulation No. 150 and past orders/precedent for the basis of its decision for this application. According to the foregoing, Mr. Musfeldt believed that the criteria with which the Commission should base its decision is as follows:

- (1) The telecommunications carrier must provide basic local exchange service in the relevant service area. For the purposes of his testimony, basic local exchange consists of the following: a) single party basic local exchange service within an exchange for which an ETC is receiving support; b) dual tone multi-frequency signaling or the functional equivalent; c) a standard white page or alpha directory listing at the customer's request; d) access to directory assistance services; e) equal access to interexchange services; f) access to emergency 911 or E911 services; g) access to operator services; and h) toll blocking for qualifying low-income subscribers;
- (2) The carrier must also price its basic local exchange service offering at the benchmark rates established by the Commission which, pursuant to the Commission's order in Application No. C-1628 are presently \$17.50 per month for residential service and \$27.50 per month for business service;
- (3) The carrier must advertise such services and the applicable charges using media of general distribution; and
- (4) The carrier must be subject to such requirements as the Commission may adopt from time to time with respect to ETCs receiving NUSF support, including any applicable quality of service requirements and the requirement that the ETC provide supported services for which it will receive NUSF funding to all requesting subscribers within the Commission-approved geographical service area.

Mr. Musfeldt testified that NT&T has and will continue to satisfy the above-referenced criteria. Although NT&T does not publish its own directory, NT&T has entered into separate directory agreements with Qwest and Citizens, which provide, inter alia, that NT&T customers are listed in the "white page" directory listing at the customer's request. Mr. Musfeldt further testified that NT&T offers equal access to interexchange services. NT&T intends to price its basic local exchange service offering at an amount not less than the benchmark rates established by the Commission. Mr. Musfeldt further confirmed that NT&T has previously advertised the availability of its services through several different media including newspaper, radio, television and billboard advertising. He stated that NT&T will comply with any advertising requirements the Commission may impose in the future. Mr. Musfeldt further testified that NT&T will comply with any requirements the Commission may adopt that apply to all ETCs receiving NUSF support.

With respect to the requirements imposed by an ETC desiring NUSF support during the transition period, NT&T provided that through its exhibits it can adequately document the support it should receive on an interim basis pursuant to Commission order in C-1628. To meet this requirement, Mr. Musfeldt testified that since it provides service through the incumbent by purchasing the loop and switching elements from the non-rural incumbent, the cost of providing that service to its end user is commensurate with the cost of the non-rural incumbent. Along with the cost of buying the loop and switching elements, NT&T incurs a cost as a part of its plant operations, customers services, sales/marketing and corporate operations. Accordingly, in the Qwest exchanges for example, NT&T testified that its cost of providing the service is commensurate with the costs of the non-rural incumbent on a per line basis.

Mr. Michael Orcutt, Vice President of NT&T, testified next on behalf of the applicant. Mr. Orcutt testified that he oversees the general operations of the company as well as marketing and sales. He prepared the advertising plan, marked and accepted as Exhibit No. 3. He testified that the applicant would contact its existing customers under contract and inform them of the rate change.

No other party presented testimony at the hearing.

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

The Commission considers this application against the backdrop of its findings and conclusions in Application No. C-1628/NUSF (entered January 13, 1999). In that docket, the Commission set its course for the operation of the Nebraska Universal Service Fund (NUSF) to guide telecommunications carriers through the transition period. Specifically, the Commission found, "[a]dditional carriers other than ILECs will be eligible for interim funding after they have applied for and have been granted state ETC designation pursuant to Commission guidelines and existing law and have provided documentation acceptable to the Commission on the amount of support they should receive on an interim basis for providing service to high-cost customers." Although the Commission makes other findings with respect to support, this finding was specifically directed towards support for competitive ETCs in the transition period. Therefore, the Commission will rely on this particular finding for the purposes of considering this application.

In its January 13, 1999 order, the Commission held that additional carriers other than ILECs will be eligible for interim funding after making an acceptable demonstration, pursuant to Commission guidelines regarding how much each respective carrier should receive. This finding suggests that the Commission intended to make a company by company cost determination of support rather than utilize a blanket approval process for all ETCs based on one forward-looking cost methodology. Accordingly, the Commission concludes that NT&T has correctly interpreted the requirements for demonstrating needed support for the transition period.

At the hearing on this application, NT&T provided documentation acceptable to the Commission to demonstrate the amount of high-cost support they should receive on an interim basis. NT&T intends to provide service through unbundled network elements provided by Qwest on a platform basis or "UNE-P" which is service provided entirely over Qwest's facilities leased by NT&T in a combination form. To demonstrate cost, NT&T highlighted the amounts it pays to Qwest, the underlying carrier, for the lease of unbundled network elements on a UNE-P basis. This amount was derived from its interconnection agreement with Qwest which is currently on file with the Commission. As previously conceded by the applicant, the support area for the purposes of this application is the exchange area. Therefore, the amounts included in NT&T's analysis was also derived using the interim zone one through three loop rates established in Application No. C-2256/PI-38. In addition to the amount NT&T pays to Qwest per UNE-P, NT&T adjusted the figure to include its cost of doing business represented by Plant Operations and Corporate Overhead. The total, NT&T argued, was its company-specific cost to provide service in zones one through three.

NT&T testified that it was not seeking additional support in exchanges currently falling in zone one as defined by the Commission. NT&T was seeking additional support in the Qwest exchanges which have been grouped in zones two and three. NT&T's position is that NT&T interim NUSF support for providing service to high-cost customers in Qwest's and Citizens' exchanges should be calculated to the extent that Qwest or Citizens receives NUSF support for a customer that elects to obtain basic local exchange service from NT&T. Because we find that NT&T has established that it is utilizing the loop and subloop elements of the ILEC and that its costs for providing competitive local exchange

service to high-cost customers in Qwest exchanges are generally equal to the costs incurred by Qwest, the Commission agrees with NT&T's position. That is, an amount equal to the NUSF support attributable to such customer should also be paid to NT&T.

The Commission finds that NT&T has demonstrated that it's cost to provide service in high cost zones as defined by the Commission are indeed commensurate with the costs borne by Qwest, from which NT&T purchases UNE-Ps. No like evidence was provided by NT&T to prove this case with respect to Citizens. However, Citizens does not now draw support from the NUSF. Therefore, the Commission finds that NT&T should receive an amount commensurate with the underlying carrier, in this case Qwest. Because the cost data provided pertains solely to the non-rural carriers and is limited to cost recovery for supported services provided over UNE-P, the Commission's finding here is also so limited. This finding carries no precedential value for the calculation of support in rural areas or for a support methodology for elements or service provided through means other than UNE-P.

Although NT&T took no position on the issue at the hearing, Qwest, an Informal Intervenor in this case, voiced concerns that the Commission will reduce the amount of support currently going to Qwest for these lines. The findings and conclusions in C-1628 were silent on the issue of reduced support. The Commission finds no basis in the record or in C-1628 to reduce NUSF support to Qwest concurrent with the lending of support to NT&T. This finding, however, is in no way intended to preclude the Commission from making a future finding that NUSF support should be limited.

In our C-1628 Order the Commission also declared that "[a]s additional carriers are granted ETC designation and it is determined that they are eligible for support from the interim fund, fund size and the surcharge will be adjusted accordingly." At the present time, we find it unnecessary to adjust the fund size or surcharge. However, the Commission will revisit this issue in the future should it deem it necessary to do so.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of Nebraska Technology and Telecommunications, Inc. to receive NUSF support for supported services provided by said carrier to high-cost customers in the service areas served by Qwest and Citizens shall be and it is hereby granted.

IT IS FURTHER ORDERED that in order to be eligible and retain eligibility to receive ongoing NUSF support that NT&T must provide the supported services as defined by current and future Commission orders and rules and regulations and that NT&T offer such services in a reasonable time period.

IT IS FURTHER ORDERED that if the Commission determines that NT&T has failed to provide all supported services as defined by the Commission, then, upon notice and hearing, the Commission may withhold or adjust NT&T's interim NUSF support.

IT IS FURTHER ORDERED that NT&T may begin receiving NUSF distributions for its provision of supported services as set forth herein effective immediately.

IT IS FURTHER ORDERED that to the extent that interim NUSF support that would otherwise have been received by Qwest or Citizens is paid to NT&T, the interim NUSF support payments to Qwest or Citizens shall not be reduced.

IT IS FURTHER ORDERED that in order to be eligible to receive NUSF support NT&T must advertise the availability and price of its universal service offering in those high-cost service areas in which it is seeking support, and that the price for that offering shall not be less than the benchmark rates established in the C-1628 Order.

IT IS FURTHER ORDERED that NT&T file any information required by the NUSF Director necessary to determine support amounts as set forth in this Order.

IT IS FINALLY ORDERED that in the event that NT&T begins serving customers in ALLTEL or United exchanges on an unbundled network element platform (UNE-P) or other facilities-basis, that NT&T must file a separate application before seeking additional NUSF support for those exchanges.

MADE AND ENTERED at Lincoln, Nebraska, this 5th day of June, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director