

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Application No. NUSF-35/PI-69
Public Service Commission seeking	)	
to determine Nebraska Eligible	)	
Telecommunications Carrier status	)	
for the purposes of receiving	)	
state universal service support	)	
for providing Lifeline/Link-up	)	
services and Telehealth services	)	
to rural hospitals.	)	
	)	
In the Matter of the Nebraska	)	
Public Service Commission, seeking	)	Application No. C-2868/PI-69
to require all local exchange	)	FINDINGS AND CONCLUSIONS
carriers to provide Lifeline and	)	
Link-up services.	)	Entered: April 29, 2003

BY THE COMMISSION:

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

1. The Nebraska Public Service Commission (Commission) opened this proceeding on January 28, 2003 to determine Nebraska Eligible Telecommunications Carrier (NETC) status for carriers providing Lifeline/Link-up services and for carriers providing Telehealth services to rural hospitals. The Commission also sought comments on whether it should require all local exchange carriers (LECs) to provide Lifeline and Link-up services. Notice of the application was published in The Daily Record, Omaha, Nebraska, on January 31, 2003.

2. Comments were filed on February 21, 2003 by AT&T Communications of the Midwest and AT&T Local Services for TCG, Dark Fiber Solutions, LLC, the Rural Independents, Qwest Corporation, Cox Communications, Inc., and MCI WorldCom Communications.

3. The Commission had proposed that all carriers holding a certificate as a LEC be required to offer Lifeline and Link-up service and be given NETC status for the associated state Lifeline/Link-up support.

**ISSUE ONE**

Position of the parties:

4. AT&T disagreed with the Commission's proposal to require that all carriers provide Lifeline/Link-up services. AT&T stated that this requirement would be a substantial barrier to entry for new companies seeking to provide local exchange services. Similarly, AT&T opposed the idea that all carriers be given NETC status upon

commencement of operations as the burdens associated with such status are considerable and should not be imposed involuntarily.

5. Dark Fiber Solutions, LLC (DFS) also disagreed with the Commission's proposal. DFS also argued that this requirement would serve as a substantial barrier for entering into the local market. DFS also opposed any requirement that new entrants automatically be given NETC status upon the commencement of operations.

6. The Rural Independent Companies on the other hand supported the Commission's proposal that all carriers holding a LEC certificate be required to offer Lifeline and Link-up service and that such carriers be given NETC status for the associated Lifeline/Link-up support. The Rural Independent Companies believed that such a requirement would provide a public benefit. Moreover, they stated, it would assist the Commission's universal service goals by ensuring that quality telecommunications and information services are available at just, reasonably and affordable rates. The Rural Independent Companies believed that the granting of NETC status for this situation should only allow such carriers to receive NUSF support for Lifeline/Link-up service.

7. Qwest stated that it was concerned with the implications and confusion associated with designating carriers as NETCs as many of these LECS would not meet the designation criteria of an ETC pursuant to 47 U.S.C. Section 214(e). Qwest suggested that for the purposes of this inquiry into Lifeline and Telehealth that the Commission use the term Nebraska eligible carrier, or in the alternative, non-ETC carriers. Qwest agreed that low-income consumers deserved as many competitive options as other consumers in Nebraska and thus supported a requirement that all LECs be required to offer the state low-income programs. Consistent with the FCC's rules, however, such carriers that are not designated as ETCs would not be eligible to receive federal matching funds. Therefore, the non-ETC eligible carriers' customers would receive a smaller credit.

8. Cox commended the Commission for pursuing ways to further the availability of basic local telephone service for low-income customers. However, as an ETC, offering Lifeline/Link-up services, Cox would not be affected by the outcome of this proceeding. If it was the intention of the Commission to require all LECs to become federal ETCs, Cox suggests streamlining the process.

9. MCI WorldCom opposed the Commission's proposal stating that all carriers should be required to meet section 214(e) eligibility criteria as a condition to receiving support. Also pure resellers, for example are not eligible to receive universal service funding because they offer service solely by reselling another carrier's universal service package. Carriers offering Lifeline services

must be likewise subject to the FCC's rules. These criteria would be overly burdensome to new entrants.

Discussion:

10. The Commission's proposed requirement was not intended to be a burden upon new entrants, but rather a streamlined approach to make all certificated local exchange carriers eligible for Lifeline/Link-up support upon the offering of local exchange services. The Commission also hoped to increase the alternatives for Lifeline/Link-up customers. The Commission continues to believe, from a policy perspective, that there would be significant benefits to low-income Nebraska subscribers if the Commission's proposal were to be implemented. Low-income subscribers ought to have the same choice amongst carriers and should not be limited to those carriers who by choice apply for and become federal ETCs. At the same time, a requirement that all local exchange carriers to participate in the state Lifeline/Link-up program would assist the Commission in furthering one of its many universal service goals by ensuring that all Nebraskans have access to affordable telecommunications services. As it is, carriers with a significant subscriber base offering facilities-based and UNE-based services have been diligent in offering Lifeline and Link-up services. However, not all local exchange carriers want to be ETCs or offer Lifeline/Link-up services. As part of the Commission's NUSF rules, all NETCs seeking state support are required to offer Lifeline/Link-up services.

11. The Commission does not believe that there are any inherent barriers that would prevent carriers offering local exchange services from providing Lifeline/Link-Up services. However, the Commission recognizes that in order to receive reimbursement from the federal universal service fund for a portion of the discounts provided on Lifeline/Link-Up services, carriers are required to receive designation as a federal ETC pursuant to 47 U.S.C. Section 214(e). Unlike the area of federal support for rural health care programs, the FCC requires carriers receiving Lifeline support to be federal ETCs. As WorldCom provides, ETCs offering Lifeline services are subject to federal rules, which would not apply to other carriers who become eligible on a statewide basis only. Currently, the Joint Board on Universal Service is recommending other ways of broadening the base of Lifeline recipients. However, eliminating the ETC requirement for carriers is not amongst the considered alternatives. The Commission does not believe that would be in the public interest to create an interim step, whereby low-income consumers enrolled in the Lifeline/Link-Up program would receive a smaller credit when service is provided by a non-ETC. Low-income consumers under such an approach would only receive a discount equal to the State's matching support of \$3.50/month instead of the \$10.00/month or more discount received by other qualifying consumers. This will create confusion amount low-income

consumers. Therefore, for the present time, the Commission will not implement its proposal to require all certificated local exchange carriers to offer Lifeline/Link-up service.

## **ISSUE TWO**

### Position of the Parties:

12. AT&T disagreed with a requirement that all certificated carriers automatically receive NETC status for the purpose of receiving state support for the Telehealth program. AT&T again believed that it would be a burden and therefore a barrier to entry for new carriers. AT&T believes that once a carrier received federal ETC status from a state Commission it should automatically receive state ETC status as well.

13. DFS disagreed with the Commission's suggestion that access to NUSF funds for provisioning services to rural health care providers should be triggered by automatically "granting" such carriers NETC status. DFS provides that the NUSF Act provides that funds for the support of health care to rural areas will be available to any entity providing telecommunications services. Neb. Rev. Stat. Section 86-1404. Unlike funds for the support of high cost services areas, DFS states, no NETC designation is required by statute. Finally, DFS states that based upon Nebraska's longstanding policy to foster competition for provision of telecommunications services, the Commission should permit any carrier that has been granted a certificate of public convenience and necessity to provide local exchange or interexchange services to be eligible to access support from the NUSF for the provision of Telehealth services.

14. The Rural Independent companies supported the Commission's proposal that all carriers holding a local exchange or interexchange carrier certificate be given NETC status for the purpose of providing service to rural health care providers. If such carriers sought other high cost support, such carriers should apply for NETC designation in order to receive high cost support.

15. Qwest did not oppose the inclusion of eligible carriers including all local exchange carriers and interexchange carriers for the purposes of the rural Telehealth program. Qwest noted its concern that changes to the state program prior to FCC action on the rural health care support mechanism may be premature. Qwest therefore maintains that the Nebraska Telehealth program should await federal action to ensure that no duplicative state support will be given.

16. Cox urged the Commission to implement streamlined procedures that would refine the process so that competitive local exchange

carriers could review potential rural healthcare projects knowing that its ETC designation is not in dispute.

17. MCI WorldCom did not comment separately on this issue but rather referred the Commission to its earlier comments on the Commission's first proposal.

Discussion:

18. Consistent with the federal position on this issue, the Commission finds that it should make support available to all certificated local exchange and interexchange carriers who desire to competitively bid to provide connectivity for the rural Telehealth program. With respect to AT&T's comments, the Commission disagrees that this would create additional barriers upon entrants. The Commission is simply providing that all certificated carriers are eligible to competitively bid, if they so choose, in the Telehealth process and then after a plan has been approved, such carriers would be eligible to receive support from the NUSF. The Commission is not imposing any additional criteria upon certificated carriers nor is the Commission forcing any carrier to participate in this process. By designating all certificated local exchange and interexchange carriers as eligible, the Commission is furthering its goal of ensuring that affordable service is offered to rural health care facilities.

19. While the Commission is aware that Neb. Rev. Stat. § 86-323 provides that "Funds for the support of . . . providers of health care to rural areas will be available to any entity providing telecommunications services, maintenance, and upgrading of facilities", the Commission also reads Neb. Rev. Stat. § 86-324 which provides "only eligible telecommunications companies designated by the commission shall be eligible to receive support to serve high-cost areas from the fund" to require the commission to affirmatively designate which carriers are eligible to draw funds from the NUSF for the purpose of providing affordable access to all high-cost areas including those of the rural health care provider. To simplify this process, however, and for the purpose of supporting the rural Telehealth program, the Commission proposed to designate all certificated local exchange carriers and interexchange carriers as *eligible* to participate in the competitive bid process and then to receive NUSF support. Such a finding would satisfy both the requirement of both statutes.

20. In 1999, the FCC released its Fourteenth Order on Reconsideration in FCC 99-256.<sup>1</sup> In that order, the FCC reconsidered its decision to limit federal support for serving rural health care providers to eligible telecommunications carriers so designated by

---

<sup>1</sup> In the Matter of the Federal-State Joint Board on Universal Service, Fourteenth Order on Reconsideration, CC Docket No. 96-45 (rel. November 3, 1999)(FCC Order on Reconsideration).

Section 214(e). The FCC decided that its interpretation of Section 254(e)<sup>2</sup> was too restrictive. The FCC then held that all telecommunication carriers that contribute to the federal universal service mechanism, should be eligible to receive support for providing discounted services to rural health care providers.<sup>3</sup>

21. Upon consideration of the FCC's interpretation and in view of the state NUSF Act provisions, we find that all certificated telecommunications carriers should be eligible for support. Therefore, the Commission characterizes all presently certificated local exchange and interexchange carriers as eligible providers for the purpose of receiving Telehealth support. The Commission considers this designation separate from NETC carriers who wish to receive other high cost support. Such carriers need to apply for and become designated as NETCs for those purposes. For local exchange carriers and interexchange carriers which will be granted a certificate of public convenience and necessity by this Commission in the future, the Commission will consider those new entrants automatically eligible for participation in and the receipt of support for participation in the state rural Telehealth program.

22. Further, the Commission declines to link the grant of Nebraska ETC status to the granting of federal ETC status. In large part, the criteria for federal ETC status are set by the FCC and in the Communications Act and cannot be modified by States. With respect to the NUSF, the Commission has a statutory obligation as well a legitimate right to determine the criteria to receive support.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the opinions and findings contained in this Order, be and are hereby adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 29th day of April, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION  
COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

---

<sup>2</sup> Section 254 (e) provides in pertinent part that "only an eligible telecommunications carrier designated under 214(e) shall be eligible to receive specific Federal universal service support." 47 U.S.C. Section 254(e).

<sup>3</sup> See FCC Order on Reconsideration at ¶ 15.