BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Joint Petition of Allo Communications, Imperial, L.L.C., Mobius Communications Company, Hemingford, and Pinpoint Communications, Inc., Cambridge, for a docket to investigate findings and conclusions under C-2516 and NUSF-26 regarding competitive business telecommunications services.	)	Application No. C-3448/NUSF-46/PI-102 ORDER Entered: March 7, 2006

APPEARANCES:

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BY THE COMMISSION:

By Joint Petition filed on July 15, 2005, Allo Communications, L.L.C., of Imperial, Nebraska, Mobius Communications Company of Hemingford, Nebraska and Pinpoint Communications, Inc., of Cambridge, Nebraska (collectively referred to as "joint petitioners"), request the Commission to investigate certain findings and conclusions made in Application No. C-2516 and NUSF-26 regarding competitive business telecommunications. Notice of this Joint Petition appeared in the Daily Record, Omaha, on July 21, 2005. Petitions of

Intervention were filed by the Rural Independent Companies[1], Nebraska Technology and Telecommunications, Inc., Orbitcom, Inc. and Qwest Corporation. On September 26, 2005, a planning conference was held. At the planning conference it was agreed to by all parties that the Commission should bifurcate the Joint Petition. It was agreed that the Commission would first focus its attention on the request for interim relief requested in the review of the Commission's decision in NUSF-26.[2] The Commission would then address, at a later hearing, the request to modify Commission findings in Docket C-2516 relative to the wholesale UNE loop rates charged by Qwest in the three Commission-established zones.

On November 10, 2005, the Commission held a hearing on the Joint Petition. This hearing focused on the Joint Petitioner's request for interim relief by modification of the Commission's NUSF-26 Findings and Conclusions Order entered in November of 2004. The Petitioners requested an order of the Commission extending the grandfathering provision in paragraphs 29 and 30 in order to make Petitioners eligible to receive NUSF support for all business lines in zones 2 and 3.

Mr. Bradley A. Moline testified on behalf of the Petitioners. Mr. Moline is president of Allo Communications. Mr. Moline testified that the Commission's Order in NUSF-26 had an unintended consequence that virtually eliminated competition for business customers in Zones 2 and 3. The NUSF-26 order was entered in November of 2004. In that order, the Commission used a hold harmless provision which specified that existing business lines receiving support as of September 2004 would continue to receive the same NUSF support as they had previously. The Commission found it would not support new business lines. As a result of the Commission's order, Allo eliminated its sales force in zones 2 and 3. Allo is not seeing as much business competition in those areas. Mr. Moline testified that until the Commission aligns the NUSF-26 methodology and Allo's UNE loop costs derived from Docket C-2516, there should be interim support flowing to Joint Petitioners.

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[1] The Rural Independent Companies are collectively comprised of: Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co, Consolidated Telephone Co., Consolidated Telco Inc., Consolidated Telcom Inc., Eastern Nebraska Telephone Co., Great Plains Communications Inc., Hartington Telecommunications Co. Inc., Hershey Cooperative Telephone Company Inc., K & M Telephone Company Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co. Inc., and Three River Telco.

[2] This order focuses solely on the petitioners' request for what is referred to as "interim relief" described in section 3)a) of the Joint Petition.

Mr. Moline testified the Commission shifted its support mechanism to target loop costs for out of town households rather than more densely populated areas. Accordingly, Qwest does not receive support for businesses either.

Mr. Roger Hoffman, a consultant appearing on behalf of Pinpoint Communications, testified Pinpoint is at a disadvantage when it comes to serving business customers in zones 2 and 3.

Mr. Jeffrey Pursley, Director of the Nebraska Universal Service Fund Department testified against interim relief. Mr. Pursley stated the Commission should look towards a long term solution rather than modify its findings in NUSF-26. If the Commission chose to grant interim relief to the Petitioners, Mr. Pursley suggested, they should limit the amount of support and the timeframe in which support would be given. Mr. Pursley indicated that the staff had been evaluating options that would involve modifying zones 2 and 3 created in Docket No. C-2516.

Mr. Peter Copeland, Director of Cost and Economic Analysis for Qwest, testified in opposition to the interim relief portion of the Joint Petition. Qwest does not agree that the joint petitioners are competitively disadvantaged. Rather, Mr. Copeland believes Qwest is at a disadvantage because the petitioners continue to receive support for their existing business customers and the pre-existing NUSF-26 levels and also receive support for in-town residential lines where Qwest does not. Mr. Copeland testified that Qwest's position on universal services has evolved over time so its current position may be at odds with the position Qwest took during the NUSF-26 proceedings. Mr. Copeland testified that he agreed with the Commission's findings that it should not be supporting business services.

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

The joint petitioners request that the Commission modify its findings in the November 3, 2004, NUSF-26 Order relative to business line support. The relevant portions for the purpose of this Joint Petition are contained within paragraphs 29 and 30, which provide as follows:

> 29. As a general matter, the Commission will no longer be porting support for business lines. However, with respect to the business lines from which CNETCs are currently receiving support, the Commission, as recommended, adopts a hold harmless provision

> during the transition period to avoid any disruption to the CNETCs who are currently competing in rural areas. Specifically, the NUSF Department should calculate business line support using the current zone port rates, which are as follows: Zone One business: $0.00, Zone Two business: $15.15, and Zone Three business: $56.87.
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> 30. The hold harmless provision will only be applicable for the number of lines reported for September 2004. CNETCs will then continue to receive NUSF support for the business lines unless and until such lines are lost. The CNETCs could fall below the current support level for business lines but could never receive support above the level established by the September 2004 access line report. CNETCs are required to notify the NUSF Department when they no longer provide service to such a grandfathered business line.

(Emphasis added.)

While the joint petitioners refer to the consequences of these findings as “unintended consequences”, the NUSF Department Director disagreed that the result was unintended. Rather, he testified that it was one of many cognizable consequences of the order. There was no disagreement that all interested parties had an opportunity to comment and to challenge the Commission’s findings and conclusions in NUSF-26. As such the NUSF Department and Qwest suggest that the Commission should deny the Joint Petition.

On the other hand, the Commission is not unsympathetic to the Joint Petitioners’ position. The petitioners have made legitimate inroads in effort to provide competition for business service in zones 2 and 3 which include smaller communities and rural areas in Nebraska. NUSF support would allow the petitioners to serve areas in zones 2 and 3 without having to build new facilities, at least until the petitioners are able to make that investment.

Upon consideration of the positions of the parties, the testimony and post-hearing statements, the Commission is of the opinion and finds that it should temporarily modify its NUSF-26 findings and conclusions relative to supporting business lines. The grandfathering provision contained in paragraph 30 of the Commission’s findings in NUSF-26 will be temporarily extended to

include business lines in zones 2 and 3 that the Petitioners can demonstrate to the Commission's satisfaction were in service or were in the process of procuring service as a business line as of November 3, 2004, the date when the original order in NUSF-26 was entered. This temporary extension of the provisions of NUSF-26 will only be in effect until the Commission has had an opportunity to investigate and make a determination on the alignment of NUSF-26 and Docket No. C-2516.

In order to properly consider the alignment of NUSF-26 methodology and Docket No. C-2516 UNE rates and zones, the Commission finds that these issues should be investigated in separate dockets and not in the current docket at hand. The issues involved are more far-reaching than the current docket allows. In the interest of fairness, we find time should be allowed for other interested parties to participate in this process if they so desire. Therefore, we are reserving making a decision on the second part of the Petitioner's requests at this time and closing this docket. In place of phase two of this docket, the Commission opened two new dockets on February 28, 2006, C-3554, to investigate in the Communications department the possibility of implementing changes to C-2516 zones and Progression Order #2 in NUSF-50 to investigate possible methodology for altering porting of NUSF support in certain instances.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Joint Petition request for modification of the Commission's findings and conclusions issued in the November 3, 2004, NUSF-26 Order be and it is hereby granted subject to the conditions set forth in this order.

IT IS FURTHER ORDERED that this docket be and is hereby closed.

MADE AND ENTERED at Lincoln, Nebraska this 7th day of March, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Deputy Director