

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition ) Application No. NUSF-77.20  
of the Nebraska Telecommunica- )  
tions Association for )  
investigation and review of )  
processes and procedures ) PETITION FOR FORMAL  
regarding the Nebraska Universal ) INTERVENTION DENIED  
Service Fund: Application to )  
the Nebraska Broadband Pilot )  
Program (NEBP) received from )  
N.E. Colorado Cellular d/b/a ) Entered: May 23, 2013  
Viaero. )

BY THE HEARING OFFICER:

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

By Petition filed on April 29, 2013, United Telephone Company of the West d/b/a CenturyLink and Qwest Corporation (collectively referred to as "CenturyLink") seeks formal intervention in the above-captioned proceeding. An Objection to the Petition was filed by N.E. Colorado Cellular d/b/a Viaero ("Viaero") on May 2, 2013. A Response to the Objection was filed by CenturyLink on May 8, 2013.

Petitions for Formal Intervention were to be filed on or before April 5, 2013 pursuant to the Commission's Order establishing the procedure schedule for Nebraska Broadband Pilot (NEBP) Program applications<sup>1</sup> and pursuant to the Commission's Rules of Procedure.<sup>2</sup> Subsequent to the April 5, 2013 deadline, and pursuant to the Commission's Order, interested parties in the NEBP dockets were to be given a 30-day negotiation period by which applicants could resolve objections to their application by further restricting the area in which support was sought.

In its Objection, Viaero stated that the Petition was untimely, having been filed three (3) weeks after the deadline for such Petitions. In addition, Viaero stated with regard to the instant matter, the grant of the Petition would confer a procedural benefit upon CenturyLink.

In support of its Petition for formal intervention, CenturyLink stated its late-filed petition was the result of its

<sup>1</sup> See *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Progression Order No. 7, Order (January 13, 2013) (Progression Order No. 7).

<sup>2</sup> See. Neb. Admin. R. & Regs., tit. 291, ch. 1, § 015.01B.

extensive review of confidential data it received from Viaero. In addition, CenturyLink cites *In re Application of Jantzen*, 245 Neb. 81 511 N.W.2d 504 (1994) ("Jantzen"), to support its argument that the Commission has discretion to waive its procedural rules. CenturyLink stated its participation will aid the Commission by ensuring that NUSF support is spent wisely and consistent with the law and the Commission's own rules.

Upon consideration of the late-filed Petition, the Objection and the Response filed, I am of the opinion and find the late-filed Petition for Formal Intervention should be denied. In weighing the arguments in the present case, I find there was no valid reason for the delay, that a grant of the Petition would not "merely serve as an aid to the Commission",<sup>3</sup> and that a grant would be prejudicial to the applicant. I'm particularly concerned that a grant of the late-filed Petition at this stage in the proceeding would circumvent the good faith negotiation process contemplated by the Commission in its Order, and, additionally providing CenturyLink and Viaero an additional 30-day negotiation period would cause an unreasonable delay in considering all other NEBP applications.

Notwithstanding the denial of Formal Intervenor status, CenturyLink continues to have an avenue to file and present a prepared statement and exhibits thereby providing the Commission with any information relevant on this matter at the hearing. If a timely petition for informal intervention is filed and granted pursuant to Neb. Admin. R. & Regs., tit. 291, ch.1 §015.02, CenturyLink may present a witness at the hearing, participate in oral argument(s), and file any solicited post-hearing briefs/comments.

## O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Petition for Formal Intervention filed by United Telephone Company of the West d/b/a CenturyLink and Qwest Corporation be and it is hereby denied.

MADE AND ENTERED at Lincoln, Nebraska this 23rd day of May, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

By: 

Frank E. Landis  
Hearing Officer

<sup>3</sup> *Jantzen*, 245 Neb. at 97.