

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its ) RULE AND REGULATION NO. 178  
own motion, seeking to amend Title 291, )  
Chapter 5, Telecommunications Rules and ) ORDER RELEASING SECOND SET  
Regulations, to adopt rules regarding ) OF PROPOSED RULES  
intrastate switched access regulation. )  
Entered: August 16, 2011

BY THE COMMISSION:

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

The Nebraska Public Service Commission ("Commission"), on its own motion, opened the above-captioned proceeding to amend Title 291, Chapter 5, Telecommunications Rules and Regulations, to adopt rules regarding intrastate switched access regulation. Pursuant to the Nebraska Telecommunications Regulation Act, *Neb. Rev. Stat. § 86-101 et. seq.*, the Commission is given the authority to promulgate rules and regulations for purposes of administering the Act.

The Commission released a first set of proposed rules and requested comments from interested parties. Comments were timely received from Cox Nebraska Telecom, LLC, ("Cox"); AT&T Communications of the Midwest, Inc. and TCG Omaha, Inc., (collectively "AT&T"); Sprint Communications Company L.P., d/b/a Sprint Nextel, and West Corp., d/b/a Nextel Partners, (collectively "Sprint Nextel"); the Rural Telecommunications Coalition of Nebraska, ("RTCN"); MCI Communications Services d/b/a Verizon Business, MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, Verizon Long Distance LLC, Verizon Enterprise Solutions, LLC, and Verizon Select Services, Inc., (collectively "Verizon"); the Rural Independent Companies, ("RIC"); the Nebraska Telecommunications Association, ("NTA"); and United Telephone Company of the West d/b/a CenturyLink, Embarq Communications, Qwest Corporation and Qwest Communications Company (collectively "CenturyLink").

Based upon the comments received, revisions to the proposed rules were made and a Second Set of Proposed Rules and Regulations is released for comment. A copy of the Second Set of Proposed Rules and Regulations is attached to this order as Appendix A and incorporated herein by this reference.

Changes made to the First Set of Proposed Rules and Regulations originally released on April 26, 2011, include: the addition or removal of words or phrases for purposes of clarification or clean-up, the expansion of the notice requirement in section 014.01G to include both affected carriers and the Commission, new provisions regarding access rate decreases or the establishment of new access rates in section 014.02, and an additional new section 014.03G regarding access payments during the pendency of any access rate negotiations and/or review proceedings. Due to the number of changes, a relined copy of the Second Set of Proposed Rules showing the changes made between the first and second set of rules is attached as Appendix B and incorporated herein by this reference.

Comments on the proposed rules shall be filed by interested parties on or before **3:00 p.m., Friday, September 30, 2011**. Parties filing comments should file one original and five (5) paper copies and one (1) electronic copy emailed to [deena.ackerman@nebraska.gov](mailto:deena.ackerman@nebraska.gov) and [nichole.mulcahy@nebraska.gov](mailto:nichole.mulcahy@nebraska.gov).

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Second Set of Proposed Rules in the above-captioned rulemaking proceeding be, and is hereby, released for comment.

IT IS FURTHER ORDERED that interested parties file comments on or before **3:00 p.m., Friday, September 30, 2011.** Commenting parties shall file one original and five paper copies along with one electronic copy emailed to [deena.ackerman@nebraska.gov](mailto:deena.ackerman@nebraska.gov) and [nichole.mulcahy@nebraska.gov](mailto:nichole.mulcahy@nebraska.gov).

MADE AND ENTERED at Lincoln, Nebraska, this 16<sup>th</sup> day of August, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

APPENDIX A

Amendments to Nebraska Administrative Code, Title 291, Chapter 5,  
Telecommunications Rules and Regulations:

Insert the following new section:

014 SWITCHED ACCESS REGULATION:

014.01 Switched Access Tariff to be Filed with the Commission: For switched access service offered by a carrier, the tariff of the carrier shall set out the rates, charges, regulations, terms, and conditions applicable to the switched access service. No carrier shall:

014.01A Charge, demand, collect, or receive a greater or less or different compensation for switched access service, or for any service in connection therewith, than the charges specified in its tariff in effect and duly filed with the Commission;

014.01B Refund or remit by any means or device any portion of the charges so specified; or

014.01C Extend to any person any privileges or facilities in the provision of switched access services, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such tariff.

014.01D Special Contracts For Switched Access Service: A carrier may offer switched access services under a contract that charges, demands, collects or receives a greater, lesser, or different compensation than the rates and charges specified in its switched access tariff in effect at the time, but only upon the filing of a copy of such contract pursuant to rule 014.01E or maintain an up-to-date summary list of all such contracts in its switched access tariff schedules. No carrier shall offer the terms and provisions of such contracts in an unreasonable or discriminatory manner. The list shall be entitled, "Switched Access Service Special Contracts" and shall designate switched access service contracts with deviations and show at least the following information regarding each contract:

014.01D1 The name of each party to the contract other than the carrier filing the tariff;

014.01D2 The execution and expiration dates;

014.01D3 The rates, charges, regulations, terms, or conditions that vary from the comparable switched access tariff.

014.01E A carrier may file a copy of the executed contract containing deviations from its switched access tariff within thirty (30) business days after execution instead of updating or maintaining a list pursuant to section 014.01D.

014.01F Failure to Negotiate Special Contracts; Effect:

Parties to a current special contract for access services filed pursuant to section 014.01D or 014.01E, that fail to negotiate a new special contract at the termination of the previous contract, may file an application for review of the disputed rates and charges pursuant to section 014.03.

014.01G Changes in the Elements of Access Service; Effect: Any carrier offering switched access service that makes changes, modifications, or adjustments to any element, component, or aspect of the provision of access service that results in a substantial increase in the bills rendered for such service, shall notify affected carriers in writing thirty (30) days prior to such change, modification or adjustment. Such notice shall simultaneously be filed with the Commission, which shall publish notice of the modifications pursuant to the Commission's Rules of Commission Procedure.

014.02 Establishing New Access Rates or Charges or Changing Existing Access Rates or Charges: An application to establish new access rates or charges or to change existing access rates or charges, shall be accomplished by filing proposed tariff sheets setting forth the proposed rates and the appropriate filing fee with the Commission.

014.02A Rate Increases; Automatic Suspension: Upon the filing of a proposed tariff containing an increase to existing access rates or charges, the Commission shall suspend such tariff.

014.02B Rate Decreases: Upon the filing of a proposed tariff containing a decrease to existing access rates or charges, the tariff shall become effective ten (10) days after filing with the Commission.

014.02C New Rates; Optional Suspension: Upon the filing of a proposed tariff seeking to establish access rates for a carrier that has no existing access rate tariff on file with the Commission, the tariff shall become effective ten (10) days after filing with the Commission unless after review by the Commission, the Commission determines the proposed rate is not reasonably comparable to other access rates in the Nebraska market and suspends the proposed tariff.

014.02D Notice: The Commission shall publish notice of the proposed tariff filing, including new rates, rate increases, or rate decreases, for thirty (30) days pursuant to the Rules of Commission Procedure.

014.02E Request for Negotiations; Written Request: Any interested carrier desiring to negotiate the switched access rates or charges contained in the proposed tariff filing shall have thirty (30) days from the date of publication of notice pursuant to section 014.02C to submit a written request to negotiate with the carrier that filed the proposed tariff. The carrier that submits a request for negotiation under this

section shall simultaneously file a copy of the request with the Director of the Communications Department. All carriers requesting negotiations and the carrier proposing the new rates shall cooperate in good faith to facilitate negotiations of the access rates at issue.

014.02F No Requests Received; Effect: If no requests for negotiation are received pursuant to section 014.02C, and the Commission does not initiate a review of the proposed access rates or charges on its own motion, the suspended tariff provision containing the new or increased access rates or charges shall become effective immediately following the expiration of the thirty (30) days following publication.

014.02G Negotiations: Upon receipt of written request(s) for negotiations, representatives of the carrier(s) requesting such negotiations and the carrier proposing the new or revised access rates or charges shall pursue negotiations of such access rates or charges in good faith. Such negotiations shall continue until either the parties reach agreement or the expiration of sixty (60) days following publication of the notice, whichever is earlier.

014.02H Negotiation Report; When Filed; Service: The carrier that filed the proposed tariff shall file a written report with the Director of the Communications Department of the Commission on the outcome of the negotiations. The report shall be filed no later than ten (10) days after the day negotiations cease. The carrier that submits the report shall simultaneously serve a copy of the report with each carrier that participated in the negotiations.

014.02H1 Modification: If negotiations result in a modification to the proposed access rates or charges, the report shall include proposed tariff sheets setting forth the modified access rates or charges.

014.02H2 No Change: If negotiations result in no change, the report shall state whether negotiations resulted in agreement to the proposed tariff with the new or revised access rates or charges or if agreement was unable to be reached.

014.02H3 Notice: The Commission shall publish notice of the negotiation report and modified tariff, if included, for thirty (30) days pursuant to Commission Rules of Procedure.

014.02I Application for Review: Any affected carrier dissatisfied with the proposed access rates or charges, whether the same as initially filed or modified through negotiations, may file an application for review of the proposed access rates or charges with the Commission pursuant to section 014.03 within thirty (30) days from the date of publication of the negotiations report.

014.02J No Applications for Review; Effect: If no applications for review are filed with the Commission pursuant to section 014.02G, and the Commission does not initiate a review of the proposed access rates or charges on its own motion, the suspended tariff provision, whether the same as initially filed or modified by negotiations, containing the new or revised access rates or charges, shall become effective immediately following the expiration of thirty (30) days following publication of the negotiation report.

014.03 Access Rate Review Proceedings: Any carrier dissatisfied with the new or revised access rates or charges in a proposed tariff filed and negotiated pursuant to section 014.02 may file an application for review of the new or revised rates or charges by the Commission pursuant to Neb. Rev. Stat. Section 86-140.

014.03A Application; Content: An application for Commission review of the new or revised access rates or charges shall be in writing and shall set forth the name and address of the carrier seeking review, a statement of the relief sought, and the facts that support granting such relief.

014.03A1 Service: A copy of the application for review shall be served upon the carrier proposing the new or revised access rates or charges and all carriers that participated in negotiations of such new or revised rates or charges in accordance with the Rules of Commission Procedure.

014.03A2 Notice: The Commission shall publish notice of the application for review for thirty (30) days pursuant to Rules of Commission Procedure.

014.03B Opportunity to Respond: The carrier proposing the new or revised access rates or charges shall file a response to the application for review within twenty (20) days after service of the application for review. Such response at a minimum shall include information on an annual basis for the immediately preceding three (3) years in the following areas:

014.03B1 Overall regulated rate of return of the carrier;

014.03B2 Basic local exchange service revenues;

014.03B3 Intrastate and Interstate switched access service revenues;

014.03B4 Federal Universal Service Fund and Nebraska Universal Service Fund support received;

014.03B5 Intrastate and Interstate switched access demand by rate element; and

014.03B6 Cost of providing supported services, defined as basic local exchange and access services.

014.03C Options for Satisfying Informational Requirements: To satisfy the information requirements contained in section 014.03B, any carrier seeking to implement new or revised access rates or charges may submit either of the following:

014.03C1 The most recently completed cost study completed in compliance with parts 32, 36 and 69 of the FCC rules, including any known and measurable changes that have occurred or will occur subsequent to the accounting period used in connection with the cost study; or

014.03C2 Data similar to that required on the Commission's Nebraska Universal Service Fund EARN form. Carriers opting to use this option shall submit such data on a supported services basis, except as provided in section 014.03C3.

014.03C2a A carrier desiring to file information pursuant to 014.03C2 that does not maintain its books and records on a supported services basis, may submit the data in the form maintained by the company and request the Commission use approved conversion formulas and factors, as the Commission shall specify by order, to convert the data to a supported services basis. The mechanics of this calculation are provided in Application No. C-4145/NUSF-74/PI-147.

014.03D Commission Action; Hearing: Unless otherwise agreed to by all parties, the Commission shall, after providing proper notice, hold and complete a hearing on the review application within ninety (90) days after receipt of the application for review.

014.03E Commission Analysis: In conducting a fair and reasonable analysis regarding the proposed access rates or charges, the Commission shall consider the following:

014.03E1 Basic local service revenues of the carrier imputed at the current benchmark rates for rural and urban areas as specified by Commission order;

014.03E2 A rate-of-return analysis, using a ten percent (10%) rate-of-return as a beginning point for evaluating a carrier's costs and revenues; and

014.03E3 Any other information provided by the parties the Commission determines to be relevant in

making a determination regarding the proposed access rates and charges.

014.03F Commission Order: The Commission shall have sixty (60) days from the date of hearing to issue an order establishing the access rates and charges with written findings and opinions.

014.03F1 The Commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the Commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services.

014.03G Continuation of Access Payments: An interexchange carrier receiving switched access services from the carrier proposing an increased access rate pursuant to a tariff or contract filed with the Commission shall make timely payments for access services to such carrier during any suspension of a proposed tariff at the existing access rate levels during the pendency of negotiations and/or a review proceeding pursuant to this section.

014.03H Submission of Tariff to the Commission: Upon issuance of an order by the Commission on the application for review, the carrier seeking to establish or revise its access rates or charges shall have ten (10) days in which to file conforming tariff sheets setting forth the approved access rates and charges with the Commission. The access rates and charges established pursuant to the Commission's order shall become effective upon filing the conforming tariff sheets.

014.03I Appeals: A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission pursuant to this section may appeal such order in accordance with the state's Administrative Procedure Act.



APPENDIX B014 SWITCHED ACCESS REGULATION:

014.01 Switched Access Tariff to be Filed with the Commission: For switched access service offered by a carrier, the tariff of the carrier shall set out the rates, charges, regulations, terms, and conditions applicable to the switched access service. ~~Except as provided in rule 014.01D, a~~ No carrier shall:

014.01A Charge, demand, collect, or receive a greater or less or different compensation for switched access service, or for any service in connection therewith, than the charges specified in its tariff in effect and duly filed with the Commission;

014.01B Refund or remit by any means or device any portion of the charges so specified; or

014.01C Extend to any person any privileges or facilities in the provision of switched access services, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such tariff.

014.01D Special Contracts For Switched Access Service: A carrier may offer switched access services under a contract that charges, demands, collects or receives a greater, lesser, or different compensation than the rates, ~~fares,~~ and charges specified in its switched access tariff in effect at the time, but only upon the filing of ~~shall file~~ a copy of such contract pursuant to rule 014.01E or maintain an up-to-date summary list of all such contracts in its switched access tariff schedules. No carrier shall offer the terms and provisions of such contracts in an unreasonable or discriminatory manner. The list shall be entitled, "Switched Access Service Special Contracts" and shall designate switched access service contracts with deviations and show at least the following information regarding each contract:

014.01D1 The name ~~and location~~ of each party to the contract other than the carrier filing the tariff;

014.01D2 The execution and expiration dates;

014.01D3 The rates, charges, regulations, terms, or conditions that vary from the comparable switched access tariff. ~~State the schedule number of the comparable switched access tariff and summarize the differences between the switched access tariff provisions and the contract;~~

014.01E A carrier may file a copy of the executed contract containing deviations from its switched access tariff within thirty (30) business days after execution instead of updating or maintaining a list pursuant to section 014.01D.

014.01F Failure to Negotiate Special Contracts; Effect:

Parties to a current special contract for access services filed pursuant to section 014.01D or 014.01E, that fail to negotiate a new special contract at the termination of the previous contract, may file an application for review of the disputed rates and charges pursuant to section 014.03.

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014.02I Application for Review: Any affected carrier dissatisfied with the proposed access rates or charges, whether the same as initially filed or modified through negotiations, may file an application for review of the proposed access rates or charges with the Commission pursuant to section 014.03

within thirty (30) days from the date of publication of the negotiations report.

014.02J No Applications for Review; Effect: If no applications for review are filed with the Commission pursuant to section 014.02G, and the Commission does not initiate a review of the proposed access rates or charges on its own motion, the suspended tariff provision, whether the same as initially filed or modified by negotiations, containing the new or revised access rates or charges, shall become effective immediately following the expiration of thirty (30) days following publication of the negotiation report.

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014.03B1 Overall regulated rate of return of the carrier;

014.03B2 Basic local exchange service revenues;

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014.03B5 Intrastate and Interstate switched access demand by rate element; and

014.03B6 Cost of providing supported services, defined as basic local exchange and access services.

014.03C Options for Satisfying Informational Requirements: To satisfy the information requirements contained in section 014.03B, any carrier seeking to implement new or revised access rates or charges may submit either of the following:

014.03C1 The most recently completed cost study completed in compliance with parts 32, 36 and 69 of the FCC rules, including any known and measurable changes that have occurred or will occur subsequent to the accounting period used in connection with the cost study ~~A cost study completed within the immediately preceding three (3) years; or~~

014.03C2 Data similar to that required on the Commission's Nebraska Universal Service Fund EARN form. Carriers opting to use this option shall submit such data on a supported services basis, except as provided in section 014.03C3.

014.03C2a A carrier desiring to file information pursuant to 014.03C2 that does not maintain its books and records on a supported services basis, may submit the data in the form maintained by the company and request the Commission use approved conversion formulas and factors, as the Commission shall specify by order, to convert the data to a supported services basis. The mechanics of this calculation are provided in Application No. C-4145/NUSF-74/PI-147.

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014.03E3 Any other information provided by the parties the Commission determines to be relevant in making a determination regarding the proposed access rates and charges.

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014.03F1 The Commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, ~~of providing such access services. as~~ determined by the Commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services.

014.03G Continuation of Access Payments: An interexchange carrier receiving switched access services from the carrier proposing an increased access rate pursuant to a tariff or contract filed with the Commission shall make timely payments for access services to such carrier during any suspension of a proposed tariff at the existing access rate levels during the pendency of negotiations and/or a review proceeding pursuant to this section.

014.03H Submission of Tariff to the Commission: Upon issuance of an order by the Commission on the application for review, the carrier seeking to establish or revise its access rates or charges shall have ten (10) days in which to file conforming tariff sheets setting forth the approved access rates and charges with the Commission. The access rates and charges established pursuant to the Commission's order shall become effective upon ~~ten (10) days from the date of~~ filing the conforming tariff sheets.

014.03I Appeals: A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission pursuant to this section may appeal such order in accordance with the state's Administrative Procedure Act.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

RULE AND REGULATION NO. 178

PAGE 2

O R D E R

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IT IS FURTHER ORDERED that interested parties file comments on or before 3:00 p.m., Friday, September 30, 2011. Commenting parties shall file one original and five paper copies along with one electronic copy emailed to [deena.ackerman@nebraska.gov](mailto:deena.ackerman@nebraska.gov) and [nichole.mulcahy@nebraska.gov](mailto:nichole.mulcahy@nebraska.gov).

MADE AND ENTERED at Lincoln, Nebraska, this 16<sup>th</sup> day of August, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Red Johnson*  
*Anne Boyle*  
*David L. Up*

//s//Tim Schram

*Tim Schram*  
Chairman

ATTEST:  
*Shirley J. [Signature]*  
Executive Director