

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on) RULE AND REGULATION NO. 187
its own motion, seeking to amend)
Title 291, Chapter 5, Telecommuni-) ORDER RELEASING SECOND SET OF
cations Rules and Regulations, to) PROPOSED RULES AND SEEKING
add rules regarding adequacy of) COMMENT
service and prohibiting call block-)
ing and choking.) Entered: November 19, 2012

BY THE COMMISSION:

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

On July 17, 2012, the Nebraska Public Service Commission (Commission), on its own motion, opened this proceeding to amend Title 291, Chapter 5, Telecommunications Rules and Regulations, to add rules regarding adequacy of service provided by telecommunications carriers and prohibiting call blocking and choking pursuant to the Nebraska Telecommunications Regulation Act, Neb. Rev. Stat. § 86-101 et. seq. Under the provisions of the Act, 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 AT&T Communications of the Midwest, Inc. and TCG Omaha (AT&T); Charter Fiberlink-Nebraska LLC (Charter); Cox Nebraska Telcom LLC (Cox); N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (Viaero); Rural Independent Companies (RIC); Rural Telecommunications Coalition of Nebraska (RTCN); Sprint Nextel (Sprint); Time Warner Cable (TWC); United Telephone Company of the West d/b/a CenturyLink (CenturyLink); and Verizon. Based upon the comments received, revisions to the proposed rules have been made and a Second Set of Proposed Rules and Regulations attached hereto as Appendix is released for comment.

The Commission has reviewed all of the comments received. Changes made to the First Set of Proposed Rules and Regulations originally released on July 17, 2012, include additional language in section 002.02B further defining and clarifying the scope and intent of the adequacy of service rule as some commenters suggested the rule provision as originally proposed was vague and ambiguous.

Further changes include additional language added to section 002.02I clarifying that the prohibition on blocking, choking, reducing, or restricting traffic did not include legitimate or lawful restriction of traffic or restrictions due to events out of the control of a carrier such as natural disasters. Additional language at the end of section 002.02I was included to further clarify the rule applicability to least cost routers employed by carriers to transport traffic on a carrier's behalf. Both of these changes were added in response to commenters expressing concern about the scope of the proposed rule.

Many commenters suggested that the call termination issues sought to be addressed by the Commission in this rulemaking proceeding are being addressed by the Federal Communications Commission (FCC) and therefore should not or could not be addressed at the state level. We disagree. A call that originates and/or terminates in Nebraska directly affects a Nebraska consumer and is under the regulatory jurisdiction of the Commission. We find it appropriate to act for the benefit of Nebraska consumers at this time and see delay as not only unwarranted but potentially harmful to Nebraska consumers and carriers.

Comments on the second set of proposed rules, which are set forth in Appendix and incorporated herein by this reference, shall be filed by interested parties on or before **3:00 p.m., December 21, 2012**. Parties filing comments should file one (1) original with five (5) paper copies in Word format and one (1) electronic copy emailed to deena.ackerman@nebraska.gov and nichole.mulcahy@nebraska.gov.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that interested parties may file comments on or before **3:00 p.m. on December 21, 2012**. Commenting parties shall file one (1) original and five (5) paper copies in Word format along with one electronic copy. Electronic copies should be emailed to nichole.mulcahy@nebraska.gov and deena.ackerman@nebraska.gov.

MADE AND ENTERED at Lincoln, Nebraska, this 19th day of November, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

APPENDIX

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

Add new section 002.02B and 002.02I and renumber existing sections as needed:

002.02 Adequacy of Service:

002.02A Each exchange carrier shall provide adequate access line service. In determining whether the access line service provided by an exchange carrier is adequate, the Commission's consideration will include, but shall not be limited to, the adequacy of the carrier's plant and equipment, the number and nature of service interruptions, trouble reports, customer complaints and held applications, the nature of access line service offered by the carrier and the nature of the access line services desired by the public served.

002.02B Adequate service shall include not subjecting any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage in the provisioning of service by means of blocking, choking, reducing or restricting traffic in any way, or otherwise engaging in unjust or unreasonable conduct with regard to intrastate telecommunications service prohibited by Nebraska law or the rules and regulations of the Commission.

002.02C In the event of a dispute between a subscriber or subscribers and an exchange carrier regarding the adequacy of the access line service provided, the carrier shall make such investigations as required by the particular case, and report the results to the subscriber. In the event the dispute is not reconciled, the exchange carrier, or the subscriber affected, may make application to the Commission for a determination of the dispute.

002.02D Each exchange carrier shall employ appropriate engineering and administrative procedures to determine the adequacy of access line service being provided to its customers.

002.02E Traffic studies shall be made and records thereof maintained to the extent and frequency necessary to determine that sufficient equipment and adequate operating forces are provided.

002.02F Each exchange carrier shall employ adequate procedures for assignment of facilities. The assignment record shall be kept up-to-date and checked periodically to determine whether adjustments are necessary to maintain proper balance in all trunk and equipment groups.

002.02G Local access line service furnished by means of line concentrators or subscriber carrier equipment at a given exchange shall be substantially equivalent to that furnished other subscribers at that exchange served by means of normal physical loops.

002.02H Each exchange carrier shall continually review its operations to assure that the access line service provided is adequate.

002.02I No exchange carrier shall engage in any practice, including blocking, choking, reducing, or otherwise restricting telecommunications traffic to particular locations in an unjust or unreasonable manner, that has the effect of degrading service to a particular location, including for purposes of avoiding any certain rate, charge, or fee. Each exchange carrier shall be responsible for the acts omissions, or failures of their officers, agents or other persons acting for or employed by the carrier, including but not limited to third parties contracted by carriers to assist in the provision of service.

Many commenters suggested that the call termination issues sought to be addressed by the Commission in this rulemaking proceeding are being addressed by the Federal Communications Commission (FCC) and therefore should not or could not be addressed at the state level. We disagree. A call that originates and/or terminates in Nebraska directly affects a Nebraska consumer and is under the regulatory jurisdiction of the Commission. We find it appropriate to act for the benefit of Nebraska consumers at this time and see delay as not only unwarranted but potentially harmful to Nebraska consumers and carriers.

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MADE AND ENTERED at Lincoln, Nebraska, this 19th day of November, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram
Heule L. P.

//s//Rod Johnson
//s//Frank Landis

Chairman

ATTEST:

Executive Director

Rod Johnson

Heule L. P.