

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Alltel Communications of the ) Formal Complaint No. 1310  
Midwest, Inc., )  
Complainant, )  
vs. ) ORDER GRANTING QWEST'S  
 ) MOTION AND DIMISSING  
 ) COMPLAINT  
Qwest Corporation, )  
 )  
Respondent. ) Entered: April 15, 2003

BY THE COMMISSION:

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

This matter comes before the Nebraska Public Service Commission (Commission) on the Motion to Dismiss filed by Qwest Corporation. Having reviewed the Complaint filed by complainant Alltel and Qwest's Motion, and having reviewed and considered the submissions and arguments of the parties, the Commission finds that it lacks jurisdiction over the matters asserted in the Complaint, and finds that the Motion to Dismiss should be granted and the Complaint dismissed for the reasons set forth herein.

In its Complaint, Alltel asserts that, before May 2002, Qwest's rates for unbundled local DS1 loops were too high (Cmplt., Paragraph 8). In July 2001, Alltel entered into a "Regional Commitment Plan" (RCP) pursuant to Qwest's F.C.C. No. 1 Access Tariff in order to purchase finished DS1 **interstate** loops at discounted rates in return for a four-year term commitment (Cmplt., Paragraphs 7, 8 and Exhibit A). Alltel's complaint focuses on the fact that one of these "Regulations, Rates, and Charges of Qwest's Interstate F.C.C. No. 1 Access Tariff" is termination liability.

As relief, Alltel requests that this Commission order Qwest to excuse Alltel from these charges because the Commission on April 23, 2002, ordered unbundled DS1 local loop rates to be reduced in the Qwest SGAT, and Qwest in a filing dated May 31, 2002, incorporated the April 23, 2002, order along with other voluntary reductions to several network elements (Cmplt., Paragraph 10). Alltel contends that the rates contained in the May 31, 2002, filing make it cheaper for Alltel to purchase unbundled DS1 local loops under the SGAT than to purchase finished DS1 interstate loops under the RCP (Cmplt., Paragraph 11).

Section 47 U.S.C. § 152(a) of the Telecommunications Act of 1996 vests in the Federal Communications Commission (FCC) the exclusive authority to regulate interstate communications. Thus, "[q]uestions concerning the duties, charges and liabilities of telegraph or telephone companies with respect to interstate communications service are to be governed solely by federal law . . . and the states are precluded from acting in this area." *Ivy Broadcasting Co. v. AT&T*, 391 F.2d 486, 491 (2d Cir. 1968).

Although Alltel requests the Commission to compel Qwest to waive termination liability charges contained in an FCC tariff, the Commission is without jurisdiction to grant such relief as a matter of federal law. Based on the foregoing, this Commission lacks jurisdiction, as a matter of federal law, to grant Alltel the requested relief. Only the FCC can order the relief requested by Alltel.

Accordingly, for the reasons set forth above, the Commission is of the opinion and finds that Qwest's Motion to Dismiss should be granted and Alltel's complaint dismissed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Motion to Dismiss shall be, and is hereby, granted.

IT IS FURTHER ORDERED that the Complaint filed herein shall be, and is hereby, dismissed for lack of jurisdiction.

MADE AND ENTERED at Lincoln, Nebraska, this 15th day of April, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director