

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-1825/  
of the Nebraska Public Service ) PI-21  
Commission, on its own motion, )  
seeking to conduct an investigation ) ORDER  
into the effects of Internet tele- )  
phony on the telecommunications in- )  
dustry in Nebraska. ) Entered September 28, 1998

BY THE COMMISSION:

On June 16, 1998, by its own motion, the Commission opened Docket No. C-1825/PI-21 to conduct an investigation into Internet Protocol telephony (IP telephony) to determine: what IP telephony is; what regulatory or oversight role the Commission has in relation to IP telephony; what responsibility providers of IP have to Nebraska consumers; and otherwise examine the place of IP telephony in the telecommunications industry.

The Commission requested that by August 14, 1998, interested persons submit responses to a series of questions. The following parties submitted comments: Aliant Communications (Aliant); MCI Telecommunications Corporation (MCI); US West Communications, Inc. (USW); the VON Coalition (VON); Qwest Communications Corporation (Qwest); the Nebraska Telephone Association (NTA); the Nebraska Independent Telephone Association (NITA); Nebraska Technology & Telecommunications (NT&T); Community Internet Systems, Inc.; Nebraska Cooperative Government; and Steven D. Smith.

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

The Nebraska Constitution, Article IV section 20, empowers the Commission to regulate common carriers, including telecommunications companies. Neb. Const. Art. IV sec. 20; Neb. Rev. Stat. sec. 86-803(1). In this instance the Commission has specific jurisdiction to regulate intrastate two-way switched voice communications. Neb. Rev. Stat. sec. 86-802(2). IP telephony is two-way switched voice communications and, therefore, is subject to Commission jurisdiction when the call originates and terminates within Nebraska. Interstate calls would be subject to the jurisdiction of the Federal Communications Commission (FCC). USW also suggested that the Commission has pricing jurisdiction over all calls to ISPs using local exchange facilities.

Voice communications transmitted over the internet differ from traditional telephony in both the technology utilized, and the quality of the communication. The separately routed data "packets" transmitted through IP telephony place different demands and costs on the public switched network than do the dedicated end-to-end transmissions of traditional telephony.

While most commentators agreed that the Commission has jurisdiction over at least some aspect of intrastate IP telephony, several suggested that the Commission refrain from exercising that jurisdiction. Many indicated that traditional regulatory practices should not be applied to IP telephony. Parties expressed concern as to the ability to distinguish between intrastate voice communications with other data transmissions over the internet. Further, IP telephone calls are of a lower quality than traditional phone service.

As technology evolves, these shortcomings should dissipate. However, the majority of parties stated that the imposition of access or other charges could discourage advances in the technology.

We agree that if providers of IP telephony were subject to access and other charges as they are currently structured, these obligations could suffocate the development of IP telephony. Further, because IP telephony does not place the same burdens upon the network as does traditional switched telecommunications, the obligations of its providers should not be the same.

All users of the network should be treated equally, based on the costs they impose on the network. Aliant suggested that "Instead of burdening ISPs with current access charges, the (Commission) should facilitate the creation of an environment in which all network users contribute equitably to the cost of the network." The Commission has a vehicle in which the preliminary steps toward such an environment can be taken. Docket No. C-1628 was initiated by the Commission's own motion to address access charge reform and the development of a state universal service fund. The specific questions concerning an IP provider's obligations for access and universal service should be addressed in that docket.

As such Docket No. C-1825 should be closed, and the issues raised in such docket should be explored in Docket No. C-1628. The comments submitted in this docket will be included as part of the record in Docket No. C-1628, and all parties who submitted comments are encouraged to participate in those proceedings.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Docket No. C-1825/PI-21 is hereby closed, and that the questions concerning the obligations Internet Protocol providers for access, universal service contributions, and other contributions shall be addressed in Commission Docket No. C-1628.

IT IS FURTHER ORDERED that all comments received in the present application, will be made a part of the record in Docket No. C-1628.

MADE AND ENTERED at Lincoln, Nebraska, this 28th day of September, 1998.

COMMISSIONERS CONCURRING:

*Ann C. Boyle*

//s//Lowell C. Johnson  
//s//Frank E. Landis  
//s//Daniel G. Urwiller

NEBRASKA PUBLIC SERVICE COMMISSION

*Lowell C. Johnson*  
Chairman

ATTEST:

*Robert R. Logsdon*  
Executive Director