

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Commission,) Application NO. 2662/PI-55
on its own motion, to investigate)
the effects of local service) ORDER OPENING DOCKET,
freezes in Nebraska.) SETTING HEARING AND
) ISSUING TEMPORARY CEASE
) AND DESIST
)
) Entered: January 29, 2002

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) initiates the above-captioned docket, on its own motion, to investigate the effects of local service freezes in Nebraska local exchange markets. On January 16, 2002, this Commission sent a letter to Qwest Corporation (Qwest) requesting it to delay the implementation of its proposed local service freeze product until the Commission has completed an investigation of the effects such a service will have on local competition. In a letter dated January 23, 2002, Qwest answered that it would not send any bill inserts or customer notifications regarding the local service freeze until the Commission concludes its investigation. Qwest also stated that it would not conduct any telemarketing associated with the local service freeze. However, Qwest informed the Commission that it would not delay implementation of the local service freeze and that it will be offering such services along with primary interLATA carrier freezes to customers that call into Qwest business offices and request such products.

The Commission finds that the above-captioned docket should be opened to investigate whether local service freeze protection should be permitted in Nebraska, and if so, under what set of guidelines the service should be offered. The Commission believes that local exchange carriers offering this service will use this service to engage in anti-competitive behavior. Moreover, as the Commission is cognizant of the Federal Communication Commission's rules with respect to the implementation of preferred carrier freezes, the Commission would like assurance that the carrier making this service available has an established mechanism to follow through on federal requirements. Finally, the Commission is also of the opinion that local service freeze protection should be a tariffed service offering. The Commission seeks input from interested parties on whether local service freeze offerings and the guidelines specifying how they are to be administered should be tariffed with the Commission.

Once learning of Qwest's proposed offering, two competitive local exchange carriers filed informal complaints with the Commission. One company requested the Commission to enter an order requiring Qwest to

cease and desist its activities relating to the local service freeze. A request for immediate action was filed by Cox Nebraska Telcom L.L.C. (Cox) on January 23, 2002. Cox requested that the Commission enter an order either requiring Qwest to cease all implementation of the proposed local freeze service or requiring Qwest to show cause why its proposed service would not be in violation of state and federal law. Expedited consideration for Cox's filing was requested by Cox. Therefore, the Commission mailed and faxed a notice that the Commission would hold an oral argument on January 24, 2002, to Qwest Corporation and Cox.

Upon consideration of the informal complaints and the arguments therein, the Commission finds there is sufficient cause to, on its own motion, order a temporary cease and desist preventing Qwest Corporation from offering its local freeze service to any Nebraska customer. Pursuant to Neb. Rev. Stat. ' 75-133, upon reasonable belief by the Commission that any common carrier is in neglect or violation of any provision of sections 75-101 to 75-801, the Commission shall:

at once institute an investigation and fix a time and place for hearing thereon, upon its own motion, and shall make any order as it deems just and reasonable, including but not limited to, an order that the carrier cease and desist from continuing such neglect or violation made effective on the date of entry of the order by the Commission.

The Commission believes that Qwest's proposed local service freeze is, without further safeguards, anti-competitive and in violation of the Commission's charge to promote local competition in Neb. Rev. Stat. ' 75-109 and the federal Telecommunications Act of 1996. Therefore, simultaneous to opening the above-captioned investigation, the Commission orders Qwest to immediately temporarily cease and desist continuing to offer its proposed local service freeze. In the meantime, a full evidentiary hearing will be held on February 20, 2002, at 2:30 a.m. in the Commission Hearing Room. Accordingly, the Commission reserves judgment on Cox's cease and desist or show cause request in Application No. C-2664 and finds its request for immediate relief moot by this order.

The Commission seeks to pursue this investigation without delay. Therefore, the Commission will not request comments but will set this matter for public hearing on February 20, 2002, at 2:30 p.m., in the Commission Hearing Room, Lincoln, Nebraska. All interested parties will be permitted to present testimony and evidence in support of their respective positions.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be, and it is hereby, opened to investigate the effects of local service freezes in Nebraska.

IT IS FURTHER ORDERED that a hearing on this matter be, and it is hereby, set for February 20, 2002, at 2:30 p.m. in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

IT IS FURTHER ORDERED that Qwest Corporation temporarily cease and desist its offering of the local service freeze in Nebraska.

MADE AND ENTERED at Lincoln, Nebraska this 29th day of January, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director