

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-3335  
of Qwest Communications )  
Corporation (QCC), Denver, )  
Colorado, seeking to Remove ) ORDER  
Restrictions of Commission Order )  
in Docket No. C-1839/PI-22. )  
 ) Entered: April 19, 2005

BY THE COMMISSION:

By Application filed January 18, 2005 Qwest Communications Corporation (QCC), of Denver, Colorado, seeks to remove the restrictions of Commission Order in Docket No. C-1839/PI-22. Notice of the application was published in The Daily Record, Omaha, Nebraska, on January 20, 2005. A Petition of Formal Intervention was filed on February 4, 2005 by Cox Nebraska Telcom LLC. A Petition of Informal Intervention was filed on March 22, 2005, by a group of Rural Independent Telephone Companies (RIC). A planning conference was held on March 10, 2005. Prior to the issuance of a planning conference order setting this matter for hearing, the Commission was notified that Applicant and Cox were engaged in settlement discussions which if approved by the Commission, would result in the withdrawal of Cox's intervention, Qwest would withdraw its discovery requests, and a rulemaking proceeding would be opened to govern the disclosure of information by incumbent local exchange carriers (ILECs) relative to their in-region affiliated competitive local exchange carriers (CLECs). By Order entered by the Commission on March 29, 2005, the Commission opened a proceeding entitled Rule and Regulation No. 164 concerning such disclosure.

The Commission was also notified of a settlement agreement between QCC and the RIC group which, if approved would result in the withdrawal of the RIC Informal Intervention. QCC and RIC agree that without any prejudice to either party's ability to argue for the same, greater, or lesser requirements in Rules and Regulation No. 164, the requirements listed in paragraph A. 1 through 5 and a modified version of 7 in the Commission's C-1839 Order would remain in effect until the final resolution of Rule and Regulation No. 164.<sup>1</sup> According to the agreement reached between QCC and the RIC group, the rule provided in the C-1839 Order regarding multi-location customers would not remain in effect pending the final resolution of the rulemaking.

<sup>1</sup> The resolution for this purpose means either an order closing the docket without approval of a new rule or the effectiveness of any new rule.

QCC, Cox and RIC assert to the Commission that the most appropriate vehicle going forward would be Commission Rule and Regulation No. 164. However, QCC, Cox, and RIC do not take any position as to whether the proposed rules are appropriate or proper by their settlements, and these parties through their agreements have reserved their rights to argue for the proposed rules, against them, or argue for some amended form thereof.

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

The Commission has been requested to approve the agreements reached between QCC and the Formal and Informal Intervenors. In accordance with the settlement agreements reached by the parties, the Commission finds as follows:

1. The Commission has opened a rulemaking docketed as Rule and Regulation No. 164 to address rules regarding ILECs that have one or more affiliated CLEC(s) competing within the ILEC's incumbent service territory in Nebraska. This rulemaking is intended to address the concerns outlined by Cox in its Petition of Formal Intervention and by the RIC group in its Informal Intervention. As a result of the Commission's decision to open this rulemaking, Cox has agreed to withdraw its intervention.
2. As a result of the agreement between QCC and the RIC group, QCC has agreed to abide by the limitations which were established in the Order entered in Docket C-1839 under paragraph A. 1 through 5 and 7, several of which QCC may be otherwise bound to follow by state and federal rules, regulations, and orders as follows:

A.1 The affiliated in-region CLEC will be a legal entity separate from the affiliated ILEC operated consistent with the requirements of the Report and Order in CC Docket No. 96-150, released December 24, 1996, in which the FCC addressed accounting safeguards necessary to satisfy the requirements of the Telecommunications Act of 1996;

A.2 There shall exist an interconnection agreement between the affiliated ILEC and a non-affiliated third party CLEC that has been approved by the Commission which the affiliated in-region CLEC can adopt pursuant to Section 252(i) of the Act;

A.3 The affiliated in-region CLEC shall provide its own facilities except as otherwise provided by the interconnection agreement adopted pursuant to Section 252(i);

A.4 The affiliated ILEC and the affiliated in-region CLEC shall provide the Commission, on request, with access to documents, data and records pertaining to inter-company transactions relating to in-region transactions;

A.5 The affiliated ILEC shall not discriminate in favor of the affiliated in-region CLEC in the provision of any telecommunications services;

A.7 The affiliated in-region CLEC shall not use any customer proprietary network information associated with or attributable to the affiliated ILEC's provision of local exchange or access services, except as otherwise provided by Nebraska or federal rules and regulations or orders.

The settlement agreements entered into by Cox and QCC and RIC and QCC set forth in paragraphs 1 and 2 above should be approved as provided herein. The restrictions imposed by the order in Docket C-1839 with the exception of those detailed in paragraph 2 above shall be lifted. The Commission shall approve the requests by Cox and RIC to withdraw their interventions. Further, in light of the fact that there is no opposition to the lifting of the restrictions except as provided in paragraph 2 above, and in light of the fact that a rulemaking has been opened to address what restrictions, if any, an ILEC must follow with respect to an affiliate CLEC operating within its ILEC service territory, the Commission does not find it necessary to make a substantive finding on the merits of QCC's application.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the settlement agreements between Qwest Communications Corporation and Cox Nebraska Telcom LLC and Qwest Communications Corporation and the Rural Independent Companies shall be approved as provided herein.

IT IS FURTHER ORDERED that Qwest Communications Corporation remains subject to the limitations described herein pursuant to the settlement agreements.

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IT IS FURTHER ORDERED that all other limitations imposed upon Qwest Communications Corporation provided in the Commission's December 15, 1998 Order in Application No. C-1839, are hereby lifted.

MADE AND ENTERED at Lincoln, Nebraska, this 19th day of April, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Anne C. Boyle*

Chairman

*Gerald F. Vap*

*Frank E. Landis*  
//s/ Frank E. Landis  
//s/ Gerald L. Vap

ATTEST:

*A. J. Pollak*  
Executive Director