BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission on its own motion seeking to establish an interim policy on eligible telecommunications carrier standards.	)))))	Application No. C-3415 ORDER ADOPTING GUIDELINES Entered: June 28, 2005

BY THE COMMISSION:

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

I. Background

On May 4, 2005, the Nebraska Public Service Commission (Commission) opened this proceeding seeking to establish an interim policy on eligible telecommunications carrier (ETC) standards. This proceeding is opened in conjunction with Rule and Regulation No. 165 which is the Commission's rulemaking proceeding to promulgate ETC designation and reporting standards. The Commission's rulemaking proceeding, in large part, mirrors the proposed rules released by the Federal Communications Commission (FCC) in its March 17, 2005 Report and Order. Many of the FCC's proposed rules clarify standards for judging public interest which is a threshold determination which the Commission must decide in weighing ETC designation applications. However, many of the standards adopted by the FCC in its Report and Order have been used in prior FCC and state commission determinations in granting or denying ETC designations. The FCC recommends that state commissions adopt *at a minimum* the standards and reporting rules they adopted.

II. Proposed Guidelines

The Commission considers the standards adopted by the FCC in its Report and Order reasonable and useful in its determination of ETC designations. In its public interest analysis, this Commission has been using some of the same considerations since its determination of Western Wireless' ETC designations. As previously stated, the Commission feels these standards are indeed relevant in determining whether a grant of an ETC application serves the public interest. The Commission makes clear that the reporting requirements are applicable to all ETCs designated by the Commission who are receiving, or intend to receive, high-cost support from the federal universal service fund.

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Comments were received from the Rural Independent Companies, Sprint, Nextel, Viaero, Qwest, the Rural Telephone Coalition, Cox and ALLTEL.

On June 14, 2005, a hearing was held to determine whether to adopt the interim guidelines proposed in the Commission's May 4, 2005 Order. The Commission admitted all comments received into the record. The Commission also heard testimony from the following persons: Mr. Dan Davis and Ms. Sue Vanicek representing the Rural Independent Companies (RIC); Mr. Dennis Pappas representing Qwest; Mr. Loel Brooks representing Nextel Partners and Viaero; Mr. Bill Ashburn representing ALLTEL; and Dr. Brian Staihr representing Sprint.

Upon review of the comments and testimony, the Commission finds that interim guidelines would provide important clarity for carriers seeking eligible telecommunications carrier designation. Again, aside from the reporting requirements and the five-year plan requirement many of the guidelines below have been policy considerations of the FCC and this Commission in previous designation cases. The Commission may make slight modifications to the interim guidelines in Rule and Regulation No. 165, however, based upon the Commission's current view that it would be most appropriate to mirror the FCC's standards it is unlikely that significant modifications will be made. Despite its current viewpoint, the Commission will remain open to considering the comments and opinions of all interested parties in that proceeding.

Although several commented in opposition to the five-year plan requirement, the Commission feels that it is important to establish guidelines consistent with those developed by the FCC. The main argument in opposition to this requirement is that carriers do not make business plans beyond a one to two year time frame, thereby rendering a five year plan speculative and meaningless. The Commission acknowledges that the plans will by necessity be fluid and changing. Despite the positions of the opponents of this requirement, the Commission believes that a five-year plan will provide the Commission with meaningful information about the business goals of the carriers.

Further, the Commission declines at this time to modify the outage guidelines we originally proposed in response to Qwest's recommendation. The Commission believes the 900,000 user-minute trigger recommended by Qwest is not consistent with either the current Commission outage reporting requirements thus requiring the carriers to report under two different standards. The proposed guideline requirement sets a reasonable time frame of

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thirty (30) minutes and a reasonable number of customers being impacted.

Accordingly, for the present time, the Commission adopts the following interim guidelines:

1. An eligible telecommunications carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

2. In order to be designated an eligible telecommunications carrier a common carrier must:

a. Demonstrate that such designation is consistent with the public interest, convenience, and necessity, and, in the case of an area served by a rural telephone company, demonstrate that public interest will be met by an additional designation;

b. Demonstrate that it will offer the services that are supported by federal universal service support mechanisms and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier);

c. Demonstrate that it will advertise the availability of such services and the charges therefore using media of general distribution;

d. Demonstrate that it is capable of providing and will continuously provide the services designated for support as defined in 47 C.F.R. Section 54.101;

e. Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

i. Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

ii. Provide service within a reasonable period of time, if the potential customer is

within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment;

f. A carrier requesting federal high cost support must submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area;

g. A carrier requesting federal high cost support must demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations;

h. A carrier requesting federal high cost support must demonstrate that it will satisfy applicable consumer protection and service quality standards;

i. A carrier requesting federal high cost support must demonstrate that it offers a local usage plan

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comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation; and

j. A carrier requesting federal high cost support must certify to the Commission that the applicant acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

3. In the case of an applicant seeking designation in an area served by a rural telephone company, the Commission will consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering.

4. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis.

5. Any common carrier that has been designated by this Commission as an eligible telecommunications carrier for the purpose of receiving high cost support must submit the information required by paragraphs 2(f) and 2(g) of this section no later than October 1, 2006.

6. A common carrier designated as an eligible telecommunications carrier for the purpose of receiving federal high-cost support shall provide the following on an annual basis to the Commission:

a. A progress report on its five-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;

b. Detailed information on any outage of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e).

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Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected;

c. The number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers;

d. The number of complaints per 1,000 handsets or lines;

e. A certification that it is complying with applicable service quality standards and consumer protection rules;

f. A certification that the carrier is able to function in emergency situations as set forth in § 54.201(a)(2) and any applicable Commission rules;

g. A certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

h. A certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

7. In order for a common carrier designated as an eligible telecommunications carrier to continue to receive federal high-cost support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information detailed in paragraph 6 no later than October 1, 2007, and thereafter annually. A carrier may elect to have its ETC annual report due either on October 1 or on April 30. All carriers must make this election the first year and must receive Commission approval for any changes in the reporting date.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the interim guidelines on eligible

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telecommunications carrier standards set forth above are hereby adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 28th day of June, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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

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