

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. C-3734/NUSF-  
Public Service Commission, on its ) 63  
own motion, to develop a )  
repository for information ) ORDER OPENING DOCKET AND  
collected in response to federal ) ENTERING PROTECTIVE ORDER  
intercarrier compensation )  
proposals. ) Entered: December 12, 2006

BY THE COMMISSION:

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

On July 25, 2006, the Federal Communications Commission (FCC) released an intercarrier compensation proposal known as the "Missoula Plan" for comment. The Commission filed initial comments in conjunction with certain other states affected by the Early Adopter Mechanism in the Missoula Plan ("Early Adopter States") on October 25, 2006. The Commission has been working with other Early Adopter States and Missoula Plan proponents to size the Early Adopter Mechanism and to develop specific proposals to appropriately account for states, which have implemented state universal service programs, access charge reform and/or rebalanced local rates.

The Commission staff recently requested information from all incumbent local exchange carriers (ILECs) in effort to determine the appropriate size of Nebraska's portion of the proposed Early Adopter and Restructuring Mechanisms. The Commission hereby opens this docket as a vehicle to collect and aggregate the requested information, which the Commission would plan to share with the Missoula Plan sponsors who would then calculate Nebraska's portion of the Early Adopter and Restructuring Mechanism funds. The Commission has until December 22, 2006, to give its input to the Missoula Plan sponsors regarding the sizing of these mechanisms and to forward any data in support of its position. Accordingly, information responsive to the Commission's data request is due on or before **December 15, 2006.**

CONFIDENTIALITY AND PROTECTIVE ORDER

Some of the information collected is already publicly available and should not be marked as confidential. Confidential information should be specifically and clearly marked so that the Commission knows which information the company believes is confidential information. The Commission expects that the information received will be aggregated to the track level to alleviate most of the specific company confidentiality concerns. At this aggregated level, the Commission does not view the

information as confidential. However, there may be a track with only one company, which may raise certain confidentiality concerns. For companies concerned with confidentiality and the use of the information being sought, the Commission hereby finds the following relative to the use and protection of the data provided by the companies:

1. Confidential Information: All documents and information (including confidential information in computer storage media or devices of every type or description) filed with the Commission or released by the Commission pursuant to any requests for information, which is claimed by the company to be of a trade secret, proprietary, or confidential nature (hereinafter referred to as confidential information) shall be so marked by the company so claiming, by stamping the same with a designation indicating its trade secret, proprietary or confidential in nature. Access to and review of confidential information shall be strictly controlled by the terms of this order.

2. Availability to the Commission and Other Persons: Confidential information shall be accessible to the Commission, Commission counsel, and Commission staff members and shall not be used or disclosed except for the purpose of conducting, issuing orders in, and otherwise participating in, the FCC's proceeding on intercarrier compensation in CC Docket 01-92. The information collected will be aggregated to the track level then released by the Commission and sent to Missoula Plan sponsors, working groups, the FCC and other state commissions for the purpose of discerning the size of the Early Adopter and Restructuring Mechanism.

3. Storage of Confidential Information: While in the custody of the Commission, the original and all copies of material containing information claimed under this order to be confidential, shall be kept in a sealed envelope or box, which envelope or box is marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN APPLICATION NO. C-3734/NUSF-63."

4. Segregation of Files: The materials containing the confidential information will be sealed and marked as provided in this order of the Commission, segregated in the files of the Commission and withheld from inspection by any person except under the conditions established in this order, unless such confidential information is released from the restrictions of this order either through agreement of the company providing the information or, after notice to the company, pursuant to the order of the Commission and/or final order of a court having jurisdiction.

5. Challenge to Confidentiality: In the event that any person challenges a claim for protection under this protective order, the person objecting to the removal of the confidential designation bears the burden of demonstrating the harm that would result from public disclosure of the material for which protection is sought. Any person may challenge the characterization of any document or specific information claimed by the providing party to be confidential in the following manner:

- A) A person challenging the confidentiality of any materials pursuant to this order shall first contact counsel for the providing person and attempt to resolve any differences informally.
- B) If the persons cannot resolve the disagreement informally, the party challenging the claim for protection shall do so by filing a motion with the Commission, which identifies with specificity, the material challenged and requests a ruling whether a document or information is confidential.
- C) Within three business days of service of a motion for determination of confidentiality, the person claiming confidentiality shall deliver under seal all of the relevant documents and information to the Commission for an in camera inspection by the Commission or its designated hearing officer.
- D) A ruling on the confidentiality of the challenged document or specific information shall be made by the Commission after an in camera hearing which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. Such hearing shall be held as expeditiously as is practicable following delivery of the relevant documents and information to the Commission.
- E) The record of said in camera hearing shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN APPLICATION NO. C-3734/NUSF-63." Court reporter notes of such hearing shall be separately bound, segregated, sealed and withheld from inspection by any person who has not executed a nondisclosure agreement in accordance with this order.

- F) If the Commission rules that any document or specific information should be removed from the restrictions imposed by this order, no party shall disclose such document or specific information, or use it in the public record for five business days unless authorized by the providing person to do so. The provisions of this subparagraph are entered to enable the party claiming protection to seek a stay or other relief from the Commission's order denying that person such protection.

6. Return of Documents: Upon request by the disclosing person, confidential information provided pursuant to this protective order shall be returned to the disclosing party within 30 days of the conclusion of the FCC proceeding in CC Docket 01-92, or any appeal taken therefrom.

7. Responses to Subpoena or Order: If any person receiving confidential information receives a subpoena or order for production of confidential information produced under the terms of this order, that person shall promptly notify the effected person's counsel after receiving the subpoena or order and before the documents are produced, identifying the date and location of the ordered or requested production.

8. Damages: Any person who violates this protective order by reason of unauthorized use, or disclosure or failure to keep the information confidential, may be liable for damages and penalties as provided by law.

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.

IT IS FURTHER ORDERED that information responsive to the Commission's data request is due on or before **December 15, 2006**. This information shall be sent electronically to tyler.frost@psc.ne.gov.

IT IS FURTHER ORDERED that the terms of the protective order herein shall govern the use and protection of confidential information collected by the Commission pursuant to the data request referenced above.

MADE AND ENTERED at Lincoln, Nebraska this 12<sup>th</sup> day of December, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s// Lowell C. Johnson

//s// Frank E. Landis



Chairman

ATTEST:



Executive Director