

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. C-4145/
Public Service Commission, on) NUSF-74/
its own motion, to conduct an) PI-147
investigation on intrastate) ORDER
switched access charge policies)
and regulation codified in Neb.)
Rev. Stat. Section 86-140.) Entered: April 20, 2010

BY THE COMMISSION:

B A C K G R O U N D

On February 24, 2009, the Nebraska Public Service Commission ("Commission"), on its own motion, opened the above-captioned investigation and sought comments from interested parties regarding the appropriate evidentiary standard and minimum criteria required under Neb. Rev. Stat. §86-140 (Reissue of 2008) which governs access rate changes. Notice of the above-captioned docket was published in the Daily Record, Omaha, Nebraska, on February 26, 2009.

On February 3, 2009, in Docket C-3945/NUSF-60.02/PI-138, the Commission indicated its intent to open an investigatory docket to "examine the issues raised in [the] proceeding regarding the appropriate evidentiary standard and minimum criteria required under Neb. Rev. Stat. §86-140 to prove a carrier's proposed access rates are fair and reasonable."¹

In the above-captioned proceeding, the Commission requested that interested parties submit written comments regarding intrastate access rate change proceedings under §86-140 and intrastate access rate policy in general. The Commission provided five proposals and four questions on which comments were requested to be filed on or before April 23, 2009. Written comments were filed by: AT&T Communications of the Midwest, Inc. and TCG of Omaha, Inc. ("AT&T"); Cox Nebraska Telcom, L.L.C. ("Cox"); Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska ("Frontier"); United Telephone Company of the West d/b/a Embarq ("Embarq"); Qwest Corporation ("Qwest"); Rural Telephone Coalition of Nebraska ("RTCN")²; The Rural Independent Companies ("RIC")³; Nebraska

¹ See Docket C-3945/NUSF-60.02/PI-138, *In the Matter of the Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates Order* (Feb. 3, 2009) at 13.

² RTCN is comprised of: Arapahoe Telephone Company, Benkelman Telephone Co., Inc., Cozad Telephone Company, Diller Telephone Company, Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford

Telephone Association ("NTA"); Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners ("Sprint Nextel"); MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon"); and Windstream Nebraska, Inc. ("Windstream").

On May 13, 2009, the Hearing Officer entered an order requesting reply comments from interested parties on or before May 27, 2009. This filing date was extended by the Hearing Officer Order to June 10, 2009. Reply comments were filed by AT&T, Cox, Embarq, Qwest, RIC, RTCN, Sprint Nextel and Verizon.

On November 3, 2009, in the above-captioned docket, the Commission entered an order releasing a proposed order, setting a hearing on the proposed order and establishing post-hearing comment and reply comment opportunities for interested parties.

A hearing in the above-captioned docket was held on January 6, 2010. Post-hearing comments were requested to be filed on or before February 16, 2010. Post-hearing comments were filed by: AT&T, Cox, CenturyLink f/k/a Embarq, Qwest, RIC, RTCN, Verizon, and jointly by Nebraska Technology and Telecommunications, Inc. ("NT&T") and OrbitCom, Inc. ("OrbitCom").

Reply comments on the post-hearing comments were requested to be filed on or before February 26, 2010. Reply comments were filed by: AT&T, Cox, CenturyLink f/k/a Embarq, Qwest, RIC, RTCN, and Verizon.

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

The Commission has carefully reviewed all of the comments and reply comments that have been submitted in the entirety of this proceeding. Further, the Commission is well aware of the recent National Broadband Plan released by the

Cooperative Telephone Company, Mainstay Communications, Plainview Telephone Company, Southeast Nebraska Telephone Co., Wauneta Telephone Company and Westel Systems f/k/a Hooper Telephone Company.

³ RIC is comprised of: Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco Inc., Consolidated Telcom, Inc., Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc, Hershey Cooperative Telephone Company, K&M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom, Inc., and Three River Telco.

Federal Communications Commission ("FCC") recommending potentially significant changes to many aspects of the telecommunications industry and marketplace, including universal service and access rate reform on both the interstate and intrastate level. As always, the Commission will continue to closely monitor action at the federal level. However, we feel it is appropriate and prudent for us to proceed in our interpretation of Nebraska law regarding access rate regulation codified in Chapter 86 of the Nebraska Telecommunications Regulation Act.⁴

The Commission has been urged by some parties in this proceeding to make sweeping reforms to access charges,⁵ most specifically in relation to Competitive Local Exchange Carrier ("CLEC") access rates. The Commission's primary purpose of initiating this docket was to investigate access charge policies and procedures codified in Chapter 86 and more specifically the evidentiary requirements under §86-140 as we stated in this docket and in Docket C-4145/NUSF-74/PI-147.⁶ While we asked for comments on some broader policy questions, the primary purpose of this docket was, and remains, limited to §86-140 proceedings. In the Order opening the above-captioned docket we stated, "The Commission does not have any intention through this investigation to consider or evaluate current intrastate switched access rates of telecommunications carriers."⁷ Therefore, in this order we will confine our consideration to the policy, procedures, and evidentiary requirements under §86-140.

Access Rate Regulation

The Nebraska Telecommunications Regulation Act⁸ grants regulatory authority to the Commission regarding changes to intrastate access charges imposed by telecommunications companies for access to local exchange networks for interexchange service in §86-140. The statute was initially enacted by the Nebraska Legislature in 1986,⁹ and was

⁴ See Neb. Rev. Stat. §86-101 et seq.

⁵ For purposes of this order, the terms, "access charges" and "access rates" are synonymous meaning the charges imposed by a local exchange carrier for access by an interexchange carrier to its network.

⁶ See Docket C-3945/NUSF-60.02/PI-138, *In the Matter of the Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates Order* (Feb. 3, 2009) at 13.

⁷ See Docket C-4145/NUSF-74/PI-147, *Order Opening Docket and Seeking Comment* (February 24, 2009).

⁸ Neb. Rev. Stat. §86-101 et seq.

⁹ Laws 1986, LB 835, §14.

subsequently amended and recodified.¹⁰ Section 86-140 currently reads:

- (1) Access charges imposed by telecommunications companies for access to a local exchange network for interexchange service shall be negotiated by the telecommunications companies involved. Any affected telecommunications company may apply for review of such charges by the Commission, or the Commission may make a motion to review such charges. Upon such application or motion and unless otherwise agreed to by all parties thereto, the Commission shall, upon proper notice, hold and complete a hearing thereon within ninety days of the filing. The Commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The Commission shall set an access charge structure for each local exchange carrier but may order discounts where there is not available access of equal type and quality for all interexchange carriers, except that the Commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the Commission based upon evidence received at the hearing, incurred or which will be incurred by the local exchange carrier in providing such access services. Any actions taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority.
- (2) Reductions made to access charges pursuant to subsection (1) of this section shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges has been reduced. The Commission shall have the power and authority to (a) ensure that any access charge reductions made pursuant to subsection (1) of this section are passed on in a manner that is fair and reasonable and (b) review actions taken by any telecommunications company to ensure that this subsection is carried out.
- (3) For purposes of this section, access charges means the charges paid by telecommunications companies to

¹⁰ Most notably by Laws 1999, LB 514.

local exchange carriers in order to originate and terminate calls using local exchange facilities.

The first sentence of §86-140(1) expressly provides that the intrastate access charges imposed by a telecommunications company for access to its local exchange network for interexchange service "shall be negotiated by the telecommunications companies involved." The Commission finds that the inclusion of a negotiation requirement in §86-140 indicates the Legislature's intent that reviews under the provisions of §86-140 be necessarily premised upon a carrier notifying the Commission of its intent to implement a change to its existing access rate or set its initial access rates. Absent a carrier seeking to change its existing intrastate access rates or establish its initial access rates, there is nothing to be negotiated by the affected carriers and the negotiation requirement would be rendered meaningless.¹¹

The Legislature's inclusion of a statutorily imposed short timeframe for §86-140 proceedings was another indication that §86-140(1) is triggered by a new or changed access rate. The statute allows ninety (90) days for the Commission to conduct a hearing and sixty (60) days to issue an order with its findings in such proceedings.¹² Here, we believe, the Legislature meant to facilitate competition by ensuring that new entrants weren't unnecessarily delayed when entering the market. Further, the Legislature sought to create an environment which permitted existing carriers to adjust access rates through an expedient process when market conditions required such action. There was an obvious concern regarding timeliness in §86-140 review proceedings by the Legislature that would be rendered meaningless and unnecessary if carrier initiated reviews of other carrier's existing access rates can be done at will.

Moreover, practically speaking, to permit carriers to initiate a §86-140 review of another carriers' access rates at any time would leave the Commission and other carriers at the mercy of the carrier filing for a §86-140 review to dictate the timing and frequency of such reviews. Nothing in the statute would limit the number of §86-140 proceedings that could be

¹¹ The Commission notes that the provisions of §86-140(1) that allow the Commission on its own motion to review access charges, added to this statute by the Legislature in Laws 1999, LB 514, §2, are not reasonably interpreted to be premised on prior negotiation by affected telecommunications companies regarding the access charges in question. The Commission retains the authority to review access charges of telecommunications companies that are subject to the provisions of §86-140(1) at any time.

¹² Neb. Rev. Stat. §86-140(1)(Reissue of 2008).

potentially filed by any affected carrier or carriers. Further, carriers with access tariffs would be unable to rely on the filed rates as they could be required to come to the Commission at any time and expend resources to justify the rates contained in its access tariff totally at the whim of another carrier. We find it unlikely the Legislature contemplated or envisioned such a system under §86-140. Instead, the negotiation and timeframes adopted by the Legislature in §86-140 indicates the Legislature's intent that reviews under §86-140 occur only in the event a carrier proposes to make a change or establish its initial access rates by allowing affected carriers the opportunity to negotiate the proposed rates and expedited Commission review of such rates.

The Commission has also heard arguments that Neb. Rev. Stat. §86-141 limits the scope of the Commission's regulatory authority regarding access rates in §86-140 by excluding those companies that serve less than five percent (5%) of the state's access lines in the aggregate statewide. The practical result of such an interpretation would be that only an extremely small percentage of carriers in Nebraska would be subject to the provisions of §86-140. The Commission disagrees with such an interpretation of §86-141 and §86-140. The Legislature passed LB 514 in 1999, adding the sentence at the end of §86-141(5), which states, "This section shall not be construed to exempt any local exchange carrier from regulation of its access charges pursuant to section 86-140."¹³ While the Commission acknowledges that the language in §86-141(1) could be interpreted to be in conflict with the last sentence in subsection 5, the Commission concludes the specific language referencing regulation of access charges in §86-141(5) should prevail over the more general statutory cite contained in §86-141(1).¹⁴

Further, the Legislative intent of the additional language in §86-141(5) added by LB 514 is indicated in an explanatory memo regarding the provisions of LB 514 prepared by the Legal Counsel of the Transportation and Telecommunications Committee in 1999 for the Committee members. The purpose of including the language in §86-141(5) was described as follows: "language is added which indicates that nothing in this section prohibits the regulation of access charges by the PSC." Therefore, we conclude that the Legislature did not intend to limit the scope

¹³ See Neb. Rev. Stat. §86-141(5) (Reissue of 2008) (emphasis added).

¹⁴ See, State v. County of Lancaster, 272 Neb. 376, 721 N.W.2d 644 (2006); and State ex rel. Garvey v. County Bd. of Com'rs of Sarpy County, 253 Neb. 694, 573 N.W.2d 747 (1998).

of the Commission's authority to regulate access charges under §86-140 with any provision in §86-141.

Section 86-140 Negotiations

The first sentence of §86-140(1) expressly provides that access charges imposed by a telecommunications company shall be negotiated. There has been considerable argument and confusion regarding the negotiations requirement contained in §86-140. Carriers and interested parties have disagreed on how to satisfy the negotiation requirement contained in the statute and how negotiations fit into the timing of access rate changes and reviews. Therefore, to clarify the negotiations requirement for the purposes of §86-140, the Commission implements the following procedures as outlined below.

Local exchange carriers operating in Nebraska that provide intrastate access services file tariffs with the Commission setting forth the rates, terms and conditions under which intrastate access service is provided. Procedurally in Nebraska a carrier's notification of its intent to change its current access rates or establish its initial access rates is indicated through the filing of a tariff with the Commission. To ensure that all potentially affected carriers are made aware of a carrier's intent to change or initially set its access rates, any tariff provision filed with the Commission regarding initial or changing access rates will be automatically suspended.¹⁵ The Commission shall then publish notice of such filing for thirty (30) days pursuant to the Commission's Rules of Procedure.¹⁶

Any interested telecommunications carrier desiring to negotiate the proposed access rates shall give written notice of such desire to the carrier proposing the new access rate and the Director of the Communications Department within thirty (30) days after publication.

If no requests for negotiations are received and the Commission does not initiate a review of the proposed charges on its own motion, the suspended tariff containing the new access

¹⁵ The Commission recognizes that Neb. Rev. Stat. §86-144 (Reissue of 2008) provides that telecommunications companies shall file rate lists which, except for basic local exchange rates, "shall be effective after ten days' notice to the commission." Notwithstanding this directive, §86-140 sets forth separate, unique provisions governing establishment of access charges, including a negotiation requirement. Therefore, tariff filings that contain a change in a carrier's intrastate access rates shall be automatically suspended pending compliance with the procedures set forth in this Order.

¹⁶ See Neb. Admin. Code, Title 291, Ch. 1 §011 (1992).

rates shall become effective immediately following the expiration of the thirty (30) days following publication.

In the event the carrier proposing a change in its intrastate access rates receives written notice from an affected carrier or carriers evidencing a desire to negotiate the proposed access rates, representatives of the carrier proposing to change its access rates shall confer with representatives of each of the affected carriers requesting negotiations. All carriers requesting negotiations and the carrier proposing the new rates shall cooperate in good faith to facilitate negotiations of the access rates at issue. Such negotiations shall continue until (a) such time that the parties reach agreement on the access rates in question or (b) sixty (60) days following Commission publication of notice of the carrier's proposed change to its intrastate access rate, whichever is earlier.

The carrier that initiated the change in its access rates shall report to the Director of the Communications Department in writing the outcome of the negotiations. In the event the negotiations were successful and resulted in a modification of the proposed access rate, the written notice shall include a proposed amended tariff with the negotiated changes. The carrier shall also send a copy of the notice and amended tariff provisions to those carriers that participated in the negotiations. The Commission shall publish notice of the negotiations report and any modified tariff, if included with the report, for thirty (30) days pursuant to the Commission's Rules of Procedure.¹⁷

Once the report on the outcome of the negotiations has been filed with the Communications Department, whether the proposed access rates remained the same as initially filed by the carrier seeking the change or were modified as a result of the negotiations, any affected carrier that remains dissatisfied with the proposed access rates may apply for a review of the proposed rates by the Commission under the provisions of §86-140. Such application must be made within thirty (30) days from the date of publication of the negotiations report on the outcome of the negotiations with the Communications Department.

In the event that no applications for review of the proposed access rates, either as originally filed by the carrier or as modified by the negotiations, are received by the Commission, and the Commission does not initiate a review under

¹⁷ *Id.*

§86-140 on its own motion, the proposed access rate shall become effective thirty (30) days after publication of the negotiations report by the Commission.

Section 86-140 Reviews

Any application for a Commission review of proposed access rates under §86-140 shall be in writing, shall describe with reasonable particularity the relief sought by the carrier seeking review and the facts that support granting such relief. A copy of the application shall be served upon the carrier proposing to change its access rates and all other carriers that participated in the negotiations of such rates, such service to be in accordance with the Commission's Rules of Procedure.¹⁸ The Commission shall publish notice of the application for review for thirty (30) days pursuant to the Commission's Rules of Procedure.¹⁹ Once a §86-140 review has been initiated the timelines for hearing and order issuance as contained in §86-140 shall control, unless all parties agree to an extension of the timeline pursuant to §86-140.

The Commission opened the above-captioned docket to consider evidentiary standard and minimum criteria required under §86-140 to prove a carrier's proposed access rates are fair and reasonable. The Commission wanted to provide a "road map" to carriers in Nebraska as to the type of evidence and information to be provided to the Commission to conduct a fair and reasonable analysis in a §86-140 review. The Commission sought comment from the industry and interested parties and conducted a hearing on what evidence should be provided in such an analysis.

Upon the filing of an application for a §86-140 review, or upon the Commission instituting a review on its own motion, the carrier proposing to institute new intrastate access rates shall file a response to such application within twenty (20) days following service of the application. Such response shall include information on the following topics:

- 1) Overall Rate of Return of the carrier
- 2) Basic Local Exchange Service Revenues
- 3) Access Service Revenues
- 4) Federal Universal Service Fund (FUSF) and Nebraska Universal Service Fund (NUSF) support received
- 5) Demand by rate element

¹⁸ *Id.*

¹⁹ *Id.*

6) Cost of providing supported services (basic local exchange and access services)²⁰

All information provided shall be by year for the immediately preceding three years. Requiring three years worth of data is intended to present a more normalized picture of the carrier's operations and significantly reduce the effect of any irregular or anomalous years. We were urged to allow carriers to elect to provide either the immediately preceding three years or the most recently completed year. The Commission finds the immediately preceding three years should be the standard to be filed, however, carriers may make arguments to the Commission as to why a one year look is more appropriate in a specific carrier's circumstances.

Minimum Evidentiary Requirements in a §86-140 Review

To satisfy the request for information outlined above for the Commission to begin a fair and reasonable analysis, the Commission lays out two options below. Any telecommunications company seeking to implement a change in its intrastate access rates may utilize these options to begin establishing that its proposed access charges are fair and reasonable as required by Section 86-140(1). However, the Commission stresses again that this is a guideline to begin the fair and reasonable analysis under §86-140. Other data or information a carrier deems relevant and pertinent to the §86-140 review may be offered. The two options are described below.

Option 1: Cost Study

A carrier seeking to change its intrastate access rates for which Commission review has been requested may submit a cost study to establish the fair and reasonable nature of the requested access charges. While potentially cost-prohibitive in some situations, a carrier may have cause to perform a cost study for reasons other than to support its proposed access rates. Further, a carrier might determine the expense of preparing a cost study is reasonable and necessary to support a review of its proposed access rates by the Commission. Cost study data that establishes the carrier's cost of access consistent with the proposed access rates would be sufficient to satisfy the fair and reasonable requirements of Section 86-140.

²⁰ Carriers that do not file NUSF-EARN forms on a supported services basis or retain books and records for its company on a basis other than supported services basis may elect to use the conversion formulas provided on page 12 below to convert its data to a supported services basis.

Option 2: NUSF-EARN Form Data

A carrier desiring to implement a change in its access rates may submit data already gathered and reported on a NUSF-EARN Form, or submit data similar to what is reported on an NUSF-EARN Form if the carrier is not required to submit an EARN Form to the Commission. All data would need to be on a supported services basis, to allow for consistent analysis. The Commission further discusses the supported services basis below. The earnings data would be used as a tool to assist the Commission in ascertaining the costs incurred by the carrier in providing access services.

Option 2 offers several benefits for carriers that may consider its use. First, Incumbent Local Exchange Carriers ("ILECs") receiving NUSF support currently file similar information on their annual NUSF-EARN Forms. The cost/earning information has already been gathered or is available with some minor modifications, thereby significantly reducing the financial burden for the carrier seeking a change in access rates.

Second, a telecommunications company's network is used to provide both basic local exchange and access services. On a supported services basis, the data reported on NUSF-EARN Forms takes into account the primary revenue sources used to fund a telecommunication carrier's network, basic local exchange revenues, access services revenue, and universal service support, both state and federal, received by the carrier. Using data similar to that reported by carriers in EARN Forms will allow the Commission to examine all sources of network cost recovery in conducting a fair and reasonable analysis of a carrier's proposed access rates. It will also help ensure consistency between the Commission's NUSF policy and access policy by considering both the intrastate access revenues and the current NUSF high-cost support mechanism. Further, examining all sources of supported services revenue collectively will not require the Commission to allocate joint and common costs between basic local service and access service.

The Commission stresses that while NUSF-EARN Form type data could be used by a carrier to support its proposed access rates in an §86-140 review, the requirements for the submission of NUSF-EARN Forms for purposes of receiving NUSF high-cost support will not be affected. Section 86-140 proceedings will be considered separately and distinctly from the requirements for filing NUSF-EARN Forms. Further, the analysis of earnings data

as described in connection with Option 2 above will only occur in the event that a §86-140 review of proposed access rates is initiated. NUSF-EARN Form data filed for any other purpose will not be utilized by the Commission to conduct an independent review of any carrier's access rates.

Supported Services

To enable the Commission to conduct a consistent analysis of data submitted using Option 2, the data must be on a supported services basis. In the event that a carrier proposing to change its access rates elects to utilize Option 2 above, but does not maintain its books and records on a supported services basis, the following formulas and factors may be applied by the carrier to convert the carrier's books and records to a supported services basis. The Commission will calculate the carrier's three year average; Net Income Before Taxes, utilizing a Cost of Capital input of 10% (NIBT(10%)); Total Expenses (TotExp); and Total Revenues (TotRev). Once calculated, based on a carrier's reporting basis, the appropriate formulas and factors will be applied to derive a carrier's supported services basis proxy results. The established factors applied are based on existing Nebraska data reported on a state or supported services basis. The formulas are as follows:

State Basis:

$$\text{NIBT}(10\%)_{\text{SS}} = \text{NIBT}(10\%)_{\text{NE}} * \text{NIBTFactor}_{\text{SS}}$$

$$\text{TotExp}_{\text{SS}} = \text{TotExp}_{\text{NE}} * \text{TotExpFactor}_{\text{SS}}$$

$$\text{TotRev}_{\text{SS}} = \text{TotRev}_{\text{NE}} * \text{TotRevFactor}_{\text{SS}}$$

Total Company Basis:

$$\text{NIBT}(10\%)_{\text{SS}} = (\text{NIBT}(10\%)_{\text{TC}} * \text{NIBTFactor}_{\text{NE}}) * \text{NIBTFactor}_{\text{SS}}$$

$$\text{TotExp}_{\text{SS}} = (\text{TotExp}_{\text{TC}} * \text{TotExpFactor}_{\text{NE}}) * \text{TotExpFactor}_{\text{SS}}$$

$$\text{TotRev}_{\text{SS}} = (\text{TotRev}_{\text{TC}} * \text{TotRevFactor}_{\text{NE}}) * \text{TotRevFactor}_{\text{SS}}$$

The factor values are listed in the table below:

| | NIBT(10%) | TotExp | TotRev |
|----------------------|-----------|--------|--------|
| Factor _{NE} | 0.6569 | 0.6250 | 0.5653 |
| Factor _{SS} | 0.8691 | 0.7592 | 0.6927 |

The supported services basis conversion factors are available to assist carriers who desire to utilize the formulas. The conversion factors are offered as a way of keeping potential costs reasonable for those carriers with limited resources that seek to implement access rate changes. However, no carrier is

required to utilize the supported services conversion factors. Any carrier may conduct its own conversion of its books and records to a supported services basis and submit such data to the Commission. Carriers that currently file NUSF-EARN Form data on a supported service basis will not need to utilize the conversion factors, as no conversion would be necessary for such carriers.

Section 86-140 Fair and Reasonable Analysis

Basic Local Rates

In the Commission's review of proposed access rates, basic local service revenues shall be imputed at current benchmark rates, \$17.95 per month in urban areas and \$19.95 per month in rural areas.²¹ The Commission has indicated that a telecommunications company should first seek additional revenue by increasing local rates in both its urban and rural service areas to benchmark rates prior to increasing its intrastate access rates to generate additional revenue.²² Imputing basic local service revenues at benchmark rates will allow the Commission to determine whether raising basic local service rates alone would allow a telecommunications company sufficient cost recovery, or if increases to a carrier's intrastate access rates are fair and reasonable.²³

Rate of Return

In its §86-140 analysis the Commission shall utilize a 10% rate-of-return (ROR) as a beginning point for the analysis of a carrier's costs and revenues. The Commission in other areas has considered the reasonableness of a carrier's ROR and finds that utilizing a 10% ROR as a starting point for any fair and reasonable analysis is consistent with Commission findings regarding ROR in other areas. In considering a carrier's ROR in connection with NUSF support, the Commission uses a 12% ROR as the level at which NUSF support is subject to adjustment due to carrier overearnings. However, in Docket NUSF-7, the Commission

²¹ Urban areas and rural areas have been defined by the Commission as "in-town areas" and "out-of-town areas," see Docket NUSF-50, *In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to the universal service fund mechanism established in NUSF-26*, Progression Order No. 5 (December 19, 2006) Appendix A at pg. 6.

²² See Docket C-3945/NUSF-60.02/PI-138, *In the Matter of the Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates Order* (Feb. 3, 2009).

²³ The imputation of benchmark rates discussion is premised upon the assumption that a carrier has filed for an increase in its intrastate access rates.

held no carrier is guaranteed a 12% ROR and a 12% ROR is not a targeted ROR.²⁴ The Commission instead established a 10% ROR as the cap for any carriers seeking additional NUSF support. The Commission therefore, shall utilize a 10% ROR to begin its analysis of any proposed access rate. The results of any ROR analysis shall be a guideline for the Commission's fair and reasonable determination, not a bright line rule for granting or denying a proposed access rate.

Access Rate Complaints

As stated above, the Commission finds that access rate review proceedings pursuant to the provisions of §86-140 are only contemplated by the statute in the event that a carrier seeks to establish initial intrastate access charges or change its intrastate access rates. Challenges to a carrier's existing intrastate access rates are not properly brought under the provisions of §86-140.

In this proceeding the Commission sought comment on a proposed standard to evaluate Formal Complaints challenging a carrier's existing access rates outside of a §86-140 review proceeding. The Commission's earlier proposed order contained a section discussing the use of a standard based upon the concept contained in an earlier Commission order of "reasonably comparable"²⁵ when considering a challenged CLEC's access rates in the context of a complaint proceeding. Based on the comments received and after careful consideration the Commission declines to adopt any specific evidentiary standards regarding any complaints filed to challenge a carrier's existing access rates. The Commission finds that the Commission's currently established complaint procedures are appropriate and sufficient for any party to bring challenges to a carrier's existing access rates.

²⁴ See Docket NUSF-7, In the Matter of the Commission, on its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund. Waiver Requests Granted in Part and Denied In Part (September 26, 2000).

²⁵ See Docket NUSF-50, In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to the universal service fund mechanism established in NUSF-26, (December 19, 2006), at ¶32.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the procedure, requirements, and findings as outlined above be, and are hereby, adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of April, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman



ATTEST:

Executive Director



//s// Frank E. Landis

//s// Gerald L. Vap

