

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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. )

APPLICATION No. NUSF-50  
Progression Order No. 3

IN THE MATTER OF THE COMMISSION, )  
ON ITS OWN MOTION, SEEKING TO )  
INVESTIGATE WHETHER THE ZONES )  
ESTABLISHED IN DOCKET NO. C-2516 )  
ARE APPROPRIATE IN LIGHT OF NUSF- )  
26 FINDINGS AND CONCLUSIONS. )

APPLICATION No. C-3554/PI-112

**PREFILED TESTIMONY  
OF  
DALE MUSFELDT**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Dale Musfeldt. My business address is 519 NE 24<sup>th</sup> Court, Ankeny, Iowa 50021.

3 **Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?**

4 A. I am presently an independent telecommunications consultant and am periodically retained  
5 by companies such as Nebraska Technology & Telecommunications, Inc. (“NT&T”) to provide  
6 analysis and advice on telecommunications issues. I have been retained by NT&T in this proceeding  
7 to analyze the proposal of the Nebraska Public Service Commission (“Commission”) staff to modify  
8 the zones set forth in C-3554/PI-112 and adopt the porting methodology described in the  
9 Commission’s February 28, 2006, order in NUSF-50, Progression Order No. 2.

10 **Q. PLEASE BRIEFLY DESCRIBE YOUR WORK EXPERIENCE.**

11 A. I have some 40 years of experience in the telecommunications industry. I first joined NT&T  
12 in June 1998, when I was hired by NT&T to serve as its Vice President of Operations. In this  
13 capacity I was responsible for, among other things, developing cost models for the implementation

1 of a facilities-based business model. In April 2000 I became the company's CEO and had overall  
2 responsibility for the operations of NT&T. I remained in that position until I voluntarily retired on  
3 September 30, 2004, and began consulting on telecommunications matters on a part-time basis.  
4 Prior to joining NT&T, I worked for the predecessors of Qwest Corporation for 32 years. My last  
5 assignment there was manager of outside plant planning for Iowa, Nebraska and South Dakota.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. The purpose of my testimony is to comment on the Commission staff proposals set forth in  
8 the Order Releasing Staff Proposal dated February 13, 2007.

9 **Q. HAVE YOU REVIEWED THE COMMISSION STAFF'S PROPOSAL ISSUED ON**  
10 **FEBRUARY 13, 2007?**

11 A. Yes.

12 **Q. BASED UPON YOUR REVIEW OF THE STAFF PROPOSALS AND YOUR**  
13 **TRAINING AND EXPERIENCE, HAVE YOU REACHED ANY CONCLUSIONS**  
14 **AND OPINIONS WITH RESPECT TO THE STAFF PROPOSALS AND THE**  
15 **LIKELY IMPACT IN THE EVENT THEY ARE ADOPTED?**

16 A. Yes.

17 **Q. WHAT ARE YOUR CONCLUSIONS AND OPINIONS?**

18 A. NT&T was created to bring the benefits of telecommunications competition to all of  
19 Nebraska, especially the rural exchanges served by Qwest and Windstream. It has not been easy as  
20 NT&T has been forced to deal with anticompetitive behavior and unjust and unreasonable rates  
21 charged by the ILECs. Nevertheless, with the advent of UNE-P and the porting of NUSF support,  
22 NT&T was finally able to offer the benefits of competition to rural Nebraska. Customers have  
23 voluntarily switched their business to NT&T because of its superior customer service, the ability to  
24 talk to a live human being at NT&T when questions arise, and significant cost savings.

1           The two present proceedings propose to radically alter the manner in which NUSF is ported,  
2 as well as how Qwest’s rate zones are structured. **If adopted in their current form, the staff**  
3 **proposals would cause NT&T to lose approximately \$2 million in revenue each and every year.**  
4 I have significant concerns about the likely impact of the staff proposals, especially the proposed  
5 NUSF porting changes in Zones 2 and 3 and significant proposed loop rate increases in out-of-town  
6 zones. While NT&T is fully prepared to work with Commission in creating mechanisms to more  
7 efficiently target NUSF support, it is critical that any such modifications preserve the element of  
8 predictability and continue to encourage meaningful competition throughout all of Nebraska.

9       **Q.     DO YOU HAVE AN OPINION WITH RESPECT TO THE STAFF PROPOSAL TO**  
10       **INCREASE THE NUMBER OF ZONES ESTABLISHED IN DOCKET C-2516.**

11       A.     The Commission clearly possesses the authority to create more than three geographic zones  
12 for purposes of establishing rates for unbundled network elements (“UNEs”). The Federal  
13 Communication Commission’s (“FCC”) regulations mandate that “[s]tate commissions shall  
14 establish different rates for elements in *at least* three defined geographic areas within the state to  
15 reflect geographic cost differences.” 47 C.F.R. §51.507(f) (2005)(emphasis added). For states such  
16 as Nebraska, the FCC’s regulations further provide that the Commission “must create a *minimum*  
17 of three cost-related rate zones.” 47 C.F.R. §51.507(f)(2)(2005)(emphasis added). Thus, the federal  
18 regulations establish a floor, not a ceiling, on the number of zones that must be created. This  
19 mandate to create at least three zones was previously recognized by the Commission in Application  
20 No. C-2516/PI-49. Findings and Conclusions, *In the Matter of the Commission on its own motion,*  
21 *to investigate cost studies to establish Qwest Corporation’s rates for interconnection, unbundled*  
22 *network elements, transport and termination, and resale*, Application NO. C-2516/PI-49 at ¶79 (Apr.  
23 23, 2002).

24           Consequently, it is well established that the Commission has the requisite authority to create  
25 more than three rate zones, and I concur with the staff’s recommendation to modify the zone  
26 structure.

1 Q. DO YOU HAVE AN OPINION AS TO WHETHER A 4-ZONE CONFIGURATION  
2 IS PREFERRED TO A 6-ZONE CONFIGURATION AND, IF SO, WHAT IS YOUR  
3 OPINION?

4 A. Yes. In order to more accurately reflect the cost differences between the various zones,  
5 including those which are in-town, a 6-zone configuration is preferable. Simply lumping the in-  
6 town zones into one zone does not provide an accurate picture of the rate differences on a zone-by-  
7 zone basis.

8 Q. WHAT IS THE LIKELY IMPACT OF PROPOSED UNE LOOP RATES SET  
9 FORTH IN THE STAFF PROPOSAL?

10 A. The impact for customers in out-of-town (“OoT”) zones is significant. For OoT Zone 2, the  
11 UNE loop rate will skyrocket from the current \$28.11 to \$93.19; for OoT Zone 3, the rate will go  
12 from \$62.49 to \$172.95. Given these significant proposed increases for UNE loop rates for OoT  
13 Zones 2 and 3, it simply is not feasible for NT&T to continue to offer service to customers in these  
14 zones absent significant NUSF support. Even Qwest has acknowledged this. In its initial comments  
15 in C-3554-/PI-112, Qwest declared that “[t]he proposed rates for out-of-town loops are so high, it  
16 is difficult to imagine any circumstances under which a requesting carrier would seek to purchase  
17 one.” Qwest Corporation’s Initial Comments, Application No. C-3554/PI-112, at 19 (May 3, 2006).

18 NT&T agrees. In the event these rates are adopted, NT&T requests a minimum of a three  
19 (3) year transition period to exit the OoT Zones 2 and 3 so as to permit CLECs such as NT&T with  
20 sufficient time to return the customers to their carrier of non-choice in a manner that causes the least  
21 inconvenience to the customer.

22 NT&T is generally supportive of the staff’s proposal to move the Zone 1, 2 and 3 in-town  
23 (“IT”) UNE loop rates to \$10.97, \$9.33 and \$9.93 respectively. As the Commission is well aware,  
24 NT&T has long argued that Qwest’s loop rates are inflated and not cost-based. While the staff’s  
25 proposed rates for IT Zones 2 and 3 are more in line with the “just and reasonable rates” required  
26 by Section 252(d)(1) of the Telecommunications Act of 1996 (“Act”), it is important to bear in mind  
27 that ported NUSF support will disappear for these IT zones under the Commission staff’s proposals  
28 in the present NUSF-50 Progression Order No. 3 as well as in the staff’s Post-Hearing Brief in

1 NUSF-50. As a result, NT&T's revenue from the Zone 2 and 3 IT lines will actually decrease from  
2 their current levels. It is also critical to note that any increase in the proposed IT loop rates will  
3 make it cost prohibitive for NT&T and other CLECs to compete anywhere in Zones 2 and 3.

4 **Q. IF THE IN-TOWN RATES IN THE STAFF PROPOSAL ARE ADOPTED, WILL**  
5 **NT&T'S COSTS AUTOMATICALLY GO DOWN?**

6 A. Unfortunately the answer is no. It is important to recall that NT&T currently purchases  
7 UNEs from Qwest under a Qwest Local Services Platform™ Agreement ("QLSP Agreement"). The  
8 QLSP Agreement contains multiple provisions that permit Qwest to demand a renegotiation of the  
9 material terms of the QLSP Agreement in the event of a regulatory change. Moreover, the QLSP  
10 Agreement provides Qwest with avenues for annually increasing certain recurring charges, which  
11 could be used by Qwest to recover the slight UNE-L rate reductions for the IT Zones proposed by  
12 Commission staff. As the Commission considers the issues raised in these two dockets, it is  
13 important to recognize that CLECs such as NT&T generally purchase UNEs from Qwest under  
14 commercially-negotiated arrangements that differ from the interconnection agreements contemplated  
15 by the Act.

16 **Q. DO YOU HAVE AN OPINION AS TO HOW IN-TOWN AND OUT-OF-TOWN**  
17 **AREAS SHOULD BE DEFINED?**

18 A. Yes. A number of Nebraska laws reference a municipality's corporate limit and a reasonable  
19 buffer zone around such limit, in determining the applicability of various statutory provisions. A  
20 common buffer zone is 5 miles. *See, e.g.,* NEB.REV.STAT. §§17-114, 23-3608. In addition, in at  
21 least one instance the Legislature has referenced this same five-mile radius in regulating matters  
22 within the jurisdiction of the Commission. *See* NEB.REV.STAT. §75-304.02 (5-mile radius of  
23 corporate limit for movers of household goods). Consequently, NT&T recommends that "in-town"  
24 be defined to include all customers within a radius of five miles of the corporate limits of any city  
25 or village in Nebraska.

1 **Q. DO YOU HAVE AN OPINION WITH RESPECT TO THE PORTING**  
2 **METHODOLOGY PROPOSED BY THE STAFF IN NUSF-50 PROGRESSION**  
3 **ORDER NO. 2 DATED FEBRUARY 28, 2006 AND, IF SO, WHAT IS YOUR**  
4 **OPINION?**

5 A. Today, what limited competition that exists in Qwest's Zone 2 and 3 exchanges in Nebraska  
6 is largely the result of ported NUSF support, which is nothing more than a pass-through from CLECs  
7 like NT&T to Qwest. No rational business model would support leasing the loop element from  
8 Qwest for the current \$62.49 per line in Zone 3 (regardless of whether the end user/customer is in-  
9 town or out-of-town) and attempting to sell that line to a customer at a competitive rate near the  
10 benchmark without some form of additional financial support. Until such time that Qwest's Zone  
11 2 and 3 loop rates are truly "just and reasonable," NUSF support will be required if Nebraska  
12 residents in Qwest's rural exchanges are to receive the benefits of meaningful competition. Thus,  
13 NT&T opposes the proposed porting methodology for the OoT zones. By our calculations, at a  
14 minimum the monthly per line NUSF portable support needs to be at the following levels:

15	<b>Zone</b>	<b>Staff Proposal</b>	<b>NT&amp;T Proposal</b>
16	OoT Zone 1	\$7.39	\$20.00
17	OoT Zone 2	\$69.06	\$85.00
18	OoT Zone 3	\$148.81	\$163.02

19 NT&T also opposes the proposed elimination of NUSF support for IT Zones 2 and 3 *unless*  
20 the changes are coupled with a modification of the zones and adoption of UNE-L rates along the  
21 lines proposed by the staff in C-3554/PI-112 for IT customers.

22 **Q. SHOULD THE COMMISSION CONTINUE TO PORT NUSF SUPPORT IN OUT-**  
23 **OF-TOWN AREAS IN ZONE 3 TO CLECs?**

24 A. Yes. Our Legislature has declared in Section 86-801 of the Nebraska Revised Statutes that  
25 it is the policy of this state to promote fair competition in all Nebraska telecommunications markets.  
26 Given the exorbitant loop rates charged by Qwest in Zone 3, and the \$172.95 loop rate proposed by

1 the Commission staff for OoT Zone 3 customers, competition will cease to exist in the absence of  
2 meaningful NUSF support.

3 **Q. SHOULD THE COMMISSION GRANDFATHER THE PORTING OF NUSF**  
4 **SUPPORT FOR EXISTING LINES, BUT NOT SUPPORT NEW LINES?**

5 A. It is NT&T's position that NUSF support should continue to be ported for all existing and  
6 new lines. Given the mandate in Section 86-323(5) of the Nebraska Revised Statutes for NUSF  
7 mechanisms to be "predictable," *at a minimum* existing lines should be permanently grandfathered  
8 given that NT&T and other CLECs relied upon the NUSF mechanisms adopted by the Commission  
9 and offered the benefits of competition to thousands of customers in high-cost areas.

10 Again, the issue comes down to predictability. There are valid policy reasons why the  
11 Nebraska Legislature adopted "predictability" as a guiding principle for the NUSF. Companies such  
12 as NT&T develop and implement long-range business plans that are based in part on the levels of  
13 universal service support. A lack of predictability with respect to the funding and operation of the  
14 NUSF damages the ability of companies like NT&T to compete and offer Nebraska customers the  
15 services they desire. This, in turn, puts consumers at risk. That is hardly the intended result of the  
16 NUSF.

17 With the adoption of the NUSF-26 order and other orders in related dockets, the Commission  
18 gave NT&T and other CLECs a directive to go out and offer the benefits of competition to rural  
19 Nebraska. Based upon the commitments made by the Commission to establish a "long-term" and  
20 "permanent" NUSF mechanism, NT&T did just that. As of January 2007 NT&T had over 21,000  
21 access lines in Qwest exchanges, approximately 13,000 of which are in Qwest's Zones 2 and 3.  
22 Given the extraordinarily high loop rates that NT&T is presently forced to pay Qwest, it would have  
23 been cost prohibitive to offer service to the vast majority of these customers without the benefit of  
24 NUSF support. My review of this matter reveals that, without this NUSF support or the adoption  
25 of UNE-L rates that are truly "just and reasonable" (which, in my opinion, should require Qwest to  
26 take into account the USF and NUSF support it receives), NT&T and other competitive carriers  
27 cannot continue to provide service to customers in Zone 2 and 3 exchanges, and rural Nebraska  
28 consumers will be denied the right to choose their local telephone company.

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2 A. Yes.

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