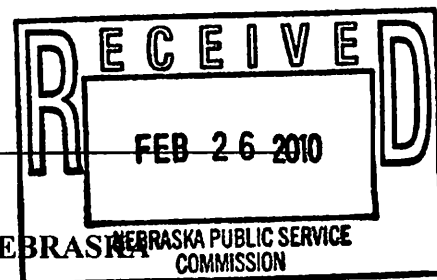


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service)
Commission on its own motion to conduct an)
investigation on intrastate switched access charge)
policies and regulations codified in Neb. Rev. Stat.)
Section 86-140.)

Application No. C-4145/NUSF-
74/PI-147



**REPLY COMMENTS OF THE
RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA**

I. Introduction

The Rural Telecommunications Coalition of Nebraska (“RTCN”),¹ by and through its attorneys of record, hereby respectfully submits the following reply comments in response to comments filed by various parties on February 16, 2010, in the above-captioned proceeding.

II. RTCN Agrees with the Commission’s Interpretation of the Scope of § 86-140(1)

In their respective comments, AT&T, Qwest and Verizon disputed whether NEB.REV.STAT. § 86-140 is limited to circumstances in which a local exchange carrier (“LEC”) files a new or revised intrastate switched access tariff.² These commenters argued that affected carriers should be permitted to seek a review of a LEC’s rates under § 86-140(1) at any time. The Commission has recently addressed this issue directly, leaving no doubt about the scope of applicability of § 86-140, and thus any comments attempting to undo this precedent should be disregarded.

Not even four months have passed since the Commission held that § 86-140(1) only applies in the context of a carrier filing a tariff with new or revised access rates:

¹ For purposes of this docket, RTCN is made up of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cozad Telephone Company, Diller Telephone Company, Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford Cooperative Telephone Co., Mainstay Communications, Plainview Telephone Company, Southeast Nebraska Telephone Co., Wauneta Telephone Company, and WesTel Systems f/k/a Hooper Telephone Company.

² See *AT&T’s Post-Hearing Comments* (Feb. 16, 2010), pages 2-7; *Qwest Corporation’s February 16, 2010 Comments* (Feb. 16, 2010), pages 5-6; *Post-Hearing Comments of Verizon* (Feb. 16, 2010), page 1.

The Commission does not interpret the language and intent of §86-140 to allow an affected telecommunications company to challenge the intrastate access rates of another carrier at any time by applying for a review of such rates by the Commission. Instead, in our analysis, the provisions of §86-140 only apply in the event a carrier files a tariff with new or revised access rates. . . .

An affected carrier may initiate a review by the Commission pursuant to §86-140 only in the event of a tariff establishing a new rate or revising current access rates is filed by a carrier.³

In reaching this conclusion, the Commission carefully analyzed the language of the statute in order to understand the intent of the Legislature. The Commission first focused on the affect of the negotiation requirement in the statute:

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 submission of a tariff to the Commission whereby a carrier seeks to implement initial rates or change its existing intrastate access rates. . . . Absent a carrier filing such a tariff containing its initial rates or changing its existing intrastate access rates, there is nothing to be negotiated by the affected carriers. To interpret the provisions of §86-140 any differently would effectively render the negotiation requirement under the statute meaningless.⁴

The Commission next explained that the time restrictions in § 86-140(1) lend further support for the conclusion that the Legislature intended the statute to only apply in the context of new or revised access rates:

The provisions of § 86-140(1) also place time restrictions upon the Commission to conduct access rate review proceedings. The statute allows ninety (90) days for the Commission to conduct a hearing in such proceedings. The inclusion of an express provision limiting the timeframe for Commission access charge review proceedings also supports the conclusion that the Legislature was only contemplating proceedings under § 86-140 in the event a carrier seeks to establish initial access rates or revise its existing access rates. The obvious concern regarding timeliness in § 86-140 review proceedings is rendered meaningless and unnecessary if carrier initiated reviews of other carrier's existing access rates can be done at will. The Legislature's inclusion of a statutorily imposed short timeframe for § 86-140 proceedings shows clear intent to avoid long

³*In the Matter of the Formal Complaint of OrbitCom, Inc., Sioux Falls, South Dakota, seeking a determination that AT&T Communications of the Midwest, Inc., Denver, Colorado, failed to pay intrastate access charges billed by OrbitCom in accordance with OrbitCom's intrastate switched access tariff, Application No. FC-1332; In the Matter of the Formal Complaint of AT&T Communications of the Midwest, Inc., Denver, Colorado, seeking a determination that OrbitCom, Inc., Sioux Falls, South Dakota, failed to negotiate Intrastate Access Charges and that OrbitCom's tariffed Intrastate Switched Access Rates are unfair and unreasonable, Application No. FC-1335, Order, pages 7-8 (November 10, 2009) ("Application Nos. FC-1332/FC-1335").*

⁴ *Id.*

delays when carriers seek to implement new or revised access rates.⁵

In the same Order, the Commission explained that AT&T could not challenge OrbitCom's intrastate switched access rates under § 86-140(1) over six years after OrbitCom's tariff establishing such rates was filed. The Commission found:

AT&T's opportunity to request negotiations with OrbitCom regarding OrbitCom's intrastate access rates or to apply to the Commission for a review of those rates was in 2003, when OrbitCom filed its Nebraska Tariff establishing its access rates. AT&T failed to do so and chose instead to try and negotiate a better deal for itself. To bring an application for review of OrbitCom's Nebraska Tariff six (6) plus years after it was filed with the Commission is untimely and not proper under § 86-140.⁶

In addition to the Commission's well-reasoned analysis and conclusions regarding the proper interpretation of § 86-140(1), RTCN's recently filed comments provided additional statutory interpretation support for the Commission's conclusions, explaining that the multiple references made to § 86-140 in § 86-141 appear to have been made with the legislative assumption that § 86-140 only applies in the context of a change or revision to a carrier's rates.⁷ Thus, it is relatively clear that, like the Commission, the drafters of § 86-141 understood § 86-140 to only apply in the context of a request for new or revised access rates.

Based on the above-described Commission holding and the statutory analysis accompanying it, it appears that the Commission has reached a sound and well-reasoned interpretation of § 86-140, namely that it only applies in the context of a local exchange carrier filing for new or revised intrastate access rates.

RTCN also reiterates that it opposes challenges by affected parties to the current rates of ILECs. All current ILEC intrastate switched access rates have already been reviewed and approved by the Commission, and thus to now allow challenges to existing ILEC access rates would not only undermine the efforts made by the Commission and the industry in prior

⁵ *Id.* at 8.

⁶ *Id.* at 9.

⁷ *See Comments of the Rural Telecommunications Coalition of Nebraska* (Feb. 16, 2010), page 5.

proceedings, but would also subject ILECs to unnecessary and burdensome litigation. Thus, RTCN agrees with the Commission's Proposed Order that challenges to the lawfulness of ILECs' existing access rates under effective tariffs should be prohibited.

III. RTCN Opposes a Universal Access Rate that Mirrors Qwest's Rate

In their most recent written comments, both Qwest and Verizon again proposed that all carriers' intrastate switched access rates should mirror Qwest's rate.⁸ For several reasons, RTCN opposes this proposal. It is indisputable that there is a significant difference between Qwest's costs and the costs incurred by all other carriers in Nebraska, particularly the rural ILECs, and thus there is no legitimate basis to require rural ILECs' intrastate access rates to match Qwest's intrastate access rates. Rural ILECs' economies of scale are vastly different from Qwest's. Moreover, notwithstanding that Qwest serves some low density rural areas of Nebraska, Qwest's state access rate is heavily influenced by its extremely dense, lower cost Omaha market. Without question, forcing all local exchange carriers to reduce their rates to mirror Qwest's rates would result in under recovery of costs by all local exchange carriers in Nebraska other than Qwest. Without a replacement of revenues lost with such a reduction, rural ILECs would be unable to fulfill their carrier of last resort obligations. Thus, the Commission should not consider any proposal for a uniform intrastate switched access rate.

IV. RTCN Opposes the Proposed Elimination of Option 3

Qwest also proposed that the Commission eliminate the Commission's third proposed option for a carrier to establish that its intrastate access rates are fair and reasonable.⁹ The Commission explained that Option 3 is available to carriers in the event that they do not maintain

⁸ See *Qwest Corporation's February 16, 2010 Comments* (Feb. 16, 2010), page 4; *Post-Hearing Comments of Verizon* (Feb. 16, 2010), page 6.

⁹ See *Qwest Corporation's February 16, 2010 Comments* (Feb. 16, 2010), pages 4-5.

their books and records on a supported services basis.¹⁰ RTCN opposes Qwest's proposal to remove Option 3, particularly because it would eliminate the primary option for carriers (including all the RTCN companies) which do not file EARN forms on a supported services basis. The RTCN companies do not perform cost studies on a supported services basis and therefore do not compile the annually filed NUSF-EARN forms on a supported services basis. The compilation of a carrier's NUSF-EARN form on a supported services basis would entail considerable internal staffing costs as well as costs to the carrier for external consulting services to complete a supported services study necessary for such a compilation. The removal of Option 3 would place carriers like the RTCN companies at an unfair disadvantage when it comes to proving their proposed rate changes are fair and reasonable, and thus, RTCN urges the Commission to reject Qwest's proposal.

V. RTCN Agrees with the General Direction and Intention of the Proposed Order

Contrary to continued attempts to change the scope and direction of this proceeding,¹¹ RTCN continues to support and applaud the Commission's efforts to establish a well-defined review process and clear evidentiary standards for applications for intrastate access rate increases. As noted in its previous comments, RTCN anticipates that if the current environment (including the depleting NUSF) continues or worsens, carriers like the RTCN companies may need to begin seeking increases in their intrastate switched access rates in the coming years in order to meet the ongoing obligations placed on them as carriers of last resort. This approach is consistent with Commission policy, that "[i]n the event that the NUSF is not able to meet its funding commitments, companies would in that instance, be permitted to seek approval to

¹⁰ See *In the Matter of the Nebraska Public Service Commission on its own motion to conduct an investigation on intrastate switched access charge policies and regulations codified in Neb. Rev. Stat. Section 86-140*, Application No. C-4145/NUSF-74/PI-147, Order, page 9 (November 3, 2009).

¹¹ See *Post-Hearing Comments of Verizon* (Feb. 16, 2010), page 2-8.

increase intrastate access to a reasonable level.”¹² Thus, rather than entertaining ways to lower the access rates of carriers, it is important that the Commission stay the course in this proceeding and establish a fair and workable framework for future intrastate switched access rate applications.

VI. Conclusion

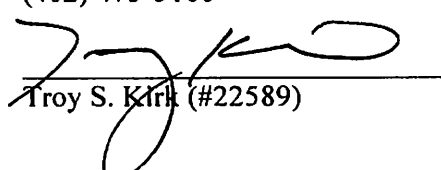
As more fully described above and in its prior comments, RTCN continues to support the Commission’s efforts and the general direction it has taken in the Proposed Order. RTCN again appreciates this opportunity to submit comments and looks forward to its continued participation in this docket.

Dated this 26th day of February, 2010.

RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA (“RTCN”)

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Cozad Telephone Company,
Diller Telephone Company,
Glenwood Telephone Membership Corporation,
Hartman Telephone Exchanges, Inc.,
Hemingford Cooperative Telephone Co.,
Mainstay Communications,
Plainview Telephone Company,
Southeast Nebraska Telephone Co.,
Wauneta Telephone Company, and
WesTel Systems f/k/a Hooper Telephone Company.

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¹² *In the Matter of the Nebraska Public Service Commission, on its Own Motion, Seeking to Conduct an Investigation of Intrastate Access Charges for Rural ILECS*, Application No. NUSF-28, Findings and Conclusions, page 12 (November 26, 2002).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and a copy of the foregoing Comments of RTCN were served by hand delivery to the Public Service Commission and a copy was served via electronic mail on February 26, 2010 addressed as shown below, to the following:

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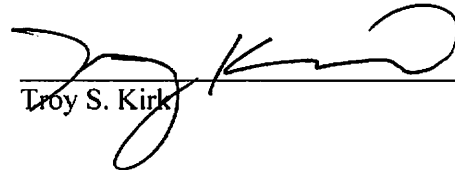
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