

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its) RULE AND REGULATION NO. 172
Own Motion, seeking to amend Title 291,)
Chapter 5, Telecommunications)
Rules and Regulations, to add rules)
regarding customer billing practices.)

**COMMENTS AND PROPOSED REVISIONS TO
TELECOMMUNICATIONS RULE 002.17**

By Order entered May 19, 2009, the Commission released an Order Opening Docket and Seeking Comment to which was attached proposed amendments to NAC, Title 291, Chapter 5, Telecommunications Rule 002.17 (the "Rule"). In such Order the Commission requested that comments on the Rule be filed on or before 5:00 p.m. (CDT) on June 30, 2009.

These Comments are submitted on behalf of the Incumbent Local Exchange Carrier Group ("ILEC Group"), consisting of those carriers named in the signature block of these Comments. The ILEC Group appreciates the opportunity to provide these comments on the Rule. Careful consideration should be given to any Rule additions or changes regarding the billing and payment relationship between companies and their customers. Any required changes may cause customer confusion and required tariff changes. The comments appear in numerical order in accordance with the subsection numbers that appear in the Rule.

Section 002.17A

The Proposed Requirement of "Prompt and Accurate" Bills

The ILEC Group is in general agreement with the concept that customer bills should be "prompt and accurate" as specified by the proposed language added to the first



sentence of this subsection. However, the proposed language of Subsection 002.17A2 should be revised because the current wording is confusing. The ILEC Group suggests the following revised wording for this subsection:

“Prompt and accurate” billing shall mean that charges set forth in a retail customer’s billing statement or invoice shall be limited to those charges incurred not more than ninety (90) days prior to the date of such billing statement or invoice.

The Proposed Mandatory 30-Day Grace Period for Bill Payment

a. Lack of Commission Jurisdiction

The proposed addition of the last sentence to Subsection 002.17A is particularly troubling to the ILEC Group for several reasons. First, the Commission has not previously sought to specify by rule a minimum “grace period” that must expire before a retail customer billing is due and payable. The jurisdiction of the Commission to adopt a rule containing the language proposed in this subsection is, at best, questionable under existing Nebraska statutes, most particularly the Nebraska Telecommunications Regulation Act (the “NTRA”). Specifically, *Neb. Rev. Stat. § 86-123(1)* (Reissue 2008) provides that:

The Commission shall regulate the quality of telecommunications service provided by telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of telecommunications service.

“Quality of service” has generally been regarded as synonymous with “adequacy of service” as addressed in NAC, Title 291, Chapter 5, Telecommunications Rule 002.02 and in the service standards addressed in Telecommunications Rules 002.03 through 002.12 (as opposed to customer billing which is addressed in the Rule). The ILEC Group submits that due dates for payment of customer invoices and the grace period associated

therewith do not relate to quality of service, and therefore, are not within the Commission's jurisdiction.

Further, the Commission cannot rely on its limited jurisdiction to regulate rates for telecommunications services as a basis for establishing a rule governing the payment date for customer invoices. Although the Legislature has provided that the "Commission may regulate telecommunications company rates pursuant to sections 86-139 to 86-157" *Neb. Rev. Stat. § 86-123(2)* (Reissue 2008), Section 86-139 states with further specificity as follows:

Except as provided in the Nebraska Telecommunications Regulation Act, telecommunications companies shall not be subject to rate regulation by the commission and shall not be subject to provisions as to rates and charges prescribed in sections 75-101 to 75-158.

In addition, Section 86-141 specifically exempts telecommunications companies which serve less than five percent of the state's subscriber lines from rate regulation.¹ Even for telecommunications companies serving more than five (5) percent of such lines and in exchanges where no competition exists, Section 86-144 provides that rate lists may be filed which shall become effective after ten (10) days' notice to the Commission, except with regard to basic local exchange rates. It should also be noted that retail customer billing statements or invoices encompass charges for many services other than basic local exchange service charges, i.e. interexchange service, equipment, taxes and fees.

In summary, the scope of regulatory jurisdiction delegated to the Commission by the Legislature does not provide the Commission with the authority to mandate the grace period or the payment due date governing retail customer billing statements or invoices.

¹ None of the Companies in the ILEC Group serve more than five (5) percent of the aggregate subscriber lines in the State based upon the statistics reported in the Commission's 2008 Report to the Legislature.

b. ***Industry Practice Regarding Grace Period for Bill Payment***

Assuming for the sake of argument that the Commission were to find that it has jurisdiction to adopt the proposed last sentence of proposed Subsection 002.17A, the ILEC Group submits that based upon the following data, mandating a 30-day grace period is contrary to industry practice and regulations in other states.² The ILEC Group has researched state commission rules and practices in a number of states and has assembled the following information concerning current customer billing due date requirements:

Iowa – ILEC tariffs uniformly require that “payment for all bills shall be not less than 20 days after the bill is rendered.”³

Kansas – Due date shall be stated on the bill and shall be 10 days after the bill is mailed.⁴

Colorado – All bills for telecommunications services shall clearly display the billing date and the payment due date, which must be at least 15 days after the billing date.⁵

South Dakota – State law does not require carriers to file local service tariffs, however administrative regulations for telecommunications providers define “due date” as a date at least 15 days after the date a bill is mailed.⁶

Arizona - Payments may be considered delinquent 15 days after the bill is rendered.⁷

² Other states have different jurisdictional statutes that may allow for a utility commission to regulate the billing grace period.

³ See *Iowa Admin. Code* r. 199-22.4(3)(c)(2) (stating “the last date for timely payment shall be clearly shown and shall be not less than 20 days after the bill is rendered).

⁴ Kan. Corp. Comm’n, “Telephone Billing Practices,” Docket No. 120,408-U, available at <http://www.kcc.state.ks.us/telecom/phonebilling.pdf>

⁵ *4 Colo. Code Regs.* § 723-2-2304(a).

⁶ *S.D. Admin. R.* § 20:10:05:03.

⁷ *Ariz. Admin. Code* § R14-2-508(C)(2).

Arkansas - Due date shall not be less than 14 days after the bill is mailed if no late fee is imposed, but not less than 22 days after bill is mailed if a late fee is imposed.⁸

California – Date after which a bill is considered overdue and delinquent, and after which late charges may accrue, must not be earlier than 22 days after the date the bill was mailed.⁹

Florida – Bills shall not be considered delinquent prior to the expiration of 15 days from the date of mailing or delivery.¹⁰

Louisiana - Penalties for delinquent payment shall not apply less than 20 days from the date of billing.¹¹

Nevada - Date a bill is past due may not be earlier than 15 days after its issuance.¹²

Oklahoma - Bills shall be past due 15 days after the bill is mailed and the bill due date must be stated on the bill.¹³

Washington – The bill due date must reflect a date which, at a minimum, allows a customer 15 days from the date of bill mailing to make payment.¹⁴

Utah – A retail account holder shall have not less than 20 days from the bill date to pay charges and the bill date shall be shown on the billing.¹⁵

⁸ Telecommunications Provider Rule 5.05, Ark. Pub. Serv. Comm'n, available at http://www.apscservices.info/Rules/telecommunications_provider_rules.pdf.

⁹ Telecommunications Bill of Rights, Docket # R.00-02-004, issued by the California Public Utilities Commission May 27, 2004.

¹⁰ Fla. Admin. Code Ann. § 25-4.110(7)(a).

¹¹ La. Pub. Serv. Comm'n, Gen. Order, "In re: Penalty charges for delinquent payment of utility bills" (Feb. 20, 1973) (amending Gen. Order dated November 16, 1972), available at <http://www.lpsc.org/pdfs/orders/GeneralOrder02-20-73.pdf>.

¹² Nev. Admin. Code § 704.4125(3).

¹³ Okla. Admin. Code § 165:55-9-3.

¹⁴ Wash. Admin. Code § 480-120-161(2).

¹⁵ Utah Admin. Code § 746-240-4.

Based upon the foregoing information, the ILEC Group submits that industry practice regarding the grace period applied to customer billings in states surrounding Nebraska as well as other states is to provide a grace period as short as ten (10) days, but generally not to exceed twenty (20) days. Based upon this data, the ILEC Group recommends that if the Commission proceeds to adopt the last sentence of Subsection 002.17A, the 30-day grace period should be shortened to fifteen (15) days.

There are also practical reasons that a 30-day grace period is unworkable. As is general knowledge, invoices for telecommunications services are rendered monthly. If customers were provided a 30-day grace period for payment, it can be reasonably anticipated that a large percentage of customers would not pay their invoices until very near the end of such grace period. Time is needed for such payments to reach the billing carrier (particularly if transmitted by U.S. Mail). Additional time is needed to process the payment and post the payment credit to customers' accounts. The time required to complete these functions, when added to the proposed 30-day grace period, would mean that the subsequent month's invoices would be transmitted to customers before payments can be credited on such invoices. This situation is likely to create customer confusion as to the amount that is properly payable, questions as to why the payment for the prior monthly invoice is not shown as credited and responding to such questions will take time and resources from carrier customer service representatives that would be avoided if the ILEC Group's recommended 15-day grace period is adopted by the Commission.¹⁶

¹⁶ Specifying a 15-day grace period would also resolve the obvious issue that in the instance of bills rendered relating to February, the due date for such bills would not occur prior to the date that the March billing issues. The ILEC Group submits that it is also important to avoid consumer confusion that would arise in connection with this February-March billing timing issue.

A further practical reason that the 30-day grace period should not be adopted is that to do so would negate the industry practice of billing for basic local exchange service one month in advance. This practice has existed for many years and provides a local exchange carrier with additional security for payment for telecommunications services provided to the end user customer. If the proposed 30-day grace period is adopted by the Commission, it is foreseeable that local exchange carriers will need to expand the number of customers from which security deposits are required and/or increase the amount of the security deposits.

For the foregoing reasons, the ILEC Group submits that either (a) the Commission should conclude that it lacks jurisdiction to establish a rule specifying a grace period for payment of invoices for telecommunications services, and on that basis remove the last sentence from Subsection 002.17A; or (b) reduce the proposed 30-day grace period set forth in Subsection 002,17A to the 15-day grace period proposed by the ILEC Group.

Section 002.17B

In order to provide greater certainty to the terms of this subsection, and thereby to avoid potential future disputes relating to the due date for customer payment of billing adjustments that result in additional charges, the ILEC Group suggests that the phrase “a carrier must offer a reasonable amount of time for payment” be replaced by the phrase “a carrier shall allow the customer fifteen (15) days to make payment of such additional charges.”

Section 002.17C

As proposed, Subsection 002.17C would require that upon termination of service, in addition to ceasing charges to the customer, the carrier “shall refund the pro rata portion of the month’s charges for the period of days remaining in the billing period after termination of service to the customer.” By definition, a “refund” would only be required if the customer prepaid for service. Therefore, the ILEC Group proposes that any prepaid charges first be credited against any amounts owing on the customer’s account, and thereafter, if any balance remains, such amount shall be refunded to the customer. Thus, the ILEC Group suggests that the following clarifying change should be made to this subsection: Delete that portion of proposed Subsection 002.17C following the word “termination” in the fourth line of this subsection, and insert the following: “and shall credit the pro rata portion of any services billed in advanced against any final amount owing on the customer’s account, and if any balance remains, shall refund such balance to the customer.” The ILEC Group submits that this suggested change would serve the best interests of both the customer and the carrier.

Section 002.17D

The ILEC Group does not have changes to suggest relating to this subsection.

Dated: June 30, 2009.

The Incumbent Local Exchange Carrier
Group:

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telco, Inc.
Consolidated Telcom, Inc.
Consolidated Telephone Company,
Curtis Telephone Company,
Eastern Nebraska Telephone Company,
Golden West Telecommunications
Cooperative, Inc.,
Great Plains Communications, Inc.,
Hamilton Telephone Company,
Hartington Telecommunications Co., Inc.,
Hemingford Cooperative Telephone
Company,
Hershey Cooperative Telephone Company,
K & M Telephone Company, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Pierce Telephone Co., Inc.,
Rock County Telephone Company,
Southeast Nebraska Communications, Inc.,
Stanton Telecom, Inc. and
Three River Telco

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