

BEFORE THE PUBLIC SERVICE COMMISSION OF NEBRASKA

In the Matter of the Commission, on its)
own Motion, seeking to amend Title 291,) Rule and Regulation No. 178
Chapter 5, Telecommunications Rules and)
Regulations, to adopt rules regarding) AT&T'S COMMENTS
intrastate switched access regulation.)

**AT&T COMMUNICATIONS OF THE MIDWEST, INC. AND
TCG OMAHA, INC.'S COMMENTS**

AT&T recognizes and appreciates the Commission's efforts to address issues raised by the Industry in the prior Rule and Regulation No. 177 docket. The revisions made by the Commission to the proposed rules, such as eliminating the retail contract-filing requirement and enlarging the filing timeframes, significantly ease the administrative and operational burdens from the originally-proposed rule.

AT&T¹ continues, however, to have concerns with portions of the Commission's newly proposed rules concerning the regulation of intrastate switched access services and respectfully submits the following comments:

I. Contracts for Switched Access Service.

AT&T supports the Commission's removal of retail services from the proposed rules requiring carriers to make informational tariff filings concerning customer-specific contract pricing or to file such contracts with the Commissions.² Indeed, sufficient competition exists in the retail market to make legacy state regulatory requirements (such as tariffing, service quality

¹ AT&T Communications of the Midwest, Inc. and TCG Omaha, Inc., will be collectively referred to in this pleading as "AT&T."

² AT&T respectfully submits these comments pursuant to the Nebraska Public Service Commission's (the "Commission's") April 26, 2011 Order Opening Docket and Seeking Comment.

standards, and price regulation) no longer pertinent for any carrier, whether incumbent LEC, CLEC, IXC and/or type of other carrier operating in the state.

Proposed Filing Requirements. AT&T continues to oppose the portion of the proposed rule relating to the filing of switched access contracts or informational tariff filings concerning those agreements. Such requirements would impose additional contract processing, record-keeping and other administrative steps on carriers seeking to comply with the rule, and add filing, storage and maintenance burdens on Commission staff. Imposing these added obligations would be counter-productive, resulting in decreased competition and increased administrative cost burdens to carriers.

Less Burdensome Alternatives. To the extent the Commission determines that a rule is necessary, less burdensome alternatives exist. The Commission's concerns can be addressed by rules requiring carriers to make competitive agreements available to the Commission or its Staff upon request with appropriate safeguards to protect proprietary information. For example, Missouri maintains a requirement that provides:

. . . Every telecommunications company shall file with the commission as and when required by it a copy of any contract, agreement or arrangement in writing with any other telecommunications company or any other corporation, association or person relating in any way to the construction, maintenance or use of telecommunications facilities or service by or rates and charges over or upon any facilities.³

And in any event, the application of any such rule should be competitively neutral, applying the same requirements to all providers of the service (RBOC, ILEC and CLEC) on an equal basis.⁴

³ Mo. Ann. Stat. § 392.220.1 (Vernon 2010) (emphasis added). Information a utility provides to the Missouri Commission, unless otherwise required by Commission order or statute, may not be publicly disclosed. Mo. Ann. Stat. § 386.480 (Vernon 2010).

⁴ Exhibit A to these comments contains proposed modifications to the proposed rule that reflect the comments filed herein. While AT&T does not support the inclusion of any filing requirements for switched access contracts, AT&T supplies Exhibit A in an attempt to assist the Commission as it deliberates this issue.

Competitive Safeguards. In the event the Commission promulgates the proposed contract disclosure rule, the Commission should take steps to ensure that competitively sensitive and proprietary information remains protected. If the Commission determines a need exists for the public disclosure of off-tariff rates, terms and conditions, any required disclosure should exclude a customer's name, service locations, services purchased and other information relating to that specific customer. Such private business information is generally recognized as a protectable property interest for which confidential treatment must be accorded.⁵ Disclosure of this type of market information would harm rather than enhance competition, and is not needed to apprise similarly situated purchasers of available service terms.

In addition, disclosure of information pertaining to services provided in the interstate jurisdiction or in another state should not be required and redaction of such information should be allowed in any disclosures required by the Commission. Such services fall outside the Commission's jurisdiction and could potentially be subject to rules of other regulatory bodies that conflict with what is being proposed here.

II. Proposed Process for Introducing New Or Revised Access Rates or Charges or Changes that Result in Substantial Increases to Access Billing.

Process for Negotiation and Commission Review. AT&T supports the Commission's diligent efforts to codify the processes for the introduction of new or revised switched access service rates and charges; for customers of those services to negotiate new or revised rates and charges; and for seeking Commission review when those negotiations are unsuccessful. The proposed rule, however, is too limited in that the process for review of switched access rates under Section 86-140 should be available whenever an access service customer seeks to

⁵ See *Home Pride Foods v. Johnson*, 634 N.W.2d 774, 781 (Neb. 2001) (a customer list can be included in the definition of a trade secret under the Uniform Trade Secrets Act, § 87-502); *Henkle & Joyce Hardware Co. v. Maco, Inc.*, 239 N.W.2d 772, 776 (Neb. 1976) (list of customers amounts to trade secret).

negotiate switched access rates and charges and those negotiations fail. Neb. Rev. Stat. Section 86-140 places no restriction on switched access customers' ability to request negotiation of rates and charges and to seek Commission review when such negotiations are unsuccessful.

Process Relating to Expired Switched Access Contracts. The proposed rule appropriately recognizes switched access service providers' requirement to negotiate a new contract service upon expiration of an existing contract, and switched access customers' right to seek review of disputed rates and charges when the parties fail to negotiate a replacement agreement.⁶ The proposed rule fairly implements Neb. Rev. Stat. Section 86-140, which states:

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. . . .

as well as the District Court's February 24, 2011 Order in Case Nos. CI09-4787 and CI10-2119. AT&T, however, would suggest adding a reference to the Access Rate Review Proceedings provision (Section 014.03) to make clear the path for review of such disputed rates under 014.01F.

Changes Resulting in Substantial Increases to Access Billing. The Commission's proposed rule appropriately imposes a requirement on switched access providers to notify affected carriers in writing of any "changes, modifications, or adjustments to any element, component, or aspect of the provision of access service that results in a substantial increase in the bill rendered for such service. . . ."⁷ The proposed rule is reasonably intended to prevent future situations in which access service customers are not notified in advance of such material changes and only learn of the increases many months after they have been made. From AT&T's perspective, however, the 10-day notice provided in the rule may not provide adequate time for

⁶ Proposed Rule 014.01F.

⁷ Proposed Rule 014.01G.

switched access customers to evaluate such a change and take appropriate action. Instead, AT&T would propose a 30-day notice requirement.

In addition, the proposed rules do not specify a path for switched access service customers receiving such notices to avail themselves of the remedies provided by Nebraska law. Under Neb. Rev. Stat. Section 86-140, access charges are to be "negotiated by the telecommunications companies involved" and any affected telecommunications company "may apply for review of such charges by the commission. . . ." The proposed rule should make the application of this statutory process clear. AT&T recommends incorporating references to such access service changes (as described in 014.01G) in the sections of the rule pertaining to the establishment of new access rates or charges or changing existing rates or charges (Section 014.02), and access rate review proceedings (Section 014.03). AT&T's specific suggested edits are included in the redlined version of the proposed rules attached to these comments as Exhibit A.

Process for review of new, revised or changed Switched Access Service. AT&T opposes Sections 014.03B, 014.03C and 014.03E. These sections provide a process by which access rates might be increased as a way of supplying subsidy funding to some local exchange telephone companies through the back door, rather than making the more difficult political choice of either requiring those carriers to recover more of their costs from their own customers, or increasing the explicit subsidies paid by all communications consumers in the state. In today's telecommunications market place, requiring one, diminishing subset of consumers to bear the entire burden of funding new subsidies is not only patently unfair to those customers, it is contrary to the public interest, would harm consumers, would harm competition, and would reverse progress that has already been made in Nebraska. It is also doomed to failure, because

those subsidies cannot continue to be squeezed from a turnip that is shriveling more and more every day.

Nebraska was once a leader in access reform but is now well behind many other states and the federal arena. Since the Commission ordered access rate decreases in 1999, the FCC has continued to reduce interstate access rates, and many states have followed suit. The Commission has not. Intrastate access rates for many carriers in Nebraska are now significantly higher than the federally-governed interstate rates, are excessive relative to many other states, and are excessive relative to the cost of providing access service. Access rates are not the way to fund local exchange companies, and the Commission should not promulgate a rule by which access rates could be further increased in order to meet any additional support requirements. There are much better ways to provide financing for local exchange companies if such funding is deemed necessary.

Section 014.03E purports to provide guidelines for conducting a "fair and reasonable" analysis for determining whether a carrier should be entitled to access rate increases in order to satisfy purported revenue needs, taking into account basic local service revenues imputed at the current benchmark rates (014.03E1), a rate-of-return analysis (014.03E2), and other information deemed relevant (014.03E3). However, there are not circumstances in which increases to Nebraska's current access rates would be fair and reasonable as a means of satisfying a purported revenue imbalance or rate of return deficiency. Current switched access rates are already excessive. For example, Qwest's intrastate access rate is over three times higher than the rate it charges for interstate access, even though interstate and intrastate access are the same functionality, and Citizens/Frontier's is nearly 150% higher.⁸

⁸ Many Rural ILECs intrastate switched access rates are similarly excessive.

Excessive access rates harm consumer welfare in numerous materials ways. First, they cause long distance prices to be too high. Access charges are the biggest single cost of providing long distance service, and competition in the long distance marketplace forces those access rates—whether high or low—to be flowed through to customers. There is no longer any doubt that higher access rates lead to higher long distance prices. The clear relationship between access rates and long distance prices has been borne out in both the federal and state jurisdictions. For example, in the federal arena, over the period 1996 to 2007, interstate access rates fell by 4.5 cents. Remarkably, during the same time period, interstate long distance rates fell by nearly double that, by almost 9 cents per minute on average.⁹ In the intrastate arena, research by Dr. Debra Aron of Northwestern University and Navigant Economics, using AT&T data on 50 states over 5 years, shows that states that have higher intrastate access rates have higher intrastate long distance prices.¹⁰ Dr. Aron found that specifically in Nebraska, the prices residential consumers pay for wireline long distance service are over 40 percent higher than they would be if all local exchange carriers in Nebraska were required to reduce their intrastate access rates to equal the same rates that they already charge for interstate access. Permitting access rates to rise even higher would only cause further, direct, and unjustifiable harm to Nebraska's wireline long distance customers.

Imposing higher long distance prices on Nebraska's wireline long distance customers not only harms those customers who pay the higher rates, but it causes all customers to favor other technologies—and eschew wireline long distance service—more than they would if long

⁹ "Trends in Telephone Service," Federal Communications Commission, Industry Analysis and Technology Division Wireline Competition Bureau, September 2010, (*hereafter 2010 FCC Trends in Telephone Service*), Tables 1.2, 13.4..

¹⁰ Debra J. Aron, et al., "An Empirical Analysis of Regulator Mandates on the Pass Through of Switched Access Fees for In-State Long-Distance Telecommunications in the U.S." (October 14, 2010). Available at SSRN: <http://ssrn.com/abstract=1674082>.

distance prices were lower and more aligned with the true cost (as opposed to the access-inflated cost) of providing the service. This is because intrastate access rates are paid primarily by wireline long distance companies and, by federal rules, apply rarely to wireless service and not at all to social networking and several other forms of communication. This lopsided burden is harmful to competition and to efficient investment.

Competition benefits consumers and social welfare when companies compete—and consumers choose among them—on their merits. Companies and technologies compete with each other on their merits when their prices reflect their costs, not when one technology's prices are inflated by having to pay artificial embedded subsidies and the others do not. Having to pay subsidy-laden access rates while other, competing technologies do not, is like requiring wireline long distance companies to compete with one hand tied behind their backs, against fully armed rivals who bear no equivalent burden. Wireline service should be able to compete as well as it can against various alternatives, without the additional burden of regulator-imposed costs from an antiquated system that other technologies do not bear. By permitting access rates to increase further, the Commission would not only continue to play technology favorites, but would tip the scale further against wireline long distance technology.

Meddling in the ability of technologies to compete with each other further harms the economy by affecting investment decisions. When wireline long distance prices are higher than they should be due to excessive access rates, consumers are encouraged to abandon wireline long distance services if they can. When consumers abandon a technology, investments correspondingly decline. Wireline long distance service has declined precipitously in favor of other technologies in the past ten years, and while certainly some of that migration is due to the benefits that many consumers find in wireless services and other technologies, the artificial

disadvantage borne by wireline long distance owing to its inflated access costs has undoubtedly accelerated that decline. It is very difficult for wireline long distance services to compete against the array of characteristics that people enjoy about other technologies when the providers' ability to lower their price to reflect true underlying costs is removed from their arsenals.

Aside from the destructive effect on competition and investment, and the direct cost burden imposed on long distance customers that would result from increased access rates, the current access system is highly unfair in its differential effect on customers. Access rates are a cross-subsidy from wireline long distance companies and their customers to local exchange companies. When, many years ago, all customers used the wireline long distance system, everyone contributed to the subsidy. That, in and of itself, might have been unfair—why should low income Nebraskans have had to pay into a subsidy whose beneficiaries included wealthy rural exchange customers? Then and today, the beneficiaries of the access subsidy system are not distinguished by income or need, but only by geography. Low income customers living in relatively high cost-of-living areas and relying on wireline long distance service must pay the subsidy, which benefits customers of rural local exchange companies, including wealthy customers in upper income brackets. But aside from that fundamental inequity of the legacy system, today, the system has become even more lopsided because not everyone pays into the access-subsidy system any longer. The people paying the subsidy—the remaining wireline long distance customers around the state—are those who have the least ability or willingness to abandon wireline long distance. Who are those customers who are least willing and/or able to abandon the wireline system? Studies show that older Americans are the least likely age group to rely on wireless service or use social networking. Hence, access subsidies fall

disproportionately on senior citizens, and increasing access rates would further burden older Americans.

Further increasing intrastate access rates in order to provide more subsidies to local exchange companies is poor public policy in Nebraska because it harms consumers, harms competition, and harms efficient investment. But it is also poor public policy because it cannot succeed. Using the access system to fund local exchange companies is a crumbling house of cards and increasing access rates can only hasten its collapse. The system is crumbling because the source of funds—wireline long distance minutes—have fallen. According to information compiled by the FCC, the interstate interLATA access minutes billed by reporting ILECs to long distance service providers declined from a peak of 535.0 billion in 2000 to 348.5 billion in 2007—the most recent year with available information—a decline of 35 percent in just seven years. In that same time period, intrastate interLATA minutes declined by about 39 percent, from 257.3 billion to 156.0 billion.¹¹ As wireline long distance usage falls, access revenues received by the very companies they are supposed to support fall. Increasing access rates puts more and more burden on fewer and fewer minutes, and fewer and fewer customers—and as the price of long distance rises with the access rates, the decline in usage accelerates. It is a self-perpetuating downward spiral. The burden of subsidy support simply cannot, as a practical matter, be derived from a rapidly dwindling service, the speed of whose decline is increased by the already-excessive access rates.

If it is determined that a particular local exchange company requires additional revenue, the most economically efficient and realistically practical means of providing it is through increased retail local exchange prices. Local exchange companies should be required to recover their costs through their retail prices, just as companies do in other industries. It is also

¹¹ 2010 FCC Trends in Telephone Service, Table 10.2.

necessary so that consumers face the right price signals to choose among technologies, and put society's resources where they do the most good, as defined by the ultimate arbiter, the consumer. AT&T believes that if additional revenues become necessary for any ILEC, the Commission must revisit its current benchmarks. The current benchmarks are conservative, as evidenced by, among other things, the fact that several local exchange companies in Nebraska already charge residential rates for basic local service in excess of the Commission's current \$17.50 residential benchmark. There is no reason that other companies could not and should not be expected to do the same.

If it is not possible or if the Commission deems it unacceptable to require LECs to recover their additional funding needs entirely through their retail prices, and a subsidy is required, the subsidy should be explicit. It should not be a hidden, implicit subsidy provided through access rates. An explicit subsidy can be provided through the Nebraska Universal Service Fund (NUSF), from which ILECs should be able to draw only if a legitimate need is demonstrated. Unlike the implicit subsidy from access rates, the NUSF is supported by a wide range of technologies and services, and therefore spreads the burden more equitably, which in turn limits the opportunity and incentives for customers to avoid contributing to the subsidy by abandoning wireline services. It is a more robust funding source because it does not rely on a single, declining technology, and it is fundamentally fairer to consumers.

Because any source of additional funds for local exchange carriers will impose additional burdens on consumers, it is critical that the process for determining whether any new revenues are needed be as disciplined as possible.

The proposed Informational Requirements outlined in section 014.03C are wholly inadequate as evidence to support any specific access rate level. The NUSF EARN form does

not provide enough information to determine an overall revenue requirement (014.03E2). Similarly, data like that required on the NUSF EARN form, nor the factors discussed in section 014.03C2a, will provide the Commission the ability to identify the cost of providing intrastate access service. In addition, this information does not provide an adequate picture of whether a local exchange carrier requires additional funding. Without the proper data, the Commission will not be able to assess whether it has complied with the requirement in Neb. Rev. Stat. § 86-140, which prohibits the Commission from ordering access charge rates that are below a carriers specific annual costs (014.03F).

In addition to objecting to the general premise in Section 014.03E, AT&T specifically objects to the criterion for assessing need in 014.03E2. According to that section, the "starting point" for determining whether a LEC is entitled to additional funds would be a "rate-of-return" analysis using a 10 percent rate of return. The rule should not identify a particular rate of return as a starting point. AT&T does not object to the concept of a rate-of-return analysis as a framework for assessing whether a LEC is entitled to additional funds; however, establishing any particular rate in the rules is likely to create an incorrect and arbitrary benchmark because the rate of return appropriate for a local exchange company can vary considerably from year to year and from company to company. A starting point or benchmark rate (which can assume an importance that is not at all justified and instead can be a distraction, either on the high or low side) is not needed when, in fact, a rate can be developed as needed based on facts that are relevant to the particular company and to economic conditions.

Moreover, establishing a 10 per cent benchmark may be excessive in today's marketplace. An excessive benchmark, even if it is just a "starting point," will inevitably encourage either unnecessary increases in retail prices, excessive draws from the universal

service fund (and associated burdens on all Nebraska consumers), or, if the other aspects of 014.03E are not corrected as discussed above, pressure to erode the progress Nebraska has made on access rates, to the detriment of consumers, investment, and competition in Nebraska.

Finally, AT&T also strongly objects to Section 014.03E on the grounds that it would permit CLECs to increase their intrastate switched access rates upon a demonstrated "need." CLECs should not be entitled to increase their access rates, or indeed partake in any subsidy, on the basis of any perceived or demonstrated "need." On the contrary, the Commission has already ruled that it has authority over CLECs' intrastate access rates and that CLECs' intrastate access rates must be reasonably comparable to those of the ILEC with whom they compete.¹² . AT&T urges the Commission to promulgate a rule (014.04) that codifies its earlier finding and require CLECs to limit their intrastate access rates to the rates of the ILEC with whom they compete.

There is no justification for allowing a CLEC to charge higher access rates than the ILEC with whom it competes. CLECS do not face carrier of last resort obligations, they can choose to build facilities only in highly lucrative areas, they need not offer any stand-alone services, and they can pick and choose their customers and their service offerings. They can and do offer bundles of services that leverage the most profitable service offerings.

Allowing CLECs to charge the same access rates as the ILECs with whom they compete is more than adequate to ensure that any comparably efficient CLEC can survive.¹³ A CLEC that has higher costs than the ILEC with whom it competes should be required to recover those costs from and only from its own customers in the retail marketplace, not from customers of long

¹² Progression Order No. 15, *In the Matter of the Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform and intrastate universal service fund*, Application No. C-1628, (February 21, 2001), ¶9.

¹³ The South Dakota Public Utilities Commission, on April 27, 2011, adopted SDAR 20:10:27:02.01 which requires a CLEC to "charge intrastate switched access rates that do not exceed the intrastate switched access rate of the Regional Bell Operating company operating in the state." *In the Matter of Revisions and/or Additions to the Commission's Switched Access Rules Codified in ARDS 20:10:27 through 20:10:29*, RM05-002. Many additional states of have taken similar action.

distance companies or through any general subsidy fund. As the FCC has pointed out,¹⁴ requiring CLECs to limit their access rates does not deny them the opportunity to recover their costs. Rather, it only puts the burden of recovery where it belongs--in the retail marketplace where, as in any other industry, a company must endure the rigors and bear the sunshine of the competitive market in order to recover its costs. While local exchange companies understandably covet access revenues because they constitute a monopoly revenue stream, the retail marketplace is where consumers make decisions based on the quality and desirability of the product and service offerings. The FCC requires CLECs to limit their interstate access rates to the rate of the ILEC with whom they compete,¹⁵ and the Commission was correct ten years ago to require the same. It should codify its conclusion in the current rulemaking.

III. Conclusion

In codifying these processes, the Commission should be vigilant to ensure that the proposed rules for introducing and changing switched access service rates and charges are not used to erode the progress and gains made by the Commission in reforming intrastate switched access service rates. As much work remains to bring intrastate switched access rates into parity with their federal counterparts, the Commission should make clear that these rules are not to be used to recoup any revenue deficiencies perceived by a LEC. Rather, perceived revenue deficiencies are to be addressed through adjustments to local rates and through the Nebraska Universal Service Fund.

¹⁴ Seventh Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Access Charge Reform and Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, before the Federal Communications Commission, FCC 01-146, (released April 27, 2001), ¶39.

¹⁵ 47 CFR § 61.26 (c).

Respectfully submitted this 27th day of May, 2011.

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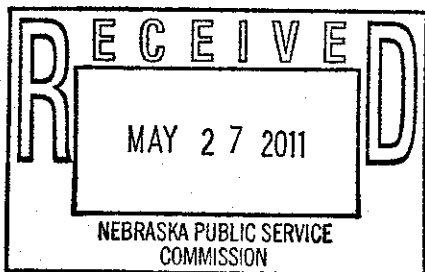
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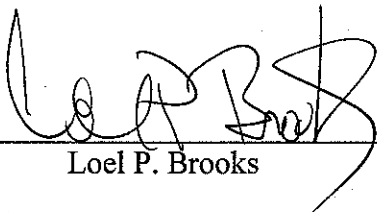
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of May, 2011, an original, five copies and an electronic copy of AT&T's Comments in Rule and Regulation No. 178 wrtr delivered to:

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RULE AND REGULATION #178
Working Copy

Amendments to Nebraska Administrative Code, Title 291, Chapter 5, Telecommunications Rules and Regulations. Insert the following new section:

014 SWITCHED ACCESS REGULATION:

014.01 Switched Access Tariff to be Filed with the Commission: For switched access service offered by a carrier, the tariff of the carrier shall set out the rates, charges, regulations, terms, and conditions applicable to the switched access service. Except as provided in rule 014.01D, no carrier shall:

014.01A Charge, demand, collect, or receive a greater or less or different compensation for access service, or for any service in connection therewith, than the charges specified in its tariff in effect and duly filed with the Commission;

014.01B Refund or remit by any means or device any portion of the charges so specified; or

014.01C Extend to any person any privileges or facilities in the provision of access services, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such tariff.

014.01D Special Contracts For Switched Access Service: A carrier may offer switched access services under a contract that charges, demands, collects or receives a greater, lesser, or different compensation than the rates and charges specified in its switched access tariff in effect at the time, but shall file a copy of such contract pursuant to rule 014.01E or maintain an up-to-date summary list of all such contracts entered into after the effective date of this rule in its switched access tariff schedules. The summary list shall be entitled, "Switched Access Service Special Contracts" and shall designate switched access service contracts with deviations and show at least the following information regarding each contract:

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014.01D1 Arrangement number associated with the name and location of each party to the contract other than carrier filing the tariff;

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014.01D2 The contract term;

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014.01D3 The rates, charges regulations, terms or conditions that vary from the comparable switched access tariff.

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Deleted: and summarize the differences between the switched access tariff provisions and the contract;

014.01E A carrier may file a copy of the executed contract containing deviations from its switched access tariff within thirty (30) business days after execution instead of updating or maintaining a summary list pursuant to section 014.01D.

Carriers may redact the customer name, location, and any other information relating to that specific customer, as well as any information that is not specific to intrastate switched access service being rendered in Nebraska by the carrier under the contract. The information required under 014.01D shall be filed as part of the contract under this option and available for public viewing.

014.01F Failure to Negotiate Special Contracts; Effect:

Parties to a current special contract for access services filed pursuant to section 014.01D or 014.01E, that fail to negotiate a new special contract at the termination of the previous contract, may file an application for review of the disputed rates and charges pursuant to section 014.03.

014.01G Changes in the Elements of Access Service; Effect: Any carrier offering switched access service that makes changes, modifications, or adjustments to any element, component, or aspect of the provision of access service that results in a substantial increase in the bills rendered for such service, shall notify affected carriers in writing thirty (30) days prior to such change, modification or adjustment. Notice may be accomplished by filing such notice with the Commission, which shall publish notice of the modifications pursuant to section 014.02B. Any carrier may file an application for review of changes in the elements of Access Service pursuant to section 014.03.

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014.02 Establishing New Access Rates or Charges or Changing Existing Access Rates or Charges: An application to establish new access rates or charges or to change existing access rates or charges, shall be accomplished by filing proposed tariff sheets setting forth the proposed rates and the appropriate filing fee with the Commission.

014.02A Automatic Suspension: Upon the filing of a proposed tariff containing new or revised access rates or charges, the Commission shall suspend such tariff.

014.02B Notice: The Commission shall publish notice of the proposed tariff filing for thirty (30) days pursuant to the Commission Rules of Procedure.

014.02C Request for Negotiations; Written Request: Any interested carrier desiring to negotiate the switched access rates or charges contained in the proposed tariff filing or in a notice to affected carriers under section 014.01G shall have thirty (30) days from the date of publication of notice to

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submit a written request to negotiate with the carrier that filed the proposed tariff. The carrier that submits a request for negotiation under this section shall simultaneously file a copy of the request with the Director of the Communications Department.

014.02D No Requests Received; Effect: If no requests for negotiation are received pursuant to section 014.02C, and the Commission does not initiate a review of the proposed access rates or charges on its own motion, the suspended tariff provision containing the new or revised access rates or charges shall become effective immediately following the expiration of the thirty (30) days following publication.

014.02E Negotiations: Upon receipt of written request(s) for negotiations, representatives of the carrier(s) requesting such negotiations and the carrier proposing the new or revised access rates or charges, or other changes described in section 014.01G, shall pursue negotiations of such access rates or charges in good faith. Such negotiations shall continue until either the parties reach agreement or the expiration of sixty (60) days following publication of the notice, whichever is earlier.

014.02F Negotiation Report; When Filed; Service: The carrier that filed the proposed tariff or the proposed changes described in section 014.01G shall file a written report with the Director of the Communications Department of the Commission on the outcome of the negotiations. The report shall be filed no later than ten (10) days after the day negotiations cease. The carrier that submits the report shall simultaneously serve a copy of the report with each carrier that participated in the negotiations.

014.02F1 Modification: If negotiations result in a modification to the proposed access rates or charges, the report shall include proposed tariff sheets setting forth the modified access rates or charges.

014.02F2 No Change: If negotiations result in no change, the report shall state whether negotiations resulted in agreement to the proposed tariff with the new or revised access rates or charges or if agreement was unable to be reached.

014.02F3 Notice: The Commission shall publish notice of the negotiation report and modified tariff, if included, for thirty (30) days pursuant to Commission Rules of Procedure.

014.02G Application for Review: Any affected carrier dissatisfied with the proposed access rates or charges, or

other changes described in section 014.01G, whether the same as initially filed or modified through negotiations, may file an application for review of the proposed access rates, charges, or other changes with the Commission pursuant to section 014.03 within thirty (30) days from the date of publication of the negotiations report.

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014.02H No Applications for Review; Effect: If no applications for review are filed with the Commission pursuant to section 014.02G, and the Commission does not initiate a review of the proposed access rates or charges on its own motion, the suspended tariff provision, whether the same as initially filed or modified by negotiations, containing the new or revised access rates or charges shall become effective immediately following the expiration of thirty (30) days following publication of the negotiation report.

014.03 Access Rate Review Proceedings: Any carrier dissatisfied with the new or revised access rates or charges in a proposed tariff filed and negotiated pursuant to section 014.02, negotiated under section 014.01F or with other changes described in section 014.01G, after negotiations under section 014.02E, may file an application for review of the new or revised rates or charges by the Commission pursuant to Neb. Rev. Stat. Section 86-140.

014.03A Application; Content: An application for Commission review of the new or revised access rates, charges, or changes shall be in writing and shall set forth the name and address of the carrier seeking review, a statement of the relief sought, and the facts that support granting such relief.

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014.03A1 Service: A copy of the application for review shall be served upon the carrier proposing the new or revised access rates, charges or changes and all carriers that participated in negotiations of such new or revised rates, charges or changes in accordance with the Commission's Rules of Procedure.

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014.03A2 Notice: The Commission shall publish notice of the application for review for thirty (30) days pursuant to Commission Rules of Procedure.

014.03B Opportunity to Respond: The carrier proposing the new or revised access rates, charges or changes shall file a response to the application for review within twenty (20) days after service of the application for review. Such response at a minimum shall include information on an annual basis for the immediately preceding three (3) years in the following areas:

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014.03B1 Overall rate of return of the carrier;

014.03B2 Basic local exchange service revenues;

014.03B3 Access service revenues;

014.03B4 Federal Universal Service Fund and Nebraska Universal Service Fund support received;

014.03B5 Demand by rate element; and

014.03B6 Cost of providing supported services, defined as basic local exchange and access services.

014.03C Commission Action; Hearing: Unless otherwise agreed to by all parties, the Commission shall, after providing proper notice, hold and complete a hearing on the review application within ninety (90) days after receipt of the application for review.

014.03D Commission Analysis: In conducting a fair and reasonable analysis regarding the proposed access rates or charges, the Commission shall consider the following:

014.03E1 Basic local service revenues of the carrier imputed at the current benchmark rates for rural and urban areas as specified by Commission order;

014.03E2 A rate-of-return analysis, using an appropriate rate-of-return for evaluating a carrier's costs and revenues; and

014.03E3 Any other information provided by the parties the Commission determines to be relevant in making a determination regarding the proposed access rates and charges.

014.03F Commission Order: The Commission shall have sixty (60) days from the date of hearing to issue an order establishing the access rates, charges or changes with written findings and opinions.

014.03F1 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 of providing such access services.

Deleted: 014.03C Options for Satisfying Informational Requirements: To satisfy the information requirements contained in section 014.03B, any carrier seeking to implement new or revised access rates or charges may submit either of the following:¶

¶ 014.03C1 A cost study completed within the immediately preceding three (3) years; or¶

¶ 014.03C2 Data similar to that required on the Commission's Nebraska Universal Service Fund EARN form. Carriers opting to use this option shall submit such data on a supported services basis, except as provided in section 014.03C3.¶

¶ 014.03C2a A carrier desiring to file information pursuant to 014.03C2 that does not maintain its books and records on a supported services basis, may submit the data in the form maintained by the company and request the Commission use approved conversion formulas and factors, as the Commission shall specify by order, to convert the data to a supported services basis.¶

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014.03G Submission of Tariff to the Commission: Upon issuance of an order by the Commission on the application for review, the carrier seeking to establish or revise its access rates or charges shall have ten (10) days in which to file conforming tariff sheets setting forth the approved access rates and charges with the Commission. The access rates and charges established pursuant to the Commission's order shall become effective ten (10) days from the date of filing the conforming tariff sheets.

014.03H Appeals: A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission pursuant to this section may appeal such order in accordance with the state's Administrative Procedure Act.

014.04 CLEC Switched Access Service: Each Competitive Local Exchange Carrier's switched access rates, charges, terms and conditions shall be reasonably comparable to those of the ILEC with whom it competes.