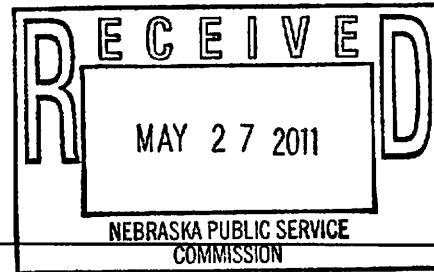


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 5, Telecommunications Rules and Regulations, to adopt rules regarding intrastate switched access regulation.

) RULE AND REGULATION NO. 178
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**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 these Comments to the Nebraska Public Service Commission (“Commission”) regarding the Commission’s Order Opening Docket and Seeking Comment entered by the Commission on April 26, 2011, in the above-captioned rulemaking docket (the “Order”).

II. COMMENTS

A. Proposed Rule Section 14.01 – Switched Access Tariffs Filed with the Commission

- 1. The Commission should prohibit switched access agreements that set different rates or terms of service than those set forth in the applicable switched access services tariff.**

Rather than providing a mechanism by which carriers may enter into and file off-tariff switched access agreements that establish rates or terms of service of a local exchange carrier that are different than those set forth in the local exchange carrier’s switched access tariff, RTCN

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., Keystone-Arthur Telephone Co., Mainstay Communications, Plainview Telephone Company, Wauneta Telephone Company, and WesTel Systems f/k/a Hooper Telephone Company.

advocates that the Commission should altogether prohibit such agreements. RTCN's primary concern is that the allowance of such agreements provides a method by which large IXCs can use their tremendous bargaining power and a willingness to utilize negotiating tactics that capitalize on such power to force smaller LECs into access service agreements that they would not otherwise enter. Such was the case as described in the *OrbitCom v. AT&T* complaint.² In its Answer to AT&T's Complaint in *OrbitCom v. AT&T*, OrbitCom alleged, among other things, that AT&T had forced OrbitCom to enter an off-tariff agreement by refusing to pay any access charges owed to OrbitCom until such time that AT&T's proposed agreement rates (which were different than the tariff rates) were accepted by OrbitCom. RTCN is aware that the type of "self-help" tactic described in OrbitCom's Answer is not uncommon in the telecommunications industry today,³ and RTCN fears that if the Commission's rules permit switched access service agreements that establish rates or terms of service different than those set forth in the tariff, small LECs, like those making up RTCN, will be vulnerable to these and other types of pressure tactics from large interexchange carriers.

Based on the foregoing concerns, RTCN suggests that the Commission modify its proposed rules to altogether prohibit switched access service agreements that establish rates or terms of service of a local exchange carrier that are different than those set forth in the local exchange carrier's switched access tariff.

- 2. If the Commission adopts the proposed rule amendment that permits switched access service agreements that establish rates and terms of service different than those set forth in the tariff, then the Commission should adopt a rule to specifically prohibit self-help practices.**

² See *OrbitCom, Inc. v. AT&T Communications of the Midwest, Inc.*, Application Nos. FC-1332/1335, Order (Nov. 10, 2010) ("*OrbitCom v. AT&T*").

³ *In re Access Charge Reform, Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd. 9932, para. 23 (rel. April 27, 2001) ("Reacting to what they perceive as excessive rate levels, the major IXCs have begun to try to force CLECs to reduce their rates. The IXC's primary means of exerting pressure on CLEC access rates has been to refuse payment for the CLEC access services.").

In the event that the Commission adopts its proposed rule amendments permitting switched access service agreements, the Commission should adopt a rule which prohibits the type of self-help tactics referenced in the *OrbitCom v. AT&T* proceeding and other court and FCC proceedings.⁴ Accordingly, RTCN proposes that the Commission adopt the following rule:

014.01H An interexchange carrier receiving switched access services pursuant to a tariff filed with the Commission is prohibited from using self-help measures of withholding payment for services duly performed. In the event of a dispute, the interexchange carrier receiving switched access service must first pay the amount allegedly due under the tariff, and then, if applicable, seek redress if such amount was not proper under the applicable tariffed charges and regulations.

The adoption of this rule would be an important step toward alleviating RTCN's primary concern regarding the allowance of switched access services agreements that establish rates or terms of service of a local exchange carrier that are different than those set forth in the local exchange carrier's switched access tariff.

3. The Commission should Require Interexchange Carriers Receiving Switched Access Services in Nebraska to File and make Publicly Available the Contact Information of the Appropriate Personnel to Address Quality of Service and Termination Issues Associated with Long Distance Calls.

The Commission is currently investigating severe and wide-spread issues related to service quality and non-termination of long distance calls in Nebraska in Application No. C-4328/PI-176.⁵ As highlighted in the recent workshop in the Investigation, several rural carriers in Nebraska have received and reported numerous complaints regarding long distance calls that are not being completed due to issues outside the control of the rural carriers but within the purview of the interexchange carriers receiving switched access services. The rural carriers,

⁴ See *In re Access Charge Reform, Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd. 9932, para. 23 (rel. April 27, 2001); *MCI Telecommunications Corporation, American Telephone and Telegraph Company and the Pacific Telephone and Telegraph Company*, 62 FCC 2d 703, para. 6 (1976); *National Communications Association, Inc. v. AT&T*, 2001 WL 99856 (S.D.N.Y. Feb. 5, 2001).

⁵ *In the Matter of the Nebraska Public Service Commission on its own motion to investigate issues related to the service quality associated with intrastate interexchange service including the origination, termination, and routing of interexchange calls*, Application No. 4328/PI-176, Order Opening Docket (February 1, 2011) (the "Investigation").

while not the source of the problems being experienced, are often the recipients of the customer complaints and the first to be made aware of the issue. It is imperative that local exchange carriers have direct access to the appropriate personnel of interexchange carriers in order to quickly and adequately address these issues. However, it has been the experience of the rural carriers that it is extremely difficult to identify and reach the appropriate personnel of the interexchange carriers to address the issues. Thus, RTCN urges the Commission to adopt a rule in this section which requires all interexchange carriers that receive switched access service in Nebraska to file and make publically available the contact information of appropriate personnel that are able to quickly and adequately address the types of issues that have been discovered in the Commission's Investigation.

B. Proposed Rule Sections 14.02 and 14.03 – Establishing New or Changed Access Rates and Access Rate Review Proceedings.

RTCN observes that proposed rule sections 14.02 and 14.03 are essentially the codification of the Commission's final order in Application No. C-4145/NUSF-74/PI-147 entered on April 20, 2010.⁶ RTCN filed multiple rounds of comments in the aforementioned proceeding and generally supports the Commission's ruling in that proceeding. Therefore, at this time RTCN does not offer any additional comments on the proposed rules set forth in proposed rule sections 14.02 and 14.03 but reserves the right to provide additional comments at a later time in this proceeding.

III. CONCLUSION

In conclusion, RTCN respectfully requests that the Commission refrain from adopting any rules that permit switched access agreements that set different rates than those set forth in an applicable switched access tariff. In the event the Commission permits switched access service

⁶ *In the Matter of the Nebraska Public Service Commission, on its own motion, to conduct an investigation on intrastate switched access charge policies and regulation codified in Neb.Rev.Stat. Section 86-140, Application No. C-4145/NUSF-74/PI-147, Order (April 20, 2010), modified in part, AT&T Communications of the Midwest, Inc., and TCG of Omaha, Inc. v. The Nebraska Public Service Commission, CI10-2119, Order (February 24, 2011)*

agreements, RTCN respectfully requests that the Commission adopt a rule prohibiting self-help practices as described above. RTCN also urges the Commission to require all interexchange carriers that receive switched access service in Nebraska to file and make publically available the contact information of appropriate personnel to address the types of issues that have been discovered in the Commission's Investigation. Finally, at this time RTCN offers no additional comments to what it views as a codification of the Commission's ruling in Application No. C-4145/NUSF-74/PI-147 and reserves the right to file comments on these and other issues later in this proceeding.

Dated this 27th day of May, 2011.

RURAL TELECOMMUNICATIONS COALITION OF
NEBRASKA ("RTCN")

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.,
Keystone-Arthur Telephone Co.,
Mainstay Communications,
Plainview Telephone Company,
Wauneta Telephone Company, and
WesTel Systems f/k/a Hooper Telephone Company.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and five copies of the foregoing Comments of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on May 27, 2011, and a copy was served via electronic mail on May 27, 2011, addressed as shown below, to the following:

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