

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 1, Rules of Commission Procedure, to update the chapter in its entirety.

) RULE AND REGULATION NO. 192
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COMMENTS OF THE RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Commission’s Order Opening Docket and Seeking Comment entered in this proceeding on September 30, 2014 (the “Order”). RIC appreciates the opportunity to provide the following Comments to the Commission.

Section 001.02 of the Proposed Rules defines “Commission”. However, in a number of instances the Proposed Rules use the term “agency” rather than “Commission” to refer to the Nebraska Public Service Commission, *see e.g.*, Sections 001.04 and 004.05A1a. Although this is a rather minor point, RIC suggests that all references to “agency” in the Proposed Rules be changed to “Commission” to be consistent with the definition provided in Section 001.02.

Beginning with Section 2, and continuing in various sections thereafter, the Proposed Rules set forth a non-uniform approach regarding the provision of descriptive titles to sections and sub-sections. For example, compare Section 001.01 (no title) to Section 002.01 (with the title “Petition”, and Section 003.04F (with the title “Print”) and Section 003.05A (with no title).

¹ Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Co., Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

It is suggested that a uniform approach be adopted of no section titles or of adding titles for the sections that currently do not have titles.

Section 001.17 provides a definition of “Necessary Party”. However, the definition, as currently worded, is limited to Petitions for Declaratory Rulings. The concept of necessary party is applicable to other proceedings before the Commission in addition to declaratory rulings. Therefore, it is suggested that the phrase “for purposes of Petitions for Declaratory Rulings” be removed from proposed Section 001.17.

Sections 001.24 and 001.25 as currently worded limit the definition of “Protest” and “Protestant” to applications for motor carrier authority. These terms have applicability to additional proceedings before the Commission beyond applications for motor carrier authority. Thus, it is suggested that the phrases, “for motor carrier authority” be omitted from both of these sections.

Section 84-914 of the Nebraska Administrative Procedure Act sets forth the statutory guidelines for ex parte communications in contested cases. Specifically, Section 84-914(6)(e) provides that “[t]he prohibitions of subdivision (6) of this section shall apply *beginning at the time notice for hearing is given.*” (emphasis added). While this section further provides that an agency may designate an earlier time in a contest case at which the ex parte restrictions shall be applied, there is no statutory requirement that the restrictions be implemented at the filing of a petition. Thus, RIC suggests that Proposed Rule 004.01A be amended to remove the phrase “at the time a petition is filed” and to replace this phrase with “at the time notice for hearing is given”.

Section 004.13 addresses payment of costs of a formal hearing. As worded, this Proposed Rule states that “[a]ll costs of a formal hearing shall be paid by the Party or parties

against whom a final decision is rendered . . .” (emphasis added) This wording presumes that all applications for which a formal hearing is held are adversary proceedings that involve a final decision rendered “against” a party or parties to the proceeding. This is not the case. Formal hearings are held in matters that are not adversarial in nature such as transfers of control of a carrier, financings, and the like. RIC suggests that this Proposed Rule be re-worded to read: “All costs of a formal hearing shall be paid by the party or parties ordered by the Commission to pay such costs, unless waived by the Commission.”

Section 014 of the Commission’s current Rules of Procedure is entitled “Protests”. While the Proposed Rules contain the definition of “Protest” and “Protestant”, no section similar to existing Section 014 is included in the Proposed Rules. RIC submits that there should be added to the Proposed Rules a section comparable to existing Section 014 that sets forth details as to the purpose and use of a protest as a pleading that may be filed in proceedings before the Commission.

Section 004.02A1 of the Proposed Rules would allow the filing of a petition for interventions up until five (5) days prior to the commencement of the hearing on a contested case. Section 004.02A4 allows the petition for intervention to seek either formal or informal intervention. RIC submits that allowing intervention up until the virtual eve of the commencement of a contested case hearing would be inconsistent with the orderly pre-hearing management of a contested case. Either (a) the date by which a petition for intervention shall be filed (if for formal intervention) must be revised to not less than thirty (30) days prior to commencement of the hearing; or (b) the intervention must be limited to informal intervention and the status and level of participation of an informal intervenor must be limited as provided in Rule 015.02 of the existing Rules of Procedure. RIC recommends that existing Rule 015 of the

Rules of Procedure, or provisions substantially similar thereto, should be added to the Proposed Rules in order to more completely address formal and informal interventions than is currently provided in Proposed Rule 004.02.

Rule 022 of the current Rules of Procedure addresses “Security Issuances”. The Proposed Rules do not contain any provisions on this subject. *Neb. Rev. Stat. §§ 75-148 – 75-151* (Reissue 2009) address the Commission’s authority regarding issuance of securities by common carriers. Current Rule 022 implements administrative aspects of security issuances. It is RIC’s suggestion that the contents of Rule 022 be added to the Proposed Rules in order to assure continuity of this aspect of the Commission’s regulatory authority.

The Rural Independent Companies appreciate the opportunity to participate in this important docket and look forward to participation at the hearing in which the Commission will receive evidence in connection with the Commission’s final formulation and approval of the revised Rules of Procedure.

Dated: November 20, 2014.

Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Co., Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc., and Three River Telco (the "Rural Independent Companies")

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of November, 2014, an electronic copy of the foregoing pleading was delivered to:

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