

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

COMMENTS OF THE RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Commission’s Order Releasing Second Set of Proposed Rules and Seeking Comment entered in this proceeding on February 3, 2015 (the “Order”). RIC has previously filed comments in this docket on November 20, 2014 (the “*RIC Comments*”).

The red-lined version of the Proposed Rules reflects the incorporation of many of the points addressed in the *RIC Comments*. RIC appreciates the fact that the Commission is proposing the changes that RIC has supported in the Second Set of the Proposed Rules (the “Proposed Rules”). However, two areas of concern exist with regard to the Proposed Rules and therefore, RIC will describe these concerns and propose additional revisions to the Proposed Rules which would, if adopted, resolve these concerns.

Proposed Rule 004.01, Rules of Practice and Procedure for Hearings in Contested Cases

The Nebraska Legislature has generally addressed ex parte communications in the context of Nebraska administrative agencies in *Neb. Rev. Stat. § 84-914(6)* (Reissue 2014).

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.



However, the Legislature has further addressed ex parte communications specifically in the context of the Nebraska Public Service Commission in *Neb. Rev. Stat. § 75-130.01* (Reissue 2009).

As a consequence of the Legislature's specific action concerning ex parte communications relating to the Commission and its Staff, RIC urges that Proposed Rule 004.01 be revised to reflect one of the two following alternatives:

1. Delete existing Proposed Rule 004.01 in its entirety and revise it to state that: "Ex parte communications in contested cases before the Commission shall be governed by Section 75-130.01 of the Nebraska Revised Statutes as currently enacted or as such section or any successor statute may be amended or enacted in the future."
2. Alternatively, delete existing Proposed Rule 004.01 and set forth the wording of Section 75-130.01 in substitution for existing Proposed Rule 004.01.²

Proposed Rule 004.03, Intervention and Protest in a Contested Case

In the *RIC Comments*, RIC took exception to the proposed language that would allow the filing of a petition for intervention "up until five (5) days prior to the commencement of the hearing on a contested case."³ In the Proposed Rules, Section 004.03A1 would allow submission of a petition for formal intervention during any time up to five (5) days before the hearing. As stated in the *RIC Comments*, 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

² As presently worded, the first sentence of Proposed Rule 004.01B mirrors the wording of the first sentence of Section 75-130.01. However, the second sentence of Section 75-130.01 is omitted and a new second sentence is included in Proposed Rule 004.01B. RIC recommends that if the wording of Section 75-130.01 is to be set forth as Proposed Rule 004.01, the complete wording of the statute should be set forth. RIC has no objection to inclusion of the existing second sentence of Proposed Rule 004.01B in the final version of revised Proposed Rule 004.01.

³ *RIC Comments* at 3-4.

contested case.⁴ RIC submits that the content of existing Rule 015.01 of the Commission's Rules of Procedure which addresses formal interventions should be retained and should replace Proposed Rule 004.03A in its entirety.

There may be a concern that the Commission must include a formal intervention procedure in the Proposed Rules that mirrors the terms of *Neb. Rev. Stat. § 84-912.02* (Reissue 2014) which sets forth language that allows submission of formal interventions at any time up to five (5) days before the hearing. However, *Neb. Rev. Stat. § 84-912.02* (Reissue 2014) does not mandate inclusion of all provisions of the Attorney General's model rules in the Commission's Proposed Rules. Application of the "five-day rule" as well as granting of a petition for formal intervention at any time up to 24 hours prior to a hearing is impractical and the rationale for RIC's recommendation that existing Rule 015.01 should be retained with regard to formal interventions can be readily presented as justification for variance from the model rules relative to interventions.⁵

With regard to informal intervention, RIC also recommends that Proposed Rule 004.03B should be replaced in its entirety by existing Rule 015.02 of the Commission's Rules of Procedure. RIC's rationale for this recommendation parallels the foregoing explanation relating to petitions for formal intervention.

⁴ *Id.*

⁵ It should also be noted that the requirements of Section 84-912.02 regarding formal intervention appear to be intended for application only in "contested cases" and not in other types of proceedings. (Compare the wording of Section 84-912.02(1)(b) that requires inclusion of a statement in a petition for formal intervention that is essentially equivalent to the definition of "contested case" found in Section 84-901(3).) The Commission processes many cases that are not contested cases and thus, Proposed Rule 004.03 would be inapplicable in any event.

RIC respectfully submits that with regarding to the existing Rules of Procedure that address formal and informal intervention, this is a case in which the old saying “if it ain’t broke, don’t fix it” is entirely applicable.

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: March 13, 2015.

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

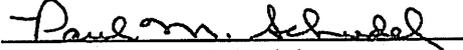
The undersigned hereby certifies that on this 13th day of March, 2015, an electronic copy of the foregoing pleading was delivered to:

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All other parties that have submitted comments in this docket.


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