

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to adopt safe harbor market rates for the leasing of dark fiber by agencies or political subdivisions of the state.	)	)	Application No. C-5461/PI-244
	)	)	Entered: December 6, 2022
	)	)	COMMENTS
	)	)	

**COMMENTS OF UBIQUITY NEBRASKA, LLC  
ON ORDER OPENING DOCKET AND SEEKING COMMENT**

Ubiquity Nebraska, LLC (“Ubiquity”) respectfully submits comments on the Commission’s Order Opening Docket and Seeking Comment on guidelines for the leasing of dark fiber by agencies or political subdivisions. Ubiquity was granted authority to operate in Nebraska as a local exchange and interexchange carrier on October 4, 2022. Ubiquity anticipates that it may need to lease dark fiber from cities or counties in Nebraska to provide telecommunications services in the state. Therefore, Ubiquity has a direct interest in the outcome of this proceeding.

**COMMENTS ON ISSUES**

**1. Basis for a Competitive Price Determination Comparison:**

The Commission noted that it may determine dark fiber rates based on rate schedules, interconnection agreements, other documents within its regulatory oversight, and other market rate information. The Commission sought comment on what documents should be consulted in this determination, and the relative weight which should be placed on each type of document.

- a. What market rate information is available which the Commission might consult?

**Ubiquity Response:** Some states require dark fiber contracts to be filed with the relevant public utilities commission and some states permit or require tariffing of dark fiber. In addition,

several states own and/or operate open-access fiber networks that could be used as a proxy for dark fiber leased in Nebraska by governmental entities.<sup>1</sup> These sources of information would provide a high-level view of dark fiber pricing, and would need to be adjusted for local cost inputs in Nebraska.

## **2. Regional or Statewide Rates**

The Commission is seeking comment on the appropriate scope for dark fiber rates. Ubiquity submits that the Commission should set rates that reflect local market conditions as closely as possible and offers the following comments.

- a. Should the Commission set the safe harbor rates on a statewide basis?

**Ubiquity Response:** No.

- b. Would it be more appropriate to set safe harbor rates on a regional basis?

**Ubiquity Response:** Yes. If the Commission sets safe harbor rates, they should reflect regional differences in costs. Dark fiber rates should distinguish between urban, suburban and rural areas because each region has differing market costs. In addition, differences in costs and market rates for last-mile, middle-mile and long-haul fiber should be considered in setting dark fiber rate caps.

## **3. Current Market Rates:**

The Commission stated that it is seeking information about current market rates for dark fiber leases and asks for data from quotes, contracts, and other documentation of recent leases for dark fiber. In particular, the Commission asks for input on the following questions:

- a. How often should current market rates be reassessed?

**Ubiquity Response:** Market rates should be reviewed at least annually to ensure that

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<sup>1</sup> Colorado, Florida, Illinois, Kentucky, Massachusetts, Michigan, Missouri, North Carolina, Ohio, Utah, Virginia, and Washington all have existing state-owned fiber networks. California is in process of building a state-owned fiber network.

they reflect current market conditions such as inflation, supply chain shortages and distribution issues that could put upward pressure on market rates for dark fiber components, labor, etc.

b. Should the Commission update the safe harbor market rates on an annual basis?

**Ubiquity Response:** Yes. This is especially important in the current inflationary environment. It is important that the Commission's rate caps reflect current market conditions, and the rates should be adjusted annually to capture fluctuations in market cost inputs.

c. Can annual adjustments be automatically determined?

**Ubiquity Response:** No. Annual adjustments should reflect actual market conditions rather than relying on an automatic adjustment (such as a set percentage increase each year).

Ubiquity appreciates this opportunity to provide input as the Commission evaluates the best approach to setting dark fiber rate caps.

Respectfully submitted,



*Counsel for Ubiquity  
Nebraska, LLC*