

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology.)

Application No. NUSF-100/PI-193

RTCN OBJECTION TO CTIA MOTION SEEKING PROCEDURAL ORDER

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APR 21 2017

Nebraska Public Service Commission

I. INTRODUCTION

The Rural Telecommunications Coalition of Nebraska ("RTCN"),¹ by and through its attorneys of record, objects to the *Motion Seeking Procedural Order* filed by CTIA on April 5, 2017, in this proceeding. In support of this *Objection*, the RTCN states and alleges as follows:

1. The Nebraska Public Service Commission ("Commission") opened this proceeding on its own initiative by *Order* entered November 13, 2014. The proceeding was from the outset, and has always remained an investigatory proceeding, as reflected by the docket numbers assigned in the caption of the proceeding: PI-193, PI standing for Public Investigation. The text of the Order also refers to the "investigation" undertaken. See p. 5. The proceeding resembles many proceedings, in which the Commission has undertaken to investigate issues of statewide and industry-wide importance. It is consistent with those proceedings in all respects, including the manner and procedure by which the investigation has been handled.

2. The Rules of Commission Procedure expressly anticipate and authorize the conduct of investigatory proceedings, such as the present docket. NEB. ADMIN. CODE, tit.

¹ For purposes of this proceeding, 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 Network Services, Inc., The Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford Cooperative Telephone Co., Mainstay Communications, Pierce Telephone Company, Plainview Telephone Company, Southeast Nebraska Communications, Inc., and Wauneta Telephone Company.

291, ch. 1, § 003.01(5). This Rule permits the Commission on its own motion to initiate a proceeding. Rule 012.01 also clearly allows investigatory proceedings: “The Commission may, at any time on its own motion, conduct an investigation or order any hearing which the Commission is authorized by law or inherent power to conduct.” The Commission, as will be explained, is well within its authority to conduct the present proceeding in the manner it has.

3. The Nebraska Constitution established the Commission and gave it broad authority over the regulation of common carriers. Neb. Const. art IV, § 20. In absence of specific legislation, the Commission’s powers, as described by the Nebraska Supreme Court is “absolute and unqualified” and “plenary and self-executing.” *Myers v. Blair Tel. Co.* 194 Neb. 55, 59-60, 230 N.W.2d 190 (1975). *See also Thompson v. Heineman*, 289 Neb. 798, 832, 857 N.W.2d 731 (2015). Legislation also gives the Commission broad authority over the regulation of common carriers and telecommunications carriers. NEB. REV. STAT. § 75-109.01(1) and (8). The Nebraska Universal Service Fund Act specifically authorizes the Commission to administer the Nebraska Universal Service Fund (“NUSF”) and “require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law.” NEB. REV. STAT. § 86-324(d). The Commission in this proceeding is considering that very mechanism.

4. While the substantive focus of this proceeding is directed on the universal service mechanism, the *Motion* of CTIA raises issues not of substance, but of process. Few statutes direct the manner in which the Commission is to conduct its proceedings and no statute specifically dictates the process for a general investigative proceeding such as this one.

5. In general investigations such as this, which is not directed at any individual carrier, the Commission has traditionally conducted the proceeding in legislative format.

The Nebraska Supreme Court has recognized the various powers of the Commission. “Generally, unlike some public service commissions, the Nebraska Public Service Commission, in the different aspects of its constitutional functions, exercises legislative, administrative, and judicial powers.” *Myers*, 194 Neb. at 62. *See also Thompson*, 289 Neb. at 832. Other than law directing processes for promulgating rules and regulations, no specific legislation directs the Commission as to the proper procedure for exercising its legislative powers.

6. Consistent with the manner in which it has conducted all other investigatory proceedings known to the undersigned, the Commission has invited comment and participation in the present proceeding vigorously and openly. Over the course of the past 29 months, the Commission has released a number of orders seeking comments and briefs. Interested parties have responded. More than 10 interested parties have contributed to the Commission’s consideration of NUSF contribution reform, most of the parties regularly and actively. CTIA has actively participated and commented in this proceeding since the outset.

7. On February 22, 2017, after several rounds of comments, the Commission requested interested parties to comment on more specific proposals in the form of testimony. Along with several other parties, CTIA submitted testimony on March 24 in response to the Commission’s February 22 order inviting testimony.

8. Consistent with any legislative proceeding and the traditional practice in Commission investigations such as this, CTIA never informally or formally intervened pursuant to Commission Rule and Regulation or the Administrative Procedure Act. No interested party intervened informally or formally in this proceeding, which has spanned 29 months, and counting. Neither CTIA nor any other interested party nor the Commission itself has treated this proceeding as a contested matter.

9. Under Commission rules, only formal intervenors and protestants are permitted to engage in discovery and cross-examination. NEB. ADMIN. CODE, tit. 291, ch. 1, § 015.02C. As mentioned, no interested party has intervened in this proceeding or has protested. That fact has not thwarted the active participation of any interested party in this proceeding. As discussed above, several interested parties are, in fact, actively participating in the investigation. Because no interested party has status as a formal intervenor or protestant, allowing any party discovery and cross-examination privileges would be improper and an abrogation of Commission rules.

10. Until filing its testimony March 24 and its Motion April 5, CTIA has participated in this proceeding in a manner consistent with legislative proceedings. In its April 5 Motion, however, CTIA now seeks to convert this legislative proceeding into a judicial proceeding, one that is contested in nature, and seeks to conduct discovery prior to the hearing and cross-examination of witnesses at the hearing. CTIA's request is belated and disingenuous and should be rejected for what it is, a tactic to delay critical action to reform the NUSF contribution mechanism.

11. Allowing testimony by interested parties is not unique to judicial proceedings. It is common in legislative proceedings. The Nebraska Legislature conducts hearings and permits testimony on each bill introduced. Senators are permitted to examine witnesses. No cross-examination is allowed, and discovery is unheard of. The Commission has traditionally and consistently conducted investigatory proceedings in the same manner. By simply allowing pre-filed testimony, the Commission has not converted this proceeding into a contested case of judicial nature. Indeed, it would be improper for the Commission to do so now. By requesting testimony, the Commission is merely preparing itself for the hearing it intends to conduct so it can adequately establish a record on which to take the final steps necessary to complete the task of reforming the NUSF contribution mechanism,

which is critical to compliance with the declared purpose of the NUSF Act to ensure that “all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.” NEB. REV. STAT. § 86-317.

FOR THE ABOVE REASONS, the RTCN respectfully requests the Commission deny CTIA’s *Motion Seeking Procedural Order* and move forward expeditiously with this proceeding.

Dated this 21st day of April 2017.

RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA

ATC Communications,
Benkelman Telephone Company, Inc.,
Cozad Telephone Company,
Diller Telephone Company,
Glenwood Network Services, Inc.
The Glenwood Telephone Membership
Corporation,
Hartman Telephone Exchanges, Inc.,
Hemingford Cooperative Telephone Co.,
Mainstay Communications,
Plainview Telephone Company,
Southeast Nebraska Communications, Inc.,
Wauneta Telephone Company, and
Westel Systems.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and five copies of the foregoing *Objection* of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on April 21, 2017, and a copy was served via electronic mail on April 21, 2017, addressed as shown below, to the following:

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