

LEGISLATIVE BILL 514

Approved by the Governor March 17, 1999

Introduced by Transportation Committee: Bromm, 23, Chairperson; Jones, 43; Dw. Pedersen, 39; C. Peterson, 35; Thompson, 14; and Kristensen, 37; Landis, 46

AN ACT relating to the Public Service Commission; to amend section 75-609, Reissue Revised Statutes of Nebraska, and sections 75-609.01, 86-1401, 86-1405, and 86-1410, Revised Statutes Supplement, 1998; to restrict ex parte communications; to change provisions relating to access charges and universal service; to provide an exemption from certain surcharges; to eliminate a termination date; to harmonize provisions; to repeal the original sections; to outright repeal section 86-1411, Revised Statutes Supplement, 1998; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. With respect to any matter of fact or law at issue in a contested case and notwithstanding any other provision of law, a member, staff, or agent of the Public Service Commission shall not during the pendency of any contested case heard before the commission have any ex parte communication with any party having an interest in the outcome of the contested case. For purposes of this section, the definitions in section 84-901 shall apply.

Sec. 2. Section 75-609, Reissue Revised Statutes of Nebraska, is amended to read:

75-609. (1) When two or more telephone carriers jointly furnish interexchange service or extended area service, the revenue from such jointly furnished service shall be divided in such manner as may be agreed upon by the carriers furnishing such service. In the event of inability to agree, any one of the carriers jointly furnishing such service may file an application with the commission requesting that the commission enter an order prescribing an equitable division of revenue from such jointly furnished service. The order entered pursuant to such application may be appealed from by any party to the proceeding in the same manner as from other orders of the commission.

(2) Access charges imposed by telephone carriers for access to a local exchange network for interexchange services shall be negotiated by the carriers involved. Any affected carrier may apply for review of such charges by the commission or the commission may make a motion to review such charges. Upon such application or motion and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing thereon within sixty days of the filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange carrier but may order discounts where there is not available access of equal type and quality for all interexchange carriers, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services. Any actions taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority.

(3) Reductions made to access charges pursuant to subsection (2) of this section shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges have been reduced. The commission shall have the power and authority to ensure that any access charge reductions made pursuant to subsection (2) of this section are passed on in a manner that is fair and reasonable. The commission shall have the power to review actions taken by any telephone carrier to ensure that this subsection is carried out.

(4) For purposes of this section, access charges means the charges paid by telephone carriers to local exchange carriers in order to originate and terminate calls using local exchange facilities.

Sec. 3. Section 75-609.01, Revised Statutes Supplement, 1998, is amended to read:

75-609.01. (1) Telephone carriers which serve less than five percent of the state's subscriber lines in the aggregate statewide shall not

be subject to rate regulation by the commission pursuant to section 75-609 unless (a) the carrier elects by action of its board of directors to be subject to such rate regulation by the commission, (b) the proposed increase exceeds thirty percent in any one year, (c) five percent of the subscribers petition the commission to regulate rates pursuant to subsections (2) through (4) of this section, or (d) the commission declares that the carrier shall be subject to rate regulation by the commission pursuant to subsection (5) of this section.

(2) Each such telephone carrier not subject to rate regulation shall, at least ninety days before the effective date of any proposed rate change, notify the commission and each of the carrier's subscribers of the proposed rate change. Notice to the commission shall include a list of the carrier's published subscribers. Notice by the carrier to all subscribers shall be in a form prescribed by the commission, shall be by first-class mail, and shall include a schedule of the proposed rates, the effective date of the rates, and the procedure necessary for the subscribers to petition the commission to determine rates in lieu of the proposed rates.

(3) The subscribers of a telephone carrier not subject to the commission's rate regulation may petition the commission to determine rates in lieu of any rate change proposed by the carrier pursuant to subsection (2) of this section. A petition substantially in compliance with the rules and regulations of the commission shall not be deemed invalid due to minor errors in its form.

(4) If, by the effective date of the carrier's proposed rate change, the commission has received petitions from less than five percent of the subscribers requesting that the commission determine rates, the commission shall certify such fact to the carrier and the carrier's proposed rates shall become effective as published in the notice to subscribers. If, on or before the effective date of the proposed rate change, the commission has received petitions from five percent or more of the subscribers requesting that the commission determine rates, the commission shall notify the carrier that it will determine rates for the carrier in lieu of the carrier's proposed rate change. Rates established by the commission or by a telephone carrier pursuant to subsections (2) through (4) of this section shall be in force for at least one year.

(5) In addition to the procedure for petition prior to any proposed rate change pursuant to subsections (2) through (4) of this section, the subscribers of a telephone carrier not subject to the commission's rate regulation may at any time petition the commission to declare that the carrier shall be subject to such rate regulation. If the commission determines that at least fifty-one percent of a carrier's subscribers have properly petitioned that the carrier be subject to the commission's rate regulation, the commission shall certify such fact to the carrier and thereafter the carrier shall be subject to rate regulation by the commission until at least fifty-one percent of the carrier's subscribers properly petition that the carrier no longer shall be subject to the commission's rate regulation. This section shall not be construed to exempt any local exchange carrier from regulation of its access charges pursuant to subsection (2) or (3) of section 75-609.

Sec. 4. Section 86-1401, Revised Statutes Supplement, 1998, is amended to read:

86-1401. Sections 86-1401 to ~~86-1411~~ 86-1410 shall be known and may be cited as the Nebraska Telecommunications Universal Service Fund Act.

Sec. 5. Section 86-1405, Revised Statutes Supplement, 1998, is amended to read:

86-1405. The Nebraska Telecommunications Universal Service Fund is hereby created. The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act. Only eligible telecommunications companies designated by the commission pursuant to 47 U.S.C. 214(e) and in substantial compliance with the law and commission orders shall be eligible to receive support to serve high-cost areas from the fund. A telecommunications company that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purpose of the Nebraska Telecommunications Universal Service Fund Act. The commission shall have authority and power to issue orders carrying out its responsibilities, and any such support shall not be distributed to an eligible telecommunications company until a commission order is adopted that ensures corresponding reductions in the price of services currently subsidizing service in high-cost areas. The commission shall have the authority to review the compliance of any eligible telecommunications

company receiving support for continued compliance with any such order and may withhold all or a portion of the funds to be distributed from any telecommunications company failing to continue compliance with its order. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 6. Section 86-1410, Revised Statutes Supplement, 1998, is amended to read:

86-1410. (1) The commission shall establish the Nebraska Lifeline Service Program. The purpose of the Nebraska Lifeline Service Program shall be to promote the provision of universal service to low-income households by local exchange carriers. Support provided by the program shall be specifically targeted to maintain affordable rates for residential basic local exchange services supported by federal and state universal service mechanisms. The commission shall establish means-tested eligibility guidelines and standards for the provision of support from the Nebraska Lifeline Service Program which are consistent with ~~section 254 of~~ the Telecommunications Act of 1996, 47 U.S.C. 254, and any rules and regulations adopted and promulgated by the Federal Communications Commission.

(2) Any local exchange carrier receiving state universal service support shall be prohibited from disconnecting the basic local exchange service of any customer receiving low-income support from the Nebraska Lifeline Service Program for the nonpayment of any interexchange toll service charges. The Public Service Commission may grant limited waivers of this requirement in a manner consistent with applicable rules and regulations adopted and promulgated by the Federal Communications Commission.

(3) Any person receiving low-income support from the Nebraska Lifeline Service Program shall be exempt from the payment of any surcharge established by the commission pursuant to the Nebraska Telecommunications Universal Service Fund Act.

Sec. 7. Original section 75-609, Reissue Revised Statutes of Nebraska, and sections 75-609.01, 86-1401, 86-1405, and 86-1410, Revised Statutes Supplement, 1998, are repealed.

Sec. 8. The following section is outright repealed: Section 86-1411, Revised Statutes Supplement, 1998.

Sec. 9. Since an emergency exists, this act takes effect when passed and approved according to law.