Before the
Federal Communications Commission
Washington, D.C. 20554

IN THE MATTER OF	)	
	)	
	)	**WC Docket No. 04-313**
Unbundled Access to Network Elements	)	
	)	**CC Docket No. 01-338**
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	

INITIAL COMMENTS AND WAIVER REQUEST OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEBRASKA [1]

The Public Service Commission of the State of Nebraska (Nebraska) respectfully submits these initial comments electronically in response to the August 20, 2004 released *Order and Notice of Proposed Rulemaking* (*Interim Order and NPRM*), FCC 04-179, 69 Federal Register 55128 (September 13, 2004) seeking input on a variety of issues related to the development of final network unbundling rules.

Nebraska also requests any waivers necessary to file evidence from its State TRO proceeding in CD-ROM format only.

We will include a summary of the evidence presented on the CDs at a later date. A hard copy of this pleading and the record referenced in that summary will be filed separately by CD-ROM.

The CD-ROMS will be available for inspection at the FCC's headquarters.

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Nebraska Public Service Commission, P.O. Box 94927, Lincoln, NE 68509.

I. GENERAL COMMENTS

On October 7, 2003, in response to the FCC's order initiating rule making, the Nebraska Public Service Commission opened its own 9 month TRO proceeding. In light of the uncertainty regarding the outcome of the present docket, Nebraska suspended its own TRO proceeding in an order dated March 23, 2004. At that time, discovery had been initiated and some comments had been received. Nebraska is in the process of gathering and summarizing all information provided through its proceedings and intends to provide a summary of the information provided prior to the stay. As a general matter, Nebraska makes the following comments.

Since the passage of the Telecommunications Act of 1996, state commissions have worked diligently to foster competition. By arbitrating disputes, approving interconnection agreements and determining the openness of the local marketplace, state commissions have unique knowledge and understanding on the present state of local competition.

While strides have been made since 1996, the amount of local competition remains minimal, particularly in smaller communities. Continued growth in the local marketplace is a shared goal between the state and federal jurisdictions. As such, we continue to believe some sort of collaborative effort between the FCC and the states would best serve the public. Nebraska presents a unique marketplace given the significant rural population and the Omaha metropolitan area. The rural areas of Nebraska present particular concerns in light of the sparse population and remoteness of location both of which present challenges in providing competitive alternatives in light of the increased cost of providing service present in those areas. Our information and experiences can be shared so that our common goal of providing customers with greater choices in the local telecommunications market is realized.

The issuance of this Notice of Proposed Rule Making and the attendant court rulings come at a crucial time. The elimination of UNEs could significantly impact the marketplace, potentially undermining the progress achieved to date. While some customers in Nebraska have enjoyed the benefits of competition from facilities-based carriers, namely those in the Omaha metropolitan area, this option does not, and will not exist on a statewide basis. The availability of the UNE platform is an option for carriers to provide competition to end-users. Competition

provided over the UNE platform has not yet had sufficient time to be fully tested so as to demonstrate its effectiveness in facilitating competition.

We strongly urge that the FCC continue to pursue unbundling within the confines of USTA II and to seek a method consistent with USTA II to allow for state participation in this effort. State participation would ensure that experience, unique conditions and public interest was foremost in the decision making process.

II. REQUEST FOR WAIVER OF FILING REQUIREMENTS

Due to the voluminous nature of the *TRO* proceedings' records anticipated from all states, and the cost and time associated with duplicating and filing same in light of Nebraska's limited staff and in order to provide the FCC with comments in the most accessible format, Nebraska respectfully requests a waiver pursuant to FCC rule 1.3[2] of the filing requirements in FCC rules 1.51 and 1.419[3] to allow it to file its *TRO* proceedings' records in CD format. For the same reasons, Nebraska also petitions for a waiver of the *Interim Order and NPRM's* ¶3 requirement for commenters to stamp each page of any confidential or proprietary document with the "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN CC DOCKET NO. 01-338 & WC DOCKET NO. 04-313 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION"; and the filing of redacted forms of the confidential information stamped "REDACTED—FOR PUBLIC CONSUMPTION." (Note: Nebraska will label each CD containing confidential documents with the foregoing confidential information notice; such CDs contain only confidential documents.[4] Redacted confidential documents will be saved to CDs clearly labeled as "Non-confidential.") Finally, and also for the same reasons, Nebraska requests a waiver of paragraph 33 of the *NPRM* in order to allow it to file its comments using the FCC's ECFS system, but without having to upload and attach all of the documents on the CDs.

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[2] 47 C.F.R. § 1.3 (2004).

[3] 47 C.F.R. §§ 1.51 and 1.419 (2004).

[4] The designation of an exhibit as confidential is not an indication that Nebraska made a substantive determination that the information contained therein is confidential under state law. With few, if any, exceptions, designating of a document as confidential was done by the offering party and not substantively reviewed by the Nebraska prior to admission.

Pursuant to FCC rule 1.3, the Commission may waive its rules for good cause. Good cause may be found when special circumstances exist to warrant a deviation from the general rule[5], or where circumstances make strict compliance inconsistent with the public interest.[6] In this matter, good cause exists simply based on the shear volume, time, and expense involved with submitting Nebraska's *TRO* proceedings' records in paper format due to its limited staff. Moreover, Nebraska will spend considerable time in compiling the CDs and ensuring that they accurately represent the record from its *TRO* proceeding. Finally, by allowing Nebraska to submit its records on CD, the Commission avoids the prospect of being inundated with such records in piecemeal fashion by the participating parties. This is not to say that Nebraska does not expect parties to provide comments to the *NPRM* and to include therein additional comments on Nebraska's *TRO* proceedings.

III. CONCLUSION

Nebraska intends to provide a summary of the information and the underlying data it has obtained through its own TRO proceedings. Nebraska is hopeful that the FCC will continue to carve out a role for State participation. Nebraska further respectfully asks that its request for waiver be granted.

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[5] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert denied* 409 U.S. 1027 (1972).

[6] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166.