

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service)
Commission, on its own motion, to investigate)
ways to accelerate the deployment of broadband) Application No. C-4807/PI-202
consistent with Section 706 of the Tele-)
communications Act of 1996.)

**COMMENTS OF
CITIZENS TELECOMMUNICATIONS COMPANY OF NEBRASKA
D/B/A FRONTIER COMMUNICATIONS OF NEBRASKA**

On December 15, 2015 the Nebraska Public Service Commission (“Commission”) issued its *Order Opening Docket and Setting Workshop*. In that Order, the Commission noted that it opened the docket to facilitate discussion about the challenges of deploying broadband service and possible solutions to those challenges. In the Order, the Commission identified several specific issues that it hoped to address in the docket.

Citizens Telecommunications Company of Nebraska, Inc. d/b/a Frontier Communications of Nebraska (“Frontier”) files the following Comments in response to the Order, addressing the specific topics raised by the Commission.

1. The challenges that carriers face when deploying new broadband infrastructure

The greatest challenge to the wide deployment of broadband infrastructure is cost, including the expenses associated with obtaining access to private easement, railroad rights of way, and public rights of way. In general, broadband service is currently available in areas where it is economically viable. It is in those areas where the product cannot support itself financially that broadband deployment lags. Specifically, it costs a lot of money to both build and support broadband infrastructure in areas of low population density, and in those areas, the anticipated revenues from the service are usually not sufficient to pay for those high costs. Slow or limited adoption of broadband by rural customers makes the economics even more difficult. For example, if the actual adoption by customers is only half of that anticipated, then the cost to deploy broadband essentially doubles.

The second biggest obstacle to the rapid expansion of broadband is the administrative burden placed on carriers in obtaining private easements or access to railroad and public rights of way. These burdens can and do slow the construction progress.

2. The approval processes and the extent to which the processes vary from one jurisdiction to another.

To place facilities needed for broadband, carriers require access to private easements, state, county, and local public roadway rights of way, and railroad rights of way. And each of these items requires a different approval process.

With respect to a private easement, the carrier must first attempt to negotiate the easement's pricing and terms with the landowner whose property it seeks to cross. If the landowner is unwilling to sell or the parties cannot agree on a price, then the carrier has only three choices: (1) abandon its build; (2) attempt to reroute its build; or (3) initiate an eminent domain proceeding under Neb. Rev. Stat. § 86-705 to have a judicial determination of the easement's pricing and terms. Unfortunately, in rural areas, the costs and time associated with the latter two options often force a carrier to choose the first option.

Neb. Rev. Stat. § 86-164 governs carrier crossings of railroad rights-of-way that occur outside of public right of way. In accordance with that statute, each railroad operating in Nebraska has developed its own standardized application procedures for carriers that seek to install wireline facilities across railroad rights of way. For example, Union Pacific's wireline crossing application procedures are available at:

https://www.up.com/real_estate/utilities/wireline/wireline_procedure/index.htm.

Carrier access to public road rights of way is governed by Neb. Rev. Stat. § 86-704. In general, carriers are entitled to utilize state lands and public road rights of way so long as their installations do not interfere with the ordinary use of such lands or roads. This statutory provision also limits the occupation taxes and construction permit fees that municipalities can charge carriers for access to their public road rights of way.

3. The fees for obtaining access and how they compare to other market-based rates.

In general, for Nebraska, the actual financial costs experienced by Frontier for access have not been problematic. The standardization of process and cost for railroad and public road access has been beneficial. For example, under Neb. Rev. Stat. § 86-164, a carrier pays a

standard crossing fee of \$1,250.00 for each wireline crossing outside of a public right of way, which is significantly less than what railroads charge in other states. But, in those individual cases where cost problems are incurred, considerable time and energy are expended to come to some type of resolution.

4. The challenges negotiating rights of way access with entities such as railroads, utilities, and other private entities.

Carriers have faced challenges when attempting to work with railroads when installing wireline facilities within public road rights of way where the roads cross railroad rights of way. Specifically, railroads frequently claim entitlement to the \$1,250.00 crossing fee set forth in Neb. Rev. Stat. § 86-164 for wireline crossings of railroad rights of way that occur within public rights of way even though subsection (5) of this statute specifically states the statute “does not apply to ... any line, wire, or cable within any public right-of-way and does not change, modify, or supersede any rights or obligations created pursuant to *sections 86-701 to 86-707.*” In doing so, railroads frequently cite to the Commission’s regulations implementing Neb. Rev. Stat. § 86-164, which are located at 291 Neb. Admin. Code § 5-013, since those regulations do not differentiate between crossings within and outside of public rights-of-way. In such situations, carriers are often forced to pay the railroads’ demanded, but unauthorized, crossing fees because it would cost the carriers more to seek relief before the Commission and because railroads will otherwise refuse to provide the carriers with flaggers who are needed to safely perform work within railroad rights of way.

5. The extent to which the Commission or public stakeholders can play a role to encourage the rapid deployment of broadband in areas where federal CAF support is being provided.

The Commission is in a unique position to positively impact the deployment of broadband. As the governing authority of the Nebraska Universal Service Fund (“NUSF”), the Commission holds the purse-strings to resources that can be devoted to uses that complement and reinforce the work being done by carriers under the Federal Communications Commission’s Connect America Fund (“CAF”) program. In its decisions in the NUSF-99 docket, the Commission recognized this ability. Frontier would urge the Commission to be expeditious and clear in its governance of the NUSF and the programs it supports so that those resources can be effectively used to further the deployment of broadband service.

The Commission can also revise its regulations implementing Neb. Rev. Stat. § 86-164. Such revisions would make clear that the statutory \$1,250.00 crossing fee only applies to private railroad crossings and not to crossings that occur within public road rights of way and reiterate that the carriers' use of public road rights of way are governed by Neb. Rev. Stat. § 86-704.

Maximizing the number of services that can be provided over the broadband facilities has the advantage of increasing the amount of revenue available to support the deployment and maintenance of the broadband network. Video service is another offering that can be offered using the broadband network. Due to the need to obtain a separate video franchise for each separate municipality served in Nebraska, there is a significant initial cost both in terms of time and resources required before carriers can enter the video market. Many states have adopted a procedure under which carriers can efficiently obtain a statewide video franchise. This approach streamlines the process, and allows carriers to more easily begin to offer video services to customers. Adopting this statewide approach in Nebraska would make broadband deployment more viable in the state.

Taxes assessed to broadband plant (for example, sales and property taxes) also make deployment more costly. Actions taken to reduce those costs can be boost for broadband deployment. For example, Iowa has taken action to exempt facilities placed to provide broadband from property taxes for a period of years.

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Respectfully submitted,

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