

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-139
Public Service Commission, on its)
own Motion, to consider)
appropriate modifications to the) ORDER OPENING DOCKET
high-cost distribution and) SEEKING COMMENT AND
reporting mechanisms in its) SETTING HEARING
Universal Service Fund program in)
light of federal and state)
infrastructure grants.) Entered: August 29, 2023

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission"), on its own motion, hereby initiates this proceeding to consider appropriate modifications to the Nebraska Universal Service Fund ("NUSF") high-cost distribution mechanism and associated reporting requirements. This proceeding is designed to take into account changes impacting the pace at which broadband services will be deployed and to investigate transitional mechanisms which will need to be in place to ensure that broadband networks are sustainable over the long term.

I. BACKGROUND

A. Evolution of the NUSF Program

When the Nebraska Telecommunications Universal Service Fund Act ("NUSF Act") was passed in 1997,¹ it was in response to the newly created provisions in the federal Telecommunications Act of 1996² which embodied Congress' goal that consumers in all regions of the nation, including rural and insular, and high-cost areas, should have access to telecommunications and information services at rates "reasonably comparable" to services and charges offered in urban areas.³ The 1996 Act specifically envisioned that universal service should be an evolving level of service which should be responsive to consumer needs in the marketplace.⁴

¹ Neb. Rev. Stat. §§ 84-312 *et seq.*

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*) (1996 Act).

³ 47 U.S.C. § 254.

⁴ See 47 U.S.C. § 254(c)(1), which provides,

In general- Universal service is an evolving level of telecommunications services that the [Federal Communications Commission] shall establish periodically under this section, taking

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Initially, both the state and federal programs were focused on ensuring universal access to telephone service in the newly competitive market.⁵ Later, as broadband services emerged and rapidly expanded, both the state and federal programs began authorizing more funding towards broadband-capable deployment.⁶

into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the [FCC] in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

⁵ See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (May 8, 1997) at para. 61 (Defining the supported services as: single party service; voice grade access to the public switched network; DTMF signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income consumers). See also *In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access reform*. Application No. C-1628/ NUSF, Findings and Conclusions (January 13, 1999) ("C-1628 Order") at 3 (defining the supported services to include single-party service; touchtone; standard "white page" listing; access to directory assistance; access to interexchange services; access to emergency services; access to operator services; and toll blocking for qualifying low-income consumers).

⁶ See *In the Matter of Report on the Future of the Universal Service Fund*, WC Docket No. 21-476 (August 15, 2022) at paras. 3-5 (In 2009 Congress mandated that the FCC prepare a National Broadband Plan, and in 2011, the FCC created the Connect America Fund to shift away from a voice-centric high-cost program and prioritize broadband service and funding.) See *Connect America Fund et. al*, WC Docket 10-90, Report, Order & Further Notice, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re FCC*, 753 F.3d 1015 (10th Cir. 2014) See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism*, Docket No. NUSF-26, FINDINGS AND CONCLUSIONS, (November 3, 2004), at paras. 39-41. ("NUSF-26, Findings and Conclusions Order") (As networks continue to evolve and new technologies are deployed the emphasis for universal service needs to shift...). See also *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the NUSF*, PROGRESSION ORDER NO. 1 (November 3, 2010) (Finding the Commission had legal authority to support broadband with NUSF support and seeking comment on the creation of a broadband pilot program) ("NUSF-

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Over the years, the Commission has modified its high-cost universal service program in response to policy decisions made by the Federal Communications Commission (FCC) resulting in changes to the federal universal service support mechanisms, and also in response to specific changes driven by the communications landscape in Nebraska.⁷ The Commission's high-cost support mechanism was last changed in its NUSF-99/NUSF-108 companion decisions to transition more support for specific broadband-capable infrastructure projects.⁸ In its NUSF-99 proceeding, the Commission focused on reforms for carriers categorized as "price cap" carriers.⁹ In its NUSF-108 proceeding, the Commission focused on reforming the high-cost mechanism for carriers categorized as "rate-of-return" carriers. The Commission has also used its NUSF-108 proceeding to annually release the high-cost program budget and distribution amounts.¹⁰

However, over the past two years, in response to the COVID-19 pandemic, Congress has appropriated more than \$80 billion to address the nationwide broadband digital divide. The

77") and *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program*, ORDER (December 10, 2013) (restructuring the Nebraska Broadband Pilot Program) ("NUSF-92"). In 2011, the FCC found that Connect America Fund Support would be available for carriers that provide broadband with speeds of at least 4 Mbps downstream and 1 Mbps upstream. See *USF/ICC Transformation Order* at para. 93 (finding speeds of 4/1 Mbps was a reasonable benchmark for the availability of "advanced telecommunications capability" defined by the statute). The FCC currently uses 25/3 Mbps as its benchmark. See *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Notice of Inquiry, GN Docket No. 22-270. For the purpose of the NUSF high-cost distribution of broadband deployment support and the NBBP, Nebraska statutes currently require that projects be scalable to 100/100 Mbps. See Neb. Rev. Stat. §§ 86-324.01 and 86-1304(1)(a).

⁷ See generally NUSF-77 and NUSF-92.

⁸ See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program*, Docket No. NUSF-99, PROGRESSION ORDER NO. 1 (September 1, 2015) ("NUSF-99") and *In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to its high-cost mechanism and make revisions to its reporting requirements*, Docket No. NUSF-108, FINDINGS AND CONCLUSIONS (March 28, 2017) ("NUSF-108").

⁹ One drawback of this regulatory regime without specific service quality metrics is that providers can be incentivized to look for savings at the expense of upgrading service and improving service quality. The Commission modified its high-cost program in 2015 in an effort to have more oversight over the price cap carriers' use of NUSF support. See NUSF-99, (cont'd) PROGRESSION ORDER NO. 1 (September 1, 2015) at 6. (With this Order, through the broadband grant approval process, the Commission will now know at a more precise level how NUSF support is being used).

¹⁰ See generally NUSF-108.

Infrastructure Investment and Jobs Act ("Infrastructure Act") of 2021 includes a historic level of federal investment in broadband infrastructure which totals approximately \$65 billion. In addition, in conjunction with the Nebraska Department of Economic Development, the Commission applied for and received roughly \$80 million in broadband deployment funds from the US Department of Treasury, Coronavirus Capital Projects Fund ("CPF"). The Nebraska Broadband Bridge Program ("NBBP") has been and continues to provide \$20 million towards broadband infrastructure deployment on an annual basis. Collectively, with state and federal universal service fund support, these funding streams will be designed to connect all unserved locations in the state with high-speed internet access over the next few years. Such events have, once again, precipitated a need to consider a review and potential changes to the NUSF program goals, the high-cost distribution mechanism, and the oversight needed to ensure that networks built in high-cost areas are sustainable over the long-term.

While we seek comment on a broad set of issues, we intend to narrow the issues after comments have been filed and may thereafter release a more specific set of proposals for comment and hearing. Further, we recognize that there may be other issues that are not addressed in today's Order. To that extent, we invite commenters to bring other proposals and issues to the forefront for Commission consideration.

B. Universal Service Goals

1. Legislative Goals

In 1997, the Legislature established the fundamental goals of statewide universal service policy by declaring that,

(1) Quality telecommunications and information services should be available at just, reasonable, and affordable rates;

(2) Access to advanced telecommunications and information services should be provided in all regions of the state;

(3) Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates

that are reasonably comparable to rates charged for similar services in urban areas;

(4) All providers of telecommunications should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;

(5) There should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service. Funds for the support of high-cost service areas will be available only to the designated eligible telecommunications companies providing service to such areas. Funds for the support of low-income customers, schools, libraries, and providers of health care to rural areas will be available to any entity providing telecommunications services, maintenance, and upgrading of facilities. The distribution of universal service funds should encourage the continued development and maintenance of telecommunications infrastructure;

(6) Elementary and secondary schools, libraries, and providers of health care to rural areas should have access to advanced telecommunications services as described in the Telecommunications Act of 1996. To promote the efficient use of facilities in rural areas, universal service rules should not preclude the sharing of facilities supported by universal service funds with other local users, if such ineligible users pay appropriate retail usage rates to the telecommunications company;

(7) The implicit support mechanisms in intrastate access rates throughout the state may be replaced while ensuring that local service rates in all areas of the state remain affordable; and

(8) The costs of administration of the Nebraska Telecommunications Universal Service Fund should be kept to a minimum.¹¹

2. Commission-Established Goals and Strategic Plan

Over the years, the Commission has sought comments and made modifications to its high-cost program in order to structure the NUSF program to achieve these goals. Later, in 2016,¹² the Commission sought comment and made findings regarding a strategic plan to lay the foundation for future funding decisions. In its

¹¹ Neb. Rev. Stat. § 86-323.

¹² See *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, NUSF-100/PI-193, ORDER SEEKING FURTHER COMMENTS, April 5, 2016, at 5 (setting forth a strategic plan for ubiquitous broadband, the preservation and advancement of affordable voice service, the deployment of fiber-based network everywhere, accountability, stability of the program, and timeframe for implementation).

NUSF-100 proceeding, the Commission established a goal of reaching ubiquitous broadband deployment and recognized the need to give funding preferences to fiber-based deployments or equally scalable long-term broadband technologies.¹³

II. ISSUES FOR PUBLIC COMMENT

A. The Need for Immediate Reform

The Commission seeks comment on immediate interim reforms needed to account for the fact that the FCC discontinued the Form 477 broadband data reporting requirements, as FCC Form 477 data was utilized to determine the baseline of eligible census blocks and was one tool used by competitive carriers to demonstrate service within a census block. While the Commission's previous orders do not require the Commission to utilize Form 477 data,¹⁴ the Commission has used this publicly available data source as a minimum surrogate for broadband service availability in a given census block.¹⁵ On December 9, 2022, the FCC adopted an order ending the collection of broadband deployment data through FCC Form 477.¹⁶ Because this data is no longer available, and because more granular data is being collected by the FCC, the Commission proposes to take the following steps in the interim so that eligible areas in the high-cost distribution model can be determined.

The Commission proposes to aggregate the FCC's broadband data collection ("BDC") data to be used in the current model for the next calendar year to determine high-cost support distributions. Assuming issues related to accessing the licensed dataset for this purpose can be resolved, the Commission seeks comment on a proposal to utilize the most current FCC BDC data available from carriers which will be filed beginning July 1 through September 15 (availability data as of June 30, 2023) to determine eligible

¹³ See *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, NUSF-100/PI-193, ORDER AND ORDER SEEKING FURTHER COMMENTS AND SETTING HEARING, February 22, 2017 at 19.

¹⁴ See generally NUSF-99 and NUSF-108.

¹⁵ See NUSF-108, Progression Order No. 3, FINDINGS AND CONCLUSIONS (November 19, 2018) at 38-39, at 46 (directing staff to annually release an initial list of census blocks to commence the challenge process for the determination of high-cost support.)

¹⁶ See *Form 477 Sunset Public Notice*, DA 22-1345, WC Docket Nos. 19-195 and 11-10 (December 19, 2022).

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locations or geographic areas for ongoing and buildout support.¹⁷ The Commission believes such data would also be publicly available in November.¹⁸ In the alternative, in order to make high-cost distribution amounts available earlier, the Commission seeks comment on whether to seek broadband availability data from carriers as they are filing this data with the FCC during the July through September timeframe.

Additionally, the Commission seeks comment on any changes in how its challenge process is conducted. Currently, providers can demonstrate, using FCC Form 477 data, or using other evidence, that a census block is served. As an interim solution, should the Commission forgo using its own challenge process, which would have required carriers to file challenges with the Commission in December, and instead rely on carrier challenges to the BDC data within the FCC broadband map? In the alternative, should the Commission continue to retain its own challenge process? If so, should the Commission allow for per location challenges or keep challenges on a census block level? Should the Commission adopt a challenge framework similar to the FCC's?¹⁹ Should the challenge process be based upon what service is currently provided rather than whether a provider could initiate service through a routine installation within 10 business days of a request with no extraordinary monetary charges or delays attributable to the extension of the provider's network.²⁰ As of January 1, 2022, the Commission requires that any broadband infrastructure project must provide a minimum of 100/100 Mbps capable service for any project funded through NUSF.²¹ Currently, the NUSF support model uses 25/3 Mbps as a benchmark for when a census block is considered "served." Should the 100/100 Mbps benchmark also apply to whether blocks and locations are considered "served" when evaluating the need for high-cost buildout support or ongoing support? Why or why not?

The Commission also seeks comment on the structure of payments made to carriers for buildout projects. The Commission implemented a reimbursement-based mechanism as an accountability measure,

¹⁷ See FCC Public Notice, Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to September 15, 2023, WC Docket No. 19-195, 11-10 (July 25, 2023). See also <https://www.fcc.gov/BroadbandData>.

¹⁸ See *id.*

¹⁹ See, e.g., <https://help.bdc.fcc.gov/hc/en-us/articles/10476040597787-How-to-Submit-an-Availability-Challenge>, regarding the nine reasons for filing an availability challenge and the requirement to upload documentation supporting the challenge.

²⁰ See *id.* See also 47 CFR § 1.7001(a)(19).

²¹ Neb. Rev. Stat. § 86-324.01.

where carriers would only be reimbursed after submitting proof of actual costs incurred. While the Commission believes this is a robust way to ensure accountability, an ancillary disadvantage is that the balance of the NUSF has built up significantly since the measures were implemented. Is there a better way to both ensure accountability by the recipients of NUSF without considerable build-up of the NUSF balance? For example, should the Commission implement a structured payout process, similar to Broadband Bridge or Capital Projects Fund grant programs, where portions of project costs are paid out incrementally and final payment would be made available upon project completion, speed testing, and proof of actual costs incurred?

Comments and recommendations in response to these issues should be filed no later than **Friday, September 29, 2023, at 5:00 p.m. Central Time**. Parties may submit comments via email to psc.nusf@nebraska.gov. A public hearing in Legislative Format will be held on **Tuesday, October 24, 2023, at 1:30 p.m. Central Time**, in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508.

B. NUSF Goals and Strategic Plan Update

In recognition of the fact that the NUSF program must continue to be structured in a manner that is consistent with the 1997 statutorily defined legislative goals as well as take into consideration the current environment, the Commission solicits general comments on appropriate revisions and updates to its strategic plan relative to broadband funding, maintenance of reliable and affordable voice and broadband services, and oversight.

We note that in its August 2022 Universal Service Report to Congress, the FCC adopted proposed goals of universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States.²² The Commission's strategic plan envisioned ubiquitous broadband and the preservation of affordable voice service.²³ The Commission has

²² *In the Matter of Report on the Future of the Universal Service Fund*, WC Docket No. 21-476 (August 15, 2022) at para. 12 ("FCC USF Report")

²³ *See In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, NUSF-100/PI-193, ORDER SEEKING FURTHER COMMENTS, April 5, 2016, at 5.

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previously considered a goal of affordability and standards by which that should be measured. Should the Commission revise its strategic plan relative to universal service funding to include a goal of affordable broadband service? Why or why not?

Additionally, first among the universal service legislative policies in Neb. Rev. Stat. § 86-323 is the statement that **quality** telecommunications and information services should be available at just, reasonable, and affordable rates.²⁴ (Emphasis added). Should the Commission update this goal in a manner to specifically ensure a certain level of quality access to broadband and telecommunications services is being provided? If so, please describe how this goal should be updated?

The FCC specifically declined to adopt goals related to reliability, sustainability, adaptability, and cybersecurity.²⁵ The FCC generally agreed that such goals were important, but considered these goals were within the existing definition of availability. Even though the FCC did not adopt these goals, are these goals the Commission should explicitly consider and adopt?²⁶ For example, even though sustainability is not specifically listed among the Legislative goals above, this large infusion of federal grant funding for broadband infrastructure was not a foreseeable event at the time the Legislation was enacted. Should the goal of sustainability be added among the Commission's universal service fund goals? Why or why not?

Are there any additional goals the Commission should consider? Please explain.

C. Potential Objectives Driving Modifications to the High-Cost Program

We solicit comments on several general topic areas in relation to our objective to update our high-cost program framework and reporting mechanisms. More specifically, we seek comments regarding the following list of tasks aimed at modernizing and improving the effectiveness of our NUSF high-cost distribution mechanism and reporting framework:

²⁴ Neb. Rev. Stat. § 86-323.

²⁵ See FCC USF Report at para. 14.

²⁶ See *id.*

1. Creation of incentives for carriers to make new broadband investments and to update existing networks as they age.
2. Creation of a transitional mechanism to support a more robust ongoing funding mechanism once broadband networks are deployed.
3. Revision of the portable support mechanism for competitive providers receiving grant funds for deployment of networks in high-cost areas.
4. Enhancing protections for consumers in terms of access to a provider of last resort and quality services.
5. Ensuring that services are offered in rural areas at rates which are affordable, and which are reasonably comparable to services and rates offered in urban areas.
6. Creation of oversight mechanisms to coordinate other sources of funding received to ensure funding from the NUSF is not duplicative or excessive.
7. Simplification of and streamlined regulatory accounting and annual eligible telecommunications carrier (ETC) recertification reporting aimed at increasing accountability for current NUSF objectives.

Interested parties are invited to add to or suggest alternatives for consideration. Each of these listed items and potential program modifications are discussed further in more detail below.

1. Incentivization of New Broadband Investment

The Commission's transitional framework was originally structured to level the field for competitive entry by making the rate design explicit, by eliminating implicit subsidies found in access rates, establishing benchmark retail rates to promote affordability and the reasonable comparability goals of the NUSF.²⁷ The Commission incentivized investment through the combined use of access replacement and an earnings test. Subsequently, in 2004, the Commission adopted a cost model to determine appropriate cost allocation to rural high-cost areas for maintaining, upgrading and provisioning service.²⁸ Along with the NUSF-EARN Form process, the Commission adopted a mechanism to review historic and planned use of NUSF support on an exchange basis,²⁹ and adopted an expense cap

²⁷ See C-1628/NUSF (January 13, 1999).

²⁸ See NUSF-26, Findings and Conclusions Order, at paras. 46-51.

²⁹ See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for the purpose of certifying the use*

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test and policies to disallow certain operational expenses to guard against gold-plating expenses.³⁰

However, a number of the Commission's reporting and oversight mechanisms were based upon the FCC's pricing and regulatory accounting framework for oversight of incumbent telecommunications price cap carriers³¹ and rate-of-return carriers.³² And, as the Commission has previously recognized, even with the availability of NUSF support and reporting thereon, it was a challenge to create sufficient incentives, particularly for larger carriers, to use NUSF support to replace outdated infrastructure.³³ Accordingly, the Commission set out to modify the NUSF high-cost program in a manner which was intended to sufficiently incentivize price cap carrier investment.³⁴ Additionally, with the decision to transition more and more NUSF support to target broadband infrastructure deployment, the Commission, through NUSF-99/NUSF-108, changed the traditional support mechanisms for price cap/rate-of-return carriers by providing specific targeted support for infrastructure deployments.

of federal universal service support; In the Matter of the Commission on its own motion seeking to establish an interim policy on eligible telecommunications carrier standards, NUSF-25/66, Progression Order No. 18, Order (May 30, 2007) ("NUSF-25/66").

³⁰ See NUSF-64 and NUSF-108.

³¹ See *supra* n. 9.

³² Even with respect to rate-of-return carriers, the Commission believes that accountability and reporting can be improved to provide more accurate monitoring and assessment over the costs of maintaining the network and use of ongoing NUSF support.

³³ The FCC recognized this as well in its *Transformation Order. In re Connect America Fund, et al.*, WC Docket No. 10-90 et al., 26 FCC Rcd 17663, 17712, para.127 (2011) (the "Transformation Order") (Estimating that more than 83 percent of the approximately 18 million Americans who lacked access to fixed broadband lived in price cap study areas.) The initial price cap carrier offers of support in the Connect America Program were also not designed to properly incentivize the replacement of broadband infrastructure as the speed benchmarks were set at 4/1 Mbps. See *id.* at 26 FCC Rcd at 7718, para. 160 (By the end of the third year, ETCs must offer at least 4 Mbps/1 Mbps broadband service to at least 85 percent of their high-cost locations - including locations on Tribal lands - covered by the state-level commitment, as described below. By the end of the fifth year, price cap ETCs must offer at least 4 Mbps/1 Mbps broadband service to all supported locations, and at least 6 Mbps/1.5 Mbps to a number of supported locations to be specified).

³⁴ In part, the decline of NUSF remittances created an unstable environment where funding was not predictable from year to year. In part, the competitive models initially used failed over time, the FCC further deregulated the accounting obligations of price cap carriers.

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After the infusion of federal and state broadband infrastructure funding, operating and capital expenses will continue to be incurred by providers. State and federal universal service objectives remain relevant to ensure that networks are able to be maintained and upgraded in high-cost areas after broadband networks have been deployed, and that services in rural areas are affordable and reasonably comparable to urban areas. Accordingly, we seek comment on how to revise the Commission's high-cost distribution mechanism to incentivize continued investment in areas where broadband infrastructure has been and will be deployed. We seek comment on ways to allocate funding in the future, including whether to utilize reverse auctions and rural-based community plans. We seek comment on how these mechanisms should be incorporated into the Commission's high-cost distribution mechanism. Will these funding mechanisms remain relevant? Are there other incentive-based methods for allocating funding which would be more effective and efficient?

The Commission seeks comment on the appropriate process for making updates to the State Broadband Cost Model ("SBCM") to account for a more current estimate of costs incurred to deploy broadband infrastructure in today's environment. With respect to historic updates to account for boundary changes, the Commission staff has historically requested revised costing data from its vendor, CostQuest.³⁵ Should the Commission initiate that process and release the updated version with sublicensed access similar to its process in NUSF-100? In the alternative, the Commission seeks comment on whether it should open a broader proceeding to consider input/output cost model modifications?³⁶ For example, an updated cost model may need to be designed to determine post-broadband deployment support amounts for allowable operating expenses and potential future capital costs. Should the Commission consider updated model inputs and outputs including but not limited to depreciation, useful life of equipment, and expected revenues? Currently, the Commission's cost model is designed for a fiber-to-the-premises build, but actual allowable costs from each capital project are reimbursed.³⁷ However, if we allow for the

³⁵ We note that a cost is incurred for such updates to the State Broadband Cost Model ("SBCM") and such costs are dependent upon the scope of the work requested.

³⁶ Cf. Enhanced ACAM Order at para. 167 (requesting comment on whether to update model inputs for developing a support methodology).

³⁷ Because the cost model estimates costs for fiber to the premises, we would not expect carriers to charge consumers for additional fiber deployment or construction charges beyond normal installation charges. However, we also

transition of or porting of support to competitive carriers that have not deployed fiber, what additional cost data should the Commission obtain for other grant funded deployments? Should a second model be established to consider costs for operating and maintaining fixed wireless networks? Should the Commission ensure that costing data is consistent with the BEAD program by obtaining and utilizing the updated cost model estimates that CostQuest has prepared for the NTIA? Why or why not? Should costs in the cost model be adjusted with time based on inflation. If so, what price index should be used?

Should the Commission focus on restructuring the high-cost mechanism with a revised cost model to determine largely ongoing support? Should the Commission consider adding new benchmarks or requirements as a condition of receiving ongoing NUSF support? If so, what should those benchmarks be? Should there be penalties or a withholding of funding in areas where it is evident that a carrier has not maintained its infrastructure after grant support has been provided?

Should the Commission consider support levels utilizing the FCC's new location fabric? This option would allow the Commission to revise its support mechanism in a manner that is more granular in nature as opposed to utilizing an exchange basis or FCC's Form 477 census data. The Commission believes that utilizing the more granular FCC location fabric may provide additional transparency and targeting of funding. However, such a change could result in significant changes to ongoing support levels. If support is determined on a cost per location basis, should there be a transition period; if so, how long should the transition period be?

2. Ongoing Support Transitional Mechanism

We seek comment on how to transition the Commission's ongoing high-cost support mechanism as more and more areas are served with broadband infrastructure. At its core, universal service is about ensuring that the comparable services are and remain available to rural consumers and the rates rural consumers pay are reasonably

understand that subscriber requests for service may not occur during the 18-month to two-year window for deployment. Accordingly, we are looking at ways to ensure those costs are recovered as budgeted by the carrier as allocated for the project and are not borne by the consumer.

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comparable to those in urban areas.³⁸ We recognize that there may be significant operating costs in rural areas which will not be recoverable from revenues earned when prices are set at affordable levels for consumers. Likewise, providers will have capital expenditures associated with replacing, upgrading and deploying new broadband infrastructure. As such, carriers will continue to have a need for support to cover those expenditures.

Before explicitly funding broadband infrastructure, the Commission relied largely on a cost model to determine the support levels and considered the relative cost to provide service in a given rural area and the expected revenue shortfalls experienced by the providers in charging the benchmark rates established by the Commission, and federal universal service funding received. Should the Commission continue to rely on modeled costs to determine ongoing support calculations? Now that the Commission has access to more granular location data, should the Commission utilize this more granular location data to derive more ongoing support calculations?

Likewise, the Commission anticipates that competitive carriers awarded broadband grants may wish to be eligible for ongoing support under the revised mechanism. How should the Commission take into account the ongoing costs for non-fiber-based deployments? As an alternative to utilizing a cost model, should the Commission rely on other data, such as historic provider specific data to obtain cost information relative to maintenance, operational costs, and continue a grant-based structure for planned network investments? What are some other alternatives the Commission should consider?

The Commission previously relied upon the adoption of the FCC's \$52.50 revenue benchmark for expected revenues that a carrier could reasonably expect to receive from each subscriber for providing voice or broadband services, or a combination thereof.³⁹ However, the Commission has not determined whether this benchmark rate reflects the realities of rates charged to consumers or current take rates.⁴⁰ Should the Commission conduct its own

³⁸ See 47 U.S.C. § 254; see also Neb. Rev. Stat. § 86-323.

³⁹ See *In the Matter of the Connect America Fund*, WC Docket No. 10-90 Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3108, paras. 53-54 (2016) ("Rate-of-Return Order") (This figure was calculated using a 70 percent take rate).

⁴⁰ See Comments of the Rural Independent Companies ("RIC"), *In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to*

analysis of expected revenues for the purposes of determining NUSF support? Why or why not?

3. Portability of NUSF Support

In recognition of the pro-competitive goals of the 1996 Act, the Commission initially found that the permanent NUSF support should be portable among ETCs.⁴¹ The Commission developed a mechanism to port per line support to competitive carriers leasing unbundled network elements from incumbent carriers.⁴² Subsequently, the FCC granted forbearance of the unbundling requirement imposed on the incumbent carriers which meant that leased network elements were no longer available to competitive carriers at Commission-determined wholesale rates.⁴³ As copper networks transitioned to fiber networks and as copper networks were being retired, network elements were no longer available to competitive carriers through

its high-cost distribution mechanism and make revisions to its reporting requirement, Application No. NUSF-108, (filed January 10, 2017) at 4.

⁴¹ See C-1628/NUSF (January 13, 1999),

The Commission finds that the permanent NUSF shall be portable among ETCs. The Commission further finds that during the interim, the NUSF shall be accessible to all ETCs. For the interim NUSF, ILECs will be eligible for interim funding as set forth in this Order. Additional carriers other than ILECs will be eligible for interim funding after they have applied for and have been granted state ETC designation pursuant to Commission guidelines and exist-ing law and have provided documentation acceptable to the Commission on the amount of support they should receive on an interim basis for providing service to high-cost customers.

⁴² See Application No. C-3448/NUSF-46/PI-102 (continuing to provide ported support to competitive carriers in out-of-town areas in zones 2 and 3 via leased unbundled network elements). See also *In the Matter of the Nebraska Public Service Commission, on its own motion, to determine whether to discontinue ported support for grandfathered business lines*, Docket No. NUSF-110, ORDER (January 17, 2018) (phasing out the porting of NUSF support).

⁴³ See *In The Matter Of Review Of The Section 251 Unbundling Obligations Of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996*, CC Docket No. 96-98, *Deployment Of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, ORDER ON RECONSIDERATION, 19 FCC Rcd 20293 (2004); *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket 04-223, MEMORANDUM OPINION AND ORDER, 20 FCC Rcd 19415(2005); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, WC Docket No. 04-313, 20 FCC Rcd 2533(2005) ("TRRO"), and *In The Matter Of Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket 19-308, REPORT AND ORDER, 35 FCC Rcd 12425 (2020).

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such network leasing arrangements. As a result, both the FCC⁴⁴ and the Commission phased out their universal service support portability mechanisms.

Further, when the Commission established the permanent NUSF funding mechanism in 2004, the Commission adopted a framework allowing competitive carriers to file petitions to replace the incumbent carrier for the purpose of receiving NUSF support in a given support area.⁴⁵ That mechanism was subsequently codified in the Commission's NUSF rules and regulations.⁴⁶ Commission rule 004.02G2 provides in part that if a competitive carrier replaces the incumbent carrier in a given area, the carrier of last resort obligations will be transferred to the competitive carrier and the incumbent carrier will be relieved of its carrier of last resort obligations.

The mechanism in the Commission's rules was designed to ensure that the Commission provided support to only one network in a given area a given time and that the competitive carrier replacing the incumbent carrier was bound to the same service quality and interconnection requirements.⁴⁷ However, to date, no alternative provider has petitioned the Commission seeking such support. Commenters are invited to suggest specific changes to § 004.02G to update this framework.

If the Commission were to provide for the portability of high-cost support, how should such support levels be determined? Should the Commission base ported support on the modeled costs? In 2015, the Commission froze modeled support for price cap carriers. If the Commission were to port high-cost NUSF support, the Commission would most likely need to unfreeze and update the modeled costs for those areas. Should the Commission unfreeze the modeled support levels in price cap areas? What other factors should the Commission consider?

In cases where a competitive carrier seeks ported support from the high-cost mechanism, the Commission also seeks comment on the obligations of competitive carriers that they do not have under the grant program(s). Should competitive carriers be required to

⁴⁴ See *Transformation Order* at paras. 29, 498-511 (eliminating the identical support rule, freezing then existing support levels and phasing down competitive ETC support).

⁴⁵ NUSF-26 Findings and Conclusions Order, at para. 15.

⁴⁶ See Title 291 Neb. Admin. Code Chapter 10 § 004.02G.

⁴⁷ See *id.*, referencing interconnection and service quality requirements.

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file the same financial reports and be subject to the same audit requirements to demonstrate levels of investment, the need for support, and the use of support? What other obligations, if any, of current high-cost recipients should be imposed on competitive carriers seeking ongoing support? Should support be based upon the services and speeds advertised to consumers? In the alternative, should ongoing support be based upon verified speed test demonstrations? As the NUSF Act requires the Commission to ensure affordable and reasonably comparable access to telecommunications services in rural areas⁴⁸ what additional standards to the voice, 911 capability, or TRS compatible framework should be made? What existing standards should be eliminated? How should support levels change over the life of the network to ensure that networks are being sufficiently maintained and elements replaced to keep pace with the changing environment? Should the Commission require carriers to report where locations are still served with copper networks? If so, how frequently should such information be filed? Should the Commission reduce or eliminate a provider's ongoing support level based upon the number of locations served with copper facilities? Why or why not?

In its *Enhanced ACAM Order*, the FCC required Enhanced A-CAM recipients to implement operational cybersecurity and supply chain risk management plans by January 1, 2024 and to submit such plans to the Universal Service Administrative Company ("USAC").⁴⁹ Should the Commission likewise require NUSF recipients to demonstrate compliance and/or file such plans with the Commission as a condition of receipt of ongoing support? Why or why not?

In July of 2002, the Commission made certain service quality standards applicable to all eligible telecommunications carriers receiving universal service support.⁵⁰ The Commission found it would be appropriate to withhold support to an eligible telecommunications carrier not meeting the Commission's service quality standards.⁵¹ However, those standards were developed relative to the supported services which were voice grade services

⁴⁸ See *supra* at pp. 5-6.

⁴⁹ See *In the Matter of Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support, Expanding Broadband Service Through the ACAM Program, et al.*, WC Docket No. 10-90, RM-11868, REPORT AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND NOTICE OF INQUIRY (rel. July 24, 2023) ("*Enhanced ACAM Order*") at para. 109.

⁵⁰ See *In the Matter of the Commission, on its own motion, seeking to establish a long-term universal service funding mechanism*, Docket No. NUSF-26, Progression Order No. 1 (July 23, 2002).

⁵¹ See *id.* at 9.

offered on an exchange basis. The Commission seeks comment on whether these findings should be updated to consider service quality metrics for broadband performance. If so, what technology neutral service quality metrics should the Commission consider?

Further, in § 004.02G of the Commission's NUSF rules, competitive carriers seeking to replace the incumbent carrier as the NUSF supported carrier are required to demonstrate that the quality of service provided would equal or be better than the service provided.⁵² While the Commission has not yet been called upon to consider a petition from a competitive carrier to replace the incumbent carrier for purposes of NUSF support, the Commission seeks comment on whether this rule should be applied and how quality of service should be judged. Should the Commission consider certain quality of service standards other than minimum speed/latency as a predicate of universal service support eligibility where it relates to broadband services? If so, aside from speed and latency requirements, what standards should be considered?

4. Carrier of Last Resort Obligations and Ensuring Universal Access to Quality Services

The NUSF Act limits funding for the support of high-cost service areas to the designated eligible telecommunications companies providing service to such areas.⁵³ Similarly the FCC's high-cost funding mechanisms also limit eligibility to ETCs. As the Commission has transitioned its high-cost mechanism into one that is more broadband-centric, oversight of rates and services has been limited by virtue of the fact that broadband services are largely unregulated. The Commission seeks comment on whether to modify its existing ETC framework to include additional metrics where carriers seeking support can opt-in to certain affordability and network quality requirements designed for a broadband centric environment. Should these requirements mirror those that have been established in the NBBP and other grant programs. Should the Commission consider other requirements? If so, please explain.

Eligible telecommunications carrier designation obligations require the carrier to provide the supported service(s) throughout the designated area unless specific forbearance has been granted.⁵⁴

⁵² See Title 291, Neb. Admin. Code, Chapter 10 § 004.02G1e.

⁵³ See Neb. Rev. Stat. § 86-324(1).

⁵⁴ See 47 U.S.C. § 214(e) (1) (A).

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Historically, for incumbent local exchange carriers, designation areas have been geographically based upon the "study area" of the carrier.⁵⁵ With respect to competitive carriers, ETC designations have been geographically based upon exchange, wire center or census block areas.⁵⁶ Each year, the Commission annually determines whether to certify the use of state or federal universal service support for each ETC throughout its designated area.⁵⁷ Now that grant determinations for infrastructure build out support may be made on a location basis, the Commission seeks comment on how those grant decisions should impact the ETC designation areas and other carrier of last resort obligations. The FCC's definition of "supported services" includes voice telephony services.⁵⁸ The Commission's supported service definitions likewise include voice service with broadband obligations extended through Commission orders specific to each broadband program. The Commission seeks comments on whether to modify its definition of supported services, and if so, what deviations from the FCC's definition of supported services should the Commission consider? If certain requirements attach as a prerequisite to receipt of ongoing NUSF support, such as certain minimum broadband speed standards, shouldn't they also be defined as "supported services"?

While grant-based infrastructure is built to enable the offering of supported services, the NBBP, BEAD and CPF programs do not require voice/supported services to be offered by a grant recipient, the Commission believes that these services should be offered by a provider in order to trigger any change in ETC

⁵⁵ See 47 U.S.C. § 214(e) (5) (defining "service area" and establishing the service area as the "study area" of a rural telephone company. See also 47 CFR § 54.207

⁵⁶ See, e.g., *In the Matter of the Application of Pinpoint Communications, Inc. of Cambridge, Nebraska, seeking designation as an eligible telecommunications carrier that may receive universal service support*, Application No. C-2659, Order Granting Designation as an Eligible Telecommunications Carrier (April 23, 2002) and *In the Matter of the Application of Nebraska Technology & Telecommunications, Inc. requesting universal service support for supported services provided in Alltel exchanges*, Application No. NUSF-45, GRANTED (July 19, 2005).

⁵⁷ See 47 C.F.R. § 54.314 (certification of support for eligible telecommunications carriers). See also WC Docket No. 14-58.

⁵⁸ The supported services for rural, insular and high cost areas are defined by federal regulations as "voice telephony services." See 47 CFR § 54.101. "Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent." 47 CFR § 54.101(a). An ETC subject to a high-cost public interest obligation to offer broadband internet access service must offer broadband services within the areas where it receives high-cost support. See *id.* at § 54.101(c).

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designation area or voice-based carrier of last resort obligation. However, given the fact that the requirements of § 54.101 are not requirements of NBBP, BEAD, or the CPF programs, and there is no obligation to offer such services, grant recipients may choose not to offer them. Further, with recent statutory changes through LB 683, and now codified in Neb. Rev. Stat 86-1501 *et seq.*, an avenue may exist for the carrier of last resort to be relieved of those obligations in areas where a competitive provider makes broadband service available. This new framework would prohibit the Commission from imposing carrier of last resort obligations on a competitive provider choosing not to be an eligible carrier receiving NUSF support. The Commission seeks comment on how to ensure that universal service goals continue to be met and that the supported services continue to be available to consumers who want them.

Further, the Commission solicits input on the minimum geographic areas used to transition carrier ETC obligations where appropriate. In the past, the Commission has been concerned about the fact that "cream skimming" can occur if the ETC designation area includes only the low cost areas in which support is available. Alternatively, the Commission may encounter situations where a provider elects to serve only the areas where the highest amount of portable NUSF support is available. Are these concerns the Commission should consider when determining ETC designation areas?

We seek comment on the potential for a state/federal mismatch between state and federal ETC designation areas triggering the eligibility for separate universal service support mechanisms. Section 214 provides a mechanism for relinquishment of federal ETC designation, upon the petition of a carrier, which the state can approve once certain conditions are met.⁵⁹ Most notably, Section 214(e)(4) states that prior to permitting an ETC to cease providing universal service in an area served by more than one ETC, the state commission shall require the remaining ETC(s) to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining ETC.

⁵⁹ See 47 U.S.C. § 214(e)(4) (Relinquishment of Universal Service-A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such carrier in any area served by more than one eligible telecommunications carrier).

Generally, ETC relinquishment has been a voluntary carrier-driven decision.⁶⁰

Likewise, we recognize that in some cases, a grant recipient may not want to take on the ETC obligations of the predecessor carrier. How do we ensure that consumers are adequately protected in these instances? There are also some instances where state commissions have been petitioned to involuntarily revoke an ETC designation.⁶¹ Are there some instances where revocation of ETC designation is appropriate? Please explain.

We seek comment on the transition of ETC designation areas in cases where a provider seeks ongoing NUSF support. How can the Commission ensure there is no mismatch between the state and federal universal service support mechanisms? Is this a concern only if the FCC establishes a replacement high-cost support mechanism in price cap carrier service areas?

The Commission also seeks comment on revising the distribution mechanism where broadband grant support has been awarded and the competitive carrier does not wish to take on ETC or carrier of last resort obligations.⁶² Should the Commission remove those locations from the support area of an incumbent carrier not receiving grant support even though the incumbent carrier still has an obligation to serve? Given that project areas may be based upon areas other than an exchange or a census block basis, how should the Commission consider calculation of high-cost support for the carrier continuing to be the ETC or carrier of last resort?

5. Ensuring Affordability and Reasonable Comparability of Service

⁶⁰ See *id.*

⁶¹ See *In the Matter of the Petition of LTD Broadband LLC to Expend its Designation as an Eligible Telecommunications Carrier; In the Matter of a Petition to Initiate a Proceeding to Revoke the Expanded Eligible Telecommunications Carrier Designation of LTD Broadband, LLC and Deny LDT's Funding Certification for 2023*, Docket No. P-6995/M-21-133; P-558, P-6995/M-22-221.

⁶² The Commission anticipates that a separate proceeding governing the mechanics of the transition process will be initiated due to the passage of LB 683 and the transitioning of carrier of last resort obligations. However, the Commission seeks comment in this proceeding related to the porting of NUSF ongoing high-cost support to a competitive carrier.

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Broadband grant programs including the NBBP, the CPF, and the BEAD programs all include requirements to address affordability. The CPF program requires grant recipients to participate in the Affordable Connectivity Program ("ACP"). Likewise, the NBBP scoring matrix takes reasonable comparability and the affordability of retail broadband rates into account.⁶³ As ETCs and as a condition of universal service support receipt, many providers are required to participate in the federal Lifeline program. Should the Commission consider applying an affordability benchmark range much like what it has applied in the past for telecommunications? If so, how should that range be determined? Should the Commission consider the federal benchmarks developed by the FCC for the Urban Rate Survey?⁶⁴ Should the Commission utilize state-specific data?

Additionally, the Commission seeks comment on the sufficiency of the current programs to ensure affordability for low-income consumers. The current FCC Lifeline Program/Nebraska Telephone Assistance Program (NTAP) discount may be insufficient to ensure affordability of broadband and telecommunications services for low-income consumers. Should the Commission consider participation in the ACP program, or any replacement program established by Congress, as a requirement for high-cost universal service fund support? Why or why not? If a high-cost recipient does not participate in the ACP program should the Commission require the provider to make a comparably affordable rate plan available to consumers? Why or why not? As the ACP is a temporary program, are there reforms the Commission should undertake with respect to its NTAP Program to supplement or replace the ACP program discount? What are other ways in which the Commission can ensure that the services being supported in rural areas are affordable and reasonably comparable to services offered in urban areas?

In the alternative, should the Commission consider additional broadband adoption support which was once made available on a pilot project basis?⁶⁵ Should the Commission consider formalizing or

⁶³ See NBBP Program Guide at 8. (Additionally, the plan should include the pricing structure of the plan being offered to low-income subscribers in addition to the availability of Lifeline or Affordable Connectivity Program (ACP) discounts and any additional terms and conditions of service.)

⁶⁴ See *In the Matter of Connect America Fund*, WC Docket No. 10-90, Public Notice, DA 23-274 (May 8, 2023).

⁶⁵ See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to administer the Nebraska Universal Service Fund's Broadband Program: Application to the Nebraska Broadband Program received from ALLO*

extending this type of grant program to promote affordability of broadband services? Are there other programs aimed at affordability the Commission should consider supporting? Please explain.

In order to ensure supported services offered in rural areas are reasonably comparable with services offered in urban areas, the Commission seeks comment on whether to require certain broadband speeds be delivered as evidenced by filing of speed test data as a condition of receiving model-based support. If so, the Commission solicits comment on the timing and reporting of speed test results. The Commission seeks comment on the minimum thresholds with which to determine carriers eligible for ongoing high-cost support. The Commission further seeks comment on other ways to measure the reasonable comparability of services offered.

6. Coordination with other funding to ensure the NUSF is not providing duplicative support

The Commission will need to coordinate its NUSF high-cost support to ensure that such support is not duplicative of other state or federal funding mechanisms including not only BEAD program funding⁶⁶ but also recognizing changes in federal universal service support received by those electing any future A-CAM offers of support.⁶⁷ While we expect that the updated state broadband map will include location-based commitments for BEAD support, we recognize that some of the FCC's programs include longer term commitments of support where locations are reported in the High Cost Universal Broadband portal (HUBB) after they have been

Communications, LLC and Lincoln Public Schools, Application No. NUSF-92.49, Granted (August 30, 2016) at 2 (approving a grant application filed by ALLO Communications, LLC and Lincoln Public Schools where the retail cost to consumers was designed to be approximately \$10 to \$15 per month with no additional cost to purchase equipment or modems).

⁶⁶ The Commission currently administers the NBBP and grant CPF programs and will share information with the Broadband Office relative to locations funded through those programs as well locations served via its high-cost broadband deployment funding. However, in addition to the BEAD funding, other federal programs must also factor into our analysis including Rural Utilities Service (RUS) broadband programs, the Tribal Connectivity Program, and federal universal service high-cost support mechanisms.

⁶⁷ See generally, *Enhanced ACAM Order*.

built.⁶⁸ In addition to the data that is currently being collected, what additional data should the Commission collect to ensure that NUSF support is not duplicative of any other state and federal support?

7. Streamlining the Accountability Framework

When the Commission established the NUSF high-cost framework, it determined the level of support should be based upon and adjusted for the carrier's rate of return.⁶⁹ The NUSF-EARN Form has allowed the Commission to measure how costly providing service is to a particular carrier and the level of investment being made. Additional reporting elements were added to provide oversight of the use and efficiency of NUSF program spending. For example, in its state and federal ETC certification proceeding, NUSF-25/66, all eligible telecommunications carriers seeking eligibility for NUSF support and certification to the FCC for the receipt of federal support have been required to file annual reports with the Commission.⁷⁰ All eligible telecommunications carriers are required to include a detailed description of the past year's historical investment data, including any expenses, for the provision, maintenance, and upgrading of any facilities or services by exchange/wire center or by county; a separate description of both the federal and state universal service funding received, and a one-year investment schedule including any expenses, for the provision, maintenance and upgrading of facilities and services for the prospective year.⁷¹

In 2008, the Commission adopted an expense cap review in the earnings calculation for NUSF support which was designed as another step to "ensure that funds collected by the NUSF are used

⁶⁸ See *id.* at para. 60 (adopting a budget over a 15-year term to 2038). We note that the Commission has access to HUBB based reporting, however, there is a lag in the timing of the publication of that information. While the HUBB data can serve as a check on locations built to for determining duplicative support, this data may not be the most useful source in determining future support needs.

⁶⁹ See C-1628/NUSF Order at 8. (This calculation was acquired from the Form M information included in the Annual Report, as well as the NUSF-EARN Form.

⁷⁰ See NUSF-25/66 Progression Order No. 18, Order Requiring Annual Certification Filings (May 15, 2007).

⁷¹ See *id.* at 2.

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appropriately and that the NUSF distributes those amounts that are necessary."⁷² Annually, prior to determining certification of support used, the Commission runs the expense cap model and seeks additional justification from carriers where needed to determine whether expenses for certain accounts are within the acceptable range.

In 2021, in response to changes made by the FCC, the Commission sought comment on and adopted a revised list of disallowed expenses.⁷³ Specifically the Commission adopted the FCC's 2018 prohibition on universal service fund recovery for the following expenses: personal expenses, expenses unrelated to carrier operations, and expenses related to corporate luxury goods.⁷⁴

As an initial matter, the Commission recognizes that the reporting requirements oversight mechanisms could be streamlined and be made more effective. The current use of separate filing processes and deadlines could be simplified and streamlined into fewer annual filings. The data collected in the reports could also be better tailored to appropriately determine NUSF support need or to track continued deployment and ongoing investments relative to broadband deployments in the future. While the Commission believes several components of these reporting mechanisms should be retained to ensure that NUSF support is being used for its intended purpose, we seek comment on ways to make the reporting requirements more relevant for the broadband-centric environment while streamlining the requirements to eliminate certain filing requirements which may be no longer necessary.

At this point, we continue to believe that an earnings test should be applied to ensure that federal support when combined with state support does not put a provider in an over-earning situation.⁷⁵ However, given that broadband services are largely

⁷² See *In the Matter of the Nebraska Public Service Commission, on its own Motion, seeking to Investigate the use of Expense Caps in the earnings calculation for Nebraska Universal Service Fund Support*, Application No. NUSF-64, Order (June 3, 2008) ("NUSF-64 Order") at 3 (quoting the testimony of Jeff Pursley, Director of the [NUSF] Department).

⁷³ See NUSF-108, Progression Order No. 5, ORDER (February 23, 2021).

⁷⁴ See *id.* at 13.

⁷⁵ See e.g., Comments of the Rural Telecommunications Coalition of Nebraska ("RTCN"), *In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirement*, Application No. NUSF-108, Progression Order No. 4 (filed December 18, 2018) at 2.

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unregulated,⁷⁶ we seek comment on updates to the NUSF-EARN Form or replacement filing requirements which will be designed to ensure that NUSF support is set at appropriate levels and is utilized in the manner which achieves the Commission's updated goals. Should the Commission revise its rules regarding carrier financial accounting or revise the level of accounting to be maintained by the carriers through revising its forms filed with the Commission such as the annual report Form M or the NUSF-EARN form? How can the Commission better target the information it collects to ensure accountability with ongoing NUSF high-cost support and broadband grant support? The Commission invites interested parties to offer specific proposals for it to consider.

We also seek comment on whether, with the broadband-centric framework it is more appropriate to target the Commission's oversight and reporting mechanisms in a way that targets the end goal of broadband affordability and network sustainability? Should the Commission require the filing of rate comparability data similar to the data filed in the NBBP and CPF grant programs? If so, how should such information be utilized to determine the effectiveness of the NUSF support? Should the Commission consider benchmarks or consider a range of affordability? How should the Commission's affordability determination evolve as broadband speeds and consumer demands change?

Further, we seek comment on whether the Commission should adopt a more specific but streamlined NUSF-25/66 reporting mechanism which is based on location data. The FCC's rules require states certifying the use of high-cost support attest that all federal high-cost support provided to such carriers within the state was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support was

⁷⁶ The NUSF support for unregulated broadband service, where not directly targeted to the broadband deployment, has introduced gaps into the Commission's accounting and reporting framework. Broadband is not considered a common carrier service, is not price regulated apart from the rate comparability clauses in the grant programs, and broadband service has not been considered an assessable service. In addition, the FCC has relaxed certain federal rules regarding uniform system of accounting requirements for price cap carriers and broadband deployment services. See *In the Matter of Business Data Services in an Internet Protocol Environment, et al.*, WC Docket No. 16-143, et al., REPORT AND ORDER (April 28, 2017) and *In the Matter of Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144, REPORT AND ORDER, SECOND FURTHER NOTICE OF PROPOSED RULEMAKING, AND FURTHER NOTICE OF PROPOSED RULEMAKING (October 24, 2018) ("BDS Orders").

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intended.⁷⁷ Currently, the filing requirements are based on exchange/wire center data due to the fact that ETC designation areas were historically approved by exchange/wire centers. Subsequently, due to changes in funding determinations made by the FCC, ETC designations were made based upon census blocks. The Commission's NUSF-25/66 filing requirements were not updated to incorporate reporting at the census block level. Should the Commission revise its NUSF-25/66 filing requirements to include census block level reporting of investments? In the alternative, given the fact that the FCC is now mapping location data and that broadband grants are awarded based on locations to be served, should the Commission revise its NUSF-25/66 certification requirements to collect historic and prospective investment based at the location level? Why or why not?

Should the Commission's NUSF-25/66 data collection and analysis be tailored to the type of support each carrier receives? Should we integrate an updated form of data collection into the Commission's high-cost distribution process? If so, please describe. For purposes of certifying the use of federal support, the Commission has access to the carriers' Form 481 reports and to the HUBB data. Should the Commission align the data collected with that filed with the FCC? What additional information should the Commission collect and review in order to certify historic and prospective use of high-cost support? Relative to the certification of the use of NUSF support, where a carrier receives broadband buildout support, the Commission largely relies on carrier invoices to document how support was utilized. However, for ongoing support, the Commission relies on the data filed by carriers in the NUSF-25/66 report, the NUSF-64 expense cap model, and in the NUSF EARN Form. Should the filing of this information be more streamlined? In addition, the Commission recognizes that there are different deadlines for ETC certification filings set by Commission orders and also by Commission rules. The Commission must certify the use of support by October 1st each year. Should the Commission adjust the deadline for all ETC filing requirements for purposes of both state and federal ETC certification?

Finally, the Commission seeks comment on whether to revise or eliminate the use of the NUSF-64 expense cap model? Are there other mechanisms the Commission should adopt which are better aligned to ensure that all NUSF ongoing maintenance and operational support is being used to support the network assets and operational expenses in Nebraska high-cost areas. What additional enforcement

⁷⁷ 47 CFR § 54.314. See also *supra* n. 70.

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mechanisms should the Commission consider when it determines that NUSF support has not been used for its intended purpose? Commenters are invited to file specific proposals for consideration.

III. COMMENTS AND HEARING

The Commission hereby requests that interested parties submit comments on the issues described in Subpart A, above by **Friday, September 29, 2023, at 5:00 p.m. Central Time**. Parties may submit comments via email to psc.nusf@nebraska.gov. A public hearing in legislative format will be held on **Tuesday, October 24, 2023 at 1:30 p.m., Central Time**, in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508. Remote access to the hearing will be available via WebEx at the following link: <https://psc.nebraska.gov/stream> (case sensitive). If an interested party desires to appear via Webex, the Commission requests that the party please notify Commission staff in advance.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven days is needed when requesting an interpreter.

Interested parties are also invited to submit comments on Subparts B and C above on or before **Friday November 17, 2023, at 5:00 p.m. Central Time**. Parties may submit comments via email to psc.nusf@nebraska.gov. Following review of the comments submitted in response to Subparts B and C, the Commission may seek additional reply comments and set this matter for hearing.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the issues identified herein be and they are hereby open for public comment.

IT IS FURTHER ORDERED that interested persons may file written comments in response to the issues described in Subpart A on or before **September 29, 2023 at 5:00 p.m. Central Time**, in the manner prescribed above.

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IT IS FURTHER ORDERED that interested parties may file comments in response to the issues described in Subparts B and C on or before **November 17, 2023 at 5:00 p.m. Central Time**, in the manner prescribed above

IT IS FURTHER ORDERED that a hearing, covering the issues described in Subpart A above, will be held in legislative format on **October 24, 2023, at 1:30 p.m., Central Time**, in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508 and via WebEx.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 29th day of August, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Eric M. Hamler
[Signature]
Tim Schram
Kevin Stocker

[Signature]
Chair

ATTEST:

Thomas W. Golden
Executive Director