

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) Progression Order No. 3
own Motion, to consider)
appropriate modifications to the)
high-cost distribution and) ORDER RELEASING PROPOSAL
reporting mechanisms in its) AND SETTING PROCEDURAL
Universal Service Fund program in) SCHEDULE
light of federal and state)
infrastructure grants.) Entered: July 9, 2024

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

Background

The Nebraska Public Service Commission ("Commission") initiated this proceeding, on its own motion, on August 29, 2023 ("August 29th Order"), to consider appropriate modifications to the Nebraska Universal Service Fund ("NUSF") high-cost distribution mechanism and associated reporting requirements.1 The Commission's August 29th Order identified certain issues as those which needed to be determined for the distribution for high-cost support in the 2024 calendar year. On November 28, 2023, the Commission issued its Findings and Conclusions and commenced a challenge process for determining eligible areas for support in calendar year 2024.2

The Hearing Officer further bifurcated the issues for comment in an Order entered on October 12, 2023. Comments on the issues described in Section II.B, and on the issues described in 1,2 and 6 of Subpart II.C of the August 29th Order were filed on November 17, 2023, by Charter FiberLink-Nebraska, LLC and Time Warner Cable Information Services (Nebraska)LLC ("Charter"), CTIA, Cox Nebraska Telcom, LLC ("Cox"), the Nebraska Rural Independent Companies

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

2 In the Matter of the Nebraska Public Service Commission, on its own Motion, to consider appropriate modifications to the high-cost distribution and reporting mechanisms in its Universal Service Fund program in light of federal and state infrastructure grants, Application No. NUSF-139, Progression Order No. 1, FINDINGS AND CONCLUSIONS ORDER AND ORDER COMMENCING CHALLENGE PROCESS (November 28, 2023) ("November 28th Order").

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-139

Page 2

("RIC"), the Rural Telecommunications Coalition of Nebraska ("RTCN"), the Nebraska Rural Broadband Alliance ("NRBA"), and Qwest Corporation d/b/a CenturyLink QC ("CenturyLink"). Comments on the issues described in Subpart II.C 3,4,5 and 7 were filed on December 22, 2023 by Charter, the NRBA, RIC, RTCN, CenturyLink and Windstream Nebraska, Inc. ("Windstream").

On January 16, 2024, a procedural conference was held in the Commission Hearing Room and via WebEx. Subsequently, the Hearing Officer issued a procedural order which asked parties to identify priority issues for a Commission workshop and hearing. Priority issues were filed by Charter, CTIA, NRBA, RIC, RTCN, and Windstream on February 2, 2024. The Commission entered an order on February 13, 2024 determining the relevant issues for the public workshop and the hearing.

The Commission held a public workshop on March 6, 2024 in the Commission Hearing Room, Lincoln, Nebraska and via WebEx. There, the Department Director and the interested parties had the opportunity to discuss initial positions relative to the priority issues identified by the Commission.

The Commission held a public hearing on March 20, 2024, in Lincoln, Nebraska, and via WebEx.

On May 30, 2024, the Commission held a second public workshop in the Commission Hearing Room, Lincoln, Nebraska and via WebEx. The issues discussed were set forth in the Commission's April 19, 2024 Order scheduling the second workshop. At the workshop, counsel for the RIC members presented a proposal which, in large part, would have the Commission retain the current distribution mechanism for 2025 while further reform measures are considered. On June 14, 2024, counsel for NRBA filed post workshop comments which included a request for a workshop or planning conference to discuss the timing of a transitional mechanism. On June 25, 2024, Windstream Nebraska, Inc. filed post workshop comments recommending, among other things, that the Commission continue to hold workshops to discuss relevant topics in this proceeding. The Commission appreciates the input provided by these parties and does not intend to foreclose any substantive proposals related to the 2025 transitional mechanism or long-term reform. Parties may continue to advocate support for RIC's, NRBA's and Windstream's proposals in the alternative to the Commission staff's proposal. However, in consideration of the need to make some adjustments to the high-cost distribution model so as to not disrupt the work of the Broadband Office in administering the BEAD program, and to

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-139

Page 3

provide adequate time for a hearing and order on the substance of those adjustments, the Commission finds that a proposal should be released for comment, and a procedural schedule for determining adjustments for 2025 should be adopted.

Staff Proposal and Procedural Schedule

The Commission hereby releases a Staff Proposal with respect to high-cost support which is attached to this Order as "Attachment A". Many of the topics included in the staff proposal were discussed on prior occasions at the first and second public workshop. This proposal should be considered transitional in nature, and while many aspects of the proposal may be carried forward to a more permanent mechanism, it is intended to be used initially for only the purposes of high-cost support allocation for the 2025 calendar year. Several issues have been raised in the NUSF-139 docket that warrant further consideration and are not likely to be resolved prior to the 2025 funding year. This proposal is not intended to preclude further consideration of high-cost reform.

For illustrative purposes only, Commission staff has prepared a breakdown of location counts and support base amounts for both the locations that remain unserved and the locations that are served only by the ILEC. This illustrative breakdown is attached to this Order as "Attachment B". This information was derived from publicly available Broadband Data Collection information, December 2023 Broadband Serviceable Location fabric data, and the State Broadband Cost Model (SBCM) - see Attachment B for additional details. Attachment B is not intended to be relied upon as an indication of proposed high-cost support for 2025 - substantive changes are likely to occur once updated deployment data, cost model information, and other data sources are incorporated, federal support received is imputed, and earnings tests are applied. It is intended only as an initial look at the support base for ILECs given the framework proposed herein.

In order to create a record on the issues discussed and with respect to the positions of the interested parties, the Commission finds the procedural schedule set forth below should be adopted.

Event:	Deadline:
Pre-filed Direct Testimony and Exhibits supporting Direct Testimony	August 6, 2024

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-139

Page 4

Pre-filed Rebuttal Testimony and Exhibits supporting Rebuttal Testimony	August 20, 2024
---	-----------------

A hearing in this matter will be set for **Thursday, August 29, 2024, at 10:00 a.m., Central Time**, in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508 and via WebEx. Proposed hearing exhibits supporting direct and rebuttal testimony must be filed with the testimony.

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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Commission staff proposal attached to this Order as "Attachment A" is hereby released for public input.

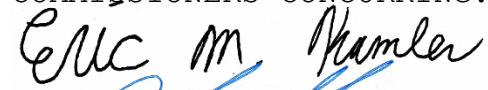


IT IS FURTHER ORDERED that the Procedural Schedule set forth herein be, and is hereby, adopted.


IT IS FURTHER ORDERED that a Hearing will be held on **August 29, 2024 at 10:00 a.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 9th day of July, 2024.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chair

ATTEST:


Executive Director

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-139

Page 5

"ATTACHMENT A"

1. The Commission Staff proposes to continue providing support to recipients that are Eligible Telecommunications Carriers and serving high cost locations that are 100/20 Mbps (down/up) capable. This would include carriers that are categorized under the regulatory labels "Price Cap" and "Rate-of-Return." For 2025, eligible locations would include only those within their Incumbent Local Exchange areas that meet the required speed capability. The Commission Staff would continue to evaluate mechanisms for supporting served locations that are outside of an ILEC area, but since issues of Carrier of Last Resort (COLR) obligations and porting of support have not yet been resolved, the Commission Staff believes that it is premature to include these locations in determinations of support for 2025.
2. The Commission Staff proposes to utilize the existing definition of high cost, where areas are considered high cost only if they are outside of cities, villages, and unincorporated areas, and that have less than 20 households and a density less than 42 households per square mile. These determinations will continue to be made on a census block basis; however, they would be updated utilizing 2020 US Census Bureau data.
3. The Commission Staff proposes to utilize location-specific cost modeling data developed through a contractual arrangement with CostQuest Associates, LLC.
 - a. This cost modeling would utilize the FCC's location fabric as the basis for determining where broadband serviceable locations exist.
 - b. CostQuest will use the location fabric set to be released June 30 as the basis for the cost model information that the Commission will license. To determine where 100/20 service exists, the Commission would utilize the most recently available version of the Broadband Data Collection, or BDC, information made publicly available. This information is typically released biennially.
4. The Commission Staff proposes that modeled cost for each 100/20 Mbps capable location that is not competitively served

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-139

Page 6

by a wireline competitor would be utilized to determine each company's support base. Modeled cost would consist of both the CapEx and OpEx portions of modeled support. A funding threshold would be utilized to account for estimated revenues that a carrier could reasonably obtain from end-users. The Commission proposes utilizing the \$63.69 threshold that the FCC utilizes in the Enhanced A-CAM mechanism, where that threshold is based on a benchmark rate of \$90.98, taken from a 2023 Urban Rate Survey, and multiplied by a 70% take rate.³ This funding threshold would be applied to all 100/20 Mbps capable locations for all carriers.

5. The Commission Staff would continue to utilize the NUSF EARN Form process to determine earnings caps for Rate-of-Return carriers. The Commission Staff believes this is still a valuable tool to assess company financial information and establish a cap on NUSF returns.
6. For Price Cap carriers, because NUSF EARN forms are not audited, the Commission Staff proposes to utilize a rate comparability metric to ensure that customers are being charged comparable rates in urban and rural areas, and that rates are reasonable. The Commission Staff proposes to use a rate benchmark of (\$92.24), where rates charged for voice capable broadband service at 100/20 Mbps must fall under that benchmark.⁴ Price Cap carriers that cannot certify their rates statewide fall under that benchmark will not be eligible for NUSF support.
7. In order to account for federal support received, the Commission Staff proposes the Commission utilize the following:
 - a. For carriers that have elected Enhanced A-CAM, the support amounts received for 100/20 Mbps capable locations would be removed from the modeled cost, and any remaining costs would make up the support base;
 - b. Similarly, for carriers that remained on the prior A-CAM mechanism, remaining costs above the A-CAM amount

³ See <https://docs.fcc.gov/public/attachments/FCC-23-60A1.pdf> at Para. 70.

⁴ See <https://docs.fcc.gov/public/attachments/DA-23-1172A1.pdf>.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-139

Page 7

- received would go towards the company's support base;
and
- c. For companies that have remained on the "Legacy" support mechanism, federal support received for broadband loop support, High Cost Loop Support, and Consumer Broadband Only Loop support would be aggregated, and applied to the modeled costs identified for the locations that a carrier serves. Any remaining costs would be applied towards that carrier's support base. Certain support types, such as Intercarrier Compensation, may be excluded.
 - d. For Price Cap carriers, the modeled cost of 100/20 locations would be applied towards their support base, with any support received through CAF II Reverse Auction, RDOF, or other FCC mechanisms received for those locations removed.
 - e. All Federal support imputation will use previous year disbursements.
8. The Commission Staff anticipates that support redistribution may continue to be necessary, where support that exceeds a carrier's earnings cap is redistributed to the remaining carriers that have not yet hit their cap. This redistribution process will be continued, and any support redistribution will be made among all remaining "underearning" carriers and price cap carriers that have satisfied the rate comparability test, until available support is exhausted, or until all earnings caps have been reached.
9. The Commission Staff proposes an additional "glide path" option to ensure that changes in support are not so drastic as to induce hardship due to the new mechanism. Under this proposal, carriers would either receive the allocated support amount as outlined above, or an amount that equates to 75% of their 2023 ongoing support amount, whichever is higher. The 75% support level would continue to be subject to earnings requirements, whereby the carrier would not receive more than is allowable according to their earnings, regardless of whether they have reached the 75% threshold.
10. While support allocated to companies is considered "ongoing" support as identified in Neb. Rev. Stat. § 86-324.02(2), the support is intended to fulfill the overall obligations of

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-139

Page 8

high cost support, where the recipient of support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁵ Therefore, support received can be used to advance any deployment obligations that might exist. Plainly stated, support can be used to augment existing projects and deployment obligations at the recipient's discretion.

⁵ Neb. Rev. Stat. § 86-324 (1).

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-139

Page 9

Attachment B				
Companies	Count of locations		Sum of annual cost base MIN((monthly OpEx + monthly CapEx - \$63.69)*12,0)	
	Unserved at 100/20	Served by incumbent only to 100/20	Unserved at 100/20	Served by incumbent only to 100/20
ATC Communications	446	718	\$1,399,966	\$2,198,361
BWTelecom	18	1,037	\$167,155	\$3,854,660
Cambridge Telephone Company	147	403	\$236,458	\$1,216,601
Lumen	32,676	1,205	\$49,450,899	\$1,823,615
Consolidated	1,763	1,941	\$7,758,879	\$9,363,795
Cozad Telephone Company	122	510	\$235,741	\$609,228
Dalton/Elsie	901	151	\$4,544,105	\$512,200
Diller Telephone Company		637		\$1,332,550
Fastwyre Broadband	3,925	77	\$5,431,458	\$22,601
Frontier	9,851		\$13,725,105	
Glenwood	1	2,979	\$632	\$5,275,078
Great Plains	11,536	3,827	\$27,787,612	\$8,348,365
Hamilton Telephone Company	197	1,732	\$349,730	\$1,913,140
Hartington Telecommunications Co Inc	1	529	\$646	\$667,280
Hemingford Cooperative Telephone Company		458		\$1,874,341
Hershey Cooperative Telephone Company	14	429	\$34,259	\$897,531
K & M Telephone Company Inc	471	19	\$1,688,512	\$43,870
Mainstay Communications		487		\$657,129
Nebraska Central Telephone Company	813	3,802	\$1,839,830	\$7,513,781
Northeast Nebraska Telephone Company	1	5,643	\$37	\$9,612,191
Pierce Telephone Co Inc	525	427	\$785,238	\$532,289
Plainview Telephone Company		498		\$658,868
Southeast Nebraska Communications Inc	29	1,115	\$79,263	\$1,646,897
Stanton Telecom Inc		496		\$825,600
Three River Telco		1,159		\$4,511,074
Westel Systems	1	772	\$809	\$1,276,287
Windstream Nebraska, Inc.	33,255	4,068	\$34,047,433	\$2,151,910
Grand Total	96,693	35,119	\$149,563,767	\$69,339,241

Notes:

- Locations are based on December 2023 Broadband Serviceable Location Fabric
- Only locations located within "high cost" areas and that have a modelled SBCM cost are included - high cost areas were determined using pre-existing definitions, but updated to 2020 Census blocks
- Unserved means locations not able to receive 100/20 Mbps service; Served means locations are able to receive 100/20 Mbps service
- Table does not include locations that have a competitor that provides 100/20 wireline service
- Data is summarized by holding company
- Cost Base is determined by: 1) disaggregating SBCM modelled costs to location level, 2) Use monthly modelled CapEx and OpEx and subtract \$63.69. If result is negative, \$0 is used; 3) Remaining Support base is annualized
- Cost Base **DOES NOT** reflect: 1) Any imputation of federal support; 2) Earnings tests; 3) Support redistribution; 4) Porting of Support