BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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. 4

COMMENTS OF THE NEBRASKA RURAL BROADBAND ALLIANCE

The Nebraska Rural Broadband Association ("NRBA"),[1] through its attorneys of record, respectfully submits these *Comments* ("Comments") in response to the *Order Issuing Findings and Conclusions, Seeking Further Comment, and Setting Hearing* ("Order") entered by the Public Service Commission ("Commission") on November 6, 2024, in the above proceeding. The Order consists largely of proposals made by Commission Staff. The NRBA will restate each Staff proposal, then will comment on the proposal and issues related to it.

Staff Proposal No. 1

The Commission proposes to continue to provide ongoing support to incumbent local exchange carriers designated as eligible telecommunications carriers and certified for the receipt of high-cost support, in high-cost areas where they provide wireline service to a location at speeds of at least 100/20 Mbps and where the location is not served by a wireline competitor providing service at speeds of 100/20 Mbps.

The NRBA supports this Staff Proposal. It complies with the current requirements of state law.[2]

Staff Proposal No. 2

The Commission proposes to continue to provide ongoing support to incumbent local exchange carriers designated as eligible

---

[1] For purposes of this proceeding, the NRBA consists of the following carriers: Cambridge Telephone Company; Glenwood Telephone Membership Corporation; Glenwood Network Services; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC dba Stealth Communications; Mobius Communications; Pinpoint Communications; Plainview Telephone Company; Stanton Telecom, Inc.; Town & Country Technologies; WesTel Systems, dba Hooper Telephone Company.

[2] NEB. REV. STAT. § 86-324.02.

> **telecommunications carriers and certified for the receipt of high cost support, for high-cost areas where they provide service to the location at speeds of 25/3 Mbps provided that such location is subject to a federally enforceable commitment to provide service at speeds of at least 100/20 Mbps, and where the location is not served by a wireline competitor providing service at speeds of 25/3 Mbps.**

The NRBA agrees that the Commission must continue to provide ongoing support for locations that are (i) currently receiving 25/3 services, and (ii) are subject to, and in compliance with, an enforceable commitment under a federal broadband funding program, such as E-ACAM. All of this must be done consistently with NEB. REV. STAT. § 86-324.02(2)(a).

The NRBA, however, urges the Commission to reduce the amount of ongoing support to reflect the facts that (i) the service is substantially less, and (ii) ratepayers are supporting obsolete infrastructure that is being phased out under the federally enforceable commitment. Support should be reduced until those 25/3 carriers complete the commitment to complete 100/20 deployment.

Nothing in state statute requires that ongoing support to locations receiving 25/3 service under an enforceable commitment be at the same level of support as locations already receiving 100/20 service. The language of the statute speaks only about support. The words used are: "the commission shall continue to provide ongoing high-cost support from the fund so long as…" NEB. REV. STAT. § 86-324.02(2)(a)

Finally, it would be inequitable to provide the same level of ongoing support to carriers that have not robustly deployed fiber infrastructure as to carriers that have taken on debt and investment risks to deploy robust fiber to the premises. These carriers built out as they had a carrier of last resort ("COLR") duty to do with the associated commitment by the Commission to maintain stability in funding. The Commission went through years of reform to correct an imbalanced system of what was supposed to be complementary state and federal funding. The imbalance was created when ACAM was adopted at the federal level. The Commission, under the leadership of Frank Landis, corrected the imbalance. The Commission's bold action literally saved some carriers from the brink of bankruptcy caused by the federal changes. The final distribution numbers reflected in Attachment A demonstrate a nearly complete reversal of the reform action Chairman Landis led. Poor past broadband deployment performance should not be rewarded at the expense of support for carriers that deployed fiber robustly years ago and have stewarded support to operate and maintain those networks.

Staff Proposal No. 3

> **The basis for determining relative costs will be the unmodified CostQuest model output, as described in the workshop held on October 23, 2024.**

The NRBA does not object to using the 2024 SBCM to determine relative costs, the support base, and distributions for the 2025 Transition Year, provided the Commission adopts a glide path or safe harbor similar to what it has recommended in Staff Proposal No. 10 and continues the EARN Form requirement. These measures are critical to ensuring that the final distributions address the fact that the SBCM does not output accurate cost estimates for many Nebraska Eligible Telecommunications Carriers ("NETCs").[3] Earlier this year, the Commission entered into a contractual relationship with CostQuest Associates, LLC, ("CostQuest") to update the State Broadband Cost Model ("SBCM"). Since then, CostQuest updated

[3] The SBCM is based on the Alternative Connect America Model, the inaccuracies of which have been demonstrated. *See* Vantage Point Solutions *Ex Parte*, WC Docket No. 10-90 (filed Jan. 5, 2016) (https://www.fcc.gov/ecfs/document/60001372111/1); and Vantage Point Solutions *Ex Parte*, WC Docket No. 10-90 (filed July 13, 2015) (https://www.fcc.gov/ecfs/document/60001092767/1).

various inputs for the 2024 SBCM, ran computations, and produced outputs ("2024 SBCM"). To date, few details about inputs have been provided. The public has been denied access to the model to scrutinize the accuracy of computations. This lack of transparency itself makes the outputs suspect, especially given that support involves tens of millions of dollars of public funds.

The SBCM is based on models the Federal Communications Commission ("FCC") offered to all NETCs.[4] Each NETC had a voluntary opportunity to accept the model for purposes of future federal support. The decisions were optional because the FCC recognized model results are inaccurate for many carriers.[5] Until the inaccuracies in the 2024 SBCM are corrected through a transparent investigation, it will be critical to use a safe harbor (e.g., permanent glide path, baseline, etc.) and accountability measures, such as the EARN Form, to ensure that carriers receive the support needed to sustain fiber-based 100/20 service to high-cost customers.[6] The Vantage Point analysis details the nature and extent of the SBCM inaccuracies and provides the rationale for such measures.

<u>Staff Proposal No. 4</u>

> **In 2025, eligible locations would include only those within their Incumbent Local Exchange areas that meet the required speed capability. However, the Commission would plan to evaluate**

---

[4] *I.e.*, A-CAM and E-ACAM.

[5] *See* CostQuest Responses to NRBA following the October 24, 2024, Workshop, at 3 ("CostQuest is unable to say with certainty without knowing what the 'actual provider cost' is. That said, the purpose of the model is to develop the optimal forward-looking cost of an efficient provider. The model is not meant to reflect the specific or incurred cost of any particular provider. With this modeling, it is reasonable to expect some level of derivation from actual provider cost, however those costs may be measured."). *See also* State of Nebraska Cost Modeling, CostQuest Associates, August 16, 2024, at 4. ("For these reasons, it is unlikely that the values highlighted will perfectly reflect all potential broadband buildouts in all situations. However, the cost presented provides a reasonable basis by which to compare the relative cost of building to one location versus another. It will also be useful to appropriately identify areas that are more expensive than other areas.").

[6] The NRBA is concerned with the lack of transparency both with regard to model inputs and computations. This lack of transparency is inconsistent with past Commission practices and may be contrary to public records laws.

mechanisms for supporting served locations that are outside of an ILEC area once the framework is in place for transitioning Carrier of Last Resort ("COLR") obligations and porting of NUSF support. High-cost support budgeted but not distributed through the 2025 transitional high-cost mechanism may be directed to such locations during 2025, if an acceptable framework has been adopted.

The NRBA is encouraged by Staff's statement that it may use "High-cost support budgeted but not distributed through the 2025 transitional high-cost mechanism" for redirection to locations served by a competitive local exchange carrier ("CLEC"). Support should be redirected as swiftly as possible.

Even if the 2024 SBCM is flawed, as we have argued and shown, the reallocation process should be simple. Redirection of support should be done based on the modeled costs of serving the locations now served by a CLEC. The level of modeled support should not depend on whether the service provider is the Incumbent Local Exchange Carrier ("ILEC") or CLEC. The allocation on a location basis should be readily calculable based on the 2024 SBCM. The question of what carrier receives support will be simple as well. So long as the CLEC is a NETC that has accepted COLR obligations and otherwise complied with state and federal law, the allocated support should be redirected to that CLEC through a streamlined process.

The Commission should act expeditiously to redirect support to CLECs now serving locations in traditional ILEC territories. No rigid framework is needed. Current law establishes the necessary framework.[7] The Rural Communications Sustainability Act ("RCSA") requires important issues like COLR and federal support to be considered in the transition from ILEC to CLEC.[8] The RCSA requires coordination with the FCC.[9] The Nebraska Commission must be prepared to act

---

[7] *See* the Rural Communications Sustainability Act, NEB. REV. STAT. §§ 86-1501 to 86-1507.
[8] *See* NEB. REV. STAT. §§ 86-1505(1) and (2).
[9] *See* NEB. REV. STAT. § 86-1505(3).

swiftly, especially as larger areas change hands under the BEAD program in the near future. The RCSA gives the Commission sizeable authority and discretion.

The Commission only recently has made support adjustments for Boundary Changes it approved long ago. The Commission has finally redirected ongoing support to the competitive carriers that long ago (for all intents and purposes) took on the obligation to serve locations in ILEC territories. Progress has been made, but it should not take as long as it has – whether the transition from ILEC to CLEC is accomplished by boundary change, rural-based plan, reverse auction, BEAD grant, or a Bridge award.

The allocation methodology and process must be predictable in order to encourage robust and informed competition for deployment grants. Providers need a streamlined process that allows for the facts and circumstances of each case to be considered with a key objective being to minimize disputes and facilitate seamless transitions through what should essentially be business transactions.

With the location-based costs approach embedded in the SBCM, it is feasible to identify census block IDs that are served by CLECs in traditional Price Cap territories. As it stands in the 2024 SBCM, model funds for these areas are marked as Unserved by respective ILEC Price Cap carriers and thus would be reallocated by the Commission to other eligible locations.

The NRBA believes that NUSF support associated with these CLEC-served areas should not be combined with support for other unserved locations of ILEC Price Cap carriers. The support should be redirected to serving CLECs in 2025. Broadband speeds for these served areas have already been reported by such CLECs to the FCC and are also readily verifiable. These areas are already served and are not eligible for any future broadband deployment programs (BEAD, Bridge, etc.). Thus, there is no reason for not allocating funds to such CLECs in 2025. The Commission Staff could put a burden of identifying such locations on CLECs to demonstrate service and commit to COLR obligations and open a very short window for the CLEC to satisfy that burden. The Commission should oversee the transition of support and COLR obligations. Such actions should be taken on a case-by-case basis so that the specific facts and circumstances of each transition may be considered and the transition may occur in a streamlined manner.

Staff Proposal No. 5

> **The data inputs would include the following: CostQuest Cost Model data (updated "2024 SBCM" data); Broadband Data Collection ("BDC") wireline availability data; the Federal Communications Commission's ("FCC's") published Enhanced A-CAM location list; the FCC's published A-CAM area definition; federal universal service fund disbursements for the following programs: Enhanced A-CAM support, A-CAM support, Broadband Loop Support ("CAF-BLS"), and High Cost Loop Support ("HCLS"); the high-cost area definition shapefile; and the exchange boundary data provided to CostQuest in June of 2024.**

The NRBA takes no issue with this Staff proposal, but maintains that access to all SBCM (or whatever model is used) input data and software to analyze the data is the only means of ensuring a correct model. Transparency is paramount for a model responsible for allocating tens of millions of public funds to private providers every year, particularly when the model is not optional, as it was on the federal level.

Staff Proposal No. 6

> **The cost base of an eligible location will consist of the sum of capital and ongoing expenditures ("CapEx" and "OpEx", respectively) less the funding threshold of $63.69 and less imputed federal support.**

Based on the evidence presently on hand, the NRBA does not object to this proposal for purposes of the Transitionary Period.

Staff Proposal No. 7

> **The support base for each eligible carrier will consist of two categories of locations. First, all 100/20 Mbps capable locations without a wireline competitive 100/20 Mbps service to the location will be eligible for support. Second, all 25/3 Mbps capable locations subject to a federally enforceable commitment without wireline competitive 25/3 Mbps service will continue to be eligible for support. The following programs will be treated as federally enforceable commitments: RDOF, USDA Reconnect, and Enhanced A-CAM. With respect to locations which are served at 25/3 Mbps and subject to a federally enforceable commitment, the carrier must demonstrate to the Commission that it is in compliance with the deployment obligation of the federally enforceable commitment. Such demonstration will include an affidavit of the carrier, as well as data to substantiate build-out milestones are being met.**

As we have stated above in our comments on Staff Proposal No. 2, ongoing support must continue for 100/20-capable infrastructure, but the amount of ongoing support should be reduced for services of at least 25/3 but less than 100/20 that are subject to an enforceable commitment.

Further, the Commission should require the NETC to periodically demonstrate it is in compliance with the deployment obligations of the federally enforceable commitment. Demonstration should include an Affidavit and data to substantiate build-out milestones are being met to the satisfaction of the Commission.

Staff Proposal No. 8

> **The cost base would consist of both the CapEx and OpEx portions of modeled support. After determining the monthly cost for the location and deducting the revenue benchmark of $63.69, the Commission proposes to assign and impute federal support received during the prior calendar year.**

For purposes of the Transition Year, and without waiving its right to comment further on the 2024 SBCM as inputs and computations are made publicly available, the NRBA does not object to imputation of federal support. Subject to these same reservations, the NRBA agrees with the imputation of those particular types of federal support currently stated in Item G of Proposal No. 8 (i.e., HCLS, CAF-BLS, A-CAM, and Enhanced A-CAM).

The NRBA also agrees with the note included in the General Support Imputation supporting document that states, "New support types may be added in the future." The NRBA agrees that future support mechanisms, such as BEAD, should be taken into consideration in a similar manner as those listed above.

The NRBA, however, would like to point out the inconsistencies of the support basis for some of those federal support mechanisms versus the recently updated SBCM and how this could affect the imputation of federal support in the NUSF process in future years. While A-CAM and Enhanced A-CAM models were based on older cost data and those costs stay constant within the federal support distributions per each associated funding mechanism, providers receiving federal support via CAF-BLS/HCLS are based on annually updated information. The annual updates mean that investment costs and expenses are updated based on any inflationary circumstances occurring each year. Therefore, if the SBCM is not properly updated each year or if the cost bases are not comparable, it could cause the federal support imputation to hit those providers harder than providers receiving other types of support that are fixed amounts. This issue points out another reason that the NUSF process should include Safe Harbor support calculations and other accountability measures, such as the EARN Form, now and going forward.

Staff Proposal No. 9

> **For 2025, the Commission would not conduct its own challenge process but would rely on the FCC's BDC data. The Commission would use the most recent BDC data available and would publish specific data sets used in its support determination. The dataset used to develop the proposal contained herein utilizes BDC availability data as of December 31, 2023. The Commission would only consider wireline BDC service records in determining where service exists.**

The NRBA recommends that the Commission allow carriers to challenge the BDC at the state level.

<u>Staff Proposal No. 10</u>

> **The support base will consist of the eligible cost base aggregated to the company level. The upper limit (cap) of ongoing support for rate-of-return carriers will be the lesser of the support base and the eligible earnings. For price cap carriers, the upper limit will equal the support base. The initial support allocation will be made based on the proportion of the carrier's support base to the total support base, not to exceed the upper limit. Unallocated support will be redistributed proportionately until all of the budget is distributed, or until the upper limit of all the carriers' support eligibility is reached. Carriers would, at a minimum, receive glide path support equal to 75 percent of the 2024 ongoing NUSF support. The upper limit will not apply to the glide path support – i.e. – glide path support will not be limited by eligible earnings.**

For purposes of the Transition Period, the NRBA does not object to the Commission's proposal to aggregate eligible cost base at the company level for purposes of determining support, provided that there is adoption of a glide path or safe harbor and eligible earnings mechanism, like that proposed by staff.

The NRBA suggests that a safe harbor or baseline equal to full 2024 ongoing support levels to ensure that carriers that have risked private investments and taken on substantial debt to deploy fiber broadband infrastructure receive the support needed to sustainably operate and maintain the infrastructure.

More specifically, the NRBA recommends that NETCs providing access to 100/20 or greater service for at least 90% or more of their high-cost locations should receive a minimum of 100% of their 2024 ongoing support adjusted upward for inflation in 2025.

As a policy matter, these 90%+ fiber-to-the-premises carriers have already expended significant debt and equity capital over many prior years to achieve greater than 90% deployment of 100/20-capable infrastructure and should not be penalized by inaccurate model results.

Under the Staff's proposal, as it stands, carriers meeting the above criteria would see their 2025 NUSF distributions cumulatively decrease over $1 million. This diversion is in stark contrast to carriers that have significantly lower levels of 100/20 service. Under the Staff's proposal, these carriers with poor past deployment records would receive an increase of several million dollars in 2025 NUSF distributions. This unjust and unfair result is due in part to the fact that the Staff has proposed providing ongoing support for service to 25/3 locations as if they were 100/20 locations. Additionally, such carriers are receiving support for the total plant investment cost for locations funded using government grants that do not need to be repaid.

Moreover, since the NPSC first adopted a model back in 2005, model results have never been the sole determinant of an annual NUSF distribution allocation. NUSF EARN Form findings have continuously been used to modify model results since 2005. By adopting an eligible earnings mechanism, as well as a glide path, safe harbor, or baseline, the Commission would be following long-standing NPSC precedent that model results alone do not always accurately reflect actual NETC financial data and model results alone cannot reflect commission priorities or provide sufficient buildout incentives or produce equitable results when all factors are considered.

<u>Staff Proposal No. 11</u>

> **The Commission proposes to continue to utilize the NUSF EARN Form process to determine earnings caps for rate-of-return carriers in 2025 while it further considers whether to eliminate or replace the NUSF-EARN Form mechanism. However, the Commission will use a one-year period where such a determination would benefit the carrier.**

The NRBA supports the Staff's proposal and is committed to collaborating to determine the best means of ensuring accountability after the Transition year.

Staff Proposal No. 12

Price Cap Accountability.

The NRBA has no comment on this proposal or the underlying issues at this time.

Staff Proposal No. 13

> **The distribution model will be revised during the year to account for: NUSF EARN Form updates, USAC disbursement updates, revisions to the FCC's list of Enhanced A-CAM supported locations, and BDC service availability data updates. The model and resulting distribution amounts may also be revised to include corrections if any methodological issues are discovered.**

The NRBA has no objection to this proposal.

Staff Proposal No. 14

> **Attachment "A" to this Order incorporates the foregoing proposal elements and is a reflection of an initial version of the high-cost distribution for 2025. The amounts reflected therein should not be relied upon as a final version of the distribution model. The Commission plans to incorporate the most up to date BDC data for the actual distribution of support in 2025. Changes or corrections may also be made after internal reviews and consideration of the comments and hearing testimony.**

The Commission does not specifically seek comment on this proposal. At this point, the NRBA will reserve further comment beyond what it has said above.

Staff Proposal No. 15

> **During the transitional year, the Commission plans to solicit further comment on the process and timeline for making adjustments to account for inflation, BDC fabric updates, as well as boundary changes approved after the June 2024 update provided to CostQuest.**

The NRBA supports this proposal.

DATED: November 25, 2024

NEBRASKA RURAL BROADBAND ASSOCIATION

Cambridge Telephone Company; Glenwood Telephone Membership Corporation; Glenwood Network Services; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC dba Stealth Communications; Mobius Communications; Pinpoint Communications; Plainview Telephone Company; Stanton Telecom, Inc.; Town & Country Technologies; WesTel Systems, dba Hooper Telephone Company.

By: REMBOLT LUDTKE LLP
3 Landmark Centre
1128 Lincoln Mall, Suite 300
Lincoln, NE 68508
(402) 475-5100

By: /s/ Andrew S. Pollock
Andrew S. Pollock (#19872)
Jeffrey Owusu-Ansah (#28033)
apollock@remboltlawfirm.com
jowusuansah@remboltlawfirm.com

CERTIFICATE OF SERVICE

The undersigned certifies that an original of the above ***Comments*** of the Nebraska Rural Broadband Association were filed with the Public Service Commission on November 25, 2024, and a copy was served via electronic mail, on the following:

Public Service Commission
psc.nusf@nebraska.gov
shana.knutson@nebraska.gov

Rural Telecommunications Coalition of Nebraska
rwesterhold@nowkaedwards.com

Charter Fiberlink - Nebraska, LLC and Time Warner Cable Information Services, LLC
kevin.saltzman@kutakrock.com

Cox Nebraska Telcom, LLC
deonnebruning@neb.rr.com

Windstream Nebraska, Inc.
nicole.winters@windstream.com

Nebraska Rural Independent Companies
pschudel@woodsaitken.com

CTIA
lbrooks@brookspanlaw.com

Lumen
KMcNamara@mcgrathnorth.com

/s/ Andrew S. Pollock__________
Andrew S. Pollock

4874-8195-0462, v. 3