

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-139  
Public Service Commission, on ) Progression Order No. 5  
its own Motion, to consider )  
appropriate modifications to ) FINDINGS AND CONCLUSIONS  
the high-cost distribution and ) AND ORDER AUTHORIZING  
reporting mechanisms in its ) PAYMENTS  
Universal Service Fund program )  
in light of federal and state )  
infrastructure grants. ) Entered: January 14, 2025

### APPEARANCES:

#### **For the Nebraska Rural Independent Companies**

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#### **For the Rural Telecommunications Coalition of Nebraska**

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#### **For the Nebraska Rural Broadband Alliance**

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#### **For the Commission**

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BY THE COMMISSION:

## **Background**

The Nebraska Public Service Commission ("Commission") initiated this proceeding, on its own motion, on August 29, 2023 ("August 29 Order"), to consider appropriate modifications to the Nebraska Universal Service Fund ("NUSF") high-cost distribution mechanism and associated reporting requirements.<sup>1</sup> The Commission's August 29 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.<sup>2</sup>

On March 20, 2024, the Commission held a hearing in Lincoln, Nebraska, and subsequently on July 9, 2024, entered an order issuing its findings regarding to two threshold issues. First, the Commission concluded that sustainability of broadband networks should be an explicit goal of the NUSF high-cost program.<sup>3</sup> Second, the Commission determined that in light of pending and anticipated infrastructure grants and broadband commitments made through other programs such as the Broadband Equity Access and Deployment ("BEAD"), Capital Projects Fund ("CPF"), the Nebraska Broadband Bridge ("NBBP"), and the Enhanced A-CAM, that it was appropriate to suspend Broadband Deployment Support ("BDS") for 2025.<sup>4</sup>

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<sup>1</sup> *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 29<sup>th</sup> Order").*

<sup>2</sup> *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 28<sup>th</sup> Order").*

<sup>3</sup> *See 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. 2, FINDINGS AND CONCLUSIONS (July 9, 2024) ("July 9<sup>th</sup> Findings and Conclusions Order") at 18.*

<sup>4</sup> *See July 9<sup>th</sup> Findings and Conclusions Order at 20.*

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Additionally, on July 9, 2024, the Commission entered an order releasing a Staff Proposal for the 2025 support year and releasing a procedural schedule.<sup>5</sup> The Commission requested pre-filed direct and rebuttal testimony to be filed by the interested parties and set a hearing date of August 29, 2024. The Commission Staff's Proposal was attached to the Commission's Order as "Attachment A". Pre-filed testimony was filed by Mr. Bachtiyer Kholmatov on behalf of the Nebraska Rural Broadband Alliance ("NRBA"), Mr. Dan Davis on behalf of the Nebraska Rural Independent Companies ("RIC"), Mr. Shaun Barkley on behalf of the Rural Telecommunications Coalition of Nebraska ("RTCN"), Mr. Pat McElroy, on behalf of Northeast Nebraska Telephone Company ("NNTC"), and Mr. Cullen Robbins, NUSF Director for the Commission. Pre-filed Rebuttal Testimony was filed by Mr. Kholmatov on behalf of NRBA, and Mr. Davis on behalf of RIC.

On August 29, 2024, the Commission held a hearing in the Commission Hearing Room in Lincoln, Nebraska. Subsequent to that hearing, the Commission held a public workshop on October 23, 2024, in the Commission Hearing Room in Lincoln, Nebraska. Following the workshop, the Commission issued an order on November 6, 2024 releasing a more specific proposal for comment and scheduling a hearing.<sup>6</sup> The Commission's proposal released in its November 6, 2024 Order is addressed herein.

Comments in response to the Commission's high-cost distribution proposal were filed by Charter FiberLink-Nebraska, LLC (Charter), NRBA, RIC, RTCN, and Windstream Nebraska, Inc ("Windstream"). A summary of the comments is set forth below.

## **Comments**

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<sup>5</sup> See *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. 3, Order Releasing Proposal and Setting Procedural Schedule (July 9, 2024) ("July 9 Proposal Order").

<sup>6</sup> *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, Order Issuing Findings and Conclusions, Seeking Further Comment, and Setting Hearing (November 6, 2024) ("November 6 Order").

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Charter emphasized the importance of undertaking a comprehensive approach that considers all sources of revenue from supported networks when making a determination of need.<sup>7</sup> Charter also recommended the Commission impute federal intercarrier compensation support received.<sup>8</sup> Finally, Charter urged the Commission to protect and steward NUSF surcharges so that distributions meet the need for services but do not provide additional unneeded funding.<sup>9</sup>

The NRBA supported the continuation of ongoing support to incumbent eligible telecommunications carriers ("ETCs") which provide service at speeds of 100/20 Mbps. However, the NRBA urged the Commission to reduce the level of ongoing support to ETCs providing service at 25/3 Mbps until those carriers can provide at speeds of 100/20 Mbps.<sup>10</sup> The NRBA did not object to using the 2024 SBCM to determine relative costs, the support base, and distributions in the 2025 Transition Year, provided the Commission adopts a glide path or safe harbor similar to what is recommended in bullet point 10 in the proposal.<sup>11</sup> The NRBA stated that until inaccuracies in the SBCM are corrected through a transparent investigation, it will be critical to use the safe harbor and accountability measures such as the NUSF EARN Form to ensure the carriers receive the support needed to sustain fiber-based service to high-cost customers.<sup>12</sup> The NRBA recommended the Commission act expeditiously to redirect support to competitive carriers now serving locations in traditional incumbent carrier territories.<sup>13</sup> The NRBA recommended the Commission require incumbent carriers with enforceable commitments to demonstrate compliance with deployment obligations of the federally enforceable commitments.<sup>14</sup> The NRBA recommended that ETCs providing service at speeds of 100/20 Mbps for at least 90 percent or more of their high-cost locations should receive a minimum of 100 percent of their 2024

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<sup>7</sup> Charter Comments at 1.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> NRBA Comments at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 8.

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ongoing support adjusted upward for inflation.<sup>15</sup> The NRBA supported the use of the NUSF EARN Form in the 2025 Transitional Year.<sup>16</sup>

RIC took a neutral position on retention of the NUSF-EARN Form for the 2025 Transitional Year, however, it is proceeding with its evaluation and analysis of a possible alternative to the NUSF EARN Form process for future years.<sup>17</sup> RIC reaffirmed its advocacy encouraging the Commission to open a rulemaking to establish procedural and substantive rules which would address portability of NUSF ongoing high-cost support and ensure that no Nebraska customer is left without carrier of last resort responsibilities.<sup>18</sup> RIC supported the Commission's proposal to utilize the most current version of the BDC data and recommended the Commission use the BDC data that was released to the public by the FCC on November 15, 2024.<sup>19</sup> RIC supported the adjustments proposed for boundary changes and for reverse auctions.<sup>20</sup>

RTCN generally supported the Commission's proposal to impute federal support received during the prior calendar year. However, RTCN suggested an adjustment be made for companies receiving 2023 support during the 2024 calendar year.<sup>21</sup> RTCN did not object to the Commission's proposal to retain the NUSF EARN Form in 2025, however, RTCN proposed the Commission discontinue the use of the NUSF EARN Form in future years.<sup>22</sup> RTCN stated that completing the NUSF EARN Form is particularly burdensome and costly for companies that have elected federal A-CAM or Enhanced A-CAM support because these companies are no longer required to complete jurisdictional cost studies at the federal level.<sup>23</sup> The RTCN supported the use of the safe harbor to offset or mitigate inaccuracies of the cost model.<sup>24</sup>

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<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Id.* at 12.

<sup>17</sup> RIC Comments at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *See id.*

<sup>21</sup> RTCN Comments at 2.

<sup>22</sup> *See id.*

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 4.

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Windstream appreciated the updates made to the cost model and recommended the Commission continue to review the CostQuest data for further updates and make adjustments to the model to reflect the changes.<sup>25</sup> Windstream recommended the Commission use the FCC's June 2024 BDC data to capture the most recent changes.<sup>26</sup> Windstream pointed out a minor discrepancy with the FCC's Urban Rate Survey benchmark and recommended the Commission utilize the benchmark of \$92.26.<sup>27</sup>

On December 5, 2024, the Commission held a hearing in the Commission Hearing Room, in Lincoln, Nebraska and via WebEx. Appearances entered at the December 5, 2024 are reflected above. Exhibits 1-11 were offered and received into the record, which included the comments filed on November 25, 2024.

### T E S T I M O N Y

Mr. Cullen Robbins, the Director of the Communications and NUSF Department, testified in support of the Commission's proposal. Mr. Robbins emphasized that the goal in releasing the proposal was to put in place a transitional support mechanism for the 2025 calendar year.<sup>28</sup> He stated that there are several issues that will need to be resolved to establish a long-term framework, the Commission's proposal would establish a distribution allocation for 2025.<sup>29</sup> Mr. Robbins then described the details of the Commission's proposal which included utilizing the 2024 CostQuest model output as the basis for determining relative costs. He stated that support to incumbent ETCs would be for high-cost areas for locations where service is available at 100/20 Mbps.<sup>30</sup> The Commission would continue to provide ongoing support to locations served at 25/3 Mbps only where there is a federally enforceable commitment as required by statute.<sup>31</sup> Mr. Robbins stated the proposed high-cost allocation for locations subject to an

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<sup>25</sup> Windstream Comments at 1.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> *See id.*

<sup>28</sup> Hearing Transcript (TR) at 9.

<sup>29</sup> *Id.* at 10.

<sup>30</sup> *See id.* at 10-12.

<sup>31</sup> *See id.* at 10.

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enforceable commitment was not significant in the overall high-cost allocation, and amounted to approximately \$110,000 in support.<sup>32</sup>

In response to the filed comments, Mr. Robbins clarified that he recommended the Commission use the FCC's Urban Rate Survey Benchmark to determine reasonable affordability.<sup>33</sup> Mr. Robbins stated that conducting a challenge process for the 2025 support allocation, in addition to using the most recent FCC BDC challenge process, would require additional resources, time, and additional personnel.<sup>34</sup> He further stated that relying on the FCC's BDC challenge process would reinforce the importance of carriers providing correct and current information to the FCC.<sup>35</sup> Utilizing the Commission's own challenge process at this time may also add to potential confusion with several challenge processes already in place through other grant programs.<sup>36</sup>

Ms. JoAnn Hohrman, a consultant with Vantage Point Solutions, testified for the NRBA. Ms. Hohrman testified that CostQuest's model output may differ significantly from actual provider costs.<sup>37</sup> She stated that her understanding is the CostQuest model was not meant to reflect specific incurred costs of any particular provider.<sup>38</sup> Ms. Hohrman testified that Vantage Point Solutions filed an ex parte communication with the FCC in 2016 regarding its analysis of the CostQuest model.<sup>39</sup> Vantage Point Solutions' analysis concluded that the model tended to underestimate deployment costs.<sup>40</sup> Accordingly, Ms. Hohrman recommended the Commission use a safe harbor support amount on an individual company basis as well as continue the use of the NUSF EARN Form.<sup>41</sup> In response to Charter's comments, Ms. Hohrman pointed out that

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<sup>32</sup> See *id.*

<sup>33</sup> See *id.* at 12.

<sup>34</sup> *Id.* at 14.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See *id.* at 20.

<sup>38</sup> *Id.*

<sup>39</sup> See *id.* at 21.

<sup>40</sup> See *id.*

<sup>41</sup> See *id.* at 22.

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the NUSF EARN Form process already appropriately considers CAF-ICC and other revenues as those specified by Charter in its comments.<sup>42</sup> Accordingly, Ms. Hohrman stated, the NRBA respectfully disagrees with both of Charter's recommendations.<sup>43</sup>

Mr. Bachtiyer Kholmatov, testified on behalf of the Nebraska Rural Broadband Alliance ("NRBA"), Cambridge Telephone Company, and Pinpoint Communications. Mr. Kholmatov focused his testimony on five issues: the need for a safe harbor and accountability, the level of ongoing support, the need for careful allocation of unbudgeted, unallocated and undistributed support, the need for Commission flexibility and discretion to handle carrier of last resort transitions as expeditiously as possible on a case-by-case basis; and the need for a state-level process to challenge the BDC for the purpose of NUSF allocations.<sup>44</sup> Mr. Kholmatov stated that because of inaccuracies in the model, the safe harbor should be set at 100 percent of 2024 ongoing support and consideration should be given to making the safe harbor permanent.<sup>45</sup> Further, he stated, the NUSF EARN Form should continue to be used in 2025 so that measures are in place to ensure ratepayer funds are not being used for unreasonable profit.<sup>46</sup> Mr. Kholmatov further stated that accountability should be the establishment of regular milestones for carriers with federally enforceable commitments to prove they are in compliance with those programs.<sup>47</sup> With respect to ongoing support, he stated the NRBA has consistently agreed that Nebraska law requires ongoing support for ETCs that are compliant with federally enforceable deployment commitments to upgrade their networks.<sup>48</sup> However, he stated, the law does not require the same level of support for 25/3 Mbps infrastructure.<sup>49</sup> Mr. Kholmatov recommended the Commission make the NUSF support that is either unbudgeted, unallocated, or undistributed available for competitive local exchange carriers that have accepted ETC obligations in the incumbent territories where the competitive

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<sup>42</sup> *Id.* at 23.

<sup>43</sup> *Id.*

<sup>44</sup> *See id.* at 38-39.

<sup>45</sup> *Id.* at 40.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 42.

<sup>49</sup> *Id.*

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local exchange carrier is offering broadband access at speeds of 100/20 Mbps.<sup>50</sup> The NRBA did not think a rigid set of rules was necessary to transition support and carrier of last resort obligations.<sup>51</sup> Finally, the NRBA suggested the Commission allow, but not require, carriers to challenge BDC data at the state level.<sup>52</sup>

Mr. Russell Westerhold testified on behalf of the RTCN. Mr. Westerhold stated that RTCN is generally supportive of the proposed transitional distribution mechanism.<sup>53</sup> But, he stated, RTCN agrees with the other commenters that more discussion is needed about the future, if any, of the use of the NUSF EARN Form in the future.<sup>54</sup> Mr. Westerhold reiterated the RTCN's position in its comments that the Commission should take into account for federal imputation purposes that some federal revenue may have been allocated for the 2023 calendar year but received by carriers in 2024.<sup>55</sup> He stated the Commission should make adjustments for support in that case.<sup>56</sup> The NRBA recommended that support attributable to 2023 but received in 2024 not be imputed in the 2025 high-cost support distribution calculation.<sup>57</sup>

Mr. Dan Davis, a consultant employed by Consortia Consulting, testified on behalf of the RIC members. Mr. Davis testified RIC's position on the NUSF EARN Form remained neutral for 2025.<sup>58</sup> RIC supported re-evaluation of the continued use of the NUSF EARN Form in future years.<sup>59</sup> Mr. Davis stated that the replacement mechanism must support the purpose of the NUSF Act to provide comparable accessibility to telecommunications and broadband services at affordable prices.<sup>60</sup> Mr. Davis stated RIC

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 44.

<sup>52</sup> *Id.* at 45.

<sup>53</sup> *Id.* at 60.

<sup>54</sup> *See id.* at 61.

<sup>55</sup> *Id.*

<sup>56</sup> *See id.* at 62.

<sup>57</sup> *Id.* at 63.

<sup>58</sup> *Id.* at 66.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

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further recommended the Commission commence a rulemaking to implement the Rural Communication Sustainability Act as soon as possible.<sup>61</sup> Mr. Davis stated this rulemaking should include terms and conditions for the withdrawal of ETC and COLR obligations, the transfer of those obligations to the competitive carrier that has deployed broadband to those locations, as well as the process for incumbent carrier compliance with Neb. Reb. Stat. § 86-134 related to discontinuation of service.<sup>62</sup> RIC stated the rulemaking is needed to avoid the ad hoc determinations.<sup>63</sup> Mr. Davis stated that RIC also supported using the most up to date BDC data.<sup>64</sup> RIC stated that it did not believe there was any material benefit to be derived from establishing a separate challenge process to confirm the accuracy of the BDC data.<sup>65</sup>

Mr. Scott Schultheis, Principal of Reynolds, Schultheis Consulting, Inc., also testified for RIC. RIC opposed the NRBA's recommendation to reduce the high-cost ongoing support for locations subject to an enforceable commitment but served with broadband at 25/3 Mbps.<sup>66</sup> Mr. Schultheis offered Exhibits 10 and 11 which were admitted into the record.<sup>67</sup> Mr. Schultheis testified Exhibit 11 illustrated RIC's position that the high-cost distribution allocation for ongoing support for locations at 25/3 Mbps and subject to an enforceable commitment would consist of a less than one percent of the 2025 total ongoing support distribution.<sup>68</sup> He stated that his estimation in Exhibit 11 would most likely be further decreased using the newest version of the BDC data, due to additional built out of locations.<sup>69</sup> Mr. Schultheis testified that RIC disagreed with the NRBA's suggestion that carriers certify federal compliance with the Commission stating that the carriers subject to enforceable commitments already certify compliance with the FCC and file HUBB data which includes

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<sup>61</sup> *Id.* at 67.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 68.

<sup>64</sup> *See id.* at 68-69.

<sup>65</sup> *Id.* at 70.

<sup>66</sup> *See* TR at 78.

<sup>67</sup> *See* TR at 75.

<sup>68</sup> *See id.* at 77.

<sup>69</sup> *See id.* at 78.

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a certification by an officer of the carrier.<sup>70</sup> Mr. Schultheis also responded to concerns regarding the use of the SBCM data to determine relative costs and its accuracy.<sup>71</sup>

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

The Commission enters this Order to determine the Commission's NUSF High-Cost 2025 Transition Year support allocation. The Commission considers the 2025 support mechanism to be transitional in nature as the Commission moves through the remaining issues raised in the Commission's August 29, 2023 Order, and which will be handled through additional phases of this proceeding. The Commission emphasizes that the findings herein are relevant to the 2025 calendar year and are not intended to predict the level of support in subsequent years.

Based upon the responsive comments filed, the testimony provided at the December 5, 2024 hearing, and in further consideration of the record, the Commission finds as follows:

The Commission adopts its proposal 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<sup>72</sup> 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. No commenter objected to this portion of the Commission's proposal.

The Commission adopts its proposal 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, 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

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<sup>70</sup> *Id.* at 79.

<sup>71</sup> *See id.* at 80-81.

<sup>72</sup> The Commission retains the historic defining characteristics of high-cost areas which are defined according to census blocks with the following: 1) less than 20 households; 2) less than 42 households per square mile; and 3) not part of a census designated city or village. High-cost areas will continue to include locations that fit the rurality characteristics even though they are located outside of the state but are served from a central office located in Nebraska.

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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. While some commenters recommended the Commission reduce the ongoing support level for 25/3 Mbps locations which are subject to a federally enforceable commitment, no recommendation as to the methodology or a reduction was proposed in the record. Overall, we find the level of support provided to these providers is de minimis. Creating an alternative solution for the 2025 Transition Year would also cause a delay in setting the funding allocation. Accordingly, that recommendation is not adopted.

The Commission finds the basis for determining relative costs will be the unmodified CostQuest model output ("2024 SBCM"), as described in the workshop held on October 23, 2024. While some commenters had concerns with the accuracy of modeled costs, the Commission finds that CostQuest's model should continue to be used as the basis for determining relative costs. We are unpersuaded by the arguments against using the model for this purpose. The Commission notes that it has utilized cost models since 2004 to determine relative forward-looking costs. The Commission has utilized CostQuest's cost model since 2015, with recent updates to the costs as requested by the Commission. When the FCC decided to adopt the CostQuest model for the purposes of determining federal high-cost universal service fund support, it found that the Vantage Point analysis of variability between model results and Vantage Point's proprietary engineering data was not a useful comparison.<sup>73</sup> While we understand that using a cost model may not capture the actual cost of each carrier on a location specific level, cost models estimate the forward looking economic cost of operating and maintaining an efficient, modern network.<sup>74</sup> Moreover, no specific cost model inaccuracies or requests for changes were brought to the Commission for consideration. The Commission has previously determined the use of CostQuest's model to be a valid source for determining relative costs, and it continues to find CostQuest's cost model should be used for that purpose.

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<sup>73</sup> See Exhibit 11, *In the Matter of the Connect America Fund, et al.*, WC Docket No. 10-90, et al., Report and Order, Order and Order On Reconsideration, and Further Notice Of Proposed Rulemaking (March 30, 2016) at para. 58.

<sup>74</sup> See *id.* at para. 59.

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The Commission further finds that for the distribution model released with its order, the eligible locations should include only those locations within the carrier's incumbent local exchange areas that meet the required speed capability. The Commission will schedule a workshop to seek comments on the appropriate framework for providing high-cost support to competitive carriers for locations served at 100/100 Mbps, and the process for transitioning Carrier of Last Resort ("COLR") obligations. The Commission expects to schedule this workshop during the first quarter of 2025.

As proposed, the Commission finds the data inputs will 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 Commission further finds 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.<sup>75</sup> 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.<sup>76</sup> 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

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<sup>75</sup> The \$63.69 threshold is the revenue benchmark the FCC utilizes in the Enhanced A-CAM mechanism as a funding threshold utilized to account for estimated revenues that a carrier could reasonably obtain from end-users. This figure is based on a benchmark rate of \$90.98, taken from a 2023 Urban Rate Survey, and multiplied by a 70% take rate.<sup>75</sup>

<sup>76</sup> See Neb. Rev. Stat. § 86-324.02(2)(a).

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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.

The cost base will 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 has assigned and imputed federal support received during the prior calendar year.<sup>77</sup> The Commission finds that federal support shall be imputed as follows:

- a. General federal support (support that is not directed to specific locations and areas) will be imputed on a location level from the cost to serve, proportionately to the location cost base (OpEx + CapEx - \$63.69) in the total cost base of the incumbent carrier.
- b. Targeted federal support (support that is directed to specific locations and areas) will be imputed on a location level from the cost base of the supported locations of the incumbent.
- c. If the specific support amount of the location is unknown, a recalculated support amount using updated 2024 SBCM and federal program parameters will be used to proportionately impute federal support. Recalculated support will only serve to provide weights for assigning support and the imputation will use only actual support disbursements.
- d. If the targeted federal support exceeds the recalculated amount, the amount in excess of the recalculated support will be imputed proportionately to the remaining cost base of the location.

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<sup>77</sup> The Commission declines to make adjustments for federal support allocated during 2023 but received in 2024 as requested by RTCN. The Commission finds the timing of the receipt of federal support during the prior year is the more relevant factor in determining how support should be calculated for the single 2025 Transitional Year of high-cost support and not when such federal support was allocated.

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- e. Targeted support will not be imputed in excess of the location cost base.
- f. If the targeted federal support exceeds the cost base of supported locations, any excess amount will be imputed as general support.
- g. Federal support types included in the imputation calculation would be:
  - i. General support: HCL, BSL
  - ii. Targeted support: A-CAM, Enhanced A-CAM
- h. Intercarrier Compensation support will be excluded from the federal imputation calculation.<sup>78</sup>
- i. The list of federal support types to be imputed may be revised to include new types of support.
- j. All Federal support imputation will use previous calendar year disbursements.

For the determination of 2025 Transitional Year support, the Commission will rely on the most recent version of the FCC's BDC data and will not conduct a challenge process this year. The Commission directs the Staff to make the specific data sets used in its support determination available to the interested parties. The dataset used for the determination of high-cost distributions in the 2025 Transitional Year utilizes BDC availability data as of June 30, 2024.<sup>79</sup> The Commission only considers wireline BDC service records in determining where service exists. We recognize that some commenters recommended that the Commission conduct a

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<sup>78</sup> The Commission declines Charter's suggestion to also directly impute the intercarrier compensation support received by carriers. The Commission is not persuaded to change course with its recommendation at the present time and agrees with the NRBA witness testimony that this revenue could be captured through the NUSF EARN Form process. However, the Commission may revisit this suggestion in the future, particularly if the NUSF EARN Form process is phased out.

<sup>79</sup> As the FCC makes continual updates to the BDC data with regard to challenges, the Commission will release the version of the downloaded dataset used for the determination of eligible areas along with the proposed and final model results.

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challenge process or otherwise permit carriers to file challenges. We decline to adopt this recommendation for the 2025 Transition Year support for a few reasons. First, in order to provide carriers with their allocation starting in January, there was not sufficient time to administratively process and re-run challenges and then provide notice to carriers of the changes due to challenges. Historically, the Commission has commenced its challenge process in the beginning of November with results in December. In addition to the number of other changes the Commission is making to the 2025 distribution mechanism, there is not sufficient time to run a challenge process. Further, the Commission agrees with Mr. Robbins that the BDC data has undergone sufficient revisions and carriers have now had the opportunity to correct and supplement the FCC's BDC mapping data. Because the FCC's BDC data is also used for other grant programs, including the BEAD program, the Commission wants to encourage carriers to file any challenges to the FCC's BDC dataset. Using the FCC's BDC dataset for NUSF purposes will promote the use of consistent data used for federal USF and other broadband grant programs.

The Commission finds 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. After further consideration, the Commission finds that glide path support for the 2025 Transition Year should equal 90 percent of the 2024 ongoing NUSF support, rather than 75 percent as previously proposed. The Commission's findings in this regard are not based on any conclusion regarding the accuracy or appropriate use of the CostQuest cost model for determining relative costs. However, given the fact that this is a transitional year, and the high-cost distribution model is being implemented in January for the 2025 calendar year, the Commission believes that raising the glide path to 90 percent, from the originally proposed 75 percent, will

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provide more stability for planned carrier budgets and investments. As indicated in the Commission's proposal, we find the upper limit will not apply to the glide path support - i.e. - glide path support will not be limited by eligible earnings. The Commission will revisit the use of a glide path support mechanism for 2026 and beyond, including but not limited to whether an alternative percentage is appropriate, or whether there are better approaches to determining a baseline amount.

The Commission finds it appropriate 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 rather than the three-year average period where such a determination is beneficial to the carrier.

With respect to price cap carriers, the Commission finds it appropriate to utilize a rate comparability metric to ensure that the comparability and affordability goals of the NUSF Act are met. Consistent with the Commission Staff's prior proposal, the Commission proposes to use the FCC's urban rate benchmark as an affordability benchmark. Rates charged by price cap carriers for voice capable broadband service at 100/20 Mbps must fall under that benchmark.<sup>80</sup> To meet this threshold eligibility requirement, price cap carriers will be required to provide an annual certification and provide documentation of comparable rates charged in rural and urban areas for services offered.<sup>81</sup> On December 13, 2024, the FCC released the 2025 reasonable comparability benchmarks for fixed voice and broadband services. The 2025 benchmark for broadband services offered at 100/20 Mbps is now \$85.85. The Commission finds it appropriate to base its affordability standard on the most current reasonable comparability standards. Accordingly, rather than using the prior

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<sup>80</sup> See <https://docs.fcc.gov/public/attachments/DA-23-1172A1.pdf>.

<sup>81</sup> The Rate Comparability and Affordability Certification must be provided via a Commission-prescribed form with sufficient documentation which shows the rates charged for services in rural areas are affordable and reasonably comparable with the rates charged in urban areas on an exchange-by-exchange basis. The form will be released with the final order approving allocations for 2025. In addition, the Commission plans to update its payment audit requirements in a separate proceeding to include a third-party review of the Commission's standards in light of changes adopted by the Commission in this docket.

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year's benchmark of \$92.26, the Commission will use the FCC's 2025 reasonable comparability benchmark of \$85.85 for price cap carrier high-cost support eligibility in 2025. Price cap carriers who cannot certify that their rates statewide fall under the benchmark will not be eligible for NUSF support. Additionally, for ongoing support to be received in 2025, price cap carriers will continue to be subject to the requirements used in 2024 as a condition for ongoing support. Specifically, price cap carriers will be required to file a breakdown of how ongoing support will be used. Ongoing support may be used for the following expenses:<sup>82</sup>

<u>Category</u>	<u>Cost</u>
Service Technicians	Wages
Service Technicians	Transportation
Equipment	Electronics
Equipment	Replacement Cards
Equipment	Switch Upgrades
Equipment	Conduit
Equipment	Fiber repair
Transmission	Transmission
Generators	Generators
Network Security	Network Security
Customer Service (if located in the state)	Customer Service

The Commission will revise the high-cost distributions to account for: NUSF EARN Form updates, USAC disbursement updates,

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<sup>82</sup> This list encompasses the allowable uses for ongoing support used in 2024. See *In the Matter of the Nebraska Public Service Commission, on its own Motion, to Administer the Universal Service Fund High-Cost Program*, Application No. NUSF-99, Progression Order No. 2, Order Authorizing Payments And Setting Project Selection Deadline (January 23, 2024).

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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.

Consistent with the Commission's past practice, the Commission approves a high-cost budget and finds that allocations should be determined using the foregoing elements. For the calendar year of 2025, the Commission hereby authorizes its staff to pay up to \$42 million in high-cost wireline support pursuant to the findings adopted herein. Specific details on the allocation of 2025 high-cost support will be made available on the Commission's website at <https://psc.nebraska.gov>.

All entities receiving ongoing high-cost NUSF support are required to abide by the Commission's speed testing requirements, as set forth in the Commission's NUSF-133 Order.<sup>83</sup> As required by the NUSF-133 Order, ongoing high-cost recipients must submit a broadband customer list to the Commission by April 30 of each year. Price cap carriers must file a rate comparability affidavit in the format prescribed by the Commission, and must provide specific details regarding their proposed use of ongoing support, which must be accepted as a condition precedent to receipt of ongoing support. These filings must be submitted electronically to [psc.nusf@nebraska.gov](mailto:psc.nusf@nebraska.gov), and are due no later than **February 19, 2025**, at 5:00 p.m., Central Time.

As proposed in the Commission's November 6, 2024 Order, we plan 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.<sup>84</sup>

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<sup>83</sup> See *id.* at 6.

<sup>84</sup> The Commission plans to consider appropriate revisions to its annual eligible telecommunications carrier (ETC) certification process, in NUSF-66, to account for findings ultimately adopted in this docket.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the opinions and findings set forth herein be, and they are hereby, adopted.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 14th day of January 2025.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Eric M. Hamler*  
*[Signature]*  
*Kevin Stocker*  
*[Signature]*

*Tim Schram*

Chair

ATTEST:

*Thomas W. Golden*  
Executive Director