

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public )  
Service Commission, on its own Motion, )  
seeking to implement policies and )  
procedures related to providing dedicated )  
universal service support for wireless )  
telecommunications services. )

Application No. NUSF-143

**COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN  
RESPONSE TO FEBRUARY 4, 2025 ORDER OPENING DOCKET**

The Nebraska Rural Independent Companies (“RIC”)<sup>1</sup> submit these Comments in response to the Order Opening Docket entered by the Nebraska Public Service Commission (the “Commission”) in this matter on February 4, 2025 (the “February 4 Order”).<sup>2</sup>

**I. INTRODUCTION**

As a preliminary matter, RIC endorses and supports the Commission’s decision “to move the universal service fund wireless program docket to a separate stand-alone proceeding to eliminate any confusion about the purpose of the wireless program . . .”<sup>3</sup> RIC respectfully submits the following Comments in response to the Commission’s questions presented in the *February 4 Order*.

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<sup>1</sup> Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Great Plains Communications, LLC, Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Sodtown Communications, Inc., and Three River Telco.

<sup>2</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to implement policies and procedures related to providing dedicated universal service support for wireless telecommunications services*, Application No. NUSF-143.

<sup>3</sup> *Id.* at pp. 1-2. RIC also agrees with the Commission’s statements in footnote 3, including the statement that NUSF support in NUSF-92 is not intended for use to support deployment of fixed wireless broadband.

## II. COMMENTS IN RESPONSE TO SECTION 1 OF THE *FEBRUARY 4 ORDER*

RIC's position in response to the Commission's questions in Section 1 of the *February 4 Order* is that in the event that the Commission desires to provide wireless carriers with NUSF High-Cost Program support, any wireless carrier seeking such support must satisfy the requirements of NUSF Rule 004.02 "Payments from the High-Cost Program" in a manner that is equivalent to the requirements imposed on wireline carriers for eligibility to receive NUSF High-Cost Program support. There should not be any "automatic designation process for wireless carrier eligibility."<sup>4</sup> Implementation of any relaxed requirements for a wireless carrier to be designated as an NETC would violate the "competitively neutral mechanisms" requirement of the Legislature's declaration of policy regarding administration of the NUSF High-Cost Program.<sup>5</sup>

The Nebraska Legislature's declaration of policy in the Nebraska Telecommunications Universal Service Fund Act (the "Act") states that:

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.* (emphasis added)<sup>6</sup>

The *February 4 Order* expressly recognizes that "a state-certified ETC and an ETC designated for federal purposes are different designations and are not predicated on the same regulatory

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<sup>4</sup> See *February 4 Order* at p. 3.

<sup>5</sup> *Neb. Rev. Stat.* § 86-323(5).

<sup>6</sup> *Id.*

requirements.<sup>7</sup> Only a telecommunications company explicitly designated as a Nebraska Eligible Telecommunications Carrier (“NETC”) by the Commission for the expressly stated purpose of receiving funding from the NUSF High-Cost Program pursuant to a Commission order shall be eligible to receive NUSF funding.<sup>8</sup> Further, an NETC shall only receive NUSF high-cost program funding for the actual provision of supported services as described in Rule 004.02(D).<sup>9</sup> Currently, to RIC’s best knowledge, no wireless carrier has applied for or received NETC designation by the Commission.<sup>10</sup>

## II. COMMENTS IN RESPONSE TO SECTION 2 OF THE *FEBRUARY 4 ORDER*

This Section of the *February 4 Order* addresses scoring of project applications for tower construction in rural areas of Nebraska. While RIC has no comments relating to scoring

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<sup>7</sup> *February 4 Order* at p. 3. Indeed, NUSF Rule 001.01(K) defines “Eligible Telecommunications Carrier” as “a carrier designated by the Commission pursuant to 47 U.S.C. § 214(e) to receive monetary support from the Federal Universal Service Fund.” This definition stands in contrast to NUSF Rule 001.01(R) that defines “Nebraska Eligible Telecommunications Carrier” as a “telecommunications company specifically designated by Commission order to receive support from the Nebraska Universal Service Fund consistent with the Federal Act and Nebraska statutes.”

<sup>8</sup> See NUSF Rule 004.01(A).

<sup>9</sup> See NUSF Rule 004.01(A)(i). The “Supported Services” that a telecommunications carrier is required to provide to all requesting users within a service area are enumerated in NUSF Rule 004.02(D).

<sup>10</sup> A number of wireless carriers have received Commission designation as eligible telecommunications carriers (“ETC”) for the purpose of receiving support from various federal programs or for the limited purpose of participation in the Nebraska Telephone Assistance Program. See e.g., *In the Matter of the Petition of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, Fort Morgan, Colorado, for designation as an Eligible Telecommunications Carrier under 47 U.S.C. Section 214(e)(2)*, Application No. C-3324, Order at p. 16 (Oct. 18, 2005) granting ETC status for the purpose of receiving federal universal service support; and *In the Matter of the application of GCC License Corporation seeking designation as an eligible telecommunications carrier that may receive universal service support*, Application No. C-1889, Order at p. 13 (Nov. 21, 2000) granting ETC status for the purpose of receiving federal universal service support.

procedures, RIC respectfully suggests that before the Commission approves continuing funding for the capital costs of constructing towers for the provision of wireless services to rural Nebraska the Commission should request and receive evidence that a continued need exists to provide NUSF support for the capital construction costs of towers.

By analogy, in the Commission's pending Application No. NUSF-139 the Commission received evidence and after evaluation of such evidence determined that in 2025 provision of Broadband Deployment Support to wireline carriers for the construction costs of wireline facilities for broadband deployment should be suspended.<sup>11</sup> Similarly, continued provision of NUSF support for tower construction by wireless carriers should not be "automatic," but rather should only occur if the Commission, after receiving and considering relevant evidence concerning this subject, finds that continued provision of NUSF support for tower construction is necessary to serve the public interest.

### **III. COMMENTS IN RESPONSE TO SECTION 3 OF THE *FEBRUARY 4 ORDER***

In this Section the Commission asks whether NUSF support should be provided "to companies working in partnership with the wireless carriers such as companies that construct or own cell towers?"<sup>12</sup> In the Legislature's declaration of policy in the Act, NUSF support is to be provided to telecommunications companies and for the benefit of elementary and secondary

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<sup>11</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) at 20.

<sup>12</sup> See *February 4 Order* at p. 3. RIC assumes that the "NUSF support" to which the Commission refers in Section 3 is the Nebraska Broadband Grant Program that has, in the past, provided capital support for tower deployment in high-cost areas of the State.

schools, libraries, providers of health care and low income individuals.<sup>13</sup> Nowhere in the Act is the Commission provided a grant of authority to provide NUSF support to entities that are not within the scope of the Legislature's policy declarations for the Act or are outside of the scope of the Commission's regulatory authority. Absent such authority, the Commission cannot and should not award NUSF support to an unidentified class of "partners" working with wireless carriers.

#### **IV. COMMENTS IN RESPONSE TO SECTION 4 OF THE *FEBRUARY 4 ORDER***

In this Section the Commission asks whether wireless carriers should be provided NUSF ongoing expense support, and if so, under what circumstances and conditions?<sup>14</sup> Before this question can be answered, the Commission must carefully consider relevant statutory provisions, the requirements of its existing NUSF Rules and pertinent policy considerations.

Section 86-324.02(2) provides that NUSF High-Cost Program ongoing expense support shall not be provided to any broadband serviceable location not capable of Internet speeds of at least one hundred megabits per second for downloading and at least twenty megabits per second for uploading after October 16, 2025.<sup>15</sup> The Commission has established speed testing requirements and procedures in Application No. NUSF-133 that must be followed to verify available broadband speeds.<sup>16</sup> Thus, as a threshold consideration, in order to qualify to receive

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<sup>13</sup> *Neb. Rev. Stat.* § 86-323(5) and (6) and § 86-324(1).

<sup>14</sup> *See February 4 Order* at p. 4.

<sup>15</sup> This section also defines "broadband serviceable location as "a business or residential location in Nebraska at which fixed broadband access service is or is able to be installed." (No federal support program for wireless carriers has been recognized by the Commission as "a federally enforceable commitment." that would trigger the exception of this cutoff date.)

<sup>16</sup> *See In the Matter of the Nebraska Public Service Commission, on its own Motion, to implement standards for the verification of broadband service provider coverage and speed*

NUSF High-Cost Program ongoing expense support wireless carriers would be required to comply with the foregoing statutory requirements. However, a number of additional matters require consideration in connection with the question presented in Section 4 of the *February 4 Order*.

What wireless carrier operational and maintenance costs might be appropriately supported by NUSF High-Cost Program ongoing expense support? Should only such costs associated with operations of the towers that have been constructed by wireless carriers through the use of Nebraska Broadband Grant Program funding be supported? Or should operational and maintenance costs relating only to a wireless carrier's Nebraska operations be supported? How would the Commission establish which ongoing expense costs and the level of such costs to be supported since wireless carriers file no financial information with the Commission and no cost model is available to estimate such costs? How would the Commission assure accountability by wireless carriers that any NUSF High-Cost Program ongoing expense support is utilized by the wireless carrier for operations in the State of Nebraska (since most wireless carriers have multi-state operations)?

The Commission's NUSF Rule 004.01(A) provides that "[o]nly a telecommunications company explicitly designated as an NETC by the Commission for the expressly stated purpose of receiving funding from the NUSF by Commission order shall be eligible to receive NUSF funding." Further, the Commission's Rules require that NUSF high-cost program funding shall only be used for the "actual provision of supported services as described in Rule 004.02(D)."<sup>17</sup>

Would a wireless carrier seeking NUSF High-Cost Program ongoing expense support be willing

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*data*, Application No. NUSF-133, Progression Order No. 1, Order Revising Speed Testing Requirements (Oct. 8, 2024).

<sup>17</sup> See NUSF Rule 004.02(A)(ii).

and able to provide the supported services enumerated in Rule 004.02(D)? If not, the wireless carrier is, according to the Commission's NUSF Rules, ineligible to receive such support.

NUSF Rule 004.02(G) provides that high-cost support "will be authorized for one facilities-based NETC in a given support area." If a wireline carrier holding NETC status and serving as the carrier of last resort for a specified area is receiving high-cost support, then according to the Commission's Rules, a wireless carrier may not be provided high-cost support for the same area.<sup>18</sup>

Additional eligibility questions would require resolution before NUSF High-Cost Program ongoing expense support could be provided to a wireless carrier:

- Is the wireless carrier providing supported services to "all requesting users within a service area"? NUSF Rule 004.02(ii)
- Is the wireless carrier charging "reasonably comparable rates" for supported services? NUSF Rule 004.02(A)(iii)
- Is the wireless carrier charging the benchmark rate set by the Commission for basic local exchange service? NUSF Rule 004.02(A)(iv)

All of these eligibility criteria will require Commission consideration and resolution before the Commission reaches the question stated in Section 4 of the *February 4 Order* regarding how maintenance costs should be calculated and what information should be

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<sup>18</sup> The Commission should also be mindful that availability of wireless carriers' fiber-based networks for use by wireless carriers is an essential element of wireless carriers' continuing ability to provide service to rural areas of Nebraska. Continued provision of NUSF High-Cost Program ongoing expense support is critical to the maintenance and operation of these fiber networks. The NUSF High Cost Program budget has finite limitations and diversion of a portion of this budget to wireless carriers and the consequent reduction in wireline carriers' ongoing expense support would reduce wireline carriers' ability to maintain and operate rural fiber networks.

considered in connection with determining the need for and amount of NUSF High-Cost Program ongoing expense support. In order for the Commission to determine wireless carrier costs and whether there is a need for such NUSF support, the Commission will need to require wireless carriers to submit financial information to the Commission for evaluation.

Due to the foregoing unanswered questions as well as statutory and Commission Rules requirements, RIC respectfully urges the Commission to find that NUSF High-Cost Program ongoing expense support shall not be provided to wireless carriers.

#### **IV. CONCLUSION**

As stated above, the Nebraska Rural Independent Companies appreciate the opportunity to provide these Comments in response to the *February 4 Order*. RIC looks forward to continuing its participation in this proceeding.


Dated: March 3, 2025.

Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Great Plains Communications, LLC., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Sodtown Communications, Inc. and Three River Telco (the "Rural Independent Companies")

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of March 2025, an electronic copy of the foregoing Comments was delivered to the Nebraska Public Service Commission at [psc.nusf@nebraska.gov](mailto:psc.nusf@nebraska.gov).

  
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Paul M. Schudel