

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service)	Application No. NUSF-139
Commission, on its own Motion, to consider)	Progression Order No. 6
appropriate modifications to the high-cost)	
distribution and reporting mechanisms in its)	
Universal Service Fund program in light of)	
federal and state infrastructure grants.		

COMMENTS BY LUMEN TECHNOLOGIES, INC.’S NEBRASKA INCUMBENT LOCAL EXCHANGE CARRIERS, QWEST CORPORATION d/b/a/ CENTURYLINK QC AND UNITED TELEPHONE COMPANY OF THE WEST d/b/a CENTURYLINK

COMES NOW Lumen Technologies, Inc., by and through undersigned counsel, on behalf of its incumbent local exchange (“ILEC”) carriers Qwest Corporation, d/b/a CenturyLink QC, and United Telephone Company of the West, d/b/a CenturyLink (collectively herein, “Lumen”), and hereby respectfully submits these comments in response to the Nebraska Public Service Commission’s (the “Commission”) Progression Order No. 6 (“P.O. No. 6”), issued April 8, 2025, in the above-captioned docket.

I. Introduction

Lumen, through its operation of Qwest Corporation and United Telephone Company of the West, has a long and established history as an ILEC and an Eligible Telecommunications Carrier (“ETC”) in the State of Nebraska. As set forth herein, Lumen remains committed to the principles of universal service and ensuring that all Nebraskans have access to essential communications services.

Lumen appreciates the Commission’s efforts to modernize the Nebraska Universal Service Fund (“NUSF”) and establish a framework for competitive carriers to potentially receive high-cost support. However, Lumen submits that any such framework must be carefully constructed to uphold the fundamental purpose of Neb. Rev. Stat. § 86-316 *et seq.* (the “NUSF Act”) and protect Nebraska consumers. Central to this is the core principle that the receipt of universal service funds

carries with it a corresponding public service obligation (i.e., Carrier of Last Resort). Lumen proposes that any framework authorizing competitive carriers to apply for NUSF high-cost support should require these carriers to assume state-defined Carrier of Last Resort (“COLR”) obligations within the geographic service area for which the NUSF support is allocated, while simultaneously relieving the Incumbent carrier of the COLR obligation. Nebraska Admin. Code, Chapter 10, Section 004.02(G) (the Nebraska Universal Fund Rules and Regulations) already provides a mechanism for a company to petition the Commission to replace the eligible telecommunications company receiving NUSF high-cost program support. Section 004.02(G)(ii) explicitly states:

“If a competitive telecommunications carrier replaces the incumbent local exchange carrier (ILEC) as provided in section 004.02(G) any carrier of last resort obligations shall be transferred to the competitive telecommunications carrier [...] the incumbent carrier not receiving high-cost support shall no longer have carrier of last resort obligations.”

This provision ensures that the responsibilities of providing essential telecommunications services are appropriately transferred to the new competitive carrier, thereby maintaining service continuity and reliability for consumers. Therefore, Lumen proposes that these conditions should be made mandatory for a competitive applicant seeking NUSF. The mandatory requirement would ensure not only the proper transfer of carrier of last resort obligations but also promote a fair and competitive environment among telecommunications providers. Allowing carriers to receive NUSF support—funds derived from Nebraska ratepayers specifically intended to guarantee service availability—without requiring them to provide service to all requesting customers in the funded area (which is the essence of COLR) would fundamentally undermine the integrity and purpose of the NUSF program. The Commission’s P.O. No. 6 (Section A.4.c) contemplates COLR obligation as an “election” by the applicant; these comments will demonstrate why such an approach is insufficient and why Lumen suggests COLR must be a **mandatory** condition of receiving NUSF high-cost support.

II. Comments to Specific Questions & Issues Posed in P.O. No. 6

A. Framework for Transitioning Support and Obligations to Competitive Carriers:

- i. **Application Process:** Lumen states that applications by competitive carriers seeking NUSF support must explicitly include the carrier's binding commitment to assume full state COLR obligations for the designated service territory upon approval of NUSF funding. The application process itself should formalize this commitment, ensuring clarity and enforceability.
- ii. **Rolling Basis Applications:** Filing applications on a rolling basis may offer administrative flexibility. Lumen does not object to this approach, provided that the COLR obligations attach immediately and automatically upon the commencement of NUSF funding for the approved service territory, regardless of when the application was filed or approved during the year.
- iii. **Procedural Consistency:** Lumen agrees that the application process must be consistent with the Commission's established Rules of Procedure to ensure fairness, transparency, and due process for all parties.
- iv. **Required Application Elements (A.4(a)-(m)):** Lumen generally supports the comprehensive list of required application elements proposed by the Commission, as they help ensure that applicants are qualified, well situated to remain going concerns well into the future and are committed to providing robust service. However, modifications and clarifications are necessary, particularly regarding the COLR obligation. The detailed capabilities required under A.4 demonstrate a high level of operational and technical competence. Any carrier meeting these standards (or committing to meet them) is capable of fulfilling COLR responsibilities. It is unreasonable to require a carrier to simply "elect" COLR status; the proven capability, along with the acceptance of public funds, should mandate the COLR obligation. Moreover, permitting competitive carriers to cherry-pick areas for support undermines the fundamental principles of universal service and equitable access. Competitive support must be tied to assumption of COLR obligations at an ILEC wire center level.

Lumen supports the proposed elements set forth in Section A.4.a, b, and e-n of the application requirements. Lumen suggests modifying the following requirements:

- A.4.c – COLR Obligation Election: Change "Election" to "Mandatory Commitment/Acceptance." The approval for NUSF funding must trigger the obligation. Lumen expands upon this in Section III of these comments below.

- A.4.d – Universal Service Commitment: Change “designated service area” to “within the ILEC wire center boundary.” This commitment is a core tenet of COLR and essential for universal service. It aligns with federal ETC requirements to serve the entire area.
- A.4.j – Interconnection on a reasonable and nondiscriminatory basis: Lumen proposes the Commission eliminate this requirement. Mandating private companies receiving federal dollars for broadband deployment to provide their competitors with access to their networks is unworkable and reduces rather than increases broadband access. Such requirements can impose significant financial and operational burdens on these companies, potentially discouraging them from investing in the development and expansion of broadband infrastructure. Moreover, this mandate may conflict with federal regulations, leading to legal and administrative complexities that further hinder broadband accessibility. Specifically, it may interfere with Section 706 of the Telecommunications Act of 1996 (47 U.S.C. § 1302), which encourages the deployment of advanced telecommunications capabilities without imposing undue barriers to investment. Furthermore, such mandates might contradict the principles outlined in the FCC's Open Internet Rules, which aim to promote innovation and investment in broadband services without unnecessary regulatory constraints. Although Lumen engages in interconnection with other Internet Service Providers (ISPs) through Peering arrangements, it is important to distinguish these from the interconnection commitments required under Section 251 of the Federal Telecommunications Act of 1996 and Neb. Rev. Stat. § 86-122. Peering arrangements are negotiated directly between Lumen and other ISPs and are specifically utilized for the exchange of Internet traffic. These arrangements are tailored to meet the needs of both parties involved and are not governed by the same principles as the mandatory interconnection agreements. Lumen publishes its Network Management Practices on its Internet Service Disclosure document. The Internet Service Disclosure document provides information about the network practices, performance characteristics, and commercial terms applicable to CenturyLink's mass market broadband internet access services, consistent with the Federal Communications Commission's Open Internet Rules. The available funds for broadband deployment have the potential to connect every truly unserved and underserved community. However, to maximize the impact of these limited funds, it is crucial to allocate them in a technology- and vendor-neutral manner. This approach ensures that the most efficient and innovative solutions can be utilized without being hampered by restrictive requirements

such as open interconnection access. To prevent the waste of limited broadband deployment funds, it is essential to implement measures that promote the efficient use of resources. By avoiding open interconnection requirements, funds can be directed towards initiatives that truly benefit unserved and underserved communities. This approach will encourage innovation and investment, ultimately improving broadband access for those Americans who need it most and helping to close the digital divide.

- v. **Annual Eligibility Determination:** Lumen supports an annual process for determining eligible locations and NUSF applications, with a date certain such as the October 1st example provided in P.O. No. 6 seeking comments. This provides predictability for carriers and the Commission and allows support levels to reflect current deployment status and cost factors.
- vi. **2026 Support Calculation Timeline:** Given the potential implementation timeline, including all competitive carriers approved for NUSF support by December 31st in the 2026 calculations appears reasonable as a transitional measure. However, this expedited inclusion must be contingent on the carrier having accepted the mandatory COLR obligation as part of its approval.
- vii. **Support Eligibility in Approved Areas:** Lumen agrees that NUSF support eligibility within an approved service territory should remain subject to other criteria, such as specific location eligibility based on cost models, existing service, or earnings test limitations (if retained). This prevents overcompensation and ensures NUSF fiscal prudence. Critically, however, the COLR obligation assumed by the competitive carrier must apply to the entire designated ILEC wire center footprint for which the carrier sought and received approval, regardless of whether every single location within that territory ultimately generates NUSF support in a given year. The obligation is tied to the commitment to serve the geography, not just the locations receiving subsidies at a point in time.

B. Cost Model Updates

Lumen supports the principle of using a carrier-agnostic cost model to determine relative costs for high-cost support distribution, as this aligns with the goal of competitive neutrality. However, the model must be robust and accurately reflect the true, forward-looking economic costs of providing the required services, including the costs inherent in fulfilling COLR obligations (e.g., extending service to remote locations, ensuring network reliability and resiliency, meeting service quality standards). A model focused on theoretically lower-cost technologies may not

accurately reflect the actual expenses required to meet COLR standards across an entire territory, potentially leading to insufficient support. Similarly, a model based on operating and maintenance expenses in the initial years of a projected new network may inaccurately estimate the actual costs of network operation over an extended period of time. Annual model reruns can result in excessive operational expenses and may be financially unfeasible. Lumen believes that a three-year cadence for cost modeling for support purposes is adequate and prudent. The Commission must ensure the chosen model realistically accounts for the full scope of obligations undertaken by NUSF recipients.

As mentioned, Lumen finds updating the cost model every three (3) years to be appropriate. This duration between updates strikes a reasonable balance between ensuring the model reflects significant changes in technology, input costs, inflation, and network boundaries, while avoiding administrative and financial burden and potential instability of annual updates. The Commission should retain the flexibility to conduct interim updates if necessitated by extraordinary events (e.g., major technological shifts, significant changes in deployment patterns, natural disasters impacting infrastructure costs).

C. Use of a Minimum Support Amount

Lumen urges caution regarding the proposal to replace the 2025 glide path with a Minimum Support Base Amount (“MBSA”). While intended to provide predictability, the specific MBSA proposal raises the following concerns:

- **Benchmark Accuracy:** The basis for the \$63.69 benchmark (annualized up to \$100) needs clear justification. Does this figure accurately represent a reasonable minimum cost to serve an eligible location across diverse Nebraska geographies and challenging customer location demographics?

- **Federal Support Imputation:** The proposal suggests *no* imputation of federal support. This is problematic. Federal USF support (e.g., legacy high-cost, CAF, RDOF, and BEAD) is explicitly intended to defray certain operational and start-up costs for serving high-cost areas. Ignoring federal support when calculating state NUSF support risks overcompensating carriers, is inconsistent with efficient use of limited NUSF funds, and deviates from principles of cost causation. State support should generally cover costs *net* of other subsidies.
- **MBSA vs. Modeled Support:** Using the greater of the MBSA or the regular support base could distort investment signals and lead to inefficient allocation of NUSF resources. It might overcompensate carriers where modeled costs are low but still above the MBSA threshold, or potentially undercompensate where the MBSA is set too low relative to actual costs. Support should ideally be tied as closely as possible to modeled, forward-looking costs exceeding reasonable revenue expectations (including federal support).
- **Earnings Test Interaction:** Running the MBSA through an earnings test (if retained) adds another layer of complexity. The Commission should carefully evaluate whether an MBSA mechanism, particularly one that ignores federal support, aligns with the overall goals of efficient, targeted support based on actual cost differences.

Lumen recommends that any support mechanism, must be carefully calibrated to provide support that is specific, predictable, and *sufficient* to cover the net costs of providing the required services, including fulfilling COLR obligations, while preventing windfall profits and promoting efficiency..

III. Nebraska Law & Legislative Policy Supports Conditioning NUSF Support on COLR Obligations.

Nebraska’s own statutory and regulatory framework governing telecommunications and universal service provides ample authority and justification for the Commission to require competitive carriers receiving NUSF high-cost support to assume corresponding COLR obligations. The state’s commitment to universal service, coupled with recent legislative actions, including pending legislation in the current legislative session, addressing the interplay between

competitive funding and COLR duties, (e.g., the Rural Communications Sustainability Act) compels such consideration in NUSF-139.

The NUSF Act (Neb. Rev. Stats. §§ 86-316 through 86-329) establishes the NUSF with the explicit purpose of ensuring that all Nebraskans have access to quality telecommunications and information services at affordable and comparable rates. The NUSF Act grants the Commission broad authority to administer the fund, establish necessary rules and regulations, and create programs to achieve these universal service goals. The State's policy reflects this mandate, aiming to provide citizens with access regardless of income or location. (Neb. Rev. Stat. § 86-323). This foundational purpose – ensuring access for *all* Nebraskans, particularly those in high-cost rural areas where service might otherwise be unavailable or unaffordable– directly aligns with the function of COLR obligations.

The Commission's NUSF rules (Title 291, Chapter 10) define a Nebraska ETC as a carrier designated by the Commission pursuant to federal law, specifically 47 U.S.C. § 214(e). This incorporation by reference brings the federal ETC service obligations – including the requirement to offer supported services throughout the designated service area – into the Nebraska framework. While these federal obligations form a baseline, Nebraska retains the authority, particularly when distributing state NUSF funds, to impose additional or more specific requirements, such as explicit COLR duties, to ensure state universal service goals are met.

Most significantly, recent Nebraska legislation directly addresses the relationship between public funding for competitive providers and COLR obligations. The Rural Communications Sustainability Act, enacted via LB683 in 2023, contains two critical provisions, being Sections 86-1505 and 1506, as discussed below:

Neb. Rev. Stat. § 86-1505: This statute provides a mechanism for the Commission, upon request by an incumbent carrier, to relieve that incumbent of its ETC and COLR obligations

within a specific "deployment project area." This relief is conditioned upon a finding that a *competitive provider* has received *final payment of public funds* under a broadband deployment program for that area and is compliant with the program's requirements.

This Section 86-1505 of the Rural Communications Sustainability Act establishes a clear legislative precedent in Nebraska: the receipt of public funds by a competitor to serve an area is directly linked to a potential transfer or relief of the incumbent's COLR duties for that same area. It acknowledges that the funded competitor is now positioned to serve the area, making the incumbent's obligation potentially redundant. Such redundancy would result in an inefficient use of limited NUSF funds.

Neb. Rev. Stat. § 86-1506(2): This section prohibits the Commission from imposing ETC or COLR obligations related to the NUSF Act on a competitive provider in any deployment project area *unless* the incumbent carrier or the competitive provider is *actually receiving support from the NUSF* for that area.

The statute clearly implies that the Commission can impose obligations on a provider receiving NUSF support for a specific area. It prevents unfunded mandates while affirming the Commission's authority to tie NUSF funding to COLR responsibilities.

Taken together, Sections 86-1505 and 86-1506 of the Rural Communications Sustainability Act create a statutory framework that explicitly recognizes the connection between a competitor receiving public funds (whether federal broadband grants under § 86-1505 or state NUSF under § 86-1506) and the assignment or relief of COLR obligations within the funded area. The Legislature has acknowledged that funding a competitor to serve an area logically impacts COLR responsibilities. Therefore, the Commission's framework in NUSF-139 should align with this legislative direction by making the assumption of COLR obligations a mandatory condition for competitive carriers who are approved to receive NUSF high-cost support and necessitating the removal of COLR obligations from the incumbent carrier.

Furthermore, the ongoing legislative discussions surrounding COLR reform, such as the consideration of LB4, underscore the importance of COLR policy in non-competitive areas, but do not negate the existing framework established by the Rural Communications Sustainability Act. Until the Legislature enacts different directives, Sections 86-1505 and 86-1506 provide the relevant statutory guidance supporting the linkage of NUSF support and COLR obligations.

Competitors seeking NUSF funding must be obligated to assume COLR obligations and serve the entirety of an ILEC's service footprint as delineated by individual wire centers. Permitting a competitor to selectively serve high-density areas, such as a county seat within a rural wire center, while leaving the remaining, more geographically dispersed, and higher cost portions of that same wire center as a COLR obligation for the incumbent would be a practice that undermines the fundamental principles of universal service and equitable access and results in a cost advantage to the competitive carrier over time. Such selective deployment, often referred to as "cherry-picking," concentrates public subsidies in the most economically attractive areas, thereby failing to address the critical need for robust broadband deployment and continued operation and maintenance of those facilities in the entirety of the ILEC's established service territory. Cherry-picking exacerbates the digital divide and places an undue and disproportionate burden on the incumbent to serve the less economically viable, yet equally essential, rural communities within their designated wire centers. Therefore, a comprehensive service obligation aligned with the entirety of the wire center footprint is essential to ensure that NUSF funding effectively promotes widespread and equitable broadband access.

In summary, Nebraska law and policy empower and, indeed, compel the Commission to condition NUSF support on the assumption of COLR obligations by competitive carriers. This approach is necessary to fulfill the NUSF Act's purpose, aligns with the federal ETC framework

incorporated into the Commission’s rules and regulations, and is consistent with the specific direction provided by the Nebraska Legislature in Sections 86-1505 and 86-1506 of the Rural Communications Sustainability Act. Ensuring that every dollar of NUSF support distributed to a competitive carrier comes with a firm commitment to serve as the provider of last resort is the most effective way to guarantee universal service for all Nebraskans, particularly in the high-cost and rural areas where the NUSF is most needed.

IV. Lumen’s Key Recommendations

Incorporating Lumen’s comments above, Lumen offers the Commission the following recommendations:

- A. **Mandatory COLR Commitment:** Modify the proposed framework in PO No. 6, Section A, particularly requirement A.4.c, to replace the concept of a COLR “election” with a mandatory “commitment” or “acceptance” that is automatically triggered upon the approval of NUSF high-cost support for use by a competitive recipient. For assurance that cherry-picking does not occur, and to ensure that every Nebraskan benefits from the funding, regardless of how remote or economically unattractive their location is for the competitive carriers, competitive recipients must agree to provide service within the entirety of a designated ILEC wire center territory in which they receive NSUF support.

- B. **Accurate and Efficient Support Calculation:** Ensure any cost model used (PO No. 6, Section B) accurately reflects the full costs of providing service, including those associated with COLR obligations. Furthermore, any support calculation methodology, including the proposed MBSA (PO No. 6, Section C), must impute

federal universal service support received by the carrier to ensure efficient use of NUSF funds and avoid overcompensation.

- C. Integrated Incumbent Relief Mechanism: Upon assumption of the COLR obligation by the funded carrier, explicitly relieving the incumbent carrier of its COLR obligations within a specific service territory concurrently with a competitive carrier receiving NUSF support and assuming COLR duties for that same territory, consistent with the precedent established in Neb. Rev. Stat. § 86-1505.

By adopting these recommendations, the Commission can establish a forward-looking NUSF framework that effectively leverages competition to advance broadband deployment while upholding the promise of universal service and ensuring that a provider of last resort stands ready to serve every Nebraskan.

V. Conclusion


Lumen is grateful for the opportunity to provide comments on the Commission's proposed framework for NUSF support for competitive carriers under NUSF-139, P.O. No. 6. Lumen strongly urges the Commission to adopt a final framework where the approval of NUSF high-cost support by any competitive carrier is explicitly and mandatorily conditioned upon that carrier's assumption of full COLR obligations for the entire designated ILEC wire center territory in which support is received by the competitor. This approach is essential for ensuring funds derived from Nebraska ratepayers are used to guarantee service availability for everyone, especially in high-cost areas; preventing situations where Nebraskans are left without a guaranteed service provider; ensuring subsidized competitors face obligations symmetrical to those historically borne by incumbents; and conforming to the principles of the federal Telecommunications Act, FCC

precedent, the Nebraska NUSF Act, and Nebraska law, including but not limited to Sections 86-1505 and 86-1506 of the Rural Communications Sustainability Act.

Dated this 6th day of May 2025.

Respectfully Submitted,


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of May 2025, a true and correct copy of the foregoing was served via electronic mail to:

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By: 
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