

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

PREPARED DIRECT TESTIMONY OF DAN DAVIS

My name is Dan Davis. I am employed with Consortia Consulting. My business address is 233 South 13th Street, Suite 1500, Lincoln, Nebraska. I am Director of Policy and Analysis at Consortia Consulting. I am testifying on behalf of the thirteen rural local exchange carriers that comprise the Rural Independent Companies or “RIC”.

As a preliminary matter, RIC desires to confirm that its members have concluded that this testimony should focus on the Proposal set forth in Attachment A to Progression Order No. 3 entered by the Commission in this docket on July 9, 2024 which I will refer to as the “Staff Proposal” in my testimony, rather than to focus on any of the alternative proposals for distribution of NUSF High Cost Program ongoing expense support in 2025 that are referenced on page 2 of Progression Order No. 3. Thus, RIC will not provide further comments regarding the 2025 transition proposal that it distributed to the Commission and interested parties at the May 30 Workshop No. 2.

Section 1: In Section 1 of the Staff Proposal the Staff recommends that the Commission should increase the minimum available broadband speeds required for a location to be eligible to continue to receive NUSF High Cost Program ongoing expense support which I will refer to as “ongoing support” in my testimony. For 2024, the Commission approved provision of ongoing support to locations that are 25/3 Mbps capable. The Staff Proposal would increase these speed

thresholds to 100/20 Mbps. Provision of ongoing support would be limited to locations within an Incumbent Local Exchange Carrier's service area that are 100/20 Mbps-capable as of January 1, 2025.

RIC believes that the Commission has authority pursuant to Section 86-325 of the Nebraska statutes to accelerate to January 1, 2025 the implementation of the 100/20 Mbps standard for eligibility of an Incumbent Local Exchange Carrier to receive ongoing support, consistent with the eligibility requirements that were approved by the 2024 Legislature in LB1031, Section 4.¹ However, RIC also believes that in connection with implementation of this 100/20 Mbps eligibility standard the Commission should recognize the exception to the 100/20 Mbps eligibility standard adopted by the Legislature in Section 4 of LB1031. The Legislature provided "except that (a) If a broadband serviceable location is subject to a federally enforceable commitment for deployment of infrastructure capable of access to the Internet at speeds of at least one hundred megabits per second for downloading and at least twenty megabits per second for uploading, *the commission shall continue to provide ongoing high-cost support from the fund* so long as the recipient of the ongoing high-cost support is in compliance with the deployment obligations of such federally enforceable commitment and the requirements of the fund."
(emphasis added)²

¹ Section 4 of LB1031 provides that 18 months following the effective date of LB1031 broadband speed requirements for ongoing support eligibility will be increased to 100/20 Mbps. Section 4 of LB1031 became effective on April 15, 2024. Therefore, the Legislature's specified date on which the 100/20 Mbps speed requirements for ongoing support eligibility will become effective is October 15, 2025. The Proposal would accelerate this date by nine and a half months.

² "Enforceable commitment" is defined in LB1031, Section 6 to mean "a binding legal agreement between an Internet service provider and the federal government or this state by which the Internet service provider receives a grant of federal or state funds in exchange for the Internet service provider deploying broadband service infrastructure to one or more unserved

RIC recommends that Section 1 of the Proposal should be modified to provide that any incumbent local exchange carrier that is (a) subject to a federally enforceable commitment as of January 1, 2025 (which would include the ACAM and E-ACAM federal programs); (b) in compliance with the requirements of the deployment obligations thereunder; and (c) in compliance with the requirements of the NUSF High Cost Program shall continue to receive ongoing support for such locations in 2025 even if such locations are not 100/20 Mbps-capable as of January 1, 2025.

Section 2: RIC supports Section 2 of the Staff Proposal which would continue to utilize the existing definition of high cost areas and that census block locations would be updated to utilize 2020 Census Bureau data. RIC has previously advocated that the Commission update the Census data utilized in connection with the NUSF High Cost Program to the 2020 U.S. Census Bureau data.

Section 3: RIC supports Staff Proposal Section 3 that advocates utilization of location-specific cost modeling data developed pursuant to a contract with CostQuest Associates based upon the FCC's location fabric to determine where broadband serviceable locations exist. RIC also supports CostQuest's use of the location fabric data set released by the FCC on or about June 30, 2024 as the basis for cost model information that the Commission will license. The Commission should use the most recent available Broadband Data Collection to determine the locations in which 100/20 Mbps broadband service exists.

Section 4: This section proposes that modeled cost for each 100/20 Mbps location that is not competitively served by a wireline competitor would be used to determine a company's

locations and that includes administrative or other penalties if the Internet service provider fails to meet the terms of such agreement." An incumbent local exchange carrier that has elected to receive ACAM or Enhanced ACAM federal support is subject to an enforceable commitment.

support base. The section describes the methodology and the benchmark rate by which modeled costs for each 100/20 capable location would be developed.

Based only on RIC's review of the contents of Section 4, RIC has not identified criticisms of or objections to the methodology or data that is proposed for use in determining modeled costs. However, RIC strongly suggests that if this portion of the Staff Proposal receives Commission approval, such approval should be conditioned upon the requirement that a reasonable time prior to use of the revised modeled costs to determine 2025 distributions of ongoing support, the Staff should release its proposed modeled cost calculations for every NUSF-eligible location and afford an opportunity for review and comment by all interested parties regarding the proposed modeled cost calculations. In connection with the release of the proposed modeled cost calculations, RIC assumes that the Commission will require access to such information to be conditioned upon execution of a reasonable and appropriate non-disclosure agreement. The RIC member companies confirm their willingness to execute such an agreement.

Section 5: Staff recommends continued usage of the NUSF EARN process for rate of return carriers in 2025. The RIC member companies are unable to reach a consensus with regard to the issue of continued use of the NUSF EARN process due to the disparate economic impacts of continuation of the earnings test on individual RIC member companies. As a result, RIC will remain neutral on this issue.

Section 6: This section proposes a rate comparability metric to be applied only to PC carriers. As written, this Section would be inapplicable to rate of return carriers such as the RIC member companies. However, in the Commission's Order Identifying Issues for Workshop No. 2, page 2, item 4 stated: "The Commission would like to discuss the continued use of the NUSF

EARN Form *and the potential replacement of the earnings tests with a rate comparability test.*” (emphasis added) Little discussion of the details relating to a potential “rate comparability test” took place at the May 30 Workshop. Therefore, this concept has not yet been fully developed for comment by interested parties, nor has the Commission Staff offered any definitive statement as to whether the concept would potentially be applied to rate of return carriers in a manner that could impact eligibility to receive ongoing support in years subsequent to 2025.

As such, RIC requests the Staff to provide a complete explanation as to whether a “rate comparability metric” will be proposed to apply to rate of return carriers at some point in the future, and if so, to also provide a detailed description of this metric and how its application would impact a rate of return carrier’s continued receipt of ongoing support.

Section 7: Section 7 addresses Federal USF imputation for rate of return carriers that have elected various forms of Federal USF support as well as imputation of various Federal program support to price cap carriers. As with the earnings test issue discussed with regard to Section 5 above, the RIC member companies are unable to reach a consensus concerning the issue of FUSF imputation as described in Section 7 of the Staff Proposal due to the disparate economic impacts of FUSF imputation on individual RIC member companies. As a result, RIC will remain neutral on this issue.

Section 8: This section addresses redistribution of ongoing support due to carriers’ overearnings. Because this concept is an integral part of the continuation of the NUSF EARN Form process described in Section 5 of the Staff Proposal, RIC adopts a position of neutrality in response to this Section 8 consistent with RIC’s position in response to Section 5 as set forth above.

Section 9: This section presents the Staff's proposed "glide path" option for calculating a carrier's 2025 ongoing support amount. RIC has a number of questions regarding this proposal. First, does the Staff intend to use a carrier's 2023 ongoing support rather than 2024 ongoing support for calculation of the "glide path" amount? RIC understands that the reference to 2023 in this Section is a typographical error and will be changed to 2024. Second, how was 75% chosen as the support level? Was this based upon use of certain data to calculate a "safety net" that would "ensure that changes in support are not so drastic as to induce hardship due to the new mechanism"? If so, RIC requests that this data and the calculations be shared with all interested parties.

In Section 9 the Staff describes the "glide path" as an "option" which implies that a carrier would have the right to opt in or to opt out of the glide path. How could a carrier intelligently exercise its option unless it was first informed as to its ongoing support allocation calculated for 2025? When will this calculation be available? How long will a carrier be given to determine whether to exercise its option to take the glide path? Will final determinations of ongoing support allocations for all eligible carriers be delayed until all glide path elections are completed? The foregoing questions, and likely several more, need to be addressed by the Staff before interested parties can intelligently comment on the "glide path" proposal.

Section 10: This section reaffirms that ongoing support must be used by the recipients consistent with the requirements of *Neb. Rev. Stat. §86-324(1)* "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.". RIC members have consistently supported and adhered to these requirements in the past and reaffirm such support at this time.

The RIC member companies appreciate the opportunity to submit this pre-filed direct testimony for consideration by the Commission and its Staff. The RIC member companies look forward to continued participation in this proceeding.

Dated: August 6, 2024.

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 6th day of August, 2024, an electronic copy of the foregoing pleading was delivered to the Nebraska Public Service Commission at psc.telecom@nebraska.gov and was electronically served on Cullen Robbins, Director of Communications, Shana Knutson, legal counsel for the Commission and on legal counsel for all interested parties that have appeared in this docket.

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