

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own Motion, to consider appropriate modifications to the high-cost distribution and reporting mechanisms in its Universal Service Fund program in light of federal and state infrastructure grants.) Application No. NUSF-139
) Progression Order No. 8
)
) **COMMENTS**
)
)

NEBRASKA RURAL BROADBAND ALLIANCE

The Nebraska Rural Broadband Association (“NRBA”),¹ through its attorneys of record, Rembolt Ludtke LLP, respectfully submits these comments in response to the *Order Seeking Comment and Setting Workshop* entered by the Public Service Commission (“Commission”) on August 26, 2025 (“Progression Order No. 8” or “PO8”).

Framework for Transitioning Support & Corresponding Duties

As stated in Comments on Progression Order No. 7, the NRBA generally supports the framework proposed by the Commission for transitioning NUSF high-cost support and obligations to competitive carriers. The framework ultimately adopted by the Commission must be consistent with the Rural Communications Stability Act² and the Telecommunications Exchange Deregulation Act, which became effective September 2, 2025,³ as well existing Commission rules and regulations regarding transition of support.⁴ The Commission should adopt a transition framework that is administratively efficient and not unduly burdensome. The Commission should strive for a simple framework that is consistent internally and with statutes and rules and regulations, but that is not redundant.

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

² NEB. REV. STAT. §§ 86-1501 – 86-1507.

³ LB311 §§ 1-11 and 21.

⁴ NEB. ADMIN. CODE, tit. 291, ch. 10, §§ 004.02(G)(i) – (ii).

The framework should provide carriers that are considering a deployment project a roadmap or checklist of information that is required to justify transitioning NUSF support and its corresponding obligations. It should be simple. While generally on target, the current proposed framework is unnecessarily complicated and contains redundancies. It should be simplified. The NRBA recommends the Commission establish a framework like something of the following.

Definitions

Aiming at the goal of simplicity, the NRBA would first recommend the Commission define certain terms with ordering language similar to the following.

For purposes of this proceeding, the following definitions shall apply:

Broadband Services means Internet services at minimum speeds established under state statute.

The **Broadband Benchmark Rate** means the same rate in compliance with the FCC's Urban Rate Survey benchmark rules for Broadband.

COLR means carrier of last resort with obligations enumerated in this Order.

FCC means the Federal Communications Commission.

ILEC means the Incumbent Local Exchange Carrier.

NETC means a Nebraska Eligible Telecommunications Carrier.

NUSF means the Nebraska Telecommunications Universal Service Fund, as defined under the Nebraska Telecommunication Universal Service Fund Act.

RCSA means the Rural Communications Sustainability Act.

TEDA means the Telecommunications Exchange Deregulation Act.

Transition Support Area means the contiguous geographic area consisting of locations serviceable by broadband and telecommunications services in a local exchange area for which an ILEC had COLR obligations until the Commission has by order relieved said ILEC of its COLR obligations and transferred those COLR obligations to an NETC as a condition of transitioning

high-cost support for such locations, but shall not necessarily be construed to mean the entire local exchange area.⁵

The **Voice Benchmark Rate** means the same residential price range as the Commission established *In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to the universal service fund mechanism established in NUSF-26*, Application No. NUSF-50, Order at p. 9 (Dec. 19, 2006).

Voice services mean telecommunications, as defined under NEB. REV. STAT. § 86-320.01.

Proposed Order Language

Based on its consideration of the Commission's proposal and comments by various stakeholders, the NRBA recommends the Commission adopt the following language as part of its order following the September 30 hearing under Progression Order No. 8:

Any carrier desiring to receive NUSF support and take on corresponding obligations for locations that are currently in an ILEC's traditional exchange may file an application ("**Support Transition Application**") in accordance with the RCSA, the Commission's NUSF Rules and Regulations,⁶ or this Order with the Commission pursuant to the Commission's Rules of Procedure.⁷

For purposes of 2026 NUSF support allocations, a Support Transition Application must be filed no later than October 1, 2025. The Commission will determine all timely filed applications no later than November 4, 2025.

For purposes of support allocations for years after 2026, a Support Transition Application must be filed no later than September 1.

⁵ See NEB. REV. STAT. §§ 86-324.02 and 86-1503(5).

⁶ *Id.*

⁷ NEB. ADMIN. CODE, tit. 291, ch. 1.

The Commission will determine all timely filed applications no later than October 1.⁸

A Support Transition Application shall include the following:

1. A description of the Applicant's organizational structure, including a certificate of good standing from the Nebraska Secretary of State.
2. A demonstration that the Applicant is an NETC or a commitment verified by affidavit to become a NETC prior to receiving NUSF support.
3. A commitment verified by affidavit to comply with all provisions of NEB. ADMIN. CODE, tit. 291, ch. 10, § 004.02(G).
4. A commitment verified by affidavit to fulfill to the Commission's satisfaction the following COLR obligations for so long as the Applicant receives NUSF support:
 - a. Offer Voice Services to all locations in the Transition Support Area in compliance with the Commission's rules and regulations.⁹
 - b. Offer reliable Broadband Services to all locations in the Transition Support Area at speeds required by statute.¹⁰
 - c. Offer affordable and reasonably comparable Voice Services and Broadband Services to all locations in the Transition Support Area. Rates for Voice Services may be no higher

⁸ The NRBA urges the Commission to consider requesting legislation to make TEDA consistent with this approach in terms of the timing of transition decisions. Administrative efficiency and fair allocations will only be achieved if allocations are determined annually both ILEC-initiated transition proceedings and CLEC-initiated transition proceedings.

⁹ NEB. ADMIN. CODE, tit. 291, ch. 5.

¹⁰ NEB. REV. STAT. § 86-324.04.

than the Voice Benchmark Rate. Rates for Broadband Services must comply with the Broadband Benchmark Rate.

d. Offer 911 and Telecommunications Relay services.¹¹

e. Participate in the Nebraska Telephone Assistant Program.¹²

5. A description of the Transition Support Area, showing by shapefile or similar means all locations for which support is sought.
6. A commitment to file the NUSF EARN Form, or any replacement filing, annually.
7. A commitment to file Commission-prescribed NETC certification reports annually.
8. A commitment to provide interconnection with any requesting carrier on a reasonable and nondiscriminatory basis.
9. A commitment to filing speed test data and meeting speed testing metrics consistent with the Commission's Orders in Docket No. NUSF-133.
10. A commitment that NUSF support received will be used in a manner consistent with the requirements of the NUSF Act (Neb. Rev. Stat. 86-316 – 86-239), Commission Rules and Regulations, and any order or policy of the Commission relevant to the use of NUSF support.
11. An affirmation verified by Affidavit that Applicant is not using or deploying communications equipment or service deemed to pose a threat to national security which is identified on the FCC's *List of*

¹¹ NEB. REV. STAT. §§ 86-1032 – 86-1086 and

¹² NEB. REV. STAT. §§ 86-329.

Equipment and Services Covered by Section 2 of the Secure Networks Act anywhere on its network.¹³

Cream-Skimming

In Progression Order No. 8, the Commission for the first time suggests a “petition” process to address cream-skimming concerns. The NRBA urges the Commission not to over-regulate actions of any type to transition NUSF support and its corresponding obligations. To some extent, each transition will need to be handled on a case-by-case basis, as the Commission has acknowledged.¹⁴ With the conversion of high-cost support from a partly grant-based system to a system now almost entirely directed to the ongoing costs of operations and maintenance, the concern about cream-skimming is misplaced. Support should flow to serve all high-cost locations. The time for considering concerns like cream-skimming or cherry-picking is during the period when grants are awarded and business decisions are made.

Members of the NRBA made business decisions beginning in the 1990s to deploy fiber in rural, high-cost areas of their ILEC exchanges. They deployed state-of-the-art infrastructure to customers in all areas. They did not utilize NUSF support as a cream-skimming tool. Other carriers did, some deploying only in their largest cities. Some carriers have competitively overbuilt cities traditionally served by an ILEC, cream-skimming and leaving the surrounding high-cost locations in even worse state. Some of these competitive carriers used their own funds to do so. Others used grants. Now, ILECs that have seen their cream skimmed still have legal COLR burdens to serve high-cost locations to which the

¹³ <http://www.fcc.gov/supplychain/coveredlist>.

¹⁴ Progression Order No. 8, p. 12.

competitor (in many cases, subject to the Commission’s authority and oversight)¹⁵ chose not to deploy.

Many carriers have received grants to deploy broadband. Grants were made by the state and political subdivisions under recent federal and state programs, such as the Nebraska Broadband Bridge program, which gave some preference for projects in high-cost areas.¹⁶ In 2023, the NRBA successfully pushed for legislation requiring the granting agency – whether it be the NBO, a county, or another government body – to collaborate with the Commission to ensure the long-term sustainability of rural, high-cost communications infrastructure.¹⁷ **It is at this point the Commission should be pressing the granting agency, the ILEC, and the competitor seeking funding to consider reaching as many locations as possible and to avoid cream-skimming by either the ILEC or the competitor.**

The RCSA also requires the Commission to coordinate with the FCC, and in consultation with the ILEC and competitive grantee, to determine whether support and its corresponding obligations should be transferred to the competitive provider.¹⁸ The message of the law is clear. All agencies and stakeholders “*shall*” work together with the goals of the RCSA in mind – and certainly guarding against cream-skimming falls within those goals.

The NRBA would respectively urge the Commission to follow the same course in determining the transition of support in areas that do not fall under the RCSA – such as privately funded projects. Unquestionably, in determining any Support Transition Application, the Commission – working with others – should consider the public interest and

¹⁵ *E.g.*, Bridge Program grants allowed competitors to seek funding for some, but all locations in an exchange; CPF grants permitted the same; moreover, most boundary change applications do not see a shift in funding for years, if at all, arguably leaving the COLR question in limbo.

¹⁶ NEB. REV. STAT. §§ 86-1304(1)(a).

¹⁷ Nebraska Rural Communications Sustainability Act. *See* NEB. REV. STAT. §§ 86-1502 and 86-1504.

¹⁸ NEB. REV. STAT. §§ 86-1505(3).

specifically the impact of the Application on nearby locations, locations within the historical exchange of the ILEC that is transitioning out. As the Commission correctly observes, it should “consider such issues on an independent basis.”¹⁹ The facts and circumstances of each transition will vary on a case-by-case basis.

Federal-State ETC Designations

The Commission also sought comment on whether there should be a requirement “for competitive providers petitioning the Commission to file for and receive federal ETC designation pursuant to (federal statute) as a condition to transfer COLR and high-cost support.” The complementary nature of NUSF and FUSF support is addressed by RCSA, which will apply to some support transition actions the Commission oversees. Even when not mandated to coordinate with the FCC as it is done under the RCSA, the Commission should use the same coordinated approach when considering other transition actions, such as transitions involving the many rural locations in Price Cap ILEC exchanges already served by competitive NETCs.

As stated above, going forward, the Commission must coordinate with the FCC in considering transition of support and corresponding obligations for grant-funded projects.²⁰ The NRBA strongly recommends the Commission do the same as other projects are considered.

Avoiding Duplicative Funding

The NRBA agrees with Charter’s comment that it is important to avoid duplicative public funding of broadband infrastructure but *strongly disagrees* with Charter’s statement that providing ongoing NUSF support “for locations with existing service” would constitute

¹⁹ Progression Order No. 8, p. 12.

²⁰ *Id.*

duplicative funding.²¹ All NRBA members ***are providing service*** to rural locations throughout their Nebraska exchanges and federally recognized study areas. Members of the NRBA that are ILECs have been providing fiber services to rural customers in their traditional exchange areas ***since the 1990s***. Most were near completion of fiber deployment throughout the entirety of their rural exchanges ***by 2012***. These small Nebraska businesses – mostly family operations and cooperatives – deployed fiber, utilizing financing from combinations of NUSF and FUSF support, together with private and cooperative equity capital and long-term debt. Many NRBA members utilized low-interest loans from the Rural Utilities Service of the United States Department of Agriculture. Those loans were authorized by the USDA based on long-term funding commitments of ongoing FUSF and NUSF support to assist in servicing the debt.

Further, under some programs, such as the Nebraska Broadband Bridge Program and the Capital Projects Fund, applicants based their cost estimates for locations in rural high-cost areas on assumptions of NUSF support, as permitted by law. The same is or will be true under the BEAD program. In such cases, ongoing NUSF support for recurring operational and maintenance costs does not duplicate grant funds that were intended to only partially fund capital expenditures to deploy a broadband network. Rather, the NUSF support augments or complements grant funding. In fact, the Legislature in adopting the RCSA ***required*** the Nebraska Broadband Office, established specially for purposes of administering the BEAD program, to coordinate with the Commission to ensure the long-term sustainability of broadband infrastructure.²² The Legislature envisioned ongoing support being authorized for all grant programs, whether state or local.²³ Ultimately, it is up

²¹ *Charter Fiberlink – Nebraska LLC, and Time Warner Cable Information Services (Nebraska), LLC's Comments in Response to Progression Order No. 6, Issued April 8, 2025*, NUSF-139 (July 1, 2025), at p. 2

²² See NEB. REV. STAT. §§ 86-1502 and 86-1504.

²³ See NEB. REV. STAT. §§ 86-1505(3).

to the Commission to determine when support, together with the corresponding COLR obligations, should be transitioned.²⁴ For all of these grant-based programs, the NRBA strongly urges the Commission to transition both support and the corresponding obligations *after* buildout of the grant project is complete and Commission-overseen speed testing demonstrates compliance with state law.²⁵

Conclusion

The NRBA will provide additional comments and looks forward to responding to the Commission's questions at the hearing on September 30.

DATED: September 15, 2025

NEBRASKA RURAL BROADBAND ASSOCIATION

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²⁴ NEB. REV. STAT. § 86-1505 (3).

²⁵ See NEB. REV. STAT. § 86-324.02.

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CERTIFICATE OF SERVICE

The undersigned certifies that an original of the above ***Comments*** of the Nebraska Rural Broadband Association were filed with the Public Service Commission on September 15, 2025, and a copy was served via electronic mail, on the following:

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