

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public) Application No. NUSF-139
Service Commission, on its own Motion, to) Progression Order No. 3
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.

**PRE-FILED REBUTTAL TESTIMONY OF THE
NEBRASKA RURAL BROADBAND ALLIANCE**

The Nebraska Rural Broadband Association (“NRBA”), through its attorneys of record, respectfully submits the attached Pre-filed Rebuttal testimony of Bachtiyer Kholmatov as allowed in the Order Releasing Proposal and Setting Procedural Schedule, entered by the Public Service Commission on July 9, 2024, in Application No. 139, Progression Order No. 3. The NRBA reserves the right to further comment on the rebuttal testimony of other parties.

DATED: August 20, 2024

**NEBRASKA RURAL BROADBAND
ASSOCIATION**

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.

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CERTIFICATE OF SERVICE

The undersigned certifies that an original of the attached ***Pre-filed Rebuttal Testimony PO-3*** of the Nebraska Rural Broadband Association were filed with the Public Service Commission on August 20, 2024, and a copy was served via electronic mail, on the following:

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**PRE-FILED DIRECT TESTIMONY OF THE
NEBRASKA RURAL BROADBAND ALLIANCE**

Q: Mr. Kholmatov, the Commission has allowed parties to make rebuttal testimony. Would you like to respond to any direct testimony presented by other parties or the Commission's staff?

A: Yes, I would. First, however, let me say that the Commission Staff is to be commended for its work to date. The prefiled direct testimony submitted by all but one of the parties generally supported the Commission Staff proposals set forth in the PO3 Order. That demonstrates convincingly that the Commission Staff's proposals for the Transitional Period are based on a solid record and sound public policy. I would emphasize that the NRBA supports the proposals to the extent they are applicable during the Transitional Period of 2025. As the Commission has noted, after the Transitional Period many of the proposals may continue into the future, while others may be changed.

Q: Please address any issues raised by the prefiled direct testimony submitted on behalf of others.

A: I will begin by addressing the prefiled testimony submitted by Commission Staff. I want to assert that we support the bulk of the direct testimony of NUSF and Telecom Director Cullen Robbins. In fact, we agree with all of his testimony, but express only a bit of hesitation with what he said in the first paragraph of his general description of the Staff Proposal. It's

really more how he said it than what he said. From the way his testimony reads, it almost could sound like the issue relating to transition of BDS support to ongoing support for the 2025 Transitional Period remains a proposal by the Staff. In fact, the issue of transition from BDS to Ongoing support has already been determined. In its July 9 *Findings and Conclusions* in this NUSF-139 investigation, the Commission said:

Consistent with the Commission staff's recommendation, the Commission also finds that it should suspend the provision of what it refers to as BDS during 2025. A pause of the BDS mechanism in its current form will allow the Commission to see the progress of other infrastructure programs including the NBBP, CPF, and the BEAD program as well as the Enhanced A-CAM mechanism.¹

The matter of transitioning support from BDS to Ongoing is no longer a proposal. Rather, it is a determination made by the Commission. The determination applies during the period the Commission called "a pause." That is the Transitional Period. What remains to be determined are the standards and conditions that will apply to high-cost support during the Pause. The rest of Mr. Robbins' testimony addresses the Staff's proposals for those standards and conditions that will apply in 2025. The NRBA generally supports the proposals Mr. Robbins made throughout the remainder of his testimony.

Q: Are there other issues raised by parties in their prefiled direct testimony you would like to address?

A: Yes. I would be remiss, however, not to begin by emphasizing the great consensus among the commenting parties. Sure, we are still talking at a conceptual level. Yes, we have

¹ In the above-captioned matter, Prog. Ord. No. 2, *Findings and Conclusions*, p. (July 9, 2024).

not had an opportunity to look at real data and cost modeling based on current information. A great deal of work needs to be done to establish the framework and standards for the model that will be used during the Transitional Period – let alone for the long-term. All that said, the fact there is so much consensus speaks to the soundness of Mr. Robbins’ proposals and, the NRBA believes, bodes well for our future work together, even when we come to issues upon which we at this time might disagree.

An important issue has sparked different positions throughout the NUSF-139 investigation. That is the continued use of the EARN form. The NRBA and its predecessors have always been strong supporters of use of the EARN form, which effectively caps our earnings. Presently, a 9.75% rate-of-return is allowed, as Mr. McElroy said in his direct testimony. Mr. McElroy recommended the Commission not use the EARN form during the 2025 Transition period. He was alone in his recommendation. The RTCN made clear its continued opposition to use of the EARN form “on a permanent basis,” but said that the form’s continued use was “acceptable” for the Transitionary Period. The RIC could not find consensus on the issue. We appreciate the explanations Mr. McElroy and the RTCN gave for their positions.

The NRBA consists of many different types of carriers. By that I mean a few things. We have ACAM companies. Hooper was an original ACAM adoptee. Cambridge elected E-ACAM. The large majority of NRBA members remain Legacy carriers. But the differences go beyond how we are characterized for federal support purposes. Stealth is a CLEC. It does not have an ILEC affiliate. It was mainly a fixed wireless company when it joined and does not receive NUSF support. Three of our members are cooperatives. Some of the traditional ILEC members have CLEC affiliates. Others don’t. Despite our differences, we find consensus within the NRBA. For example, together we strongly support a cap on earnings of Nebraska

ETCs receiving support. All of us, believe the EARN form has served the Nebraska public well. We found consensus on that as a group, *but* we are open to talking.

We believe that through discussions with thoughtful people like Mr. McElroy and Mr. Barkley, we can achieve broader consensus on the best means to ensure accountability without giving advantage to one type of carrier. The accountability methodology should not be used to stifle business innovation.

Q: Are there other points made in direct testimony you would like to address?

A: Yes. The NRBA supports the strong statement Mr. Barkley made on behalf of the RTCN in its discussion about the EARN form and accountability. Mr. Barkley said, (and I quote):

“For purposes of high cost ongoing support there is no logical reason for subjecting Rate of Return carriers and Price Cap carriers to differing standards.”

The NRBA wishes we had been as forthright as Mr. Barkley when it came to the question of Price Cap accountability. As I said in my direct testimony, we believe the accountability standards Staff proposed for Price Cap carriers were overly light-handed. We agree with Mr. Barkley, they should be as rigorous as those for Rate-of-Return carriers, if not more so, given past track records. While the NRBA unfortunately does not have an alternative to the EARN form to suggest for Price Cap carriers, we simply now take the position that we are glad to collaborate with the Commission and Price Cap carriers to help develop fair accountability measures for all locations. Ultimately we must be focusing away from the carrier and more on the location.

I also think Mr. Barkley’s testimony on the subject of transparency captures the essence of the NRBA’s concern about not committing to support any particular outcome until

ample, open, and evidence-based investigation is conducted. This should happen before the Commission adopts any Transitional Period methodology. Here is what Mr. Barkley said:

“The RTCN agrees that federal support received must in some manner be accounted for when determining a carrier’s eligible support base. Beyond that general statement, we reserve any further comment until after the updated cost modeling data is complete and the impact of any particular method of federal support imputation can be considered together with the new data.”

The NRBA may not be so reserved with our comment. We hope to do more than comment. We hope to engage with other parties and the Commission in ensuring the most accurate and current input data is used and that the various aspects of high-cost allocation methodology are addressed fairly. To do so, however, we must have access to that data and we must know more about what the Commission and its experts are considering in terms of changes in methodology.

I think that is what Mr. Barkley is getting at. We want to see the new data. The inputs need to be transparent. The methodologies for allocating support and imputing federal support must be open for public investigation. In that regard, we wholeheartedly agree with Mr. Barkley: It is difficult to comment much more than we have at this point. We urge the Commission to expeditiously and openly investigate at a granular level all pertinent input data, as well as its proposed allocation and imputation methodologies.

Q: Is there anything else that’s been said in prefiled direct testimony that you would like to comment on, Mr. Kholmatov?

A: Just one more thing. I would like to briefly address a comment Mr. Davis made in direct testimony submitted on behalf of the RIC group. Referencing LB1031, which was

enacted during the regular Session of the Legislature earlier this year, Mr. Davis pointed out there is an exception for the 100/20 Mbps standard to qualify for ongoing support, which the Commission intends to begin to enforce January 1, 2025. The NRBA agrees with the RIC. It is imperative for the Commission to recognize this exception.

As Mr. Davis correctly said, this statutory exception applies when there is a federally enforceable commitment for deployment of 100/20 speeds. He asked the Commission apply the exception *to ILECs* that are subject to the federal commitment. I would rephrase that to ask the Commission to apply the exception *to locations* subject to federally enforceable commitments, which is what the statute says. That's how the language reads. According to LB1031, the Commission's attention must be focused primarily *on the location*. As the recipient of support for accepting a corresponding duty to serve the location, the carrier is secondary.

Mr. Davis is generally correct. ETCs serving locations subject to federal commitments will continue to receive ongoing support so long as they are in compliance with deployment obligations of the federally enforceable commitment and the requirements of the NUSF. It is also important to remember that this exception does have a sunset. Beginning January 1, 2029, the Commission is no longer allowed to provide ongoing high-cost support for any location receiving less than 100/20 service.

Q: Please conclude your testimony.

A: Commissioners, thank you for your efforts to date. Your Staff is to be commended. We all have a lot of work left to do. Thank you for your leadership. We look forward to working together to build consensus to the greatest extent possible. The Transitional Period will give us time to do so in a thoughtful and deliberate manner. I would be glad to answer questions.