

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-139
Public Service Commission, on its)	
own motion, to consider appropriate)	COMMENTS OF THE RURAL
modifications to the high-cost distribution)	TELECOMMUNICATIONS
and reporting mechanisms in its Universal)	COALITION OF NEBRASKA
Service Fund program in light of federal)	
and state infrastructure grants.)	

INTRODUCTION

The Rural Telecommunications Coalition of Nebraska (“RTCN”)¹, by and through its undersigned counsel of record, submits these Comments (“Comments”) in response to the Order Opening Docket and Seeking Comment (the “Order”) entered by the Nebraska Public Service Commission (the “Commission”) on August 29, 2023 in the above-captioned matter. As requested, these Comments relate only to those issues set forth in Sections II.B and II.C(1), (2) and (6) of the Order.²

At the outset, we commend the Commission’s recognition of the need for reform of the Nebraska Universal Service Fund (“NUSF”) high-cost distribution mechanism, and for its willingness to embark on a holistic examination of the NUSF high-cost program. Before launching into a discussion of necessary changes, it is important to underscore the accomplishments of the NUSF high-cost program in realizing the Nebraska Legislature’s vision of establishing access to affordable, ubiquitous telecommunications service across Nebraska. Thousands of Nebraska households and businesses throughout rural Nebraska now enjoy access to the same broadband service as residents of Lincoln or Omaha because of the Commission’s

¹ For purposes of this proceeding, the RTCN consists of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications; Benkelman Telephone Company, Inc., Cozad Telephone Company, Hartman Telephone Exchanges, Inc., Diller Telephone Company, Southeast Nebraska Communications, Inc., Pierce Telephone Company, and Wauneta Telephone Company.

² *Order Bifurcating Schedule for Comments*, Docket No. NUSF-139 dated October 12, 2023.

past success through the NUSF high-cost program. While hard to quantify, the benefits for economic development, education, and health care in Nebraska's rural communities are significant and demonstrable. Their importance for the growth and vitality of rural Nebraska cannot be understated.

We attribute much of the Commission's success to its willingness for adaptation and change over the life of the NUSF high-cost program. The Commission has consistently responded to changes in federal high-cost support policy, new technologies entering the market, and most importantly, the needs of Nebraskans. Several new developments once again require an evolution in the NUSF high-cost program, including the estimated \$405 million broadband deployment funds to be distributed in Nebraska through the federal Broadband Equity Access and Deployment ("BEAD") program.

The Commission last undertook a major reform of its NUSF high-cost program approximately five (5) years ago in the NUSF-108 docket. Much has changed since that time. While far from complete, extensive broadband deployment has occurred in many previously unserved and underserved areas through the Nebraska Broadband Bridge Program, the Capital Projects Fund, NUSF broadband deployment support, and other sources. Notably, the level of the NUSF Fund has stabilized due to the Commission's contribution methodology reforms.³

Much will continue to change over the next five to ten year period. Investments in deployment through the BEAD program will bring service to thousands more locations across the state. Aside from BEAD, enforceable commitments to serve now exist in thousands of additional locations across the state as a result of recent federal Enhanced A-CAM elections.

³ *In the Matter of the Commission, on its own motion, to consider revisions to the contribution methodology and determine a rate design for services currently subject to a revenues-based surcharge, Docket No. NUSF-119 and In the Matter of the Commission, on its own motion, to determine a rate design and address implementation issues with a connections-based contribution mechanism, Docket No. NUSF-111.*

These Comments are intended to highlight current issues, identify topics for discussion as this docket progresses, and suggest necessary reforms that will position the NUSF high-cost program to meet the future needs of Nebraskans.

B. THE RTCN COMPANIES

As context, we provide the Commission with background information on the RTCN members, their historical activities, and NUSF support levels. The RTCN Companies are rural, independent local exchange carriers (“ILECs”). Most are family-owned businesses, having been passed through successive generations that are community based and maintain close relationships with their customer bases. The RTCN Companies were founded and proudly remain in the rural Nebraska cities of Diller, Cozad, Arapahoe, Pierce, Falls City, and Benkelmen.

Most RTCN Companies have substantially completed fiber to the home (FTTH) build out in their respective exchanges and provide their customers with voice and broadband service at speeds of 100/100 or greater. In that sense, RTCN Companies have been early adopters and front runners in fulfilling the ubiquitous broadband goals of the Commission and the Legislature for rural Nebraskans. RTCN Companies completed much of their existing deployment *before* significant amounts of grant-based funding were available through the Nebraska Broadband Bridge Act, or other such sources. Rather, RTCN Companies financed significant portions of their networks with loans, internal capital, or other sources of debt. A key factor in the business decision-making of the RTCN Companies to deploy networks in this manner was the promise of stable and predictable ongoing support from the NUSF High-Cost Fund.

As the Commission’s Order recognizes in several instances, the challenge for RTCN Companies after deploying broadband networks in high-cost areas is the continual cost of debt

service, operations, maintenance, and upgrades to ensure that deployed networks remain viable.⁴ With cost inflation for operating and capital expenses drastically increasing and debt service remaining, ongoing support from the NUSF High-Cost Fund is critical for the RTCN Companies. Unfortunately, many RTCN Companies have experienced fluctuating ongoing support from the NUSF High-Cost Fund for several years.

Traditionally, the RTCN Companies all received cost-based legacy support from the federal Universal Service Fund (“USF”). Pierce Telephone Company and Arapahoe Telephone Company previously elected support based on the Alternative Connect America Model (“ACAM”). In 2023, Southeast, BWTelcom, Diller, and Arapahoe elected Enhanced A-CAM. Presently, only Cozad Telephone Company continues to receive cost-based legacy federal support.

For the RTCN Companies that elected Enhanced A-CAM support at the federal level, it is important to understand that those companies *will not* receive more total support on the federal level as a result of the election. Instead, those companies will generally receive federal support *equal* to each’s legacy support received in 2022. Using the FCC’s transitional support calculation over the 15 year term of the Enhanced A-CAM obligation period, federal support for each RTCN Company electing Enhanced A-CAM will *decrease* over the 15 year term.

Notwithstanding that their federal support will be frozen at 2022 levels for the next 6 years, the RTCN Companies that elected Enhanced A-CAM will face significant reductions in their NUSF high-cost ongoing support levels based upon our understanding of the current methodology.

⁴ Order at page 12.

II.B PROPOSED UPDATES TO THE STRATEGIC PLAN

The RTCN generally supports the Commission’s suggested revisions to its strategic plan.

A. Adoption of an Affordability Goal

The Order questions whether the Commission should include within its strategic plan a goal of affordability. We support the adoption of such a goal, which is consistent with the Legislature’s statewide universal service policy of ensuring consumers statewide have access to comparable services at comparable rates. Neb. Rev. Stat. § 86-323(3).

B. Updates to the Commission’s Quality Goal

The Order also seeks input on whether the Commission should update its strategic plan to define “a certain level of quality access to broadband and telecommunications services [that are] provided.” While somewhat unclear, we interpret the Order to ask whether the Commission should establish a specific strategic goal of ubiquitous broadband service at a certain level of speed. We answer that question in the affirmative and suggest that the Commission establish a goal of access to service at speeds of 100/100 statewide.

C. Adoption of a Sustainability Goal and Additional Goals

Importantly, the Order also asks whether the Commission should consider adopting a sustainability goal into the strategic plan. The very language of the NUSF Act supports this notion:

There should be specific, predictable, sufficient, and competitively neutral mechanisms to **preserve** and advance universal service [which] will be made available to any entity providing telecommunications services, **maintenance, and upgrading of facilities**.

Neb. Rev. Stat. § 86-323(5)(emphasis added) By referencing the preservation of existing services by supporting their maintenance and upgrading, the Legislature clearly foresaw the need

for sustainability of deployed networks. Sustainability should be a primary strategic goal of the Commission going forward; it is simply good policy to focus on ensuring that the rural networks deployed through the efforts of the Commission and the Legislature are durable into the future.

C1. INCENTIVING NEW BROADBAND INVESTMENT

The Order broadly asks the question of how the Commission should seek to revise its high-cost distribution mechanism “to incentivize continued investment in areas where broadband infrastructure has been and will be deployed.”⁵ As context for this question, the Order notes that “after the infusion of federal and state broadband infrastructure funding” the universal service goals of comparability and affordability will remain relevant. Said another way, when this imminent and significant investment in broadband deployment in Nebraska has been completed, the need to focus the Commission’s high-cost distribution mechanism on the maintenance and upgrade of existing networks will remain.

In that sense, we believe the Commission is asking the right question at the right time. As explained in more detail below, we believe the Commission should take the following steps for transitioning the high-cost distribution mechanism toward the future:

- Transition the high-cost distribution mechanism away from supporting deployment projects over the next five years;
- Focus the high-cost distribution methodology to deliver **stable, predictable and consistent** support that incentivizes providers to make long term investments in their networks;
- In doing so, develop a base level of support for all deployed networks that ensures a stable, predictable amount of annual ongoing support;

⁵ Order at page 12.

- Set benchmarks and requirements for performance as a condition of receiving this base support; and
- Consider offering ongoing support to providers over a fixed term of years to provide stability and encourage investment.

1. Transitioning the Fund to On-Going Support Only

We suggest that the Commission develop a plan for transitioning the NUSF away from supporting broadband deployment projects so that the full focus of the high-cost distribution will be on supporting the operation and maintenance of existing networks. As other commenters have already argued in this docket, the influx of new state and federal deployments funds will likely eliminate the need for the NUSF to continue supporting deployment activities.⁶ Because the administration of the federal BEAD program will take place over the next several years, and pending developments with the Commission’s renewed reverse auction efforts for unused deployment support in price cap areas, we believe the Commission can prudently transition that NUSF fully away from providing deployment support over the next five year period.

2. Deliver a Stable, Predictable, Consistent Methodology

One of the Legislature’s fundamental goals for Nebraska universal service policy was “specific, **predictable**, sufficient, and competitively neutral mechanisms to preserve and advance universal service.” Neb. Rev. Stat. § 86-323(5)(emphasis supplied) In 1997, the Legislature foresaw the need for universal service funding to be delivered in a predictable, stable manner – not annually subject to drastic changes outside the control of providers – as a means of encouraging continued business investment in rural, high cost areas.

⁶ *Comments of the Nebraska Rural Broadband Alliance*, Docket NUSF-139, dated September 29, 2023 at page 5.

Unfortunately, the Commission's high-cost distribution methodology has become anything but predictable on a long-term basis for RTCN Companies. RTCN Companies have experienced large swings (both positive and negative) in the amount of ongoing support received through the NUSF on an annual basis. While the NUSF mechanisms that create these fluctuations may have at one time had valid policy justifications, the ongoing support outcomes for RTCN Companies produced by these mechanisms are now counterproductive to the Commission's ultimate universal service goals.

The reason for this is straightforward: network investments require reliable revenue streams. Companies planning for future network maintenance and upgrades are unlikely to make favorable decisions based on ongoing support levels that are not reliable. As the Commission's Order recognizes, providers that have deployed networks must plan to maintain and eventually upgrade their networks with new technology, and to replace equipment that has reached the end of its useful life. Upgrade cycles occur every 5 to 10 years and are capital intensive. Decision-making on when and how to perform these upgrades is driven by expected revenues – from customers, from federal support, and from the NUSF. A prudent, well-managed rural telecommunications provider is unlikely to rely on the existence of NUSF ongoing support using the current methodology because the outputs for individual companies fluctuate greatly for reasons that are outside the control of the company. As a result, *less* investment is made because little can be relied upon from the NUSF in terms of ongoing support. This is a result that the Commission should, and can, avoid with common-sense reforms to its NUSF ongoing support methodology.

3. Develop a Base Level of On-Going Support

Central to our suggestion that the Commission ensure the predictability and stability of NUSF ongoing support is the development of a base level of ongoing support for deployed networks, subject to the commitments and requirements discussed below. Specifically, we ask that the Commission refine the NUSF high-cost distribution methodology such that each provider receives an annual base amount of ongoing support. Providing a stable, consistent base amount of annual ongoing support that cannot be lost as a result of overearning, federal support elections, budget control mechanisms, or other considerations would ensure that providers can plan on, and will make, network investments based on NUSF ongoing support.

Development of an annual base support amount would also promote better predictability and stability of NUSF ongoing support funding by mitigating the negative impacts of certain issues with the current NUSF methodology. Primarily, we view the following three issues within the current methodology as ripe for review and reform because they produce unpredictable (and in some cases unfair) results in ongoing support levels: (1) the overearnings issue; (2) failure to accurately adapt federal A-CAM support to the state NUSF methodology; and (3) the need to recognize and protect networks that were financed and deployed through loans, internal capital, and other forms of debt – rather than public funds.

A. The Overearnings Issue

The first of these issues relates to the impact of the Commission's earnings cap, which contributes to the instability of funding for reasons that are not based on sound policy. RTCN Companies generally operate single exchanges. Fiber buildouts are typically constructed over a short period of time, and result in large amounts of depreciation expense that increase total expenses on the EARN form, and result in greater amounts of ongoing support in the initial years

after deployment. As depreciation expenses decrease thereafter, the Commission’s earnings test typically results in *decreased* (sometimes significantly decreased) ongoing support due to the decreased depreciation expenses and decreasing net plant base that offset revenue. Said another way, non-cash expenses such as depreciation decrease well before the network equipment’s useful life ends – which results in overearning and loss of NUSF ongoing support. This cycle creates less revenue available for maintenance and future plant upgrades when it is needed.

These typical declines in ongoing support *do not* correspond to the actual expenses incurred to maintain and operate deployed networks in rural Nebraska. In contrast to ongoing support, actual cash expenses do not decrease (expenses for staff, administration, maintenance, etc.) In the current inflationary environment, those actual cash expenses have instead significantly increased. The mismatching of actual expenses and NUSF ongoing support output leave providers of deployed networks in the position of being unable to invest NUSF ongoing support for needed future upgrades. This is a basic unfairness that the Commission must address, and that the development of a base support level in the NUSF methodology would address.

B. Adapting A-CAM Support to the Methodology

Another factor contributing to instability is the Commission’s lack of success in adapting the NUSF high-cost methodology for providers that elected federal model support. In general, the Commission has previously expressed that it has “no intent to penalize certain companies for elections made in response to the FCC’s offer of A-CAM support.”⁷ Without immediate reform to this facet of the NUSF high cost methodology, that is precisely the result that will occur for

⁷ Findings and Conclusions, *In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements*, Docket No. NUSF-108 dated November 19, 2018, page 44.

companies, including several RTCN Companies which recently elected the FCC’s Enhanced A-CAM offer.

In taking its previous position on state support of A-CAM locations, the Commission noted that “carriers have seen an increase of federal support” and expressed the desire to ensure that NUSF funding “is not duplicating federal support” in areas and for locations supported by A-CAM.⁸ In light of the parameters of the recent federal offer, we ask the Commission to re-examine these conclusions.

First, providers electing Enhanced A-CAM support *will not* receive an increase in their overall federal support. As described in Section B above, the initial year of Enhanced A-CAM support for the RTCN Companies which elected that model is *equal to or less* than the support received in 2022 under the federal CAF BLS system. For most, federal support is frozen at 2022 levels for the first 6 years of the 15 year term, and then decreases incrementally to the carrier’s actual model-based costs.⁹

Second, while we are mindful of and agree with the need to ensure that state NUSF support is not duplicative of federal support, there is nothing to suggest that continuing NUSF ongoing support to carriers electing model support would violate that principle. The historical premise of the Commission’s position on supporting locations covered by an enforceable A-CAM commitment to serve is that the model costs represent the actual costs to serve such locations, unless such modeled costs exceed the FCC’s per location cap for model support. We do not agree with that premise, and believe that the Commission’s suggestion of opening a broader proceeding on the topic is desirable. As the Order notes, an updated cost model

⁸ *Id.*

⁹ Enhanced A-CAM Report and Order, FCC Docket 23-60A1 para. 80.

designed to fully and accurately determine actual post-deployment costs for operating expenses and future capital expenditures would serve several beneficial purposes. First, it would ensure that the Commission has a full understanding and accurate picture of the current and future needs to sustain deployed networks. We also believe such a proceeding would demonstrate that providing NUSF ongoing support to such locations is not duplicative of federal funding.

C. Protecting Privately Financed Networks

As the Commission is aware, many RTCN Companies and other independent rural Nebraska companies built out their networks using substantially private equity and federally-backed loans, not federal or state grant funds. When making these business decisions, those companies relied in part upon the future stability of federal and state universal service support to help finance the considerable debt undertaken with respect to those investments.

The Commission has historically acknowledged the importance of ensuring stable and sufficient ongoing support for these companies:

The Commission cannot overlook the importance of providing support to carriers that have borrowed or privately leveraged other capital resources to deploy broadband services to their customers and continue to have a need for NUSF support, particularly because those were the incentives on which the Commission expected carriers to base investment decisions.¹⁰

The carriers who made early decisions to invest in broadband networks for their customers are now penalized for doing so through the issues described above. Because these carriers incurred the cost of deploying their network early, the depreciation expense generated from their plant

¹⁰ Findings and Conclusions, In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements, Docket No. NUSF-108 dated November 19, 2018, page 45.

investments has now significantly decreased. As a result, the earnings cap within the NUSF methodology reduces their ongoing support levels. Again, this is simply a paper transaction that has no bearing on the actual needs of the carrier or the cost of operating their network. Principal and interest payments on the debt these companies incurred to build their networks remain due and owing – however, the ongoing support these carriers counted on when making these investments is decreasing.

4. Establish Benchmarks and Requirements

To ensure that NUSF ongoing support is directed to the maintenance and upgrading of deployed networks and otherwise serves the goals of universal service, the Commission should develop and enforce benchmarks and requirements to be met by providers receiving ongoing support, including base level support as suggested above. We suggest that the Commission explore the following series of requirements:

- Provision of 100/100 service to all locations supported by NUSF ongoing support by a fixed future date
- Verification of the above requirement through the Commission’s current speed testing protocol
- Participation in the federal ACP program to ensure affordability of service offerings
- Maintenance of carrier of last resort (COLR) obligations
- Cybersecurity protections consistent with those required of carriers at the federal level

5. Consider Offering Support for a Term of Years

As a further means of bringing greater stability and predictability to NUSF ongoing support, we suggest that the Commission revisit the concept of providing base support funding amounts for a fixed commitment period. Five years ago, the Commission considered but ultimately rejected such a proposal.¹¹ Much has changed since the Commission last considered this issue. Five years ago, the Commission was determined to balance the need for additional deployment funding with ongoing support obligations and the stability of overall NUSF Fund levels was uncertain. The influx of outside federal and state funding for deployment support, along with the current stability of NUSF Fund levels resulting from the Commission's contribution methodology reform, may now permit the Commission to seriously consider making such commitments to carriers.

C2. ONGOING SUPPORT TRANSITIONAL MECHANISM

1. Continued Reliance on Modeled Costs to Determine Ongoing Costs

The Commission asks whether it should continue to rely on modeled costs to determine ongoing support calculations. As explained above, we believe that the issue of accurately determining ongoing costs for the maintenance and operation of deployed networks is complex enough to warrant a separate Commission proceeding outside this docket. Additionally, if the Commission considered implementing a "base support" model for ongoing support that is tied the receipt of ongoing support in exchange for compliance with a series of benchmarks and expectations – the need for more accurate and transparent cost modeling of ongoing support needs may be mitigated.

¹¹ Findings and Conclusions, *In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements*, Docket No. NUSF-108 dated November 19, 2018, page 41.

2. Allowing Competitive Carriers to be Eligible for Ongoing Support

At various places, the Order suggests that the Commission may consider “the transition of support to competitive carriers” or allow “competitive carriers awarded broadband grants to be eligible for ongoing support.”

At present, the RTCN believes that the provision of ongoing support to competitive carriers would be an inefficient use of NUSF funds. As the Commission is well-aware, ongoing support serves as an important means of ensuring that incumbent providers have the certain and stable funding necessary to maintain existing networks and invest in future upgrades for those networks. Ongoing support also serves the important function of allowing incumbent providers to provide supported services through their exchanges, and not just in low-cost areas where competitive providers can enter the market without the need for subsidized deployment.

Incumbent providers take on the obligation to serve all customers regardless of the cost to serve.

If ongoing support were to transition to competitive providers that only “cherry pick” low-cost locations, the resulting ongoing support needs of the incumbent provider to serve higher-cost locations throughout its exchange will increase. In doing so, the Commission will increase the total amount of ongoing support required from the NUSF fund to provide universal service to a particular community, exchange, or study area. For that reason, we believe that providing ongoing support to competitive carriers will result in the inefficient use of the NUSF funds.

D. PROCEDURAL CONSIDERATIONS

After the submission of the initial comments sought in the Order, we understand that the Commission intends to hold a hearing in this docket.¹² Thereafter, the Commission has indicated

¹² *Order Bifurcating Schedule for Comments*, Docket No. NUSF-139 dated October 12, 2023.

it may release “a more specific set of proposals for comment and hearing.” In lieu of an initial hearing, we ask that the Commission consider conducting a workshop, or series of workshops, in this docket. We believe that the workshop format would allow for a more robust exchange of thoughts and considerations between interested parties, staff, and the Commission as this docket progresses to the release of a specific set of proposals.

DATED: November 17, 2023

**RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA**

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