

In the Matter of the Nebraska Public ) Application No. NUSF-108  
Service Commission, on its own ) Progression Order No. 6  
Motion, to make adjustments to its )  
high-cost distribution mechanism and )  
make revisions to its reporting )  
requirement. )

**REPLY COMMENTS OF THE  
NEBRASKA RURAL BROADBAND ALLIANCE**

The Nebraska Rural Broadband Alliance (“NRBA”),<sup>1</sup> by and through its attorneys of record, submits these *Reply Comments* (“Reply Comments”), as allowed by the *Order Seeking Comments* (“Order”) entered by the Public Service Commission (“Commission”) on April 21, 2021.

The Order indicated that the Commission had initiated this proceeding at the request of the Rural Independent Companies (“RIC”). In their Comments, RIC makes clear that it quietly asked the Commission to open this proceeding to reconsider issues the Commission has in the past decided over opposition by RIC.<sup>2</sup>

The Commission’s authority to open this Progression Order No. 6 proceeding is made clear by the Rules of Commission Procedure. As the operative rule provides, “at any time on its own motion,” the Commission has broad authority to conduct an investigation into any matter for “which the Commission is authorized by law or inherent power to conduct.” NEB. ADMIN. CODE, tit. 291, ch. 1, § 006.01.

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<sup>1</sup> For purposes of this proceeding, the NRBA is made up of the following carriers: Cambridge Telephone Company; Diller Telephone Company; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; and Stanton Telecom, Inc.

<sup>2</sup> According to its Comments, for purposes of this proceeding, the RIC is made up of the following carriers: Arlington Telephone Company, Blair Telephone Company, Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska 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, Rock County Telephone Company, and Three River Telco.

There is nothing nefarious about RIC urging the Commission to open the Progression Order No. 6 investigation. As the NRBA pointed out in its original Comments, however, it would be misguided for the Commission to reverse several important NUSF reform policies formally established in recent years.

While there may be nothing necessarily wrong with RIC asking the commission to reverse major improvements in NUSF accountability, the Commission should take the bait no further. The Commission should not undo past decisions that have been critical to improving the pace of broadband deployment in rural areas in recent years. The NRBA respectfully refers to its May 28 Comments for its reasoning.

As observed in the NRBA's original Comments, the Commission's Order does raise several issues that should be addressed to better fine-tune and update support mechanisms. The Commission posits good questions, such as (i) how to adjust ongoing support for carriers as they deploy broadband; (ii) whether to adjust speed standards for support to carry out 2021 legislation; and (iii) the proper exercise of its authority over supported broadband affordability. The NRBA stands by its May 28 Comments on those issues. Such issues warrant further investigation.

With astonishing arrogance, RIC argues that "such issues are not central to the focus of the Progression Order No. 6 Order and that any Commission consideration of such issues should not delay action on the RIC BDS Proposal."<sup>3</sup> In other words, RIC is telling the Commission to focus on RIC's biased request to roll

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<sup>3</sup> NUSF-108, Progression Order No. 6, *Comments of the Nebraska Rural Independent Companies* (May 28, 2021) ("RIC Comments"), pp. 2-3. With comparable audacity, the RIC shrugs off the "remaining (non-RIC-initiated) issues contained in PO 6 Order." RIC states: "In the PO 6 Order, the Commission outlined five (5) additional issues that extend *beyond the BDS-related focus of RIC's advocacy* in NUSF-108." RIC Comments, p. 22 (emphasis added).

back several years of good regulatory reform, further delaying broadband deployment so some telecommunications carriers may receive subsidies without restrictions on earnings or accountability.

As stated above, the Commission has wide discretion and authority to investigate any matter within the scope of its authority under the Nebraska Constitution, and it may do so at any time of its choosing. The self-serving desires of the industry should never be a controlling factor in the Commission's decisions to exercise its authority.

While the Commission should not be cowed by RIC's disrespectful admonition to *stay in bounds*, the NRBA generally agrees with the basic positions of the Rural Telecommunications Coalition of Nebraska ("RTCN") and the Cellular Telecommunications Industry Association ("CTIA") that some important questions the Commission has raised might be better considered after the administration of 2021 funding under the Broadband Bridge Act and the American Rescue Plan Act has been completed.

Throughout the RIC Comments are unsubstantiated allegations of discriminatory treatment against A-CAM carriers. These unexplained assertions essentially boil down to this: Carriers that have not used federal and state support in the past to deploy fiber to many rural locations complain they are receiving less in state support than other telecom carriers.<sup>4</sup>

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<sup>4</sup> This should not be read as a blanket comment about all A-CAM carriers. Some, like the Hooper Telephone Company, have aggressively used increased A-CAM support to complete deployment in their territories, which was previously well underway.

The same carriers, who now complain, were the recipients of significant increases in federal Universal Service Fund support under the A-CAM model they pushed. As the Commission stated in its final decision under Progression Order No. 3:

“The A-CAM Companies elected A-CAM support largely because they saw an increase to their federal funding compared to their previous support under the former legacy system.”<sup>5</sup>

That these carriers, which reaped benefits from federal changes they themselves pushed and elected, now claim discrimination is ironic. In short, the same carriers advocated successfully for the A-CAM model at the FCC level, which increased their federal subsidies. Their action, however, did not expand the pie of federal support for Nebraska rate-of-return carriers. Rather, it cut larger slices of a fixed pie for A-CAM-electing companies, while leaving crumbs for many other rural Nebraska companies.

As the record of the Progression Order No. 3 proceeding painfully demonstrates, some of these Nebraska companies struggled to service debt they had assumed in anticipation of stable federal funding. Some struggled to hang on. Many small rural Nebraska telecommunications carriers – family-owned businesses and cooperatives – were negatively impacted, losing substantial amounts of federal

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<sup>5</sup> NUSF-108, Progression Order No. 3, *Findings and Conclusions* (Nov. 19, 2018), p. 43.

support, which they had relied upon to responsibly build fiber networks. For several of these companies, rapid fiber deployment was brought to an abrupt halt.

After more than three years of investigation – including substantial input, argument, and evidence presented by RIC members – the Commission finally attempted to restore some balance to the complementary nature of federal and state support.<sup>6</sup> This action allowed small rural Nebraska companies, which had built fiber to all customers, to hang on. Others were again able to move forward with construction more rapidly and finally were able to complete fiber deployment throughout their territories.

In sum, bold action by the Commission at least partly corrected for adjustments in federal support that almost cost several small Nebraska carriers their businesses because of the severity of these adjustments' discriminatory effects.

With all due respect, claims of discrimination based on such sheer hypocrisy should not have been heeded to the extent they have. After the hearing, if not before, the Commission should close the Progression Order No. 6 proceeding.

The Commission would be well advised to return, after it has administered the 2021 Broadband Bridge Program, to study the important questions it has asked, such as the proper allocations between BDS and ongoing support, speed standards for ongoing support, and how best to ensure affordable broadband services are accessible in all areas of the state. Lessons learned in the Broadband Bridge Program, as well

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<sup>6</sup> See NUSF-108, Progression Order No. 3, *Findings and Conclusions* (Nov. 19, 2018), p. 2 (noting proceeding began September 27, 2016); NUSF-108, Progression Order No. 4, Order (Oct. 29, 2019).

as through Rule 202 proceedings, may very well help the Commission and others better understand the practical implications of such inquiries.

DATED: June 18, 2021.

NEBRASKA RURAL BROADBAND  
ASSOCIATION

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**CERTIFICATE OF SERVICE**

The undersigned certifies that an original of the above ***Reply Comments*** of the Nebraska Rural Broadband Association was filed with the Public Service Commission via regular United States mail, postage prepaid, on June 18, 2021, and a copy was served via electronic mail, on the following:

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