

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public Service ) Application No. C-5461/PI-244  
Commission, on its own motion, to adopt )  
safe harbor market rates for the leasing of )  
dark fiber by agencies or political subdivisions )  
of the state. )

**COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES**

The Nebraska Rural Independent Companies (“RIC”)<sup>1</sup> submit these Comments in response to the Order Opening Docket and Seeking Comment entered by the Nebraska Public Service Commission (the “Commission”) on December 6, 2022.<sup>2</sup> RIC appreciates the opportunity to provide these Comments and looks forward to continuing its participation in this docket regarding the adoption of safe harbor market rates for agencies or political subdivisions leasing dark fiber in Nebraska. In the below Comments, RIC will first set forth the topic on which comments are requested in the *C-5461 Order* followed by RIC’s responsive comments.

**A. RIC’S RESPONSES TO THE COMMISSION’S REQUESTS FOR COMMENTS**

**1. Basis for a Competitive Price Determination Comparison**

*The Commission seeks guidance on what documents should be consulted in this determination, and the relative weight which should be placed on each type of document. What*

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<sup>1</sup> 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, Sodtown Communications, Inc. and Three River Telco.

<sup>2</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, to adopt safe harbor market rates for the leasing of dark fiber by agencies or political subdivisions of the state, Application No. C-5461/PI-244, Order Opening Docket and Seeking Comment (Dec. 6, 2022) (the “C-5461 Order”).*

*market rate information is available which the Commission might consult? Are there other sources of information which should be considered?*

**Response:** Reasonably, it would seem that the “best evidence” of existing dark fiber lease rates would be the leases themselves. However, existing leases will generally be highly confidential and proprietary in nature and thus, are unlikely to be made available to the Commission or its Staff for inspection (even pursuant to a protective order). Thus, provision of “de-identified” lease rate information in filed comments may be the best documentation available to the Commission regarding dark fiber lease market rates.

RIC has made inquiries of members of the Office of the Nebraska Chief Information Officer (“OCIO”) regarding the possible availability of state agency or political subdivision dark fiber rate information that is public as a result of procurement through a public bid process. Unfortunately, no such information has been identified by the OCIO.

Similarly, research of Internet sources has not revealed useful dark fiber lease market rate data pertinent to Nebraska.

## **2. Regional or Statewide Rates**

*The Commission seeks input as to whether it should set the safe harbor rates on a statewide basis. Would it be more appropriate to set safe harbor rates on a regional basis? If so, what regional boundaries might the Commission set?*

**Response:** Based upon research and inquiries conducted by RIC in response to the *C-5461 Order*, it appears that dark fiber lease market rates are likely to differ based upon whether the fiber facilities in question serve urban locations (i.e., a fiber ring in a city or town) compared to fiber facilities that are used for rural, longer length fiber routes (i.e., middle mile fiber routes to connect distant locations). RIC has not been able to develop any facts that would support a need to regionalize safe harbor dark fiber lease rates based upon, for example, fiber facilities located in Eastern Nebraska versus Western Nebraska.

### 3. Current Market Rates

*The Commission seeks information as to what current market rates are for the leasing of dark fiber. Additionally, how often should current market rates be reassessed? Should the Commission update the safe harbor market rates on an annual basis? How might the Commission assess market conditions in future years? What resources, such as market analyses, currently exist which the Commission might use to reassess market rates? Can annual adjustments be automatically determined?*

**Response:** Based upon existing dark fiber lease rate information that RIC has been able to obtain from its members, the following information has been provided:

- Carrier A: Dark fiber located out of town is being leased at the average rate of \$35.10 per month per strand per mile for fiber routes averaging 7.26 miles in length pursuant to leases with ten (10) year durations.
- Carriers B and C: Dark fiber located out of town is being leased at the average rate of \$29.17 per month per strand per mile for fiber routes averaging 46.5 miles in length pursuant to leases with five (5) year durations.

In light of the relative lack of publicly available information regarding market rates for dark fiber leasing, RIC suggests that it would be reasonable for the Commission to limit its review and reassessment of market rates for dark fiber leasing on a triennial basis. The information to be used in such a rate review would be dark fiber lease rate information in the Commission's possession or available from other state agencies, and information that may be obtainable through a future order such as the *C-5461 Order* from privately-owned entities as well as from agencies and political subdivisions that own dark fiber that may be available to lease.

RIC is unaware of automatic annual adjustments to market rates for dark fiber leasing other than automatic price adjustment provisions such a cost-of-living escalator, particularly given the current inflationary economic environment.

#### 4. Served and Unserved Areas

*On what basis should the Commission make the determination of whether a lease encompasses “served” or “unserved” locations as defined Neb. Rev. Stat. § 86-577(a) and (b)? What information should the Commission rely on to make that determination? Should the Commission require applicants to define or disclose the area served by the lease? If so, how should that area be defined? Should applicants be required to file plant maps showing the location of the dark fiber, or would shapefiles showing the locations to be served be sufficient?*

**Response:** According to § 86-577(1)(a) a “served location” means a location receiving communications service of at least 25/3 Mbps at the date a dark fiber lease is filed with the Commission for review. On the other hand, § 86-577(1)(b) defines an “unserved location” to mean a location not receiving communications service of at least 25/3 Mbps at such date. This location status determination of “served” versus “unserved” locations drives the Commission’s determination under § 86-577(4)(b) as to whether the profit earned by an agency or political subdivision under a dark fiber lease is retained or whether 50% of such profit is to be credited to the NUSF.

RIC submits that the Commission’s determination of available speeds should be in accordance with speed tests conducted in accordance with the requirements established in the Commission’s Order Setting Speed Test Requirements entered November 8, 2022 in Application No. NUSF-133.<sup>3</sup>

Since the Commission’s determination of the number of “served” and “unserved” locations as defined in § 86-577(4) is the driver of the requirement for the agency or political subdivision to allocate 50% of lease profits to the NUSF, it would appear that the Commission should require an applicant seeking approval of a dark fiber lease to identify the locations to be

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<sup>3</sup> See, *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement standards for the verification of broadband service provider coverage and speed data*, Application No. NUSF-133, Order Setting Speed Test Requirements (Nov. 8, 2022).

served by the dark fiber that is subject to the lease so that appropriate speed testing can be conducted for such locations, or an appropriate random sample of such locations. RIC would expect that this location identification could be accomplished through the submission by an applicant of a map of the served locations in a format that is reasonably acceptable to the Commission Staff.

## **5. Other Issues**

*The Commission welcomes additional comments and suggestions regarding the above topics. If there are other considerations which need to be addressed, interested parties are encouraged to bring them forward in comments.*

**Response:** RIC has no further comments to offer on the foregoing topics or additional subjects at this time. However, RIC reserves its rights to provide reply comments in response to comments by other interested parties on other topics in this docket.

## **B. CONCLUSION**

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Comments in response to the *C-5461 Order*. RIC looks forward to further participation in this proceeding.

Dated: January 6, 2023.

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, 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 January 2023, an electronic copy of the foregoing pleading was delivered to the Nebraska Public Service Commission at [psc.telecom@nebraska.gov](mailto:psc.telecom@nebraska.gov).

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