

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Application No. NUSF-133
Public Service Commission, on its	)	
own Motion, to implement standards	)	
for the verification of broadband service	)	<b>COMMENTS OF THE RURAL</b>
provider coverage and speed data.	)	<b>TELECOMMUNICATIONS</b>
	)	<b>COALITION OF NEBRASKA</b>

**INTRODUCTION**

The Rural Telecommunications Coalition of Nebraska (“RTCN”)<sup>1</sup>, by and through its undersigned counsel of record, submits these Comments in response to the *Order Opening Docket and Seeking Comment* entered by the Nebraska Public Service Commission (the “Commission”) on March 15, 2022.

**COMMENTS**

**A. USE OF FEDERAL TESTING PARAMETERS AND MEASURES**

As the Commission’s Order details, the Federal Communications Commission (the “FCC”) has adopted a speed testing protocol whereby recipients of various forms of federal high cost support must submit speed testing results as part of their annual compliance for certification. These requirements are being implemented through the Performance Measures Model (“PMM”) framework. Most recipients of federal high cost support were required to begin testing no later than January 1, 2022 with test results due for submission no later than July 2023.<sup>2</sup> In other words, many carriers subject to the Commission’s proposed testing requirements in this docket

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<sup>1</sup> For purposes of this proceeding, the RTCN consists of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications; Benkelmen Telephone Company, Inc., Cozad Telephone Company, Plainview Telephone Company, Southeast Nebraska Communications, Inc., and Pierce Telephone Company.

<sup>2</sup> Recipients of ACAM II, Legacy Rate of Return, and CAF II Auction support begin testing on January 1, 2023 with test results due July 2024.

are currently performing similar testing for similar purposes as the result of the above federal requirements.

The Commission proposes to “adopt [the] general framework” of the PMM as a template for implementation of the Nebraska Universal Service Fund ongoing support testing requirements passed in LB338 (2021) and now codified at Neb. Rev. Stat. § 86-324.02. The RTCN supports the Commission’s proposal in this regard. To the extent possible, we suggest the Commission align its testing standards with federal requirements to avoid unnecessary duplication of effort by carriers.

As articulated by its sponsor, the policy goal of Neb. Rev. Stat. § 86-324.02 is to create accountability for providers receiving ongoing high-cost support from the NUSF.<sup>3</sup> As the Commission notes in its Order, the policy goal of the FCC testing requirements is to “promote greater accountability” for recipients of federal high-cost support. Many carriers and customer locations in Nebraska are subject to these overlapping state and federal accountability requirements. While we agree that transparency and accountability must accompany the public funding of private networks, we question the utility of twice performing the *same* speed testing to demonstrate compliance with the *same* standards simply to satisfy two *different* regulators sharing the same policy goal.

To mitigate duplication of effort by carriers and reduce the administrative burden on the Commission, we believe it both possible and prudent for the Commission to create a “safe harbor”-style system where carriers demonstrating compliance with FCC speed testing requirements over their served locations are deemed compliant with the requirements of Neb. Rev. Stat. § 86-324.02. We encourage the Commission to consider fashioning a provision which

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<sup>3</sup> Senator Bostelman introduction on AM845 to LB338, Legislature Floor debate transcript March 31, 2021, One Hundred Seventh Nebraska Legislature.

would permit carriers subject to Neb. Rev. Stat. § 86-324.02 to apply for an exemption provided the carrier can demonstrate the following items:

- The carrier is conducting speed testing as required by the FCC
- All locations for which ongoing high cost support is received from the NUSF are subject to the carrier’s FCC-required speed testing
- The speed tiers tested by the carrier are those required to be tested by the Commission
- The carrier agrees to submit to the Commission the results obtained through its federal speed testing program, and any other information requested by the Commission to ensure compliance with Neb. Rev. Stat. § 86-324.02

We acknowledge that not all carriers receiving ongoing high-cost support from the NUSF are likely conducting federally required speed tests on all served locations. The Commission will need to adopt a speed testing program for those “gap” areas. But allowing federal speed testing to suffice for state requirements would greatly lessen the amount of unnecessary duplication.

## **B. SELECTION OF LOCATIONS**

### **1. Commission’s Interpretation of the Statutory Mandate**

Neb. Rev. Stat. § 86-324.02 requires ongoing high-cost support recipients to perform speed tests at “locations of consumers who subscribe to services provided over infrastructure for which ongoing high-cost support is received.” As the Commission correctly notes, ongoing support “is not earmarked to one location or even determined on an exchange basis.” To resolve this statutory ambiguity on the scope of testing, the Commission proposes an interpretation that requires providers eligible for ongoing support to conduct speed tests on a random sample of all active subscriber locations.

Neb. Rev. Stat. § 86-324.02 mandates the aforementioned speed testing “as determined by the Commission.” We believe this phrase evidences the Legislature’s intent to vest the Commission with authority to determine the scope of testing necessary to accomplish the goals of the statute. Further, we believe the Commission’s decision to require speed testing on a random sample of all active subscriber locations is reasonable and consistent with the Legislature’s intent.

**2. Sample Selection**

The Commission seeks input on the process of determining locations for testing and identifying a statistically valid sample of locations. Consistent with our general commentary above, we suggest that the Commission align its sample selection standards with federal requirements.

**C. ACCEPTABLE END POINTS FOR TESTING**

The RTCN suggests that the Commission utilize the same acceptable end points for testing as currently utilized by the FCC. While we decline to identify any specific alternative testing parameters which should be approved or declined at this time, we believe the Commission should remain flexible to such suggestions as necessary to reduce administrative burdens on carriers.

**D. DAILY TEST PERIOD AND TESTING INTERVALS**

The RTCN suggests that the Commission utilize the same daily testing period requiring carriers to conduct tests between 6:00 p.m. and 12:00 a.m. We further agree with the Commission’s proposal to require at least one download test and one upload test per testing hour. RTCN believes this is appropriate as it matches federal requirements.<sup>4</sup>

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<sup>4</sup> See FCC 19-104 at paras 24-26.

## E. CONSUMER INPUT AND VALIDATION

The Commission also seeks input regarding consumer-initiated speed testing initiatives to assist the Commission and other policymakers in their understanding of “the consumer experience” and to provide consumers with “the ability to share how their broadband services are or are not performing as promised.” The Commission suggests this could be accomplished through provider-initiated programs or other means, and implies that consumer-initiated testing results could be utilized to challenge provider speed test and coverage data.

We note that the Nebraska Legislature recently passed LB1144, which contains provisions granting the Commission authority to create and maintain a state broadband map “showing broadband availability and **quality of service** for all serviceable locations in Nebraska.”<sup>5</sup> (emphasis supplied) LB1144 provides the Commission with broad means to accomplish this – collecting information from carriers and contracting with a third party to “create, improve, and maintain” the map.

We agree with the premise that adequately informed consumers should have avenues for conducting their own speed testing, reporting those results to the Commission or the FCC, and to challenge speed testing or coverage determinations. Assuming the Commission goes forward with the statewide mapping effort recently authorized by the Legislature, we suggest the process for conducting such mapping in Nebraska incorporate reasonable opportunities for consumers to participate in the development, completion, and verification of such mapping data.

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<sup>5</sup> LB1144 (2022), Final Reading Copy, Section 2.

DATED: April 15, 2022.

**RURAL TELECOMMUNICATIONS  
COALITION OF NEBRASKA**

**Arapahoe Telephone Company d/b/a  
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Telephone Company, Inc., Cozad  
Telephone Company, Hartman  
Telephone Exchanges, Inc., Plainview  
Telephone Company, Southeast Nebraska  
Communications, Inc., Pierce Telephone  
Company, Wauneta Telephone Company**

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