

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

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

**COMMENTS OF THE  
NEBRASKA RURAL BROADBAND ALLIANCE**

The Nebraska Rural Broadband Association (“NRBA”),<sup>1</sup> through its attorneys of record, submits these *Comments* (“Comments”) in response to the *Order Opening Docket and Seeking Comments* (“Order”) entered by the Public Service Commission (“Commission”) on August 29, 2023, in the above proceeding. The NRBA comments on issues raised by the Commission in Section II.A of the Order relating to (i) the data source and challenge process applicable for determining served locations under the Nebraska Universal Service Fund (“NUSF”), (ii) the speed metric by which locations should be deemed served for purposes of the NUSF, and (iii) the method of reimbursement for deployment support under the NUSF.

**I. Data for Determining Served Locations for NUSF**

Given the discontinuance by the Federal Communications Commission (“FCC”) of Form 477 data for determining service in a census block, the Commission seeks comment on whether it should aggregate the FCC’s broadband data collection (“BDC”) for use in determining high-cost support distributions for the next calendar year.<sup>2</sup> Additionally, the Commission notes that it should make “immediate interim reforms” as a result of the change

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<sup>1</sup> For purposes of this proceeding, the NRBA consists of the following carriers: Cambridge Telephone Company; Glenwood Telephone Membership Corporation; Glenwood Network Services; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC; Mobius Communications; Pinpoint Communications; Plainview Telephone Company; Stanton Telecom, Inc.; Stealth Communications; Town & Country Technologies; WesTel Systems, dba Hooper Telephone Company.

<sup>2</sup> Order, p. 6

in federal mapping data.<sup>3</sup> The NRBA respectfully encourages the Commission to indeed speedily institute such interim reforms. The Commission further seeks comment on whether it should use the BDC data available in the June 30, 2023, iteration of the map (such data will become publicly available likely by November 2023) or whether it should request that carriers concurrently submit their BDC data to the Commission for determination of high-cost locations prior to the public availability of the federal map.<sup>4</sup>

Assuming there are no licensure issues with respect to accessing BDC data, the Commission should use every effort to utilize the most current BDC subscription and availability data for purposes of determining service levels and high-cost distributions. Provider data as of December 31 will be due to the FCC by March 1 of the following year, and data as of June 30 will be due to the FCC by September 1 of that same year.<sup>5</sup> The Commission notes that the FCC extended the June 30 filing deadline to September 15, 2023, this year and requests comment as to whether providers should submit their June 30 BDC data to the Commission separately.<sup>6</sup> The NRBA opposes the Commission requesting providers to comply with duplicate data submissions. The NRBA requests that the Commission use the most recently available BDC map data available when determining service levels and high-cost distributions. The Commission should perhaps consider revising NUSF allocation decision timelines to coincide with publicly available federal data, especially as the BDC data will be far more granular and reliable than what was previously available under Form 477.

The NRBA, alternatively, requests that the Commission allow providers the opportunity to challenge the publicly available BDC data used in the NUSF high-cost

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See *Federal Communications Commission Broadband Data Collection Help Center*, Broadband Data Collection (BDC) FAQs, <https://help.bdc.fcc.gov/hc/en-us/articles/7682769466395-Broadband-Data-Collection-BDC-FAQs>.

<sup>6</sup> Order p. 6.

distribution calculation. Specifically, the NRBA would support allowing providers to challenge such data directly to the Commission, rather than having the Commission rely on the adjudication of federal challenges in this case, which could unnecessarily extend the allocation timeline. Currently carriers are submitting challenges to the FCC related to BDC data, but such challenges are not always reflected on the map in a timely manner nor are they clearly indicated in the applicable June 30 and December 31 map iterations. For the Commission to receive the most accurate data, and to incentivize accountability among providers, there should be an option to correct publicly available BDC location and service data at the state level which coincides with the PSC's NUSF distribution timeline.

Any challenges should be conducted on a per location basis, rather than census block. This will allow for the utmost efficiency and compatibility across all state and federal programming for determining which locations are served and which warrant ongoing support. Further, the challenge should be based on whether a location is served at the minimum speed threshold. The burden of proof for any challenges in this case should rest with the carrier submitting the challenge, similar to the methodology utilized in the Nebraska Broadband Bridge ("Bridge") Program. Further, if a challenge is in a service territory different from the challenger, the challenged carrier should then be allowed the opportunity to rebut such a challenge with evidence that applicable minimum speed service is available and a service connection to that particular location could be initiated within 10 business days with no extraordinary monetary charges or delays attributable to extending the challenged carrier's network.

## **II. Minimum Speed Thresholds for NUSF Served Locations**

The Commission requests comment on the new appropriate minimum speed threshold for infrastructure supported by ongoing operation and maintenance NUSF funds. Given that

construction of new broadband infrastructure projects funded through NUSF are now required to meet a minimum threshold of 100/100 Mbps, the Commission is right to raise this issue.<sup>7</sup> The NRBA contends that current NUSF minimum speed thresholds of 25/3 Mbps for ongoing operation and maintenance support are insufficient to justify the continued use of ratepayer funds where locations with these speeds are now considered “underserved” by the federal government for purposes of new deployment, even in rural areas.<sup>8</sup>

The NRBA requests the Commission adopt the rigorous threshold of 100/100 Mbps as the minimum speed threshold for NUSF ongoing support. This would align NUSF with the state law standard for all new projects deployed with Bridge and Capital Projects Fund (“CPF”) dollars and ensure that NUSF dollars sustain networks that deliver adequate broadband service to high-cost areas. Alternatively, the Commission could require that infrastructure be capable of providing all supported locations with broadband at speeds of at least 100/20 Mbps, which is the new federal minimum speed standard for all BEAD deployment projects.<sup>9</sup> This would at the very least bring NUSF ongoing support into line with current minimum standards established for other state and federal programs. In either case, the NRBA urges the Commission to make a minimum speed threshold determination sooner rather than later. Carriers need regulatory certainty with respect to NUSF as they consider grant applications under BEAD and other programs, within the coming year.

Consequently, the NRBA recommends the Commission completely terminate ongoing support for locations and/or service territories not receiving a minimum speed of 100/100 Mbps by June 30, 2025.<sup>10</sup> Incumbent carriers have received well more than \$750 million in

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<sup>7</sup> Neb. Rev. Stat. § 86-324.01.

<sup>8</sup> National Telecommunications Information Administration, *Broadband, Equity, Access and Deployment Program Notice of Funding Opportunity*, p. 2.

<sup>9</sup> See 47 U.S.C.A. § 1702 (BEAD Program);

<sup>10</sup> See *In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the second round of federal Capital Projects Funds for broadband deployment in Nebraska*, Application No. CPF-2,

NUSF support since the NUSF Act was passed in 1997. Ongoing support should no longer fund networks that are obsolete and unserved.<sup>11</sup>

### **III. Reimbursement Methods for NUSF Broadband Deployment Support**

The Commission requests comment as to whether it should retain its current post-build reimbursement method for NUSF deployment support. The Commission seems to suggest that one of its reasons for requesting comment on this point is the fact “that the balance of the NUSF has built up significantly since the [post-build reimbursement approach was] implemented.”<sup>12</sup> To ensure accountability, the Commission asks whether it should instead implement a structured payout process similar to that used for Bridge and CPF.

The NRBA urges the Commission to retire deployment support and transition it fully to ongoing operation and maintenance support. With the influx of new state and federal deployment funds, as the Commission noted in its Order, there is no reason that NUSF funds should continue to support deployment activities.<sup>13</sup> However, should the Commission wish to continue allocating broadband deployment support in the immediate interim, the Commission should not deploy such funds where there exists an enforceable commitment to provide qualifying broadband service, similar to the standard utilized in the BEAD program.<sup>14</sup> There is no reason for areas/locations to receive duplicative deployment funding.

The NUSF-99 deployment program has largely been a dysfunctional program and has not incentivized deployment, evidenced by the fact that a significant amount of funds allocated for Price Cap carriers to construct infrastructure has not yet been utilized. Further,

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Comments of the Nebraska Rural Independent Companies (September 15, 2023), p. 6 (recommending an 18-month transition period for copper plant).

<sup>11</sup>47 U.S.C.A. § 1702 (BEAD Program).

<sup>12</sup> Order, p. 8.

<sup>13</sup> Order pp. 3-4.

<sup>14</sup> BEAD NOFO, p. 36, fn. 52.

as evidenced by the Commission's proceedings on Application No. NUSF-131, the reverse auction process has not worked and is not a successful program for restructuring the allocation of NUSF ongoing support. Much of the reason the reverse-auction and rural-based programs have not worked is because the Commission has not modernized its allocation of support. This investigation presents an opportunity for the Commission to do so expeditiously.

Ultimately, the NRBA believes NUSF funds currently allocated for deployment support will be better used to sustain infrastructure capable of providing broadband services at speeds of at least 100/100 Mbps. Other programs are more effectively funding broadband deployment, and the NUSF deployment program is clumsy in its administration and accountability at best. Yet, NUSF support remains a critical component to the successful ongoing operation and maintenance of infrastructure in rural areas where the cost to maintain a high-speed broadband network far exceeds the return on investment from deployment.

#### **IV. Conclusion**

The NRBA appreciates the opportunity to submit these comments to the Commission and urges the Commission to expeditiously proceed through this Application. This will provide regulatory certainty for carriers regarding NUSF ongoing support as they consider whether and where to apply for BEAD and other state level deployment programs in the coming months. These issues are closely related for carriers, and it is critical that the Commission not prolong this investigation regarding NUSF reform.

The NRBA, in conclusion, respectfully requests that the Commission (i) adopt the BDC data with a state level challenge process similar to that used in Bridge for purposes of determining NUSF allocations, (ii) stop supporting obsolete networks and adopt a minimum

speed threshold for NUSF support of 100/100 Mbps as consistent with state law, or at the very least 100/20 Mbps as consistent with federal law, and (iii) retire NUSF deployment support entirely and transition it fully to ongoing support so that limited NUSF resources can be targeted to the critical need of sustaining ongoing operational maintenance in high cost service areas. Finally, the NRBA respectfully reserves the right to supplement these comments in any reply comment period.

DATED: September 28, 2023

NEBRASKA RURAL BROADBAND  
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Corporation; Glenwood Network Services;  
Glenwood Telecommunications, Inc.;  
Hemingford Cooperative Telephone Co.;  
Mainstay Communications; Midstates  
Data Transport, LLC; Mobius  
Communications; Pinpoint  
Communications; Plainview Telephone  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that an original of the above *Comments* of the Nebraska Rural Broadband Association were filed with the Public Service Commission on September 28, 2023, and a copy was served via electronic mail, on the following:

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