

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public)
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.)

Application No. NUSF-139

Nebraska Public Service Commission

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**SECTION II.A COMMENTS OF THE
NEBRASKA RURAL INDEPENDENT COMPANIES**

The Nebraska Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Order Opening Docket, Seeking Comment and Setting Hearing entered by the Nebraska Public Service Commission (the “Commission”) in this matter on August 29, 2023.²

The responses set forth below are limited to the issues presented by the Commission in Section II.A of the *NUSF-139 Order*. In the below Comments, RIC will first set forth the topic or question in response to which comments are requested in the *NUSF-139 Order* followed by RIC’s responsive comments. RIC appreciates the opportunity to provide these Comments to the Commission.

¹ Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis 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, Sodtown Communications, Inc., and Three River Telco.

² *In the Matter of the Nebraska Public 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*, Application No. NUSF-139, Order Opening Docket, Seeking Comment and Setting Hearing (Aug.29, 2023) (the “*NUSF-139 Order*”).

RIC'S RESPONSES TO THE COMMISSION'S SECTION II.A REQUESTS FOR COMMENTS

The Commission seeks comment on a proposal to utilize the most current FCC BDC data available from carriers which will be filed beginning July 1 through September 15 (availability data as of June 30, 2023) to determine eligible locations or geographic areas for ongoing and buildout support. The Commission believes such data would also be publicly available in November. In the alternative, in order to make high-cost distribution amounts available earlier, the Commission seeks comment on whether to seek broadband availability data from carriers as they are filing this data with the FCC during the July through September timeframe.

Response: RIC supports the use of up-to-date and reliable data regarding broadband availability. However, there are practical issues that may foreclose use of the FCC's broadband data collection ("BDC") data for 2024. First, for 2023 and prior years the data used to determine distributions of Nebraska Universal Service Fund High Cost Program ("NUSF") broadband deployment support ("BDS") and ongoing expense support was based on 2010 Census data and the State Broadband Cost Model ("SBCM") that utilizes 2010 Census location data. Second, the BDC data is based on satellite imagery, tax records, 2020 Census location data and other data sources. Many of RIC's members have determined that the BDC tends to overcount Broadband Serviceable Locations ("BSLs") by including, for example, outbuildings, machine sheds, barns, and stacks of hay bales.

Therefore, if and when the Commission proposes to use FCC BDC data, it will first need to implement some process to resolve the issues that will otherwise arise, i.e., a location being in a different census block in the 2010 census versus the 2020 census. A possible solution to this issue would be for the Commission to obtain the right to use an updated version of SBCM based

upon 2020 Census location data.³ In addition, RIC recommends that the Commission delay the use of BDC data until the BSL issue described above is resolved.

Based upon these practical limitations, RIC suggests as an alternative to use of FCC BDC data for determining 2024 NUSF high-cost distributions that the Commission Staff would carry forward 2023 location data used to determine distribution of BDS and ongoing expense support. In order to update the 2023 location data, the Commission should allow carriers, consistent with past practice, to inform the Commission Staff of additional broadband buildout locations completed subsequent to the prior reporting period. To ensure the reliability of such update data, the carriers reporting additional buildout data would self-certify the accuracy of newly deployed locations.

In connection with the Commission's determination of 2023 NUSF high-cost distributions, an order was issued on November 8, 2022 directing the Staff to commence the challenge process for 2023 high-cost support with the challenge filing deadline of December 1, 2022.⁴ RIC suggests that this process be repeated with regard to the determinations of 2024 high-cost support. This approach to establishing carrier distributions of BDS and ongoing expense NUSF support for 2024 should be regarded as "transitional" and limited to 2024. For 2025 and subsequent years, the Commission Staff would have additional time to take necessary steps to obtain FCC BDC data on a timely basis, to update its distribution mechanism to use

³ It is possible that the Commission Staff has already taken necessary steps to utilize 2020 Census location data in connection with its NUSF high-cost distribution mechanism. RIC simply does not have information in this regard.

⁴ *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*, Application No. NUSF-108, Order Authorizing 2023 High-Cost Wireline Support and Commencing Challenge Process at 1 (Nov. 8, 2022).

2020 Census location data and to take whatever other additional steps are needed to complete its update of the NUSF high-cost distribution mechanism.

Turning to the Commission's questions regarding the timing of the Commission Staff obtaining access to FCC BDC data *if* such data were to be used to determine 2024 NUSF high-cost support distributions (as stated above, RIC recommends against adoption of this approach for 2024 distribution determinations), RIC believes that this approach is problematical. First, if the Commission Staff obtained access to FCC BDC data contemporaneously with its provision to the FCC, this data would not have been subject to the FCC challenge process and corrections resulting therefrom. In any event, availability of the FCC BDC data to the Commission Staff prior to public release of such data would likely only marginally improve the date on which NUSF high -cost distribution information would be released to the carriers from its traditional release in mid-January.⁵ If FCC BDC data were to be used by the Commission Staff for determination of 2024 NUSF high-cost support distributions, and if such data is released by the FCC to the public in November 2023, there should be adequate time for the Commission Staff to calculate and the Commission to approve support distribution information by mid-January 2024. Based upon the foregoing considerations, seeking early access to FCC BDC data does not seem likely to result in material benefits for the Commission or for carriers. In any event, regarding 2024 NUSF high-cost support distribution determinations, RIC again recommends that the Commission should utilize the procedures outlined above to determine 2024 distributions.

Additionally, the Commission seeks comment on any changes in how its challenge process is conducted. As an interim solution, should the Commission forgo using its own challenge process, which would have required carriers to file challenges with the Commission in December, and instead rely on carrier challenges to the BDC data within the FCC broadband map? In the alternative, should the Commission continue to retain its own challenge process? If so, should the Commission allow for per location challenges or keep challenges on a census

⁵ *Id.*, Order authorizing Payments for Calendar Year 2023 (Jan. 24, 2023).

block level? Should the Commission adopt a challenge framework similar to the FCC's? Should the challenge process be based upon what service is currently provided rather than whether a provider could initiate service through a routine installation within 10 business days of a request with no extraordinary monetary charges or delays attributable to the extension of the provider's network. Should the 100/100 Mbps benchmark also apply to whether blocks and locations are considered "served" when evaluating the need for high-cost buildout support or ongoing support? Why or why not?

Response: The Commission should retain its time-tested challenge process rather than relying on carrier challenges to the FCC BDC data within the FCC broadband map. The Commission should allow challenges on a location basis rather than on a census block basis.

RIC recommends that the Commission's challenge process should be based on broadband service that a provider could initiate through a routine installation within 10 business days of a request for service, with no extraordinary buildout charges to the customers or delays attributable to an extension of the provider's network.

RIC believes that it would be sound policy to transition at a future point in time to the 100/100 Mbps benchmark in connection with the determination of the "served" status of locations and evaluation of the need for NUSF BDS or ongoing expense support. RIC recognizes that the Legislature has established 100/100 Mbps broadband service as the standard for receipt of NUSF support for construction of new broadband infrastructure beginning January 1, 2022.⁶ However, "flash-cut" migration from the current 25/3 Mbps speed standard to a 100/100 Mbps standard to determine "served" status and to qualify for ongoing support would have adverse impacts on a number of recipients of NUSF support and their customers in areas where 100/100 Mbps broadband has not yet been deployed. In order to allow carriers to better manage any such adverse impacts, Commission implementation of a 100/100 Mbps benchmark

⁶ See Neb. Rev. Stat. § 86-324.01.

to establish the “served” status of locations vis-à-vis determination of the need particularly for ongoing support should be on a to be determined transitional basis for years subsequent to 2024.⁷

The Commission also seeks comment on the structure of payments made to carriers for buildout projects. Is there a better way to both ensure accountability by the recipients of NUSF without considerable build-up of the NUSF balance? For example, should the Commission implement a structured payout process, similar to Broadband Bridge or Capital Projects Fund grant programs, where portions of project costs are paid out incrementally and final payment would be made available upon project completion, speed testing, and proof of actual costs incurred?

Response: For the reasons stated below, RIC supports the use of installment payments of NUSF support. The Commission has recognized that an installment payout regime is appropriate in the Commission’s Order Issuing Grant Awards for the 2023 Capital Projects Fund Grant Cycle based upon the following findings:

As previously set forth in this docket, 1/4 of the funds awarded will be processed for distribution upon award of the grant. One-fourth of the funds will be processed for distribution in March of 2024 [nine months later]. Following project completion, applicants shall submit all invoices justifying project expenses within ninety (90) days of project completion. Upon successful completion of the project, the required speed testing, and invoice submittals to justify expenses, the remaining one-half of awarded funds will be processed for distribution. Final payments may be adjusted based on actual eligible project costs and match percentage.⁸

⁷ The Commission should consider aligning such transition with the FCC’s Enhanced A-CAM Interim and Final Deployment Milestones. *In the Matter of Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support, Expanding Broadband Service Through the ACAM Program, et al.*, WC Docket No. 10-90, RM-11868, REPORT AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND NOTICE OF INQUIRY at para. 48 (rel. July 24, 2023).

⁸ *In the Matter of the Nebraska Public Service Commission, on its own motion, to administer federal Capital Projects Funds for broadband development in Nebraska*, Application No. CPF-1, Order Issuing Grant Awards and Results of Challenges at 5-6 (June 27, 2023) (the “2023 Grant Order”).

RIC supports the concept of payments to fund buildout projects funded through the NUSF on an installment basis. However, RIC recommends that the payments be made in three equal installments with one-third of NUSF support for the capital cost of a broadband project to be paid to the recipient on the date of the Commission's monthly telecommunications payment next following Commission approval of the recipient's proposed project. The next one-third payment would be distributed to the recipient not more than nine (9) months following project approval. The remaining one-third payment would be made to the recipient following satisfaction of the requirements of the last two sentences of the above quotation from the *2023 Grant Order*.

RIC respectfully submits that adoption of the above-described payment process will accomplish at least the following three benefits. First, the process will provide partial funding for a broadband project during the construction process, thereby providing the recipient with funds for material acquisition and for labor costs, alleviating, to some degree, cash flow issues for the recipient. Second, this partial funding provision will not sacrifice accountability of the recipient for completion of the project because successful completion is the condition precedent for the recipient to receive the last one-third payment for the project's costs. Finally, this payment process will help the Commission to manage the current large accumulation of the undistributed NUSF balance.⁹

CONCLUSION

As stated above, the Nebraska Rural Independent Companies appreciate the opportunity to provide these Comments in response to Section II.A of the *NUSF-139 Order*. RIC looks forward to further participation in this proceeding.

⁹ According to the Commission's website, as of June 30, 2023, the end of period adjusted NUSF balance was slightly over \$133 million of which only \$6.25 million was uncommitted funds.

Dated: September 29, 2023.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of September 2023, an electronic copy of the foregoing pleading was delivered to the Nebraska Public Service Commission at psc.nusf@nebraska.gov.

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