BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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 requirement.	))))))	Application No. NUSF-108 Progression Order No. 7

COMMENTS OF THE NEBRASKA RURAL BROADBAND ALLIANCE

INTRODUCTION

The Nebraska Rural Broadband Alliance ("NRBA")[1], by and through its attorneys of record, submits these *Comments* ("Comments") in response to an *Order Seeking Comment* entered by the Public Service Commission ("Commission") on October 19, 2021, in the above matter. In its Order, the Commission raised a number of questions it wishes to consider regarding how accounting rules should be applied and reflected in the NUSF-EARN Form. The NRBA will restate the Commission's questions and respond to them below.

COMMENTS

COMMISSION QUESTION No. 1

What is the accounting treatment for federal loan forgiven, such as loan forgiveness through the federal Paycheck Protection Program (PPP) and/or the COVID-19 Economic Injury Disaster Loan (EIDL) advance as provided by the SBA? Please also describe how any loan forgiveness amounts should be accounted for within the EARN form. On what basis is the accounting treatment determined? Please provide references to specific sections of the CFR that may be used in that determination.

Accounting for forgivable PPP and EIDL loans was a topic of discussion within the industry after PPP loans were authorized by Congress in 2020. Due to the potential for

[1] For purposes of this proceeding, the NRBA is made up of the following carriers: Cambridge Telephone Company, Diller Telephone Company, Glenwood Network Services, Inc., The Glenwood Telephone Membership Corporation, Hemingford Cooperative Telephone Co., Mainstay Communications, and Stanton Telecom, Inc.

diversity in the accounting treatment for these loans, the National Exchange Carrier Association (NECA) sought and received guidance from the Federal Communications Commission (FCC) and subsequently issued an Informational Paper entitled, "Cost Study Treatment of PPP and EIDL Loans," in September 2021. In general, and as more fully discussed in the Informational Paper, accounting standards allow a carrier to adopt either ASC 470 or IAS 20 for book purposes, but following either accounting standard for book purposes may not produce an appropriate regulatory accounting result. "[FCC] staff stated that if forgiven funds are not credited to the associated expense account, carriers will effectively be reimbursed twice for the same expenses."[2] NECA goes on to say, "While companies may follow any of the options described under the AICPA guidance for accounting purposes, for USF/cost study reporting the forgiven PPP funds are to be classified as a reduction to the appropriate expense account."[3]

COMMISSION QUESTION No. 2

What accounting rule should be applied to determine if a federal or state funding source that provides support for deployment of broadband is considered construction support? Would 47 CFR § 32.2000, subsection (a) (2) be applicable to funds carriers receive for broadband deployment through programs such as Nebraska Universal Service Fund (NUSF) BDS, NUSF Reverse Auction Support, Nebraska Broadband Bridge Program (NBBP), and other deployment specific funding sources?

Whenever possible, the Commission's regulations, policies, and practices should conform to federal regulations in order to reduce confusion and undue administrative burdens. For this reason, relying upon federal regulation for determining the accounting treatment for state funding sources that are specifically for broadband deployment (and not

[2] NECA Informational Paper, "Cost Study Treatment of PPP and EIDL Loans" ("NECA"), p. 2, fn. 7. (Sept. 2021).
[3] NECA, p. 2.

operation) would be appropriate.[4] It should be noted, however, that ongoing high-cost support would not meet this definition because this support is not a contribution toward the construction of telecommunications plant. Therefore, any NUSF Reverse Auction Support redirected for the purpose of operating and maintaining broadband infrastructure would not be included. Ongoing support is critical to the success of rural broadband deployment. The high-cost nature of these areas requires continuing support to ensure rates remain affordable for rural Nebraskans.

COMMISSION QUESTION No. 3

If a funding source other than FUSF is accounted as revenue, which line on the EARN form should it be reported as revenue? When accounting for funding as revenue on the EARN form, should an attestation be included to explain the accounting and use of the funds?

The NRBA recommends that the Commission require eligible telecommunications carriers (ETCs) to include PPP activity within the "Other Excluded Services" column on the NUSF-EARN Form and require supporting documentation detailing PPP activity separate from other excluded services activity.

COMMISSION QUESTION No. 4

What accounting treatment would be most appropriate to ensure investments made to plant with use of NUSF BDS funds are accounted for properly on the NUSF-EARN Form? Should BDS and/or other grants be included in the rate base and allowed to earn a rate of return for purposes of calculating ongoing NUSF support? If yes, should they earn the same rate of return or different?

---

[4] *I.e.*, 47 C.F.R. § 32.2000(a)(2) ("The telecommunications plant accounts shall not include the cost or other value of telecommunications plant contributed to the company. Contributions in the form of money or its equivalent toward the construction of telecommunications plant shall be credited to the accounts charged with the cost of such construction. Amounts of non-recurring reimbursements based on the cost of plant or equipment furnished in rendering service to a customer shall be credited to the accounts charged with the cost of the plant or equipment. Amounts received for construction which are ultimately to be repaid wholly or in part, shall be credited to Account 4300, Other long-term liabilities and deferred credits; when final determination has been made as to the amount to be returned, any unrefunded amounts shall be credited to the accounts charged with the cost of such construction. Amounts received for the construction of plant, the ownership of which rests with or will revert to others, shall be credited to the accounts charged with the cost of such construction.")

Because the Commission has chosen to bifurcate NUSF high-cost and allow access to BDS funds for reimbursement of costs incurred for broadband construction, BDS support should be treated as construction support as defined and treated as described above. Therefore, the use of BDS should be adjusted out of any corresponding lines in column B Other Excluded Services on the NUSF-EARN Form. The Commission should not include plants already paid for with BDS or grant funds in the rate base or allow it to earn a rate of return for purposes of calculating ongoing NUSF because it would result in double recovery of those assets.

COMMISSION QUESTION No. 5

What test is used to determine the accounting treatment of various sources of grant funds? Is the treatment determined based on the cost review, invoice review, payment structure (i.e. grant payment received all at once, or in equal installments), or some other method? Please explain and provide any references to specific sections of the CFR that may be use in the determination.

- ***a. How would this apply to CARES Act funds provided by the Nebraska Department of Economic Development?***
- ***b. How would this apply to Broadband Deployment Support (BDS), reconnect, or other programs?***

Regarding of the source, if a nonrecurring payment prior to construction is received or a nonrecurring reimbursement upon completion of construction is received specifically to defray the cost to construct broadband plant and there is no obligation to repay the monies received, then the monies should be accounted for as a grant regardless of the source of the funds. Such monies were not contributed by equity owners and plant constructed with such monies should be excluded from regulated recovery (regulated plant, depreciation reserve and depreciation expense accounts should exclude grant related activity).

COMMISSION QUESTION No. 6

On what basis have carriers opted to apply one accounting treatment for these funding sources over another?

ETCs' choices of accounting treatment for NUSF funding have been based to some degree on the Company's federal regulatory status (i.e., A-CAM or Legacy rate-of return) during the accounting period involved.

The accounting and income tax positions ETCs' auditors employed also played into the decision-making process. One audit firm classified PPP loan forgiveness as non-operating revenue. This same firm took the position that the broadband development support was recognized as taxable access revenues and not as aid-in-construction. Other ETCs treated the broadband deployment support payments not as revenue, but as grants for assisting in the buildout of their fiber network. Additions to those ETCs fiber networks were not capitalized.

Regardless of the accounting treatment adopted by any particular ETC, the Commission unquestionably has the regulatory authority to dictate how funds are reported on the NUSF-EARN Form.

CONCLUSION

The NRBA looks forward to continuing to work with the Commission and others with an interest in this proceeding.

DATED: November 29, 2021

NEBRASKA RURAL BROADBAND ALLIANCE

Cambridge Telephone Company, Diller Telephone Company, Glenwood Network Services, Inc., The Glenwood Telephone Membership Corporation, Hemingford Cooperative Telephone Co., Mainstay Communications, and Stanton Telecom Inc.

By: REMBOLT LUDTKE LLP
3 Landmark Centre
1128 Lincoln Mall, Suite 300

Lincoln, NE 68508
(402) 475-5100
apollock@remboltlawfirm.com

By: /s/ Andrew Pollock
Andrew S. Pollock (#19872)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and five copies of the above ***Comments*** of the Nebraska Rural Broadband Alliance were filed with the Public Service Commission on November 29, 2021, and a copy was served via electronic mail, to the following:

Cullen Robbins
Public Service Commission
Cullen.robbins@nebraska.gov

Shana Knutson
Public Service Commission
Shana.Knutson@nebraska.gov

Brandy Zierott
Public Service Commission
Brandy.zierott@nebraska.gov

Deonne Bruning
Cox Nebraska Telcom
deonnebruning@neb.rr.com

Loel Brooks
CTIA
lbrooks@brookspanlaw.com

Paul Schudel
RIC
pschudel@woodsaitken.com

Russell Westerhold
RTCN
rwesterhold@nowkaedwards.com

/s/ Andrew Pollock
Andrew S. Pollock