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Before the
NEBRASKA PUBLIC SERVICE COMMISSION

JUL 19 2018

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)		Nebraska Public Service Commission
)	Application No. NUSF-108	
)	Progression Order No. 3	
)		
)		

**COMMENTS OF CTIA
IN RESPONSE TO THE ORDER SEEKING COMMENT**

CTIA respectfully submits its comments in response to the Nebraska Public Service Commission’s (“Commission’s”) Order Seeking Further Comments and Setting Hearing entered June 19, 2018 in the above-captioned docket.¹

I. INTRODUCTION AND SUMMARY

CTIA commends the Commission for recognizing that it should eschew providing high-cost support in areas where no support is needed. This includes areas supported by the Federal Communication Commission’s (“FCC’s”) Connect America Fund (“CAF”) funding, as well as areas served by an unsubsidized competitor. Regarding the later, the Commission should recognize unsubsidized competitors without regard to technology as long as they provide voice and 25 Mbps downstream and 3 Mbps upstream (“25/3 Mbps”) broadband service. Similarly, the Commission should not provide support for incumbent local exchange (“ILEC”) deployment projects undertaken in the past with no expectation of support. As described below, these steps will limit the economic burden on Nebraska consumers, ensure that the Nebraska Universal

¹ *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, Progression Order No. 3, Order Seeking Further Comments and Setting Hearing (June 19, 2018) (“Order”).*

Service Fund (“NUSF”) operates effectively and efficiently, and meet the Commission’s goal to “target support to areas that need it the most.”²

II. THE COMMISSION SHOULD PROVIDE HIGH-COST SUPPORT ONLY WHERE IT IS TRULY NEEDED

As CTIA has argued previously, the Commission should ensure that high-cost support is provided only to the extent that it is truly needed, to avoid burdening telecommunications consumers in Nebraska more than the minimum level necessary to achieve prudent universal service goals.³ CTIA therefore supports the Commission’s proposal to “isolate census blocks where support should be targeted.”⁴

To this end, CTIA supports the removal of census blocks from eligibility for NUSF funding where federal CAF support is available.⁵ As the Commission noted, this step will “create a more efficient use of support while targeting limited resources to consumers lacking sufficient broadband service.”⁶ If CAF support is being provided in a census block, there is no reason for the Commission to allow the carrier to “double-dip” into state universal service support for that block.

The same principle of avoiding double-dipping should be applied in “partially funded” census blocks. In the Staff’s July 6, 2018 responses to questions posed by the Nebraska Rural

² *Id.* at 3-4.

³ See Reply Comments of CTIA, Application No. NUSF-108, Progression Order No. 3, at 4 (Apr. 12, 2018) (“CTIA April Replies”) (“there is no basis to provide a subsidy for broadband service in an area where no subsidy is needed”).

⁴ Order at 4.

⁵ As CTIA has previously stated, the Commission should “ensure that NUSF support is coordinated with federal support” to guarantee “carriers cannot double-recover funding.” Comments of CTIA, Application No. NUSF-108, Progression Order No. 3, at 2-3 (filed Mar. 6, 2018) (“CTIA March Comments”). The Commission must ensure NUSF support “is never duplicative of [CAF] support.” *Id.* at 2.

⁶ Order at 4.

Independent Companies (“RIC”), the Staff invited comment on whether census blocks that are partially funded through the FCC’s model-based support model (“A-CAM”) should be excluded from NUSF funding.⁷ There are compelling reasons for the Commission not to make NUSF funds available in such areas, so the Commission should carefully consider whether it is fiscally responsible to make scarce NUSF funds available in census blocks that are partially A-CAM funded.

First, the FCC is in the process of deploying additional A-CAM funding, so it is unclear how many areas will remain partially funded.⁸ Further, the Commission should recognize that carriers that accepted A-CAM funding committed to deploy facilities without assurances of full funding and remain bound by their deployment commitments without additional funding from any source, although under FCC rules the number of locations they must reach is reduced in census blocks that are not fully funded.⁹ If the Commission decides that NUSF support is warranted in such blocks, it should account for the fact that the A-CAM support will be paying to bring the carrier’s facilities into the census block, so the incremental support needed to achieve deployment to any remaining locations should be quite small. Ultimately, the Commission should ensure that any NUSF support offered in partially A-CAM-funded census blocks does not result in the ILEC receiving more total support than is necessary to ensure universal service – and in no event more in the aggregate than the total amount that the carrier would have received

⁷ Letter from Frank E. Landis, Jr., Nebraska Public Service Commission, to Paul M. Schudel, Woods & Aitken LLP, Application No. NUSF-108, Progression Order No. 3, Exhibit A at 1-2 (July 6, 2018).

⁸ See *Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, and Developing a Unified Intercarrier Compensation Regime*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92, FCC 18-29 (rel. Mar. 23, 2018).

⁹ See, e.g., *id.* at ¶ 155.

if full A-CAM funding was available.¹⁰ The Commission should also require any carrier receiving NUSF funds for a “partially funded” census block that later receives additional A-CAM funding to reimburse the NUSF in the amount of the additional A-CAM funding. Offering support above the level of full A-CAM funding would be wasteful and excessive.¹¹

CTIA also supports the removal of census blocks where an unsubsidized competitor is offering voice service and broadband service of at least 25/3 Mbps. If a carrier is already providing that service in the area without a subsidy, this demonstrates that no support is needed to make service in that area economically feasible. Past comments in this proceeding support not providing subsidies in areas with an unsubsidized competitor.¹² There is no reason, however, to limit unsubsidized competitors to “wireline” providers. To ensure that consumers have access to appropriate services, the Commission should simply specify the services and performance level it wishes to see – such as it has done in specifying voice and broadband service at 25/3 Mbps.¹³

¹⁰ Doing so will bring more accountability to NUSF and will “avoid ‘double dipping’ of both state and federal universal service funds on the same projects” as Commissioner Crystal Rhoades highlighted late last year. *See* CTIA March Comments at 3 (citing Paul Hammel, “Nebraska Plans to Start Collecting Flat Fee for Each Phone Connection,” *Omaha World-Herald* (Nov. 21, 2017), available at https://www.omaha.com/news/nebraska/nebraska-plans-to-start-collecting-flat-fee-for-each-phone/article_893d868b-9b57-5752-8590-aa47c0746f05.html).

¹¹ CTIA March Comments at 2-3.

¹² *See, e.g.*, CTIA March Comments at 3 (“CTIA strongly supports the proposal to disallow broadband support in areas where there is already an unsubsidized provider”); Reply Comments by Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC, and Cox Nebraska Telecom, LLC, Application No. NUSF-108, Progression Order No. 3, at 10 (filed Apr. 12, 2018); Comments of the Rural Telecommunications Coalition of Nebraska, Application No. NUSF-108, Progression Order No. 3, at 6-7 (filed Mar. 5, 2018) (“The presence of unsubsidized competing carriers providing both voice and 25/3 Mbps broadband service may ... affect grant-based support for new deployment”); Joint Reply Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink, Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska, and Windstream, Application No. NUSF-108, Progression Order No. 3, at 5 (filed Apr. 12, 2018).

¹³ Other commenters agree. *See, e.g.*, Comments by Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC, Application No. NUSF-108, Progression Order No. 3, Attach. A at 2 (filed Mar. 5, 2018) (stating, that the Commission “should not favor one technology or type

By focusing on the presence of unsubsidized wireline providers only, the Commission discourages competitive entry by other types of providers. Failing to consider unsubsidized, *non-wireline* competitors will result in wasteful expenditure of scarce NUSF funds to provide duplicative deployment in areas that are already served by another provider already providing voice service and broadband service at 25/3 Mbps. As network technologies evolve, even traditionally “wireline” providers are beginning to use spectrum-based facilities to deliver voice and high-bandwidth broadband services economically in rural areas. Further, as 5G wireless service is deployed, wireless carriers’ performance will improve exponentially, and the NUSF rules should be designed to recognize upcoming important technology changes that can benefit rural consumers.¹⁴

III. THE NUSF SHOULD NOT PROVIDE RETROACTIVE SUPPORT TO COMPLETED PROJECTS

In the Order, the Commission proposes that “for carriers that have eligible census blocks built out with broadband networks capable of 25/3 Mbps service, we propose to pay both operating expenses and capital expenses for these blocks, based on the calculation of support by SBCM.”¹⁵ As CTIA has commented previously, it is unclear why the Commission would fund projects that an ILEC has undertaken without support and without any clear promise of support.¹⁶ The purpose of universal service support is to create incentives for the deployment of service where it would not otherwise be economical. Such projects are examples of instances in

of provider over another. Technological neutrality also means that the Commission should consider use of alternative technologies where such technologies are cost effective.”).

¹⁴ The Commission should also recognize that advanced 4G technologies may enable mobile broadband service offering speeds near, at, or above the Commission’s 25/3 Mbps standard.

¹⁵ Order at 7.

¹⁶ See CTIA March Comments at 4 (emphasizing that the Commission should not attempt to “devise a way to account for loans ... taken out previously” and that those carriers “took out these loans without any apparent expectation of specific recovery from the NUSF”).

which support is not required, and the Commission can avoid overburdening Nebraska consumers by eliminating or declining to provide such support.

IV. THE COMMISSION SHOULD MAINTAIN AN OPEN AND TRANSPARENT APPLICATION PROCESS

To further ensure that NUSF funds are used as effectively as possible, CTIA urges the Commission to continue considering NUSF applications through an open process where applications are docketed and interested parties are able to comment. Doing so will ensure the best use of funds and make it easier for competitors to inform the Commission of concerns, such as the presence of competitors in areas for which NUSF funding is sought. Doing so will generally promote a more transparent process and confidence in the appropriateness of the expenditure of funds under the Commission's oversight.

V. CONCLUSION

CTIA commends the Commission for recognizing that NUSF funding is scarce and that high-cost support should not be provided in areas where such support is not needed. CTIA urges the Commission to consider the important issues explained in these comments to ensure that the NUSF operates effectively and efficiently without overly burdening Nebraska consumers.

Respectfully submitted,

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July 19, 2018

CERTIFICATE OF SERVICE

I certify that on the 19th day of July, 2018, an electronic copy of the foregoing Comments on behalf of CTIA-the Wireless Association, in Application No. NUSF-108, Progression Order No. 3, were delivered to:

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