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 mechanisms and make revisions to its reporting requirements	Application No. NUSF-108

COMMENTS OF QWEST CORPORATION d/b/a/ CENTURYLINK QC AND UNITED TELEPHONE COMPANY OF THE WEST d/b/a CENTURYLINK

The Nebraska Public Service Commission ("Commission") opened the above referenced docket on September 27, 2016 to "consider certain modifications to the high-cost funding mechanism in the universal service fund program."[1] The Commission notes that "the NUSF-EARN Form and other reporting measures were not revised to account for the changes occurring in the market. Accordingly, our current distribution and reporting procedures may not properly incent continued carrier investment in IP networks."[2] The Commission seeks comments on a number of modifications to the distribution and reporting processes of high cost Nebraska Universal Service Funds ("NUSF") to encourage investment in broadband capable networks. Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (collectively, "CenturyLink") respectfully provide these comments in response to the Commission's request.

The Commission's proposals are clearly designed to manage the size of the NUSF and to move more of the support distributed to price cap carriers to broadband deployment. However, the proposals come at the cost of sacrificing sufficient high-cost universal voice service support in the State of Nebraska. In the current era of competition, the federal government and an increasing number of states are asking the right policy questions to determine (1) the services to be supported; (2) the geographic

[1] *See 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 Number NUSF-108, Order Opening Docket and Seeking Comments, Page 1.
[2] *Id*, page 2.

areas that require funding; and (3) how to provide the proper funding amounts to achieve the policy goal of universal service. Unfortunately, the Commission fails to ask these questions. Instead, it asks questions that were relevant to the bygone monopoly era. Accordingly, there is little hope of achieving an effective universal service policy for the many rural Nebraskans whose quality of life depends on it.

A. Distribution Mechanism

The Commission first contemplates returning to the use of the Support Allocation Mechanism ("SAM") for the determination of NUSF high cost support for price cap carriers. The Commission "believes the SAM will better capture the support needed by the price cap carriers and will provide a more stable, predictable and transparent calculation of support."[3] However, this action comes just one year after the Commission chose to take the price cap carriers *out* of the SAM distribution process and create a separate distribution methodology.

On September 1, 2015, the Commission issued a Progression Order in Application No. NUSF-99. In that Progression Order, the Commission found that NUSF high cost support for price cap carriers should be frozen at 2015 levels and adjusted up or down as needed based on the change in contributions received into the fund. These actions were made to transition NUSF high-cost support to be consistent with and complement the distribution of federal high cost support under the FCC' Connect America Fund ("CAF") program. The Commission further determined that 50 percent of the support should be used for broadband projects and 50 percent should be used for ongoing costs associated with the existing voice network.[4]

Now, just one year after adopting changes in the calculation and distribution of NUSF high-cost support for price cap carriers, the Commission proposes to reverse course and move the calculation of NUSF distributions for price cap carriers back to the SAM, albeit with a budget separate from the rural

[3] Ibid

[4] NUSF-99 Order. The Commission notes on page 5 of this Order that the "steps taken today are transitional in nature and will continue to evolve as issues outside this docket progress."

carriers. The Commission has not provided reasons why the methodology for the calculation of NUSF support for price cap carriers that it adopted just one year ago no longer provides an accurate reflection of the support price cap carriers need or how that support should be used. CenturyLink respectfully states that the Commission must articulate its decision upon evidence and findings supporting the reversal to a methodology determined to be unsuitable just a year ago.

CenturyLink does not agree that distributions calculated under the SAM will provide a stable, predictable and transparent calculation of support. Under the SAM process, one carrier's over or under earnings situation (as defined by the Commission) could have a significant impact on the distributions that all other carriers receive. Moreover, with only four companies in the price cap pool, there could be significant swings in the distribution calculations from year to year for individual companies, swings that cannot be predicted nor budgeted.

The Commission's proposal also raises a number of other questions, the answers to which could significantly impact the amount of support individual carriers receive. For example, the Commission states that there will be separate budgets for the rural companies and the price cap companies. How will the total budget for each group be determined each year? Will the total budget for the price cap companies continue to be frozen at 2015 levels and adjusted only for changes in the contribution levels, or will other factors impact the amount of support that is budgeted for the price cap companies? What other factors may impact the amount of support that individual price cap companies receive? More information regarding the process that will be used to determine NUSF support for the price cap companies is needed before more substantive comments can be provided.

B. Reported Earnings Adjustments

The Commission proposes to continue the use of the NUSF-EARN Form for the price cap companies, but states that the data from this report would be used not to reduce or limit distributions from the NUSF, but rather to determine how much of the annual support must be used for broadband projects versus supporting the ongoing costs of maintaining the existing voice network. In addition, the Commission proposes three adjustments to the NUSF-EARN Form for price cap carriers.

1. Competitive Losses

The Commission notes that it does not want to artificially support competition and therefore proposes to impute revenue from the competitive losses experienced by each carrier. CenturyLink fails to understand how imputing the revenue from competitive losses will accomplish the goal of not artificially supporting competition. In fact, imputing competitive losses back to the incumbent carrier may exacerbate the problem.

Competition from other wireline carriers is available throughout the state, but especially so in the cities. The SAM model directs NUSF high-cost support to areas primarily outside of the cities, in the more rural areas where population densities are low and the cost to provide service is high and competition from wireline providers is more limited.

It costs exponentially more to provide service in low population density rural areas than it does in high population density urban areas. However, legislative policy states that consumers in all regions of the state should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;[5] therefore carriers are unable to charge customers in rural areas a rate that is sufficient to cover the cost associated with providing service. In the past, carriers have recovered the cost of providing service to high cost rural customers through implicit subsidies in the rates of urban customers and explicit subsidies from the universal service fund.

Competition, however, has eroded the market share of incumbent carriers in all areas of the state, but especially in the urban areas. The implicit subsidies used to help offset the high cost of providing service in rural areas have declined as a result. The Commission's proposal to add back

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[5] Neb. Rev. Stat. Section 86-323(3).

revenue from these competitive losses, losses which are experienced primarily in urban areas that do not receive NUSF high-cost support, would result in substantially, but artificially, increasing the earnings of those carriers as reported on the NUSF-EARN Form, possibly to a level in excess of the allowable rate of return. Such policy is exactly backwards. The margins permitted in the monopoly environment were available to implicitly fund universal service. The migration to competitive markets, albeit with many public policy and consumer benefits, eroded the implicit support from the universal service system. A policy by the Commission to impute, and effectively take away again the margin already lost to competition is a form of economic double jeopardy. The Commission has indicated that it plans to "allocate that portion of support which would be above [the] rate of return to that carrier for grant-based [broadband] projects."[6] Therefore, adding back revenue attributable to competitive line losses will have the effect of driving a substantial amount of support to broadband, leaving limited or no support for the ongoing costs associated with maintaining the voice network in rural high-cost areas, support that is sorely needed given the significant loss of the implicit subsidies. Any amount of phantom revenue or support imputed to the NUSF process will not change the fact that the cost of providing mandated voice service in high cost rural areas far exceeds the expected revenues.

2. Reduce Rate of Return

The second adjustment the Commission proposes to make is to reduce the rate of return from the current 12 percent to 9.75 percent. CenturyLink understands that the current twelve percent rate of return is higher than the return used by the FCC, but believes that such a significant change in the rate of return should be phased in over several years, not incorporated into the return calculation in a single year.

[6] NUSF-108 Order, page 4.

3. Federal CAF II Support

The third adjustment the Commission proposes is to account for CAF II support that price cap carriers receive from the federal universal service fund. While the Commission previously imputed federal universal service fund high cost support,[7] that support was to be used for the maintenance, provision, and upgrade of the existing voice network. The CAF II support that the price cap carriers currently receive is to build out broadband service to eligible high-cost rural areas of the state where service is currently not available. Including the CAF II support in the SAM process would have the effect of reducing the NUSF support that a price cap carrier receives for the maintenance, provision, and upgrade of voice service, which would have a negative impact on rural customers. The fact is that the past and the proposed level of NUSF support has only been a fraction of the support produced by the cost model underlying the SAM process and there is no justifiable claim that the support amounts are duplicative.

C. Calculation of Support

The Commission proposes to use the adjusted NUSF-EARN Form to determine the portion of NUSF high cost support that a carrier will be required to use for broadband projects. In particular, the Commission proposes that any earnings above the 9.75 percent rate of return benchmark would be used for grant-based broadband projects and any remaining support would be used by the carrier for the maintenance, provision, and upgrade of the voice network. Before the price cap carriers can determine whether or not the proposal would develop an objective methodology for the allocation of NUSF high-cost support, there are a number of issues that must be considered.

For example, because of the imputation of revenue for customers a price cap carrier no longer has, it is quite likely that a carrier's adjusted earnings above the 9.75 percent rate of return may exceed the amount of NUSF support to which the carrier is eligible. In that case, under the Commission's

[7] FUSF high cost support is imputed to the intrastate jurisdiction to the extent the FUSF receipts create an over earning position in the interstate jurisdiction.

proposal, 100 percent of the NUSF support would be allocated to grant-based broadband projects with no support being directed to the ongoing costs of maintaining the voice network in high-cost areas of the state. In this case, the social compact of maintenance of the voice network based upon NUSF support will have been broken.

Conversely, there is also the possibility that, even with the adjustments the Commission wishes to make, a carrier could see a negative earnings situation relative to the 9.75 percent rate of return, in which case none of the NUSF high-cost support would be used for broadband projects. In that circumstance, the rural customers would suffer a delay in the deployment of broadband. The Commission should seek an allocation of support such that both broadband projects and ongoing costs of the existing voice network are supported at reasonable levels. CenturyLink encourages the Commission to thoroughly evaluate its proposals to ensure that these changes will accomplish the Commission's goal and avoid further short-term changes to the NUSF distribution mechanism for price cap carriers.

CenturyLink has a concern with the time it will take the Commission to work through these calculations and determine the high-cost support that will be available to each of the price cap carriers and how much of that support must be used for broadband projects each year. CenturyLink begins work on its capital budgets in June or July for the following year, and must include in the capital budget all broadband projects using NUSF support. It is likely that, under the Commission's proposal, carriers will not know how much support will be available until late in the year, long after capital budgets have been submitted.

D. Conclusion

The Commission seeks to make significant changes to the method for which NUSF high-cost support for price cap carriers is calculated and allocated between maintenance for the voice network and broadband projects. This change comes only one year after the Commission changed the methodology for the calculation and distribution of support for these carriers. The changes proposed by the Commission are rooted in monopoly era thinking, which has no place in the current competitive marketplace. An objective methodology is needed to ensure the NUSF high-cost distributions are stable, predictable, and transparent. However, the changes the Commission proposes will not accomplish these goals. CenturyLink is committed to working with the Commission to find a distribution methodology that effectively determines the amount of NUSF high-cost support that each price cap company needs and objectively determines how that support should be used.

Dated this 27th day of October, 2016.

Respectfully submitted,

By: ______________________________

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of October, 2016, a true and correct copy of the foregoing was delivered to the following as indicated below:

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