BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own Motion, to Administer the Nebraska Universal Fund High Cost Program	)))))	**Application No. NUSF-108**

INITIAL COMMENTS OF WINDSTREAM

Windstream Nebraska, Inc. ("Windstream") hereby files its initial comments in this docket and states as follows:

I. Introduction and Summary

On September 27, 2016, the Nebraska Public Service Commission ("Commission") issued its Order Opening Docket and Seeking Comment (the "Order") regarding its proposal to modify the high-cost funding mechanism for price cap carriers participating in the universal service program. Windstream appreciates the opportunity to comment on the Commission's proposal. While Windstream would prefer to keep the current methodology intact so that there is predictability with regard to the allocation of support between ongoing and grant-based support, Windstream offers these comments in an effort to achieve a workable mechanism within the framework the Commission has proposed.

II. 2016 Budget Levels Should be Preserved to Ensure Adequate Support and Facilitate Planning

The key to a workable universal service mechanism is consistency in support levels from year to year. In this regard, Windstream appreciates that the Commission's proposal generally preserves existing support levels by using the 2016 support amount as the "starting point"[1] for the high-cost program budget.[2] Preservation of existing funding levels is needed to ensure sufficient support to achieve universal service objectives within Windstream's service areas.[3] In addition, consistency of support levels is critical to successful network planning, which requires vision beyond the next calendar year. For these reasons, Windstream supports a price-cap support budget based on 2016 funding.

Windstream interprets this amount to be $18,936,696, which is the 2016 support amount for price cap carriers, excluding NUSF-7 support.[4] For the avoidance of doubt, Windstream seeks confirmation that NUSF-7 support will not be charged against the high-cost program budget. Although the Commission stated that it "will treat NUSF-7 support through a separate process,"[5] it did not specifically state that the NUSF-7 support will continue to be funded through a separate budget. CenturyLink, a price cap carrier, is scheduled to receive NUSF-7 funds of over $1.6 million in 2017, and a budget reduction of that size to the price cap carrier portion alone would negatively impact the objectives of this fund. Moreover, it would not be appropriate to reduce this high-cost

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[1] Windstream recognizes the need to adjust the budget for changes in universal service fund remittances and does not oppose this aspect of the Commission's proposal.

[2] Order, p. 2.

[3] "The purpose of the Nebraska Telecommunications Universal Service Fund Act is to authorize the commission to establish a funding mechanism which supplements federal universal service support mechanisms and ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices." Neb. Rev. Stat. § 83-317 (2016). Support from the fund "should be explicit and *sufficient* to achieve the purposes of the act." Neb. Rev. Stat. § 83-324 (2016) (emphasis added).

[4] *See In re the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service High-Cost Program,* Application No. NUSF-99, Order on Reconsideration and Order Releasing Project Checklist (July 12, 2016).

[5] Order, p. 3.

budget for funds that were awarded without regard to specific requirements for this fund. Accordingly, the 2017 high-cost budget for price cap carriers should not be reduced by NUSF-7 support amounts.

III. Given the Continuing Need for Ongoing Support, the Support Allocation Mechanism Should Not be Biased in Favor of Grant-Based Support

Windstream favors the Commission's 2016 support mechanism because it provides a balance between ongoing and grant-based support. However, in the context of a preserved support budget, Windstream does not oppose the use of the Support Allocation Mechanism ("SAM") to determine the relative proportions of ongoing vs. grant-based support, provided that the allocation is not biased in favor of grant-based support. Specifically, the Commission proposes to allocate to grant-based projects that portion of support that would be above a stated rate of return.[6] Ostensibly, this is a significant departure from the 2016 program, which allocated high-cost support between ongoing and grant-based support on a predetermined basis. However, when the Commission's proposed adjustments are factored into SAM, the outcome is also largely predetermined—but instead of a balanced 50-50 split, the support will be shifted, *perhaps entirely*, to the grant-based category. In other words, the Commission's allocation mechanism appears to be improperly biased toward grant-based support.

As discussed more fully below, the Commission's proposed competitive loss adjustment and any proposal to treat CAF II support as revenue would increase a carrier's EARN revenue. In addition, the proposed 9.75% rate of return standard would lower the threshold for "overearning," which triggers a reallocation of support. When

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[6] Windstream addresses the proposed rate of return in Section III.B below.

combined, these adjustments would shift too much support away from the ongoing "provision, maintenance, and upgrading of facilities and services,"[7] where the need is not declining. Therefore, Windstream does not support the adjustments as proposed.

A. Revenue Should Not be Imputed for Competitive Losses

Windstream strongly opposes the Commission's proposal to impute revenue attributable to competitive losses into the NUSF-EARN data. Not only is the Commission's methodology flawed under ratemaking principles, but it is based on the false premise that the need for ongoing support declines when lines are lost to competition. The effect of the proposal is to punish price-cap carriers twice for losing customers to competition—first, when revenues are lost and second, when "phantom revenues" are used to deny ongoing support.

With no explanation other than "to ensure the Commission is not artificially supporting competition with NUSF support,"[8] the Commission proposes to treat lost revenues as if the carrier had actually earned them. Imputation of revenue, as a ratemaking principle, has a punitive effect. In the ratemaking process, imputation of revenues that are not actually realized reduces the revenue requirement shortfall needed to earn an adequate return. Here, it reduces the allocation of ongoing support. In both scenarios, it implies fault on the part of the carrier. However, it is improper to fault a carrier for losing customers who choose another telecommunications technology while requiring a carrier with carrier of last resort obligations to stand ready to provide its

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[7] *See* Neb. Rev. Stat. § 83-324 (2016) ("A telecommunications company that receives [high-cost support] shall use that support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. . . .")

[8] Order, p. 3.

existing service to any customer who requests it. This puts a dagger in the heart of the regulatory compact.

Moreover, Windstream rejects the premise that competitive losses should trigger a shift of support away from ongoing provision, maintenance and upgrading of facilities and services. The foundation of universal service is to maintain a quality network that provides the services that customers need. The fixed costs of operating and maintaining a telecommunications network are substantial, particularly in light of carrier of last resort obligations. Therefore, the loss of access lines does not automatically translate into lower network costs. It does, however, result in a reduction in customer revenue, which, absent price increases, adds to the need for universal service support, and in particular, support for ongoing network costs. In this environment, a reduction in ongoing support harms customers by jeopardizing a carrier's ability to provide reliable service.

For these reasons, the Commission should not impute revenue for competitive losses. If, however, the Commission decides to make this imputation, it should only impute revenue from line losses in areas identified by the SAM process as eligible for support as opposed to state-wide line losses. Additionally, the Commission proposes that data from the landline 911 reports would be used to determine the competitive losses. Windstream does not recommend that landline 911 reports be used for this purpose because the reporting of 911 lines does not include certain types of customers and caps lines based on customer sizes. These 911-specific requirements would cause an underreporting of actual lines served and most likely an overstatement of competitive losses.

B. The FCC's Prescribed Rate of Return Should Be Phased-In Per the FCC's Order

Windstream does not oppose the use of the FCC's prescribed rate of return to allocate support between grant-based projects and ongoing provision, maintenance and upgrading of facilities and service. However, there is a discrepancy in the Order between the Commission's intended use of the FCC rate "*consistent with* the FCC's recent decision relative to universal fund support for rate-of-return carriers"[9] and the stated rate of 9.75 percent. Although the FCC determined that the existing rate of 11.25% should be reduced to 9.75%, it also determined that this rate should be phased-in to "minimize the immediate financial impacts that represcription may impose on carriers."[10] Specifically, the FCC determined that the existing 11.25% rate should be reduced by 25 basis points each year. Under this methodology, the authorized rate of return was reduced to 11.0% effective as of July 1, 2016, and will be reduced to 10.75% as of July 1, 2017.[11] Windstream urges the Commission to mirror the FCC's transitional approach. This would preserve more support for the ongoing provision, maintenance, and upgrading of facilities and services. Because NUSF high-cost support is awarded on a calendar year basis, it would be appropriate to apply the average rate for 2017, which would be 10.875%.

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[9] Order, p. 3.

[10] *See In re Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime,* WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (March 30, 2016), ¶ 325.

[11] *Id.* ¶ 326. Under the FCC's approach, a 9.75% authorized rate of return will be effective on July 1, 2021.

C. CAF II Support Used for Capital Investment Should be Treated as Contra Capital

The Commission also proposes to account for federal universal service support received by the carrier through the CAF II program, noting that the SAM process has historically accounted for federal high-cost support. However, CAF II support differs from other federal support in that it is conditioned upon deployment of broadband to specified geographies and location objectives. In this environment, ongoing state support is needed more than ever. It would be ironic if the accounting of this federal broadband support in the SAM process resulted in a shifting of state support away from the ongoing category. To avoid this result, Windstream proposes that CAF II funding used for capital expenditures be treated as contra capital accounting for the SAM process, offsetting the associated expenditures reflected in fixed asset accounts. To the extent that, in a given accounting year, the CAF II funding exceeds the amounts recorded in the contra capital accounts, the remaining funding would be used for operational expenses and reflected as revenue in the SAM process.

IV. Form 477 Data Should be Used as a Complement to Other Carrier-Supplied Data Regarding Broadband Deployment

Windstream recognizes the Commission's need to monitor broadband buildout in the state and to track how NUSF support is used. In this regard, Form 477 data is a good starting point. However, carriers should have the opportunity to supplement Form 477 data as the context may require to ensure that the Commission receives complete information upon which to base is decisions.

V. **Summary**

Windstream appreciates the Commission's proposal to preserve high-cost support for price cap carriers at 2016 levels and recognizes the need for both ongoing support and for the expansion of broadband in the state. Although Windstream is not opposed to the concept of using the SAM process to allocate high-cost support between these two categories, we urge the Commission not to adopt adjustments to this process that will shift substantial support away from ongoing costs to broadband projects. These two important needs should be balanced, as they were in 2016. While it is possible that the SAM process, without modification, could yield some sort of balance, it is almost certain that the Commission's proposed adjustments would skew support in favor of broadband projects. In order to preserve the ongoing support that is still needed by carriers of last resort, the Commission should reconsider its proposals in accordance with Windstream's recommendations.

Respectfully submitted,

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