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 requirements.	))))))	Application No. NUSF-108 **COMMENTS**

I. INTRODUCTION

On August 15, 2018, the Public Service Commission ("Commission") held a hearing in this proceeding. Following the hearing, the Hearing Officer entered an Order on August 27, 2018, permitting post-hearing comments by interested parties. The Rural Telecommunications Coalition of Nebraska ("RTCN")[1] has participated in this proceeding since its outset and presented evidence at the hearing. The RTCN submits these comments in response to the Hearing Officer's August 27 Order.

The comments of the RTCN will focus on the proposals made in the Commission's June 19, 2018, *Order Seeking Further Comments and Setting Hearing* ("June 19 Order"), as clarified by a letter from the Hearing Officer on July 6, 2018 ("Hearing Officer Letter"), and as presented by Commission staff ("Staff") at the August 15 hearing. At the hearing, Cullen Robbins, Director of the Commission's Communications and Nebraska Universal Service Fund ("NUSF") Department, testified in support of the Commission's proposals made in the June 19 Order.

II. COMMENTS

In the June 19 Order, the Commission clearly signals its objective of ensuring that all Nebraskans, regardless of location, have access to quality voice and information

[1] For purposes of this proceeding, RTCN is made up of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cambridge Telephone Company Telephone Company, Cozad Telephone Company, Diller Telephone Company, Glenwood Network Services, Inc., The Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford Cooperative Telephone Co., Mainstay Communications, Plainview Telephone Company, Southeast Nebraska Communications, Inc., Stanton Telecom, Inc., and Wauneta Telephone Company.

services. With respect to voice telecommunications services, the Commission has long-established service quality standards in place to protect the consumer,[2] regardless of where they work or reside. With regard to information services, the Commission has made clear in recognizing "broadband services" as requiring a minimum upload speed of 25 megabits per second and a minimum download speed of 3 Mbps ("Broadband") that it will apply current industry standards, including those recognized by the Federal Communications Commission and the Nebraska Legislature,[3] in determining what constitutes quality information services.

1. <u>Census Block Eligibility</u>.

On page 4 of the June 19 Order, the Commission states its intention to isolate census blocks where support should be targeted and explains the process it proposes to determine those census blocks. The June 19 Order proposed three primary criteria upon which eligibility for support would be determined, and Mr. Robbins addressed each of those criteria.

a. Target Rural Census Blocks.

The first criteria proposed for determining eligibility is whether the census block is urban or rural. The Commission proposed to remove urban census blocks, proposing to do so by utilizing a method similar to its historic distribution methodology, which is further explained in the Hearing Officer Letter. Mr. Robbins testified in support of this proposal, as did all witnesses at the August 15 hearing who addressed the issue. Stacey Brigham, Director of Federal Policy Analysis and Advocacy for TCA, Inc. – Telcom Consulting Associates ("TCA"), supported the Commission proposal on behalf of the RTCN, testifying

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[2] NEB. ADMIN. CODE, tit. 291, ch. 5, §§ 002.02 – 002.28.
[3] NEB. LB 994 (2018), Sec. 1 (2) ("It is further the intent of the Legislature that the residents of this state should have access to broadband telecommunications services at a minimum download speed of twenty-five megabits per second and a minimum upload speed of three megabits per second."). LB 994 became effective when it was approved by the Governor on April 17, 2018. *See* Sec. 11.

that targeting support to rural areas was consistent with the Commission's historical approach to support. (121:2-8).

On behalf of the Rural Independent Companies ("RIC"), Consortia Consulting Director of Policy and Analysis Dan Davis also testified in support of targeting support to rural areas (86:12-15). Mr. Davis went on to provide compelling testimony countering arguments made by Charter Fiberlink – Nebraska LLC, Time Warner Cable Information Services (Nebraska), LLC, and Cox Nebraska Telcom, LLC, ("Charter/Cox") in comments filed July 19, 2018. According to Mr. Davis:

> While no commenting party opposed the concept of NUSF support being targeted to nonurban areas, Cox and Charter propose a change to staff's continued use of the current classification of a census block as urban if the number of households is equal to or greater than 20 and density is greater than 42 households per square mile. (87:5-12)

Mr. Davis explained that the Charter/Cox proposal appears to be an effort to disqualify a greater number of census blocks from eligibility. (87:16-18) He testified that Charter/Cox have not demonstrated flaws in the parameters developed by Staff for determining rural census blocks. Notably, Charter/Cox offered no evidence at the hearing that might suggest the historical parameters proposed by the Commission are erroneous or inconsistent with the Commission's long-accepted guidelines for determining rural census blocks. (87:19-23) Mr. Davis also criticized the Charter/Cox argument, testifying that it relied on national population densities and that Charter/Cox failed to provide any data specific to Nebraska to support their argument. (88:6-14) Indeed, Charter/Cox offered no evidence in any form at the August 15 hearing.

As was true historically, the Commission's proposal to continue to target support to rural areas is consistent with the policy pronouncements of the Nebraska

Telecommunications Universal Service Fund Act ("Act") that rates for telecommunications and information services should be affordable and that rates in rural areas are comparable to rates in urban areas.[4]

b. Remove CAF-supported Census Blocks.

According to the Hearing Officer Letter, the term "CAF-supported census blocks is intended to mean the census blocks where federal universal service support in the form of CAF A-CAM model support has been offered to a rate-of-return carrier in the state-level election process, and accepted by that rate-of-return carrier for specific broadband buildout obligations. See 47 C.F.R. § 54.311."

NUSF Director Robbins explained that the proposal to exclude census blocks designated to receive funds under the federal Alternative Connect America Cost Model ("ACAM") was based on the Commission's objectives of preventing duplication of federal support with state support. (13:13-15)

Ken Pfister, Vice President of Strategic Policy for Great Plains Communications ("Great Plains"), testifying on behalf of Great Plains, the American Broadband Companies, the Consolidated Companies, and the Nebraska Central Telephone Company, testified that he believed that ACAM census blocks that are partially funded at the federal level should be eligible for state support. (35:6-9; 41:10-15) Mr. Pfister said that under ACAM, the Federal Communications Commission ("FCC") funds eligible census blocks up to a cap of $146.10 per customer monthly, funding an average of 48 percent of the total rural costs of the companies on whose behalf he testified. (36:5-11) Neither Mr. Pfister nor any other witness or party provided evidence to support the average he mentioned. Mr. Pfister claimed that "[e]xcluding partially funded census blocks would result in thousands of rural Nebraskans being essentially ineligible for broadband under the NUSF." (37:19-24)

[4] NEB. REV. STAT. §§ 86-323 (1) and (3).

At the hearing, Mr. Robbins presented compelling rationale for excluding partially funded ACAM census blocks:

> I did want to point out that the A-CAM model itself, models fiber to the premises, so fully funding service to the location would presumable provide the necessary support to bring fiber to that location. And, yet, even fully funded locations of the companies that elected A-CAM support, they are required to provide 25/3 service only to a fraction of them, between 25 and 75 percent. That depends on the density of housing units within those areas. The rest of those fully funded blocks are required to be served at 10/1 megabit per second, which could be accomplished without fiber-to-the-home deployment. And for those locations that are partially funded, the requirements are to bring 10/1 service to a certain number of them and 4/1 service to the remainder. So to be clear, partially funded means carriers aren't getting the full amount to bring fiber to the home, but that does not mean they aren't getting all of the funding necessary to meet their deployment obligations. Actually, one might assume that because the path to the A-CAM model was voluntary, that by selecting the model path, the carrier determined the funding offered would be at least sufficient to meet their obligations. And it does not necessarily mean that they aren't getting the funding to bring 25/3 service to more locations than is required by the FCC. (20:18 - 22:1)[5]

[5] Further, a report prepared by Alexicon, and referenced by the USTelecom Association in comments before the FCC demonstrates that not all agree with Mr. Pfister's numbers. (Alexicon's report showed that a sampling of ACAM carriers will receive 78% of their hypothetical costs, while a sampling of Legacy companies will receive only 57% of their actual costs.) *Comments of the USTelecom Ass'n*, Appendix A In the Matter of Connect America Fund, WC Doc. No. 10-90, WC Doc. No. 14-58, WC Doc. No. 07-135, CC Doc. 01-92 (May 25, 2018).

Moreover, Mr. Pfister's claim (that partially funded ACAM census blocks will not receive Broadband) ignores the fact that carriers can, and do, deploy facilities capable of providing Broadband services to rural customers utilizing means in addition to direct federal and state support and customer charges to fund the deployment. Many independent rural Nebraska telephone companies built out their networks using private equity, federal loans, or a combination of both.[6] Such decisions were made based on historically based assumptions that stable federal and state support would assist the carriers in servicing debt and making reasonable returns on investments

Tonya Mayer, General Manager of Hemingford Cooperative Telephone Company ("Hemingford Coop") in the Nebraska Panhandle, testified that her company borrowed from the United States Department of Agriculture ("USDA") through its Rural Utilities Service ("RUS") to deploy fiber to the home, including farms and ranches in rural areas. (101:12-102:3)

Randy Sandman, President of Diller Telephone Company in rural Jefferson County ("Diller Telephone"), testified about his company's deployment of fiber throughout 70 percent of its rural exchanges. (107:24-108:13) Diller Telephone utilized private financing and the company's own equity, for its fiber deployment. (110:15-111:2)

Colleen Paden of Stanton Telecom, Inc. ("Stanton Telecom") testified that her company has buried fiber, allowing customers access to Broadband services, throughout its entire exchange. (113:8-10) Stanton Telecom utilized loans to deploy fiber. (115:24-116:3)

Pat McElroy, General Manager of Northeast Nebraska Telephone Company ("Northeast Nebraska"), appearing on behalf of Northeast Nebraska, as well as Clarks Telecommunications Company, Hartington Telecommunications Company, and Three River

[6] The total borrowed by RTCN companies to build out their networks was over $61 million. Maturity dates for those loans vary. The earliest is in 2025, while the latest is in 2037.

Telco (collectively, the "Cost-Based Companies"), testified that his company built out its networks utilizing loans. (142:18-143:1)

None of these witnesses, who testified on behalf of Nebraska-based rural telephone companies, disagrees with the notion that all Nebraskans should have access to Broadband services. Indeed, the Act calls upon 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."[7] The Nebraska Legislature declares one of the cornerstone principles of the Act:

> Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced 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.[8]

As evidenced by the testimony of Ms. Mayer, Mr. Sandman, Ms. Paden, and Ms. Brigham, the RTCN is mindful of the Commission's duty to ensure that Nebraskans in rural and high-cost areas have access to telecommunications and information services comparable to those services in urban areas. That includes Nebraskans in ACAM census blocks that the FCC is, according to some, "partially funding." The actual extent of federal funding provided to those census blocks will not be known until after the ACAM-electing carriers fulfill their deployment obligations.

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[7] NEB. REV. STAT. § 86-317 (emphasis added).
[8] NEB. REV. STAT. § 86-323(3).

The RTCN does not believe the Commission should penalize the customers of companies that have not used prior support to build Broadband-capable facilities to their customers. Many of those companies, however, are receiving through the ACAM substantial increases in federal support today for census blocks in which those customers reside,[9] and those companies are seeking further increased public funding through the ACAM,[10] a model advanced by many of those companies. (Pfister, 55:7-12)

To ensure all Nebraska residents have access to Broadband while avoiding potential double recovery of public funds, the RTCN recommends the Commission open a separate investigation to determine the best way public funds might be used to serve those now underserved residents.

c. Remove Competitive Census Blocks.

The Commission has proposed to remove from eligibility census blocks in which an unsubsidized competitor is offering wireline voice and Broadband services. All witnesses at the hearing, who addressed this issue, supported the Commission's proposal. (Robbins, 13:1-6; Davis, 90:18-23; Brigham Pre-filed Testimony (Ex. 24) 5:18-20)

As Ms. Brigham testified, however, the presence of an unsubsidized competitor, should not impact future on-going OpEx support. (Ex. 24, 5:18-22) While census blocks where an unsubsidized competitor is present should be ineligible for grant support for new CapEx deployment, census blocks in which the local incumbent has already invested in plant and is receiving on-going support should not be declared ineligible retroactively

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[9] In the aggregate, Nebraska ACAM carriers received $11 million in 2016 under legacy funding. In 2017, under the ACAM, those same carriers received approximately $34 million (based on funding up to $146.10 per location).

[10] If increased funding is approved by the FCC, as requested by the Nebraska ACAM companies, those companies would receive more than $40 million annually in future years (based on funding up to $200 per location). *See also Notice of Ex Parte Communications* to the FCC from Mattey Consulting LLC, *Connect America Fund et al.*, WC Doc. Nos. 10-90, 14-58, 07-135 and CC Doc. No. 01-92, August 20, 2018 (concerning meeting with Ken Pfister, Great Plains Communications, Wendy Fast, Consolidated Companies and Carol Mattey, Mattey Consulting LLC, with members of the FCC in which Pfister, Fast and Mattey advocated for allocating an additional $66 million annually to fund ACAM companies up to $200 per location).

because of the subsequent entry of an unsubsidized competitor. Such existing deployment, as well as financing and loans secured to deploy, would be jeopardized if support were terminated by competitive entry. (Brigham, 121:9-21)

Local wireline providers have made, and will continue to make, investments based on assurances of on-going support. Local wirelines providers also have utilized, and will continue to utilize RUS loans from the USDA to deploy, provide, maintain, and upgrade facilities and services in high-cost areas. Local wireline providers applied for such loans, and the USDA provided such loans, based on projections of federal and state universal service fund support. In the June 19 Order, the Commission appears to draw a distinction between unsubsidized competitors already providing voice and Broadband services in a census block and the prospect of unsubsidized competitors providing such services in the future: "[W]e propose removing census blocks where an unsubsidized competitor ***is offering*** wireline voice and broadband service." By saying "is offering" as opposed to "offers," the Commission appears to draw a distinction between existing and prospective unsubsidized competitive services. To ensure that investments made by local wireline carriers and loans provided for high-cost service are not jeopardized, the Commission should make this distinction clear. (Ex. 24, 5:22-6:11) The RTCN respectfully urges the Commission to do so.

d. Review of Census Block Eligibility.

The Commission proposes to review the eligibility of census blocks annually, allowing for carrier, and presumably public, input. Witnesses for both the RTCN and the RIC opposed such frequent review because of the administrative burdens it would create. (Davis, 90:7-91:4; Brigham, 121:22-122:2) The RTCN supports periodic public review of census block eligibility but encourages the Commission to do so every five years rather than every year. (121:25-122:2; Ex. 24, 6:14-15) There are 193,352 census blocks in Nebraska and reviewing each of these annually will take significant time and effort for all parties and the Commission. The burden of annual review very well may lead to a less than thorough review, which would be counterproductive. Further, network investments require predictable revenue streams, and an annual review would disincentivize deployment as carriers may not be able to predict with any level of certainty whether their ongoing projects will continue to receive support year over year. (Ex. 24, 6:15-21) Mr. Davis objected to even the five-year review recommended by the RTCN on the same basis – that it would lead to uncertainty, possibly discouraging investment. (90:10-16)

e. Allocation between CapEx and OpEx Support.

The Commission proposes to allocate between on-going and grant-based support based on overall CapEx/OpEx splits for eligible census blocks. Mr. Robbins at the hearing clarified that the Commission's "initial proposal created essentially two silos of funding, one for ongoing maintenance and one for broadband deployment." (14:10-12) Utilizing the State Broadband Cost Model ("SBCM") and comparing the relative percentage of prior investment in Broadband-capable census blocks with the relative percentage of investment necessary to bring Broadband to census blocks that lack it, the resulting split would be 57 percent for on-going support and 43 percent for supporting new build-out. (14:13-15:2)

This split is not out-of-line with ranges recommended by the parties in their July 19 comments, and the RTCN supports the Commission's proposal. The SBCM provides a solid basis for the split recommended by Staff. That said, as with past Commission action having substantial impact on high-cost support, the Commission's decision following the hearing in this matter will not be its last word on several critical issues, including support allocation. The RTCN understands the complexities of high-cost support, as well as the constantly evolving nature of the services for which state support is essential, not to mention the dynamic interrelationship with federal support, which itself is continually being modified.

The RTCN urges the Commission to continue to recognize this reality by making clear that any allocation established as the result of this proceeding remain subject to modification based on these myriad evolving facts and circumstances. (Ex. 24, 7:10-28)

2. **Grant-Based Support.**

The Commission proposes to support deployment of new facilities capable of delivering Broadband services through a program akin to existing grant programs used to fund deployment. At the hearing, Director Robbins acknowledged it may be prudent to characterize the support as something different than pure grant-based support (16:22-17:5), addressing concerns some parties raised about the implications of grants on accounting and asset value. As Ms. Brigham said, "Such support has consequences when it comes to company asset valuation, accounting issues, and taxes." (Ex. 24, 8:6-7) Mr. Pfister expressed similar concerns (44:1-2), as did Mr. Davis (91:17-23). Unlike Mr. Pfister and Mr. Davis, Ms. Brigham supports the conceptual approach of reimbursing carriers for the actual expenses of Broadband deployment proposed by the Commission because of the incentives to build-out it offers and the accountability it ensures. (Ex. 24, 8:7-13)

Despite uncertainties about proper accounting treatment, the RTCN continues to support the Staff proposal to require carriers to submit Broadband deployment plans in advance, for Commission approval, and for the Commission to fund actual Capex deployment costs (not SBCM estimated Capex costs) upon project completion. The RTCN respectfully recommends that the Commission formally refer to such reimbursement as Broadband Deployment Support to best avoid negative unintended consequences.

a. Reimbursement of Actual Costs.

The Commission proposes to use the SBCM as a proxy for estimating the cost of projects to deploy facilities necessary to provide voice and Broadband services. Once such projects are complete, the Commission proposes to reimburse carriers for the projects on actual costs up to the maximum level allowed under the SBCM. (Robbins, 17:22-18:14) The RTCN supports this proposal. (Brigham, 122:3-7)

b. Per Customer Cap.

The Commission in its June 19 Order proposed a cap of $15,000 per customer location for grant-based support. According to Ms. Brigham, initial inquiries to members of the RTCN suggested the proposed cap level seems low. (Ex. 24, 9:2-3) In its June 19 Order, the Commission provided no explanation for the cap level, other than to say that it would not come into play for approximately 90 percent of customer locations in the state. Nor did the Commission present any evidence at the hearing to support the cap level. In fact, the Commission's testimony seems to contradict any basis for a cap. If, as Mr. Robbins testified, the Commission intends to use the SBCM to establish the maximum reimbursement level for actual costs of new build-out (18:11-14), an additional arbitrary per-customer cap would be unnecessary.

Both the RIC and the RTCN expressed concerns about the proposed cap. Mr. Davis advocated for its outright elimination, citing Neb. Rev. Stat. § 86-323(3). (93:5-15) Ms. Brigham also cited the Act in expressing concerns about the proposed cap level.[11] (Ex. 24, 9:5-10) If the Commission does establish a per-customer cap, it should be higher than that proposed, and it should be reviewed and adjusted as costs of construction increase. (Ex. 24, 9:10-13)

Further, consistent with the Hearing Officer Letter, if a carrier projects costs per customer exceeding the Commission cap, or if actual costs exceed it, the Commission should still reimburse the carrier for costs up to the cap, allowing the carrier to construct infrastructure needed to reach the customer. Nothing should prevent a carrier from utilizing its own or other resources to serve Nebraskans. (Ex. 24, 9:16-20)

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[11] NEB. REV. STAT. § 86-317

c. Grant Process.

In its June 19 Order, the Commission outlined a proposed process for carriers to request grants, including a proposal that the process be subject to internal review by the Commission, rather than require a formal approval process involving notice and possible hearing. Mr. Robbins gave further explanation of this process in his hearing testimony. (17:10 – 18:10)

The RTCN has said before that the process should be spelled out by rule and regulation. At the very least, the process should be clearly set forth in writing, even if it is more readily mutable than rulemaking allows. The RTCN does not object to an internal review process, provided, however, that such process be transparent to the public. Nebraskans in some areas of the state have experienced hardships resulting from unreliable services (extended outages in some cases, even recently). While most Nebraska carriers have been responsible stewards of state and federal support, a few have not. Nebraskans cannot afford a process that leads to or rewards irresponsible use of state support. Only by establishing an open and transparent application process, can the Commission ensure responsible use of state support. (Brigham, Ex. 24, 10:1-9)

The Commission also has outlined the process for reimbursing the actual costs of a project. (Robbins, 18:11 – 19:11) The RTCN urges the Commission to reduce this process to writing and make it publicly available. To the extent utilization of modern technology is feasible, the Commission should utilize such technology to reduce the burden of submitting invoices and making reimbursement. That said, whatever process the Commission employs should allow for scrutiny by the public to ensure accountability. The RTCN supports the Commission's proposal to allow affidavit support for the invoices. Requiring carriers to submit FCC Form 477 data with the Commission is also a sound proposal, again subject to such data being accessible to the public. (Brigham, Ex. 24, 10:12-19)

The Commission, in its June 19 Order, concluded its discussion of grant-based support by proposing to allow rate-of-return "carriers with small grant allocations, or *de minimis* allocations, to have those amounts distributed as ongoing support." The RTCN strongly supports this common-sense proposal. It is likely the combined cost of administering NUSF grant-based support to the many local businesses, which have responsibly built infrastructure to serve farmers and ranchers in their areas, would exceed the costs of necessary projects. (Brigham, Ex. 24, 10:23 – 11:2)

Finally, the Commission sought comment on what would be a reasonable threshold for determining support is *de minimis.* The Commission sought specific comment on whether a threshold based on a finding that the amount of grant support does not exceed two percent (2%) of total support annually would be appropriate. (Robbins, 19:1-7) The RTCN suggests a higher threshold to ensure that administrative costs do not exceed project costs. A threshold of ten percent (10%) seems a prudent level that would not unduly jeopardize state funds. If, after establishing an original threshold in this proceeding, the Commission later determines a lower percentage is more prudent, it could adjust the rate after notice and hearing. (Brigham, Ex. 24; 11:7-11)

d. Reject the Performance Plan

At the hearing, Gary Warren, Vice President of Hamilton Telephone Company, testifying on behalf of a number of carriers, offered testimony advocating for what he referred to as a Delivered Services Performance Plan. The RTCN opposes the plan Mr. Warren offered. Beyond Mr. Warren's testimony, which explained and advocated for the Performance Plan at a high level, no evidence was introduced to support the plan. While presenting a flow-chart purporting to show how the plan might function, Mr. Warren offered no evidence of the assumptions underlying the plan or its inputs. According to Ms.

Brigham, the plan is deficient in its accountability requirements. (Ex. 24, 12:21-13:3) The grant-based program advocated by Staff is superior in accountability.

Further, Mr. Warren offered little explanation as to why the plan took certain carriers to zero support. Mr. Warren acknowledged that more comment and study would be needed to address such anomalies. (73:24-75:1) Mr. Warren's repeated statements that the plan is "flexible" and could be adjusted (67:6-14, 68:12-19, 69:10-14; 71:17-22), presumably to address such anomalies, offers little confidence to carriers that have relied on projections of sustainable support in taking out loans and building Broadband-capable networks to reach customers throughout their service territories.

Stanton Telecom, for example, took on debt to finance its deployment of fiber throughout its service territory, allowing customers, even on remote farms, access to Broadband. As Ms. Paden testified, "Stanton Telecom has lost over 50 percent of its FUS over the past few years (during which ACAM was introduced). One major concern for Stanton Telecom is the ability to service the debt that we needed in order to provide fiber to the home." (115:24-116:3) Ms. Paden could not explain why the so-called Performance Plan dropped Stanton's support to zero. (118:14-18) The black box nature of the Performance Plan lacks the transparency of the Staff plan. Ms. Paden's concern about servicing debt, responsibly taken out based on reasonable assumptions about high cost support, would be compounded, at best, if state support ended altogether, as the companies advocating the Performance Plan recommend.

In light of Ms. Paden's testimony and other evidence that shows that the Performance Plan does not provide sufficient support for a number of companies that have "performed" by responsibly deploying fiber to the home, while rewarding companies like Great Plains that have not built out (*see* 71:2-22), the name of the plan is curious. As Commission Staff rightly asked, "Where is the incentive for them to deploy broadband?"

(71:7-8) The plan offered by Mr. Warren is not only a poor means of supporting high-cost services and further Broadband deployment, it is mis-named.

Mr. McElroy, of Northeast Nebraska, in his own words echoed these concerns on behalf of the four Cost-Based Companies on whose behalf he appeared:

> One observation the cost-based companies – the cost-based carriers have with regard to the plan is that the model results negatively impact those companies already meeting the plan's objective. Those companies that have already built facilities to subscriber locations will receive less NUSF than they are currently allocated.
>
> On top of that, some companies that are fully built out, appears they would receive no funding at all. The cost-based carriers oppose the performance-based plan in its current form because it does not reward those who have previously invested in fiber-based facilities. (141:5-18)

3. <u>On-Going Support</u>.

The Commission proposed to allocate on-going support to carriers proportionally based on eligible census blocks within their exchanges. (Robbins, 15:3-16:5) The RTCN supports this position. The Commission proposed in its June 19 Order that "for carriers that have eligible census blocks already 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." The RTCN strongly supports this proposal, as do the Cost-Based Companies represented by Mr. McElroy. (140:1-14)

Mr. Robbins said, "The rationale behind this is that in those blocks where 25/3 service is already available, the investment into broadband-capable network has been made and the fund will assist in recovering some of the costs associated with building and maintaining those networks." (15:15-21)

Investments local telephone companies have made in deploying infrastructure, through not only private equity and approved borrowing, but also previous state NUSF support, must be protected by providing on-going support sufficient to operate and maintain that infrastructure. (Brigham, 123:22 – 124:9; Ex. 24, 13:14-17) The Act's primary purpose is to ensure the support needed to maintain and operate reliable infrastructure necessary to ensure quality services. "*Quality telecommunications and information services* should be available at just, reasonable, and affordable rates."[12] Further, the Act mandates that support be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended," which is "to serve high-cost areas."[13]

Representatives of a number of other Nebraska-owned local exchange companies testified about the investments they have made to carry out the purposes of the Act. These investments serve not the carrier, but the customer. Ms. Mayer testified about how their investments have fostered economic development in Hemingford Coop's rural Panhandle service territory. She spoke of a young woman, a native of the area, working for a marketing firm in Chicago, who was able to move back and keep her job because of her access to Broadband through Hemingford Coop's network. Not only was the young woman able to return home, but the Chicago firm hired another person in Hemingford Coop's service territory. (102:16-24)

Mr. Sandman testified about the broader economic benefits Diller Telephone's investments in its rural areas, including development of a wind farm, a turkey hatchery, several hog farms, and a shrimp farm. (109:9-14) Ms. Paden testified about how Stanton Telecom's investments have been the envy of individuals and civic leaders in nearby

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[12] NEB. REV. STAT. § 86-323 (1) (emphasis added).
[13] NEB. REV. STAT. § 86-324 (1).

communities, who wished they had access to the same fiber-based Broadband services. (115:4-18)

> Several years ago, when I was mayor of Stanton, we had a visit from Speaker Mike Flood, and Norfolk Mayor Sue Fuchtman. They were begging us to come to the City of Norfolk and provide the same service that we provide in our exchange. They wanted us to provide fiberoptic cable and look at the possibility of a data center. They couldn't understand why we could have high – high-speed Internet in Stanton and it was not available for them in Norfolk. (115:4-14)

Since the outset of this proceeding, the RTCN has maintained that the Commission should prioritize predictable and sufficient support for operating and maintaining existing infrastructure capable of providing voice and Broadband services. The testimony of the above three witnesses demonstrates the merit of this position. Without on-going support, the investments necessary to provide the services that have fostered economic development will be jeopardized. A quick study of the high number of outages in the service territories of other carriers is testament to the consequences of failure to properly maintain networks. Mr. McElroy, on behalf of the Cost-Based Companies, summed up this fact well:

> We agree with this proposal with – with this proposal because the companies that have fully built out their network still continue to have capital expenses. These capital items include continuing to replace deteriorating and end-of-life electronics within our networks, buildouts to new customer locations within our service areas and to recover a return for our investment and help us cover our loans. (140:6-14)

The above four Nebraska-based carriers that sent representatives to Lincoln to testify at the hearing, like many other rural carriers, have been responsible stewards of past NUSF high-cost support, investing it locally in their networks in order to serve their customers. The Staff's plan to support carriers that have fully built out their networks with Broadband-capable facilities based on combined CapEx and OpEx allocations is a sensible way not of "rewarding" the carriers, but of ensuring that customers continue to benefit from the investments those carriers have made.

a. Retain the EARN Form.

In its June 19 Order, the Commission proposes that "[a]ll ongoing support would continue to be subject to an earnings test." Mr. Robbins offered testimony explaining this proposal: "We believe the EARN form allows us to track company-specific revenues, expenses and investments, including federal support received by each company." (16:14-17) The RTCN supports this proposal. As Ms. Brigham testified:

> The RTCN maintains that the EARN form is a prudent and administrative effective means of allowing private carriers a reasonable but not excessive return on investments the local telephone companies have already made. These dollars are being provided by ratepayers who cannot afford to be paying for earnings above the commission's thresholds. (124:14-22)

Just as ensuring accountability through a grant-based program is imperative, accountability for on-going support is also critical to ensuring the public confidence and trust in the use of ratepayer funds. The EARN form helps ensure accountability. Other compelling reasons support continued use of the EARN form.

First, retaining the EARN form is needed to ensure that federal support does not result in over-earnings. In particular, ACAM, for the first time, has decoupled a carrier's actual expense from the federal High Cost support it receives. Instead, support is derived from a model that attempts to estimate the support necessary to deploy broadband capable networks in rural areas using certain assumptions about cost drivers and without regard to the carriers actually serving the area. Due to this process it is possible that some individual carriers receive significantly more ACAM funding than their actual results would indicate, while other carriers experience the inverse outcome. Understanding that may be the case, the FCC made ACAM model funding voluntary for qualifying rate-of-return carriers. It will be years before an evaluation of the accuracy of the ACAM model's estimated financial outputs can be compared to actual financial data produced by all ACAM-electing carriers. Since NUSF resources are scarce, the Commission should take care not to over-distribute state support to carriers that the ACAM is inadvertently over-funding. The consequence would be under-distributing state support to under-earning Nebraska rural carriers. The EARN form generally minimizes the extent of inadvertent over-funding or under-funding of individual carriers. This maximizes the benefits to rural Nebraska consumers by ensuring that contributions paid into the NUSF are used for their intended purposes. (Brigham, Ex. 24, 16:4-21)

Second, over the last couple years, several rural local exchange carriers that elected ACAM federal support have filed comments with the FCC, claiming ACAM funding is not optimal to construct Broadband-capable infrastructure.[14] If that is the case, then carriers that elected ACAM support should have little concern with continuation of the EARN form because such insufficient federal ACAM funding combined with declining NUSF distributions over the last few years should have reduced the probability of over-earning at either the total company or Nebraska state level to a negligible level.[15] (Ex. 24, 16:22 - 17:4)

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[14] *See, e.g.*, Connect America Fund, WC Docket No. 10-90. Cheryl L. Parrino NE Ex Parte 020718 (Received February 9, 2018) (Claims that ACAM distributions west of the Mississippi river as significantly below ACAM costs). *See also* WC 10-90 Nebraska A-Cam Companies, Nebraska State A-CAM Letter. (Received December 1, 2017).

[15] *See Comments of the Rural Independent Companies in Response to Order Seeking Comment*, NUSF-108 (March 5, 2018), p. 6.

Third, Nebraska carriers can significantly reduce the probability of over-earning through common capital budgeting techniques and multi-year financial projections. If a carrier's capital budgeting and financial projections show potential over-earnings, the carrier could evaluate the prudence of projected fiber network investments sufficient to avoid projected future over-earning. In effect, the annual filing of an EARN form should incentivize carriers that are close to a potential over-earning situation to accelerate their network upgrade deployment timeline. Doing so would result in more rural high-cost Nebraska consumers receiving higher internet speeds sooner. Carriers decided whether to elect ACAM support or remain on legacy support on or before November 1, 2016. Therefore, all carriers have had several years lead time to ramp up significant network upgrade projects to minimize potential over-earnings. (Ex. 24, 17:5-15)

Finally, it remains true, and will remain true, that urban ratepayers, as well as, low-income persons who themselves receive modest discounts on landline telephone service and often cannot afford even basic internet access in their home, should not be required to foot or fill the bill for local incumbent carriers, serving urban areas, as defined by the Commission, at rates exceeding the rate of return capped by the Commission. Such support would not be support, but rather corporate subsidization. The EARN form remains critical to prevent such subsidization. (Ex. 24, 17:16-22)

The RIC group's persistent call for the elimination of the EARN form is puzzling. Even if the Commission were to adopt a methodology for support other than what Staff has recommended, a means of testing earning is necessary to ensure public funds are not leveraged to generate confiscatory earnings or misused. The RIC group's surprising mantra has continued throughout this proceeding:

- In its initial comments, the RIC said: "The use of the NUSF EARN form for ROR carriers would be discontinued (under RIC's proposed support methodology)."[16]
- In comments filed in response to the Commission's June 19 Order, all but four members of the RIC group said, "there is no need for an earning test."[17]
- At the hearing, Mr. Warren testified, "One of the characteristics of the plan is the elimination of the EARN form. I think it's important to address this upfront. It's been mentioned by Cullen and -- Mr. Robbins that there's consideration of changing the EARN form. We believe it needs to be done away with. We believe the EARN form has outlived its usefulness. (65:17-24)

The position of the RIC group is confounding at best. To suggest that there be no regulatory check on earnings when substantial public funds support high-cost services should be rejected.

RTCN strongly urges the Commission to retain the EARN form and consider making it more robust to make sure that recent increases in federal support for certain carriers is being invested responsibly in deploying Broadband-capable networks in Nebraska. Mr. McElroy, speaking on behalf of the Cost-Based Companies, agreed with the RTCN's support of retaining the EARN form:

> We agree with the RTCN comments that the EARN form is a prudent and effective means of allowing private carriers a reasonable return on investment up to the rate allowed by the commission. This EARN form

[16] *Comments of the Rural Independent Companies in Response to Order Seeking Comment*, NUSF-108, Prog. Order No. 3 (March 5, 2018), p. 6.
[17] *Comments of Arlington Telephone Company, Blair Telephone Company, Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., the Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hershey Cooperative Telephone Company, Inc., the Nebraska Central Telephone Company, and Rock County Telephone Company in Response to Order Seeking Further Comments*, NUSF-108, Prog. Order No. 3 (July 19, 2018), p. 7.

encourages and protects investments local telephone companies have made. The EARN form appropriately considers all regulated revenues, investments and expenses, including federal USF support. The EARN form ensures that federal support does not result in overearnings. (138:12-23)

b. Redistribution of Unused Support.

The RTCN urges adoption of the Commission's position that support, which would have otherwise exceeded the authorized rate of return, should be distributed to other rate-of-return carriers eligible to receive on-going support. (Ex. 24, 17:23 – 18:1)

III. CONCLUSION

We conclude not with gratuitous remarks by lawyers about the importance of this proceeding, but by giving real examples. The Commission's decisions will have serious impacts on the viability of certain carriers and their ability to serve Nebraskans. Several members of the RTCN are struggling due to reductions at the federal level caused by adoption of the ACAM model, which has substantially benefited other Nebraska companies, and the shrinking balance of the NUSF. These struggles have included not filling employee positions, putting off necessary equipment upgrades, slowing fiber deployment, and other decisions that potentially jeopardize service to customers. The testimony of the three RTCN company witnesses bears out this fact.

Mr. Sandman of Diller Telephone:

> We've been cautious and deliberate with our spending due to declines and uncertainty in both the federal and state USF. That – that is really the lifeblood for rural companies like us. Unfortunately, this slowdown has set us back about 2.5 years in completing our rural buildouts and created some haves and have-nots even in our own exchanges. The work you're doing today

is of extreme importance as we seek to finish the job to the remaining 30 percent of our rural customers. (108:14 - 109:1)

Coleen Paden of Stanton Telecom:

When we took out the loan to take fiber throughout the exchange, we assumed the decades-old system of FUSF support would be available to service our debt obligations. We never thought we would have our FUSF reduced so drastically. Because of dramatic FUSF reductions, certain network upgrades have been put on hold in our central office and customer premise. ... There have been many sleepless nights in the Paden household. After decades – several decades of pouring blood, sweat and tears into our work, it's been painful to understand why we have been penalized for doing the right thing for the last 38 years. (116:4 - 117:6)

Ms. Mayer of Hemingford Coop:,

It is difficult to continue providing these levels of (Broadband) service when our revenues are declining and the future of them are unstable. As our funds have been reduced, we have looked for ways to be more efficient, but at some point, there is nothing more that can be cut without jeopardizing current operations and public safety. We have looked at changing our employee benefits. But the cost of changing our current plan is to high to be worthwhile. There is little we can do about salaries since we compete with the railroad for employees. We did cut two positions in the spring. And we won't replace two others who are leaving for the railroad. These challenges are why your work in NUSF-111 in reforming contributions and resizing the fund are critical. They are why your outstanding work in the current proceeding is important. Without the reforms you are undertaking, we will not be able to tackle these challenges, but with the reforms you are making, we are confident that Hemingford Telephone will continue to provide the essential infrastructure and services needed for rural Nebraskans to prosper. (103:16 -104:16)

The RTCN appreciates the Commission undertaking this important investigation and reserves the right to comment and participate further as the proceeding advances.

Dated: September 17, 2018.

RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and five copies of the foregoing ***Post-Hearing Comments of the Rural Telecommunications Coalition of Nebraska*** were filed with the Public Service Commission on September 17, 2018, and a copy was served via electronic mail, to the following:

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