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 to make revisions to its reporting requirements.	))))))	Application No. NUSF-108 Progression Order No. 3

COMMENTS OF THE RURAL INDEPENDENT COMPANIES IN RESPONSE TO ORDER SEEKING COMMENT

The Nebraska Rural Independent Companies ("RIC")[1] submit these Comments in response to the Progression Order No. 3 issued by the Nebraska Public Service Commission (the "Commission") in this proceeding on December 19, 2017 (the "*December 19 Order*"). RIC appreciates the opportunity to provide the following Comments to the Commission.

In connection with formulating its positions in response to the questions posed in the *December 19 Order,* RIC has invested considerable time and effort to develop a Nebraska Universal Service Fund ("NUSF") distribution and accountability plan applicable to Rate of Return ("ROR") carriers. This plan would be aimed at providing NUSF High Cost Program support to ROR carriers for the deployment and operation of broadband-capable networks. RIC is unable to present a final plan at this time since additional development work is needed to complete the plan. When its work on this plan is finalized, RIC intends to present it to the Commission for consideration. Nonetheless, the RIC Proposal presented below in these

[1] Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company and Three River Telco. Each of the RIC companies is an Incumbent Local Exchange Carrier as defined under Section 251(h) of the Communications Act of 1934, as amended (the "Federal Act"). *See* 47 U.S.C. § 251(h).

Comments is sufficiently detailed to be adopted by the Commission as a means to address the issues raised by the *December 19 Order*. RIC respectfully submits that its on-going work regarding an accountability and distribution plan should not delay the Commission's adoption of the RIC Proposal described below.

RIC recognizes and appreciates the Commission's continuing desire to review and reform the current NUSF High Cost Program distribution and accountability mechanisms (the "Mechanisms") applicable to ROR carriers. RIC respectfully submits the following "Guiding Principles" for the Commission's consideration. RIC believes that these Principles provide the parameters and guidance necessary for the Commission to adjust the current Mechanisms. With these Principles in mind, in these Comments RIC offers a proposal to revise the Mechanisms, and also provides RIC's responses to the Commission's questions set forth in the *December 19 Order*.[2]

I. GUIDING PRINCIPLES

In April 2016 the Commission announced a "Strategic Plan" with regard to the evolution of universal service in Nebraska.[3] The Commission stated that "[t]his roadmap will serve as the

[2] RIC respectfully reminds the Commission that in addition to adjusting the Mechanisms applicable to ROR carriers, it is of utmost importance for the Commission to continue to aggressively pursue reform of the NUSF contribution mechanism and to implement a rate design that will yield annual remittances to the NUSF of approximately $60 million. RIC has presented a rate design that will accomplish this growth in the size of the NUSF while, at the same time, minimizing increases in the current levels of NUSF contribution pursuant to the revenues-based remittance mechanism. *See, In the Matter of the Nebraska Public Service Commission, on its own motion, to determine a rate design and address implementation issues with a connections-based contribution mechanism*, Application No. NUSF-111, Comments of the Rural Independent Companies in Response to Order Opening Docket and Seeking Comment, pp. 7-12 and Exhibit Two (Jan. 30, 2018).

[3] *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Application No. NUSF-100/PI-193, Order Seeking Further Comments, pp. 5-6 (April 5, 2016).

foundation for the advancement of universal service in the broadband age." RIC respectfully submits that the following Guiding Principles advance each of the following stated goals of the Commission's Strategic Plan, and should guide the Commission's actions with regard to changes in the current Mechanisms applicable to the provision of NUSF High Cost Program support to ROR carriers.

Goal #1 – Ubiquitous Broadband: Principle: Distribution of NUSF High Cost Program support should be performance-based recognizing already accomplished broadband build-out and creating incentives to deploy additional broadband to underserved and unserved locations.

Goal #2 – Preserve and Advance Affordable Voice Service: Principle: At a minimum and in order to maintain the network used to provide broadband and voice services, ROR carriers receiving NUSF High Cost Program support should retain the ability to utilize the portion of such support for network operations and maintenance as determined pursuant to the State Broadband Cost Model ("SBCM").[4]

Goal #3 – Deployment of Fiber-based Network Everywhere: Principle: Provision of NUSF High Cost Program support should focus on funding for deployment of broadband-capable fiber loop plant in rural high-cost areas of the State.

Goal #4 – Accountability: Principle: For those ROR carriers that have accomplished broadband build-out in their service areas, this performance should be recognized and such ROR carriers should receive ongoing NUSF High Cost Program support. For those ROR carriers that have remaining broadband build-out to be accomplished in their service areas, RIC proposes that such carriers should annually provide the Commission with a filing that describes NUSF High

[4] Based upon RIC's analysis of this ratio for each Nebraska ROR carrier, the average OpEx/CapEx ratio for these carriers is 47% OpEx and 53% CapEx. This ratio was calculated using SBCM cost categories. For further details regarding the calculation of the foregoing ratio, please refer to footnote 7 below.

Cost Program supported build-out plans based upon specified funding level assumptions, which may include locations that are underfunded by Federal Universal Service Fund ("FUSF") support. This filing should also include a report detailing the prior year's accomplishment of the anticipated build-out commitments funded by NUSF High Cost Program support including, if applicable, additional built-out locations provided with broadband access through the use of NUSF High Cost Program support that exceeded the prior year's anticipated results. In estimating the costs associated with the build-out plans and commitments, the ROR carriers will utilize cost data provided by the SBCM. These new accountability measures will supplant and replace continued use of the NUSF EARN form. Such measures will facilitate the Commission's verification that ROR carriers utilized the CapEx portion of annual NUSF High Cost Program support for the purpose of constructing the broadband build-out projects identified to the Commission during a specified funding year.

Goal #5 – Stability of the Program: Principle: In order to bring stability and predictability to the support that a ROR carrier may expect to receive from the NUSF High Cost Program (and to otherwise assist in ameliorating the adverse broadband deployment effects associated with the material decline in NUSF High Cost Program support over the past five years for ROR carriers), the Commission should establish a minimum 10-year commitment for funding with a minimum annual funding level set for 2019 that shall be applicable for the remaining years of the funding commitment period.[5] Recognizing that Goal #3 (deployment of fiber everywhere) will not be accomplished during the 10-year commitment period, not less than twenty-four (24) months prior to the end of such period, the Commission should commence an

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[5] In connection with setting the annual funding level for the NUSF High Cost Program, the Commission should consider the impact of inflation on the costs of broadband deployment and consider adjusting the minimum annual funding level of the NUSF High Cost Program accordingly.

investigatory docket to evaluate continued NUSF High Cost Program funding for broadband build-out.

Goal #6 – Timeframe for Implementation: Principle: The time frame needed for accomplishment of ubiquitous fiber-based broadband availability in this State depends upon the level of funding provided. However, the Commission should establish a rule that any NUSF High Cost Program support distribution provided to a particular carrier that is not committed to a broadband build-out project either approved by the Commission (in the case of Price Cap ("PC") carriers) or reported by a ROR carrier in its annual commitment filing (see discussion in connection with Goal #4 above) within twelve (12) months following award shall be returned to the NUSF High Cost Fund for redistribution to other Nebraska eligible telecommunications carriers ("NETCs").[6]

II. REVISIONS TO DISTRIBUTION AND ACCOUNTABILITY MECHANISMS

RIC proposes that the following listed points would constitute revised distribution and accountability mechanisms to be applied to ROR carriers that are recipients of NUSF High Cost Program support (the "RIC Proposal"):

1. The RIC Proposal would utilize the SBCM (which models the costs of a fiber-based, broadband-capable network) to distribute NUSF High Cost Program support to ROR carriers based on each carrier's service area.[7]

[6] "Since 2015, the three large multi-state companies that receive High-Cost dollars must file project-based applications and have PSC approval in order to access 80% of the funds allocated to them. We found that of the $24 million allocated to these companies for the projects, 26% had been spent." Source: Legislative Audit Office Pre-audit Report – Universal Service Fund, p. 1 (Jan. 2018).

[7] RIC recommends continued use of the NUSF Support Allocation Methodology or "SAM" on an interim basis to calculate costs and for distribution of NUSF High Cost Program support in 2019 or until the transition to SBCM-determined costs can be implemented.

2. NUSF High Cost Program support for a ROR carrier would be allocated based upon the SBCM's average split of approximately 53%/47% between capital expenditures ("CapEx") and operations and maintenance expenditures ("OpEx"), respectively.[8] A ROR carrier that has completed or has substantially completed a documented fiber-to-the-home ("FTTH") build-out may utilize all or a portion of the CapEx percentage of its NUSF High Cost Program support for cost obligations incurred for prior broadband deployment or to realize a return on the FTTH investment associated with the build-out.

3. The use of the NUSF EARN form for ROR carriers would be discontinued. Historically, the NUSF EARN Form was to be a tool used by the Commission to incent carriers to make investments in their networks and to use NUSF High Cost Program support in Nebraska for its intended purpose.[9] RIC's proposed accountability mechanism represents a process in which a ROR carrier pre-identifies the actual project(s) that will be built during a specific time period, to the extent that NUSF High Cost Program funding is provided, and following completion of the build-out the ROR carrier confirms to the Commission the accomplishment of the project(s). This build-out can be audited by the Commission to verify the accuracy of the ROR carriers' reporting. As such, the RIC Proposal should be accepted and implemented by the Commission as a replacement for continued use of the NUSF EARN form.

4. Any PC carrier's allocation of CapEx-restricted NUSF High Cost Program support that is not approved for project deployment by the Commission pursuant to grant applications should be returned to the "Uncommitted Fund Balance" for re-distribution to other NETCs under the following circumstances:

   A. If applications for deployment of NUSF High Cost Program support allocations for specific broadband projects are not filed by and do not receive Commission approval by the following deadlines: (i) For allocations relating to 2016 and prior years by January 1, 2019 and (ii) for allocations relating to 2017 by January 1, 2020; and

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[8] The annual cost of the initial capital investment is calculated in SBCM using annual charge factors which relate the initial investment to cost over the useful life of each asset. As a result, annual CapEx is comprised of three cost categories: Depreciation, Cost of Money and Taxes related to the investment. OpEx is calculated with factors based on ROR carriers' National Exchange Carrier Association data and classified into four categories: Network Operations, Customer Operations and Marketing, General Administration, and Bad Debt. *FCC Alternative Connect America Cost Model Overview*, April 1, 2015. *https://transition.fcc.gov/wcb/ACAM040115.pdf*

[9] *In the matter of the Nebraska Public Service Commission, on its own motion, to administer the Universal Service Fund High-Cost Program*, Application No. NUSF-99, Progression Order No. 1, p. 6 (Sept. 1, 2015).

B. If applications for deployment of NUSF High Cost Program support allocations for 2018 and subsequent years to specific broadband projects are not filed by and do not receive Commission approval within twelve (12) months from the date of the Commission order approving the support allocations.

5. Accountability for ROR carriers' use of NUSF High Cost Program support designated for CapEx should be administratively efficient for the Commission, its Staff and the ROR carriers in order to identify reported new locations of broadband-capable network in any given year, and would include the following:

A. Identification by the ROR carrier of the number of actual new passed locations or broadband-capable locations completed using NUSF High Cost Program funding during the prior NUSF funding year (with explanation of any deviations between the estimated and actual number of such new locations).

B. Identification by the ROR carrier of new locations for build-out during the upcoming NUSF funding year and any associated assumptions relating to the build-out.

C. In lieu of complying with the reporting of A through C above, for any ROR carrier that has constructed FTTH throughout its service area, the carrier shall confirm this capability in its annual filing with the Commission and shall be permitted to utilize up to the full amount of such carrier's NUSF High Cost Program support for costs incurred for broadband deployment or to realize a return on the investment associated with equity funded build-out.

As outlined herein, RIC's accountability framework requires the demonstration and reporting to the Commission of actual new broadband-capable locations deployed in any given NUSF program year, reported by the ROR carrier and verifiable by the Commission. RIC respectfully submits that the focus under the new performance-based accountability program will allow the Commission to report actual broadband capability to consumers living in a ROR carrier's service area, thereby advancing the Legislative's aspirational directives that "access to advanced telecommunications and information services should be provided in *all regions of the state*"[10] and that *"[c]onsumers in all regions of the state* . . . should have access to

[10] *Neb. Rev. Stat.* § 86-323(2) (emphasis added).

telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas . . . ."[11]

III. RESPONSES TO COMMISSION QUESTIONS CONTAINED IN THE *DECEMBER 19 ORDER*

For purposes of these Comments, RIC will re-state each of the Commission's questions contained in the *December 19 Order* and then provide its response.

1. **Should the Commission reform the distribution mechanism for ROR carriers by making specific allocations for broadband build-out in ROR areas?**

Response: Yes, in light of the Commission's desire for greater accountability regarding the use of NUSF High Cost Program support, such reforms are appropriate. Therefore, RIC respectfully submits that the Commission should utilize the RIC Proposal as the basis for initially reforming the distribution and accountability mechanisms of the NUSF High Cost Program applicable to ROR carriers.

Consistent with the FCC actions regarding the 10-year recovery period associated with Alternative-Connect America Model ("ACAM") model recipients,[12] the Commission should adopt a 10-year NUSF High Cost Program funding period similar to that used by the FCC as an initial funding commitment period.[13] This 10-year period would begin with the initial year of

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[11] *Neb. Rev. Stat.* § 86-323(3) (emphasis added).

[12] *See, e.g., In the Matter of Connect America Fund et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, 31 FCC Rcd 3087 (2016) ("*FCC ROR Reform Order*") at ¶ 22; *see also* 47 C.F.R. § 54.311(c). While this 10-year proposal was applicable to model-electing ROR carriers, the same underlying rationale – need for predictability on expected universal service disbursements – applies to all ROR carriers. This principle should be a fundamental cornerstone of the Commission-established going-forward NUSF Mechanisms for all ROR carriers as funding availability that can be expected directly relates to the establishment of rational and achievable build-out.

[13] By adopting a similar 10-year commitment for the provision of NUSF High Cost Program support, RIC respectfully submits that such Commission action will harmonize the NUSF policies with those of the FCC, and, in this regard, the existence of a federal-state partnership

implementation of the connections-based contribution mechanism approved by the Commission in Application No. NUSF-100. Instituting this 10-year support period would, as the FCC found, bring a greater degree of "certainty of receiving specific and predictable monthly support amounts" as well as establishing "predictable support" that, in turn, "will enhance the ability of these carriers to deploy broadband throughout the term."[14]

Certainty and predictability in the context of NUSF High Cost Program support is no less necessary than it is for the FUSF. This is particularly true in the rural, higher-cost-to-serve areas of the RIC members, some of which will necessarily be required to utilize NUSF support to defray maintenance and other operating costs incurred to accomplish the network build-outs required for the provision of ubiquitous access to voice and broadband services.

2. **If so, how should the Commission consider ongoing operations expenses? Should the revised mechanism default to mirror the mechanism in place for price cap carriers which includes specific percentages of support allocated for broadband plant and ongoing operating expenses? Please explain.**

Response: RIC respectfully submits that the Commission must continue to allow ROR carriers the flexibility to utilize NUSF High Cost Program support for both CapEx and OpEx associated with their provision of universal service. (Please refer to Goal #2 above.) RIC respectfully submits that applicable law allows an NETC to recover its CapEx and OpEx from universal services mechanisms.

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regarding universal service will be more fully realized. *See, e.g.*, Commission Order, Application No. NUSF-110, issued October 31, 2017 at 29-30; *FCC Rate of Return Reform Order* at ¶ 184; *Federal-State Joint Board on Universal Service, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 18 FCC Rcd 22559, 22568, ¶ 17 (2003) (The Communications Act of 1934, as amended (the "Federal Act") "makes clear that preserving and advancing universal service is a shared federal and state responsibility"); *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001); *Qwest Communications Int'l Inc. v. FCC*, 398 F.3d 1222, 1232 (10th Cir. 2005).

[14] *FCC ROR Reform Order* at ¶ 22.

Section 254(e) of the Federal Act, for example, provides for the recovery associated with the "the provision [and] maintenance" of ETC networks.[15] Similarly, § 86-324(1) provides that NUSF High Cost Program support is to be used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended." It is an undeniable fact that operation and maintenance of broadband transmission facilities cause costs – human resources, electricity, splicing, etc. Absent acknowledgement of these necessary uses of NUSF High Cost Program support in accordance with the provisions of relevant statutes and rules, the networks to be deployed would not be available for continued use by consumers.

Moreover, the need for OpEx recovery, separate and apart from CapEx recovery, is built into SBCM cost recovery levels. RIC respectfully submits that the recovery established by the SBCM should establish the percentage allocation of NUSF High Cost support to OpEx. Based upon RIC's analysis of this ratio for each Nebraska ROR carrier, the average OpEx/CapEx ratio for these carriers is 47% OpEx and 53% CapEx.[16] For companies that are fully built out, there would not be a requirement to utilize the CapEx percentage for new investments.

3. **How can the Commission establish a responsible but administratively efficient process for ROR carriers to annually present a list of the projects for which broadband funding is desired and have the Commission review, and approve or deny the projects?**

Response: It is a recognized fact that ROR carriers have deployed and continue to deploy broadband-capable networks.[17] This history, coupled with the RIC Proposal, negates any

[15] *See generally,* 47 U.S.C. § 254(e).

[16] *See,* footnotes 4 and 7 above.

[17] *See, e.g. 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, Order Seeking Further Comment, p. 3 (Dec. 20,

need for some form of pre-approval, project-based deployment model as perhaps contemplated by this question.

RIC respectfully submits that the current NUSF accountability framework associated with PC carriers is ill-advised and should not be instituted for the ROR carriers. In Application No. NUSF-99, the Commission implemented a number of reforms applicable only to PC carriers.[18] The Orders entered by the Commission in Application No. NUSF-99 set forth the Commission's reasoning that the reforms addressed therein were and are specifically applicable to PC carriers. Such conditions do not exist for ROR carriers.

Furthermore, from an administrative standpoint, there are four PC carriers operating in Nebraska (two of which are affiliated companies), in contrast to approximately 35 ROR carriers. Thus, imposition of a prior approval requirement for ROR carriers' CapEx projects represents an entirely different burden not only on the Commission's administrative resources, but also on the resources of small ROR carriers as compared to the project pre-approval requirement applicable to the PC carriers.

Finally, if the objective that the Commission seeks to attain through the NUSF High Cost Program is creation of more broadband-capable networks, the results from the PC carriers' High Cost Program allocations are at odds with that objective. RIC notes that as of January 31, 2018, $9,468,348 of the CapEx allocation to PC carriers for 2016 remains unspent, $14,545,442 of the CapEx allocation to PC carriers for 2017 remains unspent and $969,696 of the CapEx allocation

2016). The Commission stated: "Our data further shows an increase in investment made by rate of return carriers."

[18] *See, In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program,* Application No. NUSF-99, P.O. No. 1 (Sept. 1, 2015).

to PC carriers to date for 2018 remains unspent.[19] While it is not possible to fully explain this lack of deployment of allocated funding to broadband projects, it is certainly reasonable to conclude that the Commission's prior approval requirement has proven to be a considerable barrier to accomplishment of the Commission policy supporting broadband build-out to underserved or unserved areas of Nebraska.

In light of the above, the RIC Proposal offers an alternative accountability process for ROR carriers. The benefits of the RIC Proposal relative to assuring accountability for use of support for the Commission's intended purposes has been explained above. In general, however, RIC respectfully submits that the accountability framework set forth in the RIC Proposal represents an administratively efficient reporting and review process, and provides the Commission, its Staff, the public and the ROR carriers with data regarding the number of new locations in the ROR carriers' service areas that are newly broadband capable. This result, in turn, would allow the Commission ample basis for concluding that the NUSF High Cost Program support was, in fact, used for the intended purpose – the deployment of broadband capable networks.

4. **How should the Commission coordinate the use of state high-cost support with federal support particularly for those ROR carriers that have elected to take model support? How should the Commission treat ROR carriers where the carrier will remain on a legacy-based support mechanism?**

Response: Please refer to the discussion of Goal #4 – Accountability, above and to points 3 and 5 of the RIC Proposal described above.

[19] *See,* NUSF Quarterly Remittance and Fund Balance Report http://www.psc.nebraska.gov/ntips/ntips_nusf.html. As of January 31, 2018 the NUSF balance was $47,398,892 and of this balance, $34,249,742 of committed funding remained unspent regarding Commission-approved allocations dating back to 2013.

5. **Similar to the price cap territories, the Commission proposes to disallow broadband build-out support in areas that already have an unsubsidized carrier providing comparable broadband service. Please comment.**

Response: If examination of the notion of "unsubsidized competitor" by the Commission is necessary for purposes of establishing the state policies associated with any new ROR carrier's NUSF High Cost Program support distribution framework, RIC respectfully submits that the Commission should not be constrained by the narrow definition of "unsubsidized" established by the FCC related to the receipt of "high-cost" support.[20] Specifically, while the FCC examined the payment of FUSF high-cost loop support to a company as establishing whether that competitor is, in fact, a "subsidized" competitor, the fact remains that the unsubsidized ROR carrier competitor has, within its control, the ability to define its service area and therefore may exclude from its service area any higher-cost-to-serve area within a ROR carrier's Commission-certificated area. The ability of the new entrant to self-define its service area, in turn, allows for a competitive rate/service advantage, regardless of whether the new entrant receives high-cost loop or other universal service fund support. As such, where the service area of a new entrant is not co-extensive with the ROR carrier, then that new entrant should not be viewed as an unsubsidized competitor.

The Commission's use of the new entrant's service area, the lack of Carrier of Last Resort/Provider of Last Resort/Eligible Telecommunications Carrier status of that new entrant, and the lack of service comparability are appropriate for the Commission to consider. The adoption of these requirements is consistent with the "additional" standards permitted to be

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[20] *See,* 47 C.F.R. §§ 54.5 (defining "subsidized competitor" as a "facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.")

established by the Commission for the NUSF under Section 254(f) of the Federal Act.[21] Consideration of these additional factors is permissible in order to advance the predictable and sufficient NUSF High Cost Program that the Commission is legislatively directed to create and administer.[22] Likewise, consideration of these additional standards are amply supported by *Neb. Rev. Stat.* § 86-325.

6. **How can the Commission fairly treat rate-of-return carriers who have already deployed broadband throughout their footprint? For ROR carriers that have built out fiber to the premises, is the NUSF EARN Form an appropriate way to determine or limit the allocation of support?**

<u>Response</u>: Please refer to the discussion of Goal #4 – Accountability, above, and the RIC Proposal described above, specifically the discussion set forth regarding points 2, 3 and 5.D.

7. **How do we account for ROR carriers that have built out to 100 percent of their subscribers and have extensively borrowed for plant investment? Should the Commission focus on the amount of debt taken on by a carrier for plant investment? Should the Commission look at existing loan terms and payment requirements? If so, what type of information should be filed? How could the Commission account for this in an administratively efficient manner? How should the Commission consider in-town versus out-of-town investment when looking at structuring support aimed at ongoing operational expenses and debt?**

Response: Please refer to the discussion of Goal 4 – Accountability, above, and the RIC Proposal described above, specifically the discussion set forth regarding points 2, 3 and 5.D.

8. **How should the Commission account for the ROR carriers that have built out broadband to a majority of subscribers but not to those that are the**

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[21] 47 U.S.C. § 254(f) of the Federal Act provides, in part, that the Commission may enact "regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms."

[22] Under the NUSF Act, the Commission "shall determine the standards and procedures reasonably necessary, adopt and promulgate rules and regulations as reasonably required . . . to efficiently develop, implement, and operate the fund." *Neb. Rev. Stat.* § 86-325 (Reissue 2014).

furthest out? Should the Commission focus NUSF support on the last mile customers? Are there some subscribers that are too expensive to serve? Should the Commission encourage the use of alternative technologies to reach the last mile subscribers above a certain cost threshold? If so, what should that threshold be?

Response: RIC notes that the Nebraska Legislature in the statement of purpose section of the NUSF Act directs the Commission "to establish a funding mechanism which . . . ensures that *all Nebraskans, without regard to their location*, have comparable accessibility to telecommunications services at affordable prices."[23] Further, the policy declaration of the Legislature set forth in *Neb. Rev. Stat.* § 86-323(2) requires that "access to advanced telecommunications and information services should be provided in *all regions of the state*."[24] In § 86-323(3) the Legislature also required that *"[c]onsumers 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 . . . ."[25]

Based on these directives, RIC respectfully submits that the Commission should encourage full deployment of fiber-based, future-proof and scalable networks throughout the State of Nebraska. RIC recognizes that it will take time to achieve this objective especially in light of the historical insufficiency of NUSF High Cost Program funding.

RIC respectfully submits that the Commission should not create broadband "haves" and "have nots" regarding citizens within the State simply because they are located in more costly-to-serve areas. As fiber-based networks are deployed in higher cost-to-serve portions of a ROR carrier's service area, progress may be incremental in meeting the NUSF Act's goals and

[23] *Neb. Rev. Stat.* § 86-317 (Reissue 2014) (emphasis added).

[24] *Neb. Rev. Stat.* § 86-323(2) (emphasis added)

[25] *Neb. Rev. Stat.* § 86-323(3) (emphasis added)

objectives. However, realization of only incremental progress does not suggest that the Commission should abandon the Legislature's goals as stated in the NUSF Act.[26]

III. CONCLUSION

As stated above, RIC appreciates the opportunity to provide these Comments in response to the questions posed by the Commission, and respectfully requests that the Commission take action in a manner consistent with these Comments. As this proceeding moves forward, RIC looks forward to its continuing participation in this docket and the prompt resolution of the questions posed in the *December 19 Order*.

[26] RIC notes that, for example, certain of the Legislatives' goals are aspirational through the use of in the statutory sections of the term "should" not "shall" such as in *Neb. Rev. Stat.* § 86-323(2) and *Neb. Rev. Stat.* § 86-323(3). Incremental achievement of these goals, therefore, is, in RIC's view, permissible provided that, in fact, incremental progress toward reaching them is undertaken.

Dated: March 5, 2018.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of March, 2018, an electronic copy of the foregoing pleading was delivered to:

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