

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  
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Public Service Commission

COMMENTS OF THE RURAL INDEPENDENT COMPANIES IN RESPONSE TO  
JUNE 19, 2018 ORDER SEEKING FURTHER COMMENTS AND SETTING HEARING

I. INTRODUCTION.

The Nebraska Rural Independent Companies (“RIC”)<sup>1</sup> submit these Comments in response to the Order Seeking Further Comments and Setting Hearing issued by the Nebraska Public Service Commission (the “Commission”) in this proceeding on June 19, 2018.<sup>2</sup> On July 6, 2018, the Commission released information clarifying several matters addressed in the *Order*.<sup>3</sup> RIC appreciates the opportunity to provide these Comments to the Commission.

<sup>1</sup> The Rural Independent Companies that join in these Comments are: 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., K & M Telephone Company, Inc., The Nebraska Central Telephone Company and Rock County Telephone Company. The Rural Independent Companies that do not join in these Comments are: Clarks Telecommunications Co., Hartington Telecommunications Co., Inc., Northeast Nebraska Telephone Company and Three River Telco. As used in these Comments, the acronym “RIC” refers to those Companies that join in these Comments.

<sup>2</sup> *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 Comments and Setting Hearing (June 19, 2018) (the “*Order*”).

<sup>3</sup> *See*, Letter from Frank E. Landis, Jr. to Paul M. Schudel with attached responses, Re: Application No. NUSF-108, Progression Order No. 3, released July 6, 2018 (the “*Staff Responses*”).

On page 4 of the *Order* the Commission solicits comments on proposed modifications to reform the Nebraska Universal Service Fund (“NUSF”) High-Cost Program distribution mechanism for rate-of-return (“ROR”) carriers. As the Commission is aware, in connection with recent actions taken by the Federal Communications Commission (“FCC”) to reform Federal universal service fund (“USF”) support for ROR carriers, an option was provided to ROR carriers to elect to receive Alternate-Connect America Model (“A-CAM”) support or to continue to receive “legacy” Federal USF support. The following RIC member companies elected A-CAM support: the American Broadband affiliates, Arlington, Blair, Eastern Nebraska and Rock County Telephone Companies; the Consolidated Companies affiliates, Consolidated Telephone, Consolidated Telco, Consolidated Telecom and Curtis Telephone Company; Great Plains Communications, Inc.; K & M Telephone Company, Inc.; and Nebraska Central Telephone Company (the “RIC A-CAM Companies”). The following RIC member companies either elected to remain on or were not provided an option to elect legacy Federal USF support: Clarks Telecommunications Co., Hamilton Telephone Company, Hartington Telecommunications Co., Hershey Cooperative Telephone Company, Inc., Northeast Nebraska Telephone Company, and Three River Telco. (the “RIC Legacy Companies”).

As a result of the distinct FCC-based advocacy positions adopted by the RIC A-CAM Companies and by the RIC Legacy Companies, these Comments will address specific, non-NUSF distribution mechanism-based matters relating to the Commission-proposed modifications to the NUSF High-Cost Program as set forth in the *Order*. To the extent that they wish to do so, a RIC member company, either individually or as a group, may submit separate comments to the Commission with regard to the *Order*’s proposed NUSF distribution mechanism. Comments

below will focus on other matters addressed in the *Order* concerning which the RIC member companies identified in footnote 1 above join.

## **II. COMMENTS ON THE COMMISSION'S PROPOSED MODIFICATIONS TO THE NUSF HIGH-COST PROGRAM DISTRIBUTION MECHANISM**

### **A. As clarified by the Staff Responses, RIC supports the Commission's classification of in-town census blocks.**

In the *Staff Responses* in-town or urban census blocks are defined as either: (1) census blocks with 20 or more households and greater than 42 households per square mile; (2) census blocks in areas classified by the U.S. Census Bureau as cities or villages; or (3) census blocks in any area within city limits as defined by the U.S. Census Bureau. The *Staff Responses* confirm that these bases for classifying census blocks as in-town are similar to past practice used by the Commission in connection with distributions of NUSF High-Cost Program support.<sup>4</sup> As such, RIC supports the foregoing bases for classification of census blocks as in-town or urban.

### **B. The Commission's definition of unsubsidized competitor and the impact thereof on the eligibility of census blocks to receive NUSF High-Cost Program support.**

In the *Staff Responses* the Commission Staff confirmed that for purposes of determining eligibility of out-of-town census blocks for NUSF High-Cost Program support, an unsubsidized competitor will only be an entity providing wireline-based broadband at a speed of at least 25/3 Mbps.<sup>5</sup> RIC agrees. This construct allows determination of the existence of 25/3 Mbps broadband service in a particular census block with precision and to have the benefit of the technology associated with wireline-based broadband which is scalable to meet future consumer desires for increased broadband speeds. As such, taking into account an unsubsidized wireline

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<sup>4</sup> *Staff Responses*, p. 1.

<sup>5</sup> *Id.*, p. 2.

provider in a rural area of Nebraska as proposed in the *Order* is consistent with the Commission's strategic plan for broadband deployment in Nebraska.<sup>6</sup>

- C. The State Broadband Cost Model (“SBCM”) should be used to determine the allocation of NUSF High-Cost Program support between capital expense for broadband deployment (generally referred to as “CapEx”) and operating and maintenance expense (generally referred to as “OpEx”).**

In the *Staff Responses* the Commission Staff acknowledged that the CapEx/OpEx split for eligible census blocks as noted in the *Order*<sup>7</sup> is proposed to be based upon SBCM data for all eligible census blocks in ROR carrier areas statewide.<sup>8</sup> Presumably, therefore, this split will be used to allocate any NUSF High-Cost Program support available to ROR carriers between CapEx (for not fully built-out census blocks) and OpEx. RIC understands that the specific CapEx and OpEx split will be determined on a ROR carrier-specific basis. While the specific carrier allocation of CapEx and OpEx is not ascertainable based on the *Order* and the *Staff Responses* due to the absence of model runs in the *Staff Responses*, as a general matter RIC supports the use of the SBCM to determine CapEx/OpEx allocations for all ROR carriers. Such use of the SBCM is consistent with the positions taken by RIC that it would be appropriate to allocate any ROR carrier budget associated with the NUSF High-Cost Program based upon the SBCM's average split of approximately 53 percent/47 percent between CapEx and OpEx.<sup>9</sup>

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<sup>6</sup> *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, p. 5 (April 5, 2016).

<sup>7</sup> *See, Order*, p. 4.

<sup>8</sup> *Staff Responses*, p. 2.

<sup>9</sup> *See*, Application No. NUSF-108, Comments of the Rural Independent Companies in Response to Order Seeking Comment, p. 6 (Mar. 5, 2018). *See also*, Application No. NUSF-108, Comments of the Rural Independent Companies in Response to Order Seeking Comment, pp. 4-5 (Mar. 5, 2018) and Reply Comments of the Rural Independent Companies in Response to Order Seeking Comment, pp. 4 and 11 (April 12, 2018).

Ultimately, and while the “devil-is-in-the-details” regarding application of ROR carrier-specific CapEx/OpEx allocations, RIC respectfully submits that action by the Commission to set CapEx and OpEx allocations consistent with the SBCM should ensure that ROR carriers continue to invest in their networks, as well as to provide for the appropriate OpEx recovery for ROR carriers’ cost to serve very rural areas.

### **III. COMMENTS ON THE “GRANT SUPPORT ALLOCATION” SECTION OF THE ORDER**

#### **A. A long-term commitment of NUSF High Cost Program support is consistent with statutory directives.**

While reference is made to the further use of the SBCM by the Commission within the *Order*, that discussion is in the context of “grant-based support” for broadband deployment.<sup>10</sup> RIC emphasizes that the use of SBCM is consistent with the FCC’s cost modeling efforts. However, the Commission’s endorsement of the use of the SBCM materially differs from the FCC insofar as the *Order* does not address a long-term commitment to continuing provision of NUSF High-Cost Program support in a manner that is consistent with the FCC’s 10-year provision of Federal USF to ROR carriers that elected A-CAM model support. This long-term commitment has been supported by RIC in previous Comment filings which are incorporated herein by reference.<sup>11</sup> RIC continues to believe that the predictability associated with a long-term support commitment would encourage broadband deployment. In contrast, the *Order* only

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<sup>10</sup> See, *Order*, p. 4. RIC opposes grant-based NUSF High-Cost Program support for ROR carriers for all of the reasons previously stated in RIC’s filed Comments, not the least of which is the demonstrable failure of timely disbursement of grant-based NUSF High-Cost Program support to Price Cap carriers. Later in these Comments RIC will address the reasons that weigh against imposing a grant-based application process on ROR carriers.

<sup>11</sup> See e.g., Application No. NUSF-108, Comments of the Rural Independent Companies in Response to Order Seeking Comment, pp. 4-5 (Mar. 5, 2018).

proposes to permit a ROR carrier “to carry over the support on a one (1) time basis.”<sup>12</sup> RIC submits that establishment of a long-term commitment to provide NUSF High-Cost support is not only desirable, but further would be consistent with the policy declaration set forth in LB 994 adopted by the 2018 Nebraska Legislature, and approved by the Governor, which provides:

It is the intent of the Legislature that broadband telecommunications service in rural areas of the state should be comparable in download and upload speed and price to urban areas in the state where possible and that state resources should be utilized to ensure that the rural residents of the state should not be penalized simply because of their rural residence.<sup>13</sup>

**B. The SBCM should be used to determine costs to deploy broadband without imposition of an arbitrary upper limit on the amount of support per consumer location.**

Also in this section of the *Order* the Commission proposes a per customer location CapEx cap of \$15,000.<sup>14</sup> RIC respectfully submits that establishment of this “hard cap” on per location NUSF High-Cost Program support is not only an undesirable policy, but further directly conflicts with the requirements of the Nebraska Telecommunications Universal Service Fund Act (the “Act”) as well as the Commission’s Strategic Plan for universal service. Section 86-323(3) of the Act provides:

*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;*  
(emphasis added)

Section 86-317 which sets forth the purpose of the Act further provides:

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<sup>12</sup> *Order*, p. 5.

<sup>13</sup> LB 994 § 1(2) (Approved April 17, 2018).

<sup>14</sup> *Order*, p. 5.

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.* (emphasis added)

Also, the Commission has declared that “an important goal of reform will be to support the *deployment of ubiquitous broadband availability throughout Nebraska*” as well as the “deployment of fiber-based network *everywhere.*”<sup>15</sup>

Capping the amount of NUSF High-Cost Program support per consumer location runs afoul of the statutory requirement that all Nebraska consumers, even those in “rural and high-cost areas” should have access to advanced services. Further, limiting support to \$15,000 per location is contrary to the Commission’s stated goal of ubiquitous broadband availability to Nebraska consumers through use of fiber-based networks. As such, the proposed customer location cap should be abandoned.<sup>16</sup>

**C. RIC’s proposed Report for Planned Broadband Capital Projects should be utilized rather than an application process as proposed in the Order.**

All ROR carriers regardless of whether they have accomplished broadband build-out in their service areas or are undertaking that effort currently must receive ongoing OpEx NUSF High-Cost Program support. Likewise, for those ROR carriers that have remaining broadband build-out to be accomplished in their service areas, it is entirely appropriate as proposed by RIC, as well as being readily verifiable and auditable (as explained below), for carriers to annually provide the Commission with a filing that describes NUSF High-Cost Program supported build-

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<sup>15</sup> *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, p. 5 (April 5, 2016) (emphasis added).

<sup>16</sup> RIC appreciates the Commission’s clarification in the *Staff Responses*, p. 3 that census blocks with locations that exceed \$15,000 cost per location to deploy broadband will, nonetheless, remaining eligible for ongoing maintenance costs.

out plans based upon specified funding level assumptions. Such plans should allow ROR carriers to propose build-out of currently underfunded areas, regardless of whether those areas were determined by the FCC based on A-CAM or legacy locations. In the absence of this approach, a “mismatch” between federal USF and NUSF High-Cost Program supported locations would occur and ROR carriers would be precluded from using NUSF High-Cost Program support for non-fully funded federal USF supported locations.

As RIC has demonstrated, its annual 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 exceed the prior year’s commitments. These filings will facilitate the Commission’s verification that ROR carriers utilized the SBCM-determined 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.

Attached to these Comments as Exhibit A is a copy of a proposed reporting form identifying ROR carrier broadband projects planned for construction in a specified year. This form has been previously submitted to the Commission for consideration. Following completion of the build-out of the planned project(s) the ROR carrier would provide the Commission with a written report or affidavit confirming the accomplishment of the project(s). This reported build-out could be audited by the Commission to verify the accuracy of the ROR carrier’s reporting.<sup>17</sup>

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<sup>17</sup> For a further discussion of the RIC accountability proposal, please refer to Application No. NUSF-108, Comments of the Rural Independent Companies in Response to Order Seeking Comment, pp. 5-8 (Mar. 5, 2018) which are incorporated herein by reference.

RIC continues to believe that the above-described approach to accountability by ROR carriers for the use of NUSF High-Cost Program CapEx support will provide the Commission with the assurance that support is being used for purposes that are consistent with statutory requirements,<sup>18</sup> and the Commission's goal of deployment of ubiquitous broadband availability throughout Nebraska. RIC respectfully urges the Commission to abandon the application and grant process for ROR carriers as described in the *Order* and instead to adopt RIC's proposed accountability procedures described above.<sup>19</sup>

Implementation of RIC's accountability proposal would eliminate the administrative burden and expense for ROR carriers to submit invoices for project costs for reimbursement as well as the consequent administrative burden on and expense to the Commission Staff to review and approve such invoices. Rather, NUSF High-Cost Program support would continue to be provided to ROR carriers consistent with current practices with the SBCM-determined CapEx portion of support being utilized to construct broadband projects to currently unserved or underserved locations and with such projects reported to the Commission by use of the reporting form attached as Exhibit A as described above.

**D. RIC supports the Commission's suggestion that ROR carriers be allowed two (2) years to complete a CapEx project.**

RIC supports the Commission's proposal that a ROR carrier be allowed a two-year period to complete construction of a CapEx project. Thus, completion of the projects that a ROR carrier would report to the Commission for intended construction (by means of use of the

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<sup>18</sup> See, *Neb. Rev. Stat.* § 86-324(1) (Reissue 2014).

<sup>19</sup> The sufficiency of reporting process supported by RIC is confirmed by the Commission's finding that "[o]ur data has indicated a significant decline in investment levels by price cap carriers over the years. *Our data further shows an increase in investment made by rate of return carriers.*" See, Application No. NUSF-108, Order Seeking Further Comment and Releasing Proposed 2017 Distribution Calculations, p. 3 (Dec. 20, 2016) (emphasis added).

reporting form attached to these Comments as Exhibit A) would need to occur within a 2-year window unless a good cause showing for an additional twelve (12) month extension of the completion date is made.

**E. In response to the Commission’s request for comments on the de minimis level of NUSF High-Cost Program support that should be distributed as ongoing or OpEx support, RIC offers the following suggestion.**

In the data posted to the Commission’s website with regard to 2018 distributions of NUSF High-Cost Program support to individual companies, eight (8) ROR carriers received total NUSF High-Cost Program support allocations of less than \$100,000. Based upon SBCM’s average split of approximately 53 percent/47 percent between CapEx and OpEx,<sup>20</sup> the largest CapEx allocation among these eight (8) ROR carriers would be \$51,871 and the smallest CapEx allocation would be \$25,716.<sup>21</sup>

Consistent with RIC’s recommendation against grant applications as set out in Section III.B above, RIC suggests that payment of annual NUSF High-Cost Program support to an individual ROR carrier of \$100,000 or less be distributed to such carrier and that such carrier be allowed to request Commission approval to use the entire amount of such distribution for OpEx, that is for ongoing maintenance and operation expenses.

**IV. CONCLUSION**

As stated above, the RIC member companies joining in these Comments appreciate the opportunity to provide these Comments in response to the *Order* and respectfully request 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.

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<sup>20</sup> See, fn. 9 above.

<sup>21</sup> See, Year 14 NUSF-26 Distribution Model Revised Public Information spread sheet.

Dated: July 19, 2018.

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., K & M Telephone Company, Inc., The Nebraska Central Telephone Company and Rock County Telephone Company

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 19th day of July, 2018, an electronic copy of the foregoing Comments was delivered to:

**Nebraska Public Service Commission**

Cullen.Robbins@nebraska.gov

Brandy.Zierott@nebraska.gov

Other Commenting Parties

  
Paul M. Schudel

**EXHIBIT A**

**CONFIDENTIAL REPORT TO THE COMMISSION IDENTIFYING RATE-OF-  
RETURN CARRIER PLANNED BROADBAND PROJECTS,  
CALENDAR YEAR 20\_\_ (“FUNDING YEAR”)**

In order to provide accountability to the Nebraska Public Service Commission (the “Commission”) for the planned expenditures of Nebraska Universal Service Fund (“NUSF”) High Cost Program support designated by the Commission to be used for capital construction projects in the service area of the rate-of-return carrier identified below (the “Carrier”)<sup>22</sup>, the following information is provided to the Commission for the Funding Year.

**This Report is provided to the Commission on a CONFIDENTIAL basis.**

1. Please provide the Carrier’s name, address, telephone number, email address and identify the person designated as the Carrier’s primary point of contact:

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2. Please provide broadband project information including: Project identification, number of locations to be passed, total projected costs, estimated completion date and planned speed capabilities of the infrastructure for each project for which the Carrier will use NUSF High Cost Program support during the Funding Year to extend broadband accessibility.

See Attachment A, Table One.

3. Please provide a description of the extent of completion of the prior Funding Year’s broadband projects including: Project identification, number of locations actually passed, date of completion of project and the speed capabilities of the completed infrastructure.

See Attachment A, Table Two.

4. To the best of Carrier’s knowledge, identify any unsubsidized competitor currently providing any level of broadband service in any of the Census Blocks included in any project identified in this report. An “unsubsidized competitor” is a provider of voice and data service in an area that is co-extensive with the Carrier’s service area, which provider does not receive either federal or Nebraska universal service support.

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<sup>22</sup> This Report addresses only that portion of the Carrier’s NUSF High Cost Program support designated by the Commission for capital construction projects. The Carrier is not required to report on support that has been designated for operational and maintenance costs.

**ATTACHMENT A**

**Table One**

Current Funding Year Project Information

<b>Project Identification</b>	<b>Estimated Total Locations To Be Passed</b>	<b>Estimated Total Project Costs</b>	<b>Estimated Project Completion Date</b>	<b>Planned Speed Capabilities of the Infrastructure</b>
#1				
#2				
#3				
Etc.				

Census Block-level map for each project

[Attach appropriate map(s)]

**Table Two**

Project Completion Information

<b>Project Identification</b>	<b>Total Locations Passed</b>	<b>Project Completion Date</b>	<b>Speed Capabilities of Completed Infrastructure</b>
#1			
#2			
#3			
Etc.			

Census Block-level map for each project

[Attach appropriate map(s)]

**AFFIDAVIT**

STATE OF NEBRASKA    )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, on behalf of \_\_\_\_\_, after first being duly sworn, do hereby state the following:

1. My name is \_\_\_\_\_ and I am the \_\_\_\_\_ of \_\_\_\_\_ (the "Company").
  
2. I have carefully reviewed the foregoing Report to the Commission and affirm that the contents of this Report are true and correct to the best of my information and belief.

Witnesseth, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SEAL]

\_\_\_\_\_

Notary Public