

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

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I. INTRODUCTION

On December 19, 2017, the Nebraska Public Service Commission ("Commission") released *Progression Order No. 3* in Docket No. NUSF-108 ("Progression Order"). In the Progression Order, the Commission sought comments on proposed changes to the high-cost distribution mechanism for rate of return carriers, as well as reporting requirements for high-cost support. After receiving comments from several parties, responsive to the Progression Order, the Commission on March 19, 2018, announced it would accept reply comments. The Rural Telecommunications Coalition of Nebraska ("RTCN")<sup>1</sup> submitted Comments in response to the Progression Order, as well as Reply Comments, after the March 19 Order. On June 19, 2019, the Commission released an *Order Seeking Further Comments and Setting Hearing* ("June 19 Order"). On June 26, 2018, counsel for the Rural Independent Companies ("RIC"), sent a letter to the Hearing Office in NUSF-108. On July 6, 2018, the Hearing Officer responded to the RIC letter ("Hearing Officer Letter"), publicly providing responses to questions RIC asked, while making it clear that the responses did not represent an official declaration of the Commission.

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<sup>1</sup> 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., Wauneta Telephone Company, and WesTel Systems f/k/a Hooper Telephone Company.

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In its Opinions and Findings of the June 19 Order, the Commission essentially addresses the following three general subjects related to the reform of support for rate-of-return carriers:

1. The process for determining what census blocks in the state are eligible for high-cost support;<sup>2</sup>
2. A grant-based approach for facilitating new plant build-out necessary to provide voice and broadband communications services;<sup>3</sup> and
3. The process by which the Commission will provide on-going support necessary for the continued provision of voice and broadband communications services.<sup>4</sup>

In these comments, the RTCN will address specific issues the Commission has raised under each of the above general subject areas addressed in its June 19 Order.

## II. COMMENTS

The RTCN applauds the Commission for its expeditious progress in this important proceeding and, especially, for the sound reasoning and solid factual basis underlying the Commission's proposals set forth in the June 19 Order. The Commission's focus, rightly, is upon the consumer, upon ensuring that Nebraska residents and business have affordable and reliable communications services, both voice and internet. Support for deployment, operation, maintenance, and upgrading of communications infrastructure in high-cost, rural areas of Nebraska is critical in this endeavor. Affordable and reliable communications services are necessary to grow Nebraska's economy and to position Nebraskans to prosper

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<sup>2</sup> June 19 Order, p. 4.

<sup>3</sup> June 19 Order, pp. 4-6.

<sup>4</sup> June 19 Order, pp. 6-7.

in an economy that will continue to be increasingly global. The June 19 Order signals the Commission's understanding of these facts.

#### **1. Census Block Eligibility.**

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. Specifically, the Commission proposes 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.
- 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."
- Remove census blocks in which an unsubsidized competitor is offering wireline voice and broadband service at a minimum upload speed of 25 megabits per second and a minimum download speed of 3 Mbps ("Broadband").

With a caveat that will be explained, the RTCN supports each of the Commission's proposals set forth above. As was true historically, the 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.<sup>5</sup>

The proposal to remove CAF-supported blocks, as clarified in the Hearing Officer Letter to mean CAF ACAM support, appears consistent with the Commission's decision to limit funding in eligible CAF-supported blocks of price cap carriers in NUSF-99. In that proceeding, the Commission indicated that the change in the way price cap carriers received support at the federal level through CAF Phase I and II created a need to "consider changes to its allocation mechanism for price cap carriers to complement federal universal service reform."<sup>6</sup> In the same proceeding, the Commission cautioned that "[c]areful consideration must be given for broadband funding in CAF II areas to prevent redundant support being provided to price cap carriers in CAF II support areas."<sup>7</sup> This additional scrutiny is required by the Act to ensure the Commission "supplements federal universal service support mechanisms."<sup>8</sup> State high-cost support must be coordinated with and should not duplicate federal support. ACAM support is similar in nature to CAF Phase II support, as both are derived from the same source, with variations deemed appropriate by the FCC to account for a difference in carrier sizes. Therefore, it would be appropriate to treat ACAM funded areas in a similar manner to CAF Phase II supported areas. Excluding census blocks that receive ACAM may be one way to ensure that redundant support is avoided. To further ensure that state support complements and does not duplicate federal support, the Commission's proposal to continue use of the EARN form is sensible and prudent, as will be discussed more below.

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<sup>5</sup> Neb. Rev. Stat. §§ 86-323 (1) and (3).

<sup>6</sup> 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 ("NUSF-99"), *Order Opening Docket, Seeking Comment and Setting Hearing* (October 15, 2014), p. 2.

<sup>7</sup> NUSF-99, *Progression Order No. 1* (September 1, 2015), p. 7.

<sup>8</sup> Neb. Rev. Stat. § 86-317.

With one caveat, the RTCN supports the Commission proposal to remove census blocks in which an unsubsidized competitor is offering wireline voice and Broadband service. Such census blocks should be ineligible for grant support for new deployment. The presence of an unsubsidized competitor, however, should not impact on-going support. 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, Rural Universal Service (“RUS”) loans from the United States Department of Agriculture (“USDA”) to deploy, provide, maintain, and upgrade facilities and services in high-cost areas. Local wireline providers applied for such loans, and the USDA has 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.”<sup>9</sup> By saying “is offering” as opposed to “offers,” the Commission appears to draw a distinction between existing and prospective unsubsidized competitive services. In order 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 more clear. The RTCN respectfully urges the Commission to do so.

The Commission next proposes to review the eligibility of census blocks annually, allowing for carrier, and presumably public, input. The RTCN supports periodic public review of census block eligibility but encourages the Commission to do so every five years rather than every year. There are 193,352 census blocks in Nebraska and reviewing each of

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<sup>9</sup> June 19 Order, p. 4 (emphasis added).

these annually will take significant time and effort for all parties and the Commission. 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. The burden of annual review very well may lead to a less than thorough review, which would be counterproductive.

The Commission concludes its discussion of the process of ascertaining census block eligibility by proposing to allocate between on-going and grant-based support based on overall CapEx/OpEx splits for eligible census blocks. The RTCN maintains that Commission should prioritize predictable and sufficient support for operating and maintaining existing infrastructure capable of providing voice and Broadband services. The allocation ultimately should be determined on the basis of objective standards and not be arbitrary. 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.

## 2. Grant-Based Support

The Commission proposes to use the State Broadband Cost Model (“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. The RTCN supports this sound two-fold proposal. Since pre-construction SBCM estimates might not be accurate and will not be exact, basing reimbursement on actual costs is prudent.

The Commission proposes a cap of \$15,000 per customer location for grant-based support. Based on initial inquiries, the proposed cap level seems low. The Commission provides 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. Given that urban census blocks are not eligible for funding, this number may not shock the conscious, but the RTCN urges the Commission to be mindful of the purpose of the Act, which is “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.”<sup>10</sup> While the RTCN in no way opposes imposition of a cap on grants on a per customer basis, the cap established after the Commission completes its investigation in this proceeding should not be set in stone. Instead, it should be reviewed and adjusted as costs of construction increase.

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

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<sup>10</sup> Neb. Rev. Stat. § 86-317 (emphasis added).

infrastructure needed to reach the customer. Nothing should prevent a carrier from utilizing its own or other resources to serve Nebraskans.

The Commission outlines 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. The RTCN has said before that the process should be spelled 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.

After outlining the application process, the Commission states that it proposes “to permit (rate-of-return) carriers to carry over the support on a one (1) time basis.” The RTCN does not understand this proposal, and respectfully recommends the Commission clarify its statement.

The Commission next outlines the process for reimbursing the actual costs of a project. 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.

The Commission 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."<sup>11</sup> The RTCN strongly supports this common-sense proposal. It is likely the combined cost of administering Nebraska Universal Service Fund ("Fund") 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.

In the same vein, the Commission seeks comment on what would be a reasonable threshold for determining support is *de minimis*. The Commission seeks specific comment on whether a threshold based on a finding that the amount of grant support does not exceed two percent of total support annually would be appropriate. The RTCN would suggest a higher threshold to ensure that administrative costs do not exceed project costs. A threshold of ten percent 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.

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<sup>11</sup> June 19 Order, p. 6.

### 3. On-Going Support

The Commission proposes to allocate on-going support to carriers based on eligible census blocks within their exchanges. The RTCN supports this position. Ratepayer contributions to the Fund should not be expended to serve areas where customer monthly payments exceed the cost of service.

The Commission states 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.”<sup>12</sup> The RTCN strongly supports this proposal.

Investments local telephone companies have made in deploying infrastructure, through not only private equity and approved borrowing, but also previous state Fund support, must be protected by providing on-going support sufficient to operate and maintain that infrastructure. 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.”<sup>13</sup> 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.”<sup>14</sup> With respect to voice telecommunications services, the Commission has long-established service quality standards in place to protect the consumer, regardless of where they work or reside. With regard to information services, the Commission has made clear in adopting the 25/3 Mbps definition of Broadband that it will apply the current industry standards, including those recognized by the Federal

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<sup>12</sup> June 19 Order, p. 6.

<sup>13</sup> Neb. Rev. Stat. § 86-323 (1) (emphasis added).

<sup>14</sup> Neb. Rev. Stat. § 86-324 (1).

Communications Commission and the Nebraska Legislature,<sup>15</sup> in determining what constitutes quality information services.

The Commission proposes that “[a]ll ongoing support would continue to be subject to an earnings test.”<sup>16</sup> The RTCN supports this proposal, provided only the portion allocated to operations expenses is included for all carriers.

Recognizing the substantive requirements of current EARN form are not at issue in this proceeding, the RTCN will refrain from discussing those specific requirements in these comments. The importance of the Commission continuing use of EARN form, however, must not be ignored. The Commission signals the importance of the EARN form in stating that it may update the form at a later date. The RTCN believes this is a good idea and urges the Commission to review the adequacy of the EARN form expeditiously in a separate proceeding.

The RTCN maintains that the EARN form is a prudent and administratively efficient means of allowing private carriers a reasonable, and not excessive, return on investment, while encouraging and protecting investments local telephone companies have made. Today, more than ever, the reasons for continued use of the EARN form are compelling.

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

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<sup>15</sup> Nebraska 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.

<sup>16</sup> June 19 Order, p. 6.

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 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 state Fund 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 fund are used for their intended purposes.

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.<sup>17</sup> 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

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<sup>17</sup> 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).

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.<sup>18</sup>

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.

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.

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<sup>18</sup> See *Comments of the Rural Independent Companies in Response to Order Seeking Comment*, NUSF-108 (March 5, 2018), p. 6.

The RTCN supports 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.

#### **IV. REQUEST FOR LEAVE TO REPLY**

The RTCN requests the Commission grant commenting parties leave to reply to comments others have made. The RTCN respects and appreciates the Commission's desire to move this proceeding forward. In making this request for reply comments, the RTCN in no way suggests the hearing date of August 15 should be changed. Rather, the Commission should allow reply comments by such date to allow parties and the Commission reasonable time to review the reply comments prior to the August 15 hearing.

#### **V. CONCLUSION**


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

Dated: July 19, 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 *Comments of the Rural Telecommunications Coalition of Nebraska* were filed with the Public Service Commission on July 19, 2018, and a copy was served via electronic mail, to the following:

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