

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public)	Application No. NUSF-108
Service Commission, on its own Motion, to)	
make adjustments to its high-cost)	
distribution mechanism and make)	
revisions to its reporting requirements.)	
)	

**COMMENTS OF THE
RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA**

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 that order, the Commission seeks comments on proposed changes to the high-cost distribution mechanism for rate of return carriers, as well as reporting requirements for high-cost support. Originally, the deadline for comments was February 16, 2018. In an order entered February 8, 2018, the Commission extended that deadline to March 5, 2018. The Rural Telecommunications Coalition of Nebraska (“RTCN”)¹ submits these comments in response to the Progression Order (“Comments”).

The contents of the Progression Order suggest potential comprehensive reform in Nebraska Universal Service Fund (“NUSF”) high-cost distribution and reporting. Questions raised by the Commission in the order further suggest that the Commission intends

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, Diller Telephone Company, Glenwood Network Services, Inc., The Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford Cooperative Telephone Co., Mainstay Communications, Pierce Telephone Co., Inc., Plainview Telephone Company, Southeast Nebraska Communications, Inc., Wauneta Telephone Company, and WesTel Systems f/k/a Hooper Telephone Company.

thoughtful consideration of issues of significant importance to the telecommunications industry of Nebraska.

Since enactment of the Nebraska Telecommunications Universal Service Fund Act (the "Act")² in 1997, the carriers who are parties to these Comments have deployed telecommunications facilities throughout their territories that allow for the provision of reliable and affordable telecommunications services and information service, including broadband, to Nebraskans in towns, villages, and rural areas. High-cost support has been critical not only to building out those facilities and systems, but to operating, maintaining, and upgrading them. High-cost support will remain critical well beyond the foreseeable future to ensure the viability of those systems and continued provision of telecommunications and information service.

As the Commission moves forward with its investigation in this proceeding, it should be guided by the same principles that have guided it since the inception of the NUSF. Those principles are set forth in the Act itself.³ Those statutory principles, which are pertinent to this investigation, can be summarized as follows:

- Ensure quality voice and information services at affordable rates;
- Offer access to voice and information services in all regions of the state, with reasonable comparability between urban and rural areas;
- The support mechanism should be predictable, sufficient, and competitively neutral;
- Support is available only to eligible telecommunications companies designated by the Commission; and
- Administrative costs should be minimized.⁴

² NEB. REV. STAT. §§ 86-316 to 86-329.

³ NEB. REV. STAT. § 86-323.

⁴ *Id.*

The RTCN urges the Commission to continue to adhere to those statutory principles as it proceeds with reforming high-cost support.

All carriers who are parties to these Comments, relying to varying degrees on NUSF support, have diligently and prudently built out their systems. Those buildouts are largely, if not completely, capable of offering access to broadband service.

The RTCN supports a definition of broadband service as requiring a minimum download speed of 25 megabits per second (“Mbps”) and a minimum upload speed of three Mbps. A broadband definition of 25/3 Mbps is consistent with the standard recently reaffirmed by the Federal Communications Commission.⁵

The investments of RTCN members have depended on the predictable and sufficient high-cost support called for under the Act.⁶ Unfortunately, in recent years, NUSF support has been neither predictable nor sufficient. Recognizing this, the Commission is undertaking NUSF contribution reform in NUSF-100. Together with contribution reform, the support reform the Commission is undertaking in this proceeding is critical to ensure that carriers continue to make the expenditures necessary to maintain and upgrade the facilities in which they have invested.⁷ The Commission must restore the sufficiency and predictability of high-cost support carriers need to maintain and upgrade their facilities to provide the services for which support is intended.

Certainly, the Act envisions extensions of facilities necessary to push broadband to areas of the state where residents and businesses are unserved or underserved, but the Commission should prioritize support for operations and maintenance (“O&M”) of systems currently capable of providing voice and 25/3 Mbps broadband service. Ensuring sufficient

⁵ *2018 Broadband Deployment Report*, Federal Communications Commission FCC 18-10, GN Doc. No. 17-199 (Feb. 2, 2018), ¶¶ 21-26.

⁶ NEB. REV. STAT. § 86-323(5).

⁷ See NEB. REV. STAT. § 86-324.

and predictable support for carriers that have made investments – utilizing support, loans, and private equity – to aggressively deploy facilities to provide voice and information services will help protect those investments and the customers served. It will encourage continued investment. Without sufficient and predictable support, those investments may well be stranded. In fact, in recent years, with declines in state support and, for many carriers, federal support, the risk of stranded investment has grown to precarious levels. Sufficient and predictable support for existing investment made by carriers that have been good stewards of public support should be prioritized.

II. RESPONSES TO QUESTIONS

In the Progression Order the Commission sought comments responsive to the following issues:

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

Presumably this question speaks to allocations for support of broadband buildout in rate of return carriers' own service territories. If that is correct, then the RTCN submits that the Commission should allow for support for future build out, provided, however, the Commission prioritize predictable and sufficient support for operating and maintaining existing facilities capable of providing voice and 25/3 Mbps broadband service. Remaining funding should be used to support broadband buildout with the goal of deploying facilities needed to provide access to comparable voice and information services in all regions of the state.⁸

⁸ NEB. REV. STAT. § 86-323 (2) and (3)

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.

As stated in response to Question No. 1, the Commission should prioritize support for O&M of systems capable of providing voice and 25/3 broadband service. Support for rate of return carriers should not mirror or resemble support for price cap carriers. An arbitrary allocation between O&M and new network deployment would not be prudent. Instead, the Commission should first determine what funding is necessary to protect existing investment and support O&M costs. Remaining funds should then be used to support build out of new plant.

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?

In the past, grant-based programs administered by the Commission have been criticized as arbitrary, overly political, non-transparent (generated from a “black box”), and inefficient. To ensure objective and transparent support for new build out, the Commission should promulgate rules and regulations pursuant to the Administrative Procedures Act. Carriers and consumers deserve a program that is understandable and administratively efficient.

- 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 the model support? How should the Commission treat ROR carriers where the carrier will remain on a legacy-based support mechanism?**

The Commission must coordinate state high-cost support with federal support to ensure efficient use of limited NUSF funds.⁹ The EARN form could be a vehicle for ensuring state support is providing a complementary role to the federal support mechanisms through evaluating a company's authorized rate of return. All incumbent local exchange carriers ("ILECs") are familiar with this form. If necessary, the EARN form could easily be modified to ensure the data collection meets the Commission's intent. Further, coordination is needed to avoid double recovery, and the Commission's rate of return restrictions must be maintained and perhaps modified to ensure fair and equitable support.

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

Past decisions of the Commission relating to this issue have been criticized. It would be inappropriate, and inconsistent with the Act for the Commission to disallow support for build out in areas where an unsubsidized carrier has deployed facilities for the provision of information services, but not telecommunications (especially voice) services. Support for information services, separate and without voice services, is not permissible under the

⁹ Coordination is not optional. It is required under the Act. *See* NEB. REV. STAT. § 86-317.

Act.¹⁰ On the other hand, it would be appropriate and fiscally responsible for the Commission to disallow support for new deployment in areas where another carrier is currently providing telecommunications (voice) and information services that meet the definition of broadband. A clear distinction needs to be drawn between system upgrades and new deployment. The presence of unsubsidized competing carriers should not affect support for system upgrades in ILECs' territories. The presence of unsubsidized competing carriers providing both voice and 25/3 Mbps broadband service may, however, affect grant-based support for new deployment by the ILEC.

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?

The RTCN appreciates the Commission's characterization of this important question. Members of the RTCN have been good stewards of past high-cost support. Many have deployed fiber and other facilities capable of providing broadband at 25/3 speeds throughout their territory. Those that have not yet fully deployed broadband capable facilities are making progress toward that objective.

That said, the RTCN urges the Commission to focus not on the carrier, but rather on the consumer. The question should be whether consumers are fairly treated by the Commission through support of rate of return carriers. For carriers that have built out to consumers, responsibly stewarding past support, the Commission should protect their investments by sufficient and predictable support for O&M. Language used by the

¹⁰ See NEB. REV. STAT. §§ 86-317, 86-324.

Commission in this question suggests the Commission is properly focused on the consumer. The Commission posits the question in terms of the carrier's broadband deployment footprint. The footprint is the area in which the carrier has deployed facilities needed to provide broadband to the consumer. Support for O&M should be allocated on a technologically neutral basis, provided the facilities support both voice and 25/3 Mbps broadband services.

The EARN Form is not only an appropriate means to determine support for carriers who have built out fully throughout their footprint, but for all carriers. Accountability is critical to ensure responsible use of limited funding.

- 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?**

The Commission's high-cost support should focus not on how the carrier funded investment of system build out, but whether investments were made. Prioritized support for O&M of voice and broadband-capable systems should not be different for carriers that have borrowed for plant investment. Carriers that borrowed, for example, through the United States Department of Agriculture's Rural Utilities Service, did so in good faith

based on assurances through both the federal Universal Service Fund and the NUSF that support would assist the carriers in servicing those loan obligations. Support reform must account for those assurances, just as it accounts for investments utilizing private equity.

The Commission should not distinguish on the basis of whether the consumer and facilities lie within a town or village or are in rural areas. Rather, the Commission should determine support based on existing build out. In other words, the Commission should prioritize support for areas, where facilities provide access to voice and broadband services.

- 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 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?**

Prioritizing support for O&M will help enable carriers that have built out facilities capable of providing broadband to a majority of, but not all, residents in the carrier's service territory to continue to extend their systems, utilizing federal support, loans, and private equity. Subject to grant program rules and regulations the Commission should promulgate (as discussed in response to Question No. 3 above), additional remaining funding could be utilized to assist carriers in extending facilities to reach residents who are unserved or underserved.

The Act does not permit the Commission to turn its focus away from any residents in the state. The language of the Act is clear. The Act states, "Access to advanced telecommunications and information services should be provided *in all regions of the*

*state.*¹¹ By repetition, in the next subsection of the Act, the Legislature emphasized this principle: “*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.”¹² Consumers who are in rural areas, no matter how remote and expensive to service, may not be ignored.

The Commission signals its recognition of this statutory principle by the next question it raises about the propriety of encouraging “alternative technologies” to reach remote residents. Members of the RTCN have aggressively deployed facilities of various technologies to service remote consumers. While fiber may be most desirable and certainly offers the most robust access to broadband, RTCN members have recognized it is not always cost-effective or sensible to deploy fiber to remote areas where there are few residents – not uncommonly only one potential subscriber. People move. New technologies develop. Subscribers’ preferences and needs change. Recognizing these facts, RTCN members have prudently deployed a variety of technologies to serve their subscribers. The Act does not call upon the Commission to support solely fiber. It calls for the establishment of “competitively neutral mechanisms to preserve and advance universal service.” This provision requires the Commission to be agnostic when it comes to technology. Without question, support of fiber should be first considered, but when fiber is not a cost-effective means of providing access to broadband, other technologies should be considered. Again, funding for such extensions of systems should be meted out based on objective standards, that consider cost and benefit, which are set forth in rules and regulations adopted by the Commission.

¹¹ NEB. REV. STAT. § 86-323(2) (emphasis added).

¹² NEB. REV. STAT. § 86-323(3) (emphasis added).

III. CONCLUSION

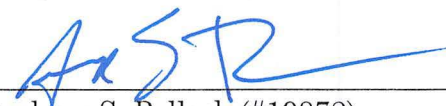
The RTCN appreciates the Commission undertaking this important investigation and reserves the right to comment and participate further as the proceeding advances.

Dated: March 5, 2018.

RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA

ATC Communications, Benkelman Telephone Company, Inc., Cambridge 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, Pierce Telephone Co., Inc., Plainview Telephone Company, Southeast Nebraska Communications, Inc., Wauneta Telephone Company, and WesTel Systems

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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 March 5, 2018, and a copy was served via electronic mail, to the following:

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