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Nebraska
Public Service Commission

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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)

POST-HEARING COMMENTS OF THE NEBRASKA COST-BASED COMPANIES

The Nebraska Cost-based Companies¹ (the “Companies”) submit these Comments in response to leave granted by the Nebraska Public Service Commission (the “Commission”) following the public hearing in this docket held on August 15, 2018 (the “Hearing”). The Companies appreciate the opportunity to provide the following Post-hearing Comments to the Commission.

The Companies provided comments to the Commission on proposed modifications to reform the high-cost program distribution mechanism for ROR carriers on July 19, 2018. In addition, Mr. Pat McElroy testified on behalf of the Companies at the Hearing on August 15, 2018. After review of the Record in this Proceeding, the Companies provide the following Post-hearing Comments and recommendations:

- 1) The Commission should continue use of the NUSF-EARN Form.
- 2) The Companies support the Commission’s proposal to pay both operating expenses and capital expenses for eligible census blocks already built out with broadband networks capable of 25/3 service.
- 3) The Companies support the Commission’s proposal regarding in-town versus out-of-town census blocks for NUSF Support.
- 4) The Companies Support the Commission’s plan for NUSF Distribution versus an alternative plan proposed by some carriers.

¹ Clarks Telecommunications Co., Hartington Telecommunications Co., Northeast Nebraska Telephone Company, and Three River Telco.

1) The Commission Should Continue use of the NUSF-EARN Form.

Based on the Commission's Staff proposal, the NUSF-EARN form will be utilized in a manner similar to how it is currently used today.² The earnings test will be applied to the amounts allocated for carriers' ongoing funds, and if a carrier's earnings exceed the cap, their support will be reduced or eliminated. According to NUSF Director Robbins, "Within this ongoing portion of support, each company will still be subject to an earnings test, and consequently, we would still require submission of an EARN form. We believe the EARN form allows us to track company-specific revenues, expenses, and investment, including federal support received by each company."³

Further, the Companies' witness McElroy testified that "in the NUSF 108 Docket released in December 2016, the NUSF EARN Form was designed to be a tool in which to provide an incentive for carriers to invest in their networks. If a carrier's investment levels declines, their earnings level would increase or be adjusted making them eligible for less NUSF high cost support."⁴ If a carrier's investment levels increase, their earnings level would decrease which depending on the NUSF fund size, would make them eligible for more NUSF high cost support.

In addition, according to witness McElroy, "the Commission wanted to ensure that all carriers are making needed investments in rural high cost areas with their NUSF support and

² 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*")

³ See Hearing Transcript, 16:10-17.

⁴ See Hearing Transcript, 139:5-12.

making timely upgrades to their outdated plant and facilities.”⁵ “The Commission’s current allocation of support and use of the NUSF-EARN form is working as it was intended for those companies that have built-out. This approach has incited these carriers to invest in their networks and we urge the Commission to continue its use.”⁶

2) The Companies support the Commission’s proposal to pay both operating expenses and capital expenses for eligible census blocks already built out with broadband networks capable of 25/3 service.

The Commission proposes to pay both operating expenses and capital expenses for census blocks already built out with broadband networks capable of 25/3Mbps service based on the calculation of support by SBCM.⁷

NUSF Director Robbins explained that, “For those carriers that have eligible census blocks in which they already offer 25/3 service, both CapEx and OpEx will be counted towards their allocation based on the modeled amounts and proportional to the funding available. The rationale behind this is that in those blocks where 25/3 service is already available, the investment into broadband-capable network has been made and the fund will assist in recovering some of the costs associated with building and maintaining those networks.”⁸ The Companies fully support the Commission’s proposal. This will allow carriers that have built out broadband networks capable of 25/3 Mbps service to recover their initial investment cost through

⁵ See Hearing Transcript, 139:13-18.

⁶ See Hearing Transcript, 139:19-25.

⁷ See *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”), p.6.

⁸ See Hearing Transcript, 15:9-21.

depreciation expense, maintenance and other operating expenses and a return on investment in a manner consistent with the calculation of cost in the SBCM.⁹

In addition to needing to recover capital costs in the form of depreciation and a return on investment, “companies that have fully built out their networks still continue to have capital expenses. These capital items include continuing to replace deteriorating and end-of-life electronics within our networks, build-outs to new customer locations within our service areas, and to recover a return on that investment and help us cover our loans.”¹⁰

With no party opposed to the Commission’s proposal, the Companies urge its adoption.

3) The Companies support the Commission’s proposal regarding in-town versus out-of-town census blocks for NUSF Support.

The Companies support the continuation of the Commission’s historical practice of targeting NUSF CapEx support to non-urban areas as reflected in the Commission’s Staff’s proposal. Specifically, as confirmed in the *Staff Responses* attached to Commission Landis’ July 6, 2018 letter, in-town or urban census blocks are defined in one of three ways: (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. Had this definition been problematic, the Companies submit that the issue would have been raised since the definition’s development in 2004.¹¹ Although Cox and Charter argued for modification to the Commission’s

⁹ See <https://transition.fcc.gov/wcb/ACAM040115.pdf>

¹⁰ See Hearing Transcript, 140:7-14.

¹¹ See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism*, Application No. NUSF-26, Progression Order No. 5, July 29, 2004, Appendix A, p. 6.

definition, RIC witness Davis noted, “Cox and Charter have failed to provide any Nebraska-specific data nor data with regard to the number of rural Nebraska households that would be excluded from the benefits of NUSF support availability for broadband deployment if the Cox/Charter approach was adopted.”¹² The Companies therefore strongly support the Commission’s definition without modification.

4) The Companies Support the Commission’s plan for NUSF Distributions versus an alternative plan proposed by some carriers.

The Companies oppose the adoption of the “NUSF Delivered Services Performance Plan” (the “plan”). One reason for the Companies opposition is because the plan’s results are seemingly inconsistent with its stated goal. As described at hearing, “By incenting carriers to provide higher broadband speeds, the plan’s goal is to have broadband service speeds and rates provided in rural areas that are comparable to those offered in urban areas of the state, including the ultimate goal of access of 25/3.”¹³ Although the plan sets its sight on 25/3 as its ultimate goal, Director Robbins offered that the Commission proposes 25/3 as the Commission’s minimum standard.¹⁴ In addition, 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.”¹⁵

An additional reason for the Companies’ opposition to the plan is as witness McElroy testified “One observation the cost-based carriers have with regard to the plan is that the model

¹² See Hearing Transcript, 88: 6-14.

¹³ See Hearing Transcript, 64: 16-22.

¹⁴ See Hearing Transcript, 22: 9-10.

¹⁵ See *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).

results negatively impacts those companies that are already meeting the plan's objective. Those companies that have built facilities to subscriber locations will receive less NUSF than they are currently allocated. On top of that, some companies that are fully built out, appears they would receive no funding at all."¹⁶ Since the plan's goal is to incent carriers to reach access of 25/3, those that have reached this goal should not be subject to reductions in support

In addition, RTCN notes that the Performance Plan uses a \$65 threshold for state support but does not explain why this level is appropriate.¹⁷ Further RTCN explains that the Commission has utilized the FCC benchmark (for price cap and ACAM recipients) of \$52.50 in its support distributions. Nowhere in the Performance Plan Comments do its drafters explain why \$65 should be used instead of \$52.50.¹⁸

For the foregoing reasons, the Cost Based Carriers oppose the Performance-based Plan.

As stated above, the Companies appreciate the opportunity to provide these Post-Hearing Comments to the Commission and look forward to the opportunity to assist the Commission with further input.

¹⁶ See Hearing Transcript, 141: 5-15.


¹⁷ Testimony of Stacy Brigham on Behalf of the Rural Telecommunications Coalition of Nebraska, August 15, 2018, at p. 12.

¹⁸ Id.

Dated: September 17, 2018.

NEBRASKA COST-BASED COMPANIES

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of September, 2018, that an original and five copies of the foregoing Comments on behalf the Nebraska Cost-based Companies were filed with the Public Service Commission, and a copy was served via e-mail to the following:

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