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Nebraska
Public Service Commission

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-108
Public Service Commission, on its) Progression Order No. 3
own Motion, to make adjustments)
to its high-cost distribution)
mechanism and to make revisions)
to its reporting requirements.)

POST-HEARING COMMENTS OF THE RURAL INDEPENDENT COMPANIES

I. INTRODUCTION.

The Nebraska Rural Independent Companies (“RIC”)¹ hereby submit these Post-Hearing Comments in response to leave granted by the Nebraska Public Service Commission (the “Commission”)² following the public hearing in this docket held on August 15, 2018 (the “Hearing”).³ RIC appreciates the opportunity to provide this submission and looks forward to continuing participation in this docket and other pending dockets regarding the Nebraska Universal Service Fund contribution reform.

As the record reflects, the Commission issued a progression order requesting comments on an accountability framework regarding the provision of Nebraska Universal Service Fund

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.

² 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 Progression Order No. 3, Procedural Order (Aug. 27, 2018).

³ For purposes of these comments, RIC will reference matters included in the written transcript of the Hearing as “Tr.” and then the page, and line – Tr. X:X.

High Cost support as proposed by its Staff.⁴ On July 6, 2018, the Hearing Officer provided responses to RIC's questions seeking additional information and clarifications of the contents of the June 19, 2018 proposal.⁵ Comments filed on July 19, 2018, as well as other submissions, were then made part of the record in this proceeding at the Hearing.⁶

The Commission has made admirable progress and has demonstrated significant leadership in creating a hybrid connections-based/revenues-based NUSF contribution platform for stabilizing the NUSF through its orders entered in Application No. NUSF-100. The Commission has further approved a rational rate design and sizing expectation through its decision entered in Application No. NUSF-111.⁷ Based upon the modifications suggested herein, the Commission is in a position to establish an accountability and distribution framework with respect to the Commission's now-revamped NUSF contributions framework that will serve the public interest.⁸ To this end, RIC's suggestions in these Comments are aimed at achieving and advancing the applicable NUSF policies and directives and doing so in a manner that provides the necessary information to assure that the NUSF support distributed to all Rate of

⁴ *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*"). As used in these Comments, references to "NUSF" are intended to refer to the NUSF High Cost Program unless otherwise noted.

⁵ 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*"); see also Letter from Paul M. Schudel to Frank E. Landis, Jr. with attachment, RE: Application No. NUSF-108, Progression Order No. 3, submitted June 26, 2018.

⁶ See, e.g., Tr. 9:2 - Tr. 11:12.

⁷ *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, Order (Aug. 7, 2018).

⁸ RIC notes that the Commission took administrative of the dockets related to NUSF 100 and 111. See Tr. 28:5-17.

Return (“ROR”) carriers, including the RIC members, is being used to deploy and/or operate broadband and voice networks in the rural areas of Nebraska that each ROR carrier serves.

II. RIC SEEKS THE FOLLOWING FOUR MODIFICATIONS AND/OR CONFIRMATIONS REGARDING THE STAFF’S NUSF-108 ACCOUNTABILITY FRAMEWORK.

As a general matter, RIC continues to believe that many aspects of the *Order* are consistent with the framework of the NUSF Act⁹ and can and should be adopted by the Commission in its final order to be entered in this proceeding. However, for the reasons stated herein and in prior RIC comments and reply comments,¹⁰ RIC respectfully seeks the following four (4) modifications and/or confirmations of the Staff’s NUSF-108 accountability framework.

A. The Commission should Provide NUSF Support for Partially Funded Census Blocks for Additional Broadband Investment.

RIC respectfully requests the Commission to provide NUSF capital expenses (“CapEx”)¹¹ support for partially funded Census Blocks (“CBs”) for all ROR carriers¹² that receive federal Universal Service Fund (“USF”) support via the Alternate Connect America

⁹ See *Neb. Rev. Stat.*, §§ 86-316 – 86-329.

¹⁰ Based on Commission action at the Hearing, the prior submissions of RIC and other parties have been made part of the record (*see* Tr. 9:7 to 11:12) and therefore RIC will not be citing those submissions but does incorporate them herein.

¹¹ Continuation of payments for operational expenses (“OpEx”) is also necessary and otherwise agreed to in this record. *See* Section III, *infra*.

¹² The concept of “partially funded” CBs (or as the Federal Communications Commission (“FCC”) rule states “capped” (*see generally* 47 C.F.R. § 54.308)) arises from the FCC’s implementation of A-CAM funding. The FCC fully funded eligible CBs up to the model-identified cost of \$146.10, along with \$52.50 expected to be received from the end user. Only those federal USF eligible CBs served by a ROR carrier with an A-CAM cost of \$198.60 or less are fully funded, and any CB with an A-CAM cost above \$198.60 are partially funded up to that amount. *See, e.g.*, Tr. 19:18-23.

Model (“A-CAM”)¹³ developed by the FCC. In doing so, the Commission will advance existing policy directives and objectives aimed at ensuring that NUSF support is provided for *all areas* where full federal USF A-CAM-based funding is not provided.¹⁴ Without provision of NUSF support to supplement federal CapEx and OpEx USF provided through A-CAM, the stated purpose of the NUSF Act will not be achieved.¹⁵

RIC is concerned that there may be a mistaken assumption that the FCC’s disbursement methodology by which federal USF funding is provided for Price Cap (“PC”) carrier areas was established is the same disbursement methodology that was employed by the FCC with regard to support provided to ROR carriers that elected federal USF A-CAM funding.¹⁶ PC carriers’

¹³ For ROR carriers that did not elect A-CAM federal USF funding, those ROR carriers continue to receive “legacy” federal USF funding.

¹⁴ See, e.g., LB 994 § 1(2) (Approved April 17, 2018) (The Legislature made clear its intent that broadband “*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.”) (emphasis added); *Neb. Rev. Stat.* § 86-323(3) (The Act’s reasonably comparable standard between urban and rural areas in Nebraska for telecommunications and information services, interexchange services and advanced telecommunications and information services applies to “[c]onsumers in all regions of the state, including low-income consumers and those in rural and high-cost areas”) (emphasis added). Likewise, 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 networks “*everywhere.*” *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).

¹⁵ See, *Neb. Rev. Stat.* § 86-317 (In addition to Commission-established funding of the NUSF, the purpose of the NUSF Act to “*ensure[] that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices*”). (emphasis added).

¹⁶ See Exhibit 24, Testimony of Stacey Brigham on Behalf of the Rural Telecommunications Coalition of Nebraska, dated August 15, 2018 (the “Brigham Testimony”). Ms. Brigham infers that federal USF A-CAM disbursements are “similar in nature to CAF Phase II [PC federal USF] support.” Brigham Testimony at 5, line 5. Ms. Brigham suggests therefore that A-CAM funded areas are treated “in a similar manner to CAF Phase II supported areas” and that “excluding CBs

model-based federal USF support provides full funding to construct broadband-capable facilities to specifically identified locations with costs below a threshold.¹⁷ In contrast, federal A-CAM USF support is provided to ROR carriers' CBs based on eligible locations, with A-CAM participants required to meet buildout requirements based upon percentages of such locations.¹⁸ Thus, the FCC's disbursement methodologies for PC carriers' model-based CAF II USF and for ROR carriers' model-based A-CAM are *not* the same. The FCC did not create "partially funded" CBs for PC carriers. Therefore, NUSF support for PC carriers' CBs is not required based on partial federal USF funding.¹⁹ This is not the case with regard to A-CAM-electing ROR carriers' CBs that receive only partial funding of costs to establish broadband accessibility.

No basis exists for concerns that providing NUSF CapEx support for partially funded ROR carriers' CBs may lead to double recovery of costs from federal USF and NUSF support for the same CBs. RIC's accountability proposal and reporting form (*see attached*)²⁰ provide the

that receive A-CAM may be one way to ensure that redundant support is avoided." *Id.* at 5, lines 10-12.

¹⁷ *See also* 47 C.F.R. § 54.310 (a) and (d). CenturyLink witness Al Lubeck expressly acknowledges these different FCC methodologies for providing CAF II USF support to PC carriers as compared to providing A-CAM support to ROR carriers that elected A-CAM support. Tr. 132:5-19. Mr. Lubeck adds: "And just as in the past, the [C]'s focus should continue to be to . . . ensure all Nebraskans have access to quality telecom and broadband services at reasonable rates." *Id.* 132:20-24.

¹⁸ *See* 47 C.F.R. § 54.311 (d). While the 47 C.F.R. § 54.311(d) uses the term "capped support," as a practical matter this term is the same as "partially funded" in that it refers to costs above the FCC's current \$198.60 A-CAM funding limit.

¹⁹ Of course, the Commission has instituted provision of NUSF grant funding for census blocks and locations within PC carriers' service areas that were excluded from federal USF funding but nonetheless are currently unserved or underserved. *See 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, Findings and Conclusions at 5-6 (Mar. 28, 2017).

²⁰ The attached Exhibit A was provided to the Commission by RIC as a part of its July 19, 2018 Comments.

detail for NUSF CapEx projects that the Commission can then audit and verify as necessary in order to assure that no ROR carrier receives federal USF and NUSF support in excess of that carrier's actual CapEx costs relative to any CB.

B. The Commission should Utilize the Accountability Framework Outlined by RIC, using the RIC Reporting Form.

RIC respectfully requests that the Commission adopt RIC's accountability proposal and reporting form as attached to RIC's July 19, 2018 comments. No party can seriously contend that RIC's accountability framework associated with a ROR carrier's reporting of its broadband expansion to previously unserved or underserved locations would fail to advance the underlying Legislative and Commission NUSF policies and directives.²¹ Likewise, based on the technical requirements of applicable accounting rules and the avoidance of unintended consequences associated with the use of the Commission Staff's proposed project-specific application and cost reimbursement approach,²² RIC again requests that a workshop be conducted to address the "proper accounting treatment of NUSF CapEx support, while also assuring the [C]ommission of carrier accountability for the use of NUSF CapEx support for the intended purpose of building out additional broadband access to formerly unserved or underserved locations in this state."²³ RIC respectfully submits that these "technical issues" for the "proper accounting for NUSF CapEx support are more effectively addressed in a workshop setting rather than in a hearing or written comments."²⁴

C. Assuming Continued Use of the EARN Form, the Commission should Confirm RIC's Understanding that the Staff Proposal Does Not Contemplate

²¹ See, e.g., nn. 14 and 15, *supra*.

²² See *Order* at 4-6.

²³ Tr. 92:9-16.

²⁴ *Id.* 92:21-24.

Reduction or Elimination of a RoR Carrier's CapEx Support in the Event the Carrier Over Earns (evidenced by a positive EARN Form earnings variance).

In the *Order* the Commission states that “[a]ll ongoing support would continue to be subject to an earnings test.”²⁵ No mention is made in this statement or elsewhere in the *Order* with regard to subjecting NUSF CapEx support to the earnings test. RIC seeks confirmation that inclusion of the term “ongoing support” in this statement was intentional and evidences the Commission’s intention not to reduce or eliminate a RoR carrier’s NUSF CapEx support in the event such carrier over earns (evidenced by a positive EARN Form earnings variance). Inclusion of a RoR carrier’s NUSF CapEx support is proper public policy to ensure that broadband deployment is maximized.

D. The Commission should Establish a Minimum Annual Funding Level and a 10-year Minimum Funding Commitment for the NUSF.

The RIC members are, consistent with their historical practice and commitments as the carriers of last resort within their respective service areas, committed to make the necessary investments to provide broadband where predictable and sufficient NUSF is available to support carrier of last resort costs. These investments represent long-term commitments on the part of RIC members and are based on the need for certainty of the NUSF funding availability in coming years.²⁶ Thus, consistent with the FCC policies and rationale associated with similar commitments of federal USF A-CAM funding, RIC respectfully requests that the Commission establish NUSF policies that provide (1) a minimum annual commitment level for NUSF support

²⁵ *Order* at 6.

²⁶ As was stated by RIC witness Davis at the Hearing in the context of periodic reviews of unsubsidized competitors, “[n]etwork investments require predictable revenue streams . . .”(Tr. 90:17-18) and “[p]lanning for broadband-capable networks cannot be based upon a snapshot in time but, rather, needs to be based on the assurance of universal service funding availability over an extended period.” *Id.* at 95:5-9.

and (2) a minimum commitment term of ten (10) years in order to advance the Legislative directives for deployment of broadband in all rural areas in the State.²⁷

III. CONSENSUS EXISTS IN THE RECORD REGARDING THE FOLLOWING POINTS SET FORTH IN THE *ORDER* AND SHOULD BE ADOPTED BY THE COMMISSION.

RIC respectfully submits that the record developed in this proceeding amply supports adoption of the following aspects of the *Order*.

First, use of the State Broadband Cost Model (“SBCM”) in lieu of the current Benchmark Cost Proxy Model (“BCPM”) for the NUSF is sound. The SBCM was developed to determine the costs to deploy fiber-based broadband networks²⁸ and the BCPM was not. Claims that the “SBCM has not properly been vetted”²⁹ are inaccurate. In Director Robbins’ testimony at the hearing, he confirmed that the Commission and its Staff had made the decision “to move to using the . . . SBCM . . . for our methodology.”³⁰ RIC’s accountability proposal and reporting form will provide the Commission with actual costs of broadband buildout,³¹ with the SBCM used to determine the allocation of NUSF ROR carriers’ CapEx support.

Second, continuing the provision of NUSF support for OpEx is appropriate and amply supported by the record and the law. No commenting party took exception to the Commission’s proposal to provide ongoing NUSF support for operations and maintenance, even to census

²⁷ See nn. 14 and 15, *supra*.

²⁸ See *Order* at 5; see also Tr. 14:8-9.

²⁹ See Tr. 122:8.

³⁰ See *id.* 14:4-6.

³¹ See *Order* at 5.

blocks not capable of 25/3 Mbps. A deployed network must be operated and those expenses are proper NUSF disbursements.³²

Third, the Commission's proposal regarding in-town versus out-of-town CB eligibility for NUSF CapEx support should be adopted.³³ Although Charter/Cox proposed a linear density test in its comments, no Hearing testimony was provided in support of this position.³⁴

Fourth, while RIC supports the Commission's definition of an "unsubsidized competitor,"³⁵ the determination of the existence of one or more such competitors in a specific CB should, like the FCC's process, be a one-time review. Such an approach will advance the concept that "[n]etwork investments require predictable revenue streams,"³⁶ and will eliminate the administrative burdens and uncertainties that would be created by on-going eligibility reviews.³⁷ In this regard, should an assertion be made that an unsubsidized competitor exists in a

³² See *Neb. Rev. Stat* § 86-324 (1) ("A telecommunications company that receives such support shall use that support only for the *provision, maintenance, and upgrading of facilities and services* for which the support is intended.") (emphasis added)

³³ See *Order* at 4.

³⁴ As noted by RIC witness Davis, "Cox and Charter have not demonstrated that the parameters developed by the [Commission S]taff are erroneous or otherwise inconsistent with the [C]ommission's long-accepted SAM guidelines for determining in-town census blocks." Tr. 87:19-23. Likewise, RIC witness Davis noted that without explanation or justification, Cox and Charter assert with reference to a graph in their comments that, while "Cox and Charter rely on national linear densities, they fail to provide any Nebraska-specific data" (*id.* 88:6-8) nor do Cox and Charter provide any "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 linear density approach was to be adopted." *Id.* 88:9-14.

³⁵ See *Order* at 4 (An unsubsidized competitor is an entity "offering wireline voice and broadband service at speeds of at least 25/3 Mbps.").

³⁶ Tr. 90:17-18.

³⁷ See *id.* 90:7-12 and 90:18-23.

particular CB, RIC supports the notion that a ROR carrier should be provided the opportunity to respond to any such claim.³⁸

Fifth, RIC supports the elimination of the proposed \$15,000 cap on per-location NUSF support.³⁹ Any such cap is contrary to applicable Legislative directives.⁴⁰

Finally, RIC notes that no controversy appears to be present regarding the Commission proposed two-year buildout period for NUSF CapEx projects, coupled with the availability of a one-year extension for good cause.⁴¹ RIC asserts that these aspects of the accountability framework are reasonable and should be adopted.

IV. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Post-Hearing Comments to the Commission, and look forward to continued participation in this docket.

³⁸ Ms. Brigham indicates that even if an unsubsidized wireline competitor is present in a census block OpEx support should be provided to the incumbent carrier. *See* Exhibit 24, Brigham written testimony at 5-6.

³⁹ *See Order* at 5.

⁴⁰ *See, e.g., nn. 15 and 16, supra.*

⁴¹ *See Order* at 6.

Dated: September 17, 2018.

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 (the "Rural Independent Companies")

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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”)⁴², 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:

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.

⁴² 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

Project Identifi- cation	Estimated Total Locations To Be Passed	Estimated Total Project Costs	Estimated Project Completion Date	Planned Speed Capabilities of the Infrastructure
#1				
#2				
#3				
Etc.				

Census Block-level map for each project

[Attach appropriate map(s)]

Table Two

Project Completion Information

Project Identifi- cation	Total Locations Passed	Project Completion Date	Speed Capabilities of Completed Infrastructure
#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

CERTIFICATE OF SERVICE

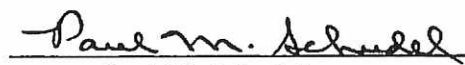
The undersigned hereby certifies that on this 17th day of September, 2018, an electronic copy of the foregoing pleading was delivered to:

Nebraska Public Service Commission

Cullen.Robbins@nebraska.gov

Brandy.Zierott@nebraska.gov

Other Commenting Parties


Paul M. Schudel