

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

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Nebraska
Public Service Commission

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

I. INTRODUCTION

On March 19, 2018, the Nebraska Public Service Commission (“Commission”) entered a Procedural Order in Docket No. NUSF-108 (“Procedural Order”) after several parties submitted comments on proposed changes to the Nebraska Universal Service Fund (“NUSF”) high-cost distribution mechanism for rate of return carriers. In that order, the Commission announced that it would accept reply comments on or before April 12, 2018. The Rural Telecommunications Coalition of Nebraska (“RTCN”)¹ submits these Reply Comments in response to the Procedural Order (“Reply Comments”).

Five parties submitted comments in response to Progression Order No. 3 in this investigative proceeding. In addition to the RTCN filing initial comments (“Comments”), other parties submitting comments were the Rural Independent Companies (“RIC”); Qwest Corporation dba CenturyLink QC and United Telephone company of the West dba CenturyLink (“CenturyLink”); CTIA, the Wireless Association (“CTIA”); and Charter

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, Plainview Telephone Company, Southeast Nebraska Communications, Inc., Wauneta Telephone Company, and WesTel Systems f/k/a Hooper Telephone Company.

Fiberlink – Nebraska LLC and Time Warner Cable Information Services (Nebraska), LLC (“Charter”).

II. REPLY COMMENTS RELATIVE TO ISSUES RAISED BY COMMISSION

The RTCN will address other parties’ comments in the context of issues the Commission has raised in Progression Order No. 3.

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

No commenter seemed opposed to the Commission making allocations to support broadband buildout in rate of return carriers’ own service territories. The RTCN reiterates its support for this principle, provided 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.²

- 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.**

With respect to the first question asked under Issue No. 2, the RTCN reiterates its strong support for NUSF support of ongoing operations and maintenance (“O&M”).

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

With regard to the second question, CenturyLink curiously argued that the Commission should use the same methodology for support to rate of return companies that it uses for price cap carriers but went on to criticize the methodology for price cap companies. The arbitrary allocation between O&M and new network deployment for price cap carriers has not worked efficiently or effectively and should not be utilized for rate of return support. As stated in the RTCN's Comments, the Commission instead 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 plants.

- 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?**

The lack of detail provided by any commenting party in response to this question supports the RTCN's position that a separate rule-making should be undertaken to establish a transparent and administratively efficient process for supporting new build out and ensuring accountability.

- 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?**

No commenting party appeared to disagree that the Commission should coordinate state high-cost support with federal support to ensure efficient use of limited NUSF funds.

The RTCN disagrees with the RIC suggestion that the EARN form be discontinued. The EARN form is still needed to ensure accountability under a new paradigm that involves federal support and bifurcated state support, with some support allocated to ongoing operations and maintenance and some support allocated to new plant.

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.**

The RTCN reaffirms the position made in its Comments. A nuanced approach to this issue is critical. The essence of the question is whether there are facilities in a particular area that support the provision of both voice and 25/3 Mbps information services. The RTCN agrees with comments submitted by the RIC on this issue. The carrier-of-last-resort responsibilities that incumbent local exchange carriers have, and which unsubsidized competitors do not, should be given great weight as the Commission considers support in rate-of-return territories.

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?**

As stated above in response to Issue No. 4, 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.

The RTCN clarifies its original Comments responsive to this issue. Support for O&M should be allocated for facilities that allow access to voice and information services. In its Comments, the RTCN advocated that the Commission should promulgate rules and regulations to establish a transparent and administratively efficient grant-based program for funding new build-out. After that program has been established, rate of return carriers should be allowed a period of five years to complete build-out necessary for support of broadband throughout their service territories.

During that five-year period, support for O&M should be based on the capability of each carrier's facilities to provide voice and information services. After closing of the five-year window, support for O&M should be based on the capability of each carrier's facilities to provide voice and broadband services, as defined by the Commission. To the extent those services are capable of providing broadband at qualifying speeds, support should account for the investment necessary to provide those higher speeds.

The RTCN does not suggest that provision of 25/3 Mbps information services should be a threshold requirement for support eligibility.

- 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?

CenturyLink erroneously claims that the NUSF Act does not allow NUSF support for debt service. CenturyLink cites NEB. REV. STAT. § 86-324(1), but that section of law states that “[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.”

Allowing eligible telecommunications companies to use NUSF support for qualifying debt service has been a longstanding practice of the Commission, which (upon information and belief) has never been challenged or questioned. Telecommunications companies serving high-cost areas have successfully utilized Rural Universal Service (“RUS”) loan proceeds from the United States Department of Agriculture to deploy, provide, maintain, and upgrade facilities and services in their high-cost service areas. As quoted above, these are precisely the purposes for which support is allowed under the very statute CenturyLink cites. In documentation potential borrowers are required to submit to apply for an RUS loan, borrowers are required to project the amount of federal and state universal fund support that will be available to assist with debt service obligations on the projected outstanding loans. Members of the RTCN and other rural Nebraska carriers have taken on significant debt to ensure that even their most remote customers have access to quality broadband service. NUSF support they receive is crucial to help service this debt. Without the ability to use NUSF funds for debt service, Nebraska rural carriers risk defaulting on loan obligations and being denied future financing for infrastructure required to provide broadband services; to operate, maintain, and repair that infrastructure; and eventually to

upgrade the infrastructure to satisfy consumer need and demand. Looking forward, rural economies will not grow unless the infrastructure is in place to provide broadband and voice services. Those services are critical for any business competing in a national market.

Eligible telecommunications carriers depend on these qualifying RUS loans to promote Nebraska's policy of preserving and advancing universal service, as set forth in NEB. REV. STAT. 86-233. These loan funds allow rural telecommunications carriers to better achieve the NUSF Act's purpose of ensuring that all Nebraskans have comparable accessibility to telecommunications services at affordable prices.³

In sum, not only is support that goes in part to assist Nebraska rural carriers to service debt allowed under the NUSF Act, it is essential to fulfilling the Act's very purpose, that is, to ensure that "[c]onsumers 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."⁴

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?

The RTCN reaffirms its Comments on this issue. In its comments on this issue, CTIA urged the Commission to consider use of technologies, such as wireless and satellite,

³ See NEB. REV. STAT. § 86-317.

⁴ See NEB. REV. STAT. § 86-323.

other than fiber to provide access to broadband in rural areas. In its Comments, the RTCN pointed out that its members have prudently deployed a variety of technologies to serve consumers. The Commission has supported technologies other than fiber in NUSF-77 and NUSF-99 programs. Competitive neutrality is central to the NUSF Act.⁵ That said, not all technologies are capable or will be capable of providing comparable services at comparable rates.⁶ Such is the nature of technology. As technology evolves and advances, new solutions develop, but not all new solutions are as robust in the services they are capable of providing or affordable to the general public. Nothing in Nebraska law prohibits or interferes with the continued evolution and advancement of technologies, but that does not render all technologies capable of providing comparable service at comparable rates. The Commission must not lose sight of the directive of the NUSF Act that the fund be used to ensure that persons in rural areas are not relegated to lesser services at higher rates than their urban friends.

III. PROGRESSION OF THIS INVESTIGATION

Charter advocates that the Commission “synchronize” this proceeding with the July Connect America Fund Phase II auction so that the Commission can learn “lessons” from that auction. Charter, as it did in NUSF-100, clearly has the intention of delaying NUSF reform as long as possible in an attempt to gain competitive advantage. Charter’s pleas for delay are squarely at odds with the purpose and objectives of the NUSF Act. The Commission is not acting hastily when it comes to NUSF reform. The process began three years ago. The negative trajectory of the Nebraska fund threatens the ability of carriers to provide quality voice and information services to consumers in all regions of the state at

⁵ See NEB. REV. STAT. § 86-323(4).

⁶ See NEB. REV. STAT. § 86-323(3).

just, reasonable, and affordable rates.⁷ Arbitrarily delaying this proceeding, as Charter continues to advocate, will serve no purpose. Since the early days of explicit support ushered in by the Telecommunications Act of 1996, Nebraska has been a leader when it comes to advancing universal service. The Commission has already undertaken to establish innovative and effective processes to support deployment of facilities capable of providing advanced telecommunications and information services in rural areas of the state. These processes have not only allowed, but have encouraged and supported competitive solutions to drive rural build-out. There are always lessons to be learned from innovation by others, but advancement of universal service in Nebraska will be jeopardized by waiting for federal action.

IV. CONCLUSION

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


Dated: April 12, 2018.

⁷ See NEB. REV. STAT. § 86-323 (1) – (3).

RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA

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Company, Diller Telephone Company,
Glenwood Network Services, Inc., The
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and five copies of the foregoing *Reply Comments of the Rural Telecommunications Coalition of Nebraska* were filed with the Public Service Commission on April 12, 2018, and a copy was served via electronic mail, to the following:

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