

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

MAY 29 2019

In the Matter of the Nebraska)	Application No. NUSF-108	Nebraska
Public Service Commission, on its)	Progression Order No. 4	Public Service Commission
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 submit these Post-Hearing Comments in response to leave granted by the Nebraska Public Service Commission (the “Commission”) at the close of the April 30, 2019 hearing in this docket. The hearing was set by the Commission for the purpose of addressing the Commission’s proposal to provide Nebraska Universal Service Fund High Cost Program (“NUSF”)² support to capped locations (the “Proposal”) as described in the February 5, 2019 Order Seeking Further Comment³ and to receive input from commenting parties in response to the Proposal.⁴ RIC appreciates the

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., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company and Three River Telco.

² Unless otherwise indicated, RIC uses the term “NUSF” within these Comments to refer to the High Cost Program.

³ *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. 4, Order Seeking Further Comment at 4 (Feb. 5, 2019) (the “Order”).

⁴ *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*

opportunity to provide these Post-Hearing Comments and looks forward to continuing participation in this docket and other pending dockets regarding the NUSF.

II. DISCUSSION

A. Commission Staff Discussion of the Proposal

Cullen Robbins, Director of the NUSF/Telecommunications Department of the Commission, testified in support of the Proposal and stated that the focuses of his testimony were: (a) How best to allocate support to the capped locations in order to get service that meets a minimum 25/3 Mbps standard; and (b) How to align that support with the Commission's previous efforts in NUSF 108 to prioritize accountability and incentivize buildout of broadband-capable networks?⁵

The Commission Staff proposed that if a carrier exceeds the minimum requirements laid out by the FCC and provides 25/3 Mbps service to capped locations, the carrier can expect to receive additional support from the NUSF to offset some of those costs to deploy an upgraded network.⁶ The Staff further proposed that the Commission would pay some portion of the unfunded build out cost at a level that is commensurate with the support it provides for other non-A-CAM areas that have been built to 25/3 Mbps.⁷

requirements, Application No. NUSF-108, Progression Order No. 4, Order Setting Hearing (Mar. 26, 2019).

⁵ Transcript of testimony of April 30, 2019 hearing in Application No. NUSF-108, Progression Order No. 4, 13:1-6. (References to this transcript in following footnotes will be "Tr. [page]:[line].")

⁶ Tr. 13:13-18.

⁷ Tr. 13:23-14:2.

RIC appreciates the position statement of the Commission Staff that once a carrier provides at least 25/3 Mbps service to a capped location, the carrier “can expect to receive additional support from the NUSF to offset those costs to deploy an upgraded network.”⁸ RIC further endorses the Commission Staff’s position that the NUSF support to be provided is not necessarily designated as CapEx or OpEx, but rather that it is “designated only as support to offset those costs of deploying and maintaining service.”⁹

However, as more fully discussed below, RIC believes that the lack of a Commission-established overall NUSF budget for capped locations and the lack of individual carrier allocations from that budget to be published prior to the year in which broadband build out is to occur will have an adverse impact on deployment of 25/3 Mbps broadband-capable networks.¹⁰ Absent this information, RIC has a significant concern that incentivizing broadband deployment will not be realized, and more importantly, that the consumer benefits to be derived from broadband deployment will likewise not be achieved.

⁸ Tr. 13:13-18. “Capped locations” are defined by the Commission as those “areas where a ROR carrier has elected Alternative Connect America Model (A-CAM) support and where support is capped at a level not sufficient to deploy broadband to 25/3 Mbps.” *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. 4, Order Seeking Comment, at 2 (Nov.19, 2018).

⁹ TR. 14:15-16. Mr. Robbins also testified: “If carriers have built and continue to build networks to capped locations that are 25/3 capable, they can expect to receive support that will help offset those costs.” Tr. 16:15-18.

¹⁰ RIC notes that the Commission released the NUSF support budget and the allocation of such support to individual carriers for Nebraska census blocks that do not receive federal universal service support in January for 2019. *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 Authorizing Payments (Jan. 29, 2019).

B. The Lack of Overall NUSF Budget for Capped Locations and the Lack of Individual Carrier Allocation will be Disincentives to Build Out 25/3 Mbps Broadband

Real world broadband deployment in low density, high-cost capped locations is dependent on the provision of NUSF support that Nebraska rate-of-return (“ROR”) carriers electing Alternative Connect America Model (A-CAM) can expect to receive as a result of the public policy framework established by the Commission to achieve additional 25/3 Mbps broadband deployment. While RIC appreciates the position statement of the Commission Staff in support of the provision of NUSF support to capped locations, there are significant shortcomings with the Staff position. First, no overall budget amount for all ROR carriers electing A-CAM support and serving capped locations was provided or is apparently intended to be provided prior to the beginning of a particular construction period. Second, no allocation of a distributed portion of the overall capped locations budget for each individual A-CAM-electing ROR carrier was identified or is intended to be provided prior to the beginning of a particular construction period. The resulting unpredictability concerning the availability and amount of NUSF support for capped locations is at odds with the legislative policy that all residents of this State should have access to broadband service at minimum speeds of 25/3 Mbps.¹¹

In RIC’s Comments filed in this docket on March 7, 2019, RIC specifically requested that the Commission and its Staff release necessary data, details and methodology description to further develop the Proposal so as to inform all interested parties in a transparent and specific manner with regard to that portion of the NUSF budget that will be allocated to all A-CAM-

¹¹ See, *Neb. Rev. Stat.* § 86-1101.

electing ROR carriers serving capped locations.¹² Further, RIC requested the Commission and its Staff to provide disclosure of the methodology for allocating portions of this overall budget for capped locations to each *individual* A-CAM-electing ROR carrier serving capped locations.¹³ The absence of this information is an impediment to deployment of broadband to capped locations because it adversely impacts the predictability of NUSF support that is essential to the ability of A-CAM-electing ROR carriers' to plan and execute additional broadband deployment at 25/3 Mbps.

The Commission has declared in the Proposal that it “proposes to provide support to capped locations that have been built to a minimum speed threshold of 25 Mbps download/3 Mbps upload speeds using fiber-based infrastructure.”¹⁴ However, as more fully discussed below,¹⁵ the absence of the overall budget for capped locations and the absence of individual carrier allocations of NUSF support for capped locations create uncertainties and resulting disincentives for carrier commitments to build out of 25/3 Mbps broadband accessibility in capped locations. The Commission’s release of the NUSF support budget and authorization for Nebraska census blocks that do not receive federal universal service support, and the release of the allocation of such support to individual carriers¹⁶ confirm that the information requested by

¹² Comments of the Rural Independent Companies in Response to Order Seeking Furth Comment (“RIC Comments”) at 4 (Mar. 7, 2019).

¹³ *Id.*

¹⁴ *Order* at 4.

¹⁵ *See*, Sections II.D and II.E below.

¹⁶ *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 Authorizing Payments (Jan. 29, 2019).

RIC with regard to capped locations can be produced. However, the Commission Staff's testimony inexplicably does not address these subjects.

RIC respectfully requests that the Commission direct its Staff to produce this information in order to allow a more complete understanding of NUSF support for capped locations. Thereafter, RIC also respectfully requests that the Commission include provisions in its final order entered in Progression Order No. 4 that (a) require the annual publication of the overall budget amount for all A-CAM-electing Nebraska ROR carriers serving capped locations, and (b) require annual publication of the allocation of a distributed portion of an overall budget for capped locations for each individual A-CAM-electing ROR carrier, such information being provided prior to the beginning of the subsequent construction period.

C. Staff Proposal of 18% Supplemental NUSF Funding for Capped Locations was Offered without Disclosure of Data or Calculation Methodology

RIC acknowledges that budgetary limitations will need to be applied to any NUSF support provided for capped locations. For this reason, RIC requested that the Commission and its Staff provide a description of the methodology(ies) that will be employed to equitably align available NUSF support among ROR carriers, including those A-CAM-electing ROR carriers with capped locations having costs eligible for such support.¹⁷

Unfortunately, no such data or methodology was disclosed in the Commission Staff testimony. Rather, it was represented that 18 cents per dollar of modeled costs for *areas other than capped locations* is being provided during 2019, and therefore, the Commission Staff proposed the same level of NUSF support for capped locations for 2019. However, Mr. Robbins acknowledged that the Commission Staff did not, as of the date of the hearing, have demand data

¹⁷ RIC Comments at 5.

in the form of the number of capped locations built out to 25/3 Mbps in 2018.¹⁸ Further, the Commission Staff offered no testimony as to the level of NUSF remittances projected to be available for NUSF support in 2019. Specifically, no testimony was offered regarding the uncommitted NUSF surplus balance as of January 31, 2019, the actual NUSF remittances for February and March 2019 or the Staff's projections of NUSF remittances that will be received during the period of April 1 through December 31, 2019 from the reformed hybrid contributions mechanism that was implemented April 1, 2019.¹⁹

Thus, no record exists regarding the calculation of an allocation of NUSF support to capped locations for 2019. Rather, as an apparent default position, Mr. Robbins offered, without explanation, the conclusion that “we would propose that we pay 18 cents of every dollar above the 252.50 for locations that have been built out by the A-CAM companies to 25/3 Mbps.”²⁰

D. The Proposed “18% Support” for 2019 is Inconsistent with Requirements of Law

Based on the status of the record, significant questions also exist as to whether the level of NUSF support for capped locations for 2019 is consistent with the requirements of section 86-317 of the Nebraska Telecommunications Universal Service Fund Act (the “Act”) that authorizes

¹⁸ Tr. 14:3-10.

¹⁹ On May 16, 2019 the Quarterly Remittance and Fund Balance Report posted on the Commission's website was updated. As updated, the Uncommitted Fund Balance as of 1/31/2018 [sic] 2019 was \$15,333,685; and actual remittances for February and March totaled \$5,787,741. Further, in setting the per connection and percentage of revenues rates for NUSF surcharges that became effective on April 1, 2019, the Commission made a finding that the “target level of the NUSF should be initially set between \$46 and \$54 million.” *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-111, Order at 26 (Aug. 7, 2018).

²⁰ Tr. 14:7-10.

the Commission to supplement federal universal service support to ensure that all Nebraskans, without regard to their location, have comparable access to telecommunications services at affordable prices. Further, RIC submits that the NUSF support level for capped locations – 18 cents per dollar of costs in excess of \$252.50 – is not “*specific, predictable and sufficient*” as required by section 86-323(5) of the Act.

The dialogue between Commissioner Schram and RIC’s witness, Dan Davis, during the hearing illustrates the shortcomings of the Proposal. Mr. Davis testified as follows:

... the way the proposal that I understand it reads is basically you go build to a certain amount of locations and we’ll give you support on the back end.

The problem that we have with that is we might spend \$100,000, but we don’t – we don’t know how much support we’re going to get.

And what I heard Cullen say was that – I thought he used the – I thought he said 18 cents for every dollar of that – of the gap. So if it costs – if the A-CAM model says it costs \$400 and you get \$200 in federal support, \$52.50 from the subscriber, what’s left over you basically get 18 cents on the dollar.

Well, I can tell you if I’m an individual investor in that company and I know I’m only going to get 18 cents on the dollar – that’s not 18 cents above the dollar. You’re not going to get \$1.18. You’re going to get 18 cents for every dollar you invested. I’m not investing in that project if I’m going to get 18 cents on my dollar. You’re losing 82 cents for every dollar you invested.²¹

In juxtaposition to this result, Mr. Davis succinctly summarized the RIC proposal as follows:

“So what we’re proposing is that if we know what dollar amount we’re going to get upfront, then we’ll figure out what it costs to build to a specific number of locations. And we’ll build to those locations.”²²

In his summary of RIC’s position, Mr. Davis described a scenario in which NUSF support for capped locations would be “specific, predictable and sufficient” and would thereby incent A-CAM-electing ROR carriers to make investments in low density high-cost locations

²¹ Tr. 36:4-37:1.

²² Tr. 37:2-6.

that are unquestionably uneconomic for investment absent provision of supplemental NUSF support envisioned by the Legislature in the passage of the Act over 20 years ago. This incentive will, in turn, enable progress toward accomplishment of the legislative policy that all residents of Nebraska “should have access to broadband telecommunications service at a minimum download speed of twenty-five megabits per second and a minimum upload speed of three megabits per second.”²³

E. The Basis for Provision of NUSF Support for Capped Locations in 2020 and Beyond Creates More Uncertainty and Disincentive for Additional 25/3 Mbps Broadband Deployment

NUSF support for capped locations in 2020 and beyond is even less clear than 2019 NUSF support amounts for capped locations. Commission Staff’s description of the distribution methodology for provision of NUSF support to capped locations for funding year 2020 and future years was that “we may consider integrating the [capped location] support with our ongoing bucket of support.”²⁴ If this integration occurs, “the additional support allocated for capped locations would become part of the overall budget for rate-of-return high-cost support with the potential for additional support for all high-cost funds if and when additional remittances are brought into the fund with recent changes to contributions.”²⁵ The absence of any details relative to distribution methodology, the aggregate projected NUSF budget and individual ROR carrier allocations from such a budget is obvious. As such, predictability of the level of NUSF support is lacking and thus, the incentive for making capital investments in uneconomic capped locations is missing.

²³ *Neb. Rev. Stat.* § 86-1101.

²⁴ Tr. 17:3-5.

²⁵ Tr. 17:6-13.

As stated above, the Legislature requires that “[t]here should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service.”²⁶ In the Commission’s implementation of this legislative directive it is essential that the Commission provides transparency and a complete explanation of the methodologies and data that will be used to calculate the allocation of NUSF support to capped locations in Nebraska.

F. RIC has Presented an Accountability Proposal to Support Pre-Build Out Capital Expenditure Funding for Capped Locations

As the Proposal is presented in the *Order* and was supported by the Commission Staff, NUSF support will only be provided to a capped location after build out is accomplished and reported to the High Cost Universal Broadband or “HUBB” portal maintained by the FCC.²⁷ RIC included an accountability proposal for pre-build out NUSF funding of capped locations in the RIC Comments,²⁸ and Mr. Robbins, on behalf of the Commission Staff, offered no support or criticism thereof.

In his testimony, Mr. Davis summarized the key points in the RIC accountability proposal as follows:

- Once the annual allocation of NUSF support for capped locations is provided by the Commission for an annual funding period, an A-CAM-electing ROR carrier would file a written designation identifying the locations to be built out to 25/3 Mbps during the upcoming construction period.
- Following completion of the construction period, the carrier would submit a written report to the Commission identifying locations that had been built out and reported to the HUBB.
- The completion report would be subject to Commission audit.

²⁶ See, *Neb. Rev. Stat.* § 86-323(5).

²⁷ *Order* at 4-5; see also Tr. 15:22-16:1. Mr. Robbins further testified “[w]hat we would propose is also providing support for the calendar year of 2019 based on what was reported for buildouts up through the end of 2018.” Tr. 16:15-18..

²⁸ See, RIC Comments at 8-12.

- Any failure by the carrier to complete build out as committed would result in future reductions in NUSF support until build outs are accomplished and reported.

RIC continues to advocate for pre-build out provision of NUSF support to capped locations, subject to the above-stated accountability requirements. Again referring to Mr. Davis' testimony in response to questioning by Ms. Knutson, he summarized the real world results arising from RIC's pre-build out funding proposal as follows:

... the way I have proposed it is that based upon a particular dollar amount that the commission has allocated, we would determine how many locations we could build to.

So we could probably determine, based upon the average cost for particular census blocks, which census blocks we would build to. The average cost of each location in the census block would be known. We'd be able to tell you how many locations we could build to.

And then obviously you could determine - we would tell you how many locations. And you could determine whether we actually built to those numbers of locations based upon the HUBB reporting.²⁹

RIC respectfully requests the Commission's support of this concept for the reasons stated in the RIC Comments and in Mr. Davis' testimony.³⁰

G. RIC Recommends Opening of a Progression Order to Examine Needed Modifications to Use of the NUSF EARN Form

Although not directly addressed in the *Order*, Mr. Davis addressed one final matter in his testimony. In its Findings and Conclusions entered in NUSF-108, Progression Order 3 on November 19, 2018, the Commission stated that it anticipated issuing a further order to modify the NUSF-EARN Form process within "the next few months."³¹ The Commission found that the

²⁹ Tr. 43:10-44:1.

³⁰ *Id.* See also, Tr. 75-80 which is the testimony of Ken Pfister in support of pre-build out funding of capped locations.

³¹ 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*

NUSF-EARN Form reporting should be modified going forward to align the reporting requirements with the current environment. RIC recommends this progression order be opened as soon as possible to address at least the following NUSF-EARN Form issues:

1. Whether NUSF High Cost Program support for capital expenditures to build out broadband in capped locations should be subject to an earnings test?
2. Whether ongoing NUSF High Cost support for capped locations should be subject to an earnings test?
3. The degree to which clarification is needed regarding whether the existing SAM distribution framework which reduced NUSF support on a dollar for dollar basis to the extent of over-earnings is now being applied in a manner that eliminates all ongoing NUSF support for capped locations regardless of the level of a carrier's over-earnings?

Each of these issues provides guidance as to how the new NUSF program will be implemented yearly based on carrier submissions. The determination of these issues also will assist in establishing potential carrier-specific NUSF allocations from the NUSF budget. Because the resolution of these issues advances the transparency of the new NUSF recovery regime being established by the Commission, as well as other purposes that may be identified at a later date, RIC recommends that the Commission should open a progression order to address these NUSF-EARN form issues at the earliest practicable date.

III. CONCLUSION

The Rural Independent Companies respectfully request that in its final order entered in connection with this Progression Order No. 4 that the Commission would incorporate provisions

requirements, Application No. NUSF-108, Progression Order No. 3, Findings and Conclusions at 42 (Nov. 19, 2018).

consistent with RIC's preceding advocacy points. The Rural Independent Companies appreciate the opportunity to provide these Comments to the Commission, and look forward to continued participation in this docket.

Dated: May 29, 2019.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of May, 2019, an electronic copy of the foregoing pleading was delivered to:

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