

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION MAR - 6 2020

In the Matter of the Nebraska)	Application No. NUSF-108	Nebraska
Public Service Commission, on its)	Progression Order No. 5	Public Service Commission
own Motion, to make adjustments)		
to its high-cost distribution)		
mechanism and to make revisions)		
to its reporting requirements.)		

REPLY COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies (“RIC”)¹ submit these Reply Comments in response to comments by the Rural Telecommunications Coalition of Nebraska (“RTCN”)² filed in this docket on December 17, 2019 in response to the Order Seeking Comment (the “*PO 5 Order*”) entered by the Nebraska Public Service Commission (the “Commission”). Significant agreement exists between the two entities commenting on the *PO 5 Order* issues. Even in instances where divergences appear, the underlying logic of the parties’ positions confirms that the public interest would be served by adopting RIC’s Revised EARN Form Framework (as that term is used in the RIC Comments).

I. SIGNIFICANT COMMONALITY EXISTS IN THE RESPONSES TO THE *PO5 ORDER*

Of the questions raised in the *PO 5 Order*, significant agreement between RTCN and RIC exists regarding the resolution of eight (8) of ten (10) of such questions.

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, LLC, 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. Each of these companies is a Rate of Return (“ROR”) company and has been designated as a Nebraska Eligible Telecommunications Carrier (“NETC”).

² For convenience, the following convention is used regarding the two (2) sets of comments filed in this docket on February 14, 2020 – the commenting party’s name followed by the word “Comments” and the page reference. In section III, RIC provides the names of the RIC member companies that have elected the Federal Communications Commission (“FCC”) Business Data Services framework.

1. The Nebraska Universal Service Fund ("NUSF") High Cost Program EARN Form data should be based on total company earnings;³
2. Earnings should be reported by each NETC;⁴
3. As applicable, the Commission should apply and follow FCC rules, including FCC's expense limitations;⁵
4. The Commission should follow the FCC's prescribed rate of return;⁶
5. The Commission should set any new transitional rate at 10.25 percent;⁷
6. The Commission should mirror the FCC's transition to 9.75 percent and direct the Commission Staff to make the adjustments as the FCC's prescribed rate of return changes;⁸
7. The same NUSF EARN Form should be applied to each ROR carrier;⁹
8. By using total company earnings, the Commission does not need to require carriers to maintain separations-based accounts for the purpose of receiving ongoing NUSF support.¹⁰

II. RTCN'S POSITIONS TAKEN ON OTHER *PO 5 ORDER* ISSUES LOGICALLY SUPPORT RIC'S REVISED EARN FORM FRAMEWORK

Even in those instances in which RTCN is silent on an issue or its position appears to be counter

³ See *PO 5 Order* at 2; see also RTCN Comments at 1 (uniform rules ensure fairness and consistency); RIC Comments at 7-8.

⁴ See *id.*; see also RTCN Comments at 2; RIC Comments at 9 and 13 (NUSF allocated support could, subject to good cause showing, be assigned to an affiliated NETC).

⁵ See *id.* at 3; see also RTCN Comments at 2-3; RIC Comments at 10.

⁶ See *id.*; see also RTCN Comments at 3; RIC Comments at 10-11.

⁷ See *id.*; see also RTCN Comments at 3; RIC Comments at 11.

⁸ See *id.*; see also RTCN Comments at 3; RIC Comments at 11 (new transition would be established for ROR NETC return levels).

⁹ See *id.*; see also RTCN Comments at 3 (A single EARN Form avoids efforts to "inappropriately angle for increased high-cost support at the expense of other carriers."); RIC Comments at 11.

¹⁰ See *id.* at 3-4; see also RTCN Comments at 3; RIC Comments at 12.

to that taken by RIC, RIC respectfully submits that the underlying logic and accompanying rationales expressed by RTCN in response to other *PO 5 Order* issues support RIC's Revised EARN Form Framework.¹¹ For example, with respect to RIC's added line to the EARN Form,¹² RTCN's desire to "avoid manipulating earnings and cost information"¹³ is akin to RIC's advocacy that the provision of NUSF support should not negate the federal universal service fund expense caps that RIC has demonstrated should be respected and preserved.¹⁴ Consequently, the additional line added by RIC in the Revised EARN Form is appropriate to adopt.

Likewise, RTCN's agreement that use of the EARN Form should continue¹⁵ acknowledges the continuing relevance of the underlying purpose of the original EARN Form to encourage investment in broadband-capable networks.¹⁶ The explicit allowance of the use of NUSF Broadband Deployment Support ("BDS") by ROR carriers that have elected Alternative Connect America Fund Cost Model support¹⁷ and the limited transfer of BDS between affiliated ROR NETCs will also encourage increased

¹¹ RIC notes that RTCN did not respond to the Commission's question in the Section "Federal Universal Support Distinctions," "What categories of support should be included in each?" However, RIC did respond to this question. *Compare PO 5 Order* at 3; RTCN Comments at 3, and RIC Comments at 11-12. Likewise, RTCN did not present any "Other Issues," while RIC raised two such issues. *Compare PO 5 Order* at 4; RTCN Comments at 3 and RIC Comments at 12-14.

¹² *See, e.g.*, RIC Comments, Exhibit A.

¹³ *See* RTCN Comments at 2.

¹⁴ *See* RIC Comments at 6 (Principle 4) and 8; *see also* Exhibit A.

¹⁵ *See* RTCN Comments at 1-2.

¹⁶ *See* RIC Comments at 5, n.11.

¹⁷ RTCN agreed with the rationale of "consistency" in the context of the use of total company earnings in the EARN Form. *See* RTCN Comments at 1. Explicitly allocated BDS to ACAM companies, in turn, advances such consistency through the eligibility for NUSF BDS by all entities using the EARN Form – all ROR NETCs.

investment in broadband-capable networks.¹⁸ Further, and equally as important, the use of overearnings to increase BDS support levels will increase the potential for additional broadband investment by ROR NETCs.

Finally, as RIC interprets the RTCN comments, it would appear that the suggested use of a three-year average of costs is intended to address “lumpy” investment.¹⁹ While RIC’s one-year reporting recommendation²⁰ initially appears to be in conflict with RTCN’s position, any conflict can be rationalized through analysis of the facts that seem to underpin both positions, namely, the impact of investment timing on reported costs. The use of a three-year average of costs should minimize the risk of NUSF ineligibility based on overearnings due to a ROR NETC’s yet-to-be incurred depreciation expense resulting from network investments. But that concern and the need for a three-year cost average is addressed through RIC’s use of such over earnings to increase such carrier’s eligible level for BDS, which, in turn, encourages investment.

Accordingly, even where apparent differences exist in the filed comments, such differences can be reconciled in light of the common rationales employed by parties. As such, RIC respectfully submits that its Revised EARN Form Framework should be adopted on the basis that it advances the public interest through additional deployment of broadband-capable networks.

III. RIC MEMBER COMPANIES ELECTING THE FCC BUSINESS DATA SERVICE

Consistent with RIC’s commitment on page 12 of its Comments, RIC identifies the following members that have elected the FCC’s Business Data Services framework: Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company,

¹⁸ See e.g., RIC Comments at 4-5.

¹⁹ See RTCN Comments at 2.

²⁰ See RIC Comments at 9.

Hamilton Telephone Company, Northeast Nebraska Telephone Company and The Nebraska Central Telephone Company.

IV. CONCLUSION

As demonstrated herein, the public interest benefits arising from RIC's proposed Revised EARN Form Framework provide a basis to overcome any current disagreements between RTCN and RIC and, if presented, any challenges to the RIC Revised EARN Form Framework. Accordingly, for the foregoing reasons and those stated in the RIC Comments, RIC respectfully requests that RIC's Revised EARN Form Framework be adopted by the Commission.

The Rural Independent Companies appreciate the opportunity to provide these Reply Comments in response to the inquiries presented by the Commission in the *PO #5 Order* and look forward to continuing participation in this docket.

Dated: March 6, 2020.

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, LLC., 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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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of March 2020, an electronic copy and one paper copy of the foregoing pleading were delivered to Cullen.Robbins@nebraska.gov and Brandy.Zierott@nebraska.gov. Also, electronic copies of the foregoing pleading were electronically delivered to the other parties to this docket.



Paul M. Schudel