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 Progression Order No. 6 **COMMENTS OF THE RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA**

INTRODUCTION

The Rural Telecommunications Coalition of Nebraska ("RTCN")[1], by and through its undersigned counsel of record, submits these *Comments* ("Comments") in response to the *Order Opening Docket and Seeking Comment* entered by the Nebraska Public Service Commission (the "Commission") on April 21, 2021. The Commission's above-referenced *Order* covers numerous topics, posing several questions with respect to each. These Comments follow the organization of the *Order*, restating questions where necessary and supplying RTCN's response thereafter.

COMMENTS

A. OVER-EARNING REDISTRIBUTION

The *Order* seeks to reexamine a concept suggested by the Rural Independent Companies (the "RIC") in the Commission's earlier proceeding under Progression Order No. 5 in the above-referenced docket. Specifically, RIC proposed that capped over earning amounts of NUSF support be shifted to the recipient's broadband deployment support (BDS) eligibility, rather than reallocated through the overearnings redistribution (OER) process.[2] While the Commission

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[1] For purposes of this proceeding, the RTCN consists of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications; Benkelmen Telephone Company, Inc., Cozad Telephone Company, Hartman Telephone Exchanges, Inc., Plainview Telephone Company, Southeast Nebraska Communications, Inc., Pierce Telephone Company, and Wauneta Telephone Company.

[2] *Comments of the Nebraska Rural Independent Companies*, Application No. NUSF-108, Progression Order No. 5, February 18, 2020.

declined to adopt RIC's proposal in the earlier proceeding, the Commission did indicate it would reconsider the issue "in a further proceeding designed to specifically address RIC's concerns."[3]

The RTCN previously opposed and continues to oppose this concept, which is contrary to the Commission's past practice and would likely have the effect of eliminating the redistribution of support in those locations.[4] The OER process has, in part, bolstered the total amount of ongoing support available for eligible carriers, despite limited funding. As explained later in these comments, the Commission *must* guarantee that the percentage of overall support allocated to ongoing is sufficient to allow for the preservation of existing broadband networks and the maintenance of financial obligations undertaken to serve customers utilizing those networks. Eliminating the OER process would, in part, make the Commission's task in that respect more difficult by shifting funds from ongoing support to BDS.

While the RTCN does not deny that such a shift may incrementally increase deployment, deployment funds available from other sources (Broadband Bridge Program and ARPA) will increase significantly in the near term. There is no similar outside source that will grow ongoing support. This should be a primary consideration in the Commission's decision-making, and should lead the Commission to reject this funding shift.

B. <u>CALCULATION AND USE OF BDS SUPPORT</u>

Should the Commission set aside a separate allocation for BDS support for capped locations?

Yes, RTCN supports the establish of a separate allocation for BDS support for capped locations because it will allow greater transparency to this support category. However, BDS support for capped locations should not be prioritized over allocations for ongoing support and

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[3] *Order* dated February 23, 2021, Application No. NUSF-108, Progression Order No. 5 at Page 14.

[4] *Reply Comments of the Rural Telecommunications Coalition of Nebraska* dated March 6, 2020 at Page 3.

deployment support. In particular, ongoing support established in the Commission's Progression Order No. 3[5] in this docket is crucial for ensuring that existing fiber networks are properly maintained and protected.

Is an increase in the amount of support for capped locations warranted? Does this place certain carriers at an advantage over others? If so, how can the Commission address this concern?

Without additional information or evidence to the contrary, the RTCN suggests that current support for capped locations is sufficient to incentivize deployment and that no increase is warranted. Numerous rural carriers throughout Nebraska have demonstrated that, through a combination of current state and federal funding, loans, and reasonable business risk-taking – rural deployment can and will continue to occur. The notion that deployment cannot occur without more support in capped locations and a blind eye toward overearnings is not consistent with recent history.

Increasing support to capped locations (and permitting overearnings for that matter) places carriers who have previously taken prudent risks to deploy broadband to their customers at a distinct disadvantage. Any business that undertook debt and utilized its own capital to fund an investment is necessarily at an economic disadvantage to a similarly situated business that has a similar investment funded by public inputs. The latter is free to use revenue from the investment for expansion, while the former must utilize at least part of its revenue from the similar investment for debt service and providing a reasonable return to the capital it used.

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[5] *Findings and Conclusions* dated November 19, 2018, Application No. NUSF-108, Progression Order No. 3.

Should there be a separate accounting of the support used for capped locations? If so, what type of accounting is needed for transparency?

The RTCN supports a separate accounting of support used for capped locations and encourages the Commission to develop such a separate accounting with the goal of maximum transparency. However, at this time, the RTCN has no specific proposal for such accounting practices.

Should the Commission be concerned about carriers that are earning above the prescribed rate of return receiving additional support for capped locations? Does the concern about consumers receiving timely broadband in those areas override the concern about a carrier earning more than the prescribed rate of return?

Yes, the Commission should continue to apply the earnings limitation when determining support for capped locations, using the Commission's EARN form. Earnings limitations are an important part of the Commission's budget control mechanism for deployment cost reimbursement. Earnings limitations also serve to protect against the duplication of federal and state support. The Commission should proceed with great caution when considering removal of any of the prior safeguards it previously established to ensure the integrity of the NUSF and the distribution model.

Is there a higher threshold that the Commission should look at or should a carrier's earnings be irrelevant?

For the reasons stated above, a carrier's earnings are highly relevant to support determinations. Without any evidence to the contrary, the RTCN questions why a higher earnings threshold is necessary.

In the event capped locations are eligible for support through, for example, the Broadband Bridge program, should NUSF support continue to be directed to capped locations? Why or why not?

Should capped locations receive deployment support or grants through the Broadband Bridge program or other outside sources, those additional funds should certainly be accounted for in the Commission's post-deployment analysis of investment data first set forth in its Progression Order No. 4 in this docket. As grant-based funding from outside sources increases, this level of examination is necessary to avoid the duplication of benefits and ensure the efficient coordination of all state and federal benefits.

If the Commission's inquiry is directed toward ongoing support, capped locations (or any locations) receiving deployment support from the Broadband Bridge program should remain eligible for ongoing support. As explained throughout these comments, ongoing support is vital to ensure the proper maintenance and operation of existing broadband networks. The Commission must prioritize protecting investments that have already been made.

Should the Commission revise the rural definition to include additional areas that might be unserved or underserved?

In its Progression Order No. 3 Findings and Conclusions in this docket, the Commission established eligibility requirements at census block level which excluded census blocks located within incorporated cities and villages, and established density requirements for rural census blocks. The RTCN believes that these requirements should be continued.

Should there be a cap on the amount that any individual location could receive in high cost support? If so, what should that cap be?

The RTCN does not oppose the implementation of a per location cap on support; however, development of any such cap must heed the Legislature's directive that all Nebraskans "without regard to their location" have comparable access to telecommunications services.[6] Development of a per location cap amount must reasonably ensure prompt deployment to unserved areas, and further should be periodically reviewed and updated by the Commission (at least annually) to account for changes in construction costs.

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[6] Neb. Rev. Stat. § 86-317

C. <u>ADJUSTMENTS TO ALLOCATIONS FOR ONGOING SUPPORT</u>

To the Commission's threshold question of whether ongoing support should continue, the RTCN replies in the affirmative. Past RTCN testimony and evidence in prior progression orders in this docket firmly supports that position. As the Commission is aware, many RTCN members and other independent rural Nebraska companies built out their networks using primarily private equity and federally-backed loans, not direct support. When making these business decisions, companies in part relied upon the stability of federal and state support to help finance the considerable debt undertaken and ensure a reasonable rate of return on their investments. Changes in federal support have already altered some of the underlying assumptions made by these carriers, adding financial constraint to already tight margins. Eliminating ongoing support from the NUSF could have dire consequences for carriers who have served their customers interests before their own and risked much to deploy broadband throughout their exchanges.

Ongoing support also ensures that operating and maintenance expenses for existing broadband infrastructure investments are met. Carriers which have fully built out their networks continue to incur capital expenses – such as component upgrades and replacement and expansion of existing networks to new customer locations. Ongoing support ensures Nebraska customers continue to benefit from the investments made by the rural carriers who have been good stewards of prior NUSF support.

While continuing to advance deployment throughout Nebraska, the Commission *must* avoid a "one step forward, two steps back" situation in which ongoing support is insufficient to keep existing networks operating and functional for Nebraska consumers. This can be accomplished by increasing and modernizing the ongoing support allocation.

A. Suggested Modifications to the Ongoing Support Allocation

As the *Order* acknowledges, the relative allocation percentage of support allocated to Ongoing "should not be static but should change based on the carriers' progress in deploying broadband service throughout their exchanges." RTCN fully agrees with the Commission's conclusions and urges the Commission to adjust the percentages of support to account for increasing deployment. The Commission's prior practice of maintaining a "fixed" or set amount of ongoing support has resulted in a death spiral in the total amount of ongoing support received by carriers that have completed their deployment and must be remedied by the Commission in this proceeding.

RTCN welcomes the opportunity in this docket to work with the Commission and other interested parties in developing a new mechanism for determining the annual allocation for ongoing support. For purposes of these Comments, RTCN suggests that this discussion, and any ultimate policy change, conform to the following principles:

- Expressed as a relative percentage of total support, the ongoing support allocation going forward should equal or exceed the percentage from the 2020 NUSF-108 distribution model results
- Given the availability of deployment funds from other sources (Broadband Bridge Program and ARPA), the Commission should strongly consider increasing the ongoing support allocation percentage above 2020 levels
- The ongoing support allocation mechanism must include a simple, predictable, and efficient means for adjusting the ongoing support allocation upwards each year to account for increased deployment in the preceding year

- The mechanism should be reviewed annually, with opportunity for comment on necessary adjustments
- An emphasis on stability, predictability, and transparency should be maintained.

D. TRANSFERABILITY OF SUPPORT TO AFFILIATED PROVIDERS

The *Order* also seeks to reexamine the RIC's suggestion from the Progression Order No. 5 proceeding that the Commission permit NUSF distributions to be transferred between affiliated Nebraska eligible telecommunications carriers ("NETCs"). The stated rationale for this RIC proposal revolves around the claim that restricting investment to specific study areas may result in the inefficient utilization of support.[7]

The RTCN previously opposed and continues to oppose affiliate transfers of high cost support. We first observe that this proposed change appears to be of little value or consequence to the Commission's goal of ubiquitous broadband deployment because the RIC concedes that only two of its members have affiliates and would therefore benefit. Moreover, permitting affiliate transfers of high cost support would require the Commission to devote resources and develop safeguards ensuring such affiliate transfers are proper. On the balance, the hypothetical benefit of permitting affiliate transfers appears to be outweighed by the real cost and effort required of the Commission to properly regulate them. We also observe that RIC's previous arguments on this topic contain little to no objective information or evidence supporting the need for affiliate transfers. RTCN urges the Commission to reject the RIC's proposal permitting affiliate transfers of high cost support.

[7] *Comments of the Nebraska Rural Independent Companies*, Application No. NUSF-108, Progression Order No. 5, February 18, 2020 at Page 13.

E. <u>SPEED REQUIREMENTS</u>

The *Order* seeks input on two broad questions relating to supported speeds: (1) which speed standard should the Commission require for high cost supported deployment; and (2) by what method should required speeds be verified.

1. The Commission Should Incent, but not Mandate, 100/100 Speeds for Ongoing Support

While the *Order* addresses the issue of speed requirements to both BDS and ongoing support, recent action by the Legislature moots the discussion related to BDS. LB338[8] requires the Commission to ensure that NUSF BDS funds go to projects scalable to speeds of 100 Mbps or greater for downloading and 100 Mbps or greater for uploading. This new requirement is effective as of January 1, 2022. With LB338, the Legislature has determined the Commission's speed standard for high cost BDS support.

Of equal import, the Legislature chose *not* to apply a 100/100 speed standard for the receipt of ongoing support. Numerous carriers have deployed 25/3 infrastructure and based their investment decisions in part on the stability of ongoing support for such deployments. Other carriers have elected Alternative Connect America Model ("ACAM") support for 25/3 deployment in part based on the stability of NUSF ongoing support for such deployments. As a matter of fairness, the RTCN opposes the elimination of ongoing support for 25/3 capable infrastructure. Where carriers undertook certain actions based on a settled understanding that NUSF ongoing support would follow, any policy change to the contrary should be discouraged and may hinder a carrier's ability to operate and maintain its deployed infrastructure.

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[8] Section 4 of Slip Law, Legislative Bill 338, One Hundred Seventh Nebraska Legislature First Session. Signed by Governor Ricketts May 5, 2021.

While protecting an established level of ongoing support for 25/3 capable infrastructure, the RTCN also acknowledges that Nebraskans have made their wishes clear on desired speeds. The *Order* references the Nebraska Legislature's recently passed Broadband Bridge Program (LB388), which provides grant-based support for broadband deployment projects that will provide not less than 100/100 Mbps service. Interest groups representing virtually every segment of Nebraska voiced their support for LB388's higher speed standard, including the Nebraska Chamber of Commerce, the Nebraska Farm Bureau, the Nebraska League of Municipalities, the Nebraska Rural Community Schools Association, and the Center for Rural Affairs. Nebraska's policymakers in the Legislature have heard their constituents demand quality broadband infrastructure throughout the state. To align NUSF ongoing support with this public demand, RTCN proposes that the NUSF ongoing support allocation be reformed to incentivize 100/100 deployment through an ongoing support increase. This could be accomplished by establishing two categories or "tranches" of ongoing support – one dedicated to 25/3 capable infrastructure and one dedicated to 100/100 capable infrastructure. Ongoing support to 25/3 capable infrastructure should be funded at a level sufficient to satisfy the expectations of those carriers who relied upon prior policy when deploying such infrastructure. Ongoing support to 100/100 capable infrastructure should, at higher amounts, reward those carriers who have deployed higher speed infrastructure to meet the public demand.

B. Speed Testing

At this time, RTCN has no specific response to the Commission's inquiry on speed testing other than to observe that LB338 requires recipients of NUSF ongoing support to submit to speed tests as determined by the Commission, conducted by the recipient and using a one week random sample of locations.[9]

F. STATE BROADBAND COST MODEL / BROADBAND MAPPING DATA

Should the Commission continue to rely on the SBCM for cost modeling?

Yes. The RTCN has consistently supported the use of the State Broadband Cost Model ("SCBM") for modelling of support. The SBCM provides a simple, predictable, and adequate basis for estimating the costs of broadband deployment.

Should the Commission continue to rely on FCC Form 477 data? With the FCC's Digital Opportunity Data Collection (DODC) mechanism in place to collect more detailed data from carriers regarding broadband deployment, should the Commission look to collect more detailed information from carriers with respect to their existing deployments?

The RTCN believes that the Commission should strive to collect the most detailed and transparent information possible from carriers to accurately gauge existing broadband deployments, coverage areas, and speeds in individual census blocks. Issues arising from reliance on the FCC Form 477 are well-documented and need not be detailed here.

G. AFFORDABILITY OF SERVICE OFFERINGS

Should the Commission set benchmarks to make supported broadband service provided to Nebraska consumers more affordable?

Rather than setting benchmarks or rate caps that would apply broadly, the RTCN suggests that the Commission's efforts to ensure affordability be undertaken with a customer-specific focus. While the RTCN acknowledges the Commission's authority to undertake such steps, we believe targeted relief to ensure affordability for low-income Nebraskans is the best approach for addressing the issue. The Commission already oversees a long-standing and successful program (the Nebraska Telephone Assistance Program or NTAP) which helps low-

[9] Section 5 Slip Law, Legislative Bill 338, One Hundred Seventh Nebraska Legislature First Session.

income Nebraskans afford telephone service by providing a credit that lowers the monthly cost of service. An expansion of this program or development of a similar program focused on broadband affordability may be an appropriate avenue for the Commission.

Are broadband prices keeping families offline? If so, how can the Commission address this?

While affordability issues may exist in limited circumstances, the RTCN believes that *availability* continues to represent a far greater barrier to broadband adoption than affordability. As anecdotal evidence, the Commission's recent broadband adoption program for low-income consumers is relevant.[10] There, the Commission allocated $1 Million for free or reduced broadband services to low-income consumers to ensure "affordable broadband connectivity" during the COVID-19 crisis. After easing the initial qualification requirements and extending the window for qualified expenses, only $225,000 of the $1 Million allocation was utilized.[11] During a global pandemic, the utilization of funds to increase broadband affordability was far less than anticipated. RTCN points to this not to suggest that affordability concerns do not exist for low-income families in Nebraska; but rather to suggest that availability remains the most significant barrier to adoption.

[10] *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program*, Application No. NUSF-92, Progression Order No. 10.

[11] *Order Approving Reimbursement Requests* dated October 20, 2020 and *Order Approving Reimbursement Requests* dated February 23, 2021, Application No. NUSF-92, Progression Order No. 10.

DATED: May 28, 2021.

RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA

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