

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 requirement. ) Application No. NUSF-108 ) Progression Order No. 4 ) **POST-HEARING COMMENTS**

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Nebraska Public Service Commission

INTRODUCTION

At the conclusion of the hearing in this matter on April 30, 2019, the Hearing Officer, Commissioner Mary Ridder, directed all interested parties to submit comments by May 29, 2019. The Rural Telecommunications Coalition of Nebraska (“RTCN”)<sup>1</sup>, by and through its attorneys of record, submits these *Post-Hearing Comments* (“**Post-Hearing Comments**”).

These Post-Hearing Comments will address testimony at the hearing, as well as the Order Seeking Further Comment (“**Order**”), entered by the Public Service Commission (“**Commission**”) in this investigatory proceeding on February 5, 2019. At the hearing, Commission witness, Cullen Robbins, summarized the staff proposal described in the Order. Mr. Robbins is director of the Commission’s Nebraska Universal Service Fund (“**NUSF**”) and Communications departments. (10:7-12)

As Mr. Robbins said at the outset of the hearing, the principal focus of the investigation docketed NUSF-108, Progression Order No. 4, has been support for eligible areas where rate-of-return carriers have elected Alternative Connect America Model (“**ACAM**”) support. (10:14-17) That support has been capped by the Federal Communications Commission (“**FCC**”) at levels reportedly insufficient to fully support deployment of

<sup>1</sup> For purposes of this proceeding, the RTCN is made up of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cambridge Telephone Company, Cozad 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., Stanton Telecom, Inc., and Wauneta Telephone Company.

infrastructure capable of delivering broadband service, defined by the Commission as 25 Mbps down and 3 Mbps up (“25/3 Mbps” or “**Broadband**”).

Two days after the April 30 hearing, the FCC’s Wireline Competition Bureau released revised ACAM II offerings for legacy carriers.<sup>2</sup> Carriers have until June 17, 2019, to elect whether to receive model-based support. Several members of the RTCN are currently considering whether to make an ACAM II election. The RTCN from the outset of this proceeding has urged the Commission to forestall final determination in this investigatory proceeding until current legacy carriers make an election for the ACAM II offering. The Commission should consider the decisions made by current legacy carriers, and its final action in this proceeding should be based on the final landscape of legacy and ACAM carriers after elections have been made. The progression of the present proceeding will not be significantly affected by the Commission waiting.

#### COMMENTS

**ALL AREAS OF THE STATE, WHETHER SERVED BY AN ACAM OR LEGACY ELIGIBLE TELECOMMUNICATIONS CARRIER, SHOULD RECEIVE SUPPORT FOR INFRASTRUCTURE CAPABLE OF PROVIDING VOICE AND BROADBAND SERVICES.**

As Mr. Robbins noted, the Progression Order No. 4 investigation is focused on ACAM-electing carriers. (10:14-17) It will apply to carriers who elected the original model-based support and carriers who elect ACAM II support. In Progression Order. No. 3, the Commission established the support mechanisms for Legacy carriers and for areas where ACAM carriers had deployed Broadband-capable infrastructure.

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<sup>2</sup> CAF II – A-CAM 2.5.1, Report Version 15 and accompanying reports, WC Doc. No. 10-90, DA 19-327 (May 2, 2019)

At the April 30 hearing, RTCN witness, Stacey Brigham, Regulatory Director at TCA Inc. – Telecom Consulting Associates, reaffirmed the RTCN's support for the Commission's proposal to provide support to capped locations that are connected to fiber infrastructure capable of Broadband services. (47:21-48:1) The mechanisms for support should be consistent with the mechanisms established by the Commission in Progression Order No. 3.<sup>3</sup> As will be discussed, the Commission staff's proposals, laid out by Mr. Robbins, would create such consistency.

**SUPPORT SHOULD BE PROVIDED *AFTER* DEPLOYMENT BY ACAM  
CARRIERS OF INFRASTRUCTURE CAPABLE OF PROVIDING  
VOICE AND BROADBAND SERVICES.**

Mr. Robbins testified that the mechanism for supporting ACAM deployment in capped locations should be provided after deployment. (13:14-18). From the outset not only of Progression Order No. 4, but also Progression Order No. 3, the RTCN has advocated for an objective and transparent means of supporting new build out.<sup>4</sup> The Commission established such a mechanism, known as the Broadband Deployment Funding Mechanism in NUSF-108, Progression Order No. 3.<sup>5</sup> That mechanism allows carriers to receive support after completion of deployment in eligible areas. The Commission's mechanism is to be commended as simple, flexible, and transparent. No party or member of the public has challenged or even publicly criticized the integrity or accountability of the post-deployment support mechanism established by the Commission under Progression Order No. 3.

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<sup>3</sup> RTCN Comments, NUSF-108, PO4 (December 18, 2018), p. 3.

<sup>4</sup> RTCN Comments, NUSF-108, PO3 (March 5, 2018), p. 5.

<sup>5</sup> 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 requirement, *Findings and Conclusions* (November 19, 2018), pp. 40-41.

The Commission is correct in establishing a mechanism for support under Progression Order. No. 4 similar to and consistent with the mechanism it established for support under Progression Order No. 3. As Ms. Brigham testified:

We support the commission's proposal to provide support only after broadband has been deployed. The commission recognized the need for more robust and transparent accountability by adopting the broadband deployment funding mechanism under Progression Order. No. 3 for legacy companies that still have locations to build with fiber facilities.

The RTCN supported that concept and post-deployment support mechanism in Progression Order No. 3.

Adopting a similar post-deployment support mechanism in this proceeding would ensure fairness and accountability. (48:2-15)

Witnesses for two parties opposed the staff proposal and argued that support should be advanced to carriers prior to deployment. The witness for the Rural Independent Companies ("**RIC Group**"), Dan Davis, noted that the staff "proposal would only provide supplemental NUSF support for capped locations after buildout of a location is completed. (26:18-20) Mr. Davis testified, "RIC has advocated and continues to advocate that NUSF support should be provided monthly on a prebuild basis to an A-CAM carrier serving capped locations." (26:21-24)

Great Plains, which is a member of the RIC Group, presented its own witness who challenged the staff's proposal for post-deployment support.

"Therefore, the commission proposal to provide some amount of support to capped locations *only after* broadband is deployed is effectively a policy which predetermines that

many rural customers in Nebraska will not receive broadband at speeds required by state policy.” (emphasis added) (74:15-21)

The Great Plains’ witness, Kenneth Pfister, did not explain how supporting capped locations only after deployment will predestine rural Great Plains’ customers to inadequate broadband speeds. Mr. Pfister used strong rhetoric in challenging the Commission’s proposal:

In my view, the commission’s proposal in Progression Order No. 4 to only provide some unknown future amount of NUSF support to a company after a company spends the tens of millions of dollars to construct and operate a broadband-capable network – an investment that realistically will never be recovered under the proposal – does not comport with state law.

Furthermore, it ignores statutory requirements and the commission’s own NUSF rules that Nebraska-eligible telecommunications carriers receive a level of supplemental support to continue to provide voice and other specific services to all customers in their service areas. (75:13-76:2)

While stating that the staff’s proposal violates official state policy set forth under law, Mr. Pfister did not explain his position. There are several flaws with Mr. Pfister’s assertions.

First, Mr. Pfister incorrectly characterizes the amount of future support as “unknown.” (75:15) The RIC Group has consistently supported the use of the State Broadband Cost Model (“SBCM”) as appropriate for modelling support in the NUSF-108 proceeding. The Commission has adopted that model for projecting costs eligible for Broadband Deployment support. While the support will not completely pay for the cost of deployment, as projected under the SBCM, no carrier subject to the limitations set forth in Progression Order No. 3, has complained about the adequacy of support. Two carriers have submitted applications for

support under the new mechanism. The Commission has proposed utilizing the same mechanism in this proceeding. The SBCM provides sufficient certainty as to projected costs. Its projections cannot correctly be characterized as “unknown.”

Mr. Pfister attempts to support his rather pointed legal challenges to the staff proposal by saying the Section 86-317 of Nebraska law authorizes the Commission to supplement federal support “and ensure that all Nebraskans, without regard to their location, have comparable access to services at affordable prices.” (76:3-9) He cites Section 86-1101. But Mr. Pfister does not even attempt to explain the accusatory conclusions he draws. He does not attempt to explain how the staff plan “does not comport with state law.”

Ms. Brigham explained that the apparent basis for Mr. Pfister’s comment is not true. Mr. Pfister apparently is trying to say that without more support up front, before construction, the Commission will deprive Great Plains customers of Broadband (and even voice) service. Ms. Brigham’s succinct testimony dispelled the very basis of this statement – that Great Plains customers will be denied broadband.

The notion that carriers cannot deploy without advance support has been disproven by history, by a history of carriers taking risks to serve rural customers and the commission should reject criticism that ignores that fact. (48:21-24)

Mr. Pfister also characterized the Commission’s proposal as *unfair* to customers residing and working in capped locations. (emphasis added) (70:16-20) Yet again, Mr. Pfister neglects to explain his argument. The Commission’s proposal treats customers served by ACAM carriers in the same manner as it treats customers of Legacy carriers under the mechanism established in Progression Order No. 3. Customers of both types of carriers will be treated the same by the Commission.

There is no difference in the mechanism established under Progression Order No. 3 and that proposed under Progression Order No. 4. If some rural customers will not receive Broadband services, it will not be due to unfair treatment by the Commission, it will be due to decisions made by the customers' carrier.

Carriers that have taken risks to serve rural customers applaud the Commission for proposing consistent state high-cost support mechanisms to supplement federal support, whether it is ACAM or Legacy support. The common support mechanisms can hardly be characterized as unfair.

**SBCM ESTIMATES SHOULD BE COMPARED AGAINST ACTUAL EXPENSES.**

In footnote 16 of its Order, the Commission notes that the SBCM estimates costs for fiber deployment. The Commission goes on to say that it would need to revisit the support calculation if the carrier uses a technology other than fiber to provide Broadband services. Ms. Brigham testified that if alternative technologies are utilized, then support should be calculated differently. For example, if a carrier used a less expensive alternative than fiber, the support should be reduced accordingly. (52:19-25)

The RTCN understands that a budget control mechanism, consistent with the mechanism applied in relation to Progression Order No. 3 support, will be applied to ensure cost containment, but evidence of construction must be sufficient to demonstrate technologies deployed.

**THE COMMISSION SHOULD VERIFY HUBB REPORTING BEFORE PROVIDING SUPPORT.**

Mr. Robbins said that the Commission believes HUBB data will be sufficient for Commission purposes. (15:22-16:6) The Commission must require additional evidence of deployed technologies.

HUBB reporting requirements, as Ms. Brigham testified, do not call for information about technology. A review of HUBB information relative to a capped location will not, by itself, indicate whether it has fiber connectivity, although technology can be inferred by the speeds offered at a particular location. Therefore, the RTCN urges the Commission to authorize modeled support for capped location only if a combination of HUBB and Form 477 information clearly indicates fiber connectivity.<sup>6</sup> Otherwise support should be adjusted accordingly.

**THE COMMISSION'S PROPOSED BUDGET CONTROL MECHANISM IS CONSISTENT WITH THE MECHANISM ESTABLISHED UNDER PROGRESSION ORDER NO. 3 AND WILL FACILITATE DEPLOYMENT WHILE CONTAINING COSTS.**

Mr. Robbins explained that the staff proposes to apply a budget control mechanism to deployment support. The proposed mechanism will pay some portion of the cost of the project (after accounting for federal support and benchmarked customer fees) commensurate with what it pays for Legacy areas where fiber has been deployed. (13:7-14:2) For that reason, staff proposes payment of approximately 18% of the remaining costs. (14:3-15:15)

As Ms. Brigham testified, "No party has challenged the sufficiency of support allocated in NUSF-108, Progression Order No. 3. No party has claimed that support allocated is too high or too low." (51:23 – 52:1) Certainly, members of the RTCN would not reject higher levels of support, both for areas where they have deployed fiber and areas where they are still deploying, but past investments by carriers have made both maintenance and operations of existing fiber and necessary new deployment feasible at current levels.

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<sup>6</sup> Prepared Testimony of Stacey Brigham, NUSF-108, PO4, for hearing April 30, 2019. Confirmed by Ms. Brigham at hearing. (45:21-46:15) Received into evidence as Hearing Exhibit 3. (53:15-20)

At the hearing, the RIC Group witness challenged the proposal to pay 18 cents on the dollar of new deployment costs, remaining after federal support and the customer charge were factored. (36:18-37:6) On cross-examination by Commission Legal Counsel, Mr. Davis was asked how many cents on the dollar would be enough to incentivize deployment. He responded that no less than full funding would be sufficient. (40:11-41:20)

To suggest that carriers will not continue deployment without full advance funding by the government, is contrary to generally observable facts. As Ms. Brigham said, the notion that deployment will not occur without full advance support has been disproven by history. It has been disproven by the conduct of many rural telecommunications carriers in Nebraska, including several RIC Group members, which have taken out RUS loans, and made private investments, and taken risks to serve rural customers without a guarantee of full funding. (48:21-25).

Given the costs of deployment, providing full advance support utilizing state ratepayer contributions is simply not feasible from a political standpoint. Mr. Davis' position would require the Commission to ask the ratepayers of the state to front the money necessary to complete Broadband deployment in all rural areas. The Commission has instead wisely proposed a paradigm that will accelerate Broadband deployment without public revolt.

Further, even project-based grant programs commonly require a match, making the funding they provide less than 100% of the total. The recently implemented RUS Reconnect Program, for example, has a "100% grant" fund that requires an applicant to provide a matching contribution of at least 25% of the cost of the overall project.<sup>7</sup>

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<sup>7</sup> United States Department of Agriculture ReConnect Loan and Grant Program, *About Funding*, <https://www.usda.gov/reconnect/about-funding> (Last retrieved 5/28/19).

**SUPPORT FOR CAPPED LOCATIONS SHOULD REMAIN SUBJECT TO THE COMMISSION'S EARNINGS TEST, UTILIZING THE COMMISSION'S EARN FORM.**

As Ms. Brigham testified, the RTCN urges the Commission to subject support for capped locations to the Commission's earnings limitations. This should be done utilizing the Commission's EARN form. Not only is applying an earnings limitation prudent as it relates to budget control, but it will also ensure avoidance of duplicative federal and state support.  
(53:1-10)

**THE COMMISSION SHOULD MAINTAIN SEPARATE ALLOCATIONS FOR PROGRESSION ORDER NO. 3 AND PROGRESSION ORDER NO. 4 CARRIERS.**

In Progression Order No. 3, the Commission established mechanisms for supporting the ongoing costs of providing services by all rate-of-return, both Legacy and ACAM, carriers in eligible areas where voice and Broadband services were available. The Commission also established the mechanism for supporting new deployment by Legacy carriers in currently underserved areas.

The allocation of support established under Progression Order No. 3, is critical to ensuring the continued reliability of existing infrastructure. Similar to relatively low maintenance budgets for roads, maintenance of existing fiber and corresponding electronics must not be neglected if we are going to protect the investments made to provide reliable service. The state cannot afford to go backwards in areas where it is already ahead.

Support for capped locations should not jeopardize ongoing support for carriers that have been responsible stewards of past federal and state support and have built out Broadband-capable facilities in their service territories.

To ensure that such ongoing support is not jeopardized, the RTCN recommends the Commission maintaining separate funds for Progression Order No. 3 and Progression Order No. 4 recipients. The NUSF Act calls upon the Commission to ensure predictable and sufficient support for high-cost service.<sup>8</sup>

Commission staff has calculated that the support generated through the mechanism it has proposed would total approximately \$5.2 million annually. (15:9-15) Provided that does not diminish funds allocated in Progression Order No. 3, the RTCN supports such proposal.

Both Great Plains and the RIC Group appear to support separate allocations.<sup>9</sup>

### CONCLUSION

The RTCN commends the Commission for its thoughtful work in this investigatory proceeding and looks forward to continuing to cooperate to ensure that telecommunications services are deployed in rural areas as expeditiously as feasible.

DATED: May 29, 2019

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<sup>8</sup> See NEB. REV. STAT. § 86-323(5).

<sup>9</sup> Brigham, Prepared Testimony, p.7:12-23.

RURAL TELECOMMUNICATIONS  
COALITION OF NEBRASKA

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that an original and five copies of the above ***Post-Hearing Comments*** of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on May 29, 2019, and a copy was served via electronic mail, to the following:

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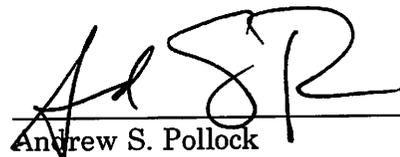
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