

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
)
)
)

COMMENTS

DEC 18 2018

Nebraska
Public Service Commission

The Rural Telecommunications Coalition of Nebraska ("RTCN")¹, by and through its attorneys of record, submits these comments ("**Comments**") in response to Progression Order No. 4 ("**PO4 Order**"), entered by the Public Service Commission ("**Commission**") in the investigatory proceeding docketed NUSF-108 on November 19, 2018. In the PO4 Order, the Commission announced its intention to further study areas where rate-of-return carriers have elected Alternative Connect America Model ("**ACAM**") support, which has currently been capped by the Federal Communications Commission ("**FCC**") at levels reportedly insufficient to fully support deployment of infrastructure capable of delivering broadband service, defined by the Commission as 25 Mbps down and 3 Mbps up ("**25/3 Mbps**" or "**Broadband**"). In its PO4 Order, the Commission posits seven specific questions, which are restated below. The RTCN will provide comments in response to these questions.

1. How should the Commission determine the amount of funding that should be made available for the identified capped locations?

In its consideration of Progression Order No. 3, in this same investigation, the Commission recognized the importance of supporting past investments carriers have made in their networks to enable them to provide Broadband service. In considering Nebraska

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Universal Service Fund (“NUSF”) support for service in capped locations, the Commission should remain mindful of the importance of supporting service to areas that carriers have made past investments necessary to provide Broadband service, areas that the Commission provided increased support for through the *Findings and Conclusions* Order, released under Progression Order No. 3 on November 19, 2018 (“**PO3 Findings and Conclusions**”). The Commission’s decision to increase funding for those areas was a decision critical to ensuring continued reliable and affordable service in those areas, given recent significant reductions in federal support for the same areas, which left carriers facing difficulty servicing debt secured to invest in those areas, upgrading necessary equipment, and retaining sufficient personnel. All Commission action in the present proceeding should reflect the Commission’s past recognition of sufficient ongoing support for areas that currently have access to Broadband.

Further, the Commission should stay the course it charted in considering Progression Order No. 3, holding to the position that it should continue to apply an earnings test to ensure the capped rate of return is not exceeded. The Commission’s continued use of the EARN form is imperative to ensure that federal support for capped locations, when combined with potential state support for those same locations, does not put the carrier in an over-earning position.

2. Should the Commission limit the number of locations that would be able to receive support?

In its PO3 Findings and Conclusions, the Commission established an eligibility requirement of high-cost support at a census block level. Only census blocks outside of incorporated cities are eligible. Census blocks where an unsubsidized competitor is providing wireline services are not eligible for new support. These eligibility requirements should be maintained.

Additionally, while not a factor disqualifying locations from support, the incumbent carrier's deployment of Broadband-capable systems qualifies the carrier for a combination of CapEx and OpEx support, while areas that do not have Broadband may only receive the OpEx portion of support. The Commission permitted carriers with areas that do not have access to Broadband service to apply for Broadband deployment support in the form of reimbursement for actual expenses associated with the deployment. The Commission should not deviate from this approach, which was adopted in the PO3 Findings and Conclusions released less than a month ago.

Areas receiving full support from the FCC should not be eligible for state support. Nor should areas be eligible for support where the incumbent carrier has not demonstrated a commitment to deploying facilities necessary to provide Broadband service.

The Commission should consider a limitation on the time an incumbent carrier is permitted to complete deployment of Broadband-capable facilities. If deployment is not completed in such time period, the Commission should consider support for competitive alternatives to ensure deployment of Broadband facilities in unserved and underserved areas, consistent with the provisions of Neb. Rev. Stat. § 86-330.

Similarly, state support should be limited by an earnings test, utilizing the Commission's EARN form.

The Commission's ultimate objective in this proceeding should be consistent with the purposes of the Nebraska Universal Services Fund Act ("NUSF Act"), in which the Legislature declared:

Consumers 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, including interexchange services and advanced telecommunications and information services,

that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.²

3. Are additional measures necessary to ensure that support is not duplicative?

While the RTCN does not have specific additional proposals at this time, at a minimum the EARN form should continue to be utilized.

4. What limits if any should be placed on the allocation of support?

As stated above, allocation of support for capped locations must not jeopardize ongoing support necessary to protect investments made to deploy facilities that are currently Broadband-capable. The RTCN recommends the Commission establish a specific allocation for supporting cap locations, subject to limits the RTCN has already discussed in responses to questions above.

Further, such allocation need not and should not entail the formal establishment of a separate fund and should not be prioritized over allocations for ongoing support and Broadband deployment support, which the Commission made in the PO3 Findings and Conclusions. Should the fund balance grow, for example, as is expected following implementation of NUSF-111, additional funds – those exceeding current levels – should not automatically be allocated exclusively toward support for capped locations, but rather should be allocated proportionally and fairly to all elements of high-cost support for rate-of-return carriers.

5. Should the Commission wait and see how the FCC resolves the requests for additional support?

² NEB. REV. STAT. § 86-323(3).

Just last week, the FCC released a 132-page Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration (“FCC’s December 2018 Order”),³ which specifically addresses federal support levels for current ACAM location, and announces a second ACAM offering that will be made after the first of the year.

Not only should the Commission forestall final determination in this investigatory proceeding until at least the time that current legacy carriers have to make an election for the second ACAM offering, the Commission should permit at least one other round of comments, after carriers have sufficient time to digest the FCC’s December 2018 Order and following release of the second ACAM offering.

The RTCN refrained from stating elsewhere, it’s belief that thorough analysis of the FCC’s actions is needed in order to properly respond to the seven questions the Commission posited in its PO4 Order. In order to allow parties to this investigatory proceeding to fully understand their positions and properly articulate those positions in a manner most conducive to establishing a complete record on which the Commission may make an informed decision in this proceeding, the Commission should allow additional rounds of comments.

6. Should the Commission account for federal support received for locations that were not built to?

To the extent carriers receive federal support for locations that were not built to, the level of such support should be offset against any state support the Commission might offer.

Further, Commission support for new deployment to unserved and underserved areas should be conditioned upon actual deployment of Broadband-capable facilities. For capped locations, the method of providing support should replicate the method adopted under the PO3 Findings and Conclusions, which the Commission has referred to as the Broadband

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Deployment Funding Mechanism.⁴ This mechanism requires carriers to project deployment costs, utilizing the SBCM as a proxy, then seek reimbursement from the Commission for the actual costs associated with deployment.

The Commission should not incent carriers to strand any customer locations in a census block. The Commission should not follow the federal approach of allowing carriers to essentially satisfy federal build-out requirements for some census blocks by building in other census blocks. Such an approach is contrary to the principles dictated by the NUSF Act, which requires the Commission to ensure that consumers in rural areas of the state have comparable access to information services.⁵

7. Should the Commission provide support to locations at levels that are commensurate with support provided to non-ACAM areas statewide?

The level of support for capped locations should take into account many factors and limitations recommended and discussed above, including not jeopardizing 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; subjecting support to an earnings test, utilizing the EARN form; and providing support only in the form of reimbursement for actual expenditures required to deploy Broadband-capable facilities. Further, as stated above, support for such locations should come from a specific allocation made by the Commission.

The focus of the Commission in the PO3 Findings and Conclusions was rightly on the consumer. The Commission should not shift its focus in the present investigation. As stated in response to the immediately preceding question, the purpose of the NUSF Act is comparable access. The NUSF Act requires support be distributed to ensure this policy

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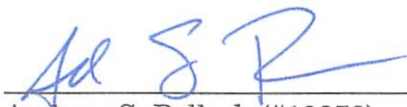
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DATED: December 18, 2018.

**RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA**

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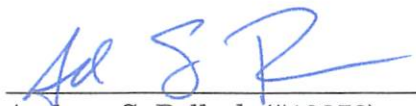
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