



BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own Motion, to establish reverse auction procedures and requirements. Application No. NUSF-131

REPLY COMMENTS OF THE NEBRASKA RURAL BROADBAND ALLIANCE

INTRODUCTION

The Nebraska Rural Broadband Association ("NRBA"),¹ through its attorneys of record, submits these Reply Comments ("Comments") in response to the Order Opening Docket and Seeking Comments ("Order") entered by the Public Service Commission ("Commission") on March 14, 2023, in the above proceeding.

COMMENTS

In its Reply Comments, the NRBA will make observations about the general consistency on core issues among the original comments submitted by the NRBA, the Nebraska Rural Independent Companies ("RIC") and Windstream Nebraska, Inc. ("Windstream") on fundamental issues. This relative harmony strongly suggests the need for significant reform of present systems of allocating and distributing support from the Nebraska Telecommunications Universal Service Fund ("NUSF"). The NRBA will refrain from getting into depth about the particular issues the Commission has raised, but rather will give recommendations of a more administrative nature.

¹ For purposes of this proceeding, the NRBA consists of the following carriers: Cambridge Telephone Company; Glenwood Telephone Membership Corporation; Glenwood Network Services; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC; Mobius Communications; and Pinpoint Communications.

Core Issues

In this proceeding, the Commission is investigating how best to allocate limited funds to accomplish the original purpose of the NUSF Act – that is, to provide affordable and reliable telephone and broadband services to all Nebraskans, including those in rural areas. Based on the original comments submitted by all stakeholders, the NRBA respectfully recommends the Commission focus its investigation on the following core topics:

- How should NUSF support be allocated to better incentivize broadband infrastructure deployment in rural areas that remain unserved and underserved?
- How should NUSF support be allocated to ensure the long-term sustainability of the broadband infrastructure being deployed through various grant-type programs?

Other Important Issues

The NRBA's recommendation to focus on those two core issues in no way suggests the other issues are unimportant. Rather, we believe that specifically honing in on the above core issues will lead to better use of time and resources by the Commission and stakeholders. The issue of participation by fixed wireless providers might be better considered in a separate proceeding, so that parties can focus resources on matters that are key to them. Doing so would merely require a progression order bifurcating the proceeding. Why make fixed wireless providers, for example, sit through a hearing that focuses on complex economic allocation questions that do not appear critical to such providers? From the point of view of the NRBA, the question of fixed wireless provider participation is fairly black and white. The NRBA generally supports the positions made by the RIC in its original comments. Based on those comments and others submitted, as well as reply comments, the Commission might ask

the parties whether a hearing is necessary or whether the Commission might determine the question based on written comments, like a court might decide some questions on the basis of briefs alone. Since this investigation is not a contested case, a hearing is not called for by law or regulation. The Commission could issue a final order more expeditiously on the issue of fixed wireless participation.

Issues relating to participation by providers that return support could be handled the same way. Taking this approach would clear the way for the more thorough, evidence-intensive investigation warranted on the core issues identified above.

Allocation of NUSF Support

Generally, the NRBA, RIC, and Windstream's comments support the notion that the present means of allocating NUSF support is no longer viable, especially as historical service territories change hands through programs such as the Bridge, Capital Projects, and BEAD.

RIC asserts that the minimum bidding units ("MBUs") – established by the Commission for purposes of allocating broadband deployment support ("BDS") in Price Cap territories – are too large and should be contiguous. The NRBA does not disagree with these assertions. We agree the territory for which state grant-based funding is awarded – regardless of the program – should be contiguous. RIC and Windstream assert that reserve prices for MBUs are too low. The NRBA does not disagree.

The RIC gives thoughtful consideration to the Commission's suggestion to increase the reserve price to three times the SBCM investment for all eligible locations within an MBU. The NRBA agrees with the RIC's thought-provoking comments that such increase would be "subjective," yet might also be "reasonable." These comments, out of context, at first appear incongruous. On deeper reflection, however, these words shed light on the magnitude of the general issues the Commission has wisely raised. The Commission has suggested

increasing the reserve price by a subjective, apparently arbitrary rate. It very well could be that the rate turns out to be reasonable, as the RIC said.

Broadband Deployment Support

What the RIC has demonstrated is that reform of what is broadband deployment support (“BDS”) allocation for price cap carriers needs to be seriously undertaken. While it might be defensible to temporarily increase the size of MBUs and increase the reserve price for MBUs as the Commission suggested, deeper investigation into the fundamentals of BDS should be conducted expeditiously. The Commission needs to consider such questions as: Should any future NUSF support go towards BDS in historic Price Cap territories? With substantial funding through the Bridge program, Capital Projects, and BEAD, is the amount allocated to BDS for Price Cap territories worth the administrative costs and other challenges? Would such funding be better utilized helping sustain rural networks?²

If BDS support is retained, the Commission will need to reexamine whether the allocation between BDS and support for ongoing costs (associated with network operations and maintenance) needs to be adjusted; and, if so, how to design the appropriate methodology for determining the split between BDS and ongoing support. Is the SBMC still the best basis for any allocation? How should BDS complement other grant-funding for broadband deployment, such as Bridge, Capital Projects, and BEAD?

The Commission would then also need to examine how to allocate BDS. In the past the NRBA has advocated that there be no effective presumption that the ILEC is entitled to BDS support for its historical carrier of last resort (“COLR”) territory, especially given ILECs have had a statutory duty since 1997 to provide universal telecommunications and broadband services in those COLR territories. The Commission has been reticent to squarely address

² By posing these questions, the NRBA is not necessarily suggesting particular answers.

such questions, including the past track records of ILECs in making grants. The NRBA asserts this has been a factor in slowing broadband deployment. There is too little competitive entry, and the Commission's current methodologies and regulatory uncertainty are partly responsible. Reform is needed to accelerate deployment. Fundamental questions like whether to even continue the process of establishing MBUs and reserve prices need to be considered and thoroughly examined. Is the process worth the cost? Is there a better way to allocate support? What methodology should be employed to create consistency and predictability?

Transition

If BDS support is to be continued, the split in allocations between BDS and ongoing support unquestionably will need to be modified over time. As Nebraska's broadband network is deployed, funding will need to shift from deployment costs to the ongoing costs of sustaining the network. Designing such transition methodology would demand sophisticated expertise and precision.

Critical Ongoing Support

When it comes to the Commission's general inquiry into issues relating to ongoing support, the comments of the NRBA and RIC resound to make clear the importance of carefully designing support distribution mechanisms to ensure that Nebraska is able to sustain the network we are now building.

The NRBA believes it is time for the Commission to re-examine the fundamentals of allocating ongoing support. Should the SBCM basis be continued, reformed, or overhauled? Both the NRBA and RIC recognize the critical connection between high-cost support and COLR obligations. The NRBA agrees with the RIC that the Commission should continue to use the existing SBCM methodology to determine ongoing support until this investigation of the methodology is completed. Transition must be carefully, but expediently carried out.

Conclusion

As the NRBA said in its original comments, the fundamental questions relating to allocation of NUSF support – for deployment and ongoing costs – demand more than superficial study and may require expert economic analysis. The Commission is wise to seek outside input. In the past, the Commission has retained professional services from economists and stakeholders have presented expert economic evidence on matters involving the fundamentals of NUSF support. Review of the stakeholders’ comments suggests consensus that such depth of investigation is warranted now. An evidentiary hearing certainly appears necessary. Only through such objective, fact-based investigation will we come up with methodologies and allocations that are indeed fair and reasonable.

In closing, the NRBA strongly urges the Commission narrow the focus of this investigation and move forward expeditiously with reform. A workshop should be convened soon to facilitate collaboration among the Commission and stakeholders to determine the scope of the investigation, the issues to be examined, the type of expertise that will be needed to sensibly examine the issues, and the best process to expediently and properly complete needed reform.

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CERTIFICATE OF SERVICE

The undersigned certifies that an original of the above ***Reply Comments*** of the Nebraska Rural Broadband Association were filed with the Public Service Commission on May 5, 2023, and a copy was served via electronic mail, on the following:

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