

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public) Application No. NUSF-139
Service Commission, on its own Motion, to)
consider appropriate modifications to the)
high-cost distribution and reporting)
mechanisms in its Universal Service Fund)
program in light of federal and state)
infrastructure grants.

**COMMENTS OF THE
NEBRASKA RURAL BROADBAND ALLIANCE**

The Nebraska Rural Broadband Association (“NRBA”),¹ through its attorneys of record, submits these *Comments* (“Comments”) in response to the *Order Opening Docket and Seeking Comments* (“Order”) entered by the Public Service Commission (“Commission”) on August 29, 2023, in the above proceeding. On October 12, 2023, the Commission entered an *Order Bifurcating Schedule for Comments and Extending Comment Deadline in Part* (“Bifurcating Order”). In the Bifurcating Order, the Commission invited interested parties to submit comments on Section II.B, and on issues 1, 2 and 6 of Subpart II.C. of the Order. The NRBA comments below address the issues identified in the Bifurcating Order.

Procedural Recommendation

Before weighing in on the substantive questions for which the Commission has invited public comment, the NRBA would strongly suggest that the Commission conduct a series of workshops to address the key issues related to high-cost reform. After the final round of comments are received on December 22, most of the issues should be well framed and the parties’ positions known. After that point, the NRBA believes workshops will be more conducive to fine-tuning the Commission’s approach to issues on which there is general

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 dba Stealth Communications; Mobius Communications; Pinpoint Communications; Plainview Telephone Company; Stanton Telecom, Inc.; Town & Country Technologies; WesTel Systems, dba Hooper Telephone Company.

agreement and to tackling those issues on which there is disagreement. Workshops will allow parties to collaboratively discuss and work through issues on which they disagree. Further, such workshops would allow the Commission and stakeholders to delve into more technical and granular matters. Formal Commission hearings are not conducive to productively addressing such matters. This approach would in no way diminish the role of the Commission. Rather, it would allow the Commission to facilitate the discussions as well as participate in them. The NRBA believes this approach will both save time and produce more satisfactory and sustainable outcomes.

NUSF Goals and Strategic Plan Update

In Section II.B of its Order, the Commission asked parties to comment on whether it should revise the goals established in a 2016 Strategic Plan “for advancement of universal service in the broadband age.”² In particular, the Commission asked whether it should include a goal of affordable broadband service.³ The Commission also inquires as to whether it should update its goals “in a manner to specifically ensure a certain level of quality access to broadband and telecommunications services is being provided.”⁴ Finally, the Commission asked whether “sustainability” should be added to the universal service Strategic Plan goals.⁵

More than twenty-five years ago, the Nebraska Legislature essentially enshrined all three of those principles into state statute. The 1997 Nebraska Telecommunications Universal Service Fund (“NUSF”) Act (“NUSF Act”) declared it the policy of the state to ensure that all Nebraskans have access to “quality” broadband services at “affordable rates.”⁶

² In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology, NUSF-100/PI-193, *Order Seeking Further Comments* (April 5, 2016), pp. 5-6.

³ Order, p. 9

⁴ Id.

⁵ Id.

⁶ Neb. Rev. Stat. § 86-323(1).

Affordability

The NUSF Act clearly calls for supported service offerings, including broadband, to be affordable.⁷ Adding a goal to the Commission's Strategic Plan would appear well-advised. Carriers receiving NUSF support should be held to the affordability standards called for under the NUSF Act. As a general proposition, rates that are reasonably comparable to rates charged for similar services in urban areas should be required.⁸

Quality Service

As to the question of whether the Commission should update the goals of its Strategic Plan to ensure service quality, the NRBA believes current requirements relative to quality telecommunications service are adequate. The Commission should zealously enforce those requirements and is right to investigate network failures that cause such troubles as 911 outages and otherwise jeopardize the public interest.

The NRBA applauds the Commission for bringing attention to the distinction made in the original NUSF Act, which called not only for quality telecommunications services, but also for quality information services.⁹ At the time the NUSF Act was adopted, "broadband" was not a term of art or even commonly used. The Legislature called for quality "telecommunications and information services" at affordable rates throughout the state.¹⁰ Information services have been referred to as Internet services or Broadband services in statute, regulation, and numerous Commission orders for several years now. Therefore, the Commission would be standing on the solid ground of precedent to give emphasis to the need

⁷ See Neb. Rev. Stat. §§ 86-323(1) and 86-324(2)(a).

⁸ Neb. Rev. Stat. § 86-323(3).

⁹ Neb. Rev. Stat. § 86-323(1).

¹⁰ Id.

to utilize NUSF funding to support access to both quality telecommunications services and quality broadband services in all regions of the state.¹¹

Further, the current regulatory requirements for ensuring quality broadband are straightforward and enforceable. Essentially, to qualify for public support, the carrier must provide reliable access to Internet services at speeds of at least 100 Mbps download and 20 Mbps. Most parties submitting comments in this proceeding support the same standard for all NUSF support, including support for the ongoing cost of operations and maintenance.¹² The Commission's current approach to verifying that speeds are sufficient to justify support appears to be working relatively well. Improved speed data and mapping will help ensure quality service into the future.

Sustainability

The Commission has also asked parties to weigh in on whether the goal of “sustainability” should be added to the Strategic Plan. Without question, the sustainability of telecommunications and broadband infrastructure is critical to the future vitality of Nebraska. Long before considering “sustainability” as an official goal in this NUSF-139 investigation, the Commission prudently recognized the reality that a business case cannot be made to continue to serve most rural areas of Nebraska. Support for the ongoing high costs of operating and maintaining these rural networks has been critical to advancing universal broadband service since the passage of the NUSF Act and remains so.¹³ In 2023, the Legislature made this plain with the passage of the Rural Sustainability Act.¹⁴ That

¹¹ Neb. Rev. Stat. § 86-323(2).

¹² See comments filed by interested parties in this proceeding on or about September 29, 2023. In its comments, the NRBA recommended that ongoing support be transitioned out for non-100/100 locations by June 30, 2025, consistent with what the RIC group had advocated in CPF comments. (p.4) The RIC, however, opposed this deadline at the October 24 hearing in NUSF-139. The RTCN voiced support for the NRBA's position.

¹³ Operations and maintenance costs encompass a broad swath of expenses – from loan service to unexpected costs associated with repairing cuts of unmarked fiber.

¹⁴ LB683, sec. 12 (2023), codified at Neb. Rev. Stat. §§ 86-1501 through 86-1507.

legislation emphasized the important role of the NUSF in providing for the long-term sustainability of broadband infrastructure that is being constructed using public funds at all levels. The Commission is right in emphasizing the key role the NUSF has, and will continue to have, in sustaining the broadband network being built through several programs, such as the Nebraska Broadband Bridge (“Bridge”), Capital Projects, and Broadband Equity, Access and Deployment (“BEAD”), not to mention American Rescue Plan projects administered by cities and counties. Adding long-term network sustainability as an objective to the Commission’s Strategic Plan is important to ensuring that the focus of NUSF be the support of the ongoing high-costs of providing broadband services in rural areas.

Objectives Driving Modifications to High-Cost Program

In Section II.C of its Order, the Commission seeks comments on several topics related to updating the high-cost program framework and reporting mechanisms.¹⁵ These topics include incentives for carriers to make infrastructure investments, transitional mechanism for support once the broadband network is fully built out, revision of the portable support mechanisms for high-cost areas where competitors are deploying networks, enhancing consumer protections, ensuring affordability in rural areas, creation of oversight mechanisms to coordinate NUSF and other deployment funding, and simplification of ETC reporting measures.¹⁶ The NRBA will address the specific questions related to subsections 1, 2, and 6 raised by the Commission in turn.

Incentivization of New Broadband Investment

The Commission specifically asks how it should revise the high-cost distribution mechanism to incentivize continued investment related to ongoing and maintenance support

¹⁵ Order, p.9.

¹⁶ Order, p.9.

in areas where broadband infrastructure has been and will be deployed.¹⁷ Once broadband capable networks are deployed, they must be maintained. While the focus on deployment programs like the Bridge program is on reaching unserved and underserved locations, the focus in the NUSF should be on the ongoing expenses of the network, particularly because assets depreciate, get damaged, or become obsolete over time. Additionally, the costs of labor, construction, and materials also generally increase over time. Therefore, the funding of broadband networks should not be considered a “one-time” expense.

The NRBA commends the Commission for its forward-thinking approach. Without ongoing operation and maintenance (“O&M”) support, carriers in high-cost regions may be forced to focus their income where it is mandatory (such as paying off debt, labor, etc.) and less attention will be given to ongoing maintenance and replacement of aging and/or obsolete assets. This could be more expensive in the long run. When maintenance falls short, sometimes assets fail sooner and therefore must be replaced, in part or entirely, sooner than scheduled. Additionally, when O&M budgets fall short, ratepayers experience more frequent outages, delays in customer service, and lack of access to newer technology and service tiers.

Relying on customer revenues to cover these expenses is not feasible in high-cost, low customer density environments. The harsh reality is that in many remote high-cost areas, customer volume is decreasing due to rural outmigration. Broadband providers cannot rely on increasing end-user revenues to fund their O&M budgets. Grants and subsidies then must fill in the gaps in order to provide customers with the level of service necessary to support Nebraska’s industry and economic health.

Further, the federal government continues to offer various opportunities to providers for broadband deployment funding support. Any continuation of deployment support from

¹⁷ Order, p. 12.

NUSF would likely duplicate those efforts. Therefore, NRBA recommends ending the NUSF deployment support component and instead shifting support to on-going operations and maintenance.

By shifting its funding efforts away from deployment costs and toward ongoing O&M expenses, the NPSC will be better able to ensure NUSF support goes to areas in most need for the future. There are several alternatives for funding mechanisms available to NPSC. Model-based support, earnings studies and rate cases are just some of the most commonly used approaches by commissions for state USF and each has its own set of pros and cons. Whichever funding mechanism the Commission selects, it needs to be structured so providers to make informed decisions on providing broadband and voice services for their consumers, which is needed to ensure long-term viability of these services and ultimately Nebraska's economy.

The NRBA further specifically recommends more transparency to the providers as to the details involved in the calculations of the support. The existing NUSF model is a complicated internal mechanism that is not transparent. As broadband technology continues to evolve, more transparency, stability, predictability, consistency, fairness, and adaptability will be necessary for an equitable cost allocation. For cost models, relevant factors such as what input years were used for the development of asset costs, whether any inflationary factors have been applied to bring those costs up to current and/or future costs should be accessible and identifiable for providers. More transparency should also include which specific expenses are eligible for funding and corresponding basis for those expenses (ensuring that these are representative of Nebraska-specific cost considerations), whether customer take-rates are taken into consideration, whether any return on investment is included in the cost model, etc. If the model consists of confidential information such that it

cannot be made public without violating NDAs, the Commission should consider developing its own model so that more transparency is established.

In order to achieve this, we believe workshops with stakeholder representatives could best be utilized to undertake this process in the most efficient manner, where feedback and ideas are exchanged quickly and efficiently. The Commission should investigate the cost model. To do so, the Commission should also conduct workshops with stakeholders to determine the scope of work necessary, the appropriate expertise the PSC needs to retain by contract to perform development work, the proper process for allowing and receiving stakeholder input at all stages of development.

Lastly, the Commission should consider clearly defining eligible locations for ongoing support to meet the needs of Nebraska's consumers in a fair and equitable manner. The Commission should consider what areas and locations are in need of O&M support and the metrics for qualification, such as speeds of 100/100 or 100/20 Mbps, etc. Service quality and sustainability are the paramount objectives of the NUSF.

The Commission specifically seeks comment on the appropriate process for updating the State Based Cost Model ("SBCM") to account for current costs.¹⁸ The SBCM is a proprietary cost model owned by CostQuest. Ideally, the Commission could exclude inputs or costs it no longer wishes to support and include or increase those it does. According to CostQuest's publicly available information on the topic, however, O&M expenses are approximated based upon a percentage of Capital Expenditures ("CapEx"). Therefore, the Commission should conduct an investigation into the determination of CapEx amounts generally and into the methodology under which O&M expenses are included in the SBCM. This information will enable the Commission to identify cost bases and inputs which could

¹⁸ Order, p. 12.

or should be changed, removed, or added. Importantly, the SBCM is based on the CACM/ACAM model, and most modifications were made between the years 2010-2014, nearly a decade ago. Therefore, the Commission should use the information from the investigation to particularly review whether the CapEx costs truly represent current costs and whether the ability to update them, if any, is based on an appropriate inflationary factor.

The Commission seeks comment on whether it should initiate a process to have CostQuest revise cost data, or alternatively, to open a broader proceeding to consider input/output cost model modifications.¹⁹ The Commission will likely need to engage CostQuest or some other economic modeling company if the Commission continues to utilize a cost model for NUSF, due to the complexity of the analysis. The NRBA encourages the Commission to create transparency in cost modeling so recipients and contributors to the NUSF may have sufficient notice as to how the operation and maintenance of assets is being funded. A separate proceeding and further workshops may be warranted, as previously mentioned in these comments, whereby experts can assist the Commission in determining precisely which expenses are to be modeled and the amount of which expenses should be supported with NUSF.

The Commission seeks comment on whether it should ensure that costing data is consistent with the BEAD program by obtaining and utilizing updated cost model estimates that CostQuest has prepared for the National Telecommunications Information Administration.²⁰ The NRBA encourages the Commission to use updated and accurate cost model estimates, revised pursuant to a third-party analysis as mentioned above. However, the Commission should tailor a cost model to the NUSF, rather than to any deployment

¹⁹ Order, p. 12.

²⁰ Order, p. 13.

program. The BEAD program is a deployment program, not an O&M support program, and therefore is not a relevant correlative for cost model estimates in this case.

The Commission seeks comment on whether costs should be adjusted for inflation.²¹ The NRBA strongly recommends that costs be adjusted for inflation. The Federal Communications Commission (“FCC”) did not include inflation in its Enhanced A-CAM Program (“E-ACAM”) due to budget concerns. However, factoring in inflation provides a more accurate picture of costs incurred by the carriers. It does not take longer than a few years of inflation for costs to be underestimated by at least 15-20%.

There are many inflationary indexes that can be used. Telecom construction inflation tends to be greater than the Produce Price Index (PPI). The NRBA recommends utilizing an index or developing an index that is more weighted toward labor (as opposed to end-user retail prices) and construction. This will ensure more accurate inflation information is being used. Furthermore, any NUSF cost model should ensure that the construction prices/inputs used are representative of the locations where support will most likely be directed (high-cost/low customer density) rather than an average or prices more representative of high-economy of scale areas.

Ongoing Support Transitional Mechanism

The Commission seeks comment on whether the current \$52.50 benchmark reflects realities of rates charged customers and take rates, and whether the Commission should conduct an analysis of expected revenues.²² Under some cost models (including E-ACAM), this end-user revenue threshold is used as a baseline for determining support. However, E-ACAM provides support for more than just O&M as it is just one component of the cost model.

²¹ Order, p. 13.

²² Order, p. 14.

Therefore, when developing a baseline for determining O&M support it would need to be an allocated portion of the expected end-user revenue since not all end-user revenue goes purely to support O&M. Developing such a number will require further analysis.

The \$52.50 non-Tribal funding threshold is also out of date. The FCC prepares an annual Urban Rate Survey that the NPSC could utilize, or instead it could perform a study of state-specific end user revenues for required service levels associated with NUSF. In addition, data for high-cost areas should be examined in order to determine an appropriate take rate. The FCC has used a 70% take rate in some support calculations, but Nebraska should consider whether this is accurate for the state.

A. Coordination to Ensure the NUSF Is Not Providing Duplicative Support

The Commission seeks comment on whether there is a need to coordinate NUSF high-cost support to make sure it is not duplicating other state/federal support including BEAD and E-ACAM, and whether there is additional data the Commission should collect, if any, to avoid such duplication.²³ Current deployment programs are currently either structured, or being structured, in such a way as to avoid the duplication of funding which the Commission is concerned about (cf. BEAD and Bridge). The NRBA continues to encourage the Commission to completely eliminate the NUSF Broadband Deployment Support (“BDS”) component, consistent with the timeline proposed in the NRBA’s previous comments and testimony.²⁴ Elimination of NUSF BDS support would make any concern regarding duplication of deployment support unnecessary.

Conclusion

²³ Order, p. 24.

²⁴ Hearing October 24, 2023; NRBA Comments in Application NUSF-139, September 28, 2023, at p. 5.

The NRBA appreciates the opportunity to submit these comments to the Commission and urges the Commission to expeditiously proceed through this Application. The NRBA respectfully reserves the right to supplement these comments in any reply comment period.

DATED: November 17, 2023

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CERTIFICATE OF SERVICE

The undersigned certifies that an original of the above *Comments* of the Nebraska Rural Broadband Association were filed with the Public Service Commission on November 17, 2023, and a copy was served via electronic mail, on the following:

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