

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service)
Commission, on its Own Motion, to Consider)
Appropriate Modifications to the High-Cost) Application NUSF-139
Distribution and Reporting Mechanisms)
in its Universal Service Fund Program in)
Light of Federal and State Infrastructure Grants.)

COMMENTS OF COX NEBRASKA TELCOM, LLC

Cox Nebraska Telcom, LLC (“Cox”) hereby files the following comments for the Nebraska Public Service Commission’s (“Commission”) consideration in the above-captioned docket, NUSF-139. These comments are being filed pursuant to the Commission Order entered August 29, 2023 and the Hearing Officer Order subsequently entered October 12, 2023. Cox thanks the Commission for opening this docket seeking input whether modifications to the Nebraska Universal Service Fund (“NUSF”) are warranted. While Cox is not a recipient of NUSF high-cost support, its telephony customers pay into the NUSF. As such, Cox is interested in the fund’s goals, its purpose, and the development of sound policies.

Subpart B. NUSF Goals and Strategic Plan Update

The NUSF was initially created in 1999 via Application C-1628 as a mechanism to lower intrastate access charges.¹ As funding objectives have changed over the years, a review of the fund’s present and futuristic goals is sensible. It is an especially ripe time for the Commission’s review given the new communications landscape that has been created by the unprecedented infusion of federal capital to construct broadband networks in Nebraska. Cox thanks the

¹ *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charger reform*; Application C-1628, Findings and Conclusions entered Jan. 13, 1999.

Commission for questioning the ongoing purpose of the NUSF and its goals considering the availability of funding from new sources.

While Cox supports setting goals for both telephony and broadband, this docket should not become a vehicle to promulgate rules that exceed the Commission's regulatory authority over broadband services. The Legislature has conferred upon the Commission some authority to ensure NUSF funds, as well as other grant programs are being used as intended and are providing a quality broadband service. For example, speed tests are required.² Additionally, broadband projects must be scalable to 100 Mbps or greater for downloading and uploading.³ And, the Commission has imposed timelines for the completion of networks that can be extended upon request for good cause, which has been done for both NUSF and Nebraska Broadband Bridge Program ("NBBP") projects. Setting goals regarding affordability and sustainability is not unreasonable; however, regulating achievement and measuring performance likely exceeds the Commission's authority unless statutorily authorized and/or expressly allowed under federal law.

Subpart C. Modifications to the High-Cost Program

For many years Cox has filed comments supporting the Commission's efforts to create a transparent and open NUSF and to prohibit carriers from "double-dipping" by receiving duplicative support for the same project. With the significant new broadband capital coming to Nebraska, Cox encourages the Commission to vigilantly follow the distribution of these funds. Federal and state awards must be continually monitored to ensure the NUSF is not duplicative of

² Neb. Rev. Stat. Sec. 86-324.02.

³ Neb. Rev. Stat. Sec. 86-324.01.

support that has been received from other sources. It is critical the Commission have a clear picture of all the funding that is flowing to Nebraska.

While the NUSF has been a primary means of support for constructing broadband infrastructure, several other programs now also fund broadband projects. The Government Accountability Office (“GAO”) recently identified at least 133 programs that can be used to support broadband access, including programs that provide support for infrastructure, making service affordable, providing devices, and building digital literacy.⁴ These programs are funded across 15 different federal agencies.⁵ Some designate broadband deployment as their main purpose or a possible purpose, while others can be used for multiple purposes related to broadband.⁶

It is estimated Nebraska will receive just over \$405 million for broadband from the Broadband Equity, Access, and Deployment (“BEAD”) program. Additionally, approximately \$80 million in broadband deployment funds are allocated to the Capital Projects Fund, and the NBBP has and continues to provide \$20 million towards broadband infrastructure on an annual basis. What role the NUSF has going forward for broadband projects can only be answered after funding from other sources, particularly BEAD has been determined. Cox encourages the Commission to await the outcome of the BEAD distribution so it can most competently determine the NUSF’s purpose and evaluate its future need.

Finally, Cox recognizes in some extremely sparsely populated areas of Nebraska, the receipt of operational support might be necessary. However, the Commission should not automatically assume a provider cannot recover costs from its customers, nor assume that the

⁴U.S. Gov’t Accountability Off., GAO -23-106818, *Broadband: A National Strategy Needed to Coordinate Fragmented, Overlapping Federal Programs* (2023), <https://www.gao.gov/products/gao-23-106818>.

⁵ *Id.*

⁶ *Id.*

NUSF is the sole source to fill that void. Support for ongoing maintenance in rural areas should be given provided there is sufficient documentation through a reputable source that operation of the network is not feasible absent NUSF support. Cox encourages the Commission to closely study and examine this topic to ensure the NUSF is being spent in the state's public interest.

In closing, Cox appreciates the opportunity to comment and thanks the Commission for opening this docket. This investigation can determine whether the NUSF remains necessary. If that question is answered affirmatively and the NUSF continues, Cox encourages the Commission to ensure the NUSF is not used for "double dipping" by duplicating support coming from other programs. Cox believes broadband should be available to all Nebraskans, and is mindful of the urgency getting all consumers connected statewide. However, the NUSF should be used only where support is otherwise not available.

Respectfully submitted this 17th day of November.


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