

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public Service Commission, on its Own Motion, seeking to make adjustments to the universal service fund mechanism established in NUSF-26 )

Application No. NUSF-50 )



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**COMMENTS OF THE  
RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA**

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**I. INTRODUCTION**

The Rural Telecommunications Coalition of Nebraska ("RTCN"),<sup>1</sup> by and through its attorneys of record, hereby respectfully submits these comments to the Nebraska Public Service Commission ("Commission") in response to the Commission's October 20, 2015, Order Authorizing Payments and Order Seeking Comments in Application No. NUSF-50.<sup>2</sup>

**II. COMMENTS**

The Order requests comment on whether to require carriers receiving high-cost support to file the following supplemental information on or before July 1<sup>st</sup> of each year (the "Supplemental Data"):

1. An affidavit by an officer or authorized representative of the company certifying that high-cost support is being used to deploy and maintain networks capable of providing broadband services in Nebraska.
2. A list of broadband infrastructure projects being deployed with the use of NUSF high-cost support which includes the following:

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<sup>1</sup> For purposes of this docket, RTCN is made up of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cozad Telephone Company, Diller Telephone Company, Glenwood Network Services, Inc., Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford Cooperative Telephone Co., Mainstay Communications, Plainview Telephone Company, Southeast Nebraska Communications, Inc., Wauneta Telephone Company, and Westel Systems f/k/a Hooper Telephone Company.

<sup>2</sup> *In the Matter of the Nebraska Public Service Commission, on its Own Motion, seeking to make adjustments to the universal service fund mechanism established in NUSF-26*, Application No. NUSF-50, Order Authorizing Payments and Order Seeking Comment (October 20, 2015) ("Order").

- a. A list of census blocks in which broadband is being deployed. The Commission proposes carriers utilize 2010 census block data.
  - b. The upload/download speeds being advertised;
  - c. The price of the broadband service at the advertised speeds; and,
  - d. An estimate of Nebraska households benefiting from new broadband infrastructure deployed by the carrier in the previous calendar year.
3. Carriers would be able to request and receive confidential treatment of proprietary information supplied through the proposed supplemental reporting requirements.

As more fully set forth below, RTCN recommends that the Commission either (1) revise the proposed Supplemental Data to more closely mirror the parameters for using NUSF support as set forth in the Nebraska Telecommunications Universal Service Fund Act (the "Act"),<sup>3</sup> or (2) alternatively, decline to adopt its proposed reporting requirements in light of duplicative reporting data currently submitted to the Commission on an annual basis. RTCN also recommends that the Commission postpone any adoption of this proposal until the FCC releases its universal service reform plan for rate-of-return carriers, which will likely include additional reporting requirements similar to those proposed by the Commission.

#### **A. The Supplemental Data should Mirror the Act**

The Commission's stated objective for requiring the Supplemental Data is to build upon its incentive-based policies encouraging the deployment of broadband capable networks. Based on this objective and the particular focus on current broadband deployment in the Supplemental Data, the Commission appears to intend that the

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<sup>3</sup> See NEB.REV.STAT. § 86-316, et. seq.

implementation of the proposed reporting requirement will create an incentive for carriers to continue to deploy broadband capable networks.

While RTCN fully supports the use of NUSF funds to preserve and advance broadband capable infrastructure in high cost areas of Nebraska, RTCN has some concerns as to whether the Commission is suggesting that NUSF funds must be used only to deploy new broadband capable networks, rather than to provide, maintain and upgrade facilities for broadband capable networks and the services provided thereby. In other words, if the Commission were to require that NUSF funds be used only for new deployment of broadband capable networks, then such a requirement is likely contrary to the Act. Assuming, however, that is not the intent of the Commission, RTCN respectfully requests that, at a minimum, the Commission revise the Supplemental Data to more closely mirror the parameters for use of NUSF funding as set forth in the Act, which specifically provides that recipients of NUSF support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>4</sup>

By more closely mirroring the Act’s funding parameters, the Commission will receive data that provides a more complete picture of how NUSF is being used to provide, maintain and upgrade broadband capable facilities and services. For example, many rate-of-return carriers, in reliance upon ongoing NUSF support, have already deployed fiber-to-the-home (“FTTH”) to 100% or nearly 100% of their service areas, and thus, consistent with the Act, NUSF funding is being, and will be, used in ways other than capital expenditures related to new deployment. Depreciation, debt service and property tax expenses incurred by carriers who have deployed FTTH, for example, are much higher than they are for carriers that have not yet deployed fiber to all customers in their service areas. Carriers having

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<sup>4</sup> NEB.REV.STAT. § 86-324(1).

implanted FTTH in 100% of their service areas rely on NUSF support to continue to cover such costs and to maintain and upgrade these networks. Without NUSF funding for these types of ongoing costs, deployment of FTTH would not be feasible for small rate-of-return carriers.

By revising the Supplemental Data to more closely mirror the Act requirements for use of NUSF support, the Commission would obtain data that, not only highlights current and planned deployment, but also highlights how support has been used to deploy FTTH in recent years and how it is continuing to be used to fund those projects that are already in service.

#### **B. Decline to Adopt the Proposal**

Given the Commission's current access to substantially similar information through other existing carrier reporting requirements, RTCN suggests that the Commission consider declining to adopt its proposed requirement to report the Supplemental Data.

Under Application No. NUSF-66, on an annual basis each ETC is required to provide the Commission with evidence of how it used federal and state universal service funds in the preceding year and how such funds will be used in the succeeding year on an exchange-level basis. The Commission uses this data to certify to the FCC that Nebraska ETCs are using universal service support for its intended purpose.<sup>5</sup>

In addition FCC Data Collection Form 481, which is filed annually with both the FCC and the Commission, includes a "Service Quality Improvement Reporting" section, in which carriers must provide a five-year build-out plan that accounts for the broadband

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<sup>5</sup> It should be noted that unlike NUSF-92 grants which involve NUSF funds that are earmarked for very specific capital expenditure projects, rate-of-return carriers generally use both FUSF and NUSF funding to support overall network investments and expenses and typically do not determine, for example, that FUSF will support project A and NUSF will support project B. Thus, except for NUSF-92 grants, it is important to acknowledge that it is common for small rate-of-return carriers to not allocate FUSF or NUSF funds on a project basis.

obligations adopted in the USF/ICC Transformation Order.<sup>6</sup> Pursuant to Form 481 and 47 CFR § 54.313(a)(1), ETCs are required to file annual progress reports on their five-year build-out plans in subsequent years.<sup>7</sup> The progress reports are required to include maps detailing the carriers' progress towards meeting their plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year.<sup>8</sup> The information must be submitted at the wire center level or census block, as appropriate.<sup>9</sup>

The five-year plan reporting requirement alone addresses the type of broadband advancement data that the Commission seeks in this docket, and thus the Commission's proposed reporting requirement is largely duplicative, creating an additional and arguably unnecessary burden on small rural carriers that already report similar information to the Commission. In addition to the five-year plan, FCC Data Collection Form 481, which again is submitted annually to the Commission, also requires carriers to report residential upload and download speeds by exchange and residential broadband price by exchange and speed tier.<sup>10</sup> Although Form 481 does not provide a category for business service speeds and prices, small rural carriers' broadband pricing is typically the same for residential and business customers.

In addition to the annual reporting requirements under NUSF-66 and FCC Form 481, FCC Form 477 also requires carriers to report broadband technology available and the broadband speeds offered in each census block of the carriers' service areas. To help

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<sup>6</sup> See FCC Data Collection Form 481, Section 100.

<sup>7</sup> See Form 481 and 47 CFR § 54.313(a)(1).

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See FCC Form 481, Section 711.

minimize additional reporting requirements and create efficiencies for Nebraska carriers, the Commission could consider requiring carriers to submit, in a confidential manner, their latest Form 477 to the Commission each July 1st in lieu of completing the proposed report.

Based on the foregoing, RTCN respectfully requests that the Commission reconsider its proposal to require carriers to annually report the Supplemental Data in light of overlapping reporting requirements currently in place.

### **C. Delay Adoption of Reporting Requirements**

Lastly, RTCN suggests that the Commission delay any adoption of its proposed reporting requirements until the FCC releases its universal service reform plan for rate-of-return carriers, which will likely include additional reporting requirements similar to those proposed by the Commission. Rather than potentially duplicate additional forthcoming FCC requirements, all parties, including the Commission, would be best served by waiting and reconsidering the Commission's proposed reporting requirements a few months after the FCC order is released. Once the FCC's new reporting requirements are released, the Commission can coordinate with the FCC requirements to avoid any unnecessary duplication, thereby maximizing its administration efficiency and minimizing the burden on reporting carriers.

## **III. CONCLUSION**

In conclusion, RTCN recommends that the Commission either (1) revise the proposed Supplemental Data to more closely mirror the parameters for using NUSF funding under the Act, or (2) alternatively, decline to adopt its proposed reporting requirements in light of duplicative reporting data already available to the Commission on an annual basis. RTCN also recommends that the Commission postpone any adoption of this proposal until the FCC releases its universal service reform plan for rate-of-return

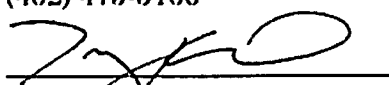
carriers, which will likely include additional reporting requirements. RTCN appreciates the opportunity to contribute to this proceeding and hereby respectfully submits its comments hereinabove.

Dated this 18th day of December, 2015.

**RURAL TELECOMMUNICATIONS  
COALITION OF NEBRASKA ("RTCN")**

Arapahoe Telephone Company d/b/a ATC  
Communications,  
Benkelman Telephone Company, Inc.,  
Cozad Telephone Company,  
Diller Telephone Company,  
Glenwood Network Services, Inc.,  
Glenwood Telephone Membership Corporation,  
Hartman Telephone Exchanges, Inc.,  
Hemingford Cooperative Telephone Co.,  
Mainstay Communications,  
Plainview Telephone Company,  
Southeast Nebraska Communications, Inc.,  
Wauneta Telephone Company, and  
WesTel Systems f/k/a Hooper Telephone  
Company.

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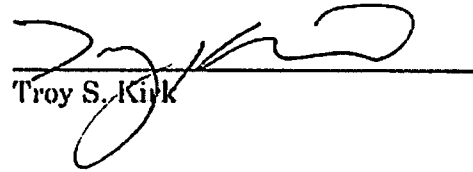
By:   
Andrew S. Pollock (#19872)  
Troy S. Kirk (#22589)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that an original and five copies of the foregoing Comments of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on December 18, 2015, and a copy will be sent via electronic mail on December 18, 2015, addressed as shown below, to the following:

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