

Before the
NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion,)
seeking to review and approve requests for)
modification of the funding calculation for the) Application No. NUSF-7
Nebraska Universal Service Fund (NUSF))

**COMMENTS OF CTIA IN RESPONSE TO THE
COMMISSION'S SEPTEMBER 27, 2016 ORDER
SEEKING COMMENT**

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CTIA¹ files this reply in response to the Nebraska Public Service Commission’s (“Commission’s”) September 27, 2016 Order Seeking Comment (“*Sept. 27 Order*”).²

I. INTRODUCTION AND SUMMARY

As has been recognized by the Commission throughout its NUSF proceedings, and by CTIA in numerous comments in those proceedings, it is important that the Commission minimize the economic burden to consumers by ensuring that NUSF support is targeted efficiently.³ To that end, CTIA supports the Commission’s efforts towards aligning federal and state support, in particular, to ensure that state funding is “coordinate[d]” with, but does not

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America’s competitive and world-leading mobile ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² *In the Matter of the Commission, on its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund (NUSF)*, App. No. NUSF-7, Order Seeking Comment (Sept. 27, 2016).

³ *See, e.g., In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program*, App. No. NUSF-99, Order Opening Docket, Seeking Comment and Setting Hearing at 2 (Oct. 15, 2014) (“*2014 NUSF-99 Order*”).

duplicate, federal USF efforts.⁴ NUSF support should “be consistent with federal universal service reform,”⁵ and “[o]ne of the core principles of [federal USF] reform since 2011 has been to ensure that support is provided in the most efficient manner possible, recognizing that ultimately American consumers and businesses pay for the universal service fund (USF).”⁶

Accordingly, the Commission should not grant waivers to allow additional NUSF support in this docket for areas where there is an unsubsidized competitor, or in areas where federal support is provided, thus making state support unnecessary.

II. BACKGROUND

This proceeding was initiated as a forum for incumbent local exchange carriers (“ILECs”) to request modified NUSF funding on a case-by-case basis, based on individual waivers of the Commission’s requirement that an ILEC’s NUSF support be reduced to the extent that it raises its local rates.⁷ Thus, the waivers authorized in this proceeding enable carriers to obtain more than the typical level of NUSF support for an ILEC that has increased its local rates. Such requests must be supported by certifications regarding how the additional funding will be used.⁸

⁴ *Id.*

⁵ *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program*, App. No. NUSF-99, Progression Order No. 1 at 5 (Sept. 1, 2015) (“2015 NUSF-99 Order”).

⁶ *Connect America Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3091 ¶ 6 (2016) (subsequent history omitted).

⁷ *In the Matter of the Commission, on its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund*, App. No. NUSF-7, Order Initiating Docket (May 18, 1999).

⁸ *Sept. 27 Order* at 1.

The *Sept. 27 Order* requests comment regarding whether, in light of changes to Federal Communications Commission (“FCC”) USF policies, such case-by-case funding is still needed in federally supported areas, whether the investments made using such funding have been fully depreciated, and whether any adjustments should be made accordingly.⁹ In particular, the Commission noted that “[t]he reformed federal universal service mechanism eliminated waste and inefficiency in order to provide more specific, targeted broadband support. . . .”¹⁰

III. NEBRASKA HAS A STRONG TRADITION OF ENSURING EFFICIENT, TARGETED NUSF FUNDING

It is appropriate for the Commission to examine in this docket whether additional NUSF support is needed in federally supported areas. The Commission has long recognized that NUSF support should not be inconsistent with or duplicative of federal USF support, and should be distributed as efficiently as possible. The *2014 NUSF-99 Order* proposed to “consider changes to [the Commission’s] allocation mechanism for price cap carriers to complement federal universal service reform [...] to ensure that these carriers can coordinate the use of state high-cost support with their [federal support].”¹¹ The Commission was “concerned that price cap carriers are not taking advantage of FCC Connect America Fund (“CAF”) opportunities because of the level of support made available”¹² – in other words, that those carriers are not making the most efficient use of NUSF support.¹³

⁹ *Id.* at 2.

¹⁰ *Id.* at 1.

¹¹ *2014 NUSF-99 Order* at 2.

¹² *Id.*

¹³ See also *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, App. No. NUSF-100, PI-193, Order

In the *2015 NUSF-99 Order*, the Commission adapted its NUSF policies to account for changes in federal USF policies. In order to be consistent with federal USF reform, the Commission decided to disallow broadband support in areas where an unsubsidized carrier provides comparable broadband service and to require carriers seeking broadband funding in areas that are eligible for CAF II support to show that both federal and state funding are needed.¹⁴ This decision was consistent with the views of CTIA and other commenters, as well as with the FCC’s high-cost support rules. Disallowing support where an unsubsidized carrier provides service minimizes competitive distortions, particularly where customers of the unsubsidized carrier would be funding the carrier receiving support.¹⁵ The Commission also imposed a presumption that a carrier that has refused CAF II support does not need NUSF high-cost support.¹⁶

These policies recognize that NUSF support should not be any higher than necessary to ensure universal service in Nebraska in the most cost-effective manner possible. Any additional, duplicative support not only distorts competition and violates technological neutrality, but it also imposes an unnecessary burden on ratepayers, thereby undermining universal service goals. As the Commission has noted, NUSF policies should be consistent with federal universal service

Seeking Further Comments at 5 (Apr. 5, 2016) (the Commission’s NUSF “reforms must be tailored to complement the federal support received in Nebraska.”).

¹⁴ *2015 NUSF-99 Order* at 6-8.

¹⁵ See *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the NUSF*, Progression Order No. 4, Order Issuing Findings, Seeking Further Comments and Setting Hearing, 2011 Neb. PUC LEXIS 299 at *4, 19-21 (Sept. 27, 2011) (recognizing need for competitive neutrality and focus on unserved areas in administering NUSF program).

¹⁶ *2015 NUSF-99 Order* at 8.

reform,¹⁷ which “eliminated waste and inefficiency in order to provide more specific, targeted”¹⁸ “broadband centric support.”¹⁹

Ensuring the efficiency of NUSF support also is important in light of changes to the competitive and technological landscape in telecommunications. Consumers are increasingly choosing mobile services and abandoning wireline services altogether; as a result, NUSF contributions from wireless customers will increasingly subsidize wireline services, creating competitive distortion. As of 2015, 48.9 percent of Nebraska households were wireless-only,²⁰ and the state boasts over 600,000 mobile broadband subscribers.²¹ The NUSF surcharge on intrastate calls is 6.95 percent.²² Wireless consumers in Nebraska face one of the highest aggregate levels of taxes, fees and surcharges on their bills in the country,²³ with a combined federal and state rate of 25.31 percent.²⁴ The Commission thus should take every opportunity to

¹⁷ *Id.* at 5.

¹⁸ *Sept. 27 Order* at 1.

¹⁹ *2014 NUSF-99 Order* at 2.

²⁰ National Center for Health Statistics, “Wireless Substitution: State-Level Estimates from the National Health Interview Survey, 2015”, *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201608.pdf (last accessed October 25, 2016).

²¹ Reply Comments of CTIA – The Wireless Association® in Response to the Commission’s October 15, 2014 Order at 3, App. No. NUSF-99 (Feb. 6, 2015).

²² Scott Mackey and Joseph Henchman, “State and Local Transaction Taxes, Fees, and Government Charges on Wireless Service, as of July 1, 2016,” attached as Appendix A, at 17, to “Wireless Tax Burdens Rise for the Second Straight Year in 2016,” Tax Foundation Fiscal Fact, No. 530 (Oct. 2016) (“Wireless Tax Burdens”).

²³ CTIA NUSF Reform Comments at 5.

²⁴ Wireless Tax Burdens at 6, Table 2, “Taxes, Fees, and Government Charges on Wireless Service, July 2016.”

minimize the contribution burden on consumers by ensuring that no redundant or unnecessary NUSF support is provided.

IV. THE COMMISSION SHOULD FOLLOW THESE PRINCIPLES OF EFFICIENCY AND TARGETING IN THE NUSF-7 PROCEEDING

As the *Sept. 27 Order* recognizes, ILECs should not be allowed to obtain additional NUSF support through waivers where such funding is no longer needed as a result of federal support or the emergence of unsubsidized competition. ILECs applying for NUSF-7 funding should take advantage of all available federal USF support, and thus, such applications should not be permitted where federal funding is available or where there is an unsubsidized competitor.²⁵

It would not be sufficient simply to subject such funding to a requirement that need for both federal and state funding be shown, as required by the *2015 NUSF-99 Order*,²⁶ because NUSF-7 support is over and above the level of NUSF support, and carriers already effectively certify that the federal support is sufficient to fund the deployment of broadband. Where NUSF and federal support already are available, additional support is not needed. CAF Phase II funding is designated for “ongoing support to deploy and maintain fixed-location broadband and voice services to high-cost areas,” and a number of locations in Nebraska are eligible for such support.²⁷

²⁵ See *2015 NUSF-99 Order* at 6-8 (disallowing broadband support in areas where an unsubsidized carrier provides comparable broadband service and requiring additional showing of need in areas that are eligible for CAF II support).

²⁶ *Id.* at 7-8.

²⁷ Further Reply Comments of CTIA – The Wireless Association® in Response to the Commission’s June 16, 2015 Order at 3-4, App. No. NUSF-99 (July 13, 2015).

This point is further underscored by the requirements that price cap carriers must meet to receive CAF Phase II support. Recipients must commit to build systems capable of delivering a defined level of service for the appropriate support term.²⁸ In making the offer of support, the FCC noted that, “[t]o the extent a carrier believes the support offered is insufficient to meet the obligations, it may turn down the offer of Phase II model-based support.”²⁹ Rate-of-return carriers have similar service availability obligations under their CAF support mechanisms.³⁰

Given that carriers have committed, in effect, that they “believe[] the support offered is []sufficient to meet the obligations,”³¹ the Commission should not consider requests for new or additional support in areas in which CAF funding is received, in order to avoid duplicating federal high-cost support. Because NUSF-7 support is over and above the level of NUSF support that would otherwise be provided, there should be no issue with inadequate support and thus no reason to permit such funding at all where federal funding is provided.

²⁸ See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5956-63 ¶¶ 14-37 (establishing performance requirements for 10-year term of support for winning bidders of Phase II competitive auctions), 5987-88 ¶ 114 (requiring winning bidder to provide self-certification with its long-form application of its technical qualifications, including engineering certification that its network will be capable of delivering voice and broadband service meeting the “requisite performance requirements”) (2016); *Connect America Fund*, Report and Order, 29 FCC Rcd 15644, 15650-51 ¶¶ 19-20, 15656 ¶¶ 30-31 (2014) (establishing performance obligations and six-year term for price cap carriers accepting state-level commitment of Phase II model-based support) (“*2014 Model-Based Support Order*”) (subsequent history omitted); *Connect America Fund*, 28 FCC Rcd 7211, 7221 ¶ 25 (WCB 2013) (price cap carrier electing to accept model-based support must state that it accepts the support amount and “commits to satisfy the service obligations for Phase II”) (subsequent history omitted).

²⁹ *2014 Model-Based Support Order*, 29 FCC Rcd at 15652-53 ¶ 22.

³⁰ See, e.g., *Connect America Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Rulemaking, 31 FCC Rcd 3087, 3113-14 ¶67 (2016) (rate-of-return carriers electing to accept model-based support must commit to meet service obligations).

³¹ *2014 Model-Based Support Order*, 29 FCC Rcd at 15652-53 ¶ 22.

Additional funding is particularly inappropriate where facilities have been fully depreciated. Indeed, where facilities have been fully depreciated, the Commission should reexamine claimed funding needs and consider whether reduction or discontinuation of support is appropriate. At a minimum, before granting a NUSF-7 waiver, the Commission should require a carrier to provide a considerable showing of changed circumstances and need based on factors not known or knowable when the carrier made its commitment to the FCC.

By following these principles of efficiency and targeting, the Commission can maximize the effectiveness of NUSF funding, ensure that NUSF high-cost support does not duplicate, but rather complements and is coordinated with, available federal CAF universal service support, and minimize any economic burden to the ratepayers who support the fund.

V. CONCLUSION

CTIA supports the continuing detailed and careful approach by the Commission towards important NUSF reforms. In keeping with this approach, and so as to be consistent with, and not duplicate, federal USF support, the Commission should ensure that NUSF-7 waivers are not granted in areas where any federal funding is provided or where there is an unsubsidized competitor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 28th, 2016, an electronic copy of the foregoing will be served electronically on the following:

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