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 Nebraska Universal Service Fund (NUSF).	Application No. NUSF-7

COMMENTS OF QWEST CORPORATION D/B/A CENTURYLINK QC

The Commission issued an Order on September 27, 2016, initiating a review of NUSF-7, and requesting public comment on certain issues, to determine whether any adjustments should be made. Specifically, the Commission seeks comments to determine whether NUSF-7 support is still needed in certain federally supported areas, whether the investments have been fully depreciated, and whether the support provided has been used for the purpose in which it was intended. Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") submits these comments in response to that Order.

Summary

No adjustments should be made to the remaining scheduled NUSF-7 support payments for CenturyLink. The NUSF-7 grants to CenturyLink were funding commitments made by the Commission in 2005, for support through 2026 in exchange for CenturyLink's commitment to rapidly upgrade and build out its network in 2005—2007, in areas of the State where such investment was uneconomic, given the pressure carriers were facing during a difficult time of transition. At that time, local exchange carriers had to shift from reliance on implicit subsidies to explicit universal service support. As a result, companies had no realistic way of recovering the cost of investments to upgrade their networks in high cost areas, absent specially devised, carrier-specific grants for agreed-upon network enhancements. In response to the Commission's invitation, carriers made application for Commission approval of funding for specific investments in certain uneconomic areas of the state. In the case of CenturyLink, its 2004 application clearly stated that the investment would not have been made without NUSF-7 funding. The Commission approved the investments applied for, and CenturyLink expended the capital dollars and continues to incur the associated maintenance costs as set forth in its application, in reliance on the Commission's funding commitment.

The Commission specifically assured that NUSF-7 investments made would be fully recovered, with a funding plan for NUSF-7 that is amortized over the depreciation lives of the facilities. In the case of CenturyLink's NUSF-7 investments, the facilities will not be fully depreciated until 2026. Since 2005, the Commission has made monthly payments pursuant to an agreed-upon support schedule that includes depreciation, return, and taxes, and which extends for another 10 years.

The Commission's question of whether the NUSF-7 has been used for the purpose intended was asked and answered at the time the facilities were installed. By the terms of the grants, the applicants filed sworn affidavits attesting that the pre-approved investments had been made, and the amounts expended for that purpose. The Commission accepted those affirmations and CenturyLink's submissions of investments in the years the investments were made.

There is no reason why recent federal support for broadband expansion and enhancement in certain areas should diminish, strip or otherwise impact NUSF-7 payments. There is no nexus or overlap between the purposes of the NUSF-7 program, and the purposes of the federally supported Connect America Fund (CAF, CAFII) and the investments that will be made pursuant to CAFII. NUSF-7 is a commitment made by the Commission 12 years ago to compensate CenturyLink for pre-approved facilities investments CenturyLink committed to make, and, in fact, made 9 to 11 years ago. The enablement requirements of the federal CAFII program will necessitate new investment, now and in the future to make higher-speed data communications available to end-user customers in narrowly defined areas. By contrast, investment made by CenturyLink under NUSF-7 was focused on improvement of its voice services. The network investments made under NUSF-7 substantially remain in service, and will remain in service, even in CAFII areas. The broadband IP capabilities to be built under CAFII will co-exist with the legacy voice network for the foreseeable future and particularly where NUSF-7 allowed for network modernization.

In summary, there is no justification for adjustments that diminish the remaining scheduled NUSF-7 payments to CenturyLink for investments made in reliance on firm commitments from the Commission. Such an action would deprive CenturyLink of payments it has earned and is owed, in violation of the provisions of the United States and Nebraska Constitutions.

NUSF-7 History

From its inception, NUSF-7 funding was specially conceptualized by the Commission on its own motion, and evaluated and granted by the Commission, as <u>additional</u> NUSF funding granted to applicants, <u>outside of existing and newly proposed "permanent" NUSF funding mechanisms</u>. As the Commission noted in its early NUSF-7 orders, the docket was opened to consider requests for additional funding from the Nebraska Universal Service Fund (NUSF) by carriers which sought a modification of the funding mechanism set forth in C-1628/NUSF.[1] A number of independent rural carriers were the first to make applications that were granted, and described in the orders as "waiver requests."[2] NUSF-7 funds were granted with amounts determined on a carrier-by-carrier basis for the applicants who made plant investment.[3]

In NUSF-26,[4] the Commission revised the mechanism for determining universal service funding mechanism established in C-1628/NUSF. The Commission explained that it administered three separate programs at that time under NUSF--the High Cost Program, the Nebraska Telephone Assistance

[1] In the C-1628 order entered January 13, 1999, the PSC acted to implement the Nebraska Telecommunications Universal Service Fund Act by establishing a transition process during which implicit subsidies contained in intrastate access charges would be removed from the rate structures of ETC's, basic local exchange rates would be adjusted to PSC-approved benchmark rates, and the support of an ETC from the NUSF would equal the implicit support removed through revenue reductions created by access charge reductions less additional revenue realized from basic local service rate increases and less any support received from the federal universal service fund that expressly offset intrastate implicit support. Each ETC was required to file a "transition plan" for approval by the PSC in order to implement the directives of the C-1628 order. The rate rebalancing and restructuring effected pursuant to the C-1628 order was to be revenue neutral for the ETC's. The C-1628 order, as modified by a subsequent ruling of the PSC on February 2, 1999, directed that this implicit support be replaced through the funding mechanism created by the NTUSFA by providing for a surcharge on retail end-user revenues from intrastate telecommunications services. *Shumacher v. Johanns*, 722 N.W.2d 346, 722 N.W.2d 37 (Neb. 2006).

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

[3] *Id.*, Waiver Requests Granted In Part and Denied In Part (Sept. 26, 2000).

[4] *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism,* Application No. NUSF-26, Findings and Conclusions (Nov. 3, 2004).

Program, and the Nebraska Tele-Health Program, each with a unique set of eligibility requirements. The NUSF-7 grants to the rural companies were already in place at the time, when the Commission adopted a new methodology for determining support carriers would receive in the future for High Cost Support.

As the Commission transitioned to the new methodology, it expressly recognized that "NUSF-7 sunsets when the investment made by the company is fully depreciated."[5] By doing so, the Commission unambiguously affirmed its intent and purpose to protect the recovery of the investments carriers made in reliance upon the NUSF-7 grants, even in the face of looming changes to permanent support: "This [treatment of NUSF-7] assures the costs, related to investments made pursuant to NUSF-7 grants, are fully recovered."[6] Essentially, the Commission's action affirmed that NUSF-7 funding was a commitment it had made, that would be honored and given priority.

It was in this context that CenturyLink applied for and was granted NUSF-7 funding in 2004.[7] CenturyLink stated that it planned to invest in interoffice facilities (IOF) and upgraded carrier systems, provided that NUSF funding would be provided. Like the earlier NUSF-7 applications made by the rural companies and granted by the Commission, CenturyLink made its application under the NUSF-7 special relief program instituted by the Commission as an additional way to bridge from reliance on access charges to a permanent universal support system. CenturyLink noted that its rates were at or above the benchmarks identified by the Commission in C-1628, and that in connection with the development of NUSF, it had dramatically reduced its switched access rates. Therefore, CenturyLink concluded, "As such, the only realistic source of revenue to support the above-described plant investment is the NUSF, specifically through the vehicle of NUSF-7."[8] Upon approval, CenturyLink implemented the network upgrades in reliance upon the Commission's assurances of compensation.

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[5] *Id.,* para. 62.
[6] *Id.*, para. 46 (emphasis added).
[7] *In the Matter of the application of Qwest Corporation for issuance by the Commission of an order waiving certain requirements in the opinion and findings in Application No. C-1628 associated with the NUSF support calculation in the transition period*, Application No. 7.07, (Application, July 13, 2004; Granted in Part, Oct. 6, 2004).
[8] *Id.*, para. 8.

Discussion of Questions Posed

1. **There is no relationship between NUSF-7 support and CAFII support, and between the facilities constructed under each program. Accordingly, NUSF-7 support payments already earned by carrier investment should continue, irrespective of CAFII.**

The Commission asks "whether NUSF-7 support is still needed in certain federally supported areas." There is no relationship between the previously approved high cost area NUSF-7 support and CAFII. Therefore, NUSF-7 payments should continue throughout the remainder of the agreed payment schedule, irrespective of CAFII support.

There are many fundamental differences between the programs.

NUSF-7 was a program designed to help carriers bridge the gap from the loss of implicit subsidies from access charges, to NUSF. It was a special program for investments made during the transition, in CenturyLink's case, to upgrade IOF between switches and carrier systems for the voice services network in rural areas, for which investment recovery and return would not otherwise have been economically feasible. CAF II, by contrast, ordered a decade later, is a departure from support for traditional voice networks. CAFII is designed to primarily advance broadband service to very narrowly defined (census block) areas. Accomplishing the separate goals of the programs requires different network technologies, different facilities and functionality, and in most instances, different geographic areas than supported by NUSF-7. In general, CAFII is a fiber-based, Internet Protocol network built alongside the legacy voice network which will continue in place to provide basic voice services for the foreseeable future and particularly where voice service quality is good.

At this time, 11 years into the recovery period for NUSF-7 investments, the remaining NUSF-7 payments are the remainder of the commitment made by the Commission to reimburse CenturyLink for pre-approved and fully executed investments. CAFII requires new investment, now and in the future, for distinctly different facilities and technology. Ten more years of payments remain to fulfill the Commission's obligation to when the NUSF-7 investments are fully depreciated.

2. **CenturyLink's NUSF-7 investments have not been fully depreciated.**

CenturyLink's NUSF-7 investments were made in 2005 to 2007. None of the investments are fully depreciated; the last of the investments will not be fully depreciated until 2026. The cost recovery and payment schedule has been a matter of agreement between CenturyLink and the Commission for many years.

3. **The support provided by NUSF-7 has been used for the purpose for which it was intended.**

As a condition of the NUSF-7 grants, recipients were required to file an affidavit that the investment would be used for the purposes described. CenturyLink filed that affidavit for each submission. As noted, the Commission accepted the attestation, and the NUSF-7 25 year-long recovery schedule has now been operational for 11 years.

4. **A reduction in the remaining NUSF-7 payments scheduled for CenturyLink would deprive the company of payments it has earned, in violation of the provisions of the United States and Nebraska Constitutions.**

NUSF-7 was conceptualized by the Commission on its own motion, to address a serious regulatory dilemma. The regulatory mandate to migrate local exchange carriers from implicit support provided by switched access, to a system supported by explicit universal service support administered by the Commission, left carriers with the inability to recover the costs for network upgrades the Commission then wanted carriers to make. NUSF itself was conceived and implemented under the Commission's power to regulate telecommunications, and was an appropriate exercise of Commission authority to rebalance and restructure rates in the face of the mandated reduction of implicit subsidies.[9] NUSF-7 was merely a different facet of that same effort, designed for additional funding for specific investments. Then, and now, the regulated companies were assured adequate recovery for approved investments.

The remaining NUSF-7 payments are identified, calculated, and scheduled. There is no controversy over whether CenturyLink has done all things it committed to do, and has taken all steps

[9] *Shumacher v. Johanns*, 722 N.W.2d 346, 722 N.W.2d 37 (Neb. 2006).

required for it to receive payment. A reduction or elimination of such payment, or the addition of new conditions, without compensation, would constitute a taking of property in violation of the state and federal constitutions.

Conclusion

For the reasons stated above, no adjustments should be made to the remaining payments earned by and owed to carriers under NUSF-7.

Dated this 27th day of October, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of October, 2016, a true and correct copy of the foregoing was delivered to the following as indicated below:

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