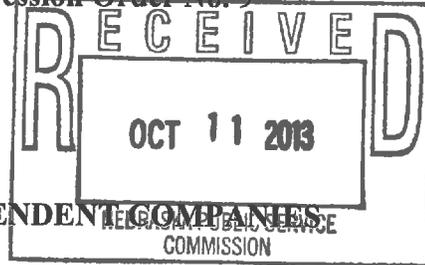


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

**In the Matter of the Petition of the
Nebraska Telecommunications Association
for Investigation and Review of Processes
and Procedures Regarding the Nebraska
Universal Service Fund.**

) **Application No. NUSF-77**
) **Progression Order No. 9**



COMMENTS OF THE RURAL INDEPENDENT COMPANIES

**I.
INTRODUCTION**

The Rural Independent Companies (“RIC”) ¹ submit these Comments in response to the Commission’s Order Seeking Comment entered in this proceeding on October 1, 2013 (the “*P.O. #9 Order*”). RIC appreciates the opportunity to provide the following Comments to the Commission in response to the *P.O. #9 Order*. In the *P.O. #9 Order*, the Commission seeks comments as to whether it should institute various caps or limitations with regard to the 2014 and subsequent years Nebraska Broadband Program (“NEBP”) grants. The Commission has asked interested parties to comment on a series of questions posed in the *P.O. #9 Order*.

**II.
RESPONSES TO COMMISSION QUESTIONS**

1. *Should the Commission institute a company cap which would limit the amount of support awarded to a single company? Such a cap would be utilized after the Commission staff prioritized the projects and would be used to ensure that funding was available to more than one or two applicants in a given funding year.*

¹Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Co., Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

The RIC member companies support institution of a per company cap to limit the amount of NEBP support that could be awarded to a company during an annual NEBP grant period. The primary reason for this position is that a company cap will allow the Commission to grant a greater number of NEBP applications by applicants serving diverse areas of Nebraska.

The experience to date with regard to the 2012 and 2013 NEBP applications reveals that only one applicant has submitted an application that, if granted as submitted, would have absorbed all or a substantial portion of the total grant program.² All other submitted applications, particularly during the 2013 NEBP grant cycle, have requested lower total grant amounts, even in those cases in which multiple requests for project funding were submitted by a single company.

Encouraging and facilitating a larger number of individual company applications for diverse areas of Nebraska will advance the Legislative policies of (a) providing access to information services to all regions of the State (*Neb.Rev.Stat. sec. 86-323(2)*); and (b) providing consumers in all areas of the State with access to information services reasonably comparable to those services provided in urban areas and at rates reasonably comparable to urban areas (*Neb.Rev.Stat. sec. 86-323(3)*).

- a. *If you recommend a company cap should be utilized what is the appropriate company cap percentage?*

In light of the Commission's decision to combine the NEBP and the Dedicated Wireless Fund Program commencing in 2014, and thereby to create a single broadband grant fund that is intended to make \$9 million of annual grants, RIC believes it is reasonable to implement a cap of

² In Application No. NUSF-77.06, N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless submitted an application that proposed a series of modules that proposed to provide mobile broadband service to much of the western one-third of the State. Ultimately, in Progression Order No. 5 entered in that docket, the Commission approved a grant of \$2,180,265 for a portion of the modules.

ten percent (10%) of annual funding that would limit annual grant funding to \$900,000 per applicant company. However, RIC suggests two exceptions to this 10% cap. First, if the Commission receives an application for a broadband grant that exceeds the 10% per company cap, and based upon the evidence offered in support of the application and in the Commission's exercise of sound judgment in the administration of the NEBP, the Commission makes a determination that the application should be funded on a multi-year basis, then the Commission would retain the discretion to approve funding to a particular applicant in excess of the 10% cap. Second, if the total amount of all applications for a grant year, excluding any application or applications for the year that exceed the 10% cap, total less than the \$9 million total annual grant allocation, the Commission would retain the discretion to approve funding of a broadband grant to a particular applicant in excess of the 10% cap rather than carrying over the unallocated portion of the annual grant allocation to the following NEBP grant year.³

- b. *If the Commission imposed a 20% cap for example, a single company would be limited to \$1.8 million in NEBP support for 2014. Would 20% be an appropriate company cap? Please explain.*

As indicated in RIC's response to Question 1.a above, RIC favors a 10% cap as opposed to a 20% cap. Theoretically, a 20% cap could cause only five (5) applicants to receive NEBP grants in a particular year. RIC believes that the cap should be set at a level that promotes the funding of a larger number of applicant companies for the reasons stated above. However, RIC supports the exceptions to the 10% cap as set forth in its response to Question 1.a above that could allow for funding in excess of the 10% cap.

³ An example of this circumstance occurred for the 2012 NEBP applications which, absent the Viaero grant request, totaled less than the \$4 million allocation. Under these circumstances, the Commission chose to fund the Viaero grant request in an amount equal to the total \$4 million allocation less the total of all other grants approved for the remaining 2012 NEBP grant applicants.

c. *If you do not believe a company cap should be used, please explain.*

As stated above, RIC favors a per company cap. Therefore, no response is required.

2. *In addition to, or in the alternative, should the Commission institute a per project cap? This cap would be applied on the front end of the Commission staff's analysis and would limit the size of projects to a certain funding level. The Commission believes a per project cap may encourage applicants to be more selective when designing discrete broadband projects.*

In light of the per company cap that RIC proposes in response to Question 1.a, RIC does not favor creation of a per project cap. It may not be possible and it is not appropriate to create an artificial project size limit. As reported in the Staff Recommendations regarding the 2013 NEBP applications, “[s]ixteen (16) applications were received with a total of sixty (60) projects. . .” These statistics demonstrate that if an applicant seeks grant funding to extend broadband access to a particular area and the costs of such extension exceeded a particular project cap, the applicant could simply separate the request into multiple “projects” and thereby circumvent a per project cap.

Within the company cap recommended by RIC, the Commission will retain the authority to exercise its sound discretion to determine whether the costs of a project submitted by an applicant are justified and warranted by the benefits that the project proposes to achieve for currently unserved or underserved Nebraska broadband consumers.

a. *If so, what would the appropriate per project cap be? Would a \$300,000 per project support cap be reasonable? If not, why wouldn't this amount be appropriate?*

As stated above, RIC does not favor establishment of a per project funding cap. With regard to the suggested \$300,000 per project cap, although the 2013 NEBP grant recommendations by the Commission Staff include only one funding recommendation greater than \$300,000, the 2012 NEBP grants approved by the Commission included four projects in

excess of \$300,000.⁴ As stated above, rather than setting an artificial limit on per project costs, RIC believes that the public interest would be better served by and through the Commission's exercise of its sound discretion to analyze the reasonableness of a project funding request and the benefits that such project will create for unserved or underserved Nebraska broadband consumers.

- b. *If a per project support cap is established, should projects where more than \$300,000 in NEBP support is sought be placed in a lower priority group assignment compared to the projects that are at or under the \$300,000 proposed project support cap?*

As stated above, RIC does not favor establishment of a per project cap. Thus, it is unnecessary to address the issue of prioritization of projects seeking greater than \$300,000 of NEBP grant funding.

- c. *If a per project support cap is established, should the Commission find the project would be supported up to, but not in excess of, the cap amount? If not, why not?*

Again, RIC does not favor establishment of a per project cap. However, in response to this question, if an applicant presents a project for funding that seeks a funding amount above a theoretical project support cap, the better policy would be to either seek a reduction in the scope of the project to a cost level that would allow its completion with allowable NEBP support plus the 25% applicant match, or not proceed to approve the project.⁵ However, RIC again refers the

⁴ The grant approved in Application No. 77.01 was \$498,780; the grant approved in Application No. 77.04 was \$477,832; the grant approved in Application No. 77.06 was \$2,180,265; and the grant approved in Application No. 77.07 was \$328,832.

⁵ The Commission has already considered and found that the 25% match requirement should apply to the combined NEBP and Dedicated Wireless Fund Program. *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Application No. NUSF-77, Progression Order No. 8 at p. 5. Conditioning an NEBP grant on a requirement that an applicant furnished matching funds in excess of the 25% requirement would seem to be contrary to this finding unless the applicant voluntarily agrees to such additional matching contribution.

Commission to the two exceptions to the per company cap that are discussed in response to Question 1.a above.

- d. *If a per project support cap is established and projects where more than the cap is sought are placed in a lower priority group assignment, should the applicant be allowed to seek support up to, but not in excess of, the cap amount in order to receive a higher priority group assignment?*

RIC does not favor the suggestion presented by this Question 2.d that would seem to create the likelihood of artificially reducing the scope of a project in a way that could result in the inefficient use of NEBP support. RIC refers the Commission to its response to Question 2.c above for a preferred approach to this issue.

- e. *If you do not believe a per project support cap should be used, please explain.*

RIC believes that the comments that it has provided to Questions 2.a through 2.d provide information responsive to this question.

3. *In addition to, or in the alternative, should the Commission institute a cost per household support cap? The purpose of this proposed cap would be to ensure that NEBP support is based upon reasonable and efficient use of grant funds.*

RIC is opposed to the institution of a cost per household support cap. First and foremost, establishment of a per household cap would create broadband consumer “haves” and “have nots” because if there is not a market-based economic rationale for a provider of broadband to serve a particular consumer’s location due to the high cost of service, then the existence of broadband service for that customer is dependent upon the provision of program support. Thus, if program support is artificially capped at a level below the actual cost to serve a very high cost customer, broadband service will not be available.⁶

⁶ The Commission has found that “information services and advanced telecommunications” as used in the Nebraska Telecommunications Universal Service Fund Act include broadband service. See, *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Application No. NUSF-77, Progression Order No. 7 at p. 11.

Such a result would be contrary to the provisions of the Nebraska Telecommunications Universal Service Fund Act (the “NTUSFA”). Specifically, the Legislature has included the following principles in the declaration of policy section of the NTUSFA:

The Legislature declares that it is the policy of the state to preserve and advance universal service based on the following principles:

(2) Access to advanced telecommunications and *information services should be provided in all regions of the state;*

(3) *Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. . . .*

Neb.Rev.Stat. sec. 86-323(2) and (3) (Reissue 2008) (emphasis added). The creation of a per household funding cap would, at a minimum, frustrate the accomplishment of the foregoing Legislative policies, and more likely would prevent accomplishment of the provision of broadband to all Nebraska consumers, including those located in rural and very high-cost areas.

a. *If the Commission adopts a household support cap what would the appropriate per household cap be?*

Since RIC opposes adoption of a household support cap, there is not an “appropriate per household cap”.

b. *Would \$5,000 per household be reasonable? The Commission estimates a cap of \$5,000 per household exceeds the average per household amount of all projects submitted in 2013. If the Commission adopts a cost per household cap should it be used to determine the priority assigned to the project by the Commission in a manner that does not preclude a project that exceeds the proposed cap? If a per household cap is established should the Commission find the project would be supported up to, but not in excess of, the cap amount? If the Commission adopts a cost per household cap that is used to determine the priority assigned to the project but does not preclude a project that exceeds the proposed cap, should the applicant be allowed to seek support up to, but not in excess of, the cap amount in order to receive a higher priority group assignment? If not, why not?*

Assuming for the sake of argument that a per household cap would be implemented by the Commission (which RIC opposes), RIC submits that it lacks sufficient data to comment in response to the question whether \$5,000 per household would be a reasonable cap and that the Commission similarly lacks sufficient data to establish any per household cap. Unless and until the Commission establishes a record that establishes the costs per household to serve the highest cost households in the State with broadband service, it is premature to even discuss the amount of a per household cap.

Further, the Commission should bear in mind that it is essentially an intuitive conclusion that as broadband service is driven deeper into Nebraska markets, the remaining unserved or underserved areas will involve higher per household costs. Lower cost consumers will, as a general matter, receive broadband service prior to higher cost consumers. Thus, any average per household amount for all projects submitted in 2013 at best represents a snapshot of the costs to serve the universe of Nebraska consumers impacted by 2013 NEBP grant applications. It is highly likely that this average cost per household in 2014 will be greater than in previous years and will approach and exceed \$5,000 per household in subsequent years as submitted projects address the service needs of the most remote, highest-cost households in the State.

With regard to the remaining inquiries in Question 3.a, RIC responds as follows:

- Since a per household cap should not be adopted by the Commission, priority of projects should not be determined on the basis of whether the cost per household exceeds a certain cost level. To do so is contrary to the Legislative policies quoted above in response to Question 3.
- Partially funding a project involving a cost per household above a stated level should not occur. As indicated by footnote 3 to this Question 3.b, such a practice would require the NEBP applicant to provide funding in excess of the 25% matching level approved by the Commission.
- The final inquiry of Question 3.b would essentially endorse a process whereby an applicant could “buy” higher prioritization for a project through the provision of a matching contribution greater than 25%. While this is a potential policy that the Commission could adopt, it has not yet done so and there is not an adequate record presented for the Commission to reach a determination on this issue. If this policy is to

receive Commission consideration it should be done separate and apart from the potential establishment of a per household support cap.

c. *If you do not believe a cost per household support cap should be used, please explain.*

Please refer to RIC's response to Question 3 above.

III. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Comments in response to the questions posed by the Commission, and look forward to participation in the October 30, 2013 public hearing regarding *Progression Order #9*.

Dated: October 11, 2013.

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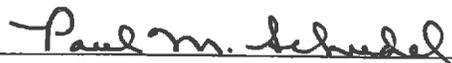
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