

Staff Recommendation
NUSF-77
Progression Order No. 6 Issues

Issues 1, 2, 6 and 12.

The Commission asked interested parties to comment on whether the goals adopted in 2002 relative to the high-cost funding mechanism should be amended or expanded based on the goals of the Nebraska Broadband Pilot Program (NEBP) as set forth in this proceeding. The 2002 goals are as follows:

1. The Commission should establish sufficient specific and predictable state support mechanisms.
2. All providers should be afforded an opportunity and not a guarantee to recover their costs. Support should be used for its intended purpose and any support that comes directly from the NUSF should be explicit.
3. The Commission should ensure that all Nebraskans have comparable access to quality telecommunications and information services, including interexchange services, advanced telecommunications and information services.
4. All services must be offered at rates that are just, reasonable, and affordable and that rural rates should be reasonably comparable to urban rates, all across the services.
5. The Commission should encourage the development and maintenance of the telecommunications infrastructure and encourage investment and the deployment of new technologies.
6. Any requirements the Commission adopts should be competitive and technologically neutral.
7. The Commission should protect the public interest and welfare and the surcharge should not burden telecommunications consumers.
8. The Commission should advance the affordable availability of telecommunication services to low-income consumers and schools, libraries and rural healthcare providers.
9. The focus of the NUSF support should be on the consumers and not on the companies.

Some commenters recommended modifications to the above-listed goals, while other commenters stated there was no reason to expand the goals adopted in 2002.

The Rural Independent Companies (RIC) urged the Commission to modify the first goal to state that sufficient, specific and predictable state support mechanisms should be established for universal availability of voice telecommunications services and of “broadband”, as such term was defined by the Commission in Progression Order No. 4. In addition, RIC advocated that the 4/1 Mbps standard approved by the Commission in Progression Order No. 4 should be subject to periodic review. RIC further commented that in consideration of sufficiency of support, the Commission should confirm its policy statements in Progression Order No. 4 that support should be targeted first to unserved areas and second to underserved areas.

With respect to its goal related to reasonable comparable access, some commenters supported a modification to this goal. RIC for example favored including a minimum goal of comparable access to information services should be that all Nebraska consumers have broadband available at speeds of at least 4/1 Mbps from at least one fixed and one mobile broadband provider. The RIC commenters further suggested the Commission determine if comparable access to mobile broadband is achieved through Phase I and Phase II of the FCC’s Mobility Fund.

Finally, RIC suggested the Commission confirm the applicability of the Commission’s goal to ensure all services are offered at rates that are just, reasonable, and affordable and that rural rates are reasonably comparable to urban rates all across the services in the broadband context.

Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska supported expanding Goal 3 to explicitly support a goal of making broadband service more widely available. However, Citizens recommended the Commission take actions that encourage, facilitate and simplify the efforts of providers rather than a goal requiring universal access to broadband. With respect to Goal 5, Citizens recommended the Commission restate the goal to encourage the development and maintenance of the telecommunications infrastructure, investment and deployment of broadband services and other new technologies.

Centurylink stated the Commission was forward-looking when it established the goals for the program in 2002. The Commission considered access to advanced services such as high-speed Internet. Accordingly, Centurylink did not believe it was necessary to amend or expand the NUSF goals set forth by the Commission based on the goals of the NEBP.

Viaero also stated the Commission has worked to maintain its historic goals for the long-term support of the NUSF mechanism as technology and state objectives have evolved. Viaero did not believe the NUSF goals needed to be amended or expanded at this time.

Cox encouraged the Commission not to just promote “access” to broadband but to promote adoption and increased utilization. Some of the reasons for low-adoption rates include barriers to access for people with disabilities, low income, reduced educational opportunities and advanced age. Cox recommended the Commission modify its goals to include the promotion of broadband adoption and utilization. Cox also encouraged the Commission to periodically examine changes in technology including delivery speeds.

Based on the comments received thus far, the Commission Staff believes the Commission should modify Goal 1 and provide certain clarifications for Goal 3. The Commission Staff agrees that universal service policy should evolve to meet the needs of consumers and the fundamental objectives of Neb. Rev. Stat. § 86-323 (Reissue 2008).

To that end, the Commission Staff recommends the Commission modify Goal 1 as follows:

1. The Commission should establish sufficient specific and predictable state support mechanisms for universal availability of voice telecommunications services **and of broadband service.**

The Commission Staff agrees the Commission should use the definition of “broadband” adopted in Progression Order No. 4 which is 4/1 Mbps but agrees that the speed thresholds should be re-examined from time to time.

The Commission also asked whether it should revise Goal 3 to incorporate a requirement of reasonably comparable access to broadband. Currently, the goal reads as follows:

3. The Commission should ensure that all Nebraskans have comparable access to quality telecommunications and information services, including interexchange services, advanced telecommunications and information services.

The Commission Staff recommends no changes to Goal 3 itself but recommends the Commission to clarify that “information” services and “advanced telecommunications” services include broadband service as defined by the Commission. The Commission Staff also recommends the Commission clarify that comparable access means universal broadband service access to one fixed and one mobile broadband provider. The Commission Staff further recommends the Commission make a finding that reasonably comparable access to quality telecommunications service remains the primary goal of universal service and accordingly must be achieved.

In addition, the Commission Staff agrees with Cox that promoting broadband adoption and utilization is extremely important. The Commission is currently working with several other entities including the Nebraska Department of Economic Development, the University of Nebraska, the AIM Institute, and the Nebraska Information Technology Commission to increase broadband adoption. In 2010, the Commission applied for and received a federal stimulus grant in excess of \$1.8 million from the National Telecommunications and Information Administration (NTIA) to promote broadband adoption across the state. These grant funds will be applied for this purpose until 2014.

The Commission Staff is also aware that the FCC has an initiative to increase broadband adoption through the Lifeline program. That program is aimed at ensuring all low-income consumers have reasonably comparable access to telecommunications services. The FCC has made it clear that the program will be expanded to include assisting low-income consumers with broadband service, including the likelihood that computers and other equipment will be provided at a discount.

That notwithstanding, the Commission Staff does not believe the Commission has the ability to utilize state universal service support for broadband adoption absent a statutory change. Neb. Rev. Stat. § 86-324 provides the Commission should establish a fund “to make **universal access** to telecommunications services available to all persons in the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act.” Eligible carriers are required to use the support only for the “**provision, maintenance and upgrading of facilities and services....**” Because the universal service fund has a limited amount of support allocated to the NEBP, the Commission Staff recommends focusing support towards the building of infrastructure to provide adequate broadband service and continuing to use the broadband adoption grant support from the stimulus grant until 2014.

Issues 3, 4, 5 and 9.

The Commission sought comments on whether to continue the NEBP on a going-forward basis, whether to combine the Dedicated Wireless Fund with the NEBP, and how much support the Commission should allocate to the NEBP. The Commission also sought comments on the structure of the NEBP going-forward.

Some commenters like the Nebraska Cable Communications Association (NCCA) stated that it is premature to make the NEBP a permanent fund. Other commenters support the proposal to continue the NEBP as universal service program which supplements the federal broadband universal service program.

A number of commenters also supported combining the Dedicated Wireless Fund with the NEBP. While each program provides support for broadband expansion, the Dedicated Wireless Fund also serves the purpose of providing wireless services in areas where there is no wireless voice service. The Commission continues to field calls from consumers who have no access to wireless voice service and consumers experiencing dropped calls along major highways and near state recreational facilities.

The Commission Staff believes that it may be appropriate to combine the programs over a few years' time, moving a portion of the support allocated to the Dedicated Wireless Fund each year. The Commission Staff recommends a four year transition period.

The Commission Staff also recommends that the Commission continue to utilize the existing methodology for allocation of NEBP support in 2013 with the modification suggested in Issue 7 below.

Issue 7.

The Commission solicited comments on whether the Commission should change the process for determining broadband support by permitting carriers to further restrict, but not enlarge, the proposed support area based on negotiations with other providers prior to the Commission Staff's review and recommendation. The commenters overwhelmingly supported this change.

The Commission Staff agrees that having a period to negotiate with other affected providers may be a useful way to reduce opposition and target requests to the unserved and underserved areas. The Commission Staff recommends that there be a 30-day time period following the end of the

protest/intervention deadline to allow for carriers to negotiate restrictions to proposed broadband support areas. The Commission Staff recommends that the Commission encourage but not require carriers to negotiate. Because the Commission Staff runs the allocation methodology for all applications in a comparative analysis, the Commission Staff recommends that the 30-day time frame be fixed and not extended. A report detailing and demonstrating all census blocks removed from the proposed support area should be filed with the Commission on the 31st day or the next business day following the 30-day window.

Issue 8.

The Commission asked whether it should impose a support cap on NEBP support received. The Commission was concerned about the possibility that one applicant could end up with all or a large portion of the allocated NEBP support while other potentially worthwhile projects would not be funded. The Comments in response to this question varied widely.

The Commission Staff believes historical data does not currently support, nor lend itself, to the creation of a fixed support cap. The Commission Staff therefore recommends that no cap be imposed for the applications filed in 2013.

Issue 10.

The Commission also asked whether it should require carriers to provide sample speed test data as a verification tool so that the Commission can determine whether an approved project was completed as specified. A number of commenters supported this proposal. CenturyLink commented that a speed test requirement may pose a “regulatory burden.”

The Commission Staff recommends that speed test information should be collected in a manner that is not a burden on the carriers but at the same time provides the Commission with verification that the approved projects are being provided as promised to consumers. The Commission Staff therefore recommends a one-time speed test sample be provided within 90 days of project completion. The Commission Staff believes such information should be treated as proprietary.

Issue 11.

Finally, the Commission sought comments on whether to require the broadband providers to include grant support received through the NEBP on their NUSF-EARN Form. A number of providers recommended that this support not be included on the NUSF-EARN Form. RIC pointed out that incumbent local exchange carriers (ILECs) are required to follow the FCC’s Part 32 accounting rules when complying with NUSF-EARN requirements. As such, RIC stated NEBP grant amounts should not be included in the NUSF-EARN Form. In addition, some commenters stated that the inclusion of NEBP support on the NUSF-EARN Form would be a disincentive for prospective applicants.

The Commission Staff understands that ILECs receiving high-cost support are required to file NUSF-EARN Forms while competitive providers and wireless providers are not. The requirement to record the grant support as revenue in Line 26 of the form may provide a disincentive as it could reduce the amount or eligibility for high-cost support. The Commission Staff does not want to provide a disincentive for carriers planning to file broadband support applications, particularly when those decisions deprive consumers with reasonably comparable access to broadband service.

The Commission Staff believes the NUSF-EARN information, used in several areas including, but not limited to, the certification of the use of universal service support, the calculation of earnings in the high-cost model, and the expense cap review, is extremely important. However, the manner in which the information is reported to the Commission may need to be re-examined. The Commission Staff recommends the Commission examine this issue further.

The Commission staff recommends that for the present time, until the Commission completes its further review of the matter, the Commission should permit grant recipients which file NUSF-EARN Forms to exclude the NEBP grant support awarded in 2012 and 2013. Companies should not record infrastructure improvements made with NEBP grant support as plant investment in the NUSF-EARN Form and companies should not report grant support received in Line 26 on the NUSF-EARN Form. The Commission staff further recommends that if the Commission should decide to require companies to include NEBP support in the NUSF-EARN Form, that such a decision be applied prospectively in nature so that 2012 and 2013 grant recipients are not later placed at a disadvantage by the Commission's final determination on this issue. This staff recommendation applies only to state NEBP support and not to any other federal or state universal service support received by a carrier.

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