

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, P.O. 6

In the Matter of the Nebraska Public Service Commission on its own motion seeking to implement policies and procedures related to providing dedicated universal service support for wireless telecommunications services.) Application No. NUSF-69

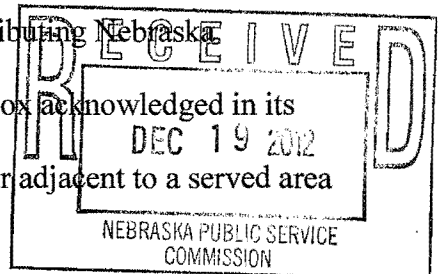
In the Matter of the Nebraska Public Service Commission, on its own motion seeking to establish a long-term universal service funding mechanism.) Application No. NUSF-26) POST-HEARING COMMENTS OF COX NEBRASKA TELCOM, LLC

INTRODUCTION

Cox Nebraska Telcom, LLC ("Cox") hereby files these Post-Hearing Comments for the Nebraska Public Service Commission's ("Commission") consideration in the above-captioned dockets; NUSF-77, P.O. 6, NUSF-69 and NUSF-26. These comments are being filed pursuant to the Commission Order entered November 7, 2012. Cox testified at the hearing held December 4, 20102, as allowed by such Order. Cox files the following Post-Hearing Comments to supplement its testimony and to respond to issues raised at the hearing.

The Commission Must Clarify the Use of NEBP Funds in Served Areas

Cox focused its testimony on the critical issue of distributing Nebraska Broadband Pilot Program ("NEBP") funds in served areas. Cox acknowledged in its testimony that funding the upgrade of transport within, near or adjacent to a served area



may be necessary to reach an underserved or unserved area. Such transport (also called “distribution”) would be a legitimate use of the NEBP. However, Cox testified and hereby emphasizes that carriers should not be allowed to use NEBP funds to enhance speeds or bring broadband to customers in areas that already have broadband. Carriers should not be able to play a shell game whereby seeking funding for an underserved or unserved areas provides an underhanded means to reach served areas.

The Staff’s recommendations were silent on this point and Cox respectfully asks the present ambiguity be clarified so there is a clear and universal understanding for 2013 applicants. Cox believes now is the proper time for the Commission to clearly articulate its policy, not via the application hearings. This is particularly true given the Commission’s continued approach to approve these applications in an ‘all or nothing’ fashion. Such an outcome will result in either denial of service to an unserved area or approval of a significant overbuild. Neither result is desirable or consistent with the NEBP’s objectives and purposes. From the onset, the Commission has indicated the purpose of the NEBP is to bring broadband to unserved and underserved areas. The Commission’s commitment and adherence to that objective must be clarified.

Commission Staff Participating in Negotiations by Request May be Beneficial

It was suggested at the hearing held December 5, 2012 that Commission Staff should participate in negotiations with all applicants in a “round-table” setting. Cox finds such a suggestion to be overly burdensome and unnecessary since many applications will likely be uncontested. However, the suggestion for Commission Staff to serve as a mediator in those applications where questions or concerns exist may be advantageous. Accordingly, Staff’s assistance should be allowed at the request of a party or parties who

find their involvement beneficial. This prevents burdening Staff and applicant resources where assistance is not needed.

Speed Tests Details Should be Clarified

Testimony at the hearing disclosed more specific information regarding the submission of broadband speed test data would be beneficial. Cox concurs and reiterates its support for the submission of speed test data by those carriers who are NEBP recipients.

First, it is important that the Commission require the submission of an affidavit accompanying the data to support its accuracy. If an affidavit is not included, the test has little meaning and value. It would not be burdensome or onerous for companies to attest that a statistically valid random sample of its customers was conducted via a third party testing tool and provide the corresponding locations and test results to the Commission.

Second, the Commission should minimize the regulatory burden associated with conducting speed tests. The Federal Communications Commission (“FCC”) is requiring testing of broadband networks as part of its USF/ICC Transformation Order, released November 2011.¹ Specifically Paragraph 109 of said Order states:

"We will require recipients of funding to test their broadband networks for compliance with speed and latency metrics and certify to and report the results to the Universal Service Administrative Company (USAC) on an annual basis. These results will be subject to audit. In addition, as part of the federal-state partnership for universal service, we expect and encourage states to assist us in monitoring and compliance and therefore require funding recipients to send a

¹ *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking.

copy of their annual broadband performance report to the relevant state or Tribal government.²

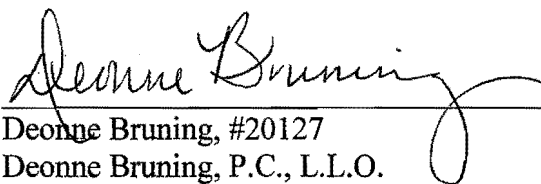
In addition, Paragraph 585 of the USF/ICC Transformation Order states:

“Speed and latency. Starting in 2013, we will require all ETCs to include the results of network performance tests conducted in accordance with the requirements of this Order and any further requirements adopted after consideration of the record received in response to the FNPRM. Additionally, in the calendar year no later than three years after implementation of CAF Phase II, price cap recipients must certify that they are meeting all interim speed and latency milestones, including the 4 Mbps/1 Mbps speed standard required by Section VII.C.1. of this Order. In the calendar year no later than five years after implementation of CAF Phase II, those price cap recipients must certify that they are meeting the default speed and latency standards applicable at the time.”³

Thus, key elements of the FCC’s approach are 1) performance testing and reporting by fund recipients and 2) certifications by those same recipients. Cox advocates the Commission require speed tests be done in a manner that mirrors the FCC’s approach, as it will lessen the regulatory burden, reduce costs and provide efficiency. It provides the Commission with information necessary to ensure the NEBP funds have been used appropriately in a manner that is most optimal for rate payers.

Respectfully submitted this 19th day of December, 2012.

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² *Id.* at para. 109.

³ *Id.* at para. 585.

Certificate of Service

An original and one copy of the foregoing Reply Comments of Cox Nebraska Telcom, LLC were hand-delivered December 19, 2012 to the Nebraska Public Service Commission, 1200 N St., Suite 300, Lincoln, NE 68508 and a copy of the same has been e-mailed to:

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