

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Commission, on its own motion, to increase broadband adoption among low-income consumers through the development of a Nebraska broadband telephone assistance program. )

) Application No. NUSF-91



**COMMENTS OF THE RURAL INDEPENDENT COMPANIES IN RESPONSE TO  
APRIL 1, 2014 ORDER SEEKING FURTHER COMMENTS**

**A.  
INTRODUCTION**

The Nebraska Rural Independent Companies (“RIC”)<sup>1</sup> submit these Comments in response to the Commission’s Order Seeking Further Comments entered in this proceeding on April 1, 2014. RIC appreciates the opportunity to provide these Comments to the Commission.

**B.  
ISSUES FOR COMMENT**

**1. Should the Commission allocate a portion of the universal service fund support currently set aside for broadband grants to initiate a pilot program subsidizing retail broadband service for low-income subscribers? Why or why not?**

RIC is opposed to the proposal to allocate a portion of the \$9 million annual level of support assigned to the Nebraska Broadband Pilot Program (the “NEBP”). Only eight months ago, following receipt of multiple rounds of comments and a hearing, the Commission entered its Order expanding the NEBP to its current \$9 million level. In that regard, the Commission stated:

---

<sup>1</sup>Arlington 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 Commission agrees with the majority of the commenters who stated this proposal would be more efficient and would bring the benefits of broadband services to Nebraska consumers at a faster pace. *As evidenced by the increase in the number of applicants, projects and the amount of support requested, the NEBP is a useful program which can accelerate broadband deployment in unserved and underserved areas.*<sup>2</sup>

In 2013, 15 applicants submitted requests for broadband grant funding in excess of \$16 million with \$4 million available for award; and in 2014 16 applicants submitted requests for broadband grant funding in excess of \$20 million with \$9 million available for award. Clearly, the need for grant funds to extend broadband availability to currently unserved or underserved Nebraska consumers has been and continues to be at a high level. In fact, in the Staff recommendations for funding of 2014 applications, the Staff wrote:

As noted previously the 2014 NEBP saw a marked increase in the number of projects submitted. While this increase continues to be a testament to the Commission and the way in which the NEBP was designed, *the influx of applications again results in demand significantly outpacing supply.*<sup>3</sup>

RIC respectfully submits that monies should not be diverted from NEBP to the Nebraska Broadband Adoption Lifeline Pilot Program (the “Broadband Adoption Program”) unless and until the Commission conducts a comprehensive investigation regarding (a) whether the Commission possesses legal authority to expand the Nebraska Telephone Assistance Program (“NTAP”) to include the Broadband Adoption Program, (b) whether a policy-based justification exists to support the establishment of the Broadband Adoption Program, and (c) whether continuation of the NEBP grant program at its current funding level is necessary in order to provide broadband availability to all Nebraska consumers.

---

<sup>2</sup> *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Process and Procedures Regarding the Nebraska Universal Service Fund, et. al.*, Application No. NUSF-77, Progression Order No. 8 at 5 (Sept. 4, 2013) (emphasis added).

<sup>3</sup> *Recommendation of the Commission Staff*, Applications NUSF-92.01 – 92.16 at 13 (Apr. 22, 2014) (emphasis added).

Further, at a proposed \$2 million annual funding level the Broadband Adoption Program will almost certainly be “top heavy” with administrative costs. The demonstrable need to not only add Commission personnel and overheads to administer this Program, but further to implement appropriate measures to safeguard against waste, fraud and abuse,<sup>4</sup> will result in overhead costs to administer a \$2 million Broadband Adoption Program that are likely to represent a relatively large percentage of the support to be delivered to low-income broadband users.<sup>5</sup> The reality of abuse and violation of the Commission’s Rules in connection with low-income telecommunications support programs was recently underscored by the Commission’s need to revoke the Eligible Telecommunications Carrier status of a wireless carrier that was participating in the Commission-administered Nebraska Telephone Assistance Program (“NTAP”) program.<sup>6</sup>

The Commission must also be cognizant of the open issue as to its statutory authority to broaden the parameters of the NTAP to include support for broadband. This subject was addressed by RIC in its Reply Comments.<sup>7</sup> The consensus among commenters was that the

---

<sup>4</sup> Illustrative of this problem is the U.S. Department of Justice’s News Release on April 10, 2014 that three individuals who owned and operated Associated Telecommunications Management Services LLC, a holding company that owned and operated multiple subsidiary telephone companies that participated in the Federal Lifeline Program, have been indicted for their alleged roles in an approximately \$32 million fraud to submit false claims to USAC for Lifeline benefits. *U.S. Department of Justice, Office of Public Affairs, News Release (Apr. 10, 2014).*

<sup>5</sup> See RIC Reply Comments at 2-4 (Oct. 25, 2013) (hereinafter the “Reply Comments”) for a more complete discussion of this issue.

<sup>6</sup> *In the Matter of the Commission, on its own motion, seeking to conduct an inquiry into the operations of Telrite Communications d/b/a Life Wireless, Application No. NUSF-89/C-4621, Order Revoking ETC Designation (Sept. 17, 2013).*

<sup>7</sup> See Reply Comments at 4-5. See also RIC Comments at 4-5 (Sept. 30, 2013) (hereinafter referred to as the “September Comments”) for a more complete discussion of the Commission’s legal authority.

Commission either lacks the authority to implement a broadband component of NTAP or that it is unclear whether the Commission possesses this legal authority. Until this issue is resolved, it would be premature for the Commission to proceed with implementation of a Broadband Adoption Program.

Finally, RIC again submits that the Commission would benefit from receipt of the data and findings from the Federal Communications Commission (“FCC”) Low-Income Pilot Program, initiated in the *Lifeline Reform Order* that examined how the existing federal Lifeline program could be restructured to include broadband as a supported service to increase broadband adoption among Lifeline-eligible consumers. As stated in RIC’s Reply Comments, the results of the FCC’s Pilot Program should be available beginning in August 2014 to assist the Commission with its consideration of the variables that have a positive impact on broadband adoption.<sup>8</sup> Further, since no other state is known to have implemented a broadband adoption program for low-income broadband users, there is no state-originated data for the Commission to utilize to determine whether implementation of the Broadband Adoption Program would be effective.

**a. Is a \$2 million allocation for calendar year 2015 reasonable? Please explain.**

If the support level were to be set at \$10.00/low-income broadband user/month as suggested in question 2.a below, a \$2 million allocation would support 16,667 users for one year. According to the Commission’s 2013 Annual Report to the Legislature, as of September 2013 approximately 13,800 Nebraskans were enrolled in and received support from NTAP (at \$3.75/month).<sup>9</sup> However, when the numbers of Nebraskans eligible for the Broadband Adoption

---

<sup>8</sup> See Reply Comments at 2-5.

<sup>9</sup> 2013 Commission Report to the Legislature at 30.

Program are considered (assuming that the Commission would approve the same eligibility criteria as NTAP) – nearly 238,000 Medicaid eligible; 180,000 qualified for Supplemental Nutrition Assistance; over 44,000 eligible for Low Income Home Energy Assistance; and over 333,000 children eligible for the National School Lunch Program – it is readily apparent that demand for support is very likely to far outstrip the proposed \$2 million allocation.<sup>10</sup> These statistics underscore that a \$2 million allocation is likely only the “beginning of the story” as far as demand for support. While RIC recommends against implementation of the Broadband Adoption Program, in the event implementation proceeds and if consumer demand for support from the Broadband Adoption Program exceeds the \$2 million allocation, the Commission would face the additional challenge of determining priority of entitlement to support or implementing an arbitrary “first come, first served” approach, both of which are problematical.

**b. For calendar year 2014, the Commission set aside \$9 million for the broadband grant program. An allocation of \$2 million in 2015 would leave \$7 million for the broadband grant program. Would this change be reasonable? Why or why not?**

As stated above, the \$9 million funding level for the NEBP was established in September 2013, and the 2014 grants exceed this allocation by approximately 220%. Further, the Commission has neither evaluated nor received any comments from interested parties that would support the advisability of any reduction in the level of the broadband grant funding for the NEBP. To the contrary, and again as quoted above, in September 2013 the Commission made the finding that “the NEBP is a useful program which can accelerate broadband deployment in unserved and underserved areas.” There is no evidence before the Commission to suggest that the need for capital funding to extend broadband service to unserved or underserved areas of Nebraska is any less today than it was in September 2013 when the Order was entered.

---

<sup>10</sup> See September Comments at 10.

Simply stated, until broadband is available to all Nebraska consumers, through private investment supported by state and federal government programs in very high cost areas, it is premature to divert monies from the NEBP to the Broadband Adoption Program. In addition, the FCC has just announced its proposal to increase the broadband speed standard for all recipients of Federal USF support from the current 4 Mbps downstream to 10 Mbps downstream.<sup>11</sup> If this increased speed standard is implemented by the FCC, it will place increasing pressure on the allocation of scarce NUSF support resources to fund the capital additions necessary to fund facility construction needed with regard to this new speed standard. To provide reduced-cost broadband service to consumers in already served areas of Nebraska while many Nebraska consumers lack access to broadband service at *any* price is proverbially to “put the cart before the horse.”<sup>12</sup>

**c. Are there other alternatives the Commission should consider to increase broadband adoption in Nebraska? Please explain.**

Consistent with the foregoing comments, the Commission should focus first on the creation of broadband availability for all Nebraska consumers before allocating scarce NUSF support resources to discounted broadband service. Absent this approach, the Commission would not be fulfilling the policy directives of the Legislature in *Neb. Rev. Stat. §§ 86-323(2) and (3)* (Reissue 2008) that require that “access to information services be *provided in all*

---

<sup>11</sup> See e.g. *Connect America Fund*, WC Docket No. 10-90, et al., FCC News Release re Seventh Order on Reconsideration (April 23, 2014).

<sup>12</sup> For example, the recently released Research Report by The Nebraska Broadband Initiative entitled “Internet Connectivity and Use in Nebraska: A Follow Up Study” (April 2014) confirms that while progress has been made in providing access to broadband access since 2010, the most recent data discloses that 82% of Nebraska households have access to broadband Internet service.

*regions of the state*” and that “*consumers in all regions of the state . . . should have access to . . . advanced information services.*” (emphasis added)

Further, since the Commission lacks any data that would support the efficacy of implementation of the Broadband Adoption Program, and as mentioned above, no other state has implemented a similar program, the Commission should await release of the results of the FCC’s Low-Income Pilot Program, and carefully consider guidance therefrom as to the type(s) of programs, if any, that demonstrably increase broadband adoption among low-income consumers.<sup>13</sup>

**2. If the Commission does initiate a pilot program to make broadband service more affordable to low-income consumers, how much should the Commission provide in monthly support?**

**a. Is a \$10.00 subsidy reasonable?**

Please refer to the discussion in response to Question 1.a above.

**b. Would a \$10.00 discount on a monthly recurring bill result in consumers paying a reasonable share for their broadband service while addressing the Commission’s affordability concerns? Why or why not?**

This question does not set forth an assumed monthly broadband service package or an assumed cost of monthly broadband service to establish a context for commenting on the reasonableness of a \$10.00/month discount. For the purpose of this response, RIC will assume that eligibility for the discount would be premised upon subscription by the low-income consumer for the least expensive provider service offering that delivers at least the 4 Mbps/1Mbps speed levels that support the Commission’s definition of “broadband”.

Using the NTAP voice service support level as a proxy, if it assumed that the price of basic local voice service is \$19.95/month, the NTAP support rate of \$3.75/month is an 18.8%

---

<sup>13</sup> See Reply Comments at 2-6.

subsidy. If it is assumed that the least expensive broadband service is \$39.95/month, then an 18.8% subsidy equals about \$7.50/month. If the assumed pricing of the broadband service is reduced to \$29.95/month, then an 18.8% subsidy equals \$5.63/month. In either case, using the NTAP support level as a comparison, a support rate of \$10.00/month for broadband appears to be excessive.

However, and as stated above, RIC opposes proceeding to provide any discount in connection with broadband adoption at least until the results from the FCC's Low-Income Pilot Program are made available and can be carefully analyzed. Lacking any state program precedents from other states to draw upon and ascertain whether (a) offering service discounts favorably impacts broadband adoption among low-income consumers, and (b) whether the amount of any discount materially impacts adoption, offering comments in response to this question is at this point essentially a speculative exercise.

**c. Are there other alternatives the Commission should consider?**

Please refer to the discussion in response to Question 1.c above.

**3. If the Commission does initiate a low-income broadband pilot program:**

**a. Should the Commission establish a test period for the pilot program and then determine the efficacy of the program?**

RIC recommends against the Commission's initiation of a low-income broadband pilot program for the reasons set forth in these Comments. However, in the event that the Commission makes a determination to proceed with implementation of the Broadband Adoption Program, such action should be *limited to a one-year test period* with a funding level not to exceed \$2 million. This one-year test should be followed by a thorough evaluation of the efficacy of the Program through the receipt of comments from all interested parties and a public hearing.



The FCC's Low-Income Pilot Program should provide the Commission with a useful template for the method to conduct a test such as is being contemplated by the Commission in this docket. The FCC's Pilot Program was commenced in February 2013 and includes a 3-month period for the selected eligible telecommunications carriers ("ETCs") to implement any administrative functions required in connection with the funded programs, a 12-month period during which subsidized broadband service offerings will be provided to eligible program participants, and a 3-month period for data collection and analysis.<sup>14</sup>

i. **If so, how should the success of the pilot program be measured?**

RIC does not have suggestions for such measurements. Again RIC recommends against implementation of the Broadband Pilot Program.

ii. **Is there relevant data providers have collected from other broadband adoption programs that the Commission should consider?**

As stated in the Reply Comments, all responding commenters stated that they are not aware of any similar broadband adoption initiatives or programs in any other state.<sup>15</sup> Thus, RIC is not aware of available data for consideration by the Commission, and thus, again urges the Commission to suspend further consideration of implementation of any Broadband Adoption Program until such time that the FCC's Pilot Program data is released and can be thoroughly analyzed.

---

<sup>14</sup> See In the Matter of Lifeline and Link Up Reform and Modernization et al, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking (rel. Feb. 6, 2012) (the "*Lifeline Reform Order*"), at para 325.

<sup>15</sup> See Reply Comments at 5-6. See also CenturyLink Comments at 12; Cox Comments at 8; Frontier Comments at 5; Verizon Comments at 6; Viaero Comments at 4; Windstream Comments at 8; and RIC Comments at 16-17.

**b. If the Commission establishes a pilot program, how should the Commission encourage consumer awareness of the program?**

While RIC believes that discussion of this subject is premature, if a pilot program is established, it seems reasonable for the Commission to create consumer awareness through the same methods that it now uses in connection with NTAP.

**c. Should there be a requirement for providers to advertise the availability of the discount program? Should this requirement be different from the requirement Lifeline providers have today?**

Please refer to RIC's comments in response to Question 3.b above. In addition, however, implementation of this advertising requirement or for that matter any other Commission-ordered requirements regarding a Broadband Adoption Program is subject to the complication that not all providers of broadband are subject to the Commission's jurisdiction (as opposed to telecommunications providers involved in NTAP all being subject to Commission jurisdiction). Therefore, it may not be possible for the Commission to impose uniform advertising requirements in connection with any Broadband Adoption Program.

**4. Are there any other suggestions or proposals the Commission should consider at this time?**

2014 is the third year of the NEBP. Once the Commission has completed its consideration of the applications for 2014 NEBP funding and has entered its orders in connection therewith, RIC recommends that the Commission should conduct a comprehensive evaluation of the effectiveness of the NEBP in order to determine whether to continue it as is, to modify it in some ways or to discontinue it.

Further, the support provided by the High Cost program to Nebraska ETCs has decreased dramatically over the last 10 years. Either in connection with the NUSF-77 docket or in a new NUSF docket, the Commission should carefully evaluate the advisability of reforming the

current contribution mechanism that generates revenues for support of all current NUSF programs. It is critical that in the near future the Commission should open an investigative docket in which measures to sustain and strengthen the High Cost program are given careful and thorough study.

C.

**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 providing additional comments for consideration if and when requested by the Commission.

Dated: May 13, 2014.

Arlington 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., 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 "Rural Independent Companies")

By: Paul M. Schudel  
Paul M. Schudel, NE Bar No. 13723  
pschudel@woodsaitken.com  
James A. Overcash, NE Bar No. 18627  
jovercash@woodsaitken.com  
WOODS & AITKEN LLP  
301 South 13th Street, Suite 500  
Lincoln, Nebraska 68508  
Telephone (402) 437-8500  
Facsimile (402) 437-8558

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13<sup>th</sup> day of May, 2014, an electronic copy of the foregoing pleading was delivered to:

**City of Lincoln**

Jeffery R. Kirkpatrick  
jkirkpatrick@lilncoln.ne.gov

**Center for People in Need**

Loel P. Brooks  
lbrooks@brookspanlaw.com  
-and-  
Katherine S. Vogel  
kvogel@brookspanlaw.com

**CenturyLink**

Jill Vinjamuri-Gettman  
jgettman@gettmanmills.com  
-and-  
William E. Hendricks  
tre.hendricks@centurylink.com

**Cox Nebraska Telcom, LLC**

Deonne Bruning  
deonnebruning@neb.rr.com

**Citizens Telecommunications Company of Nebraska d/b/a  
Frontier Communications of Nebraska**

Scott Bohler  
scott.bohler@ftr.com

**Rural Telecommunications Coalition of Nebraska**

Troy S. Kirk  
tkirk@remboltludtke.com

**Satellite Broadcasting & Communications Association**

William P. Hunt  
williamp.hunt@dish.com

-and-

Lisa McCabe

lmccabe@sbca.org

**MCImetro Access Transmission Services LLC**  
**d/b/a Verizon Access Transmission Services and MCI**  
**Communications Services, Inc.**

**d/b/a Verizon Business Services**

Steven G. Seglin

SGS@crosbylawfirm.com

**N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless**

Loel P. Brooks

lbrooks@brookspanlaw.com

-and-

Katherine S. Vogel

kvogel@brookspanlaw.com

**Windstream**

Matthew Feil

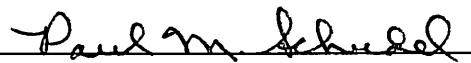
matthew.feil@windstream.com

**Nebraska Public Service Commission**

Sue.Vanicek@nebraska.gov

Brandy.Zierott@nebraska.gov

Shana.Knutson@nebraska.gov

  
Paul M. Schudel