

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program. ) Application No. NUSF-92 ) Progression Order No. 1 )

COMMENTS OF THE RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA



I. INTRODUCTION

The Rural Telecommunications Coalition of Nebraska ("RTCN"),<sup>1</sup> by and through its attorneys of record, hereby respectfully submits these comments to the Nebraska Public Service Commission ("Commission") in response to the Commission's July 22, 2014, Order Seeking Comment and Setting Hearing in Application No. NUSF-92, Progression Order No. 1.<sup>2</sup>

II. COMMENTS

A. Mobile versus Fixed Broadband

In its NUSF-77 Progression Order No. 7,<sup>3</sup> the Commission found that "reasonably comparable access to quality telecommunications service is the primary goal of universal

<sup>1</sup> For purposes of this docket, RTCN is made up of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cozad Telephone Company, Diller Telephone Company, Glenwood Network Services, Inc., Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford Cooperative Telephone Co., Mainstay Communications, Plainview Telephone Company, Southeast Nebraska Communications, Inc., Wauneta Telephone Company, and WesTel Systems f/k/a Hooper Telephone Company.

<sup>2</sup> In the Matter of the Petition of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program, Application No. NUSF-92, Progression Order No. 1, Order Seeking Comment and Setting Hearing (July 22, 2014) ("Order").

<sup>3</sup> In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the NUSF, Application No. NUSF-77, Progression Order No. 7; 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, Order Seeking Comments (January 15, 2013).

service and should be prioritized as such.”<sup>4</sup> In the same Order, the Commission then clarified that “comparable access could mean universal service access to one fixed and one mobile broadband provider.”<sup>5</sup> The Commission now seeks comment on how it should define “fixed” and “mobile” broadband as those terms are used in the context of the Nebraska Universal Service Fund Broadband Program (“NEBP”).

As technology advances and broadband service providers expand the range of services they offer to their customers, the distinctions between mobile broadband and fixed broadband are likely to continue to narrow and blur. The current need for clarity on these distinctions became apparent in the 2014 NEBP proceedings in which parties presented competing views on how the Commission’s “one fixed and one mobile” policy might be interpreted. Based on these recent disputes and in anticipation of a growing need for clarity on these distinctions in the future, RTCN commends the Commission for addressing this important issue at this time.

RTCN’s primary interest at this time is simply that the Commission clearly establish what it considers to be fixed broadband and what it considers to be mobile broadband for purposes of NEBP applications. RTCN does not advocate for any particular definitions, so long as all potential applicants clearly understand how the Commission will distinguish between a fixed broadband project and a mobile broadband project. The presence of clearly defined distinctions between these types of services will go a long way toward avoiding future confusion and potential disputes among NEBP applicants.

To the extent the Commission finds that fixed wireless broadband service should be categorized as mobile broadband service for purposes of NEBP applications, RTCN requests that the Commission establish standards for accepting mobile broadband speed test data

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<sup>4</sup> *Id.* at 11.

<sup>5</sup> *Id.*

into evidence. Such tests on networks other than a carrier's own network are in most cases inherently unreliable. If the Commission elects to accept evidence of such tests, proper controls and requirements should be established, including the following: (1) information identifying the person or persons conducting the test, including their credentials for doing so; (2) information about the date, the time of day the tests were conducted, and weather conditions; (3) information about the device used and application, including packet type and size, that were utilized; (4) specific information about the manner in which the tests were conducted; for example, how the testing device was operated, where it was positioned or held, the test file size or location, etc.; (5) information from all tests conducted, not select tests; and (6) information about the location of the server through which the tests were routed.

RTCN cautions that, regardless of how the Commission defines fixed or mobile broadband, with ever-advancing technology, the Commission must revisit these service category distinctions with some frequency to assure that clarity continues into the future,<sup>6</sup> and as providers increasingly offer services that provide both fixed and mobile capabilities, the Commission may soon be forced to take a step back and examine the larger question of whether its current policy remains applicable.

## **B. Multi-Year Projects**

The Commission also seeks comment on whether it should entertain applications to support multi-year broadband projects. RTCN does not support the approval of multi-year broadband projects at this time. By adopting a policy to accept and approve multi-year

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<sup>6</sup> Advances in technology on other fronts also necessitate the Commission's frequent periodic review of the standards and definitions utilized in the Broadband Grant Program. For example, in meetings just last week, Nebraska telecommunications representatives learned from agricultural producers in rural Nebraska that 4/1 broadband is not nearly adequate to meet the needs of those producers in utilizing applications that assist in reducing use of water and electricity for irrigation, curbing costs, maximizing efficiencies and yields, and spurring economic development. The 4/1 definition of broadband may soon be insufficient.

projects, the Commission will arguably add an unnecessary layer of complexity to the NEBP approval process. In addition, multi-year project approvals will place the Commission in an undesirable position of committing funding for future years without certainty that the funds will be available. Similarly, multi-year applicants would be at risk of beginning projects without any guarantee that funding will be available to finish such projects. Future applicants are also placed at a disadvantage if funds for future years are already earmarked for multi-year projects in advance of the application year. It is difficult to evaluate whether the third phase of a multi-year project proposed today will be superior to a broadband project proposed three years from now. For these reasons, RTCN supports the continuation of a policy whereby the Commission awards funding on a year-by-year basis only.

### **C. Project Caps**

The Commission also seeks comment regarding whether a \$450,000 per project cap would be reasonable. RTCN does not oppose a \$450,000 per project cap. The use of a per project cap would enable the Commission to prioritize projects and may increase the likelihood that more areas of the state may receive funding. In addition, the cap would provide applicants with additional guidance as to what amount of funding they may request for projects.

### **D. Broadband Adoption**

The Commission also seeks comments on whether it should entertain proposals to increase broadband adoption with NEBP grant support. The Commission previously addressed this issue in its January 15, 2013, Progression Order No. 7 in NUSF-77, in which it declined to utilize NEBP funding for broadband adoption in light of a federal grant that was being utilized by 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 this state.<sup>7</sup>

RTCN is not aware of the current status of the broadband adoption program referenced by the Commission in NUSF-77 Progression Order No. 7, but to the extent its results are now published or otherwise available to the Commission, RTCN encourages the Commission to utilize these findings to help formulate a plan for how to best spur broadband adoption in Nebraska prior to allocating NEBP or other funds to such a program. To the extent this program is not yet complete, RTCN encourages the Commission, consistent with its January 15, 2013, Order, to wait on the completion of the program and the results thereof before proceeding with the implementation of a policy to utilize NEBP funding for broadband adoption.

While RTCN supports a statewide effort to promote adoption of broadband, RTCN remains hesitant to support the utilization of NEBP funds to fund these efforts.<sup>8</sup> As stated in RTCN's NUSF-91 Comments, the broadband grant program has proven successful with high-speed internet access being made available to many Nebraskans that would otherwise not have access without the program, and based on 2014 NUSF-92 applications, demand for funding for broadband projects through the grant program far exceeds available funding. Thus, RTCN recommends that the Commission first explore contribution reform, namely broadening the NUSF contribution base, before diverting broadband grant program funds to a low-income broadband adoption pilot program.<sup>9</sup> In addition, consistent with prior comments, RTCN reiterates that the source of funding for a broadband adoption program

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<sup>7</sup> See NUSF-77 Progression Order No. 7, at 11-12.

<sup>8</sup> *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, RTCN Comments, pages 4-5 (May 12, 2014).

<sup>9</sup> See *id.* at 5.

should not be the high-cost fund, which is a program mandated under the Nebraska Telecommunications Universal Service Act.<sup>10</sup>

To the extent the Commission proceeds toward utilizing NEBP funds for broadband adoption projects, RTCN encourages the Commission to hold off on doing so for the 2015 funding year until after the Federal Communication Commission's ("FCC") release of data collected from its Low-Income Pilot Program initiated by the FCC in its Lifeline Reform Order (the "FCC Pilot Program"), and after the Commission has had a chance to further analyze such data in view of potential programs specific to Nebraska communities.

### III. CONCLUSION

In conclusion, RTCN urges the Commission to clarify what it considers to be a fixed broadband project as distinguished from a mobile broadband project. RTCN declines to support the adoption of a multi-year project policy at this time, but does not object to a \$450,000 per project cap. Finally, RTCN encourages the Commission to hold off on allocating NEBP funding for broadband adoption projects at this time. RTCN appreciates the opportunity to contribute to this important proceeding and respectfully submits its comments hereinabove.

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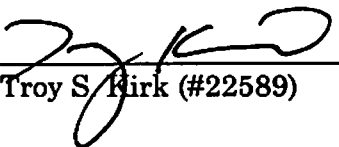
<sup>10</sup> See NEB.REV.STAT. § 86-324(1).

Dated this 4th day of August, 2014.

RURAL TELECOMMUNICATIONS  
COALITION OF NEBRASKA ("RTCN")

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Cozad Telephone Company,  
Diller Telephone Company,  
Glenwood Network Services, Inc.,  
Glenwood Telephone Membership Corporation,  
Hartman Telephone Exchanges, Inc.,  
Hemingford Cooperative Telephone Co.,  
Mainstay Communications,  
Plainview Telephone Company,  
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### CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and one copy of the foregoing Comments of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on August 4, 2014, and a copy was sent via electronic mail on August 4, 2014, addressed as shown below, to the following:

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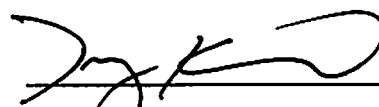
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