



**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Commission, on its Own ) Application No. NUSE-92  
Motion, to Administer the Nebraska Universal )  
Service Fund Broadband Program. )

**COMMENTS OF THE RURAL INDEPENDENT COMPANIES IN RESPONSE TO  
PROGRESSION ORDER NO. 1**

**I.  
INTRODUCTION**

The Nebraska Rural Independent Companies (“RIC”)<sup>1</sup> submit these Comments in response to the Commission’s Progression Order No. 1 Seeking Comment and Setting Hearing entered in this proceeding on July 22, 2014 (“*P.O. I*”). RIC appreciates the opportunity to provide the following Comments to the Commission.

**II.  
ISSUES FOR COMMENT**

In *P.O.I* the Commission presents Issues A through D and associated with each issue is a series of questions on which comments are requested.

**A. Mobile vs. Fixed Broadband**

- **How should the Commission define mobile versus fixed broadband service?**

RIC suggests that the Commission should adopt the definition of “terrestrial fixed broadband service” provided by the Federal Communications Commission (“FCC”). The FCC

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<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.

defined terrestrial fixed broadband service as one that serves end users primarily at fixed endpoints using stationary equipment, such as the modem that connects an end user's home router, computer or other Internet access device to the network.<sup>2</sup> This term includes fixed wireless broadband services (including those offered over unlicensed spectrum). Similarly, for reporting fixed wireless connections on the FCC Form 477, the FCC stated that a provider of fixed broadband connections to end user locations is considered "facilities-based" if any of the following conditions are met: (1) it owns the portion of the physical facility that terminates at the end user location; (2) it obtains unbundled network elements (UNEs), special access lines, or other leased facilities that terminate at the end user location and provisions/equips them as broadband; or (3) it provisions/equips a broadband wireless channel to the end user location over licensed or unlicensed spectrum.<sup>3</sup> "Broadband connections" are wired "lines" or fixed wireless "channels" that enable the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 Kbps in at least one direction.

Obviously, inclusion of this definition in the *Transformation Order* as well as the instructions for reporting fixed wireless subscriptions on the FCC Form 477 follows thorough consideration of this issue by the FCC, and adoption of these generally-accepted definitions will minimize future confusion and uncertainty. Consistent with this position, RIC also recommends a finding by the Commission that is consistent with the FCC's conclusion that terrestrial fixed broadband service includes fixed wireless broadband service, including fixed service offered over unlicensed spectrum.

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<sup>2</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 26 FCC Rcd at 17698-99, para. 98 (2011) ("*Transformation Order*").

<sup>3</sup> *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, June 27, 2013 ("*FCC Form 477*"), at p.5.

- **Are there key indicators which should be used as a threshold in this determination?**

In defining mobile service, RIC submits the Commission should take into account FCC requirements of recipients of support from the Mobility Fund as well as consumer expectations of mobile service when they purchase such service from a mobile service provider. In the Transformation Order, the FCC found that recipients of Mobility Fund support, like all CAF support recipients, must offer voice service.<sup>4</sup> In addition, the FCC requires that all recipients of Mobility Fund support must offer standalone voice service to the public as a condition to receipt of support.<sup>5</sup> RIC believes this requirement to provide voice service as part of a mobile service offering comports with consumer expectations when they purchase a mobile service.

In addition, the FCC requires recipients of support to certify annually that they offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.<sup>6</sup> RIC believes this requirement is a distinguishing characteristic of mobile service and another expectation of consumers. That is, when a consumer purchases a mobile service from a provider in rural Nebraska, the consumer has a reasonable expectation that he or she can purchase a similar service plan from a mobile provider at rates that are comparable to those offered by other mobile providers, such as AT&T and Verizon, in urban areas such as Lincoln and Omaha. It is highly unlikely for a consumer, when purchasing such mobile service to expect that he or she will be constrained to use of the service only in conjunction with a laptop computer with mobile capability provided through using dongles and handheld routers.

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<sup>4</sup> *Transformation Order*, at para 359.

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

<sup>6</sup> *Transformation Order*, at para 385.

In addition, on FCC Form 477, the FCC provides instructions for reporting Mobile Broadband and Mobile Telephone Subscriptions.<sup>7</sup> For Mobile Telephone, the instructions state that carriers are to count as a subscriber a mobile handset or other revenue-generating active voice unit that has a unique phone number and that can place and receive calls from the public switched telephone network.<sup>8</sup> The FCC further defines a mobile telephony service as a real-time, two-way voice service that is interconnected with the public switched network using an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoff of subscriber calls.<sup>9</sup> RIC submits that a seamless handoff of subscriber calls is another consumer expectation of mobile service and one that an applicant which describes its service as mobile, must demonstrate its capability to provide.

Additionally, any broadband offering that its provider represents to be mobile broadband must have the capability to provide E911 in accordance with all Commission requirements. Again, mobile subscribers reasonably expect that in the event of an emergency that requires a 911 call, first responders will be able to identify the subscriber's position in real time, and within the accuracy parameters prescribed by the FCC.

- **How should fixed wireless service be defined when it has both a fixed and a mobile component?**

It is RIC's position that if a proposed fixed broadband service falls within the above-stated definition of terrestrial fixed broadband service, it is irrelevant whether the proposed service or the platform supporting such fixed service includes a mobile component. Under such

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<sup>7</sup> *FCC Form 477*, at pp.13-14.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

circumstances the undeniable fact is that a fixed service is being proposed and the application of the Commission's procedures and policies regarding Nebraska Broadband Program ("NEBP") grant funding should be based upon a factual analysis as to whether fixed broadband is currently available in the area described in the application.

- **How should the NEBP applicants put the Commission and other interested parties on notice as to the fixed or mobile nature of their project(s)?**

In the portion of the application that identifies services and pricing, the applicant should be required to clearly identify the nature of the service proposed to be provided.

- **What type or types of service features should be listed in each application in order to make this clear?**

The provider of the service who seeks NEBP support should be required in its application to clearly identify the nature of the service for which it seeks NEBP support, provide a description of the customer service offering, including the type of broadband service against which it would likely be competing, and delineate how its proposed service offering meets any fixed and/or mobile broadband standards defined by the Commission. The application should also include information demonstrating that the service described therein is consistent with the classification asserted by the applicant, i.e. fixed or mobile.

As part of the application process, the Commission should complete an assessment of all filed NEBP applications and issue findings as to whether the Commission accepts the classification of the broadband service set forth in each application or reclassifies the service. Providing such a designation in advance of the funding hearing and release of the Staff recommendation would provide all parties, including the Commission Staff, with information essential to the preparation of testimony and challenges. In the event a service is proposed that has not previously been classified as fixed or mobile broadband service, the Commission may

wish to conduct a hearing at which evidence could be provided regarding the proper classification of such service.

- **Should the Commission use this definition [from Transformation Order para. 98] to determine whether the project is a fixed broadband service?**

Yes. Please refer to the above comments relating to the definition of fixed broadband service.

- **Should the Commission define a service by the primary use of the service rather than by technology?**

RIC believes that while there may be technological differences in the provision of fixed versus mobile services, the primary use of the service as well as consumer expectations should be primary determinants as to whether the service is fixed or mobile.

- **How should the Commission determine how the service is used primarily?**

See the responses to the preceding inquiries.

- **How should the Commission treat mobile service providers who do not fall under the FCC's definition above which also have a fixed wireless product option?**

If a service provider offers a fixed broadband service option in connection with a mobile broadband service offering, and the provider seeks NEBP grant funds, the application for grant funds should be evaluated by the Commission on the basis of the existing fixed broadband application in the area of the application as opposed to the availability of mobile broadband service.

- **Should the Commission define mobile service by technological factors such as the amount of back-up power, transmitting equipment or the tower strength? If so, what should the specific standards be?**

RIC believes that the foregoing discussion identifies sufficient factors to allow the Commission to make a proper classification of mobile broadband service.

- **Should the Commission define mobile service by the percentage of all telephone numbers which the service could reach on the applicants' network? If so, what should the percentage be?**

RIC believes that the foregoing discussion identifies sufficient factors to allow the Commission to make a proper classification of mobile broadband service.

- **What about access to emergency services with location accuracy?**

The Commission should require all providers of mobile broadband service who seek NEBP grant funding, and therefore must provide voice service in accordance with Commission requirements, to also provide E911 capability that is in compliance with all Commission requirements. This capability should include the provision Phase 2 wireless E911 services as defined in federal and state requirements.

- **Should only applicants required to comply with 47 C.F.R. § 20.18 requirements be considered as providing mobile service?**

Yes. Section 20.18 set forth CMRS 911 Service requirements and applies to CMRS providers that:

1. Offer real-time, two way switched voice service that is interconnected with the public switched network; and
2. Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

This definition is consistent with the provision of mobile voice services. As discussed earlier, any applicant which seeks NEBP grant funding for a mobile broadband services should be required to offer mobile voice service and Phase 2 wireless E911 services. Phase 2 wireless E911 location services should be deployed concurrently with the mobile broadband service for which NEBP support was approved.

- **Should Phase 2 wireless E911 location accuracy be a determining factor?**

Yes, for the reasons discussed above.

**B. Multi-Year Projects**

- **Is there an interest by providers to apply for broadband support for multi-year projects? If not, why not?**

While RIC cannot speak on behalf of other providers regarding the interest of such providers in multi-year projects for which NEBP support is requested, RIC is not interested in seeking NEBP support for multi-year projects.

- **If so, what types of projects would the Commission most likely see?**

It seems reasonable to expect that the Commission will receive submissions of large projects over the project size limitation. In fact, RIC submits that through the use of a multi-year project, a project could be engineered in a way to so as to circumvent the per-project size limitation.

- **Would the consideration of multi-year projects result in a more cohesive and cumulative broadband build-out in Nebraska? Why or why not?**

Although RIC is unaware of any data that is available that would allow a definitive answer to this inquiry, RIC does not believe that consideration by the Commission of multi-year projects would result in a more cohesive and cumulative broadband build-out in Nebraska.

- **How should the Commission modify its current application requirements to account for multi-year projects?**

Please refer to RIC's responses to previous inquiries in which RIC states that it disfavors multi-year projects. Therefore, modification of current application requirements is unnecessary.

- **Should there be any limits on multi-year projects? If so, what limitations should be considered?**

Please refer to RIC's responses to previous inquiries in which RIC states that it disfavors multi-year projects. Therefore, establishment of limitations on multi-year projects is a moot point.

- **As proposed, multi-year projects would have the effect of committing grant support in future years but would be ranked and scored in the year the application is filed. Are there any concerns with this approach? If so, please explain?**

Yes. RIC believes that if the Commission were to award multi-year projects, the Commission would risk pre-judging a particular multi-year project as superior to all projects that will be submitted in subsequent years even though the nature and extent of such future proposed projects would be unknown in the year of grant of a multi-year project. Combined with circumventing the per project size limitation, RIC submits that allowing multi-year applications will increase the likelihood of additional challenges and will increase the adversarial element of the NEBP award process.

- **How can the Commission appropriately advise providers about this risk?**

Presumably notification could be accomplished through a letter to interested parties combined with publication of notice in accordance with normal Commission procedures.

- **Does this risk pose a deterrent for multi-year projects?**

Please refer to RIC's responses to previous inquiries in which RIC states that it disfavors multi-year projects. Therefore, the issue of deterrence of proposing multi-year projects is irrelevant.

### **C. Project Caps**

- **The Commission solicits comment on whether a \$450,000 per project cap would be reasonable.**

The RIC member companies support institution of a per project cap to limit the amount of NEBP support that could be awarded per project. A cap at the suggested level of \$450,000

per project (excluding the 25% grant recipient match) seems reasonable. The primary reason for this position is that a project cap will allow the Commission to grant a greater number of NEBP applications for projects by applicants serving diverse areas of Nebraska.

Encouraging and facilitating a larger number of individual project 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. § 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. § 86-323(3)*).<sup>10</sup>

- **If so, how should the Commission coordinate this cap with its prior proposal to permit multi-year projects?**

The per-project cap should apply to both single year and multi-year projects (in the event that the Commission allows multi-year projects, which RIC opposes).

#### **D. Broadband Adoption**

- **The Commission solicits comments on whether it should entertain proposals to increase broadband adoption with NEBP grant support.**

On June 5, 2012 the Commission issued Progression Order No. 6 in Application No. NUSF-77 and on page 5 thereof, listed among the Commission's topics on which comments were requested was item 2: "Specifically, should NUSF goal 3 be revised to incorporate a requirement of comparable access to broadband . . ."

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<sup>10</sup> In RIC's Comments filed in Application No. NUSF-77, Progression No. 9 at pp. 4-6 (Oct. 11, 2013) RIC recommended against establishment of a per project cap. However, that position was premised upon the establishment of a per company cap based upon the percentage of total NEBP funding that any one recipient company could receive in any single year. Since this question is presented without the context of a per company cap, RIC responds as set forth above.

With regard to the foregoing question, the Commission should be cognizant that in Comments filed by the Commission Staff on November 13, 2012 that responded to this question, the Staff stated:

[T]he 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....**” (emphasis in original) 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.

The Commission endorsed these Staff recommendations in Progression Order No. 7, entered in Application No. NUSF-77 on January 13, 2013, stating at pages 7-8 and 11-12, its conclusion that “[t]he Commission agrees with the staff’s recommendation.” RIC believes that the Staff has correctly concluded that the scope of authority granted to the Commission regarding use of NUSF support in connection with broadband deployment is limited to the “provision, maintenance and upgrading of facilities and services.”

It is arguable that *Neb. Rev. Stat.* § 86-325 that generally delegates to the Commission the powers and duties to administer and operate the NUSF could provide the Commission with discretionary authority to utilize NUSF support for broadband adoption. That section states, in pertinent part, that “[t]he Commission shall determine the standards and procedures reasonably necessary . . . to efficiently develop, implement, and operate the fund.”<sup>11</sup>

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<sup>11</sup> As a general rule of statutory construction, however, if a conflict exists between two statutes on the same subject matter, the special provisions of a statute prevail over the general provisions in the same or other statutes. *State v. County of Lancaster*, 272 Neb. 376, 721 N.W.2d 644 (2006); *see also, Mogensen v. Board of Supervisors*, 268 Neb. 26, 679 N.W.2d 413 (2004).

The Commission has previously proposed to utilize NUSF support to encourage broadband adoption.<sup>12</sup> In response to such proposal, RIC filed Comments and Reply Comments in NUSF-91 that addressed the lack of Commission authority to expand the Nebraska Telephone Assistance Program (“NTAP”) to provide support to low-income individuals absent a statutory change.<sup>13</sup> RIC reaffirms its positions as set forth in the Comments and Reply Comments filed in the NUSF-91 docket.

In the event that the Commission concludes that it should proceed with implementation of a broadband adoption program, RIC recommends that the Commission should designate \$500,000 from the NEBP for funding of a one-time pilot program for broadband adoption projects.<sup>14</sup>

- **Should the Commission modify the NEBP standards to account for factors other than infrastructure availability?**

The Nebraska Broadband Initiative recently released a research report entitled, “Internet Connectivity and Use in Nebraska: A Follow Up Study (“the Broadband Report”). The Broadband Report found that 82% of Nebraska households currently have broadband Internet service.<sup>15</sup> When those respondents without broadband service were asked about reasons for not

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<sup>12</sup> See, *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, Order Seeking Comment (Aug. 13, 2013).

<sup>13</sup> See, RIC’s Comments filed in Application No. NUSF-91, pp. 4-7 (Sept. 30, 2013); and RIC’s Reply Comments filed in Application No. NUSF-91, pp. 6-7 (Oct. 25, 2013).

<sup>14</sup> RIC continues to believe that the Commission should await the FCC’s report concerning the results of its broadband adoption experiments implemented in conjunction with the *Lifeline Reform Order*. See, RIC’s Comments filed in Application No. NUSF-91, pp. 13-15 (Sept. 30, 2013); and RIC’s Reply Comments filed in Application No. NUSF-91, pp. 2-6 (Oct. 25, 2013).

<sup>15</sup> The Broadband Report, Executive Summary.

adopting broadband service, the most prevalent reasons were as follows (percentages indicate the number of respondents identifying the stated factor):

- 1) Don't have a computer (65%);
- 2) Too expensive (36%);
- 3) No interest in using the Internet/don't need it (34%);
- 4) Worried about others getting access to my personal information; (22%); and
- 5) Don't know how to use the Internet (22%).<sup>16</sup>

Given that data suggests that many reasons other than cost exist which may hinder broadband adoption, RIC believes that the Commission should continue to utilize infrastructure availability as the basis for making NEBP grants. Clearly, if facilities are not available to support the provision of broadband service, any other reasons for non-adoption of broadband service by a consumer are moot.

- **The Commission also specifically solicits comment on whether to include a financial aspect into its definition of “unserved” and “underserved” areas? If so, what should the revised definition look like?**

Socio-economic characteristics of a potential subscriber base are not relevant to whether a given location is unserved or underserved with broadband. This is an issue of the absence or presence of facilities capable of providing broadband at speeds required to receive NEBP support. Adding a dimension other than whether an area is served will add undue complexity into an already overly complex scoring and ranking process.<sup>17</sup>

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<sup>16</sup> *Id.* at p. 6.

<sup>17</sup> RIC will not comment on the additional inquiries presented by the Commission in connection with item D. “Broadband Adoption”. However, RIC reserves the right to address the subject matter of such inquiries in the hearing to be held in this docket on August 19, 2014.

**E. Other**

- **Interested parties are not limited to the issues specifically raised in this Order but are welcome to comment on other issues germane to this proceeding.**

At this point, RIC does not have additional issues to raise with the Commission that are germane to this proceeding. However, RIC reserves the right to provide reply comments (if requested) on any issues that may be presented by a party in its filed comments and to address such additional issues in the hearing to be held in this docket on August 19, 2014.

**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 providing reply comments for consideration by the Commission.

Dated: August 4, 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")

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#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of August, 2014, an electronic copy of the foregoing pleading was delivered to:

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