

JUN 20 2019

**Before the
NEBRASKA PUBLIC SERVICE COMMISSION**

Nebraska
Public Service Commission

In the Matter 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. 8
)
)

**COMMENTS OF CTIA
IN RESPONSE TO THE ORDER SEEKING COMMENT**

CTIA respectfully submits its comments in response to the Order Seeking Comment and Scheduling Workshop entered May 7, 2019 in the above-captioned docket by the Nebraska Public Service Commission (“Commission”).¹

I. INTRODUCTION AND SUMMARY

The wireless industry continues to support the Commission in developing policies that will support investment in and efficient deployment of wireless infrastructure necessary to increase connectivity for all Nebraskans. As the Commission reviews the wireless infrastructure grant program, CTIA urges the Commission to do so in the context of a broader strategic plan for the Nebraska Universal Service Fund (“NUSF”), consistent with prior CTIA advocacy. Such a strategic plan should consider issues such as the proper allocation of support between wireless and wireline services, as well as how to most effectively target funding as wireless technology evolves. These considerations then could inform the Commission’s review of the wireless infrastructure grant program, ensuring that such a review achieves the most productive results possible.

As the Commission reviews the wireless infrastructure program, it should make a number of targeted improvements to the program’s application process to help increase the effectiveness

¹ *In the Matter 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. 8, Order Seeking Comment and Scheduling Workshop (May 7, 2019) (“Order”).

of the program. First, the Commission should provide greater clarity regarding the criteria used to evaluate applications. Second, the Commission should ensure that its eligibility criteria treat wireless infrastructure applicants equitably when compared to wireline applicants. And third, the Commission should provisionally adopt its proposal to use population density as an eligibility metric, which will also make eligibility more equitable among the wireless and wireline programs. At such time as the Federal Communications Commission (“FCC”) finalizes data to be used for Mobility Fund II, the Commission should consider using the same or substantially similar data for its wireless infrastructure program. These changes will improve the effectiveness of the program and help increase wireless connectivity for Nebraskans.

II. THE COMMISSION’S REVIEW OF THE WIRELESS INFRASTRUCTURE GRANT PROGRAM SHOULD BEGIN WITH A STRATEGIC PLAN

As CTIA previously has stated, the Commission’s review of the wireless infrastructure grant program should begin with the establishment of a broad strategic plan for NUSF reform.² Such an approach is consistent with the Commission’s finding that:

“[a]s we consider the overall vision of where universal service should evolve, the Commission believes it is important to develop a strategic plan. This roadmap will serve as a foundation for the advancement of universal service in the broadband age.”³

A strategic plan for the NUSF is a necessary first step to ensuring reform of the wireless infrastructure grant program is coordinated, rational, and appropriately achieves the statutory goals of the NUSF. The questions in the Order are generally targeted to specific features of the program, but consideration of additional issues regarding the program’s structure and its role in fulfilling

² See, e.g., CTIA Comments, App. No. NUSF-100/PI-193 (filed April 6, 2016) at 1-3; CTIA Reply Comments, App. No. NUSF-100/PI-193 (filed July 15, 2016) at 4-6.

³ *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Order Seeking Further Comments (April 5, 2016) at 5 (available at <http://psc.nebraska.gov/orders/ntips/NUSF-100.PI-193.3.pdf>).

NUSF goals will assist the Commission in achieving the most productive results. For example, a review with an eye towards a comprehensive strategic plan could reveal that allocating more NUSF support to wireless networks would be more cost-effective than the current allocation of the NUSF budget between wireless and wireline service. Examination of issues such as these will help maximize connectivity for all Nebraskans.⁴

CTIA offers the following suggestions for tenets of a strategic plan as it concerns the NUSF wireless program:

A. The Commission Should Ensure Sufficient Support is Available for Wireless Infrastructure Projects Without Overburdening Nebraska Ratepayers.

One facet of the NUSF's current structure that would benefit from a holistic review and incorporation into a strategic plan is consideration of the appropriate allocation of NUSF budgetary resources between various NUSF programs. The wireless broadband fund is currently set at \$3.2 million per year.⁵ This is a small fraction of the over \$29 million per year that is provided through the NUSF high-cost programs for wireline providers.⁶

⁴ CTIA supports the Commission's decision to address issues in this docket through a workshop process. See *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Order Seeking Further Comments (April 5, 2016) at 5 (available at <http://psc.nebraska.gov/orders/ntips/NUSF-100.PI-193.3.pdf>) ("April 2016 Order"); CTIA Comments, App. No. NUSF-100/PI-193 (filed April 6, 2016) at 1-3 ("CTIA June 2016 Comments"); CTIA Reply Comments, App. No. NUSF-100/PI-193 (filed July 15, 2016) at 4-6 ("CTIA July 2016 Reply Comments").

⁵ See Application No. NUSF-92, *In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the Nebraska Universal Service Fund Broadband Program*, Progression Order No. 7, Order Setting Application Deadline, (Sept. 11, 2018), p. 1, and Application No. NUSF-92.54, *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to administer the Nebraska Universal Service Funds' Broadband Program: Application to the Nebraska Broadband Program received from NE Colorado Cellular, Inc., d/b/a Viaero Wireless*, Application Granted in Part, (June 4, 2019), p. 1.

⁶ See Nebraska Public Service Commission, *Public NUSF-108 Model – 2019 Payment Year – Revised (1)*, available at <https://psc.nebraska.gov/telecommunications/high-cost-information> (last accessed June 15, 2019).

As part of its process to develop a strategic plan, the Commission should reconsider this allocation and dedicate more resources to funding wireless deployment in light of consumers' high and increasing reliance on wireless voice and broadband services. At the same time, the Commission also must remain mindful of the burden that universal service programs place on ratepayers. Nebraska consumers already face some of the highest fee and surcharge rates in the country on their wireless service, so the Commission should not consider increasing the size of the NUSF budget as a whole.⁷

B. The Commission Should Target Funding to the Most Effective Projects for Expanding Wireless Coverage in Nebraska.

Although the program ostensibly funds “wireless broadband infrastructure,” it historically has focused primarily on new macro-tower construction projects. As wireless technology evolves to advanced 4G and 5G services, a variety of wireless broadband infrastructure projects using different technologies can provide coverage solutions in rural areas.

The Commission should recognize this evolution and modify the rules for the wireless infrastructure grant program to make clear that *all* types of rural wireless broadband infrastructure projects are eligible for funding. These rules should make clear that new technology overlays (including 4G and 5G) as well as small cell deployments are eligible for support.

Indeed, such rule modifications are consistent with policies enacted by the Nebraska legislature. In particular, Nebraska recently enacted Legislative Bill 184, the exclusive purpose of which is to streamline and encourage small cell deployment. Modifications to the wireless infrastructure grant program making clear that such small cell deployments are eligible for funding would help align the Commission's NUSF policies with of the Nebraska state legislature.

⁷ At the end of 2018, Nebraskan wireless consumers paid the fourth-highest state and federal tax rate among U.S. states, at 25.5%. See <https://files.taxfoundation.org/20181210141036/Wireless-Taxes-and-Fees-Climb-Again-in-2018-FF-626-2.pdf> (last accessed June 15, 2019).

III. THE COMMISSION SHOULD MAKE TARGETED IMPROVEMENTS TO THE WIRELESS BROADBAND PROGRAM

The Commission's review of the wireless broadband infrastructure funding program also should include targeted improvements to the application process that could substantially increase the effectiveness of the program.

A. Provide Greater Transparency and Certainty in the Evaluation of Applications.

Revisions to the program rules should provide greater clarity regarding the criteria that the Commission uses to evaluate applications. While the Commission's past orders establish a general purpose for the program and requirements for applications, these orders do not make clear the criteria on which applications are evaluated. As a matter of good government and transparency, the Commission should establish clear criteria for evaluating applications and projects and announce those criteria before soliciting applications. The development of these criteria can run hand-in-hand with a clear and detailed strategic plan as discussed above. Establishing such a plan would allow the Commission to develop application criteria that will best help ensure fulfillment of the stated goals of the strategic plan in the most efficient manner.

B. Treat Wireless Infrastructure Program Applicants Equitably with Wireline Applicants.

The rules and requirements for the wireless broadband infrastructure funding program should ensure that wireless infrastructure applicants are treated equitably when compared to wireline applicants. Indeed, differences in technology do not warrant differing treatment of funding applicants with the same goal – the improvement of broadband access for Nebraska.

Equal treatment of applicants is particularly important with respect to matching funding requirements. The Commission seeks comment in the Order on whether to impose a 25 percent

matching requirement.⁸ Yet, the Commission's NUSF-108 broadband deployment support program for incumbent local exchange carriers does not include any apparent matching requirement.⁹ Moreover, the Commission declined to impose a matching requirement on wireless applicants in 2016 in response to concerns about whether a matching requirement would make valuable projects unviable.¹⁰ There is no evidence that circumstances have changed such that the Commission's prior determination should be disturbed, or that wireless applicants should be subject to a matching requirement to which wireline applicants are not.

The rules also should treat wireless and wireline applicants similarly with respect to eligible expenditures. Under the current rules, wireline applicants are eligible to receive reimbursement for capital *and* operating expenditures, while wireless broadband fund applicants are limited to receiving funding for capital expenditures only. The Commission should address this imbalance by making operating expenditures eligible for funding through the wireless broadband infrastructure program.

C. Use the Best Available Data to Determine Areas Eligible for Funding, and Provisionally Adopt the Population Density Metric to Better Align Criteria for the Wireless and Wireline Programs.

The Order seeks comment on how to determine what areas are eligible for funding. As it looks at criteria, the Commission should seek to ensure that eligibility requirements for wireless programs are tailored towards the overall goals of the NUSF.

While the wireless and wireline programs use different criteria for funding, the aim of such criteria should be the same: using the Nebraska USF funds in the best way possible to benefit

⁸ See Order at 2.

⁹ See, e.g., "NUSF 108 Broadband Deployment Guidelines," https://psc.nebraska.gov/sites/psc.nebraska.gov/files/doc/NUSF%20108%20Guidelines_0.pdf.

¹⁰ See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program*, Application No. NUSF-92, Order (Jan. 26, 2016) at 3.

Nebraskans. The criteria for NUSF wireline support for high cost areas allows rural wireline carriers more flexibility to identify customers to whom they will extend broadband service, and that same flexibility should be extended to wireless carriers. However, under the current rules, the Commission uses a household density metric to determine areas eligible for wireless infrastructure grant support, limiting support to areas with less than 4.5 households per square mile.¹¹ The Commission's current wireless support criteria thereby limits funding to very low population areas in a way that the wireline programs do not, artificially directing wireless service extension to the most extremely rural areas while affording wireline carriers discretion regarding service extensions they deem prudent. Better alignment between eligibility criteria for the programs may lead to a greater number of Nebraskans benefitting from the NUSF wireless program, and may lead to a better service experience for customers.

To that end, the Commission's proposal to use population density, rather than household density, as the wireless program eligibility metric will move the wireless program closer towards such flexibility by focusing more on unserved rather than just extremely rural areas, and should be provisionally adopted. Going forward, however, the Commission has the opportunity to evaluate such criteria as part of an overall strategic plan (as discussed *supra*) and help ensure that the wireless and wireline programs both have eligibility criteria targeted towards helping the Commission achieve its overall USF goals.

Additionally, at such time as the FCC finalizes data on wireless coverage to be used for Mobility Fund II, or other federal USF programs, the Commission should consider using the same

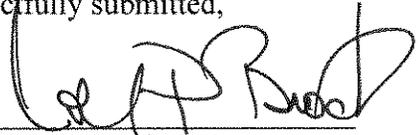
¹¹ See Application No. NUSF-69, *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to implement policies and procedures related to providing Dedicated Universal Service Support for Wireless Telecommunications Services: NE Colorado Cellular, Inc. d/b/a Viaero Wireless*, Order Granting Application in Part (Feb. 10, 2009), p. 5.

eligibility criteria as those used by the FCC to ensure consistency between federal and state support mechanisms.

IV. CONCLUSION

CTIA commends the Commission for its commitment to using NUSF funds to ensure the availability of wireless connectivity throughout Nebraska. CTIA urges the Commission to consider the important issues explained in these comments to ensure that the NUSF operates effectively and efficiently to expand wireless connectivity to Nebraskans, and to develop a strategic plan for the overall health and efficiency of the NUSF which includes wireless as a key component.

Respectfully submitted,

By: 

Loel P. Brooks, #15352

Brooks, Pansing Brooks, PC, LLO

1248 O Street, Suite 984

Lincoln, NE 68508

(402) 476-3300

lbrooks@brookspanlaw.com

and

Benjamin Aron

Matthew DeTura

CTIA

1400 16th Street NW

Suite 600

Washington, D.C. 20036

(202) 736-3683

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CERTIFICATE OF SERVICE

I certify that on the 20th day of June, 2019, one original and an electronic copy of the foregoing Comments on behalf of CTIA-the Wireless Association, in Application No. NUSF-92, PO 8, were delivered to:

Cullen Robbins

Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
Cullen.robbs@nebraska.gov

Brandy Zierott

Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
Brandy.zierott@nebraska.gov

A handwritten signature in black ink, appearing to read 'Loel P. Brooks', written over a horizontal line.

Loel P. Brooks