BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program.	)))))	Application No. NUSF-99

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NEBRASKA PUBLIC SERVICE COMMISSION

COMMENTS OF THE RURAL INDEPENDENT COMPANIES

I. INTRODUCTION

The Nebraska Rural Independent Companies ("RIC")[1] submit these Comments in response to the Commission's Order Opening Docket, Seeking Comment and Setting Hearing entered in this proceeding on October 15, 2014 (the "*Order*"). RIC appreciates the opportunity to provide the following Comments to the Commission.

As an overarching introductory comment, as the Commission deliberates on the issues that have been presented in this docket, RIC advocates that any modifications to the Nebraska Universal Service Fund ("NUSF") High-Cost Program relating to price cap ("PC") carriers be made for the purpose of ensuring the sustainability of this Program and to advance the Nebraska Legislature's policy declarations as set forth in *Neb. Rev. Stat.* § 86-323 (Reissue 2008). In particular, any approved modifications should serve the policy goals of extending access to advanced information (broadband) service to consumers in all regions of this State while at the same time maintaining universal availability of voice services.

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[1] 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.

II.

ISSUES FOR COMMENT

1. **Should the Commission consider revising the manner in which high-cost support is allocated to the price cap carriers? Why or why not?**

Response: Yes, the Commission should consider revisions to the manner in which high-cost support is allocated to PC carriers.

In its recent *Report and Order,*[2] the Federal Communications Commission ("FCC") announced its decision with regard to the policies and procedures that will govern distribution of Connect America Fund Phase II ("CAF II") support to PC carriers for the provision of universal voice and broadband services. Notably, the FCC revised to 10 Mbps downstream the minimum speed requirement that PC carriers must provide in order to qualify for Federal high-cost support. Further, the FCC adopted "targeted changes to the framework established for the offer of model-based support to price cap carriers."[3] While in-depth analysis of the *Report and Order* is beyond the scope of these Comments, RIC believes that many of the factors that have caused the FCC to separately consider the provision of CAF II support to PC carriers should receive consideration by the Commission in this docket.

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[2] *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks,* WC Docket Nos. 10-90, 14-58, 14-192 released Dec. 18, 2014 (the "*Report and Order*").

[3] *Report and Order* at para. 5.

It appears that PC carriers operating in Nebraska will be eligible to receive an additional $15 to $18 million annually in Federal CAF II support for Nebraska, if such support is accepted.[4] In its consideration of the issues presented in this docket, the Commission should consider whether acceptance of CAF II support by a PC carrier for a particular area impacts the availability of NUSF High-Cost Program support for the PC carrier in such area.

It is worth noting that although the FCC sought and received comments on near-term and longer-term reforms regarding universal service support for rate-of-return ("RoR") carriers, the FCC found "that further analysis and development of these proposals is necessary."[5] Further, the FCC stated that it "will continue to explore the possibility of a voluntary path to model-based support for those rate-of-return carriers that choose to pursue it . . . [and] to continue to develop the record and act in the coming year on alternatives for those who do not elect to receive model-based support."[6] Thus, the FCC also will likely be moving ahead with federal USF reforms for RoR carriers.

2. As it pertains to price cap carriers only, should the Commission stop utilizing the current method to allocate and distribute support?

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[4] Potential CAF Phase II support amounts for network speeds capable of 10/1 Mbps for PC carriers in Nebraska are found in the FCC's illustrative results, CAF II-CAM 4.1.1-Report Version 8.0-June 2014 found at http://www.fcc.gov/encyclopedia/connect-america-cost-model-illustrative-results. Potential CAF Phase II support amounts for network speeds capable of 4/1 Mbps for PC carriers in Nebraska are found in the FCC's illustrative results, CAM 4.1-March 2014 found at http://www.fcc.gov/encyclopedia/connect-america-cost-model-illustrative-results. Current support amounts for PC carriers were calculated by annualizing each PC carrier's January 2014 through September 2014 amounts for Nebraska found at www.org/hc/tools/disbursements.

[5] *Id.* at para. 5.

[6] *Id.*

Response: Yes, RIC believes that it would be appropriate for the Commission to stop utilizing the current method to allocate and distribute high-cost support to PC carriers.

a. **If so, how should the level of support for price cap carriers be determined?**

Response: The current Support Allocation Methodology ("SAM") process allocates funding among geographic areas based on relative costs. SAM assigns weights to support areas based on estimated costs and revenue benchmarks. These weights are then used to allocate the budgeted High Cost Program support amount between the support areas. While the SAM separates in-town and out-of-town support areas, a similar approach could be used to determine the proportion of the total High Cost Program budget that should be allocated to PC carriers. However, the cost calculations which underlie the current SAM process are based on results derived from the Benchmark Cost Proxy Model ("BCPM") which is no longer in use by the FCC. Thus, its results may not be the most accurate relative to broadband-capable networks. The FCC has more recently developed the Connect America Cost Model ("CACM") for purposes of developing costs associated with the deployment of networks capable of supporting both voice and broadband services. The RIC members recommend that the Commission give consideration to obtaining access to the CACM model and to evaluate its potential for use to determine the level of support necessary for PC carriers.[7]

b. **Should the Commission create two separate budgets, one for price cap carriers and one for rate-of-return carriers?**

Response: Yes, it would be reasonable and appropriate for the Commission to create separate NUSF High-Cost Program support budgets for PC and RoR carriers.

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[7] In recent discussions with legal counsel for CostQuest, the developer of CACM, RIC has been informed that CostQuest is developing a license agreement and pricing schedule that would allow use of CACM by state commissions and carriers in state USF proceedings.

i. **If so, how should the budgets be determined?**

Response: Please refer to RIC's response to Issue 2.a above.

ii. **Should the Commission freeze current support levels in terms of the relative support allocated to price cap carriers and rate-of-return carriers (and going forward maintain the relative level of support)?**

Response: No, the Commission should not freeze current support levels based upon the relationship between current support to PC and RoR carriers. Please refer to RIC's response to Issue 2.a above.

3. **How can the Commission revise the Nebraska universal service high-cost support mechanism for price cap carriers that would be complementary to the FCC's CAF Phase II funding for the same carriers?**

Response: RIC believes that provision of a definitive response to this inquiry probably will need to await further analysis of the *Report and Order* and the policies and procedures announced by the FCC therein that will govern the provision of CAF II to PC carriers. However, as a general comment, it would seem to be rational for the Commission to consider focusing the allocation of NUSF High-Cost Program support to PC carriers in areas of the State that are not eligible for CAF II support, that is, the limited number of locations with a cost to serve that is above the so-called "Alternative Technology Threshold" in the CACM.

a. **Should the Commission utilize a process similar to the NUSF-92 broadband grant process to allocate support?**

Response: Utilization of a broadband grant process similar to the NUSF-92 approach may be a reasonable policy to pursue. This approach could be a workable alternative to the current process based upon the filing by PC carriers of NUSF-EARN forms to better achieve the goal of targeting NUSF High-Cost Program support to the most sparsely populated, high-cost PC carrier service areas that are currently unserved or underserved from a broadband access standpoint. However, RIC currently does not have a position in response to this inquiry or sub-items i through iii below except to comment that whatever process the Commission may adopt should provide for accountability by the recipient to confirm that High Cost Program support grants are used for the intended purposes approved by the Commission.

i. **Why or why not?**
ii. **How should the methodology be designed to ensure support is allocated to areas in need of broadband investment?**
iii. **Should price cap carriers continue to be eligible for NUSF-92 support if Nebraska price cap model support is allocated to broadband investment? Why or why not?**

Response: See above comments in response to Issue 3.a above.

b. **Should the Commission use the FCC's CAF II model to determine the areas that need support?**

Response: As stated above, RIC expects that further in depth analysis of the *Report and Order* will have a direct bearing on any response to this inquiry. Until that analysis is completed, RIC is unable to respond to this inquiry and to sub-inquiries b. i through iv below.

i. **Should those CAF II areas be the areas that are/are not eligible for state support?**
ii. **Should the CAF II model output also be used to determine the level of support needed?**
iii. **If not, how should this be determined?**
iv. **If not, how should the Commission make sure that support to a carrier is based upon a reasonable cost for voice and broadband service?**

Response: See above comment.

c. **Should the Commission require broadband obligations, similar to those established by the FCC, as a condition of a price cap carrier accepting Nebraska support?**

Response: While instituting broadband obligations for PC carriers similar to those established by the FCC as a condition to receipt of CAF II support may be reasonable, RIC is unable to provide meaningful comments in response to this inquiry until the implications of the

Report and Order are thoroughly studied. However, any modifications to the NUSF High-Cost Program relating to PC carriers should be for the purpose of ensuring the sustainability of this Program and to advance the Nebraska Legislature's policy declarations as set forth in *Neb. Rev. Stat.* § 86-323 (Reissue 2008).

i. **If broadband obligations are made a condition to accepting support, what should be required?**
ii. **How can the Commission ensure that rates for comparable services remain affordable?**
iii. **What should the Commission do if a carrier refuses to apply for or accept support in a given area?**
iv. **How can the Commission structure a mechanism so that broadband is built out in the urban areas as well as the rural areas?**
v. **Should there be a specific time period for making the broadband investment?**
vi. **How should broadband obligations be reported?**

Response: RIC is unable to comment on sub-items i through vi at this time.

d. **The FCC's CAF support is based upon an existing cost model to determine a per location support amount.**

i. **Does the Commission need to make a similar per location determination to ensure that support amounts per subscriber/household remain reasonable?**

Response: About a year ago the Commission made findings that it lacked evidentiary justification to adopt any particular cap on per household NUSF High-Cost Program funding as proposed by the Commission in its October 1, 2013 Order entered in Application No. NUSF-77. The Commission indicated that it would continue to evaluate the propriety of establishing a per household funding cap.[8] RIC submits that at this time there has not been evidence submitted to

[8] *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, Progression Order No. 10 at 3, (Nov. 25, 2013).

the Commission that would support the establishment of per location limits on funding for the NUSF High-Cost Program.

ii. **Should it be based upon the CAF Phase II output?**

Response: As stated above, the response to this question appears to require further analysis of the *Report and Order.*

e. **Should the Commission continue to require NUSF-EARN Forms from price cap carriers?**

   i. **If the price cap carriers no longer receive SAM model support, would the filing NUSF-EARN Forms be relevant and/or necessary?**
   ii. **Is the Commission required to have a third party audit performed on each price cap carrier's information if it does not use this information to calculate the level of support going forward?**
   iii. **Does the Commission need a certain level of financial information from each price cap carrier to ensure that the support is being used for its intended purpose?**
   iv. **Is there another form of oversight that should be used in its place?**

Response: If the Commission were to adopt a grant-based process for the provision of NUSF support to PC carriers, the NUSF-EARN form will likely have little use in determining distribution of such support. A grant-based program will likely focus support into smaller discrete areas, whereas the NUSF-EARN form is a company-wide measure of costs and revenues. As the Commission considers elimination of this filing requirement for PC carriers, the Commission should also consider whether there are any other uses for the information collected on the NUSF-EARN form. Whether the NUSF-EARN reporting requirement for PC carriers is eliminated or retained for informational purposes, it appears that a third party audit would no longer be necessary.

Under a grant-based process, the Commission would need to develop new processes to ensure that monies are expended in the designated areas and for the approved investments. Third party audit requirements could be made a part of these new processes.

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: January 14, 2015.

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 14th day of January, 2015, an electronic copy of the foregoing pleading was delivered to:

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