BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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

Comments of Windstream Nebraska, Inc.

Windstream Nebraska, Inc. ("Windstream") submits the comments below in response to the Nebraska Public Service Commission ("Commission") "Order Opening Docket, Seeking Comment and Setting Hearing" entered on October 15, 2014 ("Order"). In the Order, the Commission poses questions regarding the merits and mechanics of possible reform to the Nebraska Universal Service Fund High Cost Program ("State HCF"), with a focus on price cap carriers and recent reforms the FCC has instituted for price cap carriers through the creation of Phase II of the Connect America Fund ("CAF Phase II").

Windstream[1] suggests that the Commission consider reforming the State HCF for price cap carriers given CAF Phase II will not support critical price cap carrier services at all high-cost locations in the state. Specifically, Windstream advocates that any such reforms should: (a) employ a mechanism that advances certainty and predictability for state USF support, (b) focus state funding on addressing high-cost locations not supported by CAF Phase II so as to ensure continued voice service support first, with the remainder devoted to new fixed broadband deployment, and (c) make clear that price cap carriers do not have state COLR obligations as to

[1] Windstream's positions in this proceeding are in response to a Commission inquiry and Nebraska-specific considerations and should therefore not be construed as support for any similar issues in other jurisdictions.

locations for which those carriers receive neither federal nor state support. These proposals should preserve state voice support where essential and promote fixed broadband deployment in a manner that is complementary to the federal CAF Phase II program.

I. Introduction.

Windstream commends the Commission for taking the initiative to explore a revision to the State HCF that may suitably complement the FCC's CAF efforts while also considering the prospects for improving fixed broadband deployment in the state. Although the Commission has undoubtedly been successful in increasing broadband availability in the state through the Nebraska Universal Serviced Broadband Program ("NEBP") program, more needs to be done for infrastructure in rural areas, where the economics, absent government funding, preclude facility deployment to all consumers. The Commission aptly notes in its Order that the FCC is reforming the federal USF program, where key objectives for high-cost support will be to extend broadband capable infrastructure to as many high-cost locations as efficiently as possible while best utilizing limited federal resources. This Commission's interest in questions surrounding whether Nebraska should be doing something similar (and, if it should, how?) is timely.

Windstream's position, in short, is that state universal service reform is needed. If the Commission makes no changes to its current high-cost regime for price cap carriers, and assuming no additional state funding is brought to bear, it appears unlikely Nebraska could meet the dual objectives of sustaining affordable universal voice services and prompting new deployment of fixed broadband services to consumers in remote areas of the state. This is so because the FCC designed CAF Phase II specifically to extend fixed broadband deployments to only some, but not all, high-cost price cap locations. The FCC is finalizing the locations in price cap areas that will receive funding and those that will not, and the available federal funding is not going to support fixed voice and broadband services to every high-cost customer location in the price cap areas of the state.

II. Reasons Supporting Reform to the State HCF for Price Cap Carriers.

As the FCC noted in its 2011 CAF Order, "a 'rural-rural' divide persists in broadband access—some parts of rural America are connected to state-of-the-art broadband, while other parts of rural America have no broadband access."[2] Specifically, the FCC found that more than 83% of Americans who lacked access to fixed broadband services were in price cap areas, while 13% were in rate-of-return areas.[3] The FCC recognized that this disparity was in large part a result of failure of existing federal to direct federal funding to all rural areas where it was needed – especially areas served by price cap carriers. The FCC responded to these different factual situations among the carriers – with unique causal factors, distinct issues, and unique histories – with different approaches.[4] For price cap carriers in particular, the portion of the federal high-cost fund dedicated to their service areas has been painstakingly and systematically prepared for repurposing over the last three years. The product of those efforts, CAF Phase II, is now imminent.

CAF Phase II was designed to extend fixed broadband deployment in some, but not all, price cap areas. According to the latest report of CAF Phase II funding estimates (CAF Phase II - CAM 4.2 Report Version 9.0, December 2014), the CAF Phase II funding that will be offered

[2] *Connect America Fund et al*; WC Docket Nos. 10-90 et al, report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*CAF Order"),* at ¶7.

[3] *Id.* ¶ 127.

[4] *Id.* ¶ 127 – 193; ¶ 194 – 285.

to price cap carriers in Nebraska will be targeted to 38,048 locations. But there are 18,728 locations that are above the FCC's "extremely high cost" threshold and, because of budget constraints, the FCC will not provide CAF Phase II price cap funding to those locations. Further, in addition to the extremely high cost locations that will not be funded, there are roughly 11,000 to 15,000 additional locations that currently have available 3Mbps down /768 kbps up, but not 10Mbps/1Mbps, that will not be funded in CAF Phase II. Unfunded locations may be addressed in decisions by the FCC in the Remote Area Fund ("RAF") and/or competitive bidding processes, both of which are still to be developed, with RAF parameters not expected until after the competitive bidding process is completed.

Where a price cap carrier accepts the statewide commitment for model-based CAF Phase II support, the program reduces the overall number of locations in the state that federal support will address. Further, where the statewide commitment is accepted, the FCC will cease supporting legacy voice service for customers in high-cost areas that are not eligible for model-based support.[5] The FCC's CAF Phase II approach, due to budget constraints, is a very limited one – it specifically targets areas (census blocks) price cap carriers serve that are high cost and do not have broadband service (at least 3Mbps/768 kbps) available from any unsubsidized competitor. The net result of CAF Phase II will be that the FCC will not provide any CAF Phase II model-based funding for (a) areas that have broadband service of at least 3Mpbs/768 kbps but less than 10/1 Mbps from a competitor and (b) any remote locations with extremely high costs to serve.

[5] For voice services, the CAF Phase II model costs out over-the-top voice deployed in conjunction with broadband. The FCC cost model assumes this over-the-top replacement to the circuit switched voice network and does not fund the latter.

Based on information the FCC provided in December 2014, every price cap carrier in Nebraska will have a significant number of CAF Phase II ineligible locations in their service areas. Some Nebraska price cap carriers may accept, or bid for, CAF Phase II funds, and some may not. Assuming a price cap carrier accepts model-based support and the statewide commitment, CAF Phase II ineligible locations will lose all federal legacy support once CAF Phase II funds are committed, and that is expected to occur sometime in the mid 2015. All else being equal, these federal changes potentially could have a significant impact on the many Nebraskans the price cap carriers serve in rural areas.

High-cost CAF Phase II ineligible locations could be eligible for funding through the Remote Areas Fund ("RAF"), a segment of the federal high cost fund, or, in some cases, the competitive bidding process. Neither alternative funding source, however, provides a definitive or immediate response to the funding gap. At this point, it is unclear when, if ever, all high cost areas will be addressed with these alternative mechanisms.

The resources set aside for RAF were designed to provide some funding for satellite and unlicensed wireless broadband services that could be used by "Americans living in the most remote areas of the nation . . . ."[6] But the FCC itself questioned whether such alternative technology platforms would be a sufficient solution for many of these rural customers, from both a cost and service standpoint: "[T]he record suggests that satellite providers are generally unable to provide affordable voice and broadband service that meets our minimum capacity requirements without the aid of a subsidy. Consumer satellite services have limited capacity allowances today, and future satellite services appear unlikely to offer capacity reasonably

[6] *CAF Order* at ¶ 533.

comparable to urban offerings in the absence of universal service support."[7] Other considerations further complicate this situation. For extremely high cost areas, RAF dollars are limited. By way of comparison, the Connect America Fund, which is not sufficient to provide broadband support to all locations in price cap areas, has a $1.8 billion annual budget. The RAF has only a $100 million annual budget, and RAF eligible areas will include significant geography over the entire country. Demand for RAF funds, therefore, could be significant and resources would be stretched thin. Then there is also a timing issue. The RAF program parameters and rules are not very far along at this point and may not be finalized for several years, at least not until after the competitive bidding process is complete.

Moreover, the FCC's decision to further open the competitive bidding process for certain locations ineligible for CAF Phase II model-based support does not guarantee ubiquitous coverage for non-remote areas with high costs. This measure will have limited application, and the premise appears to be that a carrier may not require the full amount of cost support that the FCC's model suggests is needed for a 10Mbps/1Mbps service. Even if this premise bears fruit (and it very well may not), the parameters and rules for the competitive bidding process are not fleshed out and may not be for some time to come.

In response to the above-described conditions, with voice services and broadband access to rural Nebraskans in the balance, the Commission should consider reforming the State HCF to step directly into the funding gap. The FCC itself recognized that federal resources alone were not enough and suggested a complementary role for state funding. In its order released December 18, 2014, the FCC said:

[7] *Id.* at ¶ 104 (footnote omitted).

> We also note that the states have an important role to play in advancing universal service goals. We welcome and encourage states to supplement our federal funding, whether through state universal service funds or other mechanisms.[8]

Price cap carriers will unquestionably require state support to maintain voice service in remote areas and to extend broadband networks to locations lacking access to service at 3Mbps/768kpbs or greater. Below, Windstream submits a 3-prong, high-level proposal to meet these goals. These proposed reforms are targeted at first filling the voice funding gap left by CAF Phase II in the very high-cost areas of the state. A carrier then should use its remaining funding to pivot the focus of funding the extension of broadband to unserved and underserved consumers not addressed by federal funding.

III. Predictable and Consistent State USF.

First, to advance certainty and predictability in to the state USF support system, and because CAF Phase II implementation is imminent, beginning in 2016, the Commission should consider simply fixing price cap carrier support for at least the next 6-7 years – the same time frame as a CAF Phase II support commitment – at 2015 allocation levels as part of a transition to a new price cap carrier support program. The allocation should be based on each price cap carrier's 2015 percentage allocation from the fund. If the total amount of the fund changes in the years after 2015, the Commission's use of the percentage allocation will result in a pro rata change to the price cap carriers' support.

[8] *CAF Phase II Report and Order*, released December 18, 2014, ¶ 28. In the footnote accompanying the quoted passage, the FCC cites, among other things, 47 U.S.C. §254(f) (expressly permitting states to take action to preserve and advance universal service and to require contributions to support universal service in the state) and *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001) (stating that the Act "plainly contemplates a partnership between the federal and state governments to support universal service and that "it is appropriate—even necessary—for the FCC to rely on state action").

This approach will provide critical certainty for funding levels in the budget years after 2015 for carriers serving high-cost areas and the commission. The percentage of dollars that price cap carriers are allocated will be steady and relatively predictable. This, in turn, will help spur investment in extending and upgrading broadband facilities for consumers in rural areas. In addition, the SAM model-based support that rate of return carriers receive from the State HCF will not be altered as a result of this reform proposal.

IV. Targeting State Support to Unserved or Underserved Areas that Will Not Be Addressed by CAF Phase II.

The Commission should focus state funding on remote locations that will not receive federal support to ensure those locations continue to receive supported fixed voice service, and then use remaining funds to unlock opportunities for fixed broadband deployment that otherwise would not occur. In other words, the Commission should consider a price cap carrier program design that is complimentary to CAF Phase II whereby each price cap carrier would utilize state funds for fixed voice and broadband service needs that will not be addressed sufficiently with CAF Phase II funding.

For consumer locations not addressed by CAF Phase II, the above-described state funding for price cap carriers in 2016 and beyond should be established such that a certain amount is first devoted to ensure sufficient support for traditional voice services, and the remainder of support should be devoted to broadband deployment in areas without access to service at speeds of at least 10 Mbps/1 Mbps. A price cap carrier could identify the locations it proposes to serve via the broadband funding and, for these locations, make service commitments similar to those of CAF Phase II.

V. COLR.

The Commission should make clear that price cap carriers do not have state COLR obligations as to locations in their service areas for which the carrier does not receive any federal or state support. Federal ETC obligations still will apply to high-cost areas addressed with CAF Phase II support.

VI. Conclusion.

Customers in some high-cost areas of Nebraska are subject to having all federal support for their services removed when CAF Phase II is implemented in the coming year. The Commission should therefore reform the State HCF in a manner consistent with the principles Windstream proposes in these comments, whereby support will be certain and predictable, voice service will continue to receive state support while fixed broadband deployment will be funded, and price cap carriers do not have state COLR obligations in areas that receive neither federal nor state support.

Respectfully submitted this 14th day of January, 2015.

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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 was emailed to the following:

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