

**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

PROGRESSION ORDER NO. 2

ORDER SEEKING FURTHER COMMENT AND SETTING HEARING

Entered: June 30, 2020

**COMMENTS OF QWEST CORPORATION d/b/a/ CENTURYLINK QC AND UNITED TELEPHONE COMPANY OF THE WEST d/b/a CENTURYLINK**

Pursuant to Commission Order dated June 30, 2020 in the above-referenced docket, Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (collectively, “CenturyLink”) hereby respectfully provide the following comments on the Commission’s proposal to modify the Nebraska Universal Service Fund (“NUSF”) high-cost broadband grant program (the “Proposal”).

***NUSF-99 Background***

1. On October 15, 2014, the Nebraska Public Service Commission (hereinafter the “NPSC” or “Commission”) opened this docket “to consider certain modifications to the high-cost funding mechanism in the universal service fund program.” (June 30, 2020 Order, page 1). The Commission issued an Order on September 1, 2015 where it, among other things, adopted a framework by which price cap carrier support would be allocated 20% for ongoing support for

the voice network used to provide carrier of last resort obligations and the remaining 80% directed to support the buildout of broadband in high-cost, unserved areas.<sup>1</sup>

2. After operating nearly five years under Progression Order No. 1, the Commission issued Progression Order No. 2 on November 13, 2019, to solicit comments on whether to update the NUSF-99 framework. Initial Comments were filed on December 17, 2019 by CenturyLink, Charter Communications, Inc. (Charter), Cox Nebraska Telcom, LLC (Cox), Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications (Frontier), the Rural Independent Companies (RIC), the Rural Telecommunications Coalition of Nebraska (RTCN), and Windstream Nebraska Inc. (Windstream). Reply comments were filed on January 10, 2020 by CenturyLink, Frontier, RIC and RTCN.

### *Executive Overview*

3. The Commission establishes the Proposal to restructure the allocation and use of NUSF broadband grant funding in unserved locations throughout Nebraska. Additionally, the Proposal provides the framework for funding reverse auctions pursuant to Rule 202. The Proposal appears to strike a reasonable balance between ILEC synergies and competitive efficiencies, a laudable goal. Further, CenturyLink commends the Commission and its Staff for proposing a program that is consistent with the CAF/RDOF initiatives and the legislative intent behind the reverse auctions program.

4. As with most initiatives, however, the devil is in the details and the ultimate success of the program will hinge on several unresolved questions. CenturyLink suggests that further refinement to the Commission's Proposal will increase the likelihood of successful broadband

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<sup>1</sup> See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program*, Progression Order No. 1 (Sept. 1, 2015) ("Progression Order No. 1").

deployment in rural Nebraska for both price cap carriers and auction winners. Such determinations that should be addressed by the Commission in its final framework include the following: (1) allowing partial exchange buildout by the price cap carrier or auction winner to accommodate for ultra-high cost areas; (2) offering tiered support to either the price cap carrier or auction winner based on the speeds provided; and (3) transferring the requirements of carrier of last resort obligations for areas built-out by competitive ISPs. CenturyLink addresses these issues as well as the issues presented by the Commission in these Comments.

### ***General Structure of the Commission Proposal***

5. The Commission proposes a restructured framework and allocation mechanism for NUSF broadband grants in price cap carriers' territories. Step 1 is to assign "an amount of buildout support that would be reimbursed to the carrier once broadband service is provided to all eligible locations within that exchange." CenturyLink provides comments and recommendations related to the *amount of buildout support* as well as the requirement to provide such support to *all eligible locations*.

6. Regarding the *amount of buildout support*, CenturyLink assumes the Commission's SBCM model will develop exchange funding to support 25/3 deployment; however, support limited to 25/3 speeds may unintentionally encourage buildouts of no greater than 25/3. CenturyLink encourages the Commission to develop the NUSF broadband grant program in such a manner to offer tiered support based on the speeds provided with increased support for higher speeds. This approach is similar to RDOF: higher levels of support for higher speeds. CenturyLink notes that the Commission's approach only addresses the initial buildout costs and

that the SBCM model does not include any ongoing operational costs for the next five to ten years. Both CAF and RDOF models include such operational costs.

7. In addition to the amount of support, the Commission should reconsider the locations to be served under the Proposal. The current Proposal is *all eligible locations*, defined as all locations within the exchange that are (a) rural; (b) not eligible for RDOF support; (c) not already built to 25/3 Mbps or greater; and (d) not already served by a competitor to the price cap carrier offering broadband at 25/3 Mbps with voice service. Under that standard, the technology used for projects must reach every household, regardless of topography, vegetation, or distance. CenturyLink does not take exception to the definition of “eligible location” but, rather, the requirement that the “technology used for projects must reach every eligible household in the exchange.” Although CenturyLink recognizes this requirement as aspirational, unless the Commission’s SBCM model is significantly enhanced to provide increased support for realistic, on-the ground buildout requirements, the likelihood of any wireline approach by either an incumbent or auction winner is extremely unlikely. While a price cap carrier or an auction participant could potentially serve 90% of the residents, the remaining few locations which could require miles of dedicated fiber would make the overall project cost-prohibitive. The few residents that live off-grid should not jeopardize the entire exchange. Both the FCC’s CAF and RDOF initiatives have exceptions and accommodations for remote areas; the NPSC should adopt similar guidelines.

8. Partial exchange buildouts should be allowed. Along the same lines as above, situations may arise where it is economically feasible to complete a portion of an exchange, due to existing network architecture and fiber infrastructure, while, at the same time, costs and program timelines may prohibit the completion of the remaining portion of the exchange due to terrain,

density, lack of middle-mile or other reasons. While full exchanges could be the default assumption, waivers should be available to applicants to demonstrate that partial exchange buildouts are appropriate.

### ***Reverse Auction Impacts***

9. The Commission's Proposal requires price cap carriers to use 95% of their allocated annual NUSF broadband support and to file requests for projects within 12 months. Any remaining funds or unclaimed funding by the price cap carrier will be forfeited and made available to fund a reverse auction. This aspect of the Proposal is in conjunction with the newly adopted Reverse Auction rulemaking (Rule 202). Furthermore, when the auction-funding provision of this docket is read in context with Rule 202, the combined funding and rule appear consistent with the reverse auction law (Neb. Rev. Stat. § 86-330) and further explain how the auctions will work.

### ***Timeframes***

10. The Commission proposes a one-year timeframe for carriers to file requests for support for projects in a given funding year and a two-year timeframe for project completion. CenturyLink supports this proposal, along with the opportunity to seek a waiver or extension of time for good cause shown as outlined in the Commission's proposal. CenturyLink assumes that the two-year clock will start upon the Commission's authorization of the project, which is the process under the current program; however, if the Commission anticipates that two-year clock will start when the annual funding is announced, CenturyLink has concerns regarding the

sufficiency of the build window, especially given the unique build schedule required in Nebraska due to winters.

### ***Availability of Funding***

11. The Commission proposes to make available in the first year of this program any support that has not been allocated through the NUSF-99 program. The Commission believes this yet-to-be-allocated support, combined with the 2020 deployment support held in abeyance and the 2021 support, will provide the funds necessary to promote significant broadband deployment to areas that are unserved or underserved. Although CenturyLink does not disagree, it does request the Commission to consider applications on a case-by-case basis for 2020 and prior funding, as long as the proposed projects meet the 25/3 speed threshold. This can be achieved through a waiver request or on a project application review. Either way, there is no benefit to Nebraska communities in shutting the door on projects proposed before the final rules in this docket are adopted.

### ***Prioritization***

12. CenturyLink supports the Commission's current proposal of "allowing price cap carriers to identify which areas they will build to using buildout support." This is the current process, which poses no fundamental or structural deficiencies. Indeed, the Commission does not possess information related to the ILECs' network architecture, current capabilities and/or scalability necessary to make such a fact-based decision, and broadband infrastructure, including central office configuration, middle-mile and backhaul services, must be available to support the last-mile deployment.

13. Furthermore, allowing the carrier to identify the areas to build will allow the carrier to maximize construction synergies and efficiencies with other projects while reducing the ultimate cost and timeline. This approach is the best solution in maximizing the available NUSF funding to effectively and efficiently build out critical infrastructure to as many rural Nebraskans as possible.

14. Everyone understands the critical need for broadband in today's world, and that importance exists for every resident. For that reason, CenturyLink strongly cautions against the use of potentially biased and prejudicial priority areas, especially without consideration of network architecture as discussed above. However, if the Commission does establish priority areas, priority should not be based on the number of customer complaints. Such an approach would serve only to encourage excessive and unnecessary complaints to gain priority.

#### ***Additional Reporting***

15. The Commission again contemplates additional reporting requirements for price cap carriers to "ensure that ongoing support is being used to support Nebraska-based network costs." As a threshold matter, under the current NUSF broadband grant program, price cap companies that receive NUSF broadband grants do not receive any ongoing support for Nebraska-based network costs. Rather, the current NUSF broadband grant program only supports a portion of the initial construction costs of specific projects. Furthermore, the price cap carriers participating in the current NUSF broadband grant program do not receive any funding prior to completion of the project; rather, reimbursement is after the fact and after presentation of sufficient documentation to the Commission demonstrating that the NUSF funds were spent only on eligible Nebraska-based network costs. The Commission does not propose to change this

rule; consequently, the need to ensure that NUSF support is being used solely for Nebraska-based network costs has been achieved. No additional reporting is necessary.

16. The RLECs argue for additional price cap reporting mainly to mirror their reporting requirements. However, the RLECs' arguments ignore that rate-of-return regulation fundamentally differs from price cap regulation, which does not contemplate regulated rate bases, revenue requirements or rates-of-return. Applying the same reporting requirements for these fundamentally different forms of regulation would be like applying miles-per-gallon rules and requirements for gas powered cars to today's electric vehicles. As such, applying incompatible elements of one to the other is infeasible and inappropriate.

17. In addition to the differing regulatory schemes, RLECs, unlike the ILECs, receive their NUSF support before incurring any costs. However, as explained above and recognized in the Commission's proposal, "the Commission proposes to continue its requirement that price cap carriers build out prior to seeking reimbursement for broadband projects". Thus, price cap carriers must demonstrate that spending was appropriate before receiving reimbursement from the fund.

18. The Commission plays a critical role in ensuring NUSF funding is spent appropriately; however, more than sufficient reporting is already in place to ensure that price cap companies are using NUSF broadband support solely for Nebraska-based network costs. While this is the third time the Commission has sought comment on the need for additional price cap reporting, neither the Commission nor any other party has specifically identified any explicit concerns or problems, thus suggesting a solution looking for a problem. If the Commission has specific areas of concern, it has the ability and opportunity to request any needed information from the price cap regulated companies or competitive ISPs who win the auctions.



19. Finally, to the extent additional reporting obligations are adopted to address a specific need or concern, the reporting requirements must be implemented in a competitively neutral manner and applied to all carriers participating in the NUSF broadband grant program in the price cap carrier areas. In other words, competitive ISPs who win a reverse-auction grant must be held to identical reporting and regulatory requirements as the underlying carriers.

### ***RDOF-Related Questions***

20. The Commission's Proposal seeks to remove RDOF-eligible areas from eligibility for NUSF support. Subject to the nuances discussed below, CenturyLink agrees as there is no public policy rationale in providing financial assistance to multiple providers in the same area. The key point is that the RDOF recipient should not be overbuilt by another provider using NUSF support. These areas are uneconomic for a single provider, so providing support to multiple providers would be bad public policy. Using ratepayer and/or taxpayer funds to overbuild and compete with either private industry or other networks built with ratepayer and/or taxpayer support is not only wasteful but a misuse of government funding that will have serious long-term impacts in discouraging future private investment and capital for rural broadband projects.

CenturyLink addresses the specifics of the three Commission-proposed questions related to RDOF areas:

- ***Should the Commission provide any supplemental support for areas covered by the RDOF auction?***

Whether supplemental support should be available in areas covered by the RDOF auction is clearly a complex question for which there does not seem to be solid consensus, either within Nebraska or throughout the U.S. This issue also hinges on the result of the RDOF auction process. For areas won during the RDOF auction process, any Commission-awarded

supplemental NUSF support given to the auction winner to assist the auction winner in providing the speeds and services that the auction winner committed to provide under the RDOF initiative would be a form of “double-dipping.” Although this is not prohibited in the RDOF rules, the Commission should recognize the situation and approve NUSF funding for only exceptional circumstances. For example, if an RDOF auction winner could increase speeds over its RDOF commitment area using supplemental NUSF support, it may provide Nebraska with a cost-effective synergy. In this instance, CenturyLink suggests that supplemental NUSF support should not be disallowed automatically but further investigation and analysis take place.

- ***What about areas that are initially eligible but do not receive any auction-based support?***

Yes, areas that are initially eligible for RDOF but do not receive any auction-based support should be eligible for NUSF support as it is likely that numerous RDOF-eligible areas within Nebraska do not receive auction-based support. The residents that live in these areas should not be penalized solely because the economics of the RDOF auction process did not work for their area. In fact, the absence of an auction winner is most likely the result of the high cost structure that is associated with the area. CenturyLink submits that any RDOF-eligible area that does not receive an auction winner should be immediately deemed eligible for NUSF broadband grant support. At that time, the Commission should recalculate the exchange-level support and re-allocate/re-calculate given the additional locations to serve, which are at a much higher cost.

- ***What about areas that do receive auction-based support but for other technologies such as low-orbit satellite or fixed wireless?***

RDOF-eligible areas that receive auction-based support for broadband via low-orbit satellite or fixed wireless are receiving sufficient broadband services as determined by the FCC. Otherwise, the FCC would not have selected the RDOF auction winner. From a public policy

perspective, there is absolutely no justification for the Nebraska Commission to award broadband grants for these areas only to compete with FCC-supported services. Using NUSF supported grants to compete with FCC supported grants to provide consumers multiple options while denying other areas of the state broadband services is unacceptable and not a valid use of limited NUSF dollars. Furthermore, providing funding in these areas would contradict a basic tenet of the NUSF grant program in that NUSF funding is only going to those that are unserved.

***Inextricably Linked: Universal Service Support and Carrier of Last Resort Obligations***

21. CenturyLink serves more than 20,000 square miles of Nebraska from Omaha to Scottsbluff, and from Valentine to McCook. Within its territory are larger communities such as Omaha, Grand Island, Scottsbluff, North Platte, and Norfolk. as well as more than 20 communities with fewer than 1,000 residents. Of all the Nebraska communities CenturyLink serves as an incumbent carrier, 62 exchanges have less than 10 customers per square mile with over 50 having less than 5 customers per square mile in rural Nebraska. As an incumbent carrier, CenturyLink serves as the carrier of last resort and provides voice service to any requesting customer at its current local rates, which are approximately \$25/month for residential service and under \$40/month for business service. No carrier can economically sustain a telecommunications network with one or two customers per square mile for \$25/month. Although CenturyLink will receive \$2.2 million in ongoing support for the voice network in 2020, this represents nearly a 90% decrease from 2015 levels when the Commission first opened this docket. Despite the sharp decrease in voice support and a steady decline in rural customers, incumbent carriers are still required to maintain 100% of the network. Moreover, CenturyLink and other incumbents face intense and growing competition. Today, less than 50% of

Nebraskans subscribe to wired telephone service and, for those who do, less than half subscribe to legacy voice telephone service from the incumbent. That is, over 75% of Nebraska consumers have chosen a competitive alternative for telephone service from a company other than the legacy incumbent provider. And for every household or business that chooses a wireless, cable or other competitive alternative, the incumbent carrier's obligation remains the same: maintenance of 100% of the network.

22. In its Opening Order of November 13, 2019, the Commission sought comment on the impacts to carrier of last resort obligations ("COLR") under certain situations. In its Initial Comments dated December 17, 2019, CenturyLink explained:

CenturyLink submits that COLR obligations are associated with the carrier receiving state support, not the technology deployed to provide service. If the Commission provides NUSF support to a company, regardless of the technology supported, the resulting COLR obligations must lie with the company receiving such support. If a non-incumbent carrier is awarded NUSF support, any COLR obligations must follow the support.

Furthermore, there is no public policy rationale in providing state assistance to multiple providers in the same area. In other words, the Commission should award NUSF support to only one carrier in any given area. State law and Commission rules require any carrier receiving NUSF support to be a Nebraska eligible telecommunications carrier ("ETC"). Accordingly, any carrier receiving Commission awarded NUSF broadband grant funds should be the designated COLR for all supported services, regardless of the technology deployed. This follows FCC rules associated with the Connect America Fund initiative. And once a non-incumbent carrier is the designated COLR/ETC for a given area, the incumbent provider which previously received NUSF support and had associated COLR obligations should be relieved of such obligations. Finally, as explained above and regardless of the chosen technology, the designated COLR – incumbent or non-incumbent – should be relieved of any COLR obligations if state support is insufficient to foster supported services.

23. As this docket also impacts the Commission's Reverse Auction rulemaking, CenturyLink also reiterates its comments from the 202 Docket:

Universal service support is inextricably linked to obligations that are placed upon the incumbent carriers receiving such support. These obligations include,

but are not limited to, a duty to provide service, general quality of service requirements, rate regulation, and the like. The redirection of NUSF support to another ETC should include the simultaneous transfer of obligations to the winner of the reverse auction and immediate relief for the carrier losing support. Specifically, the winning bidder in a reverse auction should be required or deemed to have petitioned the Commission to replace the ETC as contemplated in 291 Neb. Admin. Code § 10-004.02G1 and the losing ETC relieved of its ETC obligations in accordance with Section 004.02G2.”

24. Although COLR was a relevant issue for this docket, the Commission’s Proposal for NUSF broadband grants does not address the impacts to carrier of last resort obligations or any other regulatory requirements placed on price cap regulated carriers. CenturyLink strongly urges the Commission to address COLR in light of the changing competitive landscape to maintain the integrity of universal service. Simply put, the COLR obligation is inextricably linked to universal service support and the winner of any reverse-auction grant to provide broadband must replace the incumbent carrier as the carrier of last resort.

25. CenturyLink acknowledges that the Commission may not need to resolve this and other COLR-related issues in this docket or at this time. In fact, given the parameters of the Commission’s proposals, a decision on these issues is likely not necessary until 2024. This assumes the one-year timeline for 2020 NUSF broadband funding will start upon the conclusion of this docket – possibly January 2021 – the soonest a competitive ISP could complete the reverse-auction process and have a two-year buildout would be second half of 2024. However, the sooner the Commission fully addresses these critical issues, the more information competitive ISPs will have prior to a reverse auction. CenturyLink recommends the Commission commit to opening a separate docket in 2022 to address these issues and that a final order be issued before the auction process starts so that auction participants fully understand what they are committing to undertake.

***Conclusion***

26. In conclusion, CenturyLink thanks the Commission for the opportunity to provide comments in this docket and looks forward to continuing a productive dialog on the restructuring of the NUSF broadband grant initiative.

Dated this 30<sup>th</sup> day of July, 2020.

Respectfully submitted,

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