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Public Service Commission
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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

COMMENTS OF THE RURAL INDEPENDENT COMPANIES IN RESPONSE TO
ORDER SEEKING COMMENTS

I. INTRODUCTION

The Nebraska Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Order Seeking Comment entered by the Nebraska Public Service Commission (the “Commission”) in this proceeding on November 13, 2019 (the “Order”). In the following discussion, each of the Commission’s questions presented in the *Order* is set forth and is followed by RIC’s comments in response thereto. RIC appreciates the opportunity to participate in this docket and to provide the following Comments in response to the *Order*.

II. DISCUSSION

1. *Whether to align the minimum speed requirements with the 25/3 Mbps standard the FCC adopted subsequent to our September 1, 2015 Order and as applied to the rate-of-return carriers.*

Response: In addition to holding ETC status, for Price Cap-regulated carriers (“PC carriers”) operating in Nebraska to be eligible for Nebraska Universal Service Fund High Cost

¹ Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, LLC, 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 and Three River Telco.

Program (“NUSF”)² support, RIC recommends that the minimum broadband network speed requirement should be 25/3 Mbps. This requirement will harmonize the PC carrier requirement with applicable Nebraska law and with the current Federal Communications Commission (“FCC”) 25/3 Mbps broadband speed standard.

As the Commission is aware, in 2018 the Nebraska Legislature found and declared its intent that broadband telecommunications service in rural areas of Nebraska should be comparable both in download and upload speed and in price to urban areas in the State where possible and that State resources should be utilized to ensure that rural Nebraska residents are not penalized simply because of their rural residence.³ The Legislature further declared that:

It is further the intent of the Legislature that the residents of this state should have access to broadband telecommunications service at a minimum download speed of twenty-five megabits per second and a minimum upload speed of three megabits per second.⁴

Consistent with this legislative intent, the Commission has entered a series of orders in Application No. NUSF-108 that clearly establish that NUSF support for Rate-of-Return (“RoR”) carriers will be provided only in eligible census blocks built out with broadband networks capable of a minimum of 25/3 Mbps service.⁵ Moreover, the definition of “broadband” adopted

² Unless otherwise noted in these Comments, RIC uses the term “NUSF” to refer to the support that is provided to an Eligible Telecommunications Carrier (“ETC”) (*see, e.g.*, 47 U.S.C. § 214(e)) through the NUSF High Cost Program.

³ Also, as more fully discussed in RIC’s response to Commission inquiry 2.c below, RIC notes that the Commission’s current policy is that fiber optics-based networks should be deployed to provide broadband service because, among other benefits, fiber optics-based networks are scalable and provide the capabilities to meet future demands of consumers for higher internet speeds.

⁴ *Neb. Rev. Stat.* § 86-1101(2).

⁵ *See, In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting*

by the Nebraska Rural Broadband Task Force that was created by the Legislature is “[h]igh-speed internet access at 25 Mbps down and 3 Mbps up or greater.”⁶

Thus, the Legislature has announced its intention, the Commission has used, and the Task Force has confirmed that 25 Mbps upload speed and 3 Mbps download speed represent the approved public policy of this State and the current minimum broadband speeds for Nebraska residents, whether urban or rural.

Likewise, raising the broadband speed baseline for PC Carriers’ NUSF eligibility to the current 25/3 Mbps for access to advanced telecommunications capability is consistent with existing broadband speed standards established by the FCC.⁷

For these reasons, the 25/3 Mbps standard for NUSF should be applied to both PC carriers and RoR carriers by the Commission. The established public policy of Nebraska as announced by the Nebraska Legislature and implemented by the Commission for RoR carriers is that broadband networks should be capable of providing minimum speeds of 25/3 Mbps. There is no basis that would support application of different, reduced minimum broadband network speeds for PC carriers.

requirements, Application No. NUSF-108, P.O. #3, Order Seeking Further Comments and Setting Hearing at 6 (June 19, 2018); P.O. #3, Findings and Conclusions at 43 (Nov. 19, 2018); P.O. #4, Order Seeking Further Comment at 4-5 (Feb. 5, 2019); P.O. #4, Order at 25-27 (Oct. 29, 2019).

⁶ Rural Broadband Task Force Findings and Recommendations at 5 (Oct. 2019).

⁷ See, e.g., *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as amended by the Broadband Data Improvement Act, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action To Accelerate Deployment*, GN Docket No. 14-126, 30 FCC Rcd 1375 at para. 3 (2015).

2. *Whether to make the broadband deployment support available similar to the mechanism adopted in NUSF-108, Progression Order No. 3 where projects would be filed for review but not necessarily through an application process.*

Response: To place this inquiry in the proper context, RIC submits that a brief review of the Commission's orders entered in the instant docket since 2014 will be useful. On October 15, 2014, the Commission opened this Application No. NUSF-99 "to consider certain modifications to the high-cost funding mechanism in the universal service fund program."⁸ In Progression Order No. 1, the Commission stated that "we recognize again the need to transition high-cost support to be consistent with federal universal service reform" observing the impacts of the FCC's then-recent implementation of CAF II support for PC carriers' areas of Nebraska.⁹ The Commission initially found that 100% of PC carriers' NUSF support should be used for capital investment ("CapEX").¹⁰ However, this finding was later modified first to require PC carriers to utilize 50% of NUSF support for CapEX projects, and was further modified to the current standard that requires PC carriers to utilize 80% of NUSF support for CapEX projects and 20% of NUSF support for ongoing maintenance. This 80/20 split was established in order for the Commission to have "assurance that all carriers are making timely upgrades to their outdated plant facilities."¹¹ The Commission also concluded that "[o]ur data has indicated *a significant decline in investment levels by price cap carriers over the years*" and recognized "the need to set

⁸ *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, Order Opening Docket, Seeking Comment and Setting Hearing at 1 (Oct. 15, 2014).

⁹ *Id.*, Progression Order No. 1 at 5-8 (Sept. 1, 2015).

¹⁰ *Id.*

¹¹ *Id.*, Findings and Conclusions at 5-6 (Mar. 28, 2017). This 80-20 allocation was reaffirmed in the Order Authorizing Payments at 2 (Nov. 28, 2017).

clear goals for broadband deployment, particularly in those areas that do not receive federal CAF II program support.”¹²

Based upon the foregoing Commission findings, RIC submits that the Commission has allocated NUSF support to PC carriers with the expectation that such support will be promptly and properly utilized for capital investments to expand broadband availability to Nebraska consumers. However, the most recent data available on the Commission’s website reveals the following concerning PC carriers’ utilization of NUSF support:

- PC carriers have not made applications to the Commission to expend over \$10.5 million of NUSF CapEX support budgeted by the Commission to PC carriers for 2016 through 2018.¹³
- For 2017 and 2018 combined, \$18.2 million of NUSF CapEX support approved by the Commission for specific capital projects has not been disbursed to PC carriers for these Commission-approved projects.¹⁴

¹² *Id.*, Order seeking further Comment and Releasing Proposed 2017 Distribution Calculations at 3 (Dec. 20, 2016) (emphasis added).

¹³ For PC carriers, the Commission continues to make 20 percent of PC carriers’ support available for ongoing support regardless of whether those carriers have invested and deployed 25/3 Mbps broadband. RoR carriers only qualify for eligibility for ongoing support for a specific eligible location when that location has been built out to 25/3 Mbps capability. RIC recommends that the Commission establish parity between PC carriers and RoR carriers regarding provision of ongoing NUSF support.

¹⁴ In addition, for 2019 PC carriers’ allocation of \$4.02 million of NUSF CapEX support has not been designated for specific projects and \$5.4 million of NUSF CapEX support designated for specific projects remains unspent. Further, the Commission has recently authorized an additional \$4.5 million of annual NUSF support for PC carriers which will further increase the unspent amounts in the PC carriers’ NUSF support allocation. *See, id.*, Order Authorizing Payments and Commencing Challenge Process at 1 and *see*, revised 2019 high-cost support distribution.

Based upon these facts, and particularly in light of the Commission policy directing use of NUSF support allocated to PC carriers to accomplish CapEX projects to expand the availability of broadband to Nebraska consumers, *the Commission should retain and not replace its current application process applicable to PC carriers.* In addition, in lieu of growing NUSF support balances for PC carriers, the Commission should also review and modify its budget allocation to PC carriers as discussed below.¹⁵

a. Consistent with the process for rate-of-return carriers should the Commission designate eligible census blocks? Please elaborate on how the Commission can complement support received from the federal universal service program to extend existing broadband-based networks further out to rural areas that have no broadband service.

Response: On August 2, 2019, the FCC released its Notice of Proposed Rulemaking relating to the Rural Digital Opportunity Fund (“RDOF”).¹⁶ Therein the FCC proposed a budget of at least \$20.4 billion for the RDOF over 10 years. The FCC stated:

The budget is premised on the CAM estimated cost of deploying a high-speed broadband network to all locations in wholly unserved price cap census blocks that exceed the existing high-cost threshold of \$52.50 per-location per-month, and with that cost capped

¹⁵ RIC understands that the subject matter of the questions presented in the *Order* relates to the prospective framework for provision of NUSF support to PC carriers. However, in RIC’s view, this prospective framework need not and should not govern NUSF support currently allocated to PC carriers which remains unspent. In this regard, RIC believes that the Commission should establish a process whereby NUSF support allocated to PC carriers, but unspent, is re-allocated to the RoR carriers in order that such support is utilized to advance the broadband objectives and policies within Nebraska as summarized in response to Question 1 above. The Commission has found in the instant docket that in contrast to decline in investment levels by PC carriers, “data further shows an increase in investment made by rate of return carriers.” *Order seeking further Comment and Releasing Proposed 2017 Distribution Calculations* at 3 (Dec. 20, 2016). Please refer to RIC’s response to Question 3 below for further discussion of this subject.

¹⁶ *In the Matter of Rural Digital Opportunity Fund and Connect America Fund, Notice of Proposed Rulemaking*, WC Docket Nos. 19-126 and 10-90, FCC 19-77, released Aug. 2, 2019.

at \$198.60. These census blocks are considered wholly unserved because no provider is offering both voice service as well as 25/3 Mbps terrestrial fixed broadband service.¹⁷

Since the higher-cost PC carriers' locations are now being deployed to at 25/3 Mbps by those carriers that successfully participated in the CAF Phase II auction,¹⁸ the RDOF will focus on the remaining lower-cost PC carriers' locations that are currently served with 10/1 Mbps under CAF II. Thus, presumably at the end of the RDOF program, most, if not all PC carriers' locations in Nebraska will be served with at least 25/3 Mbps. However, because the RDOF is still under development, it is not yet known which census blocks in Nebraska will be eligible for RDOF support and, in due course, will be built out to at least 25/3 Mbps with that support. Nevertheless, the FCC has declared that it plans to implement the Phase I RDOF auction in 2020;¹⁹ thereby suggesting that progress on broadband deployment to PC carriers' service areas is imminent.

The Commission provided guidance in Progression Order No. 1 entered in this docket that continues to be highly relevant to the inquiries presented above vis-à-vis the expected future provision of federal RDOF support. Therein the Commission found as follows regarding the then-current CAF II federal program:

Careful consideration must be given for broadband funding in CAF II areas to prevent redundant support being provided to price cap carriers in CAF II support areas and to

¹⁷ *Id.* at para. 16 (footnote omitted). The reference to "CAM" is to the "Connect America Cost Model" applicable to PC carriers. *See, e.g., id.* at para. 8.

¹⁸ *See, i.e., "Connect America Fund Auction to Expand Broadband to over 700,000 Rural Homes and Businesses, Auction Allocates \$1.488 Billion to Close the Digital Divide,"* Federal Communications Commission Press Statement, Aug. 28, 2018. <https://www.fcc.gov/document/connect-america-auction-expand-broadband-713176-rural-locations-0>.

¹⁹ *In the Matter of Rural Digital Opportunity Fund and Connect America Fund, Notice of Proposed Rulemaking*, WC Docket Nos. 19-126 and 10-90, FCC 19-77, para. 3 released Aug. 2, 2019.

guard against any unintended consequences that would lead to that carrier's inability to obtain federal broadband support in these areas going forward. . . .The Commission finds support should continue to be targeted to areas which have a need for broadband investment. . . .However, the Commission will require an additional showing by the price cap carrier seeking support in CAF II eligible areas that NUSF support is needed in conjunction with federal support. Such a showing will not be required in CAF II ineligible areas.²⁰

While the foregoing conclusions were reached in the context of CAF II, RIC submits that these concepts will be even more applicable in the context of the upcoming RDOF, since CAF II only required buildout to a minimum of 10/1 Mbps while the RDOF speed baseline will be 25/3 Mbps and above.

Redundant NUSF support should not be provided to census blocks that will receive RDOF federal support where such support will result in the deployment and operation of at least 25/3 Mbps broadband service for the eligible locations. Further, caution should be exercised in the NUSF application review process for approval of current and upcoming PC carrier CapEX projects in order to avoid the disqualification of otherwise eligible census blocks from receiving RDOF support.²¹ NUSF support should be targeted, to the extent possible, to areas of the State that have a need for broadband investment. If, prior to the establishment by the FCC of the rules relating to the RDOF, a PC carrier seeks to obtain NUSF support for areas that may be eligible for RDOF support, then the PC carrier should bear the burden to demonstrate to the Commission that approval of its proposed use of NUSF will be consistent with FCC-announced RDOF principles.

²⁰ Progression Order No. 1 at 7-8 (Sept. 1, 2015).

²¹ For example, PC carrier applications for NUSF support that utilize fixed wireless technology may have the effect of disqualifying any census block that receives broadband service through fixed wireless technology from the receipt of RDOF support for deployment of fiber optics-based technology which is a superior technology allowing future scalability as internet speed demands increase.

b. Should the Commission prioritize certain areas for broadband deployment? If so, what criteria should the Commission utilize to make those determinations?

Response: In a prior docket in which the Commission conducted an investigation and review of processes and procedures regarding the NUSF, the Commission established a scoring process for applications for Nebraska Broadband Program support.²² The Commission considered whether an area is unserved or underserved, the retail price of the broadband service offered, costs per household, area density and proposed benefits to consumers, among other factors.²³ RIC suggests that the Commission may want to revisit these factors in order to reflect the Commission's current prioritization of NUSF support to areas that need broadband deployment. For example, in RIC's view it is important that, to the extent feasible, NUSF support should be prioritized for establishment of broadband service to currently "unserved" areas, with lower priority given to "underserved" areas.

Further, RIC respectfully submits that the Commission should find that it is not in the public interest to continue to maintain a large uncommitted NUSF balance or to maintain committed but unspent NUSF balances dating to 2016.²⁴ RIC further submits that the Commission should find that any current uncommitted NUSF fund balance (less a reasonable reserve) should be reallocated for application to RoR carriers' unrecovered costs of deploying

²² See, e.g., *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the NUSF*, Application No. NUSF-77, Progression Order No. 4 (Sept. 27, 2011).

²³ *Id.* at 15.

²⁴ According to currently available information on the Commission website relating to NUSF balances, as of July 31, 2019 the NUSF Fund Balance was \$68,301,927; the amount of Funds Already Committed and Outstanding for Approved Grants – pending reimbursement was \$48,238,219; and the Uncommitted Fund Balance was \$20,063,708. <https://psc.nebraska.gov/telecommunications/nebraska-universal-service-fund> .

and operating broadband networks in high-cost areas. In addition, RIC recommends that the Commission takes steps to ensure that PC carriers' NUSF balances are used within reasonable future time frames for the accomplishment of the purposes and policies of the NUSF Act.²⁵

c. Consistent with the past strategic plan principles, should the Commission design the process around support preferences for fiber-based projects?

Response: The Commission's Strategic Plan Principle that endorses fiber optics-based networks to support broadband deployment should continue to be followed. That Principle is:

Deployment of Fiber-based Network Everywhere. As carriers continue to invest in their networks and replace outdated facilities, the Commission's plan will have wireline carriers extend or replace facilities with fiber. Fiber facilities will allow carriers to offer consumers more services at greater speeds. The Commission hopes to alleviate the incremental minimum speed considerations in its requirements by ensuring the networks are built to sustain growth, usage and demands over the long term. As more fiber is deployed, increased speeds will follow. Coordination with the federal mechanism will be the key to making efficient use of universal service support.²⁶

The Commission has not modified or superseded the foregoing iteration of its preference for fiber-based networks, nor should it.

Accordingly, and consistent with its Comments filed with the Commission in June 2016, RIC reiterates and affirms its prior statement that the Commission should establish a policy baseline for PC carrier recipients of NUSF support "that requires the demonstration, in some fashion, that aspects of their respective networks have been planned to be scalable regarding broadband speeds, consistent with the FCC's statements that it expects carriers seeking federal

²⁵ See *Neb. Rev. Stat.* §§ 86-317 and 86-323. See also, the discussion in footnotes 14 and 15 above.

²⁶ *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Application No. NUSF-100, Order at 5 (April 5, 2016). For purposes of this discussion, RIC understands the Commission's concept of "scalable" to reflect that fiber technology allows for delivery of higher broadband speeds to consumers based on utilization of new or improved electronics that are attached to the fiber without the need to re-deploy the existing fiber within the network.

USF support to be planning, to the extent possible, for the deployment of ‘future proof’ networks.”²⁷

d. Additionally, carriers have, in some cases, utilized fixed wireless technology to meet federal universal service fund obligations. With the assumption that the cost to deploy this technology is lower than the cost to deploy fiber to the home, why is state support necessary to supplement, deployment of these technologies? How should carrier of last resort obligations (COLR) be treated if alternative technologies such as fixed wireless services are deployed in the place of replacing or updating the copper-based network with fiber? How should that impact NUSF support?

Response: NUSF support should be provided for PC carriers’ broadband projects based only on applications the Commission approves. The Commission should provide NUSF CapEX support for approved broadband projects only based on project costs documented by the PC carrier.

With regard to the Commission’s additional inquiry as to the impact of a PC carrier’s decision to use fixed wireless technology on carrier of last resort (“COLR”) obligations, it is RIC’s position that the continuing existence of a carrier’s COLR obligations is not dependent upon the technology that the carrier chooses to enable its provision of broadband service. Thus, a carrier’s decision to use fixed wireless technology to provision broadband service does not change that carrier’s COLR obligations. Pursuant to current Nebraska law, a carrier may not discontinue telecommunications service or be released from its COLR obligations unless it files an application for approval of such discontinuation with the Commission and, following public hearing, the Commission enters an order approving such discontinuation.²⁸

²⁷ The FCC has stated that “[w]e encourage recipients of funding to deploy to the extent possible future proof infrastructure that will be capable of meeting evolving broadband performance obligations over the longer term. That will ensure that our policies will continue to support an evolving level of universal service in the future.” *Connect America Fund*, WC Docket No. 10-90 *et al.*, FCC 14-190, released December 18, 2014, para. 18.

²⁸ See, *Neb. Rev. Stat.* § 86-134 which provides the criteria that must be satisfied by a carrier prior to receiving Commission approval to discontinue a service.

3. *Consistent with the requirements for rate-of-return carriers should the Commission adopt specific timeframes for both requesting to utilize allocated support, and for buildout once projects are approved? What should the timeframe be? Please explain.*

Response: Yes, the Commission should require timelines for PC carriers to make application for approval of broadband projects and to utilize any such NUSF support to complete the Commission-approved project in accordance with applicable specifications. RIC recommends that the two-year build out requirement that the Commission established for RoR carriers should be applied to PC carriers.²⁹ If a PC carrier fails to adhere to these timelines, allocated support should be required to be returned to the NUSF budget for redistribution.³⁰ If a PC carrier needs additional time to deploy broadband projects supported by NUSF, it should seek a waiver from the Commission based upon good cause.

Similarly, the Commission should apply a “shot clock” to NUSF support that has previously been allocated to PC carriers, but the PC carrier either (a) has not timely applied to the Commission for use of such support for broadband deployment project(s) or (b) has not timely executed the project approved by the Commission in accordance with the Commission’s directions. RIC suggests that the “shot clock” durations applicable to PC carriers in order to avoid forfeiture of NUSF support should be (a) application for approval of CapEX projects must be filed with the Commission within one (1) year from the date of Commission allocation of support and (b) a broadband deployment CapEX project must be completed within two (2) years

²⁹ *In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements*, Application No. NUSF-108, P.O. #3, Findings and Conclusions at 40 (Nov. 19, 2018).

³⁰ *See* footnote 24 and 25.

of the date of the Commission order approving the project (both dates subject to up to a one (1) year extension on good cause shown).

RIC submits that the foregoing recommendations are consistent with the Nebraska Legislature's stated intention "that broadband telecommunications service in rural areas of the state should be comparable in download and upload speed and price to urban areas in the state where possible *and that state resources should be utilized* to ensure that the rural residents of the state should not be penalized simply because of their rural residence."³¹ If NUSF support allocated to PC carriers remains in the NUSF budget, RIC respectfully submits that such NUSF support is certainly not being utilized consistent with the foregoing statement of legislative intent.

RIC recommends that the Commission should enter an order that establishes the time requirements in accordance with the foregoing recommendations for PC carriers to utilize NUSF support in connection with Commission-approved projects or to forfeit that support for redistribution to other eligible carriers.

4. *We also seek comment on how to better ensure that ongoing support is being used to maintain the quality and performance of both voice and broadband service in Nebraska as it was intended. Should the Commission tie ongoing support to census blocks where the carrier is providing voice and broadband service at speeds of 25/3 Mbps? If not, why not? How should the Commission treat areas that are not receiving adequate voice and broadband service? Should the Commission impose a reporting requirement, such as the EARN Form, to ensure that operational expenses are being used for the purpose of maintaining and improving the network facilities in Nebraska specific high-cost exchanges for which they were intended and in support of services offered to Nebraska consumers in high-cost exchanges?*

Response: In the series of orders entered in Application No. NUSF-108 regarding RoR carriers, the Commission established criterion that must be met precedent to a carrier's receipt of

³¹ *Neb. Rev. Stat.* § 86-1101(2) (emphasis added).

ongoing NUSF support. Among such criterion, the Commission required that CapEX projects for extension of broadband networks to locations at 25/3 Mbps must be completed prior to the receipt of broadband deployment support.³² There are no apparent reasons that these same criteria should not be applied to PC carriers as conditions for receipt of NUSF support by PC carriers. In fact, given the track record regarding the use of NUSF support by PC carriers as compared to RoR carriers, it would be appropriate for the Commission to establish even more rigorous requirements for PC carriers.

With regard to the Commission's question as to how it should address areas that are not receiving adequate voice and broadband service from a PC carrier, the Legislature has directed that "[t]he Commission shall adopt and promulgate rules and regulations that establish standards governing the withholding of funding from the Nebraska Telecommunications Universal Service Fund from any recipient . . ."³³ The Commission is engaged in implementing this directive in the pending docket designated as Rule and Regulation No. 202 and is in the midst of receiving comments on the second version of Proposed Rule 202.³⁴ RIC believes that the Commission will establish in the *Rule 202 Proceeding* the process and procedures necessary to address those

³² See, *In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements*, Application No. NUSF-108, P.O. #3, Order Seeking Further Comments and Setting Hearing (June 19, 2018); P.O. #3, Findings and Conclusions (Nov. 19, 2018); P.O. #4, Order Seeking Further Comment (Feb. 5, 2019); P.O. #4, Order (Oct. 29, 2019).

³³ *Neb. Rev. Stat.* § 86-330.

³⁴ *In the Matter of the Commission, on its own motion, seeking to establish Title 291, Chapter 16, to adopt Reverse Auction and Wireless Registry rules and regulations in accordance with Nebraska Legislative Bill 994 (2018)*, Rule and Regulation No. 202 Order Releasing Proposed Rules and Seeking Comment (Oct. 8, 2019) (the "*Rule 202 Proceeding*").

circumstances in which a recipient of NUSF support is subject to review for the provision of inadequate voice or broadband service.³⁵

With regard to implementing a reporting requirement to confirm the use of NUSF operating expense support for its intended purpose, the Commission already requires certifications of the use of universal service support consistent with statutory requirements.³⁶ Implementing a further report or certification would be redundant. RIC believes that upon completion of the Commission's formulation and approval of Rule and Regulation 202 in the *Rule 202 Proceeding*, carriers will have sufficient incentive to comply with adequacy of service requirements in order to retain NUSF support and avoid withdrawal of such support. As such, RIC submits that the outcome of the *Rule 202 Proceeding* provides an opportunity for the Commission to establish a more effective means of incenting behavior that will promote and preserve adequacy of service than implementing an addition reporting requirement. Furthermore, the Commission has authority to address alleged inadequacy of voice service by a regulated carrier under the above-referenced COLR statute.

5. *Additionally, we solicit comments on whether to make any changes to account for the possible future changes in federal support for price cap areas. Connect America Fund Phase II support will likely be transitioning to an auction-based support, at some point in time. Is there a way to better leverage federal and state support? If so please explain.*

Response: Nebraska legislative policy requires that all Nebraskans shall have comparable access to telecommunications and information services, and that rural residents

³⁵ RIC respectfully refers the Commission to its filed Comments and proposed revisions to Rule and Regulation No. 202 that have been submitted in that docket.

³⁶ See, e.g., *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for the purpose of certifying the use of federal universal service support [and state universal service support]*, Application No. NUSF-25 and NUSF-66, Order (Sept. 17, 2019).

should not be penalized in obtaining broadband access simply because of their rural locations.³⁷ The Commission has previously recognized that in the deployment of broadband networks High Cost Program support is to be coordinated with federal support.³⁸

As discussed in RIC's response to 2.a above, last August the FCC released a Notice of Proposed Rulemaking in connection with its Rural Digital Opportunity Fund.³⁹ RIC urges the Commission to closely monitor developments relating to the RDOF in order that deployment of NUSF support in PC carrier-served areas can be accomplished in a manner that results in the most efficient utilization of available NUSF support for all Nebraska consumers and avoids duplication of federal universal service support.

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 in the *Order* and look forward to continuing participation in this docket.

³⁷ See, *Neb. Rev. Stat.* § 86-317 and *Neb. Rev. Stat.* § 86-1101.

³⁸ *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Application No. NUSF-100/PI-193, Order and Order Seeking Further Comments and Setting Hearing, at 19 (Feb. 22, 2017).

³⁹ See, footnote 16.

Dated: December 13, 2019.

Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, LLC., 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 and Three River Telco (the "Rural Independent Companies")

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CERTIFICATE OF SERVICE

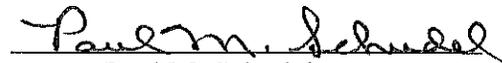
The undersigned hereby certifies that on this 13th day of December 2019, an electronic copy and one paper copy of the foregoing pleading were delivered to:

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Also, electronic copies of the foregoing pleading were electronically delivered to the other parties to this docket.


Paul M. Schudel