

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 NEBRASKA RURAL INDEPENDENT COMPANIES

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Company, Clarks Telecommunications Co.,
Consolidated Telephone Company, Consolidated Telco,
Inc., Consolidated Telecom, Inc., The Curtis Telephone
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Date: July 30, 2020

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SUMMARY

Through proper actions in response to three orders issued on June 30, 2020,¹ the Commission has the opportunity to migrate the current Nebraska Universal Service Fund (“NUSF”)² allocation and distribution process to a more transparent framework and a system that achieves more equitable policy goals both in terms of NUSF distributions and contributions. As will be amplified in response to the two companion *June 30 Orders*, the Rural Independent Companies (“RIC”) respectfully submit that these comments provide a cohesive and fully justified NUSF distribution framework for all Nebraska Eligible Telecommunications Carriers (“NETCs”) that incorporates current federal policies and events applicable to Price Cap (“PC”) carriers and incentivizes Rate of Return (“RoR”) carriers to complete broadband buildouts. The following ten (10) principles which are the foundation of the RIC-proposed distribution framework are straightforward, fact-based and entirely rational from a public policy perspective.

1. The public interest is served by formulation of a cohesive and transparent NUSF framework in response to the *June 30 Orders*.
2. The Commission should adopt a consistent and equitable NUSF distribution framework for all NETCs to provide supplemental NUSF support to those locations for which federal support is insufficient to fund broadband deployment costs while at

¹ See *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, entered June 30, 2020 (the “PO 2 Order”); *In the Matter of the Nebraska Public Service Commission, on its own Motion, to Administer the Universal Service Fund High-Cost Program, Order Opening Docket and Seeking Comment*, Application No. NUSF-119/PI-233, entered June 30, 2020 (the “NUSF-119 Order”); *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, Order Setting Hearing*, Application No. NUSF-108, Progression Order No. 5, entered June 30, 2020 (the “NUSF 108, PO 5 Order”) (collectively the “June 30 Orders”).

² Unless otherwise indicated, RIC uses the terms “NUSF” in these Comments to refer to the NUSF High Cost Program and support provided thereunder to NETCs since NUSF is only available to such NETCs. See, e.g., 47 U.S.C. § 214(e); *Neb. Rev. Stat.* § 86-324(1).

- the same time maximizing the utilization of federal support for broadband deployment in Nebraska.
3. PC carriers have not fully utilized allocated NUSF to deploy 25/3 Mbps broadband networks.
 4. RoR carriers have utilized allocated NUSF to deploy 25/3 Mbps broadband networks.
 5. Unserved and underserved areas within PC carriers' rural exchanges will see a significant expansion of additional 25/3 Mbps broadband-capable locations based on implementation of Phases I and II of the Federal Communications Commission ("FCC") Rural Digital Opportunity Fund ("RDOF") framework.
 6. An NUSF distribution framework that creates "haves" and "have nots" should be avoided.
 7. Any location awarded RDOF eliminates the need for supplemental NUSF for that location, thus maximizing the State's receipt of federal funding for broadband deployment.
 8. Total remaining State Broadband Cost Model ("SBCM") identified costs to complete broadband deployment in PC carrier service areas will be, primarily as a result of RDOF federal support, significantly lower than SBCM costs to complete broadband deployment in RoR carrier service areas.
 9. Changes to allocations of the total NUSF budget between RoR and PC carriers are warranted based on SBCM costs and public policy as demonstrated by Exhibit 1 attached to these Comments.
 10. PC and RoR carriers' supplemental NUSF distribution processes should migrate to a more transparent process.

Based on these ten principles, the RIC comments that follow provide the Commission with a basis for establishment of a more cohesive and transparent NUSF distribution process that, from a factual, public policy and legal perspective, justifies an increase in the RoR-allocated percentage of the NUSF budget while, at the same time, providing for the migration to single framework for supplemental NUSF distribution and buildout requirements applicable to all NETCs. The RIC framework preserves scarce NUSF resources, minimizes the possibility of forgoing of federal broadband funding, and encourages those NETCs with a demonstrated objective of deployment of broadband-capable networks – the RoR carriers – to continue to accomplish that objective.

The RIC comments in this proceeding demonstrate that the following NUSF distribution process changes must be made and are in the public interest.

1. No NUSF funding allocated to PC carriers for 2020 or future years should be utilized for (i) any location subject to FCC Auction 903; (ii) any location eligible for RDOF Auction I; (iii) any location eligible for RDOF Auction II; (iv) any location that currently is 25/3 Mbps capable per the SBCM files; (v) any location with SBCM costs of less than \$52.50 per month; (vi) any location already served by an unsubsidized competitor; and (vii) any location that will be funded by NUSF allocated to PC carriers for years 2017 through 2020 and is built out through use of such funding.
2. On a going forward basis, the NUSF budget allocation between PC and RoR carriers should be modified to reflect eligible remaining costs not recovered through federal universal service support and eligible locations that have been built to 25/3 Mbps. Based on RIC's analysis, the proper allocation of the NUSF High Cost Program budget should be as follows: 74.2% for RoR carriers and 25.8% for PC carriers.
3. The same NUSF distribution process should apply to both PC and RoR carriers in conjunction with the adoption of the new budget distribution percentages.
4. The same NUSF buildout timeframes should apply to both PC and RoR carriers.
5. NUSF disbursements should be based on SBCM costs or demonstrated costs of broadband deployment, whichever is less.

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COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

I. INTRODUCTION

The Nebraska Rural Independent Companies (“RIC”)³ submit these Comments in response to the Order Seeking Further Comment and Setting Hearing entered in this docket on June 30, 2020 (the “*PO 2 Order*”) by the Nebraska Public Service Commission (the “Commission”). In the following discussion, the Commission’s “Proposal” and each of the Commission’s inquiries presented in the *PO 2 Order* is set forth in italicized text and is followed by RIC’s comments in response thereto in regular font text. However, before proceeding to provide such comments, RIC respectfully submits information in Section II below that addresses matters of critical importance to the proper implementation and provision of Nebraska Universal Service Fund High Cost Program support for broadband deployment in this State.⁴

³ 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.

⁴ Unless otherwise indicated, RIC uses the terms “NUSF” in these Comments to refer to the NUSF High Cost Program and support provided thereunder to NETCs since NUSF is only available to such NETCs. *See, e.g.*, 47 U.S.C. § 214(e); *Neb. Rev. Stat.* § 86-324(1).

II. FUNDING OF BROADBAND DEPLOYMENT IN NEBRASKA IN RELATION TO THE COMMISSION’S THREE NUSF ORDERS ENTERED ON JUNE 30, 2020.

A. Commission Consideration of the Issues Raised in the *PO 2 Order* should not Occur in Isolation, but Rather within the Framework of All Funding Sources for Broadband Deployment and the Role of Supplemental NUSF Funding and Distribution of Support for Broadband Deployment.

In the statement of purpose of the Nebraska Telecommunications Universal Service Fund Act the Legislature authorized the Commission “to establish a funding mechanism which *supplements federal universal service support mechanisms* and ensures that *all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.*” (emphasis added)⁵ Since 2015, the Commission has implemented the foregoing legislative authorization by dividing the total annual NUSF budget among Nebraska NETCs based on 51.77% being distributed to PC carriers and 48.22% being distributed to RoR carriers. This allocation of NUSF support was based upon the Support Allocation Methodology (or “SAM”) and was established by the Commission in September 2015, almost five years ago.⁶ Nonetheless, since 2016 the Commission and its Staff have continued to apply these SAM-based percentages for allocation of the NUSF budget. However, because the Commission has affirmed the use of the SBCM,⁷ consistent use of the SBCM for costing of broadband buildout as well as allocation of NUSF to determine distribution of broadband deployment and ongoing support is entirely rational and appropriate, and harmonizes need (based on costs) and funding

⁵ *Neb. Rev. Stat.* § 86-317.

⁶ See Application No. NUSF-99, Progression Order No. 1 at 5 (Sept. 1, 2015) (“*PO 1 Order*”).

⁷ 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, Findings and Conclusions at 36, entered Nov. 19, 2018.

(distributions of the available NUSF budget) for broadband deployment which are the subjects addressed by the Commission in the *June 30 Orders*. The re-evaluation of the budget allocation between PC carriers and RoR carriers is long overdue and should be subject to periodic future review by the Commission.

The allocation of 51.77% of the overall NUSF budget to PC carriers was made in the context of the following finding in the *PO 1 Order* in 2015:

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 *guard against any unintended consequences that would lead to that carrier's inability to obtain federal broadband support in these areas going forward*. (emphasis added)⁸

During the nearly five years that have passed since the Commission's release of the *PO 1 Order*, the applicable facts regarding the provision of federal universal service support for PC carrier service areas have changed materially and will continue to change significantly in the near future. These changes are graphically illustrated by the information presented in the table attached hereto as Exhibit 1 which has been developed by RIC's subject matter experts' analysis of SBCM investment costs (the data source used by the Commission Staff) and available data largely derived from FCC models.

Using the SBCM, this table shows the support required to be supplied for high-cost areas from the NUSF after consideration of federal support provided. The results of the analysis amply demonstrate the path that RIC urges that the Commission should follow to ensure proper implementation of the NUSF's policy goals while ensuring that maximum amount of federal universal service support is received by carriers in Nebraska. The data contained in Exhibit 1 represent RIC's best efforts at establishing accurate and updated SBCM-eligible investment costs for NUSF funding going forward.

⁸ *PO 1 Order* at 7.

Only a small portion of RoR carriers' eligible investment costs are currently funded under today's NUSF budget. As is demonstrated by the data in Exhibit 1 attached to these Comments, increasing the overall allocation of the NUSF budget to RoR carriers to properly reflect the costs of serving these locations will serve as a more effective incentive for A-CAM carriers to build out capped, partially-funded locations than today's NUSF budget allocation.⁹

As can be seen from line 17 of Exhibit 1, RIC contends that NUSF-99 eligible locations for PC carriers constitute ***only 25.8% of the total unfunded, eligible investment costs in the State.*** As shown on line 29 of Exhibit 1, NUSF-108 eligible locations for RoR carriers constitute ***74.2% of the total unfunded, eligible investment costs in the State.*** Moreover, the foregoing data reveals that the current 51.77% /48.22% allocation of the NUSF budget is out of date based on SBCM data regarding census blocks that properly can be viewed as appropriate areas for supplemental NUSF support. As a result, Exhibit 1 demonstrates that, on a going-forward basis, the NUSF budget allocation should be adjusted to a 25.8% (PC carriers) – 74.2% (RoR carriers) allocation.¹⁰

⁹ RIC estimates that only 13.6 percent of eligible costs for broadband deployment support and 26.8 percent of eligible costs for ongoing support (all for builtout locations) are recovered in the 2020 RoR carriers' NUSF distributions. Therefore, an increase in the RoR carriers' share of the NUSF budget will provide funding for greater recovery of those costs. Furthermore, the amount of eligible locations for deployment support is increasing as A-CAM companies deploy 25/3Mbps service to capped, partially funded locations.

¹⁰ A significant driver of the public policy imperatives for this change in NUSF distribution percentages between PC and RoR carriers is the RDOF and the scheduled auctions of both the RDOF I locations (census blocks "that are wholly unserved with broadband at speeds of 25/3 Mbps") and the RDOF II locations (census blocks that the FCC "later determine[s] through the Digital Opportunity Data Collection, or suitable alternative data source, are only partially served, as well as census blocks unawarded in the Phase I auction"). *See generally In the Matter of the Rural Digital Opportunity Fund, et al., Report and Order*, WC Docket Nos. 19-126, 10-90, FCC 20-5, released February 7, 2020 at ¶ 9 (footnote omitted). As explained in more detail *infra*, it is clear that the appropriate share of "supplemental" NUSF support for NETCs is dependent on federal USF targeted to eligible customer locations and the resulting unfunded costs. Thus, it is unwarranted and inappropriate to include a large amount of PC carrier investments – particularly

Failure to make this budget allocation adjustment would likely result in one or more of the following consequences: Violation of the legislative directive that the NUSF should supplement federal universal service support mechanisms; foregoing of federal Universal Service Fund dollars for the State of Nebraska; and/or violation of the Commission's findings in the *PO 1 Order* that seek to prevent the provision of redundant universal service support and to guard against any inability of the State and its carriers to receive the benefits of federal universal service support.¹¹ In RIC's opinion none of these foregoing consequences are legally proper, advance rational public policy or serve the interests of rural Nebraskans seeking broadband availability. At the same time, however, RIC's foregoing redistribution proposal addresses this Commission conundrum.

B. The Commission Should Consider the Issues Presented by the *June 30 Orders* to be Interrelated and to be Resolved in a Manner to Maximize Broadband Deployment to All Nebraska Consumers.

The *June 30 Orders* address either the funding/remittances for the NUSF or the process for distribution of NUSF to PC carriers (which is the focus of the instant docket).

Unquestionably, the public interest is served by the Commission considering the issues raised in the *June 30 Orders* as "interrelated" and thus properly addressed in a comprehensive manner that develops a consistent and transparent NUSF framework with the objective of maximizing broadband deployment for all Nebraska consumers. These elements, in turn, have and will continue to guide RIC's efforts in responding to each of the *June 30 Orders*.

By way of example, the interrelated nature of the *June 30 Orders* is demonstrated by the

in lieu of the upcoming RDOF auctions -- for NUSF eligibility in establishing budget allocations between PC and RoR carriers' service areas based on current costs. In sum, the Commission's current budget allocation grossly over-funds PC carrier eligible areas and under-funds RoR carrier eligible areas and must be addressed.

¹¹ See footnote 8 above.

fact that, while the *PO 2 Order* seeks input on the framework for distribution of NUSF support (the “expense side” of the ledger) to one classification of NETCs, namely the PC carriers, the *NUSF-119 Order* (and before it the Commission’s action in its NUSF-111 and NUSF-100 proceedings) focuses on surcharge collections that fund the NUSF (the “income side” of the ledger). The *NUSF-108, PO 5 Order*, in turn, addresses modifications to the RoR carriers’ distribution mechanism that the *PO 2 Order* suggests (in RIC’s view appropriately so) should be applicable to PC carriers.¹² These two NUSF elements – distributions (amounts, how to distribute support and when such disbursements occur) and surcharge collections (which address the remittances necessary to fund the NUSF distributions) – cannot rationally be viewed in “silos” but rather should be considered as components of one integrated program.¹³ RIC respectfully submits that such integrated decision-making by the Commission will enhance the effort to develop a transparent and consistent NUSF distribution and remittance process, and

¹² See *PO 2 Order* at 2 (asking about designation of census blocks similar to RoR carriers and similar broadband buildout time frames for RoR carriers and broadband speed requirements applicable to NUSF disbursements for RoR carriers), at 15 (finding the same minimum 25/3 Mbps broadband speed applicable to RoR carriers is applicable to PC carriers and adopting the already-established deployment time frames for RoR and PC carriers – two-years for broadband buildout with a the ability to seek a one-year waiver), at 17 (seeking additional comments on whether the Commission should “adopt other modifications with respect to PC carrier support similar to those adopted in NUSF-108 for RoR carriers”).

¹³ The Commission has already recognized the integrated nature of the distribution and remittances aspects of the NUSF.

Specific reporting and certification procedures will need to be developed for NUSF remittances and distributions. The Commission opened an investigation in Docket NUSF-108 to develop specific accountability and reporting requirements relative to NUSF support distributions. Assuming the contribution mechanism is changed, the Commission will also need to determine the specific reporting procedures for remittances into the fund.

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

advance the overarching purpose of the NUSF to provide advanced telecommunications and broadband services to all Nebraska consumers.

RIC's recommendations regarding the issues raised in each of the *June 30 Orders* will, as a cumulative and coordinated decision-making process by the Commission, be in the public interest, the applicable standard for NUSF policy decisions. Comprehensive consideration of the *June 30 Orders* as suggested herein lays the proper foundation for achieving the proper integration of NUSF surcharge collections and NUSF support distributions, thereby advancing the overarching public policies adopted by the Commission in its long-standing *NUSF Strategic Plan*,¹⁴ a keystone of which is deployment of scalable broadband networks providing minimum broadband speeds of 25/3 Mbps to all Nebraska consumers in an equitable and expeditious manner consistent with the requirements of the Legislature in Sections 86-323(2) and (3) and 86-1101(2) of the Nebraska statutes.

III. COMMENTS ON THE PROPOSAL

Speed: 25/3 Mbps should be the minimum speed threshold for broadband deployment obligations tied to NUSF support. (p. 15)

RIC agrees. The speed threshold of 25/3 Mbps should be understood to be the *minimum* broadband speed to receive NUSF support. This standard advances the aspirational goal of the Commission's *NUSF Strategic Plan* with respect to the deployment of scalable broadband networks to facilitate ever-expanding speed requirements.¹⁵ The Commission's "scalable" goal is, in turn, fully consistent with the FCC's declaration that "future proof" networks should be

¹⁴ See *id.* at 18-19.

¹⁵ See *id.*

deployed to meet consumer demand for broadband.¹⁶ In this regard, the need for robust, scalable and future proof networks has become even more evident during the COVID-19 crisis with work from home, educate from home and tele-health from home becoming the norm.¹⁷

Buildout: a two-year standard timeframe along with the opportunity 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.

A framework that provides the foundation for prompt deployment of broadband networks by PC carriers through the use of allocated NUSF support was presented by RIC in its Reply Comments filed in this docket.¹⁸ RIC continues to advocate that the NUSF-108 framework's two-year buildout time frame should be applicable to PC carriers. And, further, that up to a one-year extension of this time frame could be granted on a showing of good cause.

At the same time, however, the Commission's NUSF distribution framework for PC carrier broadband deployment needs to reflect the reality of PC carriers allocated but unused Broadband Deployment Support. No finding is made in the *PO 2 Order*, and RIC is not aware of any facts that would suggest that the newly proposed framework would incentivize PC carriers to

¹⁶ Even at the time of advancing 10/1 Mbps standard, the FCC stated that it encouraged "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." *In the Matter of Connect America Fund, et al., Report and Order*, WC Docket No. 10-90, *et al.*, FCC 14-190, released December 18, 2014, at para. 18. *See also Connect America Fund et al.* 26 FCC Rcd 17663, 17703, para. 107 (2011) (encouraging robust scalable networks); *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15655-56, para. 29 (2014) (encouraging parties receiving 10 years of support through the Phase II competitive bidding process to deploy futureproof networks that are capable of meeting future demand); *Connect America Fund et al.*, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624, para. 26 (2017) (recognizing higher speed service will meet the evolving needs of consumers).

¹⁷ *See also* Comments of the Rural Independent Companies, Application No. NUSF-99, Progression Order 2, submitted December 13, 2019 at 2-3.

¹⁸ *See* Reply Comments of the Rural Independent Companies, Application No. NUSF-99, Progression Order 2, submitted Jan. 10, 2020 at 6-7.

undertake actions to reverse their past record of under-utilization of allocated NUSF support to deploy scalable future proof networks. RIC is concerned the framework proposed in this proceeding, coupled with the lack of any analysis and changes to the annual NUSF budget allocation (*see* Section II.A above), will result in continuation of poor broadband deployment results for Nebraska consumers in PC carrier areas, lack of deployment to rural customers in partially funded A-CAM carrier areas because of insufficient and unpredictable NUSF funding to those areas, and under-recovery of broadband deployment costs by all RoR carriers that have deployed and continue to deploy and operate high-speed networks due to insufficient NUSF support distributed on the basis of an outdated allocation methodology.

Likewise, any framework that the Commission develops in this proceeding and those related to it regarding the *NUSF-119 Order* and *NUSF-108, PO 5 Order* needs to be carefully coordinated with the outcomes of the FCC's RDOF proceedings – both the RDOF Auction I and the RDOF Auction II. Absent such coordination, scarce supplemental NUSF support could be allocated to areas that would otherwise be fully funded through RDOF auction awards and thus would not require NUSF support.¹⁹ Such a result, regardless of intention, will likely result in inappropriate over-allocation of NUSF resources to PC carrier areas and federal universal funding being forfeited that would otherwise have been provided for RDOF-eligible broadband deployment in PC carrier areas.

In light of these facts, RIC believes that the Commission's proposal to allow PC carriers one year "to file requests for support for projects in a given funding year" is too long based on the reduced number of census blocks available for supplemental NUSF funding. As such, preparation and submission of such requests should be able to be accomplished within 90 to 180

¹⁹ *See* Section II.A and Table above.

days following the beginning of a funding year. In order to most efficiently use NUSF support, such requests should also demonstrate that any NUSF funding will not result in forfeited federal broadband deployment dollars arising from RDOF auction awards.²⁰

So too, as a result of the upcoming RDOF auctions broadband deployment in PC carrier service areas will be accelerated. As demonstrated in Exhibit 1, the RDOF Auction I will make available funds to PC carrier locations in Nebraska that will result in deployment of broadband at minimum speeds of 25/3 Mbps to anticipated tens of thousands of currently unserved or underserved Nebraska PC carrier locations (and thus consumers), with such results accomplished without expenditure of any supplement NUSF support.

Consequently, as a companion to this increase in available broadband locations in PC carrier exchanges, Commission incentives that provide for increased buildout of broadband locations served by RoR carriers should be established and funded through the supplemental NUSF that is unneeded for broadband deployment in PC carrier service areas. RIC respectfully submits that such companion action is fully justified based on RoR carriers' demonstrated commitment to utilize NUSF support for broadband deployment of at least 25/3 Mbps to minimize concerns regarding rural consumer "haves" and "have nots."

NUSF Allocation Mechanism:

The Commission proposes an allocation mechanism whereby each exchange within the PC carriers' territories is assigned an amount of buildout support that would be reimbursed to the carrier once broadband service is provided to all eligible locations within that exchange. (p.15)

The nature of the "allocation mechanism" proposed by the Commission is unclear based

²⁰ As the FCC has stated with respect to the RDOF auctions, the FCC "will exclude those census blocks which have been . . . awarded funding through other similar federal or state broadband subsidy programs to provide 25/3 Mbps or better service." *RDOF Order* at ¶ 13 (footnote omitted).

on this passage. RIC believes that all interested parties would substantially benefit by the Commission providing a transparent description of this mechanism and publicly release all investments and costs from SBCM that are used to arrive at the PC carrier allocations, particularly since this appears to be the methodology by which broadband deployment costs will be established for PC carrier service areas. RIC urges the Commission and its Staff to be transparent in providing the expanded description and SBCM cost data of the “Proposal” described on pages 15-16 of the *PO 2 Order*.

Eligible locations would be those that are defined as rural, are not eligible for RDOF support, are not already built to 25/3 Mbps or greater, and do not already have competitive service, defined as broadband at 25/3 Mbps and voice service offered. (p. 15)

Consistent with its request that the Commission and its Staff be fully transparent regarding the proposed PC carriers’ NUSF framework, RIC is concerned that the above-noted statements are not fully explained in the *PO 2 Order* and could lead to misunderstandings regarding implementation of the new framework. For example, the statements raise at least the following questions:

- What is the definition of “rural” as used in the foregoing statement?
- What is the SBCM per-location cost/investment threshold for such definition?
- Are locations with a cost of less than the \$52.50 per month model eligible for NUSF funding, and if so why?
- Has the Commission calculated the number of eligible locations?
- Has the Commission calculated the cost to buildout these locations?
- Would these locations be eligible to receive both CapEx support as well as OpEx support?
- Would high-cost support be divided between CapEx and OpEx based upon the existing 80-20 split? If so, what is the rationale for providing 20% of PC carriers’ support in OpEx when a RoR carrier that has earnings more than the maximum allowable rate does not receive any OpEx?

Provision of responses to these questions and others that may be raised by interested parties would, in RIC’s view, enhance the transparency of the Proposal and the understanding of how the framework will practically be implemented.

The technology used for projects must reach every household, regardless of topography, vegetation, or distance.

RIC respectfully submits that it is entirely appropriate and rational that the technologies to be used to deploy broadband should be scalable, consistent with the Commission's broadband based *NUSF Strategic Plan* discussed above. While *allocation* of NUSF support can be based on the SBCM, supplemental NUSF payments should be based on the *actual costs* of deploying such technology via the submission of invoices.

Available Exchanges:

Utilizing this methodology, the Commission proposes to release a list of the exchanges that each carrier covers, assign a maximum reimbursable amount based on SBCM modeled costs of eligible census blocks, and carriers would be required to notify the Commission within one year of the exchanges that they plan to build to with their available buildout support.

As noted above, RIC urges the Commission to make its methodology for determining PC carriers' eligible costs more transparent before the Commission proceeds with releasing eligible costs. Also, as noted, allowing one year for the notification by PC carriers of the locations to which the carrier will buildout is excessive.

Carrier Reporting:

Carriers would be required to provide notice of projects that use 95% of their available buildout support for that year.

Consistent with the need for transparency regarding the Proposal, RIC respectfully requests that the Commission provide an example as to how the foregoing requirement would be met by a carrier. In providing this explanation, RIC believes interested parties' ability to understand the practical implementation of the Proposal will be enhanced by the Commission also answering the following questions:

- Does the Commission intend that the carrier would retain the discretion to designate the projects to be constructed each year?

- Would the Commission establish criteria to prioritize project designations?
- Is the 95% threshold intended to be of the carrier's total NUSF support for a given year, or 95% of that portion of the carrier's total support earmarked for broadband deployment?

If that threshold is not met, any remaining support would be forfeited to fund a reverse auction to bring 25/3 broadband to exchanges within that carrier's territory that do not have projects planned.

RIC respectfully submits that several questions are raised by this statement. These questions include:

- Is the "threshold" referenced in this statement referring to designation of projects that will use 95% of buildout support?
 - Or is the "threshold" the accomplishment of actual buildout or the designated projects?
- How is "remaining support" calculated that would be subject to a reverse auction?

Again, if the Commission were to provide an example of the application of the foregoing statement to a hypothetical fact situation, the understanding of RIC and other interested parties would be greatly benefitted.

The specific exchange or exchanges that would be part of the auction would be selected at the discretion of the Commission. (p. 16)

RIC recognizes that a selection process for PC carrier projects will need to be undertaken. However, based on this statement, it is unclear what factors would govern the Commission's exercise of this "discretion." In the interest of transparency, therefore, RIC respectfully submits that the Commission should identify all such factors and any weighting assigned thereto.

Through this methodology, the Commission would only prioritize areas if buildout support was not utilized in a timely manner.

Consistent with the need for transparency regarding the proposal, RIC respectfully submits that the following questions should also be answered:

- Is the Commission referring to a carrier's failure to provide notice of project designations using 95% of the carrier's available support?
 - Or is the Commission referring to a carrier's failure to complete buildout

of designated projects within the allowed buildout time limits?

Again, RIC requests a full explanation of this requirement in order that the contemplated process is transparent.

Prioritization:

The Commission also 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 support, along with the 2020 deployment support held in abeyance, and 2021 support will provide the support necessary to promote significant broadband deployment to areas that are unserved or underserved.

The above statement is, in RIC's view, unclear and thus clarifications are needed. RIC respectfully notes that this is an excessive amount of support for a segment of the industry – the PC carriers – that the Commission's own records demonstrate has under-utilized NUSF support. Further, as more fully discussed above, RIC's position is that the PC carriers are receiving an excessive share of the NUSF budget and that the RoR carriers' budget is insufficient to recover the ongoing costs of areas deployed at a minimum of 25/3 Mbps in partially funded locations in RoR carriers' service areas. For the reasons stated above, therefore, RIC respectfully requests that the Commission utilize this proceeding to permanently correct these budgetary inequities.

In so doing, RIC urges the Commission to carefully consider in its deliberations concerning the *NUSF-108, PO 5 Order* the adoption of an NUSF framework for all NETCs pursuant to which NUSF supplemental support is provided to all locations partially funded by federal universal service support.

Payment of NUSF:

Proposal is to continue its requirement that price cap carriers buildout prior to seeking reimbursement for broadband projects. (p. 16)

RIC agrees. RIC regards the continuation of the policy of completing buildout prior to cost reimbursement to be reasonable.

IV. ISSUES FOR FURTHER COMMENT

The Commission has proposed allowing price cap carriers to identify which areas they will build to using buildout support. If the Commission decides to establish priority areas, how should those priority areas be determined?

Should the Commission identify areas where it has received a number of complaints, like Oshkosh, as priority areas? Why or why not?

Consistent with the discussion in Section II.A above, any discretion that the Commission provides to PC carriers in connection with identification of areas for broadband deployment through the use of NUSF support should be subject to the following disqualifications from designation (i) any locations subject to awards in FCC Auction 903; (ii) any locations eligible for RDOF Auction I; (iii) any locations eligible for RDOF Auction II; (iv) any locations that currently are 25/3 Mbps capable per the SBCM files; (v) any locations with costs less than \$52.50 per month; (vi) any locations already served by an unsubsidized competitor; and (vii) any location that will be funded by NUSF allocated to PC carriers for years 2017 through 2020 and is built out through use of such funding. The result of applying these factors would, in turn, identify an anticipated significantly reduced number of “NUSF Eligible Locations” requiring broadband buildout.

Subject to the eligibility factors set forth in the table presented in Section II.A above, RIC believes that prioritizing locations for broadband deployment through the use of NUSF support should first be based on known consumer demands and expressed need. By way of example, consumer inquiries/complaints/expressions of need may identify “need” hotspots. In addition, as part of the PC carrier application process it would be reasonable for PC carriers to include an explanation of the rationale for choosing particular NUSF Eligible Locations for buildout.

Should the Commission adopt other modifications with respect to price cap carrier support similar to those adopted in NUSF-108 for rate-of-return carriers?

As a general proposition, the framework applicable to PC and RoR carriers' eligibility for NUSF buildout and on-going operations support should be consistent. The Commission's policymaking initiatives arising from the *June 30 Orders*, in RIC's view, should facilitate creation of this consistent framework.

Should the ongoing support a price cap carrier receives be subject to the NUSF EARN Form process or some alternative process to ensure that ongoing support is being used to support Nebraska-based network costs?

RIC recognizes that the Commission is investigating the EARN Form for RoR carriers in connection with the *NUSF-108, PO 5 Order*. As a result, the Commission should welcome in that proceeding testimony relevant to this question and the application of aspects of the current PC carriers' NUSF distribution framework to ROR carriers. As a general matter, however, and at this time, should there be any issue regarding the proper use of ongoing support by PC carriers, RIC questions why such concern should not be addressed on a carrier-specific basis as part of the Commission's annual NUSF/federal universal service use review.

Should the Commission likewise require price cap carriers receiving ongoing support to similarly report to the Commission? Why or why not?

Please see above response.

The Commission has proposed removing RDOF-eligible areas from eligibility for NUSF support. Should the Commission provide any supplemental support for areas covered by the RDOF auction?

As discussed above, the Commission should not and need not provide supplemental NUSF support to any location that fits within any of the following classes of locations: (i) any location subject to awards from the FCC Auction 903; (ii) any location eligible for RDOF Auction I; (iii) any location eligible for RDOF Auction II; (iv) any location that currently is 25/3 Mbps capable per the SBCM files; (v) any location with SBCM costs less than \$52.50 per month; (vi) any location already served by an unsubsidized competitor; and (vii) any location

that will be funded by NUSF allocated to PC carriers for years 2017 through 2020 and is built out through use of such funding. With respect to any location awarded through an auction, an auction winner should be presumed to have submitted its winning bid at a monetary level that is sufficient to buildout the locations identified in the winning bid, and to operate those locations for the FCC-established funding period. Accordingly, because NUSF has been statutorily established as “a funding mechanism which supplements federal universal service support mechanisms”,²¹ it would be impermissible for the Commission to provide NUSF support for any locations awarded by an FCC-sponsored auction of federal universal service support. Likewise, no NUSF would be necessary if the location is already served at the 25/3 Mbps threshold or by an unsubsidized competitor providing broadband at that same speed. Any location costing less than \$52.50 per month would not meet any recognized NUSF threshold for rural areas in RIC’s view, and thus should also be excluded from NUSF funding.

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

The Commission should await publication by the FCC of the results of the RDOF auctions for Nebraska eligible locations. In the event that locations do not receive RDOF support for broadband deployment, it would be appropriate for the Commission to consider provision of NUSF support for such locations in order to implement the statutory purpose of the NUSF as set forth in Section 86-317 quoted above.

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

If auction-based support is awarded to an entity that commits to deploy broadband at minimum speeds of 25/3 Mbps for a location, then supplemental NUSF support should not be provided for such location. Based upon the information in the table provided in Section II.A

²¹ *Neb. Rev. Stat.* § 86-317.

above, even after completion of the RDOF auctions and resulting buildouts, unserved or underserved locations will exist in PC carrier service areas of Nebraska. Additionally, unserved and underserved areas almost certainly will continue to exist in RoR carrier service areas of the State. It is these RoR carrier areas that the Commission should prioritize to receive NUSF support.

V. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Comments in response to the inquiries presented by the Commission in the *PO 2 Order* and look forward to continuing participation in this docket.

Dated: July 30, 2020.

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 30th day of July 2020, an electronic copy and one paper copy of the foregoing pleading were delivered to:

Nebraska Public Service Commission

Cullen.Robbins@nebraska.gov

Brandy.Zierott@nebraska.gov

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

A handwritten signature in blue ink that reads "Paul M. Schudel". The signature is written in a cursive, flowing style.

Paul M. Schudel

Exhibit 1						
Eligible Investment for NUSF Budget Allocation						
Price Cap						
Ln	Description	Source	Note	A Census Blocks	B Locations	C Investment
1	SBCM file used for 2020 NUSF Distributions	SBCM data file		33,489	118,735	\$ 905,264,808
2	Assigned CAF 2 Auction 903	FCC Auction 903 Results		4,794	8,735	147,199,917
3	RDOF Phase 1	FCC DA 20-665	Note 1	15,660	38,093	429,941,591
4	NPSC Successful RDOF Challenges	FCC DA 20-665		1,325	4,761	34,455,736
5	RDOF Phase 2		Note 2			
6	25/3 Mbps Capable Census Blocks	SBCM data file			47,560	151,227,930
7	Census Blocks with Avg Cost less than \$52.50	SBCM data file		758	4,886	8,948,906
8	Eligible Investment for NUSF before Grants	Ln 1 - Sum(Ln 2...Ln 7)		4,684	14,700	\$ 133,490,729
9	Percent of Eligible Investment before Grants	Ln 8/(Ln 8 + Ln 23)				36.5%
10	Grant/BDS Dollars for Investment	NUSF-99 Year 2017				\$ 14,545,442
11	Grant/BDS Dollars for Investment	NUSF-99 Year 2018				11,636,353
12	Grant/BDS Dollars for Investment	NUSF-99 Year 2019				15,649,548
13	Grant/BDS Dollars for Investment	NUSF-99 Year 2020				16,403,282
14	Total Grant/BDS Dollars for Investment	Sum(Ln 10..Ln 13)				\$ 58,234,625
15	Grant/BDS Dollars in NPSC RDOF Challenge Areas	NPSC RDOF Challenges	Note 4			\$ -
16	Eligible Investment for NUSF after Grants	Ln 8 - Ln 14 + Ln 15				\$ 75,256,104
17	Percent of Eligible Investment after Grants	Ln 16/(Ln 16 + Ln 28)				25.8%
Rate of Return						
Ln	Description	Source	Note	A Census Blocks	B Locations	C Investment
18	SBCM file used for 2020 NUSF Distributions	SBCM data file		20,463	52,471	\$ 740,903,888
19	ACAM Fully Funded Census Blocks	SBCM data file		7,101	21,328	161,814,465
20	ACAM Capped Census Blocks	SBCM data file	Note 3			174,292,251
21	25/3 Mbps Capable Census Blocks	SBCM data file		4,263	12,820	170,042,286
22	Census Blocks with Avg Cost less than \$52.50	SBCM data file		155	1,338	2,686,740
23	Eligible Investment for NUSF before Grants	Ln 18 - Sum(Ln 19...Ln 22)		8,944	16,985	\$ 232,068,146
24	Percent of Eligible Investment before Grants	Ln 23 /(Ln 8 + Ln 23)				63.5%
25	Grant/BDS Dollars for Investment	NUSF-108 Year 2019				\$ 7,249,469
26	Grant/BDS Dollars for Investment	NUSF-108 Year 2020				\$ 8,357,741
27	Total Grant/BDS Dollars for Investment	Sum(Ln 25..Ln 26)				\$ 15,607,210
28	Eligible Investment for NUSF after Grants	Ln 23 - Ln 27				\$ 216,460,936
29	Percent of Eligible Investment after Grants	Ln 28/(Ln 28+ Ln 16)				74.2%
Notes:						
/1	FCC DA 20-665 released June 25, 2020. Assumed all eligible CBs will be assigned in RDOF Phase 1 auction.					
/2	These amounts are unknown at this time; however, they need to be identified when federal funding is provided.					
/3	The following calculation was performed for each Capped CB: ACAM Capped Investment = SBCM Investment Capped CB * (1- ((SBCM Avg Model Cost per Loc per Mo. Capped CB - \$200 support - \$52.50 Benchmark) / SBCM Avg Model Cost per Loc Per Mo. Capped CB)). None of the 7,034 ACAM Capped CBs containing 12,267 locations are removed from the analysis.					
/4	NUSF Support reimbursed for projects identified in Note 4 would be added back to the analysis to avoid double counting.					