

RECEIVED
DEC 13 2019
Nebraska
Public Service Commission

COMMENTS

In its Order, the Commission seeks comments on a number of issues relating to high-cost support for price cap carriers. The RTCN in these comments will address each of the issues the presented by the Commission.

Should the Commission align the minimum speed requirements with a 25/3 Mbps standard?

Yes. Consistent with the standard established in NUSF-108, relative to rate-of-return carriers, the Commission should establish a standard of 25 megabits per second for download speeds and 3 megabits per second for upload (“25/3 Mbps” or “Broadband”).²

² 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 requirement, NUSF-108, Prog. Order No. 3 (“NUSF-108, PO 3”), *Findings and Conclusions* (November 19, 2018).

The Commission's 25/3 Mbps standard reflects the important public policy of ensuring that consumers in all regions of the state have access to advanced information services that are reasonably comparable to services provided in urban areas.³ It matches the threshold for broadband established in LB 994, passed during the 2018 session of the Nebraska legislature.⁴ The Legislature passed LB 994 because of the importance of broadband services to the residents of Nebraska.⁵ The same legislation established the Rural Broadband Task Force and charged it with examining rural broadband issues and reporting back to the Legislature by November 1, 2019.⁶ In its final report, submitted in advance of the deadline, the Task Force spoke specifically to the importance of broadband to rural Nebraska:

Rural broadband is important to Nebraska's economy and to the state's businesses, consumers, agricultural producers, students, educators, patients and health care providers. Rural broadband availability and adoption are associated with:

- Attraction and retention of millennials
- Greater economic growth
- Attraction of new firms
- Higher household incomes
- Small business growth⁷

The Commission wisely has recognized the importance of broadband in the standards it has established for rate-of-return carriers. There is no reason it should not establish the same standards for the benefit of consumers who happen to work and reside in areas currently served by price cap carriers.

2. Deployment Support

³ NEB. REV. STAT. § 86-323(3); NEB. REV. STAT. § 86-1101.

⁴ NEB. REV. STAT. § 86-1101.

⁵ See NEB. REV. STAT. § 86-1101(1).

⁶ NEB. REV. STAT. § 86-1102.

⁷ Rural Broadband Task Force, *Findings and Recommendations*, October 2019, p. 7 (citing: Gallardo, R., Whitacre, B. and Grant, A (January 2018). Research and Policy Insights: *Broadband's Impact*).

Should the Commission make the broadband deployment support available utilizing a mechanism similar to that adopted in NUSF-108?

The Commission should require deployment before providing support, as it currently requires of price cap carriers in NUSF-99 and rate-of-return carriers in NUSF-108. The RTCN recommends the Commission reimburse for deployment based on actual construction expenses, as documented by invoices. This method is consistent with NUSF-108 PO 3 and is preferable to the NUSF-108 PO 4 approach, because it will allow the Commission to best ensure that reimbursement is reflective of the technology deployed.

Price cap carriers have been criticized for being slow to move forward with deployment projects after the Commission began specifically allocating millions of dollars in ratepayer funds for such projects beginning in 2016.⁸ Commissioner Crystal Rhoades, dissenting from the Commission's majority decision authorizing NUSF-108, PO 3, entered October 29, 2019, leveled this criticism at price cap carriers:

As of today the price cap carriers have 16.7 million (dollars) in allocated and unused support available to them for deployment. That is in addition to 28 million (dollars in) support already allocated to price cap carriers for projects that are in progress. Moreover, I do not believe CenturyLink is making a robust effort in Valentine even though the Commission has committed \$15 million in support for that exchange.⁹

The Rural Broadband Task Force criticized all three price cap carriers, and only one legacy carrier, for not providing quality services to their rural customers:

⁸ In the matter of the Nebraska Public Service Commission, on its own Motion, to Administer the Universal Service Fund High-Cost Program, NUSF-99, *Order Authorizing Payments* (October 20, 2015) (the deployment support allocation of \$9.4 was sustained by the Commission after reconsideration in its *Order on Reconsideration and Order Releasing Project Checklist*, July 12, 2016.)

⁹ 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 requirement, NUSF-108, Prog. Order No. 3, *Order Authorizing Payments and Commencing Challenge Process* (October 29, 2019).

Broadband availability varies by incumbent carrier. Approximately 79% of those rural households which do not have broadband available reside in Windstream, CenturyLink, Great Plains or Frontier (Citizens) exchanges.¹⁰

Since the inception of the Nebraska Universal Service Fund, Nebraska carriers have received hundreds of millions of dollars of support intended to facilitate the deployment and provision of quality telecommunications and information services in rural and high-cost areas of Nebraska.¹¹ A review of Commission records will show a disparity between the quality of services provided by price cap carriers and services provided by rate-of-return carriers, particularly smaller independent carriers. From numerous consumers seeking to change boundaries because they are not receiving advanced services from Windstream,¹² to numerous consumers complaining about extended interruptions and outages caused by plant failure in CenturyLink's rural territories,¹³ a pattern of what may be considered tantamount to neglect by price cap carriers is apparent. It cannot be said that price cap carriers have responsibly stewarded high-cost support to serve those rural customers. Contrast that with the many independent rate-of-return carriers that have deployed fiber throughout their service territories, and the observer is left puzzled by why some carriers were able to deploy

¹⁰ Rural Broadband Task Force, *Findings and Recommendations*, October 2019, p. 5.

¹¹ See NEB. REV. STAT. § 86-323.

¹² See, e.g., Applications Nos. C-5042, C-5035, C-5018, C-5022, C-5024, C-5027, C-5036, C-5026, C-5010, C-5007, C-5005, C-5004, C-5003, C-5017, C-5020, C-5013, C-4981; C-4943; C-4945; C-4951; C-4956; C-4959; C-4960; C-4963; C-4968; C-4973; C-4976; C-4981 (information from the Commission's 2018 and 2019 *Annual Report on Telecommunications*). Some of the applications involved multiple customers. For example, C-4960 was filed by Citation to boundary change applications ten (10) Windstream customers who were not receiving advanced services.

¹³ See, e.g., In the matter of the Nebraska Public Service Commission, on its own motion, to investigate the level of service quality provided by United Telephone Company of the West d/b/a CenturyLink Communications in the Oshkosh, Lewellen, and Chappell Telephone Exchanges, C-5037/PI-223, *Order Opening Investigation* (February 5, 2019), in which the Commission found:

The current investigation focuses on service quality complaints the Commission has received from individuals and businesses in the Chappell, Lisco, Oshkosh and Lewellen areas of Nebraska. From September 2018 to the present the Commission has received approximately 47 consumer complaints...Most complaints indicated consumers and businesses were experiencing service interruptions, some of which have lasted for multiple days.

the infrastructure necessary to provide quality voice and information services to their customers and neighboring carriers did not.

For these reasons, the Commission should fundamentally alter its approach to providing deployment support in areas where price cap carriers are currently underserving or not providing quality voice and advanced information services to ratepayers. A change in perspective should be the first step in this reform. The Commission should not penalize ratepayers in price cap areas by transferring unused allocations to other carriers' serving other territories and ratepayers, as some have suggested in the past.¹⁴ Support allocated for areas served by price cap areas should remain dedicated to those areas, and should not be siphoned to areas served by other carriers. Rather, allocated support should be recognized as support for the ratepayers in a particular area, rather than public funds to which a particular carrier is entitled.¹⁵ High-cost support is not a corporate entitlement.

Given that the purpose of high-cost support is to assist carriers in providing quality voice and information services to consumers, the Commission should make support allocated to underserved and unserved areas available to the eligible telecommunications carrier ("ETC") that is most capable and best positioned to utilize the support to provide quality voice and advanced information services to consumers in the particular area. The process for allocated support should be similar to the community-based approach currently proposed and being considered by the Commission in its rulemaking regarding redirection of support.¹⁶

¹⁴ 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 requirement, NUSF-108, Prog. Order No. 3, *Comments of the Rural Independent Companies in Response to Order Seeking Comment* (March 5, 2018), pp. 6-7.

¹⁵ NEB. ADMIN. CODE, tit. 291, ch. 10, § 004.02G appears to contemplate what the RTCN is advocating, but may require some adjustment. The RTCN will continue to consider this issue and will comment further if appropriate.

¹⁶ In the matter of the Nebraska Public Service 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* (October 8, 2019), p. 6.

2(a) Consistent with the process for rate-of-return carriers, should the Commission designate eligible census blocks?

Until data is available to allocate support on a location-by-location basis, the Commission should continue to allocate on a census block basis, which requires a determination by the Commission as to what census blocks are eligible for ongoing or deployment support. The approach should be consistent with that established for rate-of-return carriers in NUSF-108.

Elaborate on how the Commission can complement support received from the federal universal service program to extend existing broadband-based networks to rural unserved areas.

See response to Issue No. 5 below.

2(b) Should the Commission prioritize certain areas for broadband deployment? What criteria should be used to do so.

Past sluggishness by price cap carriers to propose deployment projects should not be perceived to be an indication that deployment support is not necessary. The RTCN believes that if support is no longer conceptually or actually tied to carriers, but rather to areas, requests for support will increase. The Commission should take a ground-up approach to prioritizing projects, driven by community-based proposals for support to address local needs. If demand exceeds available allocated support, the Commission may need to take into account factors unique to particular local areas to determine what areas should be given priority. Such factors should include the number and duration of outages and service interruptions caused by plant failure (as opposed to external causes, such as fiber cuts), the number of subscriber complaints relative to the total number of subscribers, and customer requests of adjacent providers for service.

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

Yes. The Commission's objective should be to ensure that support is efficiently utilized by ETCs to provide quality voice and advanced information services at rates comparable to urban areas. Fiber has been demonstrated to be superior when it comes to providing reliable voice services and information services. The experience of RTCN members that have deployed fixed wireless networks to provide Internet service has demonstrated that the systems are relatively unreliable, have short operational lives, and are not economical over the long-term.

The Commission has prudently declared its preference for fiber as a long-term and economical means of providing Broadband service across Nebraska:

The Commission also sought comments on its desire to support fiber-based networks everywhere in high cost rural areas. We sought comment on this goal as we believed fiber may be the better long-term investment. Again, we recognize the need to balance this goal with other objectives, making sure that communications services are affordable and reasonably comparable throughout the state. To the extent that other long-term wireline broadband solutions are scalable for the future and meet the Commission's objectives that broadband be developed based upon a comprehensive deployment plan that will coalesce with the needs of consumers, including but not limited to those imposed in a Next Generation 911 environment, the Commission will consider those alternatives.¹⁷

The Commission should maintain its preference for fiber when it comes to support for deployment projects in areas currently served by price cap carriers.

2(d) Why is state support necessary to deploy low-cost fixed wireless technology?

Deployment support should be reflective of cost, which is why the RTCN recommends post-deployment reimbursement based on invoices, consistent with the approach utilized in NUSF-108 PO 3.¹⁸ The cost of fixed wireless is substantially less than the cost of buried fiber,

¹⁷ In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology, NUSF-100/PI-93, *Order and Order Seeking Further Comments and Setting Hearing* (February 22, 2017), p. 19.

¹⁸ See above response to Issue No. 2.

and an invoice-based approach will best ensure that support is commensurate with actual cost.

How should carrier of last resort (COLR) obligations be treated if alternative technologies such as fixed wireless deployed as next generation replacing copper plant? How should it impact NUSF support?

If alternative technologies such as fixed wireless systems are utilized, the duties of the incumbent local exchange carrier as a COLR and ETC must still be satisfied. Public safety is at issue. An ETC's duty to provide access to emergency services, such as 911 and enhanced 911, cannot be avoided by replacing copper plant with fixed wireless systems.¹⁹ The Commission has already expressed concern about this important public safety issue.

However, rather than replacing aging copper lines in this case, which would assist those voice consumers currently on Windstream's network, Windstream's model would treat those remaining on copper as consumers that need to be "migrated" to an unregulated technology for its voice service. As Late-Filed Exhibit 5 indicates, consumers using this service are warned that 911 service will not function if power is lost, if there is a disruption to the broadband connection, or if the network is congested. While not required, and not the basis for our denial in this case, the Commission expresses its concerns with Windstream's unwillingness to file projects seeking NUSF support to deploy fiber to its rural consumers in areas lacking broadband service.²⁰

Ultimately, failure to satisfy ETC duties should result in the Commission's withholding of ongoing support and revocation of ETC status.

3. Deployment Time Frames

Consistent with the requirements for rate-of-return carriers, should Commission adopt specific timeframes both for requesting to allocated support and for buildout once projects are approved.

Yes.

¹⁹ See NEB. ADMIN. CODE, tit. 291, ch. 1; 47 C.F.R. § 54.101.

²⁰ In the matter of the Nebraska Public Service Commission, on its own Motion, to Administer the Universal Service Fund High-Cost Program, NUSF-99.48, Windstream Nebraska, Inc. Broadband Grant Requests 2019, Order Denying Application (November 13, 2019).

4. Accountability

How can the Commission better ensure ongoing support is being used to maintain quality voice and broadband service as intended?

Consistent with what it has done in NUSF-108, the Commission should provide ongoing support only upon finding that the carrier is providing voice services that comply with all service quality standards established by the Commission and Broadband services that satisfy the Commission's 25/3 Mbps standard.

Should the Commission tie ongoing support to census blocks where the carrier is providing quality voice and 25/3 broadband?

Yes.

How should the Commission treat areas that are not receiving adequate voice and broadband service?

Ultimately, failure to provide adequate voice and broadband service should result in the Commission's withholding of ongoing support and revocation of ETC status.

Should Commission require earnings test verified by annual EARN form filings to ensure 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?

Yes. An earnings test should be used to ensure that support is being used solely for purposes allowed by law, regulation, and the Commission's policies and orders. The Commission has recognized that the EARN form should be modified to demand more robust reporting than is currently required.²¹

Further reporting (beyond the EARN form) may be needed to ensure that price cap carriers are not reporting locations now served by competitive carriers, especially if high-cost reform results in more subscribers migrating away from price cap carriers.

²¹ 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 requirement, NUSF-108, Progression Order No. 3 ("NUSF-108, PO 3"), *Findings and Conclusions* (November 19, 2018), p. 42.

5. Complementing Federal Support

Make any changes to account for possible future changes in federal support for price cap areas. CAF II support will likely transition to auction-based support. Is there a way to better leverage federal and state support? Explain.

As the Commission points out, the federal support for certain price cap areas is likely to change soon. The Federal Communications Commission (“FCC”) has proposed to conduct a Rural Digital Opportunity Fund (“RDOF”) auction in price cap areas, redirecting existing support to areas lacking Broadband by the end of 2020.²² The Commission filed comments in the RDOF proceeding, asking the FCC to coordinate with stakeholders to understand where broadband has been deployed or planned.²³ The Commission also recommended that the FCC prioritize robust scalable technology deployment by local broadband providers, rather than simply the cheapest technology.²⁴

The Commission should act quickly to build on these efforts to coordinate with the FCC wherever possible. The FCC set an ambitious timeline to complete the RDOF auction by the end of 2020, which means it likely must set its rules in the next month or two. Therefore, the Commission has a limited window of opportunity to affect change at the federal level to better leverage RDOF for rural Nebraskans. The Commission will need to develop a plan and work with the FCC to coordinate RDOF and NUSF support to avoid potential waste and to promote robust, scalable network deployment.

DATED: December 13, 2019.

**RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA**

²² *Rural Digital Opportunity Fund*, WC Docket No. 19-126, *Connect America Fund*, WC Docket No. 10-90, Notice of Proposed Rulemaking (“NPRM”) (rel. Aug. 2, 2019).

²³ Comments of the Nebraska Public Service Commission. Rural Digital Opportunities Fund WC Docket No. 19-126, *Connect America Fund*, WC Docket No. 10-90, received Sep. 19, 2019. at pp. 4-5.

²⁴ *Id.* at p. 5.

federal level to better leverage RDOF for rural Nebraskans. The Commission will need to develop a plan and work with the FCC to coordinate RDOF and NUSF support to avoid potential waste and to promote robust, scalable network deployment.

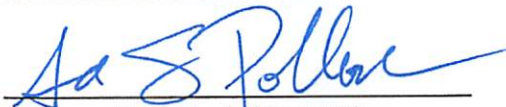
DATED: December 13, 2019.

RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA

ATC Communications, Benkelman
Telephone Company, Inc., Cambridge
Telephone Company, Cozad
Telephone Company, Diller
Telephone Company, Glenwood
Network Services, Inc., The
Glenwood Telephone Membership
Corporation, Hartman Telephone
Exchanges, Inc., Hemingford
Cooperative Telephone Co., Mainstay
Communications, Pierce Telephone
Company Plainview Telephone
Company, Southeast Nebraska
Communications, Inc., Stanton
Telecom Inc., Wauneta Telephone
Company, and WesTel Systems f/k/a
Hooper Telephone Company

By: REMBOLT LUDTKE LLP
3 Landmark Centre
1128 Lincoln Mall, Suite 300
Lincoln, NE 68508
(402) 475-5100
apollock@remboltlawfirm.com

By:


Andrew S. Pollock (#19872)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and electronic copy of the above *Comments* of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on December 13, 2019, and a copy was served via electronic mail, to the following:

Cullen Robbins
Public Service Commission
Cullen.robbs@nebraska.gov

Shana Knutson
Public Service Commission
Shana.Knutson@nebraska.gov

Brandy Zierott
Public Service Commission
Brandy.zierott@nebraska.gov

Scott Bohler
Frontier/Citizens
Scott.bohler@ftr.com

Jill Gettman
Scott Daniel
Brook Villa
CenturyLink
jgettman@gettmanmills.com
sdaniel@gettmanmills.com
brook.villa@centurylink.com

Deonne Bruning
Cox Nebraska Telcom
deonnebruning@neb.rr.com

Loel Brooks
Brooks Pansing Brooks
lbrooks@brookspanlaw.com

Paul Schudel
Woods Aitken
pschudel@woodsaitken.com

Kathy Eidenmiller
Woods Aitken
keidenmiller@woodsaitken.com

Russell Westerhold
Charter Fiberlink
rwesterhold@fraserstryker.com


Andrew S. Pollock