

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-99  
Public Service Commission, on ) PROGRESSION ORDER NO. 2  
Its Own Motion, to Administer )  
The Universal Service Fund ) ORDER SEEKING COMMENT  
High-Cost Program )  
 ) Entered: November 13, 2019

COMMENTS OF WINDSTREAM

Comes now Windstream Nebraska, Inc., (“Windstream”) and for its comments to the Nebraska Public Service Commission’s (“Commission”) Motion to Administer the Nebraska Universal Service Fund High-Cost Program (“NUSF”), states:

**I. BACKGROUND AND INTRODUCTION**

On November 13, 2019, the Commission issued Progression Order No. 2, seeking comments regarding certain modifications to the high-cost funding mechanism in the NUSF. The Commission proposed to adopt a separate distribution mechanism for price-cap carriers which would distribute support to those carriers outside of the current distribution mechanism through a mechanism that was more comparable to the Federal Communication Commission’s (“FCC”) Connect America Fund (“CAF II”). Specifically, the Commission questions whether to update the Docket NUSF-99 framework applied to price-cap carriers to more closely align it with the Docket NUSF-108 framework applied to rate-of-return carriers.

Since September 2018, Windstream has filed ninety (90) NUSF applications to expand broadband to over 14,000 households in rural Nebraska. After review by the General Staff of the Commission (“Staff”), most of those applications were approved as filed. As such, it is evident that the price-cap portion of the NUSF is currently operating in an effective manner and is achieving the desired result of providing needed investments in broadband infrastructure in

unserved and underserved rural areas of Nebraska. However, Windstream believes that some adjustments could be made to strengthen the program.

Windstream appreciates the Commission's continuing efforts to improve the NUSF process. These efforts will benefit the Commission, broadband providers, and – most importantly – the rural consumers of Nebraska. Although the project approval process is working well for the most part, Windstream provides the following comments for the Commission's consideration in improving the process.

## **II. RESPONSE TO QUESTIONS**

### **Question 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 to Question 1:** The FCC has already proposed the 25/3 Mbps minimum speed requirement for price-cap carriers in the upcoming Rural Digital Opportunity Fund ("RDOF") program. This standard is also currently applied by the Commission to rate-of-return carriers. Windstream agrees that the deployment obligation upon funding approval for price-cap carriers to provide a certain speed should be changed to match the FCC's 25/3 Mbps standard and that applied to Nebraska's rate-of-return carriers.

The change should also be used by Staff in its review of which census blocks are being served by unsubsidized competitors to evaluate which areas are eligible for funding. In addition, the review of areas which are not eligible for support due to the presence of an unsubsidized provider should also use the new 25/3 Mbps standard to ensure consistency in deployment obligations.

**Question 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 Question 2:** Windstream agrees that the same review process which is applied to rate-of-return carriers should be adopted for review of price-cap carriers' projects. The current application process for price-cap carriers takes a significant amount of time to get final approval which, in turn, delays deployment. Allowing price-cap carriers to utilize the same review process that is applied to rate-of-return carriers would expedite the beginning of construction and deployment of broadband infrastructure, thus benefiting the rural households in need of broadband. However, if the funding is designated after review, rather than budgeted under the current application process, a census block listing should be provided as discussed below.

**Question 2(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 to Question 2(a):** Having filed many applications with the Commission, Windstream has had the opportunity to work extensively with Staff. As a result, Windstream has a fair understanding of the process Staff uses in reviewing applications. Specifically, Windstream understands the criteria Staff use in its review of those areas which are eligible for funding. Despite this understanding, it would be extremely helpful for the Commission to provide a list of census blocks that are eligible for funding.

As mentioned above, Windstream has worked closely with Staff and, as such, shares a mutual understanding with them of which census blocks are eligible for funding. This similar understanding is borne out by the fact that our applications, in general, have been approved with minimal adjustments. However, if Windstream had access to a published list of census blocks



which are eligible for broadband deployment support prior to filing and those blocks were inconsistent with our analysis, the differences could be reconciled before filing an application rather than after an application has been submitted. This would save both Windstream and Staff a considerable amount of time in the review process. Windstream recommends, however, that the review process contain an opportunity for the companies to present arguments where there are discrepancies between the company's and Commission's list of eligible census blocks and allow some discretion in determine funding eligibility for census blocks that are not already classified as eligible on the Commission's list.

**Question 2(b): Should the Commission prioritize certain areas for broadband deployment? If so, what criteria should the Commission utilize to make those determinations?**

**Response to Question 2(b):** Windstream is fully aware of the areas in its footprint and network which need broadband improvements. Building out broadband networks involves many connecting parts as there are synergies in how networks are built out which involve allowing for sufficient back-haul capacity as last mile networks are deployed. As such, there is no need for the Commission to prioritize certain areas for broadband deployment.

Any business operates at the discretion of its owners and managers. However, it has long been understood that in exchange for certain treatment, a regulated utility agrees to exchange some, but not all, of its discretionary independence. The law in this area is also well established. "[T]he power of the Commission to regulate and control telephone companies is limited by the consideration that it is not the owner of the property of the utility or clothed with the general power of management incident to ownership . . . . [T]he commission has no authority to supplant the managers or directors of public utilities or substitute its discretion for theirs." *In re Application No. 30466*, 194 Neb. 55, 61, 230 N.W.2d 190, 195 (1975).

Scheduling and prioritizing areas for broadband development are subject to management judgment and discretion. As such, it is not within the sphere of Commission jurisdiction and not subject to co-opting by it.

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

**Response to Question 2(c):** No. The process should not focus on the technology of the project, but on the goal of bringing broadband capability to unserved and underserved areas with a choice of technology that makes the most sense from a reliability and cost perspective. The Commission would be doing a disservice to the citizens of Nebraska if it required fiber-based projects which cost many times (on a households-passed basis) what a fixed-wireless solution may cost. The carriers should be free to present the technology for the project which makes the most sense for that project. Broadband technology is simply not a one-size-fits-all solution.

**Question 2(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 to Question 2(d):** Although fixed wireless solutions may be less expensive than fiber, it does not mean that such solutions themselves are not expensive. Under the current price cap, the NUSF funding is only provided in areas which are not CAF II or are not served by an unsubsidized provider. In other words, the current application process is structured so that the Commission has some assurance that the areas being funded by the NUSF are more likely to be census blocks which are extremely costly to serve, for which the FCC is not providing funding, and in which no other providers have found it feasible to deploy broadband.

However, deploying to these areas is problematic. Establishing the basic infrastructure in an area requires large capital investments which must be recovered through per household revenues, whether the technology is fiber-based or fixed wireless. Where more households are covered, per-household costs are lower; where fewer households are covered, per-household costs are higher. Regardless of the technology deployed, extremely-high-cost census blocks contain few households over which to spread and recover deployment costs.

Finally, the deployment of VoIP over fixed wireless will satisfy the carrier of last resort (COLR) obligations. This includes service quality obligations. As such, deployment of VoIP over fixed wireless should not disqualify a carrier from NUSF funding.

**Question 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 to Question 3:** Windstream agrees that the Commission should adopt specific timeframes. The rate-of-return carriers currently have two years from the time the projects are approved to complete buildout of the project. Windstream agrees this is an appropriate amount of time given these parameters. However, if the Commission is desiring a “soup-to-nuts” approach wherein it would require a completion schedule which would include the time to submit documentation for the entire project, Windstream recommends a three-year time frame.



**Question No. 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 to Question No. 4:** Ongoing support is used for operating expenses. As such, it should not be tied only to areas in which voice and broadband are being provided at speeds of 25/3 Mbps. The ongoing support is needed the most in areas which are the most expensive to serve. In other words, areas for which the company has a statewide voice obligation include areas that may not be providing broadband at the 25/3 Mbps level and are the most expensive to serve. In addition, operating expenses are captured at the operating company level. Therefore, it would be impossible for Windstream to trace expenses down to geographic areas such as census blocks.

**Question No. 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 to Question No. 5:** As the current CAF II support transitions to the RDOF process, it should be very easy to modify the current price cap application process at the same time. The current process does not provide funding for CAF II census blocks. At the end of the Phase I RDOF auction, what census blocks the price cap carriers have won auction support for will be known. Using the new set of census blocks post-RDOF auction should prove seamless.

### III. Conclusion

Windstream supports the Commission's review of the NUSF program and believes that program could be strengthened, to the benefit of rural Nebraskans, by the aforementioned proposals.

Respectfully submitted on this the 13<sup>th</sup> day of December, 2019,

By:



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 13, 2019, one original paper copy and one electronic copy of the foregoing Comments on behalf of Windstream Nebraska, Inc. in NUSF-99, Progression Order No. 2 were delivered to:

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