BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on Its Own Motion, to Administer The Universal Service Fund High-Cost Program	)))))))	**Application No. NUSF-99 PROGRESSION ORDER NO. 2** **ORDER SEEKING FURTHER COMMENT** **Entered: June 30, 2020**

COMMENTS OF WINDSTREAM

Windstream Nebraska, Inc., ("Windstream") provides the following comments in response to the Nebraska Public Service Commission's ("Commission") Motion to Administer the Nebraska Universal Service Fund High-Cost Program ("NUSF"):

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 with the Docket NUSF-108 framework applied to rate-of-return carriers.

Since September 2018, Windstream has filed approximately one hundred (100) NUSF applications to expand broadband access to almost 17,000 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. COMMENTS ON PROPOSALS

Proposal: The Commission proposes to adopt the 25/3 Mbps minimum speed requirement for price-cap carriers to match the FCC's 25/3 Mbps standard and that applied to Nebraska's rate-of-return carriers.

Further Comment: Windstream agrees with the Commission's adoption of the 25/3 Mbps minimum speed requirement for price-cap carriers.

Proposal: The Commission proposes to adopt 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 along with the opportunity to seek a waiver or extension of time for good cause shown.

Further Comment: Windstream agrees with the Commission's proposal to provide one year for carriers to file requests for support for projects in a given funding year. However, Windstream requests clarification from the Commission as to when the two-year clock for project completion commences. It is Windstream's understanding, based on the Commission's proposal, that carriers will have one year to determine the exchanges for which it will accept funding and an additional two years to complete the projects in those exchanges. If that interpretation is correct, Windstream does not object to the Commission's proposed two-year timeframe for project completion assuming the Commission makes available a waiver or extension of time for good cause shown, as noted in the Order.

Windstream would note that allowing carriers one-year to determine the exchanges for which it will accept funding and then two additional years to complete projects would provide sufficient time to engage in more thoughtful planning and deployment. A three-year timeframe under the program for the funding allocation and construction is advisable.

Proposal: The Commission proposes an allocation mechanism whereby each exchange within the 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.

Further Comment: Windstream agrees with the Commission's proposal to establish an allocation mechanism whereby each exchange within the carriers' territories is assigned an amount of buildout support that would be reimbursed to the carrier once broadband service is available. However, it is inadvisable to make the availability of that support contingent upon a determination that the carrier is offering broadband service to "all eligible locations within that exchange." Such a standard would limit the feasibility of both fixed-wireless and fiber projects. For example, in the case of fixed-wireless, a project in the northern portion of an exchange may not be capable of serving households located in the southern portion of an exchange. To serve the entire exchange, the carrier would inevitably have to construct multiple fixed-wireless projects in order to serve the entire exchange. Even then, outlier locations where fixed wireless service cannot serve due to terrain issues will always exist. Further, in the case of fiber, some locations in an exchange may still remain economically infeasible even with NUSF support. Thus, withholding NUSF support unless broadband is provided to "all eligible locations within that exchange" results in less service deployment, whether by fixed-wireless technology or fiber.

As an alternative to the "all eligible locations within that exchange" standard, Windstream would propose a percentage threshold requirement be met before funding becomes available, e.g. service is available to 95% of all eligible households. The 95% threshold is currently being utilized in the FCC's Rural Digital Opportunity Fund (RDOF) and Connect America Fund II (CAF II) programs.

In addition, rather than make the 95% threshold requirement applicable on the basis of households within the exchange, as a whole, the 95% threshold requirement should be applied to the "project area". Under this proposed standard, the assigned buildout support would become available for reimbursement to the carrier once broadband service is available to 95% of eligible locations within the project area. The adoption of a 95% threshold requirement accounts for those outlier households whose location may make providing service uneconomical or otherwise impractical.

Windstream also requests the Commission clarify its definition of "eligible locations." In the June 30, 2020 Order, the Commission states, in part, that "[e]ligible locations would be those that…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." See, Order at pg. 15. Windstream interprets the clause "are not already built to 25/3 or greater" as unnecessary or redundant in light of the subsequent clause "and do not already have competitive service, defined as broadband at 25/3 Mbps and voice service offered." Clarification as to whether the former clause is intended to capture a scenario distinct from the latter clause would be appreciated.

Finally, Windstream requests that the Commission clarify the phrase "voice service offered." Certainly, this requirement would be met by a carrier capable of directly and personally providing voice services to a location through its own facilities and infrastructure. If a carrier could not directly and personally provide voice service to a location but instead, upon request, referred the customer to a third-party voice service provider, would the Commission view the "voice service offered" requirement as having been met?

Proposal: The Commission proposes to make available in the first year of this program any support that has not been allocated through the NUSF-99 program. The Commission proposes to continue its requirement that price cap carriers build out prior to seeking reimbursement for broadband projects.

Further Comment: Whether the Commission's proposal to make available in the first year of this program any support that has not been allocated through the NUSF-99 program is appropriate and/or desirable depends on how the Commission anticipate the program will be run in not only its first year, but subsequent years as well.

As an initial matter, Windstream suggests that the Commission interpret "support that has not been allocated" for the purposes of which funds will be available in the first year of this program to include NUSF-99 support that has not been distributed or applied for, rather than just support that has not been distributed. The current application process for price-cap carriers often takes a significant amount of time to get final approval, particularly in those instances where an application for funding is contested. Given the Commission's goal of expanding broadband access, the Commission should not penalize carriers who have engineered and completed the application process for NUSF-99 projects merely because those projects have not yet been approved for reimbursement at the time this program is implemented. Accordingly, the Commission may also consider exempting carriers' support allotment from the year prior to this program's implementation from the first-year program funds and instead make those unallocated funds (using the above definition) available in year two.

It would be helpful if the Commission can provide additional clarification as to the way the program will be operated. The following comments set forth Windstream's understanding of the Commission's current proposal and suggestions as to program requirements which have not yet been established.

The Commission, utilizing a cost model, would develop an initial budget identifying the amount of NUSF support needed to improve broadband access at 25/3 Mbps for all locations within the carriers' exchange. After the Commission issues this initial budget, carriers would be given one year to identify all of its total exchanges in which it plans to build given the amount of support budgeted and notify the Commission of the carriers' intent. The Commission would then issue a final budget identifying the amount of support each price cap carrier will receive in the first year of the program. The carrier then identifies the exchanges it will build to in the first year using that carrier's first year's allocation of funding. The same process would be repeated for each subsequent year until all exchanges have been built. Any exchange not chosen by a carrier in its initial notification would be subject to auction.

Alternatively, rather than deploying to a certain number of exchanges in each year of the program, the Commission could establish a term for the program, e.g. 10 years. This approach would be similar to the structure used by the RDOF. During this term, carriers are to fully deploy broadband in all exchanges the carrier elects. This approach would provide for more even deployment throughout Nebraska rather than a handful of locations being built while others wait.

Under this process, the Commission would need to balance the available funding each year with the funding initially budgeted for deployment to all locations in each exchange. The Commission would also need to develop a multi-year program to provide clarity to carriers as to the amount of funding available in any given year of the program and a realistic timeframe to achieve full deployment.

III. ISSUES FOR FURTHER COMMENT

Issue: The Commission has proposed allowing price cap carriers to identify which areas they will build to using building out 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?

Further Comment: Windstream intends to build out to all eligible locations and supports a process where price cap carriers ultimately determine which areas to build out. However, if the Commission decides to establish priority areas, prioritization should be based on areas where projects are capable of serving the most customers in order to ensure NUSF funds are spent judiciously. Prioritization based on complaints alone is not an efficient method to ensuring that NUSF dollars are spent wisely and is not always a reliable indication of service offerings or quality. However, Windstream would welcome input from the Commission on "hot-spots" or exchanges where complaints are on the rise to use in determining areas for build out.

Issue: 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? 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? The Commission has retained the NUSF-EARN Form requirement for rate-of-return carriers receiving ongoing support. Should the Commission likewise require price cap carriers receiving ongoing support to similarly report to the Commission? Why or why not?

Further Comment: Windstream supports application of a uniform standard for both price cap and rate-of-return carriers. Windstream is satisfied with the division of ongoing support and project-based funding for price cap carriers, and the Commission could choose to apply the same division to rate-of-return carriers. Conversely, if the Commission were to move to a project-based disbursement scheme for all NUSF dockets, the EARN Form requirement would no longer be necessary.

Issue: 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? What about areas that are initially eligible but do not receive any auction-based support? What about areas that do receive auction-based support but for other technologies such as low-orbit satellite or fixed wireless?

Further Comment: Windstream believes the Commission should allow RDOF-eligible areas to remain eligible for NUSF support. However, Windstream suggests that Commission make NUSF-funding available only to the carrier to whom RDOF support is granted to the exclusion of other carriers. By adopting this methodology, the Commission would avoid the scenario where multiple providers are attempting to build out in the same census blocks, thereby resulting in overbuild.

Respectfully submitted on this the 30th day of July, 2020,

By: ____________________

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 30, 2020, 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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