

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

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REPLY COMMENTS OF THE RURAL INDEPENDENT COMPANIES

I. INTRODUCTION

The Nebraska Rural Independent Companies (“RIC”)<sup>1</sup> submit these Reply Comments in response to other interested parties’ comments<sup>2</sup> filed in response to the Order Seeking Comment entered by the Nebraska Public Service Commission (the “Commission”) in this proceeding on November 13, 2019 (the “Order”). In the *Order*, the Commission requested comments on various issues relating to the Nebraska Universal Service Fund High Cost Program (“NUSF”) applicable to Price Cap-regulated carriers (“PC carriers”). RIC appreciates the opportunity to participate in this docket and to provide the following Reply Comments.

As RIC demonstrated in its previously filed Comments, the Commission has already addressed the framework for the use of NUSF support to encourage the further deployment of 25/3 Mbps broadband for Rate of Return (“ROR”) carriers.<sup>3</sup> Further, as a general matter, the

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<sup>1</sup> 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.

<sup>2</sup> For convenience, the following convention is used regarding comments filed in this docket on December 13, 2019: the commenting party’s name followed by the word “Comments” and the page reference.

<sup>3</sup> 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*

reformed NUSF distribution framework established by the Commission for ROR carriers in Application No. NUSF-108 should be applied to PC carriers with the exception of the continued use of the current application procedure for Commission approval of broadband deployment projects proposed by PC carriers.<sup>4</sup>

For the reasons stated herein and in the RIC Comments, the record developed amply demonstrates the appropriateness of application of RIC's proposed NUSF-eligibility framework to PC carriers. Moreover, the record supports a framework by which previously allocated but unspent NUSF support provided to PC carriers should be redistributed to ROR carriers.<sup>5</sup>

## II. DISCUSSION

### A. **The Proposal by the Rural Telecommunications Coalition of Nebraska ("RTCN") to Alter the PC Carrier NUSF Distribution Mechanism from a Carrier-Centric to a Location-Centric Approach Requires Further Development of a Record of Relevant Facts and Policy Considerations.**

1. Currently, no facts or data are available to explain RTCN's proposal to revise PC Carriers' NUSF support to a Location-Centric Approach.

In its comments, RTCN calls upon the Commission to "fundamentally alter its approach to providing deployment support" to PC carriers and to adopt a policy that "allocated support [to PC carriers] should be recognized as support for the ratepayers in a particular area."<sup>6</sup> This position appears to be premised upon an assumption that NUSF support currently allocated to PC

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*requirements*, Application No. NUSF-108, P.O. #3, Order Seeking Further Comments and Setting Hearing at 6 (June 19, 2018); P.O. #3, Findings and Conclusions at 43 (Nov. 19, 2018); P.O. #4, Order Seeking Further Comment at 4-5 (Feb. 5, 2019); P.O. #4, Order at 25-27 (Oct. 29, 2019). In this regard, the Commission is also appropriately addressing potential modifications to the NUSF EARN form. *See* Progression Order No. 5 (Dec. 17, 2019).

<sup>4</sup> RIC Comments at 5-6.

<sup>5</sup> *Id.* at 9-10.

<sup>6</sup> RTCN Comments at 5.

carriers can be associated with a specific location or locations within a PC carrier's service area. However, this is not the case regarding the current distribution mechanism that allocates NUSF support to PC carriers on a per company basis.

On October 15, 2014, the Commission opened this Application No. NUSF-99 "to consider certain modifications to the high-cost funding mechanism in the universal service fund program . . . affecting the carriers classified federally as price cap carriers."<sup>7</sup> The Commission undertook a comprehensive review of the manner in which NUSF support was being distributed to PC carriers. Specifically, the Commission asked for comments on the issue as to whether the Commission should make a per location determination of NUSF support amounts per subscriber/household.<sup>8</sup>

In Progression Order No. 1, the Commission found that NUSF support should be allocated to PC carriers on a company basis at 2015 per carrier levels of support with adjustments based upon overall NUSF remittance receipts. Further, the Commission required a division of the carrier allocations between ongoing support for maintenance of existing networks and investments to be made in broadband-capable networks.<sup>9</sup> In due course, the Commission established the current standard that requires PC carriers to utilize 80% of NUSF support for capital projects and 20% of NUSF support for ongoing maintenance. This 80/20 split was established in order for the Commission to have "assurance that all carriers are making timely

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<sup>7</sup> *In the Matter of the Nebraska Public Service Commission, on its own Motion, to Administer the Universal Service Fund High-Cost Program*, Application No. NUSF-99, Order Opening Docket, Seeking Comment and Setting Hearing at 1 (Oct. 15, 2014).

<sup>8</sup> *Id.* at 4-5.

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

upgrades to their outdated plant facilities.”<sup>10</sup> Applications by PC carriers for Commission approval of specific broadband projects were required as a condition precedent to proceeding with broadband deployment capital projects.<sup>11</sup>

The record in this docket on which the distribution mechanism for provision of NUSF to PC carriers is based does not rely on ongoing costs or broadband deployment costs associated with specific locations or areas served by PC carriers. PC carrier NUSF support has not been and is not currently allocated on a location-centric basis. Thus, contrary to RTCN’s statement, there is no NUSF support “dedicated to those areas”<sup>12</sup> served by PC carriers that is identifiable and therefore transferable on a location-specific basis. If RTCN’s recommendation for reform of the Commission’s approach to providing broadband deployment support to PC carrier areas is to be pursued, RIC respectfully submits that the Commission will need to develop a record to establish a process to determine the amount of NUSF support allocated to a PC carrier that is properly assigned to specific locations or areas.

2. Should the Commission elect to move forward with a Community-Based Approach to allocate PC carrier NUSF support, it should request comments on that proposal.

In its comments, RTCN proposes that the process for allocation of PC Carrier NUSF support “should be similar to the community-based approach currently proposed and being considered by the Commission” in its Rule 202 reverse auction proceeding.”<sup>13</sup> However, no

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<sup>10</sup> *Id.*, Findings and Conclusions at 5-6 (Mar. 28, 2017).

<sup>11</sup> *Id.*, Order on Reconsideration and Order Releasing Project Checklist (July 12, 2016).

<sup>12</sup> RTCN Comments at 5.

<sup>13</sup> *Id.* (citing *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* (Oct. 8, 2019) at 6).

details were provided in RTCN's comments to explain how the approach will be implemented and the predicted effects of such approach on further investment in and deployment of 25/3 Mbps broadband networks in PC carriers' service areas.

The absence of these details creates difficulties in determining whether the concept holds promise for additional 25/3 Mbps broadband deployment and how it will be impacted by the provision of federal USF to PC carriers' service areas, especially through the Rural Digital Opportunities Fund auction likely to occur later this year. Accordingly, RIC respectfully requests the Commission to issue a further progression order in this proceeding that would request comments on this subject, and, thereafter, allow the filing of reply comments.

**B. No Factual Support has been Provided for the Contention that the 20/80 Operating Expense ("OpEx")/Capital Expenditure ("CapEx") Split for PC Carriers Results in Insufficient OpEx for a PC Carrier's Voice Network.**

Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (collectively "CTL") complain that the current provision of 20% of PC carrier NUSF support for OpEx is insufficient.<sup>14</sup> CTL's contentions present no facts regarding the actual underlying OpEx costs it incurs, only mere assertions. RIC submits that CTL should supply facts that support its position as well as follow the existing procedures to request to be relieved of its Carrier of Last Resort obligations in those areas in which CTL contends that it lacks sufficient support.<sup>15</sup>

As a policy matter and absent factual demonstrations that CTL may make to the Commission, RIC respectfully submits that CTL should not receive NUSF OpEx support for

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<sup>14</sup> CTL Comments at 2 and 7.

<sup>15</sup> See, *Neb. Rev. Stat.* § 86-134 outlining the criteria that must be satisfied by a carrier prior to receiving Commission approval to discontinue a service; see also RIC Comments at 11.

networks in which it has not made investments necessary to upgrade such networks to broadband capability. Absent reallocation of NUSF support, based on existing circumstances, the Commission would effectively be creating a framework that does not utilize some level of allocated but unused PC carrier NUSF support earmarked for CapEx funding. The NUSF Act supports the conclusions that this result should be avoided.<sup>16</sup>

**C. Future Provision of NUSF Support for Deployment of 25/3 Mbps-Capable Broadband Networks should be Subject to Buildout Time Frames.**

As RIC summarized in its Comments,<sup>17</sup> data available on the Commission's NUSF website demonstrates considerable amounts of allocated but unspent NUSF support provided to PC carriers for fiber-based 25/3 Mbps fiber-based networks. No facts were presented in the comments that demonstrate future commitments by the PC carriers to reverse this historical pattern. Consequently, the Commission's policy objectives should be to create a framework whereby, through enforceable buildout time frames, NETCs are encourage to deploy 25/3 Mbps broadband networks within a reasonable time frame and with rational triggers for reallocation of existing NUSF that remains unspent or future NUSF that is allocated but unspent. CTL's argument that no time frames should be established lacks reasonable support.

CTL “. . . recommends against specific time frames to utilize support to buildout designated projects.<sup>18</sup> CTL has failed to demonstrate why the existing NUSF-108 framework

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<sup>16</sup> See, e.g., *Neb. Rev. Stat.* §§ 86-317 (In the absence of the actual use of NUSF, there is no assurance “that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.”); *Neb. Rev. Stat.* § 86-323(2) (Likewise, in the absence of the actual use of NUSF, there is no assurance that “[a]ccess to advanced telecommunications and information service [will be] provided in all regions of the state.”)

<sup>17</sup> RIC Comments at 5-6 and nn. 14 and 15 and 9, n. 24 and accompanying text.

<sup>18</sup> CTL Comments at 6.

that establishes a two-year buildout time frame with a one-year additional waiver option is insufficient to overcome the parade of possible delays that CTL provides.

RIC fully understands that acts of God such as adverse weather conditions or other unanticipated events may arise during a project. Nonetheless, early identification of potential schedule-impacting problems and bringing the relevant facts to the attention of the Commission should address the need for additional time to complete a project. Even in this type of instance, however, CTL has not demonstrated that the availability of a Commission extension of a buildout requirement based upon a good cause showing is an insufficient remedy.

For these reasons, therefore, the contention that no buildout requirements should be applicable to PC carriers should be rejected. The ROR NUSF framework of two years with an available third year extension based upon a good cause showing<sup>19</sup> should be adopted for application to PC carriers and ROR carriers alike.

**D. The Record Required to Establish Fixed Wireless as a Cost-Effective, Long-Term Substitute for Fiber Optic Network Technology to Support Broadband has not been Developed and Requires Specific Demonstration Based on Specific Proposals.**

Evaluating whether the Commission's NUSF policy framework that encourages the deployment and provision of broadband through fiber-based networks should be modified will require evaluation of the specific facts and circumstances. As noted by RIC, the Commission has properly enunciated a policy that encourages broadband deployment via fiber optic networks.

Deployment of Fiber-based Network Everywhere. As carriers continue to invest in their networks and replace outdated facilities, the Commission's plan will have wireline carriers extend or replace facilities with fiber. Fiber facilities will allow carriers to offer consumers more services at greater speeds. The Commission

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

hopes to alleviate the incremental minimum speed considerations in its requirements by ensuring the networks are built to sustain growth, usage and demands over the long term. As more fiber is deployed, increased speeds will follow. Coordination with the federal mechanism will be the key to making efficient use of universal service support.<sup>20</sup>

In light of this policy, CTL's contention that selection of fiber versus fixed wireless for broadband deployment should be "technology agnostic" misses the mark.<sup>21</sup>

RIC respectfully submits that the public policy inquiry is better articulated as follows:

Can the entity claiming the use of fixed wireless as an alternative to fiber-based technology sustain the burden of demonstrating that the use of fixed wireless is as "scalable" and "future proof" as fiber-based systems, and that consumers served by such technology will not be subject to a degradation of service as the demand for higher broadband speeds increases?

RIC respectfully submits that an NUSF-eligible PC carrier seeking to use fixed wireless should make its case based on demonstrable facts. The record reflects no such facts that would support a generalized conclusion that fixed wireless is an appropriate technology for general use to accomplish broadband deployment, and clearly does not support a retreat by the Commission from its policy declaration supporting deployment of fiber-based networks to support 25/3 Mbps and future scalable broadband service.

### III. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Reply Comments in response to the *Order* and look forward to continuing participation in

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<sup>20</sup> RIC Comments at 10 *quoting In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Application No. NUSF-100, Order at 5 (April 5, 2016).

<sup>21</sup> CTL Comments at 4.



this docket. RIC respectfully requests that the Commission resolve the issues raised in *Order* in the manner stated herein and in the RIC Comments.

Dated: January 10, 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

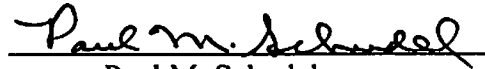
The undersigned hereby certifies that on this 10th day of January 2020, an electronic copy and one paper copy of the foregoing pleading were delivered to:

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Electronic copies of the foregoing pleading were electronically delivered to the other parties to this docket.

  
Paul M. Schudel