BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund High Cost Program	Application No. NUSF-99

REPLY COMMENTS OF QWEST CORPORATION d/b/a CENTURYLINK QC AND

UNITED TELEPHONE COMPANY OF THE WEST d/b/a CENTURYLINK

Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (collectively, "CenturyLink") hereby files these reply comments for the consideration of the Nebraska Public Service Commission ("Commission") in the above-captioned docket, pursuant to the Commission's Orders entered in NUSF-99 on October 15, 2014 and the Hearing Officer Order entered on December 2, 2014.

CenturyLink submitted its Initial Comments on January 14, 2015. CenturyLink's central point is that Nebraska residents are the ultimate beneficiaries of NUSF support and the Commission should not differentiate the support that is provided to residents under Nebraska's high-cost support mechanism. All consumers in areas eligible for state high cost support should be treated similarly, regardless of whether the carrier providing the voice service is a price cap carrier or another category of carrier under the FCC's universal service programs. The NUSF must focus its support on consumers in high-cost areas, and it is not necessary to create a separate allocation mechanism or fund for price cap carriers to accomplish that objective.

Seven other companies or associations submitted initial comments. CenturyLink offers the following responses:

CITIZENS TELECOMMUNICATIONS COMPANY OF NEBRASKA d/b/a FRONTIER COMMUNICATIONS OF NEBRASKA ("FRONTIER")

Citizens' reasons that the purpose of the NUSF Act, "to authorize the commission to establish a finding mechanism which . . . ensures that all Nebraskans, without regard to their locations, have comparable accessibility to telecommunications services . . ." does not just mean equitable access for rural and urban customers; it also means that Nebraskans should have equitable access to telecommunications services whether they are in a location served by a price cap carrier or rate of return carrier. Frontier correctly identifies as a fundamental principle that any changes the Commission may make to the NUSF mechanism must treat all customers equitably, whether served by a price cap carrier or not.[1]

CenturyLink notes that the proposals submitted for consideration in this Docket would create a fundamental, huge divide. The respective sizes of the classes of customers that would be created—price cap carrier customers and rate of return carriers—are large. Data from the Year 11 NUSF-26 Distribution Model shows that in 2013 there were a total of 233,035 residential access lines, of which 171,976 were served by price cap carriers.

Frontier concludes, as does CenturyLink, that the adoption of different funding methodologies for price cap and rate of return carriers puts the equitable treatment of customers at risk—based solely on whether their provider is a price cap carrier or a rate of return carrier. As Frontier states, the Commission should be hesitant to make such changes.

CHARTER FIBERLINK-NEBRASKA, LLC ("CHARTER")

Charter opposes the transformation of the Nebraska High Cost Program or its funding to support broadband.[2] Charter's position is colored by its fundamental skepticism regarding <u>any</u> universal service

[1] Citizens Initial Comments, p. 1.
[2] Charter Initial Comments, p. 12.

support for price cap carriers.[3] Charter's antipathy toward state universal service support, however, is not shared by most of the commenting parties, including CenturyLink, and does not represent the public policy of the State of Nebraska, as articulated by the legislature and the actions of this Commission in the implementation of state support. The antipathy toward state universal service support is also not supported by Congress in the Telecom Act of 1996 or the FCC. The FCC noted the following in Paragraph 28 of its December 18, 2014 Report and Order:

> We thus are not persuaded to increase high-cost universal service support further. Instead, we advance our broadband universal service goals through the high-cost fund to the extent we are able within the existing budget. We also note that the states have an important role to play in advancing universal service goals.[fn] We welcome and encourage states to supplement our federal funding, whether through state universal service funds or other mechanisms.
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> > [fn] *See, e.g.*, 47 U.S.C. §254(b)(5) ("There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service); 47 U.S.C. §254(f) (expressly permitting states to take action to preserve and advance universal service and to require contributions to support universal service in the state); *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001) (stating that the Act "plainly contemplates a partnership between the federal and state governments to support universal service and that "it is appropriate—even necessary—for the FCC to rely on state action."); *Qwest Communications Int'l Inc. v. FCC*, 398 F.3d 1222, 1232 (10th Cir. 2005).

In its comments, Charter misstates several of CenturyLink's positions, including that CenturyLink advocated for receiving CAF Phase II support in areas that are already served,[4] and that CenturyLink would somehow pick and choose whether to accept federal or state funds on a location-by-location basis.[5] Charter's characterizations of CenturyLink's positions stated in comments to the Missouri PSC are incorrect. CenturyLink has not advocated for receiving USF support where there is competition. CenturyLink's point was that some census blocks, such as those partially served with broadband, will not be eligible for CAF II support, or will be eligible for only token support for

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[3] Charter states: "It is far from clear whether . . . there is a need for states to supplement federal universal service support for price cap carriers with subsidies, whether for broadband or voice services." Charter states that "universal service subsidies generally are unneeded and may even be harmful to the development of competitive market forces where market forces are anticipated to provide the broadband and voice services that consumers demand." Initial Comments, p. 9.

[4] Charter Initial Comments, p. 9.

[5] *Id.*, p. 10.

broadband, and no federal support for voice. It is critical that rural customers who are not able to benefit from CAF II support at least be able to continue receiving their voice service. The state high cost fund would be the vehicle for providing the support necessary to accomplish this public interest goal.

CenturyLink's comments in Missouri are consistent with the point made by Citizens in this Docket:

> The change in the FCC's approach to supporting services in high cost areas does not invalidate the need or focus of the NUSF. Indeed, the need for the NUSF funding is arguably greater now than in the past, since the focus of the FCC's efforts is moving away from supporting voice services (as the NUSF does) and turning to funding broadband services instead.[6]

However, in the course of making its arguments against the Commission's tentative proposals made in this Docket, Charter makes the valid point that further transition of the NUSF to support broadband deployment would be premature at this time. Charter states that the effects of the CAF Phase II program should be fully understood before the Commission undertakes further steps to subsidize broadband deployment.[7] While the process for CAF Phase II is more definite after the FCC's Final Rules Order were released December 18, 2014, the areas for which price cap companies receive support will not be finally determined for many more months. CenturyLink agrees that considerable uncertainty remains with respect to CAF Phase II, the locations supported, and the identity of the providers receiving the support. Against such uncertainty, Charter makes a fair point when it states that as CAF Phase II is implemented in the next two years there will be an opportunity for the Commission to assess its effects on end-users and competing providers' broadband services.[8]

CenturyLink agrees with Charter that at this time the effects of CAF Phase II are not quantifiable. For that reason, CenturyLink agrees that the time is not ripe for the Commission to make changes to its high cost support program because of CAF Phase II.

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[6] Citizens Initial Comments, p. 2.
[7] Charter Initial Comments, pp. 1-2.
[8] *Id.*, p. 2.

Despite its position that the Commission should not further transition the NUSF to support broadband because it is unknown what the ultimate effects of CAF Phase II may be, Charter nevertheless urges the Commission to declare that ETCs should not be able to receive funding from both CAF and the NUSF for the same areas. Because it is not certain that CAF Phase II will achieve the goals it sets out for broadband deployment, CenturyLink urges the Commission to adopt a "wait and see" stance on whether to lock out CAF Phase II supported areas from state support.

Ultimately, the determination of how to coordinate NUSF and CAF Phase II to best accomplish the important public policy goals of both is both very important and complicated. The simple reference in many of the comments to "CAF areas" is misleading because the FCC's CAF Phase II program is targeted in a very granular manner to specific locations and does not match how NUSF support is determined. Further, ongoing ETC obligations outside of CAF supported areas are unclear at this point and it is critical that support from both programs be matched and sufficient to support public interest obligations.

COX NEBRASKA TELCOM, LLC ("COX")

Cox states that it supports an alignment of the NUSF with federal principles and believes that establishing a higher degree of consistency between the federal CAF and the NUSF would improve and optimize the NUSF. However, Cox's comments do not address the central question posed—whether the Commission should modify high cost support budgeting, allocation, and broadband obligations <u>for price cap carriers</u> only.

Cox makes several points of general applicability to all forms of universal service support, including the thought that universal service support should be eliminated in areas where an unsubsidized competitor offers comparable service,[9] and that the Commission's audit requirements

[9] Cox Initial Comments, p. 2.

should require explicit documentation showing funds are being used for their intended purpose.[10] CenturyLink does not disagree with these concepts. However, CenturyLink would object if the concepts are applied unevenly among carriers receiving support.

Cox suggests that "an alignment of the CAF with the NUSF would help ensure carriers cannot 'double-dip' by receiving funding from both programs for the same area."[11] Cox states that presumably there is no need for a CAF supported area to also receive NUSF high-cost support, because CAF money is designed to provide carriers with sufficient support to produce a viable business case. However, as noted by other commenting parties, the efficacy of CAF Phase II in meeting its objectives remains to be determined. The CAF Phase II support offers are the product of future cost modeling. Actual results may vary. CenturyLink urges the Commission to not adopt inflexible rules in this regard, without the benefit of further experience under CAF Phase II.

Should the Commission rule that customers' service cannot benefit from support from both federal and NUSF programs, logically and equitably the same principle should be explicitly applied to all disbursements from the NUSF, regardless of whether the customer is served by a price cap or rate of return carrier. If there is no practical, transparent, and rational way to apply the anti "double-dipping" rule suggested by the comments by Cox and others, the Commission should deliberate with great caution before it decides to withhold NUSF support for rural customers in CAF Phase II areas, but not for other rural customers.

NEBRASKA RURAL INDEPENDENT COMPANIES ("RIC")

RIC says the Commission should consider revising the manner in which high-cost support is allocated to price cap carriers because of CAF Phase II,[12] and that it may be "reasonable and appropriate" to determine the level of support for price cap carriers by methods other than the current

[10] *Id.*, p. 3.
[11] *Id.* (emphasis added).
[12] RIC Initial Comments, p. 2.

Support Allocation Methodology. RIC states that the Commission should create separate NUSF High-Cost Program support budgets for price cap carriers and rate of return carriers.[13] RIC's toleration of disparate NUSF treatment between carriers is based on the bare fact that the FCC has gone down separate tracks for reform of price cap carriers and rate of return carriers. RIC's explanation seems to be that the NUSF should change just because the federal program is changing. RIC also fails to note that the FCC has specifically stated, "We will continue to explore the possibility of a voluntary path to model-based support for those rate-of-return carriers that choose to pursue it. We also expect to continue to develop the record and act in the coming year on alternatives for those who do not elect to receive model-based support."[14] The distinctions noted by RIC may or may not remain in the CAF Phase II program going forward.

The FCC has a long history of differing approaches to determining universal support for high cost areas with low population density. The FCC explained this as follows:

> 130. *Background*. Historically, the Commission's intrastate universal service programs have distinguished between companies classified as "rural" and "non-rural" carriers, with the former eligible for high-cost loop support (HCLS) and the latter eligible for high-cost model support (HCMS) The term "rural telephone company," however, as defined by the Act, does not simply mean a carrier that serves rural areas.[205] Rather, a rural telephone company, generally speaking, is a relatively small telephone company that *only* serves rural areas. Many "non-rural" carriers serve both urban and rural areas. In fact, price cap companies, which largely are classified as non-rural companies, today serve more than 83 percent of the people that lack broadband, many of whom live in areas that are just as low-density and remote as areas served by rural companies. Today, some price cap carriers meet the Act's definition of a rural telephone company and are eligible for HCLS, while others do not and are eligible for HCMS. In addition, at least some price cap carriers currently receive support from each of the other high-cost support mechanisms: LSS, IAS, and ICLS.[15]

The Commission has wisely not found it necessary or advisable to devise separate NUSF levels of support and separate NUSF funds based on FCC distinctions in its universal service mechanisms to date. Injecting such distinctions into the state mechanism would have done a disservice to the rural customers

[13] *Id.*, pp. 3-4.
[14] FCC 14-190, Paragraph 5, December 14, 2014.
[15] Report and Order, *In the Matter of Connect America Fund*, FCC WC Docket No. 10-90, 26 FCC Rcd. 17663, para. 130.

based solely on the federal categorization of its service provider. CAF Phase II is the next iteration of the legalistic definitional divide which separates federal support mechanisms. Consumers living in high cost rural areas should have their service supported by the state fund regardless of the federal regulatory classification of their provider.

Despite paying lip service to the Nebraska universal service policy declarations,[16] RIC proceeds to ignore the policy requirement for a competitively neutral mechanism, and proposes that the Commission create different methods to allocate and distribute support for different FCC category carriers (categories not present in Nebraska state regulation), and disburse the Nebraska funds by different standards. RIC does not offer an analysis of the history and reasons for separate reform tracks at the federal level, with respect to federal universal service, or explain why separate federal support mechanisms would be appropriate in Nebraska.

RIC does not suggest making any changes in the method of budgeting and allocation of NUSF for rate of return carriers, but acknowledges that the FCC will "likely be moving ahead with federal USF reforms for RoR carriers."[17] CenturyLink respectfully suggests that while there may be merit to re-tooling NUSF because of federal universal service reforms, it only makes sense to wait to see all of the reforms.

RIC states on page 3 of its Initial Comments that PC carriers operating in Nebraska will be eligible to receive an additional $15 to $18 million annually in Federal CAF Phase II support in Nebraska. It is not clear why RIC points this out especially, but if the remark is intended as implicit criticism that CAF Phase II funding is excessive, this Commission will surely remember that the FCC is exacting a very costly buildout obligation, with new, higher bandwidth requirements.

On page 5, RIC responds to Commission question 3a, suggesting that a grant-type approach similar to NUSF-92 could be a reasonable opportunity to pursue. CenturyLink strongly disagrees that an

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[16] RIC Initial Comments, p. 1.
[17] *Id.*, p. 3.

annual grant approach for continuing voice obligations in high cost rural areas is a reasonable opportunity to pursue. Such an approach would not achieve the goals of universal service funding – specific, predictable and sufficient support.

CTIA – THE WIRELESS ASSOCIATION (CTIA)

CTIA begins by saying that NUSF reforms must be "consistent" with the FCC's CAF Phase II. If what CTIA means is that NUSF should not provide support to price cap carriers to support high cost voice services in areas which are not slated for CAF Phase II broadband support, CTIA is driving much faster down the broadband road than Nebraska has been able to go. The largest amount of NUSF support is not specifically purposed for broadband. Nebraska has not declared "mission accomplished" in its targeting of high-cost support for basic voice services.

CTIA states, "By reforming the NUSF with available federal support in mind, the Commission can ensure that support is efficiently allocated and not duplicated between the NUSF and the CAF, and encourage carriers to take full advantage of available federal support."[18] However, if the state support permits the price cap carrier to commit to the obligations tied to the federal support, thereby making use of federal support which might not otherwise have been taken, the state support will have been used efficiently, and does not constitute wasteful duplication.

CTIA reminds the Commission that it must ensure that state support mechanisms and resulting allocations are competitively neutral. However, competitive neutrality principle is not a one way street and is a principle that could easily be dishonored if the state support is not administered under equal processes consistently applied.

[18] CTIA Initial Comments, p. 4.

SPRINT COMMUNICATIONS COMPANY L.P. ("SPRINT")

Sprint claims that the current Nebraska high-cost support mechanism is "outdated and redundant" in the context of the FCC's reforms. That concern is clearly extreme in comparison to the concerns expressed by the Commission. Rather, the Commission believes that its Support Allocation Methodology "has effectively targeted high-cost support to the highest cost areas of the state for a number of years."[19] Nor does the Commission ask whether NUSF is "redundant." Rather, the Commission asks whether it needs to increase price cap carriers utilization of CAF Phase II by coordinated state support,[20] a concern that is largely the opposite of Sprint's view that state support is redundant of CAF Phase II. Clearly, the Commission is exploring how state support and federal support work together, and does not consider them to be mutually exclusive propositions.

Sprint advocates, "If an ILEC does not take full advantage of CAF funding, the Commission should not allow the ILEC to receive NUSF high-cost support."[21] CenturyLink notes that within the Initial Comments some parties have urged that price cap carriers should not receive state support when they accept CAF Phase II funding, while Sprint urges that price cap carriers should not receive state support when they do not accept CAF Phase II funding. Taken together, these recommendations would wholly exclude price cap carriers from eligibility. The wide swing between these views tells how uncertain might be the results from an extreme hard and fast eligibility exclusion rule applied to price cap carriers. The cautious, moderate approach would be to continue NUSF without special mechanisms for price cap carriers, at least for the time being.

Sprint's position varies from some of the other commenters who would exclude NUSF support from price cap carriers accepting CAF Phase II funding. Sprint would allow for an ILEC to be allowed to demonstrate a specific and identifiable need for NUSF high-cost support above and beyond its CAF

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[19] Order Opening Docket, October 15, 2014, p. 2.
[20] *Id.*
[21] Sprint Initial Comments, pp. 2-3.

Phase II funding.[22] CenturyLink agrees that an ILEC should not be foreclosed from NUSF support, in CAF Phase II support areas and outside of CAF Phase II support areas.

WINDSTREAM NEBRASKA, INC. ("WINDSTREAM")

Windstream asserts that the Commission should consider reforms to the NUSF for price cap carriers, stating that CAF Phase II support is insufficient to support services at all high-cost locations in the state.[23] Windstream further states that reforms to the high cost program should include certainty and predictability; focus funding on high-cost areas not support by CAF Phase II, first to ensure the continued availability of voice service with any remaining support devoted to broadband deployment; and relief from COLR obligations for areas that receive neither federal or state support.[24]

CenturyLink agrees with Windstream on the above mentioned reforms; however, CenturyLink does not believe that a separate NUSF fund for price cap carriers is necessary to achieve these objectives. Certainty and predictability of the fund is a concern for all NUSF recipients, not just the price cap carriers, and can and should be accomplished by stabilizing the size and contributions into the NUSF, which is the subject of another Commission docket, NUSF-100. Similarly, COLR relief would be of interest for both price cap and rate of return carriers and should not be the catalyst for creating a separate fund solely for price cap carriers.

Windstream's second issue, focusing funding on high cost areas and services not supported by CAF Phase II, also does not require the creation of a separate fund. Existing NUSF high-cost support is earmarked towards the maintenance, provision, and upgrading of *voice* service in high cost areas of the state. The Commission has another program, the NUSF-92 broadband grant program, to address the deployment of broadband to unserved and underserved areas of the state. Combined these two programs address the two needs that Windstream cites as reasons for reforming the fund for price cap

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[22] *Id.*, p. 3.
[23] Windstream Initial Comments at 1.
[24] *Id.*, pp. 1-2.

carriers. It is not necessary for the Commission to undertake a long and difficult process of creating a separate NUSF program for price cap carriers to achieve the reforms Windstream believes are needed.

It is true that the amount of CAF Phase II support that price cap carriers are expected to receive will not be sufficient to build out networks capable of providing voice and broadband services to all high cost areas of the state. The CAF Phase II fund was never intended to do so. Indeed, the FCC has recognized that it is too costly to build out broadband capable networks to the very high cost areas, and these areas will receive separate funding from the Remote Areas Fund and will receive service from satellite providers. In addition, there are some high cost census blocks that already receive broadband service, in whole or in part, from an unsubsidized competitor. These census blocks will not be eligible to receive CAF Phase II support. Therefore, it was not the intention of the FCC to provide CAF Phase II support to get to *all* high-cost areas of the state. The federal-state partnership is still necessary to achieve the goals of universal service. The Commission should complement federal funding by filling the gaps left by CAF Phase II, since federal funding for voice services will be removed from tens of thousands of high cost rural Nebraska locations.

CONCLUSION

A separate NUSF mechanism and fund for price cap carriers is not necessary to accomplish NUSF objectives. Devising a separate mechanism and fund at this time based on CAF II is premature, and potentially risks inequitable treatment of a large number of rural, high cost customers.

Dated February 9, 2015

Respectfully submitted on behalf of

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of February, 2015, a true and correct copy of the foregoing was delivered via email and hand-delivery to the following:

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