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 Windstream Nebraska, Inc.

Windstream Nebraska, Inc. ("Windstream") submits these comments in reply to other parties' comments filed in the above-captioned matter on January 14, 2015. Windstream agrees with those commenters that assert Nebraska Universal Service Fund High Cost Program ("State HCF") support in high-cost areas remains critical for ensuring communications services are available to all residents in the state. Windstream also addresses several commenters' claims that any State HCF reform should include elimination of support in areas where unsubsidized competitors are present. As discussed below, Windstream's proposal is responsive to these concerns, because it would not provide support to any locations where an unsubsidized facilities-based provider offers fixed service of 10/1 Mbps or greater. Mobile wireless is not sufficiently substitutable for fixed broadband services, so the Commission should not count the presence of a mobile wireless provider as an unsubsidized competitor for purposes of Windstream's proposed State HCF reform, just as the FCC did not for its new model-based support.

I. Ongoing Need For State Support

Windstream agrees with those commenters that asserted State HCF support for voice services remains essential. Frontier, for example, states that the change in the FCC's approach to federal funding in high cost areas did not invalidate the need for state support and that need was "arguably greater now than in the past."[1] CenturyLink lists continued voice support as one of its guiding principles for any State HCF reform and added that the "shortfall in federal funding makes the provision of NUSF funding more critical to provide rural Nebraskans with comparable service in areas ineligible for CAF Phase II support."[2] While Windstream's recommended path may differ from these commenters, Windstream's proposal for State HCF reform (providing support for voice and broadband in areas ineligible for CAF Phase II support) is in alignment with these commenters' assertions.

In its initial comments, Windstream asserted that any State HCF reforms should take into account the new Connect America Fund ("CAF Phase II") adopted by the Federal Communications Commission ("FCC"). Specifically these reforms should: (a) employ a mechanism that advances certainty and predictability for state USF support, (b) focus state funding on addressing high-cost locations not supported by CAF Phase II so as to ensure continued voice service first, with the remainder devoted to new fixed broadband deployment, and (c) make clear that price cap carriers do not have state COLR obligations as to locations for which those carriers receive neither federal nor state support. With respect to the second of these proposed reforms, Windstream proposed that the Commission focus a fixed percentage allocation of State HCF funding on price cap carriers' rural locations that will not be addressed by CAF Phase II model-based support.[3] This approach should ensure that those rural locations

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[1] Comments of Citizens Telecommunications Company of Nebraska, Inc., d/b/a Frontier, at p. 2.

[2] Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the west d/b/a CenturyLink, at pp. 1, 3.

[3] Specifically, Windstream proposes that beginning in 2016, there be an allocation based on the percentage of 2015's support distribution. See Comments of Windstream at pp. 7 – 8.

would continue to receive needed state support for voice services first, with the Commission directing the price cap carrier to use remaining support to unlock opportunities for fixed broadband services at those locations. As Windstream explains below, these locations would not include any addressed with 10 Mbps or greater service from an unsubsidized competitor.

Additional funding, as proposed by Windstream, is necessary for the continued provision of fixed voice service to all residents in the state. The FCC recognized this potential need when it stated, "We also note that the states have an important role to play in advancing universal service goals. We welcome and encourage states to supplement our federal funding, whether through state universal service funds or other mechanisms." [4] In addition, the FCC noted that gaps in CAF Phase II coverage for rural areas may warrant some level of continued federal legacy support for voice services, because "[a]fter implementation of the offer of model-based support to price cap carriers and the Phase II competitive bidding process, there may be areas of the country that no provider wishes to serve." [5] The extent of such a federal funding mechanism, however, is unknown at this time and nothing specific has been adopted.[6]

II. Unsubsidized Competition

Windstream's reform proposal is responsive to cable commenters' opposition to State HCF funding in areas where unsubsidized competitors are present.[7] Specifically Windstream's

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[4] *CAF Phase II Report and Order*, released December 18, 2014, ¶ 28.

[5] *Connect America Fund et al*, WC Docket Nos. 10-90 et al, 29 FCC Rcd 7051 (released June 10, 2014), ¶ 188.

[6] *Id.* ¶¶ 187 – 190.

[7] For example, cable providers Cox and Charter stated their opposition to state support being used to "overbuild" networks. Cox stated that it "opposes using public funds to overbuild or fund network improvements in service areas where facilities based competitors who do not receive subsidy are present." Comments of Cox, at p. 2. Charter stated that "universal service subsidies generally are unneeded and may even be harmful to the development

reform proposal would not provide funding for locations addressed by an unsubsidized competitor with fixed service of at least 10/1 Mbps.

To the extent that wireless commenters' suggest support should be eliminated in areas where there is an unsubsidized mobile wireless competitor,[8] Windstream disagrees. This would be inconsistent with Nebraska Commission precedent recognizing that fixed and mobile technologies differ in their capabilities and are not fully substitutable services. In particular, in the context of administering the Nebraska Broadband Pilot ("NEBP") program, the Nebraska Commission has found that mobile wireless broadband and fixed broadband are not substitutes for one another. The Commission accepts mobile wireless broadband NEBP projects for deployments that will serve areas already addressed by fixed broadband providers, because mobile and fixed deployments do not produce an overlap of comparable services. [9]

The FCC recently made similar findings when designing its federal universal service reforms. Specifically the FCC found that the performance of mobile wireless service can vary significantly by location, and mobile wireless's "meeting minimum speed and capacity guarantees is likely to prove challenging over larger areas, particularly indoors."[10] Mobile

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of competitive market forces where market forces are anticipated to provide the broadband and voice services that consumers demand." Comments of Charter, at p. 9

[8] Sprint and CTIA expressed opposition to state support in areas served by an unsubsidized competitor. Sprint opined, "If the NUSF high-cost support mechanism is to be brought into alignment with the policy objectives of the federal reforms, it is essential that funding be eliminated in areas where there are unsubsidized providers." Comments of Sprint, at p. 2. Similarly, CTIA stated, "The Commission's reforms should limit state high-cost support to those locations that do not currently have an unsubsidized competitive broadband provider offering service . . . ." Comments of CTIA, at p. 4.

[9] See Application No. NUSF-92, Progression Order No. 2, entered September 3, 2014, pp. 1 – 3.

[10] *Connect America Fund et al*; WC Docket Nos. 10-90 et al, report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*CAF Order*"), at ¶104 (emphasis added).

wireless's inability to meet speed, capacity, and latency requirements for all locations in a relevant area led the FCC to define an "unsubsidized competitor" as "a facilities-based provider of residential terrestrial *fixed* voice and broadband service that does not receive high-cost support."[11]

III. Conclusion

As Windstream noted in its initial comments, customers in some high-cost areas of Nebraska are subject to having federal support for their services removed when CAF Phase II is implemented this year. The Commission should reform the State HCF in a manner consistent with the principles Windstream expressed in its initial comments, whereby going forward State HCF support will be certain and predictable, with targeted voice service receiving state support while new fixed broadband deployment projects will also be funded.

Respectfully submitted this 9th day of February, 2015.

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[11] *Id.* 47 C.F.R. § 54.5.

Certificate of Service

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