

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public)
Service Commission, on its own Motion,)
to consider appropriate modifications to)
the high-cost distribution and reporting)
mechanisms in its Universal Service Fund)
program in light of federal and state)
infrastructure grants.)

Application No. NUSF-139

Nebraska Public Service Commission

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**SECTION II.C, TASKS 3, 4, 5 AND 7 COMMENTS OF THE
NEBRASKA RURAL INDEPENDENT COMPANIES**

The Nebraska Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Order Opening Docket, Seeking Comment and Setting Hearing entered by the Nebraska Public Service Commission (the “Commission”) in this matter on August 29, 2023.² The responses set forth below are limited to the issues presented by the Commission in Section II.C, Tasks 3, 4, 5 and 7 of the *NUSF-139 Order*.³

I. INTRODUCTION

On September 29, 2023, RIC filed Comments in response to the Commission’s inquiries set forth in Section II.A of the *NUSF-139 Order*, and on October 24, 2023, RIC’s witness, Dan

¹ Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis 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, Sodtown Communications, Inc., and Three River Telco.

² *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider appropriate modifications to the high-cost distribution and reporting mechanisms in its Universal Service Fund program in light of federal and state infrastructure grants*, Application No. NUSF-139, Order Opening Docket, Seeking Comment and Setting Hearing (Aug. 29, 2023) (the “*NUSF-139 Order*”).

³ The comment deadline for the *NUSF-139 Order* Section II.C, Tasks 1 through 7 was bifurcated by the Hearing Officer’s Order Bifurcating Schedule for Comments and Extending Comment Deadline in Part entered October 12, 2023.

Davis, presented testimony to the Commission regarding Section II.A inquiries. On November 17, 2023, RIC separately filed Comments in response to the Commission's inquiries set forth in Section II.B and Section II.C, Tasks 1, 2 and 6 of the *NUSF-139 Order*. The instant Comments separately address the Commission's inquiries set forth in Section II.C, Tasks 3, 4, 5 and 7 of the *NUSF-139 Order*.

In the below Comments, RIC will first set forth the topic or question in response to which comments are requested in the *NUSF-139 Order* followed by RIC's responsive comments. (The alphabetical identifications of the Commission's inquiries within Tasks 3, 4, 5 and 7 have been inserted to facilitate internal cross references within these Comments.) RIC appreciates the opportunity to provide these Comments to the Commission and to participate in this important docket regarding the long-term future of the Nebraska Universal Service Fund High Cost Program (the "High Cost Program").

II. PROCEDURAL SUGGESTIONS

Following submission of comments by interested parties on December 22, RIC encourages the Hearing Officer to conduct a prehearing conference pursuant to Rule 003.06 of the Rules of Commission Procedure for the purpose of discussing additional procedural steps that will be useful to the Commission to develop a more robust record for continuation and ultimately completion of its investigation commenced with the entry of the *NUSF-139 Order*. Such additional procedural steps might include (a) submission of reply comments by interested parties, (b) scheduling of one or more public hearings to further develop the record regarding the issues presented in the *NUSF-139 Order*, (c) scheduling one or more workshops to address issues presented in the *NUSF-139 Order* that may be more efficiently addressed in a workshop

setting rather than in a hearing, and (d) submission of post-hearing comments or legal briefs on issues identified by the Commission.

The importance of this proceeding and its impact on Nebraska universal service policies and mechanisms is unquestioned. The outcomes of this docket will establish the long-term policies and practices for the Nebraska High Cost Program, which has arguably been the nation's most significant state universal service program during the past 26 years since its inception. Therefore, in RIC's view, any changes or modifications to current policies and mechanisms should be made only on the basis of a robust record. As such, RIC would welcome the opportunity to participate in a prehearing conference as well as to participate in further procedural aspects of this proceeding that may be established by the Commission.

III. POLICY GUIDELINES

The "Policy Guidelines" set forth in RIC's Comments filed on November 17, 2023 in response to Section II.B ("*Section II.B Comments*") are equally applicable to the following comments on Section II.C, Tasks 3, 4, 5 and 7. RIC incorporates the discussion of the "Policy Guidelines" as found in such previously filed *Section II.B Comments* as if fully set forth herein.

IV. RIC'S RESPONSES TO THE COMMISSION'S SECTION II.C, TASKS 3, 4, 5 AND 7 REQUESTS FOR COMMENTS

3. Portability of NUSF Support

- A. Commenters are invited to suggest specific changes to § 004.02G to update this framework. The Commission seeks comment on whether this rule [§ 004.02G] should be applied and how quality of service should be judged. Should the Commission consider certain quality of service standards other than minimum speed/latency as a predicate of universal service support eligibility where it relates to broadband services? If so, aside from speed and latency requirements, what standards should be considered?*

Response: RIC suggests that the title of Rule § 004.02G be changed to “Eligibility for Support from the High-Cost Program.” Following this revised title, RIC further suggests the insertion of the following sentence:

The Commission shall administer this Rule consistent with the declaration by the Legislature in *Neb. Rev. Stat.* § 86-1502 that it is ‘the policy of this state to ensure that all Nebraskans have access to affordable and reliable communications services in rural high-cost areas, and to ensure the long-term sustainability of infrastructure necessary to preserve such access.’

The importance of sustainability of the network that provides access to broadband and telecommunications services was confirmed by the Legislature’s adoption of the Nebraska Rural Communications Sustainability Act (the “Sustainability Act”) which became effective May 27, 2023.

RIC has previously advocated in its Comments filed herein that the Commission should adopt a universal service goal that explicitly addresses network sustainability.⁴ As cited in such Comments, both federal and Nebraska statutes require the use of universal service support “for the provision, maintenance and upgrading of facilities and services for which the support is intended.”⁵

The Comments filed by Charter FiberLink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (collectively “Charter”) state Charter’s opposition to the “continued use of the NUSF . . . as a mechanism to support broadband infrastructure development or maintenance.”⁶ Charter asserts that once built, broadband capable networks will

⁴ See *Section II.B Comments* at 12-14 (Nov. 17, 2023).

⁵ See 47 U.S.C. § 254a(e) and *Neb. Rev. Stat.* § 86-324(1).

⁶ See Comments of Charter filed in response to the *NUSF-139 Order* at 5 (Nov. 17, 2023).

be self-sustaining and “no ongoing support should be needed or provided.”⁷ These assertions are not supported by any data provided by Charter and are contrary to the statutory provisions cited above as well as reality.

When relevant data is analyzed, an entirely different conclusion is not only supported, but required. The 2023 State Broadband Cost Model (“SBCM”) contains data identifying 39,639 Nebraska locations served by Rate-of-Return carriers (the class of carriers that include the RIC member companies) that have an average operating expense cost per month greater than the \$63.69 customer revenue benchmark (the “Revenue Benchmark”) established by the Federal Communications Commission (“FCC”) based on 25/3 Mbps rates and a 70% take rate ($\$90.98 \times 70\% = \63.69).⁸ In the aggregate, these 39,639 locations have unrecovered annual operating expense costs, net of federal universal service fund (“USF”) support, that exceed the Revenue Benchmark by nearly \$33 million annually according to the SBCM.

This data confirms the lack of factual basis for Charter’s opinion that High Cost Program operating expense support is not needed and should not be provided. The foregoing data confirms the necessity of High Cost Program (and federal USF) operating expense support for the provision, maintenance and upgrading of facilities necessary for provision of broadband (and telecommunications) services.⁹

⁷ *Id.* at 9.

⁸ *Connect America Fund, et al.*, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket Nos. 10-90, 14-58, 09-197, 16-271, RM-11868, FCC 23-60 at para. 70 (rel. July 24, 2023).

⁹ In addition to the foregoing description of the funding gap for *operating expenses* required for the provision, maintenance and upgrading of facilities, in the Nebraska Broadband Office’s *Internet for All Nebraskans Five-Year Action Plan* (Aug 1, 2023) at 83-86 a discussion of the Estimated Cost for Universal Service *deployment costs* in Nebraska is presented which concludes: “Based on these calculations, it is estimated that Nebraska will require \$870,225,369 to complete the deployment for these remaining locations that have not been covered by other

In response to the Commission's above inquiries regarding quality of service, RIC suggests that existing Rule § 004.02G1e be deleted in its entirety and be replaced by the following revised provisions:

Presentation of evidence sufficient to support a finding by the Commission (i) that the telecommunications services proposed by the petitioner satisfy the Commission's quality of service requirements applicable to telecommunications services and (ii) that the broadband services proposed by the petitioner satisfy the quality of service requirements established by the Commission in connection with the Nebraska Broadband Bridge Act, including but not limited to speed and latency requirements.¹⁰

In addition to the foregoing suggestions, the Commission's rulemaking pursuant to *Neb. Rev. Stat.* § 86-1507 should reflect the interrelationship between Rule § 004.02G, *Neb. Rev. Stat.* § 86-134 (which provides the conditions that must be met by an incumbent local exchange carrier that seeks Commission approval to abandon or discontinue service to a specified geographic area), and the provisions of the Sustainability Act.¹¹ These interrelationships and the

funding sources.” (*Id.* at 84) See also *In the Matter of Safeguarding and Securing the Open Internet*, Comments of the Nebraska Public Service Commission, WC Docket No. 23-320 at 1-2 (filed Dec. 12, 2023).

¹⁰ Regarding the authority of the Commission to impose quality of service requirements on broadband services, over 20 years ago the Commission made the following finding which has not been subject to a court challenge: “The Commission’s service quality rules should be codified in a competitively neutral set of rules and regulations. For the present time, the Commission finds that service quality rules are relevant to the services being offered for which state NUSF support is sought.” *In the Matter of the Commission, on its own Motion, seeking to establish a long-term universal service funding mechanism*, Application No. NUSF-26, Progression Order No. 1 (July 23, 2002). See also *id.*, Progression Order No. 5 at 9 (June 29, 2004): “However, the Commission believes it can facilitate access to such [advanced and information] services through its universal service policies and its support of the underlying physical network.” Ultimately, in Application No. NUSF-26, Progression Order No. 7 at 11 the Commission adopted High Cost Program Goal No. 1 stating: “The Commission should establish sufficient specific and predictable state support mechanisms for universal availability of voice telecommunications services *and of broadband service.*” (emphasis added)

¹¹ *Neb. Rev. Stat.* §§ 86-1501 – 86-1507.

need to establish Commission rules for the consistent administration of these statutes and existing regulations underscore the importance of the Legislature’s delegation of authority to the Commission to adopt and promulgate rules and regulations pursuant to Section 86-1507.

In the Commission’s public hearing on Application No. NUSF-131 held on August 2, 2023, representatives of RIC and of the Nebraska Rural Broadband Association (“NRBA”) both recommended that the Commission proceed with its rulemaking pursuant to Section 86-1507 as soon as possible.¹² RIC believes that completion of this rulemaking is critical to assure that no Nebraska consumer is left without a carrier of last resort (“COLR”) to provide essential broadband services and telecommunications services, including 911 emergency services. Indeed, Nebraska law requires this result.

B. If the Commission were to provide for the portability of high cost support, how should such support levels be determined? Should the Commission base ported support on the modeled costs? Should the Commission unfreeze the modeled support levels in price cap areas? What other factors should the Commission consider?

Response: The Commission posed questions similar to the foregoing in *NUSF-131 Progression Order No. 1*.¹³ RIC’s Comments included the following recommendations:

¹² See, *In the Matter of the Nebraska Public Service Commission, on its own Motion, to establish reverse auction procedures and requirements*, Application No. NUSF-131, Progression Order No. 1, public hearing testimony of NRBA witness Sarah Meier and RIC witness Dan Davis (Aug. 2, 2023) (“*NUSF-131 Progression Order No. 1*”). See also *id.*, Progression Order No. 2, Order Revising Reverse Auction Procedures and Issuing 2024 Reverse Auction Schedule, discussion of “Ongoing Support and Carrier of Last Resort” at 8 (Nov. 7, 2023) (“*NUSF-131 Progression Order No. 2*”).

¹³ See *Progression Order No. 1* at 3: “One approach under consideration is to allow for successful bidders in a reverse auction to receive ongoing support, comparable to the support withheld from the incumbent price cap carrier for that area, in order to maintain the network. The Commission seeks comment on whether this approach is feasible, and whether current processes should be revisited. If ongoing support is provided, what factors should be considered when calculating how much ongoing support to provide, if ongoing support is provided for the purpose of ensuring a network will be adequately maintained in the long term?”

As a matter of public policy, RIC believes that NUSF support for ongoing expenses in a given geographic area should only be provided to the COLR for that geographic area. Further, there should only be a single COLR in any given geographic area.

* * * *

*The Commission should use the existing SBCM methodology to determine ongoing expense support amounts until the Commission approves an update to such methodology that reflects reduced broadband deployment needs (due to the increasing percentage of broadband build out in the State), and concomitantly reflects the increased need to allocate NUSF support to the operating expenses associated with the expanded broadband network. (emphasis added)*¹⁴

RIC respectfully submits that the italicized portion of its NUSF-131 Comments set forth above is equally responsive to the instant inquiries by the Commission. RIC notes that in *NUSF-131 Progression Order No. 2*, the Commission found that reserve prices for minimum bidding units in reverse auctions of High Cost Program support “will be increased to two and a half times the modeled costs to serve all locations within the MBU as determined by the State Broadband Cost Model.”¹⁵ This finding supports the Commission’s conclusion in this proceeding that the costs provided by the SBCM are based on data that is now outdated and ultimately requires updating to reflect inflationary and overall cost increase adjustments.¹⁶

If the Commission approves porting of High Cost Program operating expense support, it should do so through use of SBCM methodology updated to account for inflationary factors,

¹⁴ See *id.*, Comments of Nebraska Rural Independent Companies in response to *NUSF-131 Progression Order No. 1* at 10-11 (April 14, 2023). See also Comments of Nebraska Rural Independent Companies in response to *NUSF-139 Order*, Section II.C, Tasks 1, 2 and 6 (the “*Tasks 1, 2 and 6 Comments*”) at 8-12 (Nov. 17, 2023).

¹⁵ See *NUSF-131 Progression Order No. 2* at 6.

¹⁶ The Commission agrees, stating in Application No. NUSF-139, Progression Order No. 1, Findings and Conclusions Order and Order Commencing Challenge Process at footnote 13: “We recognize that if we continue to utilize the SBCM cost model, it will need to be updated to reflect real world costs as they exist today.”

adjusted for increased costs of providing service in rural areas,¹⁷ and with elimination of any existing artificial percentage allocation factor such as the current 10% budget factor for operating expense High Cost Program support for Price Cap carrier locations.

C. Should competitive carriers be required to file the same financial reports and be subject to the same audit requirements to demonstrate levels of investment, the need for support, and the use of support? What other obligations, if any, of current high-cost recipients should be imposed on competitive carriers seeking ongoing support? Should support be based upon the services and speeds advertised to consumers? In the alternative, should ongoing support be based upon verified speed test demonstrations? As the NUSF Act requires the Commission to ensure affordable and reasonably comparable access to telecommunications services in rural areas what additional standards to the voice, 911 capability, or TRS compatible framework should be made? What existing standards should be eliminated? How should support levels change over the life of the network to ensure that networks are being sufficiently maintained and elements replaced to keep pace with the changing environment?

Response: As a general matter, RIC observes that any carrier (incumbent or otherwise) that seeks to receive support from the High Cost Program should be subject to all of the regulatory requirements applicable to any incumbent local exchange carrier (“ILEC”) designated as a Nebraska Eligible Telecommunications Carrier (“NETC”). This means that prior to a carrier’s eligibility to receive High Cost Program support, the carrier must apply for and receive Commission designation as an NETC and thereby shall be subject to all regulatory requirements applicable to all other NETCs, including financial reporting and audits, speed testing and other quality of service requirements associated with the High Cost Program.

D. Should the Commission likewise require NUSF recipients to demonstrate compliance and/or file such [cybersecurity and supply chain risk management] plans with the Commission as a condition of receipt of ongoing support? Why or why not?

Response: In RIC’s *Section II.B Comments* RIC recommended that the Commission adopt cybersecurity of telecommunications and broadband networks as an additional goal for the High

¹⁷ See *Tasks 1, 2 and 6 Comments* at 5 and 8-12.

Cost Program.¹⁸ RIC reaffirms that adoption of a Commission-identified cybersecurity plan by recipients of High Cost Program support should be a requirement placed on all recipients of High Cost Program operating expense support, and recommends that costs of compliance with cybersecurity obligations should be eligible for NUSF reimbursement.

4. Carrier of Last Resort Obligations and Ensuring Universal Access to Quality Services

- A. The Commission seeks comment on whether to modify its existing ETC framework to include additional metrics where carriers seeking support can opt-in to certain affordability and network quality requirements designed for a broadband centric environment. Should these requirements mirror those that have been established in the NBBP and other grant programs? Should the Commission consider other requirements? If so, please explain.*

Response: Eligible telecommunications carrier (“ETC”) designation pursuant to federal law is a prerequisite for a carrier to receive federal USF support.¹⁹ However, ETC designation is not required in connection with certain federal broadband build out grant programs.²⁰

NETC designation under Nebraska law and Commission Rules is a prerequisite for a carrier to receive High Cost Program support.²¹ Affordability and quality of services are not optional under the Nebraska Telecommunications Universal Service Fund Act (the “Act”) as Section 86-324(1) provides:

The Nebraska Telecommunications Universal Service Fund is hereby created. The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with

¹⁸ See Section II.B Comments at 14-15 (Nov. 17, 2023).

¹⁹ 47 U.S.C. § 254(e).

²⁰ For example, ETC status is not required of an “Eligible Entity” or of a “Subgrantee/Subrecipient” pursuant to the terms of the Notice of Funding Opportunity issued in connection with the Broadband Equity, Access, and Deployment Program (“BEAD”). See Broadband Equity, Access, and Deployment (BEAD) Program | Internet for All.

²¹ See Neb. Rev. Stat. §§ 86-323(5) and 86-324(1) and Commission Rule 004.01A.

the policies set forth in the Nebraska Telecommunications Universal Service Fund Act.

Among the “policies” set forth in the Act that are legislatively mandated are:

- (1) Quality telecommunications and information services should be available at just, reasonable, and affordable rates;
- (2) Access to advanced telecommunications and information services should be provided in all regions of the state; and
- (3) Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;²²

These are not “opt-in” requirements of the Act, but rather apply to all entities that receive High Cost Program support. The Commission is required to maintain COLR/NETC obligations for High Cost Program support recipients and this principle should be a cornerstone for this proceeding.

B. Now that grant determinations for infrastructure build out support may be made on a location basis, the Commission seeks comment on how those grant decisions should impact the ETC designation areas and other carrier of last resort obligations. The Commission seeks comments on whether to modify its definition of supported services, and if so, what deviations from the FCC’s definition of supported services should the Commission consider? If certain requirements attach as a prerequisite to receipt of ongoing NUSF support, such as certain minimum broadband speed standards, shouldn’t they also be defined as “supported services”?

Response: To RIC’s knowledge, ETC and NETC designations are in place for all customers served throughout carriers’ entire study areas. These designations exist in order to establish the rights and responsibilities of support recipients *in the contexts of both federal USF programs and the Nebraska High Cost Program*. The broadband build out *grant programs* referenced in the

²² *Neb. Rev. Stat. § 86-323(1)-(3).*

foregoing Task 4, Section A inquiries exist separate and apart from the requirements applicable to *universal service programs*. Such grant programs are the products of Congressional enactments, *i.e.*, ARPA, CPF and BEAD, and Nebraska legislative enactments, *i.e.*, NBBP. The importance of this distinction was also discussed in RIC’s response to the Task 4, Section A inquiries above.²³

Certainly, Nebraska-specific broadband build out grants have been made and will be made to recipients other than an ILEC ETC/NETC. Nevertheless, the ILEC must continue to hold ETC and NETC designations and COLR obligations for the locations in question until such time that the Commission, following presentation of evidence at a hearing, finds that the ILEC may be released from such COLR obligations and such COLR obligations are transferred to another provider.²⁴ In the event that the broadband build out grant recipient seeks ETC or NETC designation by the Commission, then the portability considerations discussed by RIC in connection with Task 3 above will be relevant.²⁵

In response to the Commission’s inquiry as to the minimum area for ETC/NETC designation for a non-ILEC broadband provider in a Price Cap carrier’s service area, RIC’s answer is the *census block level* should be the minimum designation area. With respect to the “service area” for a Rural Telephone Company²⁶ such as each of the RIC members classified by the Commission as Rate-of-Return ETC/NETCs, a proceeding addressing a reduction in a given

²³ *See supra* at 10.

²⁴ *See Neb. Rev. Stat.* § 86-134.

²⁵ *See supra* at 7-8.

²⁶ *See* 47 U.S.C. § 153(44).

designated area from the rural LEC's "study area" may be considered.²⁷ However, for the reasons previously provided, RIC respectfully submits that High Cost Program support for operating expenses should only be provided to a single COLR for a specified geographic area.²⁸

Similarly, as stated above, all NETC requirements are applicable to all recipients of High Cost Program support – both ILECs and competitive carriers. Of course, this means that any non-ILEC that seeks High Cost Program support must satisfy all of the requirements of Commission Rule § 004.02 relating to voice services as well as all quality of service requirements applicable to broadband services.²⁹ Consistent with High Cost Program requirements, the broadband services requirements for NETC designation should include provision of minimum broadband speeds 100/20 Mbps to all locations that receive High Cost Program support.³⁰

C. Further, the Commission solicits input on the minimum geographic areas used to transition carrier ETC obligations where appropriate. Are these concerns [regarding "cream-skimming" and serving only areas with high amounts of portable NUSF support] the Commission should consider when determining ETC designation areas?

Response: As stated above, RIC favors establishing the census block as the minimum geographic area for a Price Cap carrier area when transitioning COLR obligations and NETC

²⁷ Under 47 U.S.C. § 214(e)(5) the term "service area" "means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms." Moreover, RIC notes that in "the case of an area served by a rural telephone company," the service area is the rural LEC's "study area" "unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company." *Id.*

²⁸ *See supra* at 7-8.

²⁹ *See supra* at 3-4.

³⁰ *See Neb. Rev. Stat. § 86-330(4).*

eligibility for High Cost Program support when and if applicable. Establishing this standard will address the possibility of so-called “cherry-picking” of specific customers that could occur with a carrier seeking ETC and/or NETC designations in selected locations.³¹

D. We seek comment on the potential for a state/federal mismatch between state and federal ETC designation areas triggering the eligibility for separate universal service support mechanisms.

Response: 47 U.S.C. § 214(e)(2) addresses requirements for ETC designation and provides:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier *for a service area designated by the State commission.* (emphasis added)

As noted in the statute, Congress delegated to the Commission the responsibility to determine the service area in Nebraska to be designated for a carrier seeking ETC status. Similarly, Commission Rule 004.01A that addresses designation of eligibility for NETC status provides that “[o]nly a telecommunications company explicitly designated as an NETC by the Commission for the expressly stated purpose of receiving funding from the NUSF by the Commission order shall be eligible to receive NUSF funding.”

It is within the Commission’s discretion to establish the extent of the service area in which an applicant for NETC status will be eligible to receive NUSF funding. Thus, federal ETC designations (subject to 47 U.S.C. §§ 214(e)(2)³² and 214(e)(5)) and Nebraska ETC designations and establishment of the service areas for such designations are subject to

³¹ Since RIC perceives that this risk is likely to be more prevalent in areas served by Price Cap carriers, the additional steps required by 47 U.S.C. § 214(e)(5) vis-a-vis a rural ETC’/NETCs’ service area, *i.e.*, the “study area,” may not be triggered. *See* fn. 27 *supra*.

³² *See* 47 U.S.C. § 214(e)(2) (“ . . . Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.”).

Commission decision-making. As such, the Commission should be readily able to avoid any mismatch between federal and state ETC and NETC area designations.

E. How do we ensure that consumers are adequately protected in these instances? There are also some instances where state commissions have been petitioned to involuntarily revoke an ETC designation. Are there some instances where revocation of ETC designation is appropriate? Please explain.

Response: As indicated in the response to Task 4, Section D above, the Commission has authority to establish both ETC and NETC status, including actions that, subject to considerations of due process, could address voluntary and involuntary revocations of ETC or NETC designations and the consumer impacts of any such action. In addressing any such issues, the Commission should be well positioned to protect consumer interests.

F. We seek comment on the transition of ETC designation areas in cases where a provider seeks ongoing NUSF support. How can the Commission ensure there is no mismatch between the state and federal universal service support mechanisms? Is this a concern only if the FCC establishes a replacement high-cost support mechanism in price cap carrier service areas?

Response: Whether the Commission receives an application by a carrier for ETC or NETC designation, RIC respectfully submits that the Commission retains the decisional flexibility to require presentation of evidence from the entity that is seeking such designation to demonstrate that there will be no mismatch of federal and Nebraska support mechanisms in the event that ETC and/or NETC status is granted by the Commission. Such designation can then be evaluated in the proceeding and modified if necessary to avoid any mismatch. RIC recognizes that such designations will, at least initially, need to be made on a case-by-case basis until standards can be established based on the Commission's experience in this area.

G. The Commission also seeks comment on revising the distribution mechanism where broadband grant support has been awarded and the competitive carrier does not wish to take on ETC or carrier of last resort obligations. Should the Commission remove those locations from the support area of an incumbent carrier not receiving grant support even though the incumbent carrier still has an obligation to serve? Given that

project areas may be based upon areas other than an exchange or a census block basis, how should the Commission consider calculation of high-cost support for the carrier continuing to be the ETC or carrier of last resort?

Response: Designation as an ETC is a prerequisite for a carrier to receive federal USF support. Similarly, designation as an NETC is a prerequisite for a carrier to receive High Cost Program support. As stated above, COLR responsibilities follow receipt of universal service fund support.³³

As provided in Section 86-1506(1) and (2), the Commission may not require a recipient of broadband grant support to accept High Cost Program support, nor may the Commission impose ETC or COLR responsibilities on a recipient of broadband grant support. As such, and because there must be a COLR serving all Nebraska locations in order to ensure the availability of voice services, including 911 service, distribution of High Cost Program support to the existing COLR must continue if the “competitive” carrier receiving broadband build out grant support refuses to accept ETC/NETC designations and COLR responsibilities. To do otherwise would likely leave the consumers at such locations without necessary voice services, including 911 emergency service. Under the foregoing circumstances, the ILEC COLR should continue to receive High Cost Program operating expense support for all locations in the ILEC’s service area, including the locations receiving broadband build out support from one or more grant programs.

5. Ensuring Affordability and Reasonable Comparability of Service

A. Should the Commission consider applying an affordability benchmark range much like what it has applied in the past for telecommunications? If so, how should that range be determined? Should the Commission consider the federal benchmarks developed by the FCC for the Urban Rate Survey? Should the Commission utilize state-specific data?

³³ See *supra* at 7-8 and 12.

Response: While the Commission has imposed broadband rate requirements in connection with the NBBP and CPF broadband build out grant programs, the Commission has not to date set retail broadband rates for NETCs in connection with the provision of High Cost Program operating expense support. RIC respectfully submits that prescription of retail broadband rates to be charged by recipients of High Cost Program operating expense support is not within the Commission's jurisdiction.

B. Additionally, the Commission seeks comment on the sufficiency of the current programs to ensure affordability for low-income consumers. Should the Commission consider participation in the ACP program, or any replacement program established by Congress, as a requirement for high-cost universal service fund support? Why or why not? If a high-cost recipient does not participate in the ACP program should the Commission require the provider to make a comparably affordable rate plan available to consumers? Why or why not? As the ACP is a temporary program, are there reforms the Commission should undertake with respect to its NTAP Program to supplement or replace the ACP program discount? What are other ways in which the Commission can ensure that the services being supported in rural areas are affordable and reasonably comparable to services offered in urban areas?

Response: The Legislature has authorized the Commission to establish the Nebraska Telephone Assistance Program (NTAP").³⁴ However, support provided to consumers from NTAP "shall be specifically targeted to maintain affordable rates for residential basic local exchange services supported by federal and state universal service mechanisms." Absent new legislation to authorize use of funds from NTAP to support affordable rates for broadband services, the Commission lacks authority to utilize NTAP to support affordable broadband services.

In RIC's *Section II.B Comments* RIC recommended that the Commission should collaborate with other state and federal agencies in its efforts to promote affordable broadband services.³⁵ RIC reaffirms this advocacy regarding broadband affordability and the activities that

³⁴ *Neb. Rev. Stat.* § 86-329.

³⁵ *See Section II.B Comments* at 9-10 (Nov. 17, 2023).

the Commission may choose to pursue that will advance the goal of providing affordable telecommunications and broadband services to all Nebraskans.

C. In order to ensure supported services offered in rural areas are reasonably comparable with services offered in urban areas, the Commission seeks comment on whether to require certain broadband speeds be delivered as evidenced by filing of speed test data as a condition of receiving model-based support. If so, the Commission solicits comment on the timing and reporting of speed test results. The Commission seeks comment on the minimum thresholds with which to determine carriers eligible for ongoing high-cost support. The Commission further seeks comment on other ways to measure the reasonable comparability of services offered.

Response: Pursuant to existing Nebraska statutes, High Cost Program support shall not be withheld from an NETC

. . . for infrastructure found by the commission to be capable of reliably providing broadband service at a minimum download speed of one hundred megabits per second and a minimum upload speed of twenty megabits per second that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.³⁶

By virtue of this statutory provision, the Legislature has established the reasonable comparability standard for broadband services in rural areas and the eligibility of the NETC providing such services to receive High Cost Program support, including operating expense support.

Regarding the foregoing inquiries relating to broadband speeds, the Commission has already determined the standards for verification of broadband service provider coverage and speed data in Application No. NUSF-133.³⁷ Therein, the Commission found that the speed testing requirements established in the *Speed Test Order* “will apply prospectively to all entities

³⁶ See *Neb. Rev. Stat.* § 86-330(4).

³⁷ *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement standards for the verification of broadband service provider coverage and speed data*, Application No. NUSF-133, Order Setting Speed Test Requirements (Nov. 8, 2022) (the “*Speed Test Order*”).

receiving ongoing high-cost support” from the High Cost Program. The Commission further found that broadband build out grant programs which it administers should be subject to such speed testing requirements.³⁸ The *Speed Test Order* also established testing intervals, latency requirements, the number of locations to be tested and reporting of test results. In RIC’s view, these findings adequately resolve the foregoing inquiries, and in RIC’s view, there is no need for the Commission to revisit these issues in the instant docket.

7. Streamlining the Accountability Framework

- A. We seek comment on ways to make the reporting requirements more relevant for the broadband-centric environment while streamlining the requirements to eliminate certain filing requirements which may be no longer necessary.*

Response: The principal reporting forms currently in use in connection with the High Cost Program are the NUSF EARN Form, the Form M Annual Report, the NUSF 25/66 Report, and the Annual Speed Testing Form. From time to time the Commission has issued orders requesting comments regarding the advisability of the continued use of an earnings test in the High Cost Program. In Application No. NUSF-108 the Commission undertook an investigation of possible revisions to reporting requirements applicable to the High Cost Program and revisions to the NUSF EARN form.³⁹ RIC submitted multiple sets of comments to the Commission in the NUSF-108 docket. In RIC’s responses to the following Task 7 inquiries RIC will provide suggestions regarding possible modifications to the NUSF EARN Report and for modifications or discontinuation of other periodic reports required by the Commission.

³⁸ *Id.* at 2.

³⁹ *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, Order Opening Docket and Seeking Comment (Sept. 27, 2016).

B. Given that broadband services are largely unregulated, we seek comment on updates to the NUSF-EARN Form or replacement filing requirements which will be designed to ensure that NUSF support is set at appropriate levels and is utilized in the manner which achieves the Commission's updated goals.

Response: ETCs electing Enhanced ACAM federal support ("E-ACAM") will begin to receive payment of such support in January 2024. Although these electing ETCs have commitments to build out 100% of the locations in their service areas to 100/20 Mbps, the capital investments to accomplish such build out will lag behind the receipt of support, and depreciation costs associated with such investments will lag even further behind. Therefore, the Commission's current requirement to report federal USF support, including E-ACAM support, on the NUSF EARN Form in the year of receipt will create a mismatch in the recognition of federal USF support as revenue with depreciation costs created by investment of such support as expense. Furthermore, even if capital investments are equivalent to E-ACAM support received in a particular reporting period, the return component plus the depreciation expense component applicable to these capital investments will nonetheless be less than the E-ACAM support recognized as revenue received (depreciable lives on the investments far exceed the duration of E-ACAM support payments).

The Commission should expressly recognize this mismatch of revenues and expenses for NUSF EARN Form reporting purposes and institute appropriate line-item adjustments to the EARN Form that will eliminate the overearnings that will otherwise result from the mismatch. A possible alternative to these recommended adjustments would be for the Commission to approve an exemption from NUSF EARN Form submissions during the FCC's 5-year period during which E-ACAM support is provided to E-ACAM-electing ETCs.⁴⁰

⁴⁰ The Commission has noted that one of the rationales for the adoption of the NUSF EARN Form by the Commission was to incentivize capital investments in broadband-capable networks

Addressing the mismatches outlined herein is, in RIC's view, one such area in which a workshop could be beneficial in fashioning NUSF EARN Form adjustments, and RIC encourages the Commission to undertake such efforts.

C. Should the Commission revise its rules regarding carrier financial accounting or revise the level of accounting to be maintained by the carriers through revising its forms filed with the Commission such as the annual report Form M or the NUSF-EARN form?

Response: No. RIC believes that continuation of the current Form M reporting requirements is reasonable and is not unduly burdensome for carrier compliance. Please refer to the foregoing comments regarding continued use of the NUSF EARN Form.

D. How can the Commission better target the information it collects to ensure accountability with ongoing NUSF high-cost support and broadband grant support? The Commission invites interested parties to offer specific proposals for it to consider.

Response: While RIC reserves the right to address specific proposals addressing this issue (such as through the additional procedural steps suggested in Section II of these Comments), RIC believes that the current level of reporting in connection with High Cost Program support is adequate to ensure accountability for the use of High Cost Program support. Further, each broadband grant program administered by the Commission has been designed with sufficient accountability protections, including but not limited to speed testing of built out networks, as integral elements of such program.

E. Should the Commission require the filing of rate comparability data similar to the data filed in the NBBP and CPF grant programs? If so, how should such information be utilized to determine the effectiveness of the NUSF support?

which investments would, in turn, increase an NETC's net investment, the required return on this investment, and the resulting depreciation expense. Thus, the NETC's earnings as determined from the NUSF EARN Form would be decreased. See *In the Matter of the Commission, on its own Motion, seeking to establish a long-term universal service funding mechanism*, Application No. NUSF-26, Progression Order No. 5 at 16 (June 29, 2004) This incentivization is not relevant or needed for E-ACAM-electing ETCs that are mandated, as a part of such election, to build out 100% of locations in the ETC's service area.

Response: As a general matter, RIC opposes Commission imposition of specific rates or ranges of rates on retail broadband services provided in Nebraska as a condition of receiving ongoing NUSF support.⁴¹ To the extent the Commission seeks information regarding reasonable rate comparability benchmarks for broadband services, RIC recommends that the Commission reference the FCC’s most current data which sets forth the results of the urban rate benchmark for fixed voice and broadband services.⁴²

F. Should the Commission consider benchmarks or consider a range of affordability? How should the Commission’s affordability determination evolve as broadband speeds and consumer demands change?

Response: As stated above, RIC does not believe that the Commission has the authority in its administration of the High Cost Program to set retail rates or affordability benchmarks for broadband services. NETCs may participate in the FCC’s Affordable Connectivity Program (“ACP”) to offset costs for consumers to access broadband and voice services.

A draft of the Nebraska Digital Opportunities Plan has been recently released for public comment.⁴³ Over 200 pages in length, this Plan presents detailed proposals regarding broadband adoption and affordability. RIC suggests that any actions by the Commission focusing on broadband affordability should be coordinated with the Nebraska Digital Opportunities Plan when it is finalized.

G. Further, we seek comment on whether the Commission should adopt a more specific but streamlined NUSF-25/66 reporting mechanism which is based on location data. Should the Commission revise its NUSF-25/66 filing requirements to include census block level reporting of investments?

⁴¹ See RIC’s response to Task 5, Section A at 16 *supra*.

⁴² <https://www.fcc.gov/document/2023-urban-rate-survey-posting-data-and-minimum-usage-allowance> .

⁴³ https://nitc.nebraska.gov/digital_equity/DraftNebDigitalOpportunities.pdf

Response: The Commission should not adopt a more specific NUSF-25/66 reporting mechanism based on location data. Companies do not track investment and expenses by location; thus, requiring allocation to this level of detail would likely serve no useful end. The purpose for the NUSF-25/66 Report has not changed and is to verify whether universal service support was used for its intended purpose pursuant to 47 U.S.C. § 254(e) and whether High Cost Program support was used for its intended purpose pursuant to *Neb. Rev. Stat.* § 86-324 in the preceding calendar year and will be used for its intended purpose in the following calendar year.

H. In the alternative, given the fact that the FCC is now mapping location data and that broadband grants are awarded based on locations to be served, should the Commission revise its NUSF-25/66 certification requirements to collect historic and prospective investment based at the location level? Why or why not?

Response: Changes to these certification requirements are not necessary. The FCC fabric map's purpose is to demonstrate broadband speeds and technology delivered to each location and by which provider. It is not intended for accounting purposes to report investment and expense by location.

I. Should the Commission's NUSF-25/66 data collection and analysis be tailored to the type of support each carrier receives?

Response: RIC believes that the NUSF-25/66 reporting requirements serve the purposes and requirements of the relevant federal and state statutes cited above. Changes to the data reporting and analysis required by the Commission's past orders entered in NUSF-25/66 are not needed.

J. Finally, the Commission seeks comment on whether to revise or eliminate the use of the NUSF-64 expense cap model.

Response: To place this response in context, RIC notes the following history. The Commission opened Application No. NUSF-64 in December 2006 to determine whether the Commission should develop expense caps in the earnings calculation for High Cost Program support. The Commission had proposed a methodology to estimate a threshold for allowable total cost that

could be included on an NETC's NUSF EARN Form. In an order adopted in June 2008, the Commission approved an expense cap model. NETCs with expense levels that exceeded the cap calculated by the Commission were to be notified by the Commission and were provided an opportunity to submit a written explanation detailing why the NETC's expenses exceeded the upper boundary of the model and why the expenses were reasonable.

With this background in mind, RIC is unaware of any NETC that has exceeded the cap or that has been notified by the Commission that its expense levels exceed the cap. RIC therefore recommends eliminating the use of the NUSF-64 expenses cap model to the extent it is still in use.

K. Are there other mechanisms the Commission should adopt which are better aligned to ensure that all NUSF ongoing maintenance and operational support is being used to support the network assets and operational expenses in Nebraska high-cost areas. What additional enforcement mechanisms should the Commission consider when it determines that NUSF support has not been used for its intended purpose? Commenters are invited to file specific proposals for consideration.

Response: RIC has no suggestions to offer at the current time. RIC will continue to give consideration to future suggestions responsive to these inquiries.

V. CONCLUSION

As stated above, the Nebraska Rural Independent Companies appreciate the opportunity to provide these Comments in response to Section II.C, Tasks 3, 4, 5 and 7 of the *NUSF-139 Order*. RIC looks forward to further participation in this proceeding.

Dated: December 22, 2023.

Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis 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, Sodtown Communications, Inc. and Three River Telco (the "Rural Independent Companies")

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of December 2023, an electronic copy of the foregoing pleading was delivered to the Nebraska Public Service Commission at psc.nusf@nebraska.gov and was served electronically on the parties to this proceeding.

Paul M. Schudel
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