

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  <b>COMMENTS OF THE RURAL                  TELECOMMUNICATIONS                  COALITION OF NEBRASKA</b>
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**INTRODUCTION**

The Rural Telecommunications Coalition of Nebraska (“RTCN”)<sup>1</sup>, by and through its undersigned counsel of record, submits these Comments (“Comments”) in response to the Order Opening Docket and Seeking Comment (the “Order”) entered by the Nebraska Public Service Commission (the “Commission”) on August 29, 2023 in the above-captioned matter. As requested, these Comments relate only to those issues set forth in Section II.C(3), (4), (5) and (7) of the Order.<sup>2</sup>

**II.C(3)      PORTABILITY OF NUSF SUPPORT**

Section II.C(3) of the Order poses a variety of interrelated questions regarding the transfer (or portability) of high cost support in a currently supported area. Many of the inquiries are posed from the hypothetical scenario of “[i]f the Commission were to provide for the portability of high-cost support”<sup>3</sup> – how would the Commission accomplish that task?

As the Order also correctly notes, the Commission’s rules currently provide a mechanism for competitive carriers to seek a transition of both the high-cost support and the carrier of last

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<sup>1</sup> For purposes of this proceeding, the RTCN consists of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications; Benkelman Telephone Company, Inc., Cozad Telephone Company, Hartman Telephone Exchanges, Inc., Diller Telephone Company, Southeast Nebraska Communications, Inc., Pierce Telephone Company, and Wauneta Telephone Company.

<sup>2</sup> *Order Bifurcating Schedule for Comments*, Docket No. NUSF-139 dated October 12, 2023.

<sup>3</sup> *Order* at page 16.

resort (COLR) obligations in a supported area.<sup>4</sup> Despite the existence of this mechanism in the Commission’s rules for nearly two decades, to date no competitive carrier has sought to “port” high-cost support through the established process. Given this fact, we find it difficult to comment on whether the Commission’s current process for “porting” or transitioning high-cost support requires adjustment.

Further, the Commission poses a variety of inquiries related to the obligations which should be placed on any competitive carrier to which high-cost support is “ported” or transitioned in a currently supported area. In response, we generally refer the Commission to RTCN’s earlier input regarding reforms to the high-cost distribution methodology. Our position is that recipients should be entitled to a base level of ongoing support from the NUSF in exchange for meeting the following universal service benchmarks and requirements:

- Provision of 100/100 service to all locations supported by NUSF ongoing support by a fixed future date
- Verification of the above requirement through the Commission’s current speed testing protocol
- Participation in the federal ACP program (or a comparable program) to ensure affordability of service offerings
- Maintenance of carrier of last resort (COLR) obligations
- Cybersecurity protections consistent with those required of carriers at the federal level

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<sup>4</sup> Title 291, Neb. Admin. Code, Chapter 10, Sec. 004.02

**II.C(4) CARRIER OF LAST RESORT OBLIGATIONS AND ENSURING**  
**UNIVERSAL ACCESS TO QUALITY SERVICES**

RTCN supports the concept of modifying the Commission’s current eligible telecommunications carrier (ETC) framework to include obligations related affordability, speed, and other universal service goals. Specifically, the RTCN would support inclusion of all of the above mentioned benchmarks and requirements for designation as an ETC – and eligibility for receipt of support from the NUSF.

Currently, ETCs are required to provide NUSF supported services throughout their designated areas – typically the recipient’s study area. The Order suggests that the Commission may consider changes to the minimum geographic service obligations of ETCs. In response, we caution the Commission to guard against changes that would encourage “cherry picking” or “cream skimming” behavior on the part of competitive providers.

As the Commission is well-aware, ongoing support serves as an important means of ensuring that incumbent providers have the certain and stable funding necessary to maintain existing networks and invest in future upgrades for those networks. Ongoing support also serves the important function of allowing incumbent providers to provide supported services through their exchanges, and not just in low-cost areas where competitive providers can enter the market without the need for subsidized deployment. Incumbent providers take on the obligation to serve all customers regardless of the cost to serve.

If ongoing support were to transition to competitive providers that only “cherry pick” low-cost locations, the resulting ongoing support needs of the incumbent provider to serve higher-cost locations throughout its exchange will increase. In doing so, the Commission will

increase the total amount of ongoing support required from the NUSF fund to provide universal service to a particular community, exchange, or study area.

**II.C(5)      ENSURING AFFORDABILITY AND REASONABLE COMPARABILITY**  
**OF SERVICE**

Because access to affordable services is a key tenet of the Nebraska Telecommunications Universal Service Fund Act, the RTCN believes that recipients of high-cost support should participate in programs that ensure the affordability of both voice and broadband services for low-income consumers.<sup>5</sup> As the Order points out, the current combination of Lifeline / Nebraska Telephone Assistance Program (NTAP) discounts are likely insufficient if affordability requirements are extended to broadband services in addition to voice offerings.

Due to their participation in grant programs like the Nebraska Broadband Bridge Program and the Capital Projects Fund, or as a result of an election for support under the federal Enhanced ACAM program, all RTCN members currently participate in the Affordable Connectivity Program (“ACP”). On a short term basis, we believe that the Commission may address its concerns regarding the affordability of broadband services by requiring participation in the ACP as a condition of receiving high-cost universal service fund support. However, as the Commission is aware, the ACP is a temporary program currently lacking long-term funding at the federal level. Uncertainty exists regarding the long-term viability of the ACP. If ACP participation is required for high-cost NUSF support, the Commission should clarify that this requirement applies only as long as the program exists and is fully funded.

The Order also, as a means of ensuring comparability between services offered in urban and rural areas, asks whether speed testing should be required “as a condition of receiving” high-

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<sup>5</sup> See Neb. Rev. Stat. 86-323(1)(“quality telecommunications and information services should be available at just, reasonable and affordable rates”)

cost support from the NUSF. In earlier Comments, the RTCN has advocated for establishment of a goal of access to service at speeds of 100/100 statewide. We believe that the Commission should set this goal and require that recipients of high-cost support demonstrate through speed testing that supported networks can deliver such speeds.

## **II.C(7) STREAMLINING THE ACCOUNTABILITY FRAMEWORK**

In response to the Commission's inquiries about reforming the accountability framework and requirements, we begin by asking the following question: For what does the Commission wish to hold high-cost support recipients accountable? The Commission's current cost and investment based framework holds carriers receiving NUSF support accountable for spending and is premised around incentivizing investment through control of the carrier's earnings. In other words, much focus is placed on *how* a carrier runs their business, and not the results achieved from those business operations in terms of consumer access and the accomplishment of universal service goals. We suggest here that the Commission consider refocusing its accountability framework from the means through which high-cost recipients accomplish goals to *whether* those goals are actually being accomplished. In short, we believe the best regulatory scheme is one that rewards and incentivizes results.

The Commission's current accountability framework, based around the EARN form, measures a high-cost recipient's cost of service and level of investment. The premise is that these two metrics will ensure providers are devoting support they receive to the desired investments and not earning in excess of an established rate of return. By focusing on a carrier's earnings, the current framework attempts to determine "need" by denying or reducing support to carriers that are in an overearning situation. However, as earlier RTCN Comments pointed out in extensive detail – carriers are seeing their NUSF ongoing support levels decrease as a result of

“overearning” for a variety of reasons that have nothing to do with the carrier’s “need” for ongoing support to ensure the sustainability of networks. In that sense, because the Commission’s current oversight and accountability framework is based around the concept that a carrier that is “overearning” on the EARN form has a reduced “need” for ongoing support to fulfill its universal service obligations – the framework is broken and requires a significant overhaul. The first step in such an overhaul would be to simply discontinue the use of the NUSF EARN form altogether.

In a different vein, the Order also asks whether “it is more appropriate to **target the Commission’s oversight and reporting mechanisms in a way that targets the end goal** of broadband affordability and network sustainability.” (emphasis supplied) We believe this is the correct question to ask, and the RTCN would answer in the affirmative not only with respect to issues of affordability and sustainability – but as to any other issues as well. The RTCN has consistently advocated in this proceeding for a new system of accountability that would tie support to *the accomplishment of goals and benchmarks*.

We agree that the Commission must “ensure that NUSF support is being used for its intended purpose.” As the Commission’s Order notes, high-cost support recipients currently must file an annual report with detailed information regarding the recipient’s past investments toward providing, maintaining, and upgrading facilities along with a prospective schedule of planned investments toward those purposes over the next year. If the Commission feels this information does not sufficiently provide a roadmap of how support will be utilized, it could be expanded to include longer term investment plans and needs, along with updated anticipated cost information for those investments. More importantly, the report should be more specifically geared to demonstrate how those investments will permit the recipient to accomplish the goals

and benchmarks established by the Commission for service quality, speed, affordability, sustainability, cybersecurity, and the like.

DATED: December 22, 2023

**RURAL TELECOMMUNICATIONS  
COALITION OF NEBRASKA**

**Arapahoe Telephone Company d/b/a  
ATC Communications, Benkelman  
Telephone Company, Inc., Cozad  
Telephone Company, Diller Telephone  
Company, Hartman Telephone  
Exchanges, Inc., Southeast Nebraska  
Communications, Inc., Pierce Telephone  
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