

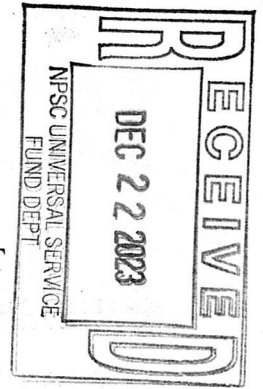
BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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

ORDER OPENING DOCKET
SEEKING COMMENT AND
SETTING HEARING

Entered: August 29, 2023



SECTION II.C ITEMS 3, 4, 5, AND 7 COMMENTS OF WINDSTREAM

Windstream Nebraska, Inc. (“Windstream”) hereby respectfully submits these comments as permitted by the Order Seeking Comment (“Order”) issued by the Nebraska Public Service Commission (“Commission”) on August 29, 2023, and extended on October 12, 2023, as follows:

I. Introduction

Windstream’s recommendations stem from its long-time participation in the Nebraska Universal Service Fund (“NUSF”) as an incumbent local exchange carrier (“ILEC”) providing telecommunications and broadband service to Nebraskans. Windstream appreciates the Commission opening this proceeding as universal service is essential to servicing customers in rural areas, and Windstream looks forward to collaborating with the Commission and the industry to modernize the current rules. Windstream believes the areas covered in this particular round of comments are important in light of the imminent rollout of the Broadband Equity, Access & Deployment Program (“BEAD”). Further, Windstream recommends the Commission form a working group of providers and stakeholders who can continue to explore the questions raised by the Commission until policy action is more appropriate following post-BEAD deployment. Windstream has seen this type of engagement be successful in other states as they work to reform their communications regulations, statutes, and support mechanisms. Windstream submits the following comments related to Subpart II.C sections issues 3, 4, 5, and 7 of the Order.

II. General Comments

To encourage broader participation in the Commission's current NUSF program, Windstream would reiterate its comments previously shared in the Commission's Rule and Regulation No. 207 matter on May 19, 2023. The Commission should strongly consider returning the NUSF-99 program to the project-based model. Project-based models allow the carrier to more efficiently use NUSF funds and its own capital to maximize the number of households that benefit from the project(s). This would act as a stop gap or bridge to universal service access until further progress is made under ongoing wide sweeping broadband access programs.

In light of the unprecedented broadband infrastructure dollars that have been granted as part of the Federal Communications Commission's Rural Digital Opportunity Fund ("RDOF") and the imminent BEAD program under the National Telecommunications and Information Administration ("NTIA"), Windstream recommends that the Commission hold on any other universal service fund changes related to broadband services until these programs are further underway or even nearing completion. This recommendation is made in light of the unprecedented amount of broadband funding and programming laser-focused on serving the unserved and underserved households in areas that would also likely benefit the most from universal service support as they are in rural, sparsely populated areas with high construction costs. The combination of reverting back to the previous program model and holding any future universal service fund decisions until there is a better understanding of the broadband landscape will ensure any funding is spent as wisely as possible, particularly since the Nebraska Broadband Office estimates "that BEAD funding will fall short of enabling universal service across Nebraska by roughly \$772.5 million."¹.

¹ Nebraska Broadband Office Initial Proposal to the NTIA Volume II. [nbo-bead-initial-proposal-volume-2-v121.pdf](#) ([nebraska.gov](#)) (pg. 31)

Despite our recommendation to delay significant changes to the NUSF until RDOF and BEAD implementation are further along, Windstream would still like to take the opportunity to provide comments responsive to the Commission's questions in order to inform later policy considerations or discussions in the event the Commission does organize an industry working group.

III. Response to the Commission's Questions

1. Revision of the portable support mechanism for competitive providers receiving grant funds for deployment of networks in high-cost areas. (Item 3)

Instead of the Commission's focus on portable support and how that is transferred subject to § 004.02G, it should instead focus on whether competition exists in a given exchange. In lieu of an opt-in program, wherein alternative providers must affirmatively petition to seek the transfer of support, ILECs should be allowed to opt out of support in exchanges where competition exists. This method not only preserves NUSF for those areas that truly need additional support, but it also reduces obligations, allowing for even greater levels of competition in that exchange which ensure affordability and continuous advancement of new technologies and faster speeds. There are various methods the Commission could use to measure competition. Some states simply look to see if there is at least one other wireline provider in the same area while other states expand competitors to include other technologies such as wireless and cable. Other states combine the existence of a competitor with the population density of an area, the idea being that areas with higher population density are not rural and thus naturally bring forth competition.

As far as cost modeling factors, the Commission should move away from the current cost modeling and instead base its cost modeling on current labor and materials costs and existing infrastructure. Carriers are in the best position to know what is needed and the costs associated with running telecommunications and broadband networks. Also, it is known that cost models are

often inaccurate as they do not take into account unknown factors such as terrain issues, changes in the marketplace (e.g., a pandemic creating unprecedented supply chain issues), labor shortages, etc. However, if the Commission is unwilling to move away from a cost model, it should unfreeze the support costs for price cap carriers, as the current models are dated and do not reflect the realities of doing business in 2023 in light of high rates of inflation and ongoing supply chain issues. In fact, the Commission should review its cost models on an annual basis.

In the event a competitive carrier elects to receive support in an area, that carrier should be subject to the same rules as the ILECs, including reporting requirements and service requirements. Windstream would like to also note that if carriers are not receiving funding, the regulations suggested in the Order should not apply; in other words, if price cap carriers are going to be obligated to comply with these requirements, they should receive adequate funding in exchange. Thus, reverting back to the project-based model is the most ideal situation for all parties involved.

Regarding the Commission's proposal for implementing operational cybersecurity and supply chain risk management plans, Windstream recommends that in lieu of a requirement to file the plans, the Commission should follow the lead of other states that simply require carriers to provide an annual certification that these programs are in place. The certification route is preferable because any meaningful cybersecurity or supply chain risk management plan would contain highly sensitive and confidential information that should not be widely shared as it creates unnecessary critical infrastructure security risks.

2. Enhancing protections for consumers in terms of access to a provider of last resort and quality services. (Item 4)

While the Commission notes that programs such as Nebraska Broadband Bridget Program ("NBBP"), BEAD, or Capital Projects Fund ("CPF") do not have a voice component requirement, it does not address programs such as RDOF which do have a voice component. While Windstream

believes the Commission should focus less on maintaining service obligations for single carriers and look more to determining whether certain areas are competitive, it appears with RDOF there is an opportunity for some streamlining. The RDOF program requires a recipient to obtain an ETC designation and recipients must provide voice services. In areas where a competitor was awarded RDOF funds, the existing incumbent provider should have the option to relinquish its COLR and/or ETC designation in these areas. Requiring incumbent providers to maintain COLR and ETC obligations and, at the same time, awarding funding to competitors to overbuild creates an unfair and potentially discriminatory environment.

Aligned with this point, Windstream suggests the Commission set the minimum geographic areas used by transitioning carriers to census block groups (CBGs). This level aligns with RDOF awards and is more closely linked to the eligible locations programs that are forthcoming. Allowing transfers at the CBG level provides additional opportunities for the Commission to create a streamlined COLR relinquishment in the event of an RDOF-supported overbuilder.

3. Ensuring that services are offered in rural areas at rates which are affordable, and which are reasonably comparable to services and rates offered in urban areas. (Item 5)

Windstream appreciates the Commission's focus to ensure services are provided at affordable rates, it would caution the Commission that the balance between creating affordable programs and rate regulation is very fine. In lieu of the Commission creating its own defined affordability standard which will likely only cause confusion amongst consumers, the Commission should look to the FCC's Urban Rate Survey as a pricing benchmark. These benchmarks already apply to RDOF supported services and align well with the proposed price points put forth by the

Nebraska Broadband Office in its BEAD Volume 2 proposal². This methodology would streamline the affordability discussion and reduce confusion among consumers, who may not understand what program funded broadband enhancement for their household.

Windstream believes it is a worthwhile exercise to examine if the Commission could develop its own independent affordability program, especially in light of the volatility that exists today with the ACP program. However, Windstream believes that any such review should happen in a separate matter as the Commission would need to undergo critical budgetary reviews to determine if available program funds are sufficient to support any statewide affordability program. Windstream would also caution the Commission to ensure it is taking into consideration urban density factors versus rural areas and consider creating an urban affordability assistance rate and a separate more generous rural affordability assistance rate.

4. Simplification of and streamlined regulatory accounting and annual eligible telecommunications carrier (ETC) recertification reporting aimed at increasing accountability for current NUSF objectives. (Item 7)

Windstream applauds the Commission's focus to simplify and streamline regulatory reporting obligations. While Windstream appreciates that some level of accountability should exist when parties received governmental support, it has several recommendations for the Commission to consider.

First, Windstream would strongly urge the Commission to move away from its mandatory annual audits and instead move to an annual random selection audit. There is little risk here that companies would "fall out of compliance" if the Commission were to move away from annual mandatory audits. First a company would never know when it may be randomly selected and once selected the Commission would have the same access to the records as if it had completed an

² Nebraska Broadband Office Initial Proposal to the NTIA Volume II. [nbo-bead-initial-proposal-volume-2-v121.pdf](#) ([nebraska.gov](#)) (pg. 31)

annual audit. This process would also bring the Commission in line with what Windstream experiences across its nationwide footprint. Additionally, in Windstream's experience Nebraska is unique in that it not only requires providers to go through mandatory annual audits it also requires the provider to secure and pay for a third-party auditor. This process alone costs providers tens of thousands of dollars a year with often no real return for the Commission or the provider. Instead of requiring providers to incur these hefty annual costs, money that would be much better spent on capital expenditures, the Commission should bear the cost of the audit. Again, this is aligned with how other states handle their audits and moving to a random selection would reduce costs for both parties.

Second, based on the Commission's division of support between operational and capital designations, the information contained in the NUSF-EARN report is no longer necessary. Windstream would recommend the Commission remove the requirement for price cap carriers to file annual NUSF-EARN reports.

Third, Windstream recommends the Commission maintain the NUSF-25/66 reporting at the exchange/wire center level. This is because project planning occurs at a more macro level to ensure construction and network efficiencies. Thus, if the Commission were to move to a more granular reporting level, providers like Windstream would then have to allocate its investments, which would dramatically increase the amount of data provided, but may not accurately reflect the investment levels. Windstream would also recommend the Commission end the NUSF-64 report. With Commission changes to divide up operational and capital support, this information is no longer useful.

Lastly, as the Commission looks at streamlining or simplifying reports Windstream would recommend that the Commission approach this with data privacy and cybersecurity in mind. Many

of the reports required by the Commission contain sensitive corporate information including customer details and trade secret information. Given that data breaches and cyber incidents are only increasing in frequency, any requested information should be limited to what Commission Staff absolutely needs in order to ensure program compliance.

IV. Conclusion

Windstream appreciates the opportunity to offer these comments as the Commission considers appropriate modifications to the Nebraska Universal Service Fund related to the deployment and long-term sustainability of broadband networks. Windstream looks forward to participating in continued dialogue to modernize the state's communications regulations, statutes, and support mechanisms.

Respectfully submitted this 22nd day of December, 2023.

WINDSTREAM NEBRASKA, INC.,

s/ Nicole Winters

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Certificate of Service

The undersigned hereby certifies that on this 22nd day of December, 2023, one (1) electronic copy of the foregoing Comments of Windstream was delivered to the Nebraska Public Service Commission at psc.nusf@nebraska.gov and was served electronically on the parties to this proceeding.

s/ Nicole Winters

Nicole Winters