BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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 FINDINGS AND CONCLUSIONS Entered: March 28, 2017

BY THE COMMISSION:

The Nebraska Public Service Commission (Commission) opened this proceeding to consider certain modifications to the high-cost funding mechanism in the universal service fund program. Notice of this proceeding appeared in the Daily Record, Omaha, Nebraska on October 4, 2016.

On September 27, 2016, the Commission proposed several modifications to the distribution mechanism for price cap carriers. The Commission proposed among other things to put the distribution of support for price cap carriers back through Support Allocation Mechanism (SAM). The Commission further proposed to make certain adjustments to the NUSF-EARN Form process that would take into consideration revenues lost from competitive losses, a 9.75 percent rate of return input, and a reduction to offset federal CAF II program support received.

With the adjustments made to the NUSF-EARN Form reporting process as described above, rather than disallowing or capping NUSF support calculated through the SAM process, the Commission proposed to allocate that portion of support to grant-based projects. The Commission stated its goal of spurring broadband investment and increasing the accountability of carriers receiving support in a manner that could be measured by the Commission.

The Commission received comments and reply responsive to its proposals on October 27, 2016 and November 14, 2016 respectively. Initial comments were filed by Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (CenturyLink); Citizens Telecommunications Company of Nebraska, Inc. d/b/a Frontier Communications of Nebraska (Frontier); the Rural Independent Companies (RIC); the Rural Telecommunications Coalition of Nebraska (RTCN); and Windstream Nebraska Inc. (Windstream). Reply comments were filed by CenturyLink; Frontier; RIC; and Windstream.

A hearing was held on November 29, 2016, in legislative format. On December 20, 2016, the Commission issued a subsequent order seeking further comments on the proposed support mechanism for 2017. Comments were filed on January 20, 2017, by Frontier; CenturyLink; RIC and RTCN.

The Commission proposed to put the distribution of high-cost support for price cap carriers back through the SAM. The Commission further proposed to continue to maintain separate budgets for rate-of-return and price cap carriers The Commission released the details of its proposal as Attachments "A" and "B" to the Order. Attachment "B" specifically detailed the allocation of support to each carrier for 2017.

Attachment "A" to the Order detailed the inputs for the proposed changes. Those proposed changes included the following:

1. A step down in the rate of return to 11 percent which would mirror the rate of return cap established by the FCC.

2. A change in the benchmark to $52.50 which also matched the benchmark adopted by the FCC.

3. A change in price cap carrier distribution which makes high-cost support 100 percent grant-based support.

4. An add-back in support in the high-cost mechanism in the amount of $4.5 million.

5. A clarification that NUSF-7 support would be removed from the SAM and will now be paid outside the model.

In addition, Attachment "A" showed the projected overall reduction in remittances for 2016/2017 at 16 percent.

The Commission proposed that the 2017 high-cost support be distributed consistent with the calculations provided in Attachment "B" to the December Order. More detailed information was provided in the 2017 SAM Model on the Commission's website at http://www.psc.nebraska.gov.

Frontier objected to the proposed methodology, stating it was not clear how the NUSF-Earn Form figures would work with the SAM computations. Frontier also argued the Commission's competitive loss adjustments to the NUSF-Earn Form were not appropriate. Frontier also argued that the reduction in the rate of return may not be appropriate for Nebraska, and may need further study. Frontier also sought clarification as to how it should reflect CAF II support in the NUSF-Earn Form. Frontier further stated that it is their understanding that the legislature intended the NUSF to both preserve and advance the service provided to customers, and that the new methodology would only serve to advance services, while not preserving existing ones. Frontier also argued that the Commission should adopt particular procedures that are simple, explicit, timely, and transparent as to how price cap carriers would access the funding amounts.

The RIC supported the continuation of establishing separate NUSF High Cost Program budgets for price cap carriers and rate of return carriers. RIC argued that while RIC supports the step down in authorized rate of return as it conforms to the FCC order, RIC would prefer that the Commission open a separate proceeding to consider this issue on its own. RIC expressed concern that the adoption of a $52.50 benchmark for the NUSF High Cost Program may be inappropriate for Nebraska. While they did not object to this level being adopted temporarily, they believe more evidence should be gathered before a more permanent level is set. RIC further urged the Commission to open an investigation into the reason for declining remittances to the NUSF, in order to more appropriately plan for the long term survival of the Nebraska Universal Service Fund.

The RTCN did not object to converting price cap high-cost support to 100 percent capital investment support, but would object if such a policy were to be applied to rate of return carriers. RTCN requested further explanation as to the reduction in the rate of return rate. RTCN also urged the Commission to implement NUSF contribution reform in light of the reductions in remittance receipts.

CenturyLink objected to the Commission's proposal to allocate 100% of the NUSF high cost distributions for price cap carriers to broadband grant projects, as support is needed to offset the ongoing maintenance and operating costs of the network in high cost rural areas. CenturyLink did not object to a reduction in the rate of return, but urged the

Commission to adopt a reasonable transition period. CenturyLink also stated that a transition to the SAM model would not create greater stability and predictability in support.

Windstream commented that generally they would prefer to keep the current methodology, however they also offered specific comments in regards to the framework proposed by the Commission. Because Windstream values consistency in support from year to year, Windstream supported using the 2016 support amount as the starting point for the high-cost program budget. Windstream also preferred that the Commission continue to use the 2016 support mechanism rather than the proposed one, as it provided a balance between ongoing and grant-based support. Windstream objected to the imputation of revenue for competitive losses, arguing that this is based on the false premise that need for ongoing support declines when lines are lost to competition. Further, Windstream did not oppose using the FCC's prescribed rate of return, but argued it should be gradually phased in. Windstream also proposed that CAF II funding used for capital expenditures be treated as contra capital accounting for the SAM process, in order to offset the associated expenditures reflected in fixed asset accounts. This would prevent the shifting away of state support for broadband. Finally, Windstream proposed that carriers be allowed to supply the Commission with supplements to their Form 477 reports in order to give the Commission a more complete picture of their broadband buildouts.

O P I N I O N A N D F I N D I N G S

In consideration of the comments made at the hearing and filed subsequent thereto, the Commission finds that 2017 high-cost support budget amounts should be distributed consistent with the calculations provided in Appendix "B" to the December 20, 2017 Order with the modifications to the price cap carrier support allocation discussed below. In addition, the Commission considers the modifications made here today to be transitional pending the outcome of the proceeding in NUSF-100 which would modernize the contribution mechanism and adjust the overall size of the NUSF fund.

Rate of Return Step Down

The Commission finds the proposed rate of return step down to 11 percent should be adopted. As part of its reform of the federal high-cost program, the FCC decided to transition the authorized rate of return from 11.25 to 9.75 finding the prescribed 11.25 percent rate was no longer consistent with the Act and today's financial conditions.[1] The FCC adopted a transitional approach which steps down the authorized rate of return by .25 percent each year beginning in 2016 until 2021 when the rate will be 9.75 percent.[2] The proposed 11 percent rate of return cap would mirror the FCC authorized rate of return. Unlike our initial proposal, however, we now find we should review the rate of return cap on an annual basis, after seeking comments from interested parties. As suggested by the commenters, we will open a separate proceeding to study the issue further.

Revised Benchmark

The Commission further finds the proposed benchmark rate of $52.50 should be adopted. Again, this benchmark is consistent with the benchmark adopted by the FCC in its final version of CAM for purposes of making the offer of model-based support to price cap carriers and subsequently adopted by the FCC for the purpose of making the offer of model-based support to rate-of-return carriers.[3]

Shift in Price Cap Carrier Support

The proposed shift in price cap carrier support generated a number of comments; however, none of the comments dissuade us from making a further shift to increase capital investment support. The Commission wants assurance that all carriers are making timely upgrades to their outdated plant

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[1] *See In the Matter of Connect America Fund et al.,* WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3211, paras. 325-326 (2016)("Rate-of-Return Reform Order").

[2] *See Rate-of-Return Reform Order,* 31 FCC Rcd at 3212, para. 326.

[3] *See Rate-of-Return Reform Order and Further Notice*, 31 FCC Rcd at 3108, para. 53.

facilities. The Commission's data indicates that price cap carriers have used support more heavily in the ongoing maintenance of the networks rather than concentrating support on capital investments projects to build out the needed broadband capable networks in Nebraska. We proposed increasing the allocation of grant based support over ongoing maintenance support in part because of this concern. In addition, however, the Commission has been focused on improving transparency and accountability metrics in its high-cost program. We recognize the need to set clear goals for broadband deployment, particularly in those areas that do not receive federal CAF II program support. Finally, we believed a shift to grant based support would be more consistent with the FCC's CAF distribution mechanism that we supplement with NUSF support.

Last year, the Commission transitioned support so that 50 percent of support was for ongoing maintenance and 50 percent was capital construction grant support. We believe that 50 percent allocated to ongoing maintenance in the current environment is too high. The state broadband cost model (SBCM) licensed by the Commission shows that 35 percent of support was allocated for ongoing maintenance while the remainder is allocated to capital investment. We find that for the current calendar year the allocation should be adjusted to a 20/80 percent split. Rather than adopt the proposal set forth in our December 20, 2016, Order, we allocate 20 percent for ongoing maintenance and 80 percent as grant based capital construction support. We further clarify that the 80 percent grant support allocated to price cap carriers are considered capital construction costs. Again, these allocations are transitional in nature and may be further modified by the Commission in subsequent support years.

As with 2016 support, price cap carriers are free to make an application for approval of grant projects at any time during the year. However, we would like to see a comprehensive plan for extending broadband to areas not already receiving federal support and areas that lack broadband availability. The Commission continues to work toward streamlined process for reviewing projects.

Budget and NUSF-7

No interested party objected to the proposed budget with the separation of NUSF-7 support. The Commission finds these proposals should be adopted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the findings and conclusions made herein shall be, and they are hereby, adopted.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 28th day of March, 2017.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

Chairman

Mary Ridder

Crystal Rhoades

ATTEST: Deborah L. Parley

Executive Director

//s//Frank E. Landis
//s//Tim Schram