

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-26
Public Service Commission, on its)
own Motion, seeking to establish a) PROGRESSION ORDER NO. 2
long-term universal service)
Funding mechanism.) Entered: August 27, 2002

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BY THE COMMISSION:

B A C K G R O U N D

1. The Nebraska Public Service Commission (Commission), on its own motion, opened the above captioned docket seeking to establish a long-term universal service funding mechanism. Notice of the application was published in The Daily Record, Omaha, Nebraska, on August 24, 2001.

2. The order initiating this docket was entered on August 21, 2001. The Commission requested and received written comments by interested parties. Commenters included the Nebraska

Telecommunications Association (NTA); Sprint; K&M Telephone Company, Inc.; AT&T; ALLTEL Nebraska, Inc., ALLTEL Communications of the Midwest Inc., ALLTEL Systems of the Midwest Inc., and ALLTEL Communications of Nebraska (collectively ALLTEL); Western Wireless; Cox Nebraska Telcom LLC (Cox); Qwest Corporation (Qwest); and a collective group of rural independent companies (the "rural independent companies" or "RIC").¹ Reply comments were filed by Western Wireless, the NICE-BCS group,² RIC, Qwest Corporation, ALLTEL and Sprint on December 14, 2001. In the RIC reply comments, the Commission received a proposal entitled the "Public Policy Goals Plan" (PPGP). Because the PPGP was outside the scope of the Commission's initial inquiry, the Commission requested that separate comments be filed by interested parties on the PPGP.³

3. The Commission held a prehearing conference on January 15, 2002, after due notice to the interested parties. On January 28, 2002, the Commission entered a prehearing conference order which bifurcated this docket into two components. The service quality component was set for hearing on February 14, 2002 and briefs on the Commission's statutory authority regarding this issue were filed by ALLTEL, Western Wireless and the rural independent companies on March 11, 2002.

4. The other issues the Commission requested parties to address in its August 21, 2001 order were reserved for the hearing held on March 18 and 19, 2002. Post hearing briefs were requested by the Commission and filed by Western Wireless, NICE-BCS, the Rural Independent Companies, Qwest, Alltel, the Nebraska Hospital Association, and the Nebraska Department of Education on May 13, 2002.

¹ The rural independent companies, in this context, are comprised of Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., Nebcom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Pierce Telephone Co., Rock County Telephone Co., Stanton Telephone Co., Inc., and Three River Telco.

² The NICE-BCS group, for the purposes of this proceeding, is comprised of Arapahoe Telephone Company, Benkelman Telephone Company Inc., Cozad Telephone Company, Curtis Telephone Company, Dalton Telephone Company, Diller Telephone Company, Elsie Communications, Glenwood Telephone Membership Corporation, Hartman Telephone Company, Hemingford Cooperative Telephone Company, Keystone-Arthur Telephone Company, Mainstay Communications, and Wauneta Telephone Company.

³ See *In the Matter of the Public Service Commission, on its own motion, seeking to establish a long-term universal Service funding mechanism.* Application No. NUSF-26, ORDER SEEKING COMMENTS (Entered: January 8, 2001).

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

5. This order addresses the testimony and arguments presented in the hearing held on March 18-19, 2002. In general terms, there were six questions open for Commission consideration. The first question was whether the Commission should modify the list of proposed goals detailed in its August 21, 2001 order. The second question asked how support should be determined for each provider. The third question asked how support should be calculated. Fourth, the Commission asked what additional services should be supported by the NUSF. Next, the Commission sought testimony on the eligibility requirements for receipt of support. Finally, the Commission asked whether it should support stranded investment.

6. Twelve witnesses testified at the two-day hearing. Mr. Pursley also testified and summarized the issues before the Commission for consideration.

I. Goals of the NUSF

A. Background

7. Neb. Rev. Stat. § 86-1404 (Reissue 1999) provides in pertinent part that:

(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;

(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 . . .

(4) There should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service. Funds for the support of high-cost service areas will be available only to the designated eligible telecommunications companies providing service to such areas. Funds for the support

of low-income customers, schools, libraries and providers of health care to rural areas will be available to any entity providing telecommunications services, maintenance, and upgrading of facilities. The distribution of universal service funds should encourage the continued development and maintenance of telecommunications infrastructure;

(5) Elementary and secondary schools, libraries, and providers of health care to rural areas should have access to advanced telecommunications services as described in the Telecommunications Act of 1996 . . .

(6) The implicit support mechanisms in intrastate access rates throughout the state may be replaced while ensuring that local service rates in all areas of the state remain affordable

8. In light of the above-described legislative policies, the Commission asked parties to identify and explain, as a practical matter, how the Commission should interpret the legislative goals and apply them. The Commission issued a proposed list of interpretive goals and sought comments and modifications to the Commission's list. The original proposed list of goals read as follows:

- (1) Fairly compensate all providers of supported services.
- (2) Determine funding needs, not impose a rate of return.
- (3) Create incentives for investments.
- (4) Create incentives for full and fair competition.
- (5) Have reasonable oversight on subsidized costs.
- (6) Have predictable growth in the size of the NUSF.

B. Position of the Parties:

9. Mr. Pursley, Director of the NUSF, offered general department recommendations to the Commission about developing goals for the long term NUSF mechanism. He recommended that any requirements the Commission adopts should be competitive and technologically neutral. He also stated the Commission should advance that all Nebraskans have comparable access to quality telecommunications and information services; this includes interexchange services and advanced telecommunications and information services. Mr. Pursley went on to state that all services must be offered at rates that are just, reasonable, and affordable and that rural rates should be reasonably comparable to urban rates, all across the services.

10. Mr. Pursley stated that there is specific language in the NUSF Act regarding low-income consumers and schools, libraries and healthcare. To that end, the Commission should determine the extent to which it should provide additional support for schools, libraries, healthcare and low-income consumers.

11. He recommended that there should be sufficient specific and predictable state support mechanisms. He also stated the providers should be afforded an opportunity and not a guarantee to recover their cost. Mr. Pursley then recommended that support should be used for its intended purpose and any support that comes directly from the NUSF should be explicit. Overall, the focus of the NUSF support should be on the customers and not on the companies. Mr. Pursley stated the Commission should encourage the development and maintenance of the telecommunications infrastructure and encourage investment and new technologies. He finished his testimony by recommending the final goal should be to protect the public interest and welfare and that the surcharge should not burden telecommunications consumers.

12. Ms. Pamela S. Fuller, Staff Manager of State Government Affairs with Alltel, also offered testimony on this issue. Alltel believes the primary goal of the NUSF should be providing affordable telecommunications services to consumers throughout the State. Alltel agreed with the first proposed goal of the Commission, which was to fairly compensate all providers of supported services. Alltel offered a suggestion as well with this goal, which was, prior to awarding any NUSF funds to a provider, the Commission should advance the provider is truly providing the defined services and should receive funds only for those customers receiving NUSF defined services. Alltel also supported the second goal, to determine funding needs and not impose a rate of return. Alltel believed each provider's funding needs should be determined. The third and fourth proposed goals of the Commission were to create incentives for investments and for full and fair competition. As previously stated, Alltel believed the primary purpose of the NUSF is to maintain affordable basic local rates and they believe this should remain the primary focus versus creating incentives for investments or for competition.

13. Alltel did not necessarily agree with the fifth Commission-proposed goal for the permanent NUSF mechanism. The Commission proposed a goal of reasonable oversight of subsidized costs. Alltel believed that as competitive pressures arise in high cost areas of the state, it would only be appropriate for the providers to apply received NUSF funds to offset the removal of specific implicit subsidies from rates. The sixth goal proposed by the Commission was predictable growth in the size of the fund. Ms.

Fuller stated in her pre-filed testimony, "The size and growth of the NUSF should be not only predictable, but also sustainable. A fund that is too large or has excessive unused funds would not be sustainable."⁴

14. Mr. Kevin Kelly represented the Nebraska Independent Companies for Embedded Based Cost Support (NICE-BCS), which is a coalition of 13 LECs serving some of the most rural high-cost areas in the state. The NICE-BCS opined that there should be twin goals of the NUSF. These two goals should be: (1) fairly compensate all providers of supported services by providing sufficient and predictable support and (2) create incentives for infrastructure investment, especially in rural and high cost areas.⁵ He went on to state that creating incentives for competition should not be one of the goals of the NUSF because the purpose of the support mechanisms is to offset the high cost of providing supported services in high cost areas, so that these services are comparable, in availability and rates, to services provided in low cost areas.⁶

15. Mr. Wayne Fisher from the Nebraska Education Technology Center submitted pre-filed testimony on March 4, 2002. In it he stated, "I would urge the PSC to develop a plan to use the NUSF to support Nebraska elementary and secondary schools."⁷ He also "further recommended that a grant-type mechanism be established for the disbursement of the funds to support K12 schools with their telecommunications needs rather than the discount program presently in place at the federal level."⁸ He stated that the "e-rate discount program has proven to be very difficult to work with on the part of the schools."⁹

16. Ms. Pamela L. Hedlin submitted pre-filed testimony on behalf of Qwest Corporation. Ms. Hedlin is a Manager in the Policy & Law Organization of Qwest Services Corporation. Qwest recommends the adoption of the following goals: (1) Fairly compensate all providers of supported services with explicit universal service support to provide the services to the customers located in high cost areas. (2) Determine sufficient support needs to be received on a revenue neutral basis after consideration of federal high-cost universal service support; not impose a rate of return. (3) Create competitively and technologically neutral incentives for investments in high cost service areas. (4) Create a fund equitably supported by all telecommunications carriers that provide

⁴ Direct Testimony of Pamela Gregg Fuller (filed March 2, 2002) at 5.

⁵ Direct Testimony of Kevin Kelly (filed March 4, 2002) at 3.

⁶ *Id.* at 4.

⁷ Direct Testimony of Wayne Fisher (filed March 4, 2002) at 3.

⁸ *Id.*

⁹ *Id.*

intrastate retail telecommunications services. (5) Create a process whereby the Commission shall retain reasonable jurisdiction over all ETCs' universal service offering. (6) Have a specific, predictable, and competitively neutral NUSF high cost support mechanism. Qwest feels that by clarifying that the support is targeted to the high-cost areas, the Commission will promote investment and the advancement of competition in the high-cost areas of the state.¹⁰

17. Ms. Sue Vanicek submitted pre-filed testimony on behalf of the Rural Independent Telephone Companies ("The Companies"). Ms. Vanicek is employed by TELEC Consulting Resources as a Senior Consultant. The Companies recommend the goals of the Commission's NUSF funding mechanism should be as follows: (1) Provide support to preserve and advance universal service in high cost areas and for low-income consumers. (2) Provide predictable, sufficient, and competitively neutral support to providers of supported services. (3) Determine funding needs, not impose a rate of return. (4) Create incentives for investments in telecommunications infrastructure, including investments in infrastructure capable of providing access to advanced services. (5) Require all carriers receiving support to comply with the same regulations for providing supported services. (6) Have predictable growth in the size of the NUSF. (7) Ensure that quality telecommunications and information services are provided, promoting the public safety and welfare for all users of the NUSF supported services. (8) Ensure that support is used only for the provision of supported services, and for maintenance and upgrading of facilities that provide the supported services in Nebraska.¹¹

18. Ms. Vanicek testified the Commission should propose a complete set of goals for the fund. The broad declaration of legislative policy that consists as a series of principals in Neb. Rev. Stat. § 86-1404 should serve as a basis for those goals. However, broad statements of policy alone are not specific enough for the Commission to develop measures to determine whether it's fulfilling legislative intent. The above-listed goals completed the recommended set of goals offered by rural independent companies.

19. Mr. James Blundell submitted pre-filed testimony on behalf of Western Wireless. Mr. Blundell is the Director of External Affairs for Western Wireless Corporation. It was Western Wireless' position that the Nebraska Legislature has already established the goals of the NUSF and the Commission may only draft

¹⁰ Direct Testimony of Pamela Hedlin (filed March 4, 2002) at 3-4.

¹¹ Direct Testimony of Sue Vanicek (filed March 4, 2002) at 3.

rules consistent with the Legislature's legislative intent and goals. Western Wireless believes that if the Commission was to adopt any set of goals for the Nebraska Universal Service Fund, it should adopt those of the Legislature, verbatim.¹²

C. Discussion

20. The Commission initially proposed that the NUSF should "fairly compensate all providers of supported services."¹³ Alltel, Qwest and NICE-BCS provided testimony in support of this proposed goal. Qwest further testified that the NUSF should be a predictable, sustainable, and sufficient fund. The RIC group commented that this goal appeared to be similar to the principle provided in Neb. Rev. Stat. § 86-1404(5) which states that there should be "specific, predictable, sufficient and competitively neutral mechanisms to preserve and advance universal service." Western Wireless commented that the Commission should adopt the Legislature's policy of "predictable, sufficient and competitively neutral mechanisms." Mr. Pursley recommended that the Commission keep the focus on the consumers and not the carriers.

21. The second proposed goal was to determine funding needs and not impose a rate of return. Mr. Pursley agreed that the Commission should allow telecommunications providers to be afforded the opportunity to recover their cost, but that the NUSF should not guarantee cost recovery or a guaranteed return. The RIC group commented that the second Commission goal again appeared to imply that a specific, predictable and sufficient mechanism be implemented. Qwest also agreed that the Commission should adopt a predictable mechanism that determines support on a revenue neutral basis.

22. The Commission agrees with the Director and finds that it should modify the proposed goal to ensure that a sufficient, predictable and specific mechanism should be adopted. This language is more consistent with the Legislative policy provided in Neb. Rev. Stat. § 86-1404. The Commission further finds that the NUSF should not guarantee all providers a specific rate of return as that would place a significant burden on the NUSF and the size of the fund as well as place a burden on the ratepayers contributing to the NUSF. Therefore, the Commission supports Mr. Pursley's recommendation by adding to and modifying the first two goals to read as follows:

¹² Direct Testimony of James Blundell (filed March 4, 2002) at 3.

¹³ See *supra*, paragraph 8.

- a). The Commission should establish sufficient specific and predictable state support mechanisms.
- b). All providers should be afforded an opportunity and not a guarantee to recover their costs. Support should be used for its intended purpose and any support that comes directly from the NUSF should be explicit.

23. The Commission's third proposed goal was to create incentives for investment. Alltel testified that this should be secondary to maintaining affordable rates. Qwest's witness stated that the NUSF should create competitively and technologically neutral incentives for investment in high cost areas. The RIC group testified that this goal was again related to another principle in the NUSF Act at Neb. Rev. Stat. § 86-1404(5) which states "The distribution of universal service funds should encourage the continued development and maintenance of telecommunications infrastructure" and to § 86-1404(2) which provides that "access to advanced telecommunications and information services should be provided throughout the state".¹⁴ The NICE-BCS group provided that a goal of the NUSF should be to create incentives for infrastructure investment, particularly in the high cost areas.

24. Mr. Pursley recommended that the Commission include a goal which provides all Nebraskans have comparable access to services including advanced services. Mr. Pursley further recommended including a goal which provides that the NUSF should create incentives for investment in the telecommunications infrastructure that are targeted to the areas of the state for which they are intended. The Commission finds it appropriate to adopt Mr. Pursley's recommendations and modify its goals to provide as follows:

- c). The Commission should ensure that all Nebraskans have comparable access to quality telecommunications and information services, including interexchange services, advanced telecommunications and information services.
- d). All services must be offered at rates that are just, reasonable, and affordable and that rural rates should be reasonably comparable to urban rates, all across the services.
- e). The Commission should encourage the development and maintenance of the telecommunications infrastructure and encourage investment and new technologies.

¹⁴ *Id.* at (2).

25. The fourth proposed goal was to create incentives for full and fair competition. None of the parties filed comments or testified in support of this goal. Qwest provided that if the NUSF is properly structured, it will foster an environment conducive to efficient competition. The Commission agrees. Therefore, the Commission modifies this goal to provide,

f). Any requirement the Commission adopts should be competitive and technologically neutral.

26. The Commission's fifth proposed goal provided for reasonable oversight on subsidized costs. As previously mentioned, Alltel recommended changing this goal. The RIC group's comments stated that this goal did not appear to be related to any universal service principle. As the RIC group correctly pointed out in its post-hearing memorandum, the Commission included this proposed goal in accordance with Section 86-1405 of the NUSF Act. This section provides that telecommunications companies must use the support only for the provision, maintenance and upgrading of facilities and services for which support is intended. The Commission believes that it is important to ensure that the providers which receive support are accountable for using that support in a manner which comports with the original legislative directives enacted through specific rules, regulations and orders of the Commission. Providers must use the support only for the provision, maintenance and upgrading of facilities and services for which support is intended. However, we believe that the fifth proposed goal is adequately addressed in goal b) *supra*, which provides that support shall be used for its intended purpose¹⁵ and any support derived from the NUSF must be explicit. The Commission believes that adopting the proposed fifth goal would be repetitive.

27. With respect to the sixth proposed goal which provided that the Commission should advance predictable growth in the size of the NUSF, the Commission finds that the overriding focus should be the public interest and welfare. All commenters providing testimony on sixth proposed goal supported it. However, the Commission has already indicated above that one of its goals is to establish a "sufficient, specific and predictable state support mechanism" which implies predictable and sufficient growth in the size of the NUSF. The Commission agrees with the recommendations of Mr. Pursley that the Commission should ensure that the public interest and welfare is protected and that the surcharge does not

¹⁵ That purpose clearly directs the Commission to Neb. Rev. Stat. § 86-1405 which provides in pertinent part that "[a] telecommunications company that receives such support shall use that support only for the provision, maintenance and upgrading of facilities and services for which the support is intended."

burden telecommunications consumers. Therefore, the Commission adopts Mr. Pursley's recommendation and finds that this goal should read as follows:

- g). The Commission should protect the public interest and welfare and the surcharge should not burden telecommunications consumers.

28. The Commission further agrees with Mr. Pursley's statement that the focus of the NUSF should be on the consumers. The Commission moves forward into this next phase with that focus in mind. The Commission finds that it should adopt the further suggestions of Mr. Pursley and add the following goals:

- h). The Commission should advance the affordable availability of telecommunication services to low-income consumers and schools, libraries and rural healthcare providers.
- i). The focus of the NUSF support should be on the consumers and not on the companies.

29. Therefore, with respect to the Commission's initial list of goals provided *supra*, the Commission finds that list should be modified and supplemented. Specifically, we find that the complete list of goals for the long-term support NUSF mechanism should be as follows:

- a). The Commission should establish sufficient specific and predictable state support mechanisms.
- b). All providers should be afforded an opportunity and not a guarantee to recover their costs. Support should be used for its intended purpose and any support that comes directly from the NUSF should be explicit.
- c). The Commission should ensure that all Nebraskans have comparable access to quality telecommunications and information services, including interexchange services, advanced telecommunications and information services.
- d). All services must be offered at rates that are just, reasonable, and affordable and that rural rates should be reasonably comparable to urban rates, all across the services.
- e). The Commission should encourage the development and maintenance of the telecommunications infrastructure and encourage investment and the deployment of new technologies.
- f). Any requirements the Commission adopts should be competitive and technologically neutral.

- g). The Commission should protect the public interest and welfare and the surcharge should not burden telecommunications consumers.
- h). The Commission should advance the affordable availability of telecommunication services to low-income consumers and schools, libraries and rural healthcare providers.
- i). The focus of the NUSF support should be on the consumers and not on the companies.

II. Manner in which support should be determined for each provider.

30. The Commission next turns to the issue of determining support for each provider. This issue addresses whether support should be determined separately for each provider, based on the incumbents' costs and made portable to all other providers, or based on the most efficient provider's costs and made portable to all other providers.

A. Position of the Parties

31. The witness for Qwest testified that support should be determined based on the most efficient provider's costs and made available to all eligible telecommunications carriers. Qwest further commented that this method is consistent with the objective of creating a competitively neutral funding mechanism that targets support to specific high cost geographic areas. Qwest provided that universal service should not be based on whether a carrier is "rural" or "nonrural." Rather, the defining characteristic should be the geographic characteristic of a service area because high cost service areas are defined by their characteristics and not by the size of the companies that serve them. Qwest stated it disagreed with RIC's support system because its methodology was inconsistent with the goals and the policy underlying universal service.

32. Western Wireless also recommended that the Commission calculate support using a forward-looking cost model similar to the one that was adopted by the FCC. Western Wireless stated that a forward-looking cost model is the most accurate and efficient method for determining levels of high-cost support in areas served by the non rural companies. Sprint also supported a forward-looking proxy cost model in its comments.

33. The witness for Alltel testified that support should be calculated as the difference between the embedded cost of providing the supported services and the revenues from those services.

Support should be determined first for the incumbent provider and then ported to any other Nebraska ETC in a given area to the extent that the competitive ETC serves the supported customers. ALLTEL further stated that an additional component should be set up to offset the removal of implicit subsidies due to competitive pressures in high cost areas.

34. The RIC group's witness testified that support amounts should be based on the service provided by each carrier. According to this group, portable support will not offer incentives for providers to meet the goals associated with universal service.

35. The NICE-BCS witness also testified that support should be determined separately for each provider since providing support based on the incumbent's support provides no incentive for a competitor to invest in rural areas.

36. Mr. Pursley testified that he believed that support should be determined separately for each provider.

B. Discussion

37. Upon consideration of the testimony and comments provided by all participants, the Commission is of the opinion and finds that determining support separately for each provider best accomplishes the goals of the NUSF. The Commission finds that support on this basis would be competitively neutral and would provide an incentive for all carriers to make investments in the telecommunications infrastructure. Moreover, the Commission agrees with the parties who believed making support portable would be problematic for dissimilar networks.

38. The Commission agrees with Qwest in that the NUSF should not be used to subsidize inefficient investments. We believe, therefore, that sufficient mechanisms should be implemented to prevent inefficient network investments. One of the factors the Commission will consider in choosing a model or methodology will be whether such model or methodology has the potential to curtail inefficient investments.

III. Calculation of Support

39. The Commission also solicited testimony on the manner in which support should be calculated on a going-forward basis. Generally, there were four options recommended which were: 1) forward-looking cost less revenues; 2) embedded cost less revenue; 3) performance-based calculation; 4) density or scale.

A. Position of the Parties

40. Alltel supported an embedded cost approach minus the revenues generated by the services on a wire center or exchange basis. Alltel further recommended that an additional component should be set up to offset the removal of implicit subsidies due to competitive pressures in high cost areas.

41. Western Wireless recommended the use of a forward-looking proxy cost model. Western Wireless claimed that the use of a forward-looking cost model was the most accurate method for determining levels of high-cost support in areas served by non-rural local exchange carriers at the most efficient level. Western Wireless further stated that the FCC and almost all states with state universal service funds in the Western Wireless territory have adopted a forward-looking cost model for determining the level of universal service support.

42. Sprint also recommended a forward-looking cost proxy model in its initial comments.

43. Qwest also supported the use of a forward-looking cost model. Qwest recommended that the Commission base the calculation of support on the most efficient provider. Qwest also stated that using embedded costs will necessarily include a variety of costs incurred through the years including costs resulting from poor planning and mistakes. Qwest provided that the forward-looking cost approach they recommended, was endorsed by the FCC and the Fifth Circuit Court of Appeals.¹⁶

44. The NICE-BCS group supported an embedded cost methodology to calculate NUSF support. NICE-BCS devoted a significant portion of its Post Hearing Brief arguing for embedded cost support. NICE-BCS recommended that the current transitional system should be modified and retained as the permanent NUSF mechanism for rural LECs as a means of ensuring that rural LECs receive sufficient support. In support of its recommendation, NICE-BCS cites the FCC's recent MAG order in which the FCC concluded that for the present time, an embedded cost methodology was the most appropriate cost methodology on which to base universal service support for rural LECs. This finding was the result of a four year proceeding. The "modified embedded cost mechanism" will be in place on the federal level until July 1, 2006. The NICE-BCS also pointed out that an embedded calculation methodology was being used in the calculation of state support for rural LECs in both Colorado and Kansas.

¹⁶ Qwest Corporation's Post Hearing Brief, (filed May 14, 2002) at 7.

45. The Rural Independent Companies recommended that support be calculated using a combination of density-based, scale-based, and performance-based systems. The RIC witness stated that using a density based component would ensure that NUSF funding is targeted to high cost areas of the state that have the least density. The RIC witness relied on an empirical study which indicated that density has a high correlation with relative cost to provision service in a given area. An added benefit to this approach was that the Commission would not need to rely on company specific data which could be subject to manipulation. Additionally, the Commission would not need to examine a myriad of cost data and assumptions as it would using a forward-looking cost proxy model. The scale-based component would ensure that the NUSF is targeted to high-cost areas of the state and the performance-based component would incent higher service quality measurements and further broadband deployment.

46. The NUSF Director, Mr. Pursley, reiterated that the purpose of the Commission hearing was not to pick a model. He recommended that the Commission pick certain criteria to adopt prior to selecting a model. Mr. Pursley recommended that any model adopted by the Commission should be made in light of the goals of the NUSF. Advocates of a model should explain how their model would meet the Commission's goals. Mr. Pursley further recommended the calculation of NUSF support should be based on an independent set of criteria and not based on company specific data because it is difficult to verify and audit this data. He stated that basing a model on an independent set of criteria would be the fairest determination of where support needs to be allocated. Under questioning, Mr. Pursley stated that density is an independent option and arguably forward-looking cost models are independent. Finally, Mr. Pursley recommended that the Commission adopt a method to calculate support on a more granule level than an exchange level. Simply averaging support across an exchange did not, in his opinion, fairly match where that support is necessary.

B. Discussion

47. Choosing a particular model or methodology at this stage of the Commission's investigation would be inappropriate. However, the Commission agrees with the NUSF Director that developing a set of criteria would assist the parties in recommending a model for the calculation of support. Any model chosen should comport with the goals of the Legislature as provided in the NUSF Act as well as the list of goals announced by the Commission herein.

48. The Commission further finds that model chosen should be independent, should be easily verifiable, and should be based on competitively neutral principles.

49. The Commission will decide at a later date the procedure for choosing a methodology that comports with the above-described principles. The Commission will take the comments and the testimony previously filed and given at the March hearings under continuing consideration in the next phase of this proceeding.

IV. Services to be Supported by the NUSF

A. Schools, Libraries and Rural Health Care

(1) Positions of the Parties

50. Mr. Wayne Fisher testified on behalf of the Nebraska Department of Education. Mr. Fisher emphasized that Nebraska elementary and secondary schools are significant users of telecommunications services. He stated that there was a need for state NUSF assistance for districts that are not a part of the free and reduced lunch program. Schools that do not participate or are otherwise ineligible for the free and reduced school lunch program do not receive support from the Federal Universal Service Fund.¹⁷ Mr. Fisher also testified that there was a need for increased bandwidth, which increases costs. The third need Mr. Fisher testified to was the need for consolidated services across the state to implement some form of enhanced infrastructure.

51. Upon questions from the Commission, Mr. Fisher stated he is requesting long-term or annual discount assistance in a manner whereby they are not are not making to much infrastructure investment. Therefore, in the case of a school which is going to be consolidated in the future, the need for funds would also decrease proportionately.

52. Ms. Donna Hammack, chief development officer at Saint Elizabeth Hospital, testified next on behalf of the Nebraska Hospital Association. Ms. Hammack also represented the interests of the Nebraska Telehealth Development Group. She testified generally on the benefits of the Telehealth program in Nebraska. Nebraska has more critical access hospitals than any state.¹⁸ Of the 85 hospitals in Nebraska, 55 of those have been designated as critical access hospitals.¹⁹ Their program is supported through the federal universal service mechanism as well as through periodic

¹⁷ Transcript (Tr.) at 10.

¹⁸ Tr. at 35:12-17.

¹⁹ *Id.*

federal grants. Upon questioning by the Commission, Ms. Hammack testified that she did not put together a business plan to figure out how much support would be needed. She testified that her main concern regarding receipt from state NUSF support relates to the portion that is not subsidized from the federal government.

53. Mr. Roger Keetle, an attorney and lobbyist with the Nebraska Hospital Association, testified next. He testified that state statute permits health care providers to be funded by the state universal service fund.²⁰ The biggest issue that faces Nebraska hospitals is the growing shortage of health care professionals. Telehealth brings specialists right into the local community. Education is also a highly favored use of Telehealth by physicians. High cost line charges are still the biggest barrier to the use of the Telehealth system. Mr. Keetle stated that the federal system does not go far enough.²¹ He testified further that his organization would like to work with the Commission to develop a system that would supplement support currently received in order to bring Telehealth to all communities in need.

54. Upon cross-examination Mr. Keetle testified that his organization was not asking for a free line. They want the state fund to be a supplement to the federal support they receive and would like to work out a method where their federal support isn't reduced or taken away. Mr. Keetle further testified that a \$300.00 per month rate is too high. Finding a reasonable rate should be considered. The main concern at this time is the critical access hospitals.

55. Mr. Lennis Benson, director of diagnostic imaging at Faith Regional Health Services in Norfolk, also testified on behalf of the Nebraska Hospital Association. In 1998, the north central region consisting of eight rural community hospitals received a grant from the United States Department of Agriculture Rural Utility Service.²² With that grant money those hospitals could purchase videoconferencing equipment, however the monthly transmission costs were unreasonable. After federal support, the monthly transmission costs ranged from \$300 to \$600 per site range.²³ Upon questioning, Mr. Benson testified that he does not have an opinion as to what would be a fair and reasonable amount.

56. Ms. Jolene Davidson from Madonna also testified on behalf of the Nebraska Hospital Association. She testified that they

²⁰ *Id.* at 45-46.

²¹ *Id.* at 52.

²² *Id.* at 54.

²³ *Id.*

developed a program but cannot implement it because of the high transmission costs. She further testified that they have needs for higher bandwidth. Madonna is a rehabilitation center and therefore is not eligible to receive federal universal service support or Medicare support.²⁴

57. With respect to supporting schools, libraries and Telehealth, Western Wireless took the position that the Commission should "avoid all those temptations to do good things."²⁵ Rather, a separate fund should be created so as to not dilute the ability of the Commission to provide basic telecommunications services. The witness representing Western Wireless corrected his filed testimony by agreeing that supporting the provision of services to health care, schools and libraries is consistent with the federal universal service system. Upon cross-examination, Mr. Blundell clarified that he is advocating for a separately financed fund for Telehealth, schools and libraries.

58. Alltel took the position that telecommunications support for Telehealth, schools and libraries should come first from federal mechanisms. Schools, libraries and the Telehealth program should utilize whatever is available from federal USF and other grants and programs prior to seeking state support. The Commission should be cautious and not let these programs double-dip and burden Nebraska consumers. The Commission should also be cognizant with the respect to the total size of the fund and the impact of the size of the fund when supporting these additional services.

59. Qwest witness, Ms. Hedlin testified that Qwest does not feel that the NUSF should be expanded to include supporting additional recipients such as schools, libraries and the health care industry. Qwest is concerned that supporting the additional programs may jeopardize support. Qwest would like the Commission to first ensure that federal funds are being utilized. In some cases, federal funds may be jeopardized by state support. Qwest does however, take the position that an investigation is warranted to determine whether supporting schools, libraries and health care is warranted.

60. Ms. Vanicek representing the rural independent companies testified that the Commission should first determine whether there is really statutory authority to provide support for rural health care providers, schools and libraries. Ms. Vanicek stated that she was unsure whether there truly is statutory authority to provide that support. The Commission should then inquire as to the size

²⁴ *Id.* at 70:23-24.

²⁵ *Id.* at 84:9-10.

of the need. In that respect the Commission should determine what the potential amount of federal funds are accessible by these providers and where the potential need exists. Finally, Ms. Vanicek stated that the Commission should balance that need against the other high-cost needs that the Commission is currently funding today.

(2) Discussion

61. Upon consideration of the comments, briefs and testimony, the Commission is of the opinion and finds that it should consider providing NUSF support for the provisioning of telecommunications services for rural health care providers. However, the Commission also finds that rural healthcare providers must first avail themselves of federal support. The Commission finds it appropriate to adopt the recommendation of Mr. Pursley and hold a separate hearing on the issue of affordable access for rural health care providers. The Commission solicits further information in the form of a plan or methodology for which funding can be based. The Commission seeks information in the form of comments, plans or methodologies with respect to potential NUSF support from the Telehealth representatives as well as from the telecommunications industry participating in the Commission's March hearings. Any party advocating for support must justify the need and explain why existing revenues, grants and/or federal funding would not cover its costs. Such parties must also account for any additional revenue likely generated as a result of the provisioning of any new or additional services. Parties seeking to file comments, a plan or a methodology should file such information with the Commission on or before **September 25, 2002**. Thereafter, the Commission will hold a hearing to discuss the filed comments or proposals. This hearing will be held on **October 8, 2002** at 9:00 a.m. in the Commission Hearing Room.

62. At this point, the Commission does not believe that there is enough evidence in the record to support an additional allocation of NUSF for advanced telecommunications services to schools and libraries. The Commission finds that the schools in high cost areas have sufficient federal support mechanisms in place and various other tools to increase their accessibility to advanced services. The Commission does not believe that there is adequate evidence indicating a need for additional allocation of targeted NUSF support. No evidence was presented regarding support for libraries.

B. Public Interest Payphones, Special Access/Private Line Service, Installation Charges and Additional Services

(1) Position of the Parties

63. ALLTEL took the position that special access, private line, nor installation charges should be not included as services eligible for support, but public interest payphones could be included to the extent mandated by the Commission.

64. Western Wireless cautioned the Commission that adding additional services to its list of supported services would dilute the fund. The Commission would then run the risk of excluding carriers that either cannot offer such services or choose not to offer services other than basic local exchange service.

65. Qwest took the position that the Commission should not expand the services that should be supported by the NUSF.

66. The NICE-BCS group believed that the Commission has the authority to expand the list of services supported by the NUSF.

67. The Rural Independent Companies on the other hand questioned the Commission's authority to support additional services. The RIC group did not support adding special access or installation charges as services eligible for support. However, to the extent that the Commission requires providers to maintain payphones at locations the providers would not otherwise choose, then such payphones should be supported through the NUSF.

(2) Discussion

68. The Commission finds that services such as public interest payphones, broadband services, Telehealth and services provided to schools and libraries should be treated separately from basic local exchange service.²⁶ The Legislature carved out specific policy goals for the Commission in Neb. Rev. Stat. § 86-1404. Specifically, the Legislature provided "[f]unds for the support of low-income customers, schools, libraries and providers of health care to rural areas will be available to any entity providing

²⁶ Basic Local Exchange Service is defined in Neb. Rev. Stat. § 86-802(2) as the access and transmission of two-way switched voice communications within a local exchange area. (Reissue 1999). The Commission's Telecommunications Rules and Regulations provide that each municipality served by an exchange carrier, where public convenience requires it, must supply at least one public pay station that will be available to the public on a 24 hour basis. Neb. Admin. R. & Reg., title 291, ch. 5, section 002.06. This rule can be waived by the Commission upon a showing of lack of use, excessive cost, or repeated vandalism or abuse. *Id.*

telecommunications services, maintenance, and upgrading of facilities,²⁷ and "[c]onsumers 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 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 charges for similar services in urban areas."²⁸ Based on the testimony, the Commission seeks further comments on whether support should be provided, and which requirements should be associated with, the proper level of support associated with the provisioning of public interest payphones. Parties interested in commenting on these issues should file written comments on or before **September 25, 2002**. Specifically, the Commission seeks comments on the following questions:

- a) What defines a "public interest payphone"?
- b) If the Commission decided to offer support to providers of public interest payphones, what is the proper level of support?
- c) How many public interest payphones are in Nebraska? How many of those should be supported?

Parties filing comments should file one (1) original, five (5) paper copies and one (1) electronic copy with the Commission in Word or WordPerfect format.

69. The Commission will delay any findings with respect to providing support for the purpose of the development and maintenance of a telecommunications infrastructure capable of providing access to broadband until after the Commission has heard specific evidence on the models and/or proposals of the parties and chosen a methodology. The Commission finds that there was no evidence justifying the allocation of support for Special Access/Private Line Service, Installation Charges or any other Additional Services.

V. Requirements to receive NUSF support

A. Position of the Parties

70. Western Wireless recommended that the Commission adopt a set of very basic distribution requirements similar to those

²⁷ Neb. Rev. Stat. § 86-1404(5)(Reissue 1999).

²⁸ *Id.* at (3).

required by the FCC. The FCC requires that carriers be designated as an ETC, be a common carrier, offer and advertise the supported services throughout the entire exchange or study area, and file a certification that the carrier will "use that support only for the provision, maintenance and upgrading of facilities and services for which the support is intended."²⁹

71. The RIC group testified that requiring a provider to obtain separate and distinct designation as an NETC for NUSF support and as an ETC for federal support is necessary. States can impose additional criteria for NETC designation beyond those specified by the FCC.

72. Qwest supported the Commission's previous findings in its C-1628 Order regarding the requirements for a carrier to be eligible for NUSF support.

73. Alltel, the RIC group and Qwest all testified that an NETC should be required to offer all of the NUSF supported services in order to receive NUSF support. The witnesses for Alltel, Qwest and RIC further testified that an NETC should be required to demonstrate an ability to provide service within an entire geographic area designated by the Commission as eligible to receive support. Alltel, Qwest, RIC and NICE-BCS all testified that the Commission should impose the same pricing benchmark requirements on all NETCs in order for an NETC to receive support.

74. Mr. Pursley recommended that carriers be designated as an NETC consistent with the Commission's proposed rules and regulations, prior to receiving support. The Commission was encouraged to differentiate between an ETC for federal universal service purposes and an NETC for state NUSF purposes. Mr. Pursley stated that to receive NUSF support the NETC should be required to provide its services in specific geographic areas, comply with the Commission's service quality standards and price services at Commission-prescribed levels. These same requirements should not, according to Mr. Pursley, apply to the receipt of federal support.

B. Discussion

75. A number of these issues have already been addressed by the Commission's proposed rules and regulations which were adopted by order on April 9, 2002. The Commission adopted the proposed rules in Rule and Regulation No. 150 after a series of comments and hearings. In its proposed rules and regulations, the Commission

²⁹ Post-Hearing Brief of Western Wireless (filed May 13, 2002) at 5 (quoting 47 U.S.C. § 254(e)).

established a differentiation between ETCs and NETCs. The Commission also clarified the requirements for the receipt of NUSF support and detailed a list of supported services for the receipt of state support.

76. The Commission established benchmark levels for all ETCs in C-1628. The current local rate benchmark levels are \$17.50 for residential and \$27.50 for single-line business service. In the transition period, carriers were required to price basic local and single-line business service in order to receive interim NUSF support. Upon review of the testimony, the Commission finds it has oversight over NUSF support levels for basic local exchange service. NETCs must price basic local exchange services and other services that receive NUSF support at benchmark rate levels established by the Commission in order to receive NUSF support.

77. A number of parties testified on the issue of whether an NETC should be required to comply Commission-prescribed access charge structures in order to receive support. With respect to that issue, the Commission will reserve its findings until after the completion of its open dockets covering the issue of access charge requirements. The Commission will consider what other requisites should be imposed on the receipt of NUSF support in context of adopting a model pursuant to further proceedings in this docket.

VI. Stranded Investment

A. Position of the Parties

78. Mr. Pursley offered department recommendations to the Commission about what role the NUSF should have in the recovery of stranded investment. He recommended that the Nebraska Public Service Commission needs to create incentives and not mandates. Mr. Pursley also stated the companies need to weigh the risks of making those investments. Mr. Pursley also stated that as we move forward, more of the risks need to be borne by the company.

79. Ms. Fuller, a Staff Manager in State Government Affairs with Alltel, also offered testimony on this issue. Alltel believes that the issue of stranded investment may be better addressed as the market has matured so that the amount of stranded investment may be more accurately quantified.

80. Mr. Kelly representing the NICE-BCS group, stated that rural LECS will incur stranded investment as a result of the introduction of competition. Mr. Kelly believed in exchange for certification as the sole provider in their service territory,

rural LECS have invested in facilities in high cost areas with the understanding that regulators would provide the ability to recover the cost of these investments. He stated that historically this cost recovery has occurred over an extended period of time and as competitors gain customers from the Carrier of Last Resort (COLR), stranded investment is inevitable. Mr. Kelly did not believe that Rural LECs would simply reduce their costs to avoid stranded costs because the majority of rural LEC's costs are attributable to the network and are relatively fixed in nature. He also did not believe that stranded investment was a transitional problem because as long as one provider in a competitive environment retains COLR obligations, the problem of stranded investment will exist.

81. Mr. Kelly also stated that the COLR could not recover stranded investment from its remaining customers because by increasing the rates of those customers, the COLR would invite even greater competitive loss. Eventually, this would result in the COLR serving only the customers without other alternatives. He also believed requiring stockholders of the COLR to absorb stranded investment would result in significant disincentives to provide state of the art telecommunications services to rural customers. Mr. Kelly believed the NUSF should reimburse COLRS for stranded investment because the NUSF is the only viable option for recovering the costs of stranded investments. Absent a reliable opportunity to recover the costs of prudent investments in high cost areas, carriers will refuse to accept COLR responsibilities. Mr. Kelly stated this would be a devastating blow to the concept of universal service in Nebraska.

82. Ms. Hedlin submitted pre-filed testimony on behalf of Qwest Corporation. Qwest stated it was not clear on the Commission's definition of "stranded investment." For the purpose of Ms. Hedlin's testimony, Qwest defined stranded investment as a situation whereby a customer made a request for service and a carrier made an investment in dedicated facilities to that customer based solely upon that customer's commitment. It is in the circumstances when the customer did not complete their commitment, that the dedicated facility becomes stranded.

83. Qwest did not believe that the NUSF should bear the costs of stranded investment unless the provider makes a showing with the Commission on why it should be reimbursed from the NUSF for its recovery of certain historic costs and investments it incurred to meet its universal service obligations. Ms. Hedlin stated the NUSF should not be relied upon as a mechanism to protect carriers from competitive losses. Qwest suggested the situation could be minimized if the Commission were to determine that ETCs should make

their facilities available for resale from another ETC. Qwest proposed that all ETCs have a duty to provide services for resale at a business to business negotiated price to the ETC obliged to serve the customer.

84. Ms. Vanicek submitted pre-filed testimony on behalf of the Rural Independent Telephone Companies ("The Companies"). The Companies believed there were situations when the NUSF should bear the costs of stranded investments. ILECs currently have unique COLR obligations that require ILECs to maintain the capability to serve all customers in a given area. Therefore the Companies believed the NUSF should provide support for stranded investment if the investment is stranded as a result of regulations that require a provider to serve a given area or customer. Ms. Vanicek stated this was especially important for small rural ILECs, many of which are experiencing a loss of subscriptions to basic local service even absent customer losses through competition.

85. She went on to refer to the comments of the Rural Task Force, in that the only alternative revenue source for many rural ILECs to offset losses due to stranded investment was to increase basic local service rates. Given Nebraska's relatively high local service rates compared to national averages, the Companies believed that placing additional burdens on local rate payers, especially those in rural areas that have lower incomes than the state average, was not an acceptable alternative to fund COLR obligations. The Companies believed that stranded investment should be funded through the NUSF, to more fairly and equitably spread the cost of the COLR obligation across all ratepayers in Nebraska.

86. Mr. Blundell submitted pre-filed testimony on behalf of Western Wireless. It was Western Wireless' position that the NUSF was not responsible for the recovery of stranded investment on a going forward basis. Those investments have been recovered through years of federal and state support payments, as well as access charges.

B. Discussion

87. It is the Commission's opinion that the Commission creates incentives for investments, but not mandates. Under this incentive plan, companies will need to weigh the risks of making investments. On a going-forward basis, on a new investment, stranded investment will not be part, and will not be, recovered through the Nebraska Universal Service Fund. Rather, as we move towards a new phase in the marketplace, more of the risks need to be borne by the companies.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the goals described in paragraph 29 be and they are hereby adopted.

IT IS FURTHER ORDERED that parties may file models or methodologies pursuant to paragraph 61 of this order.

IT IS FURTHER ORDERED that parties may file comments to the questions posed in paragraph 68 of this order on or before **September 25, 2002**. A hearing shall also be scheduled for **October 8, 2002** at 9:00 a.m. in the Commission Hearing Room.

IT IS FINALLY ORDERED that all other Commission findings and conclusions be and they are hereby adopted as provided herein.

MADE AND ENTERED at Lincoln, Nebraska, this 27th day of August, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director