

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-50
Public Service Commission, on)	
its own motion, to make)	ORDER SEEKING COMMENT,
adjustments to the universal)	SETTING HEARING AND
service fund mechanism)	ESTABLISHING CASE
established in NUSF-26.)	PROGRESSION SCHEDULE
)	
In the Matter of the Commission,)	Application No. NUSF-4
on its own motion, seeking to)	
determine the level of the fund)	
necessary to carry out the)	
Nebraska Telecommunications)	
Universal Service Fund Act.)	Entered: August 29, 2006

BY THE COMMISSION:

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

1. In 2005, the Nebraska Public Service Commission (Commission) decreased the surcharge subsequent to its findings in NUSF-26,¹ pertaining to the long-term universal service fund mechanism. Accordingly, on January 18, 2006, the Nebraska Public Service Commission (Commission) opened NUSF-50 pursuant to *Neb. Rev. Stat. § 86-324(2)(b)* (2006 Cum. Supp.) to consider certain adjustments to the long-term universal service fund mechanism established in NUSF-26 and to determine what changes need to be made to the Nebraska Universal Service Fund (NUSF) high-cost program support.

2. Annually, the Commission holds a hearing in NUSF-4 to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act (NUSF Act) and to set the surcharge. On June 27, 2006, the Commission entered an order maintaining the surcharge level at 5.75 percent of intrastate retail revenues which was reduced from 6.95 percent on October 1, 2005.

3. On July 18, 2006, the Commission released a staff proposal for public comment in NUSF-50. Comments were due on August 17, 2006. Comments were filed by United Telephone Company of the West d/b/a Embarq (Embarq), the Nebraska Rural Independent Companies (RIC), the Nebraska Rural Telephone Coalition (RTCN), Citizens/Frontier, N.E. Colorado Cellular d/b/a Viaero Wireless (Viaero), Qwest Corporation (Qwest),

¹ See generally, Application No. NUSF-26, *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a Long-Term Universal Service Funding Mechanism*, Findings and Conclusions, November 3, 2004 ("NUSF-26 Order").

Nebraska Telecommunications & Technology (NT&T) and Cingular Wireless PCS, LLC and Sprint Spectrum L.P. d/b/a Sprint PCS and Nextel West Corporation d/b/a Nextel (Cingular/Sprint/Nextel).

4. Based on the comments received on August 17, 2006, and those filed previously in this proceeding, the Commission hereby releases a proposal in this order for changing the structure of the calculation of NUSF payments. In response to this proposal, the Commission will seek testimony, reply testimony and will establish a hearing date for interested parties. Interested persons who do not intend to bring a witness to the hearing but want to have their positions on record should file comments and reply comments as opposed to testimony on the dates described below.

5. As the changes may potentially impact the level of the surcharge assessed, the Commission also combines NUSF-4 with this docket so that it can, if necessary, make any modifications to the surcharge. Because of the potential shortfalls which the fund will face in early 2007, *Neb. Rev. Stat. § 86-328(2)* (emergency adjustment to the surcharge level) is raised in this proceeding.

6. The proposed changes outlined in Steps One through Six below are changes for which we assume no change to the surcharge level is made. The proposed changes, including those in addition to Steps One through Six, will keep the fund solvent. Although all changes proposed in these paragraphs are dependent upon each other, the Commission will roughly approximate the impact of each proposed change at each step. In addition, Steps One through Six are detailed in Attachment "A", attached hereto and incorporated in this order, which illustrates how companies would be affected by the proposed modifications.

7. The Data Update column (column C) of Attachment "A" shows the net effect of scheduled updates to the NUSF-26 distribution model in accordance with the NUSF-26 Order. These changes include an increase in the per-line backstop from \$10.00 to \$15.00 and imputation of companies' 2005 EARN-Form data. High-cost support would be reduced by approximately \$3.7 million for the 2007 payment year regardless of action taken in this proceeding.

8. Prior to Step One, the formulaic dependency of the current over-earnings calculation on previous over-earnings instituted in year two is removed from the appropriate column of the TM Worksheet in the NUSF-26 distribution model resulting in a reduction in high-cost support of \$74,827 as displayed in column F of Attachment "A." The steps below then follow.

9. Step One: As previously indicated, the Commission proposes to depreciate the NUSF-7 support allocated to certain rural companies and to Qwest. The impact of depreciating the NUSF-7, the staff estimates, is a \$500,000 per year reduction in support requirements to the fund. While the overall impact to the fund is \$500,000 due to per-line backstop and OER transitional mechanisms the actual impact to the affected companies in the 2007 payment year is an estimated decrease of \$32,423 as shown in column G of Attachment "A." The reason there is limited impact on the companies is because there is sufficient monies available in the transition mechanisms to substantially reduce the impact to the companies. A worksheet describing how each company would be affected in the 2007 funding year will be made available to the companies affected upon request.

10. Step Two: The Commission proposes to change the urban rate benchmark in the model from \$17.50 to \$17.95 to reflect the urban rates currently in effect today. The urban rate benchmark calculation is detailed in Attachment "B", which is attached hereto and fully incorporated herein. The benchmark of \$17.50 has been in place for single line residential service for over six years; and, at the time it was adopted, it reflected the approximate average urban rate benchmark. The Commission believes it is an appropriate time to determine whether an increase in this benchmark should be adopted. Based on the Commission staff's calculations, urban rates have increased to approximately \$17.95. The change proposed in this step would increase the support requirements of the fund by an estimated \$2,366 as displayed in column H of Attachment "A."

11. Step Three: The Commission proposes to impute certain amounts of federal universal service fund payments into the earnings calculation. The Commission proposes to examine interstate federal universal service fund payments if interstate earnings exceed the relevant earnings benchmark. The Commission proposes to impute in the state earnings calculation the minimum of either the total federal universal service funds received by the company or the total interstate over-earnings relative to the authorized federal rate of return benchmark of 11.25 percent. This proposed modification would decrease the support requirements of the fund by an estimated \$4,517,685 for the 2007 payment year based on the current state earnings benchmark of 12 percent as displayed in column I in Attachment "A."

12. Step Four: As set forth in the staff proposal, the Commission proposes to reduce the state earnings benchmark from 12 percent to 11.25 percent. Qwest filed comments in support of

this proposal. Although a number of carriers have opposed this in their comments, the Commission believes that a change from 12 to 11.25 may be appropriate. The 11.25 earnings benchmark mirrors the authorized federal rate of return benchmark and in accordance with that, the Commission believes the staff proposal to make this modification may be appropriate. In addition, we believe the debt component has decreased since the 12 percent earnings benchmark was adopted by the Commission. The proposed modification in this step would decrease the support requirements of the fund by an estimated \$1,518,004 for the 2007 payment year as displayed in column J of Attachment "A."

13. Step Five: The Commission proposes to phase down over earnings redistribution (OER) 25 percent per year for the next three years, such that OER is eliminated subsequent to payment year six of NUSF-26. A number of commenters were in support of phasing down OER support. Qwest opposed phasing down OER. In the Commission's NUSF-26 findings and conclusions order, the Commission adopted a five-year transition period. With the adoption of this proposal to modify OER by 25 percent per year, companies will arrive at the same place they would be in year six which is the end of transition period. The Commission believes that implementing a step down will allow for an easier transition for those companies impacted. The Commission proposes to reduce OER by 25 percent in 2007, an additional 25 percent, 50 percent cumulative in 2008, an additional 25 percent, 75 percent cumulative in 2009, and the final 25 percent, cumulative 100 percent in 2010. The proposed modification in this step would decrease support requirements of the fund by an estimated \$8,571,974 for the 2007 payment year as displayed in column K of Attachment "A."

14. Step Six: State statute requires that rates be reasonably comparable throughout the state. See Neb. Rev. Stat. § 323(3). The Commission believes that the \$2.00 actual or imputed difference would still meet the reasonably comparable rate standard in Nebraska statute. Accordingly, a high-cost benchmark of \$19.95 for high-cost areas would be reasonably comparable. The rural benchmark would amount to a possible difference of \$2.00 between the urban residential basic local rate and a rural residential basic local rate. The Commission proposes to make an explicit reduction in high-cost support in those areas to reflect the fact that companies in those areas can raise their rates a maximum of two dollars. The proposed modification in this step would decrease support requirements of the fund by an estimated \$1,880,555 for the year implemented. The results are displayed in column L of Attachment "A."

15. These six steps lower the fund obligations by approximately 16.5 million dollars if there is no cut to the base allocator and give companies notice of an approximate measure of impact. Attachment "A" describes the approximate impact on the companies. However, these proposed modifications affect inter-related components in the model and any modification, however minor, to the steps and the base allocation will change the resulting approximations for these steps.

16. If the surcharge level stays the same, the Commission would not only need to implement the modifications described above, it would also need to modify the base allocation. The Commission proposes to make the remaining cuts by reducing the base allocation. This required reduction results in a net reduction of support to the affected companies of approximately 6.8 million dollars as displayed in column M of Attachment "A." Step Six would not be affected by the cut to the base allocation. The cut to the base allocation would be similar to the proposal set forth by Citizens/Frontier which recommended the Commission make across-the-board cuts to the distribution model.

17. Accordingly, in addition to the proposed steps described above, the Commission seeks comment on whether to modify the surcharge of 5.75 percent to keep the high-cost program solvent. RIC, RTCN, NT&T and Embarq all commented the Commission should increase the surcharge. If the Commission were to increase the surcharge to 6.25 percent, the Commission would need to cut approximately 16.75 million dollars from the high-cost program. If the surcharge was raised to 6.25 percent, the Commission would propose the same modifications described above, except that it would not need to reduce the base allocation. Interested parties should file specific testimony or comments on whether the Commission should modify the surcharge. Any comments should be accompanied by a specific recommendation and justification for changing the surcharge.

18. The Commission also proposes to index the allocation of support that competitive local exchange carriers (CLECs) receive from lines ported to an appropriate ratio based on the amount the incumbent local exchange carrier (ILEC) would receive. If the ILEC receives less or no high-cost support for the lines in its territory, then the support ported to the CLEC would also be phased down in accordance with the ILEC's actual support payment. If the ILEC in its territory receives no support for the year, then the CLEC would also lose support for unbundled network elements (UNEs) leased from the incumbent for that year.

19. Finally, Viaero and Cingular/Sprint/Nextel commented generally on the amount reserved for the proposed dedicated wireless program. Others commented that the Commission staff should not be concerned with funding a dedicated wireless program. At this time, the Commission has not yet developed the dedicated wireless program and the staff proposal was simply a placeholder in the event that the Commission decides to develop such a program. The Commission has yet to develop standards for eligibility, for service, or for funding.

20. Interested persons who plan to testify at the hearing in this matter must file direct testimony and all associated exhibits on or before **September 29, 2006**. A party not filing testimony in will not be permitted to call a witness at the hearing. In the alternative for interested persons not planning to present testimony or evidence at the hearing may file comments with the Commission on or before September 29, 2006. The comments filed will be made part of the record.

21. Interested persons may also file reply testimony and all associated exhibits on or before **October 23, 2006**. In the alternative for interested persons not planning to present testimony or evidence at the hearing may file comments with the Commission on or before October 23, 2006. The comments filed will be made part of the record at the hearing.

22. Interested persons must file five paper copies of all submissions with the Commission. All submissions must also be sent electronically to brandy.zierott@psc.ne.gov. Interested persons should electronically serve all persons commenting previously in this proceeding.

23. A prehearing conference will be held on **October 31, 2006** at 1:30 p.m. in the Commission Hearing Room. At the conference, the Commission will discuss the proceeding, determine whether to set limits on cross-examination time, discuss any remaining rebuttal evidence, and receive any prehearing motions or objections.

24. A hearing in this matter will be held on **November 8-9, 2006** in the Commission Hearing Room. The hearing on November 8, 2006 will commence at 11:00 a.m. CT. The hearing will continue if necessary on November 9, 2006 commencing at 10:00 a.m. CT.

25. The Commission anticipates using an outside court reporter for the hearing. The Commission also anticipates

having all parties testifying at the hearing to participate in the cost of providing the outside court reporter.

26. In order to give all interested persons an idea of the timeline in this proceeding, attached hereto as Attachment "C" is a case progression schedule which details the testimony deadlines, the prehearing conference, the hearing and a briefing schedule.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that direct testimony and all associated exhibits or comments be filed by any interested party on or before September 29, 2006 as described above.

IT IS FURTHER ORDERED that reply testimony and all associated exhibits or comments be filed by interested parties on or before October 23, 2006.

IT IS FURTHER ORDERED that a prehearing conference be held on October 31, 2006 at 1:30 p.m. in the Commission Hearing Room, 1200 N Street, 300 The Atrium Building, Lincoln, Nebraska.

IT IS FURTHER ORDERED that a hearing on the proposals set forth herein be held on November 8-9, 2006 in the Commission Hearing Room, and will be held in the Commission Hearing Room, 1200 N Street, 300 The Atrium Building, Lincoln, Nebraska. The hearing on November 8, 2006 will commence at 11:00 a.m. The hearing will continue on November 9, 2006, if necessary, and will commence at 10:00 a.m.

MADE AND ENTERED at Lincoln, Nebraska this 29th day of August, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director