

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of	)	Application No. NUSF-77
the Nebraska Telecommunications	)	Progression Order No. 6
Association for Investigation and	)	
Review of Processes and Procedures	)	
Regarding the Nebraska Universal	)	
Service Fund.	)	
	)	
In the Matter of the Nebraska	)	Application No. NUSF-69
Public Service Commission on its	)	
own motion seeking to implement	)	
policies and procedures related to	)	
providing dedicated universal	)	
service support for wireless	)	
telecommunications services.	)	
	)	
In the Matter of the Nebraska	)	Application No. NUSF-26
Public Service Commission, on its	)	
own motion, seeking to establish a	)	ORDER SEEKING COMMENTS
long-term universal service funding	)	
mechanism.	)	Entered: June 5, 2012

BY THE COMMISSION:

***Background***

On January 14, 2010, the Nebraska Telecommunications Association filed a petition for investigation and review of the Nebraska Universal Service Fund (NUSF) processes and procedures. On March 8, 2010, the Commission held a planning conference to discuss a timeline for the submission and development of issues to be considered for possible inclusion in this investigation. Comments and reply comments were submitted to the Commission by interested parties regarding issues that should be addressed. Subsequently, briefs and reply briefs were submitted in response to our July 7, 2010 Order in which we asked for legal briefs regarding four questions concerning the Commission's legal authority to provide NUSF support for broadband services.

Following the Commission's analysis of the legal briefs submitted in response to the July 7, 2010 Order, on November 3, 2010 the Commission issued Progression Order No. 1 in which we found that the Commission possesses requisite legal authority to provide support for broadband deployment and/or operational costs of broadband services through the NUSF.

Also in Progression Order No. 1 we found that the Commission should consider implementation of a broadband pilot program. A series of questions were posed in response to which we invited comments by interested parties.

On January 17 and January 31, 2011, respectively, comments and reply comments responsive to the questions posed in Progression Order No. 1 were received by the Commission. Following consideration of these comments and developments in connection with the Federal Communications Commission's (FCC) inquiry regarding the National Broadband Plan as well as adoption of the Connect America Fund, on June 14, 2011 we issued Progression Order No. 3 in which we found that making NUSF support available for broadband deployment in Nebraska will complement the Commission's existing goal to support networks that provide voice service as well as advanced services. In light of the evolving Federal policies with regard to broadband deployment, we also concluded to proceed incrementally with implementation of the Nebraska Broadband Pilot program (NEBP). In light of the many issues attendant to the implementation of the NEBP, the Commission sought comment on a series of issues relating thereto, and in particular, relating to Year One of the NEBP.

Following receipt of comments and reply comments in response to Progression Order No. 3 and a public hearing on August 8, 2011, on September 27, 2011 the Commission issued Progression Order No. 4 setting forth the proposals which would constitute the basis on which the NEBP would be established. On November 21, 2011 the Commission set forth its findings relating to the establishment of the NEBP, including guidelines for applications for funding therefrom, in Progression Order No. 5. An application period of January 2 through February 1, 2012 was established.

A total of seven applications for funding of broadband projects during 2012 were received by the Commission. Public notice of the submission of these applications was given and interested parties were provided the period to and including March 26, 2012 to file protests or interventions in response to the applications. A hearing on the applications was held on May 30, 2012.

***Standards and Goals for Deployment and Availability of High-Speed Broadband Services and NUSF Support***

As can be seen from the review of the background of activities conducted to date in this docket, considerable

progress has been made in focusing a portion of the NUSF more directly on supporting the development and availability of high-speed broadband services. However, as the Commission proceeds with the evaluation of the applications for 2012 funding from the NEBP, the Commission deems it advisable to review and re-evaluate the existing NUSF goals as previously articulated by the Commission. The NUSF goals considered here are intended to ensure that high-cost, wireless, and NEBP pilot program support are properly focused on the deployment of and maintenance, where appropriate, of quality high-speed services to consumers in all regions of the State of Nebraska.

For at least the last eight years, as a part of the Commission's efforts to develop a long-term universal service funding mechanism, the Commission has expressed the belief that "it can facilitate access to such [advanced and information services, i.e. the Internet] through its universal service policies and its support of the underlying physical network."<sup>1</sup> In fact, in 2004 we envisioned that "[a]s Advanced Services and Information Services continue to evolve, the Commission anticipates opening a docket to explore whether it should adopt standards for deployment and whether additional NUSF Program Support is needed to insure access to these services."<sup>2</sup>

These dockets are the appropriate vehicle to further explore these questions and in light of the Commission's implementation of the NEBP which provides grant support to extend high-speed broadband services to unserved and underserved areas of the State, this is the appropriate time to explore (a) whether new standards or goals should be formulated to advance the deployment and availability of high-speed broadband services to all Nebraska consumers, and (b) whether additional NUSF support should be designated for this specific purpose.

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<sup>1</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism*, Application No. NUSF-26, Progression Order No. 5 at para. 30 (June 29, 2004) and Findings and Conclusions at para. 38 (Nov. 3, 2004).

<sup>2</sup> *Id.* at para. 85.a.

***Existing Goals of Long-Term NUSF Support***

The Legislature has declared that the purpose of the Nebraska Telecommunications Universal Service Fund Act (the Act) is to "ensure that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices." *Neb. Rev. Stat. § 86-317* (Reissue 2008). The policies that the Legislature identified in the Act that are to be followed in effecting this purpose of the Act are set forth in *Neb. Rev. Stat. § 86-323* (Reissue 2008).

In August 2002, based upon these statutory directives and significant inputs from interested parties, the Commission found that the complete list of goals for the long-term support NUSF mechanism should be as follows:

1. The Commission should establish sufficient specific and predictable state support mechanisms.

2. 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.

3. The Commission should ensure that all Nebraskans have comparable access to quality telecommunications and information services, including interexchange services, advanced telecommunications and information services.

4. 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.

5. The Commission should encourage the development and maintenance of the telecommunications infrastructure and encourage investment and the deployment of new technologies.

6. Any requirements the Commission adopts should be competitive and technologically neutral.

7. The Commission should protect the public interest and welfare and the surcharge should not burden telecommunications consumers.

8. The Commission should advance the affordable availability of telecommunication services to low-income consumers and schools, libraries and rural healthcare providers.

9. The focus of the NUSF support should be on the consumers and not on the companies.

In the Commission's formulation of the foregoing goals the Commission expressly considered and determined that NUSF support should be provided for creation of an infrastructure that would not only support voice telecommunications, services, but also would support advanced and information services.<sup>3</sup> Further, the Commission found that it should be the goal of the NUSF to provide that "all Nebraskans have comparable access to services including advanced services."<sup>4</sup>

In light of the Act's policies of ensuring that all Nebraskans have comparable access to advanced services and information services at rates that are just, reasonable and affordable, we seek comments from interested parties as to whether the existing goals of the NUSF as set forth above should be revised, and if so, in what regard. Specifically, we request comments on the following:

1. Should the goals listed above, be amended or expanded based on the goals of the NEBP as set forth in this proceeding?

2. Specifically, should NUSF goal 3 be revised to incorporate a requirement of comparable access to broadband, and should NUSF goal 5 be revised to encourage deployment of infrastructure capable of supporting broadband delivery to consumers?

3. Should the NEBP be modified into a permanent fund to provide grants for infrastructure to provide advanced and

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<sup>3</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism*, Application No. NUSF-26, Progression Order No. 2 at paras. 23 and 24 (Aug. 27, 2002).

<sup>4</sup> *Id.* at para. 24. See also, Progression Order No. 3 entered in this Docket on June 14, 2011 at page 6.

information services, including broadband, to consumers located in unserved and underserved areas of the State?

4. How much funding should be committed to the NEBP in order to fulfill its goals?

5. Should the Commission consider combining the goals for the NEBP with the goals of NUSF-69 and combining the two programs into one technology neutral grant program?

6. Should the Commission's goals be modified to incorporate objectives of the National Broadband Plan created by the Federal Communications Commission?

7. Should the Commission change the process for determining broadband support by permitting carriers to further restrict, but not enlarge, the proposed support area based on negotiations with other providers prior to the Commission staff's review and recommendation?

8. Should the Commission impose a support cap on NEBP support received, as a percentage of available funds, by project or by company and at what level?

9. Is the structure of the NEBP program and its approval mechanism appropriate for the successor fund?

10. Should the Commission require carriers to provide sample speed test data as a verification tool so that the Commission can determine whether an approved project was completed as specified? If so when should this data be provided and how? If not why not. Is there any other data that should be provided for verification purposes?

11. Should NUSF-77 support received be reflected on the NUSF-EARN form?

12. In what other respects should the existing NUSF goals be modified, reduced or expanded to more explicitly reflect the policies of the Act to support advanced and information services?

### ***Comment Period***

The Commission solicits comment on the foregoing questions to determine whether any adjustments should be made prior to Year Two submissions for NEBP support. However, to give interested parties time to consider the outcome of the NUSF-77 applications filed for Year One of the NEBP and to

give interested parties time to consider changes to the federal universal service mechanism related to broadband support, we give commenters until **August 15, 2012** to file *initial comments in response to this Progression Order*. Commenters should file one (1) paper copy and one (1) electronic copy of their Comments with the Commission. Reply Comments shall be filed on or before **September 14, 2012**. Electronic copies should be sent to [Sue.Vanicek@nebraska.gov](mailto:Sue.Vanicek@nebraska.gov) and [Brandy.Zierott@nebraska.gov](mailto:Brandy.Zierott@nebraska.gov). An electronic copy of the Comments and Reply Comments shall also be served on all other interested parties on the Commission's service list.

***Commission Hearing***

A hearing on this matter will be scheduled on a date later to be determined.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Comments responsive to the foregoing shall be filed on or before **August 15, 2012** and Reply Comments shall be filed on or before **September 14, 2012** as provided above.

MADE AND ENTERED at Lincoln, Nebraska this 5<sup>th</sup> day of June, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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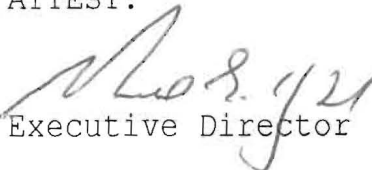


//s// Rod Johnson  
//s// Frank Landis

Chairman



ATTEST:

  
Executive Director