

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska        ) Application No. NUSF-99  
Public Service Commission, on        )  
its Own Motion, to Administer        ) PROGRESSION ORDER NO. 1  
the Universal Service Fund            )  
High-Cost Program.                    ) Entered: September 1, 2015

BY THE COMMISSION:

The Nebraska Public Service Commission (Commission) initiated this proceeding on October 15, 2014 to consider certain modifications to the high-cost funding mechanism in the universal service fund program. The Commission solicited comments on certain modifications affecting the carriers classified federally as price cap carriers.

In general terms, the Commission proposed to adopt a separate distribution mechanism for price cap carriers designed to target and track Nebraska universal service fund investments in broadband infrastructure. The Commission proposed to distribute support to price cap carriers outside the current distribution mechanism through a mechanism that was more comparable to the FCC's Connect America Fund ("CAF").

On June 16, 2015, the Commission issued an Order Seeking Further Comment and Setting Hearing ("June 16, 2015 Order"). In that Order, the Commission released further questions for consideration. Specifically, the Commission sought comments on the following:

1. Whether to freeze the amount of support allocated to all price cap carriers at the 2015 calendar year level with adjustments based upon overall NUSF remittance receipts.
2. Whether to make an allocation of ongoing support to price cap carriers for continued maintenance of existing voice and broadband networks.
  - a. The Commission proposed to set aside 50 percent of each price cap carrier's frozen support for ongoing costs of provisioning service in Nebraska. The Commission would permit price cap carriers to make a showing to the Commission for an alternative allocation of the frozen high-

cost support needed in connection with the continued provision of voice service upon request and thereby potentially adjust the allocation for broadband support set forth in paragraph 3 below.

- b. The Commission proposed the allocation of ongoing support would be subject to continued investment by the carriers in their network.
- c. The Commission proposed to relieve price cap carriers from the NUSF-EARN Form filing requirement.
- d. The Commission proposed to establish an alternative approach for determining whether the NUSF support used by price cap carriers was used for its intended purpose, keeping in mind the statutory requirement to audit, on an annual basis, the use of NUSF high cost support received.

3. Whether to make an allocation for broadband support in price cap areas.

- a. The Commission proposed to establish a streamlined process for price cap carriers to annually present a list of the projects for which broadband funding is desired and have the Commission review, and approve or deny the projects.
- b. The Commission proposed to permit price cap carriers to coordinate the use of state high-cost support with their CAF Phase I frozen high-cost support and CAF Phase II support.
- c. Consistent with the position of a number of commenters, the Commission proposes to disallow broadband support in areas that already have an unsubsidized carrier providing comparable broadband service.

In addition, the Commission sought comments on issues raised by the commenters in this proceeding. The Commission solicited comments on whether to restrict or eliminate a price cap carrier's ability to take NUSF support if the carrier declines to take advantage of the CAF II funding for Nebraska.

***Comments and Hearing***

Comments responsive to the Commission's June 16, 2015 Order were filed by CenturyLink, Frontier and Windstream (Joint Commenters), the Rural Independent Companies (RIC), Sprint, AT&T, and Viaero Wireless. Reply comments were filed by the Joint Commenters, RIC, CTIA-The Wireless Association (CTIA), and Charter Fiberlink-Nebraska.

The Joint Commenters submitted comments in support of the proposal to freeze the amount of support allocated to each of the price cap carriers but believed the 50 percent allocation to be too low for ongoing costs to maintain and operate voice networks in Nebraska. The joint commenters further recommended the broadband component of the NUSF support be used in one or more of three ways 1) to help offset the cost of deploying broadband service to CAF II eligible locations where CAF II support is insufficient; 2) to add or augment middle mile facilities necessary to expand end-user access to broadband and to increase speeds for locations where broadband is already available; and 3) to reach unserved locations not eligible for CAF II funding. The Joint Commenters supported the Commission's proposal to eliminate the NUSF-EARN Form requirement and to establish an alternative approach for determining whether the NUSF support provided to price cap companies was used for the intended purpose.

The Rural Independent Companies cautioned the Commission that freezing high-cost support should be limited in duration to a discrete finite time period. Their comments reflected support for the idea of recognizing both capital expenditures ("capex") and operational expenditures ("opex"). RIC suggested the Commission institute other accountability requirements to ensure that the policy goals of the NUSF are met. RIC also supported the Commission's efforts to establish a simplified, straight-forward set of criteria for review and approval of the broadband projects proposed by the price cap carriers for annual grant funding.

Sprint commended the Commission for its efforts to create policies for the NUSF support mechanism that will incent carriers to make appropriate investment decisions in Nebraska. Specifically, Sprint applauded the Commission's

proposal to disallow broadband support in areas that already have an unsubsidized carrier providing comparable broadband service.

Sprint disagreed with the Commission's proposal to allow price cap carriers to receive 50 percent of their frozen 2015 support for the continued maintenance of existing voice and broadband networks in the absence of a requirement to consider whether CAF support was available in areas for which funding is received. Sprint recommended the Commission restrict or eliminate a price cap carrier's ability to take NUSF support if the carrier declines to take advantage of the CAF II funding for Nebraska.

AT&T recommended the Commission do nothing in this proceeding at this time. AT&T recommended the Commission wait until the CAF II processes are complete. AT&T further commented that there is widespread availability of broadband deployment already occurring in Nebraska. Finally, AT&T recommended the Commission instead focus on broadband adoption.

Viaero generally supported the Commission's initiative to adopt a new dedicated NUSF distribution mechanism for price cap carriers. Viaero also agreed with commenters that NUSF support should be restricted or eliminated for any area where CAF II funding is available but the price cap carrier declines to pursue it. Viaero opposed any proposal that would permit a price cap carrier to receive any fixed percentage of its frozen 2015 NUSF support in the absence of a requirement to determine whether CAF support is available in the areas for which NUSF funding is requested and that the price cap carrier has declined such funding.

A hearing was held on July 21, 2015 in Lincoln, Nebraska. The comments and reply filed were made part of the record. Testimony was offered by representatives for the Joint Commenters, CTIA, and by RIC.

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

Through the years, the Commission has transitioned universal service fund support by creating programs to fulfill the policy goals of the NUSF Act, adapting to emerging technologies and consumer preferences, and

accounting for changes in federal universal service policy. In the present Order, we recognize again the need to transition high-cost support to be consistent with federal universal service reform. The steps taken today are transitional in nature and will continue to evolve as issues outside of this docket progress; issues including but not limited to, the Commission's inquiry in NUSF-100 related to contributions and NUSF-102 related to the cost model.

### **Frozen High-Cost Support**

After considering the comments and testimony provided at the hearing, the Commission finds that for the 2016 calendar year it will freeze the amount of high-cost support allocated to all price cap carriers at the 2015 calendar year level with adjustments based upon overall NUSF remittance receipts.

Moreover, the Commission finds it should make an allocation of that ongoing support to price cap carriers for continued maintenance of existing voice and broadband networks. In its June 16, 2015 Order, the Commission proposed a 50 percent allocation to ongoing support for continued maintenance of existing voice and broadband networks. The Joint Commenters recommended a 75 percent allocation to ongoing support for continued maintenance of existing voice and broadband networks. They base this estimation on a 71 percent figure they obtained through the CACM model used by the FCC in developing the CAF II costs and then rounded up from there. Other commenters cautioned the Commission to carefully consider whether an allocation for ongoing expenses should be made in areas where CAF II was accepted. In those areas, according to commenters, no support should be provided. In the interim, the Commission finds a 50 percent allocation to ongoing support for continued maintenance of existing voice and broadband networks to be most reasonable. The Commission has not had an opportunity to fully explore the cost components of the FCC's cost model but has been pursuing a licensing agreement so that it and other interested parties may have access to this information. After a fully investigated record, the Commission may revise this allocation percentage as appropriate.

### **Requirement to Demonstrate Investment in Network Costs**

The Commission finds the allocation of ongoing support will be subject to continued investment by the carriers in their network. Historically, the NUSF-EARN Form has been a tool used by the Commission to ensure carriers were making investments in their network and to ensure NUSF support provided was being used in Nebraska. With this Order, through the broadband grant approval process, the Commission will now know at a more precise level how NUSF support is being used. Price cap carriers will be filing more specific information relative to where and when broadband is being deployed, the number of households affected, and the speeds at which the service is being provided.

### **Allocation for Broadband Support**

The Commission proposed to establish a streamlined process for price cap carriers to annually present a list of the projects for which broadband funding is desired and have the Commission review, and approve or deny the projects. The Commission proposed to allow price cap carriers to coordinate the use of state high-cost support with their CAF Phase II support. Consistent with the position of a number of commenters, the Commission further proposed to disallow broadband support in areas that already have an unsubsidized carrier providing comparable broadband service.

Most of the commenters supported the Commission's proposal to allocate a portion of the price cap carrier support for specific broadband projects which would be approved by the Commission in an ongoing process. However, there were significant differences of opinion related to how broadband projects should be approved and whether the Commission should permit the coordinated use of high-cost support in CAF Phase II areas.

Based on the comments and testimony provided in this matter, the Commission adopts its proposal to disallow broadband support in areas that already have an unsubsidized carrier providing comparable broadband service. Most of the commenters strongly supported this proposal. Further, it is consistent with the federal high-cost support allocation. In limited instances, there may be cases where middle-mile costs need to be supported, however, that decision will be made on

a case-by-case basis and the Commission may consider an allocation methodology for determining what that support amount should be. As a general rule, however, the Commission will not provide explicit broadband support in areas that already have an unsubsidized carrier providing comparable broadband service. The Commission will utilize broadband mapping data and Form 477 data where appropriate to determine these areas. The Commission would also expect a carrier claiming comparable broadband service to provide evidence that such service exists.

### ***Targeted Broadband Support Areas***

The Joint Commenters supported the use of high-cost support in CAF II areas, stating the FCC's CAF II funding was never intended to replace state universal service support. They argued the FCC acknowledged that CAF II funding is insufficient to reach all eligible locations. However, CTIA, RIC, AT&T and Charter expressed concerns with the Commission's proposal to provide state universal service support in CAF II areas. These commenters were concerned with potential duplication of funding. RIC stated "targeting NUSF High Cost Program dollars to other areas that are ineligible for CAF Phase II support may provide a method by which the Commission can better utilize scarce NUSF dollars to gain greater rural consumer benefits.

In consideration of the comments and testimony received, the Commission declines to limit broadband funding requests solely to the areas ineligible for CAF II support. The Commission agrees that support should be suitably targeted to consumers in high-cost areas that will remain unserved because they are not in CAF II eligible areas. Careful consideration must be given for broadband funding in CAF II areas to prevent redundant support being provided to price cap carriers in CAF II support areas and to guard against any unintended consequences that would lead to that carrier's inability to obtain federal broadband support in these areas going forward. However, the Commission is concerned that an outright prohibition may preclude the timely deployment of advanced services to Nebraska consumers in certain cases. Further, the Commission believes carriers must have the flexibility to make prudent business decisions regarding network investments. The Commission finds support should

continue to be targeted to areas which have a need for broadband investment. Consequently, the Commission intends to carefully balance these and other considerations raised by the commenters in this proceeding when reviewing targeted broadband grant requests. However, the Commission will require an additional showing by the price cap carrier seeking support in CAF II eligible areas that NUSF support is needed in conjunction with federal support. Such a showing will not be required in CAF II ineligible areas.

Finally, some commenters recommended the Commission disallow state high-cost support in an area where a carrier was CAF Phase II eligible but declined to take the support. The Joint Commenters argued that if the state-wide offer for support is not accepted, the "NUSF support is still needed to offset the high cost of providing voice service in rural areas." The Commission finds that it would be difficult to justify providing state high-cost support for voice and broadband where a carrier has refused this high-cost support from the federal universal service fund. The Commission refrains from adopting a bright line prohibition at this time. However, there will be presumption against a carrier's need for explicit high-cost support in such areas.

#### ***Reimbursement for Broadband Investment***

Finally, the Commission declines to adopt the recommendation proposed by the Joint Commenters that broadband support be paid prior to the investment being made. Historically, the Commission has reimbursed providers based on verified invoices, or approved cost demonstrations that were supplied either at particular milestones or after the project was completed. The Commission sees the need to continue this practice for appropriate accounting and control of support.

The Commission will release relative high cost and broadband support amounts for price cap carriers in a subsequent progression order. Further, the Commission will continue to develop the process by which broadband support will be approved.



Commissioner Crystal Rhoades Concurring:

While I support moving this item forward I write separately today to express my reservations about the shortcomings in this Order. First, I have serious concerns about the 50 percent allocation for ongoing maintenance expenses. There is nothing in the record that justifies this allocation. Instead, I would have required the price cap carriers to affirmatively prove that they need NUSF support for ongoing operating expenses for maintenance of the voice network. Thereafter, I would have required the carriers to provide specific evidence supporting that allocation. I understand the staff is working through a cost modeling process to develop a more specific recommendation to the Commission. So, I support this Order on the condition that the staff work expeditiously on this issue to come up with an allocation that is appropriate and that the Commission can justify.

Moreover, in the event a price cap carrier seeks to use NUSF support in a given area where it is also using CAF II support, I urge my colleagues to set a very high bar for that determination. The FCC has already committed to providing federal broadband support in CAF II areas over the next several years which will bring speeds of 10/1 Mbps to Nebraska consumers. Each of Nebraska's price cap carriers has accepted this funding with the commitment that they will build out broadband service in these areas. Scarce NUSF resources ought to be allocated first to those areas that will continue to lack federal broadband support. I would strongly recommend a rebuttable presumption against support being provided in CAF II areas using a very high bar for demonstrating support is needed. Knowing where I stand on this issue, the carriers should be on notice that I intend to highly scrutinize any broadband request in a CAF II area. A price cap carrier requesting broadband support would be wise to select projects in areas that will not also be supported by CAF II federal support.

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Commissioner Crystal Rhoades

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the opinion and findings set forth herein be and they are hereby adopted.

MADE AND ENTERED at Lincoln, Nebraska this 1<sup>st</sup> day of September, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Tim Schram*

Chairman

*Gerald L. Vap*

*Crystal Knodes*

ATTEST:

*Red Johnson*

*Jeff L. Peltz*

Executive Director

//s//Frank E. Landis  
//s//Gerald L. Vap