

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-108
Public Service Commission, on) Progression Order No. 4
its Own Motion, to make)
adjustments to its high-cost) ORDER
distribution mechanism and)
make revisions to its)
reporting requirements.) Entered: October 29, 2019

BY THE COMMISSION:

Background

On November 19, 2018, the Commission initiated the above-captioned Progression Order to seek comment on a rate-of-return (ROR) carrier universal service fund (NUSF) mechanism for targeting broadband support to certain Federal Communications Commission (FCC) funded locations that may not otherwise be served with broadband even with the use of federal support. The Commission found that further study was necessary to determine a support allocation and reimbursement mechanism which met the Commission's accountability goals and does not duplicate federal support.

In Progression Order No. 3, the Commission found that further study should be given to account for areas where a ROR carrier has elected Alternative Connect America Model (A-CAM) support and where support was capped at a level not sufficient to deploy broadband to 25/3 Mbps ("capped locations").¹ The FCC provides a mechanism whereby carriers that receive A-CAM support report locations that have been served with broadband in the High Cost Universal Broadband (HUBB) portal. Accordingly, the Commission solicited further comment on a proposal to provide ongoing support to capped locations where broadband has been deployed and reported in the HUBB. Allocations for ongoing support would be determined based on the amount of modeled cost remaining above the capped amount already received in support, and controlled for overall support available for high cost. The Commission sought comments on the issues identified below.

1. How should the Commission determine the amount of funding that should be made available for the identified capped locations?

¹See *In the Matter of the Nebraska Public Service Commission, On Its Own Motion, To Make Adjustments To Its High-Cost Distribution Mechanism And Make Revisions To Its Reporting Requirements*, NUSF-108, Progression Order No. 3, Findings and Conclusions at 46(November 19, 2018).

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2. Should the Commission limit the number of locations that would be able to receive support?
3. Are additional measures necessary to ensure that support is not duplicative?
4. What limits if any should be placed on the allocation of support?
5. Should the Commission wait and see how the FCC resolves the requests for additional support?
6. Should the Commission account for federal support received for locations that were not built to?
7. Should the Commission provide support to locations at levels that are commensurate with support provided to non-A-CAM areas statewide?

Comments Filed

Comments responsive to the issues identified above were filed on or around December 18, 2018. Comments were filed by Charter Fiberlink-Nebraska, LLC along with Time Warner Cable Information Services (collectively referred to as "Charter"); the Nebraska Rural Independent Companies ("RIC"); and the Rural Telecommunications Coalition of Nebraska ("RTCN").

Charter recommended that the Commission open a proceeding to develop a competitive bidding program to allocate support to those unserved areas where it is most needed.² Charter submits that competitive bidding is a less expensive, more efficient means of allocating support.³ To avoid duplication of funding, Charter stated, the Commission should first determine whether federal support has been exhausted before committing millions in support to incumbent telephone companies.⁴ Charter further stated the FCC's order addresses the Commission's questions concerning funding to capped locations.⁵ Moreover, Charter argued, there is additional federal universal service fund support that has yet to be assigned

² See Charter Comments (December 18, 2018) at 3.

³ See *id.* at 8.

⁴ See *id.* at 3.

⁵ See *id.*

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and may become available to pay for broadband network deployment in rural areas of Nebraska.⁶

RIC stated that NUSF support for capped locations should include both capital expense and operating expense support.⁷ RIC stated NUSF support for both capital and operational purposes for capped locations is necessary to fulfill the requirements of Nebraska law.⁸ In response to the Commissions questions above, RIC stated that its member companies do not seek NUSF high-cost support that is duplicative of federal universal service support. However it agrees with the Commission that the HUBB database can be relied upon to accurately reflect where broadband has been deployed.⁹ RIC recommended that support be made available for capped locations and calculated by subtracting A-CAM support provided to capped locations plus customer benchmark revenue from the SBCM-determined costs to provide 25/3 Mbps speeds to such locations.¹⁰

RTCN stated the Commission should remain mindful of the importance of supporting service to areas that carriers have made past investments necessary to provide broadband service.¹¹ Further, the Commission should stay the course it charted in considering Progression Order No 3, holding to the position that it should continue to apply an earnings test to ensure the capped rate of return is not exceeded.¹² RTCN stated the allocation of support for capped locations must not jeopardize ongoing support necessary to protect investments made to deploy facilities that are currently broadband capable.¹³ RTCN stated support for new deployment should be conditioned upon actual deployment to unserved and underserved areas.¹⁴ To that end, the RTCN recommended the method should

⁶ See *id.* at 5.

⁷ See RIC Comments (December 18, 2018) at 2.

⁸ See *id.* at 7.

⁹ See *id.*

¹⁰ *Id.* at 13.

¹¹ See RTCN Comments (December 18, 2018) at 2.

¹² See *id.*

¹³ See *id.* at 4.

¹⁴ See *id.* at 5.

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replicate the broadband deployment mechanism, which was the method used in Progression Order No. 3.¹⁵

On February 5, 2019, the Commission entered an order seeking further comment on a more detailed proposal designed to address Nebraska Universal Service Fund (NUSF) support for capped locations. Specifically, the Commission sought comment on the following:

1. The Commission proposed to provide support to capped locations that have been built to a minimum speed threshold of 25 Mbps download/3 Mbps upload speeds using fiber-based infrastructure.¹⁶
2. The Commission proposed that evidence of deployment could then be submitted on a per location basis through reporting to the Universal Service Administrative Company (USAC) HUBB reporting database. The HUBB reporting database is used by the A-CAM carriers to report annual buildout for fulfillment of obligations in the CAF II program.
3. Further, the Commission proposed that relative to the locations reported in the HUBB no invoices would be routinely required as a prerequisite to determining support. However, the Commission proposed to retain the ability to audit the use of the NUSF support by requesting documentation supporting the carriers' buildout costs on a case-by-case basis.
4. Once the locations built out have been identified, the Commission proposed that the remaining cost (the total modeled cost to serve minus the capped amount and the benchmark) would be calculated on a per location basis for the carrier.
5. As with all other support, amount of support available for the capped locations would be subject to budget controls and may vary based upon the amount of support and eligible blocks across all rate-of-return areas eligible for support.

¹⁵ See *id.* at 6.

¹⁶ We noted that the SBCM estimates costs for fiber deployment. Should the carrier decide to utilize alternative technologies, the Commission would want to revisit the support calculation.

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6. The Commission proposed to provide support for the capped locations on a monthly support basis in a manner that is commensurate with the support amounts provided to non-ACAM providers for locations that have been built out to 25/3 minimum speeds.

Further Comments

Comments were due on or before March 7, 2019. Comments were filed by Charter/Time Warner, RIC, RTCN, and Great Plains.

Charter recommended the Commission not commit additional funds to carriers serving locations based solely on A-CAM estimates without demonstrated real-world evidence.¹⁷ Charter stated the recent CAF II Auction provided a real-world test in Nebraska as to the level of support needed to serve areas identified as extremely high-cost areas by the price-cap equivalent to A-CAM, the CAM. Carriers were willing to deploy fixed-wireless networks to serve extremely high-cost areas for \$38.50 per month/location in total federal support rather than the CAM estimated \$198.60 per month to serve.¹⁸

Charter further recommended caution with reliance on HUBB data, Charter stated the HUBB was not intended to track additional build-out made possible by supplemental state funding. Further, Charter stated the HUBB is a reporting and not an auditing mechanism.¹⁹

RIC recommended the Commission approve the provision of pre-build out monthly high-cost program support for capped locations.²⁰ RIC stated additional information is needed for a complete understanding of the Commission's proposal. RIC wanted the Commission to determine the amount to be allocated to individual rate of return carriers serving capped locations. RIC recommended the Commission release a total budget of all capped locations. RIC also stated that missing from the proposal was a description of the

¹⁷ See Charter Comments (March 7, 2019) at 2.

¹⁸ See *id.*

¹⁹ See *id.* at 7.

²⁰ See RIC Comments (March 7, 2019) at 2.

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methodology for allocating high-cost support to individual A-CAM electing rate of returns serving capped locations.

However, RIC noted points of agreement with the Commission's proposal.²¹ RIC agreed that the SBCM should be used to determine the costs for building fiber-based broadband networks. RIC further agreed with the Commission's proposal regarding reporting of built locations in the HUBB. However, RIC continued to disagree with the Commission's proposal that support for the capped locations would be provided after build out is completed.²² RIC was in general agreement with the principle of budget controls to the amount of support available for capped locations. Finally, RIC agreed with the proposal to provide monthly support for capped locations commensurate with support amounts provided to non A-CAM providers for locations that have been built out to 25/3 Mbps minimum speeds. RIC further recommended adoption of its own accountability proposal.²³

The RTCN recommended the Commission wait to determine the final outcome in this investigatory proceeding until at least the time that current legacy carriers have made an election for the second A-CAM offering by the FCC.²⁴ The acceptance of any revised offers will provide a clearer picture of federal support.²⁵ Further, the RTCN supported the Commission's proposal to provide support to capped locations that are connected to fiber infrastructure capable of speeds of at least 25/3Mbps. The RTCN agreed with the Commission's proposal to use the FCC's HUBB reporting system to indicate that service is being provided. The RTCN recommended that support for the capped locations should not jeopardize ongoing support for other carriers. Accordingly, the RTCN recommended the Commission establish separated funds for ongoing support of capped locations.²⁶ The RTCN recommended the

²¹ See *id.* at 6.

²² See *id.* at 7.

²³ See *id.* at 9.

²⁴ See RTCN Comments (March 7, 2019) at 2.

²⁵ See *id.*

²⁶ See *id.* at 3.

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capped locations should remain subject to the Commission's earnings test utilizing the Commission's NUSF EARN Form.²⁷

Great Plains offered a new proposal for the Commission's consideration. Great Plains recommended the Commission establish a separate budget to jumpstart deployment in capped locations.²⁸ Under Great Plains' proposal, the Commission would allocate that budget for new deployment to capped locations among A-CAM companies based on the relative SBCM cost characteristics of those locations.²⁹ Funding would be offered through an annual election process.³⁰ According to Great Plains' proposal, carriers would be eligible to receive an amount equal to the SBCM-calculated required investment to deploy fiber in the eligible census block but with an adjustment downward to reflect the amount of support for CapEx that is provided through A-CAM support.³¹ The Commission would provide an amount of support equivalent to 80 percent of the CapEx shortfall, in the year of construction. In the event of nonperformance, the amount advanced could be recouped from future ongoing support payments.³² Great Plains stated that the primary difference between their proposal and the Commission's is that electing carriers would be assured of funding in the year of construction to justify large capital investments that would be required to achieve 25/3 Mbps service in higher-cost locations.³³ Further, Great Plains then recommended, once deployment was reported in the HUBB, monthly ongoing support would be provided for capped locations with a downward adjustment to reflect the amount of funding advanced by the Commission in the year of construction to accelerate investment.³⁴ As an additional proposal, Great Plains suggested that to the extent that any A-CAM carrier is eligible for ongoing support in census blocks that are unsupported by the A-CAM program, that

²⁷ See *id.* at 4.

²⁸ See Great Plains' Comments (March 7, 2019) at 4.

²⁹ *Id.* at 4.

³⁰ *Id.*

³¹ See *id.*

³² See *id.*

³³ See *id.* at 6.

³⁴ See *id.* at 6-7.

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the company be permitted to utilize its allotted state funds to defray the cost of fiber deployment in other eligible blocks that do not yet have 25/3 Mbps.³⁵

Hearing

A hearing was held on April 30, 2019 in Lincoln, Nebraska. The comments filed on or around December 18, 2018, and March 7, 2019 were marked collectively as Exhibit 2 and received into the record. The Commission also took administrative notice of the transcript of the August 15, 2018 hearing, the exhibits which included the comments, and the Commission's orders entered on November 19, 2018 and January 29, 2019.

Mr. Cullen Robbins, Director of the Communications and NUSF Department, testified in support of the Commission's proposal.³⁶ He testified that this Progression Order takes a look at how we might provide NUSF funding for a very specific situation for companies that elected to receive FCC A-CAM support.³⁷ For these companies, the FCC determined which census blocks within their respective territories would be eligible for support and use the A-CAM model, which is similar to our SBCM, or state broadband cost model, to arrive at monthly costs to build and maintain a fiber based network for locations within those blocks.³⁸ Those capital expenses, or CapEx, and operating expenses, or OpEx, can vary widely from block to block, ranging in monthly costs well into the thousands of dollars.³⁹

The FCC found that \$52.50 was the amount of money carriers could expect to recover on monthly basis from subscribers.⁴⁰ The FCC also recently made the determination that it will provide up to \$200.00 per location in every eligible census block, on a monthly

³⁵ See *id.* at 7.

³⁶ See Testimony of Cullen Robbins, Hearing Transcript (TR) 10-22.

³⁷ See TR 10:13-17.

³⁸ See TR 10:24- 11:6.

³⁹ See TR 11:7-10.

⁴⁰ See TR 11:11-14.

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basis.⁴¹ According to the FCC, there are 30,933 locations in Nebraska that would receive support. Of those, 20,923 are fully funded, meaning the \$200.00 plus \$52.50 per month covers the modeled cost to serve that location.⁴² These fully funded locations have certain speed requirements that must be met. The remaining locations, of which there are approximately 10,000, are, according to the FCC, capped-meaning the \$252.50 does not cover the full modeled cost to serve those locations.⁴³ Because these locations are not fully funded by the FCC's high-cost model, the FCC's requirements are lower as well. The requirement is for the carrier to reach 25 percent of the capped locations with speeds of 4/1 Mbps.⁴⁴ The remaining 75 percent of locations are considered reasonable request only. Mr. Robbins testified that the A-CAM companies will still receive \$200.00 per month per location for all capped locations.⁴⁵ Mr. Robbins further explained that the A-CAM companies are to receive over \$240 million in support from the FCC over the next ten years for the capped locations. That amount is in addition to the \$45.7 million already received.⁴⁶

Mr. Robbins stated the Commission's goal in this proceeding is to consider support for the capped locations in order to get service that meets a speed standard of 25/3 Mbps.⁴⁷ In addition, he stated, the Commission needs to consider how it aligns this funding with its previous efforts in NUSF-108 to prioritize accountability and incentivize buildout of broadband-capable networks.⁴⁸ Accordingly, the proposal the Commission put forth in Progression Order No. 4 was to provide some amount of support above the \$252.50 for capped locations if the block is built to a minimum of 25/3.⁴⁹

⁴¹ TR 11:15-18.

⁴² TR 11:19-23.

⁴³ See TR 12:5-9.

⁴⁴ See TR 12:10-13.

⁴⁵ See TR 12:14-15.

⁴⁶ See TR 12:18-22.

⁴⁷ See TR 13:1-6.

⁴⁸ See *id.*

⁴⁹ See TR 13:7-12.

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If, for example, the modeled cost to provide service to a location is \$500, after the Commission removes \$252.50, there is leftover modeled cost of \$247.50.⁵⁰ The Commission's proposal is that the Commission would provide some level of support in a manner that is commensurate with what it provides in general to other non A-CAM carriers that have built to 25/3.⁵¹

Mr. Robbins testified that for other areas, and at the funding levels initially identified, rate-of-return carriers receive roughly 18 cents of every dollar of modeled cost.⁵² The proposal would be to treat A-CAM carriers similarly by providing the same level of support which is based on modeled cost.⁵³ In addition, he stated, this support is not designated specifically as CapEx or OpEx, but is treated similar to the \$200.00 per month per location provided by the FCC.⁵⁴ Mr. Robbins stated that he anticipated that the Commission would have the number of capped locations that have been built out to 25/3 through the end of 2018 so that it might be able to provide an estimate of support based on what the Commission has proposed.⁵⁵ However, that data has not yet been made available by USAC.⁵⁶

In terms of accountability, Mr. Robbins stated, the Commission has proposed using the data that A-CAM carriers submit through USAC via the HUBB to determine where deployment above the minimum baseline of 4/1 has occurred.⁵⁷ He believes the data submitted to the HUBB is sufficient for the Commission's purposes.⁵⁸ The information includes speeds as well as the coordinates for the

⁵⁰ TR 13:19-22.

⁵¹ See TR 13:23- 14:2.

⁵² See TR 14:3-10.

⁵³ See *id.*

⁵⁴ See TR 14:11-16.

⁵⁵ See TR 14:21-25.

⁵⁶ TR 15:2-3.

⁵⁷ See TR 15:22- 16:6.

⁵⁸ See *id.*

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locations.⁵⁹ He noted that he would welcome submissions of data directly to the Commission to avoid delays associated with the public release of the data by USAC.⁶⁰ Mr. Robbins proposed that support for calendar year of 2019 be based on what was reported for buildouts up through the end of 2018.⁶¹ He further recommended the support for the current year should be separate from the existing rate-of-return mechanism.⁶² In 2020 and beyond the Commission may want to consider integrating support with its allocation of ongoing support.⁶³

Under the Commission's proposal, there would be no need for submission of receipts or reimbursement of actual costs of construction. These carriers would be treated similar to other non A-CAM rate-of-return carriers.⁶⁴

Mr. Robbins clarified that if the Commission wishes to keep the allocation for A-CAM carriers separate from the other ROR allocations, they can do that going forward.⁶⁵ He noted that it may be easier to administer if they were combined at some point.⁶⁶

Mr. Dan Davis, Director of Policy and Analysis at Consortia Consulting, testified on behalf of the Rural Independent Companies (RIC).⁶⁷ He first addressed the points on which RIC agreed with the Commission. RIC agreed that capped locations should receive NUSF support. The support would increase the number of locations in rural areas with access to 25/3 speeds.⁶⁸ Also, RIC agreed with the

⁵⁹ TR 16:4-6.

⁶⁰ See TR 16:11-14.

⁶¹ See TR 16:15-18.

⁶² See TR 16:23- 17:2.

⁶³ See TR 17:3-5.

⁶⁴ See TR 17:6-13.

⁶⁵ See TR 19:7-12.

⁶⁶ See TR 19:13-20.

⁶⁷ See Testimony of Dan Davis TR 22-45.

⁶⁸ See TR 24:8-18.

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use of the State Broadband Cost Model (SBCM) to establish costs for capped locations.⁶⁹ Third, RIC agreed with the Commission's proposal to have built locations reported in the HUBB to confirm the broadband buildout.⁷⁰ Finally, RIC supported a calculation of NUSF support based on subtraction of federal A-CAM support provided to capped locations, and the customer revenue benchmark.⁷¹

Mr. Davis also stated RIC had significant disagreement with the proposal to provide supplemental support after the buildout of a location is completed. RIC advocated that NUSF support be provided monthly on a prebuild basis to an A-CAM carrier serving capped locations.⁷² According to Mr. Davis, NUSF support provided in advance of the build-out will provide predictability for the carrier and also ensure the proper regulatory accounting treatment for constructed facilities.⁷³ As far as accountability, RIC submitted an accountability proposal which would include the following steps: 1) ROR carrier provide the Commission with a written designation of the capped locations to be built out to 25/3 in the upcoming construction cycle; 2) a written report identifying the capped locations built out to 25/3 following construction along with reporting in the HUBB; 3) ROR carrier reporting would be subject to audit by the Commission; and 4) for locations not timely completed and reported, a reduction in future support would be a remedy the Commission could pursue.⁷⁴

RIC also requested the Commission release more details about the allocation of the methodology that will be used to allocate portions of the overall NUSF budget for all A-CAM carriers serving capped locations to each individual A-CAM carrier that serves capped locations.⁷⁵ RIC requested the Commission provide a description of the methodology that will be used to allocate

⁶⁹ See TR 24:19-22.

⁷⁰ See TR 25:9-24.

⁷¹ See TR 26:5-13.

⁷² See TR 26:21-24.

⁷³ See TR 26:25- 27:17.

⁷⁴ See TR 28:12- 29:17.

⁷⁵ See TR 30:5-14.

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portions of the ROR annual high-cost budget among A-CAM electing ROR carriers and non A-CAM electing ROR carriers.⁷⁶ If different methodologies will be used for 2019 and for 2020, RIC would like a full explanation regarding methodology, calculation formulas, data and other considerations for both time periods to be made available to all interested carriers.⁷⁷ Finally, Mr. Davis testified that the Commission should open a progression order with proposed changes to the NUSF EARN Form as soon as possible.⁷⁸

Upon questioning, Mr. Davis testified the difference in the RIC proposal versus the Commission proposal is that they are looking for a dollar amount up front rather than at the back end.⁷⁹ If the ROR knows what dollar amount that it was going to get and that they could recover their costs, then it would be something to consider.⁸⁰ The problem for RIC is they do not know the dollar amount they are going to get.⁸¹ Mr. Davis further stated the proposed 18 cents on the dollar does not seem to be sufficient.⁸²

Mr. Davis further clarified that for the audit and withholding portion of the RIC proposal, the Commission would have to determine how many locations the ROR carrier actually built to and compare that with the number of locations that the ROR carrier informed the Commission it would build to.⁸³ The Commission would then have to set up a process where the Commission has to prove the ROR carrier has not met their obligations, subject to acts of weather or whatever other circumstance the ROR carrier experienced.⁸⁴

⁷⁶ See TR 31:2-8.

⁷⁷ See TR 31:9-16.

⁷⁸ See TR 31:23-32:7.

⁷⁹ See TR 36:1-7.

⁸⁰ See TR 37:2-6.

⁸¹ See TR 37:14-18.

⁸² See TR 37:23-24.

⁸³ See TR 43:10-20.

⁸⁴ See TR 44:2-16.

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Ms. Stacey Brigham, shareholder and regulatory director for TCA, Inc., testified on behalf of the Rural Telecommunications Coalition of Nebraska (RTCN).⁸⁵ She testified as an initial matter, RTCN has generally supported the Commission's efforts to ensure all Nebraskans have access to robust broadband and voice services and that no rural Nebraskans are stranded on the wrong side of the digital divide.⁸⁶ In principle, she stated, RTCN supports the Commission's proposal to provide support to capped locations.⁸⁷

In addition, Ms. Brigham testified, RTCN supports the Commission's proposal to provide support only after broadband has been deployed.⁸⁸ Ms. Brigham stated RTCN supported that concept in Progression Order No. 3 relative to other ROR carriers and that adopting a similar post-deployment support mechanism would ensure fairness and accountability.⁸⁹ Ms. Brigham stated that the notion that carriers cannot deploy without advance support has been disproven by a history of carriers taking risks to serve rural customers.⁹⁰

Ms. Brigham recommended that the Commission refrain from entering an order in this proceeding until after final decisions are made relative to A-CAM support at the federal level.⁹¹ Ms. Brigham testified the results of the revised A-CAM offers increased federal universal service support by nearly \$9.6 million annually.⁹² With this new funding, the number of partially funded locations in Nebraska drops from over 14,000 down to 9,700.⁹³

⁸⁵ See Testimony of Stacey Brigham TR 45-58.

⁸⁶ See TR 47:15-20.

⁸⁷ See TR 47:21-48:1.

⁸⁸ See TR 48:2-12.

⁸⁹ See *id.*

⁹⁰ See TR 48:21-25.

⁹¹ See TR 49:3-17.

⁹² See TR 50:12-18.

⁹³ See TR 50:19-22.

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Finally, Ms. Brigham testified, RTCN had some recommendations for the Commission. RTCN recommended the Commission consider separate funds for ongoing support of capped locations.⁹⁴ Also, to the extent that nonfiber alternatives are utilized to serve capped locations, the Commission should adjust support according to the actual cost of the deployment.⁹⁵ Similarly, she stated, support should be subject to the Commission's earnings limitations using the Commission's NUSF EARN Form.⁹⁶

Mr. Ken Pfister, Vice President of Strategic Policy for Great Plains Communications, LLC, testified on behalf of Great Plains.⁹⁷ Great Plains presented its own proposal for consideration in its March 7, 2019 comments.⁹⁸ Mr. Pfister testified that without modifications, the Commission's proposal will result in many rural Nebraska customers in capped locations not receiving broadband service of at least 25/3 and will hamper the ability of companies serving these high-cost customers to continue to maintain ongoing service at existing levels.⁹⁹

Mr. Pfister described Great Plains' alternative proposal which would allocate a portion of anticipated increased support due to changes in remittances. This allocation of support would help defray the cost to provide NUSF support to capped locations. Support would be allocated among eligible locations based on the relative SBCM investment in the capped locations for the A-CAM companies similar to the methodology the Commission used to allocate broadband deployment support among ROR companies based on their relative shares of SBCM total investment for locations not receiving federal support.¹⁰⁰ The NUSF support would be offered to companies serving capped locations through an annual election

⁹⁴ See TR 52:2-18.

⁹⁵ See TR 52:19-25.

⁹⁶ See TR 53:1-10.

⁹⁷ See Testimony of Ken Pfister, TR 63-99.

⁹⁸ See TR 64:11-16.

⁹⁹ See TR 65:4-10.

¹⁰⁰ See TR 66:8-19.

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process.¹⁰¹ A company would not be required to accept an offer of support.¹⁰² If a company accepted the offer, the company would be required to make a commitment to funding the remaining 20 percent of the CapEx costs of broadband buildout.¹⁰³ Mr. Pfister further testified that depending on the NUSF budget amounts for capped locations, he would expect between 378 and 757 new locations could receive 25/3 broadband service.¹⁰⁴ Finally, Mr. Pfister testified, the actual amount of ongoing support would be subject to overall NUSF budget constraints.¹⁰⁵

In response to the Commission's proposal, Mr. Pfister testified Great Plains supported the Commission's goal to incentivize broadband buildout.¹⁰⁶ However, he does not believe the proposal incents companies to build broadband to capped locations.¹⁰⁷ Mr. Pfister presented an exhibit containing SBCM costs for high-cost locations, testified that the total investment required to build fiber to all capped locations is an extremely large dollar amount as shown in his exhibit.¹⁰⁸ Great Plains has 6,166 capped model locations after accounting for support from A-CAM and the customer revenue benchmark.¹⁰⁹ Great Plains would need to invest more than \$75 million in addition to its federal A-CAM support. That amount does not include OpEx costs.¹¹⁰ Mr. Pfister stated the remaining cost of deploying fiber to capped locations is simply too large to justify doing so without having certainty

¹⁰¹ See TR 66:20-22.

¹⁰² TR 66:22-23.

¹⁰³ See TR 68:6-13.

¹⁰⁴ See TR 67:12-17.

¹⁰⁵ See TR 69:1-14.

¹⁰⁶ See TR 70:14-16.

¹⁰⁷ See TR 70:16-20.

¹⁰⁸ See TR 72:11-17; See also Confidential Exhibit No. 5.

¹⁰⁹ See TR 73:9-14.

¹¹⁰ See TR 73:15-19.

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as to the level of NUSF support that will be available to support broadband investments on a year-to-year basis.¹¹¹

Finally, Mr. Pfister stated his belief that the Commission's proposal did not meet the requirements and aspirations expressed by the Nebraska Legislature regarding universal service.¹¹² The Nebraska Legislature's intention is for broadband in rural areas to be comparable in download and upload speed and priced to urban areas and that state resources should be utilized to ensure that rural residents are not penalized.¹¹³ Mr. Pfister further expressed Great Plains' concerns about its ability to continue to provide voice and other services to all customers without more assistance from the NUSF.¹¹⁴

Post-Hearing Comments

The Commission permitted post-hearing comments. Post-hearing comments were filed by Charter/Cox, Great Plains, RIC and RTCN.

Charter/Cox stated the Commission's decision in Progression Order No. 3 was consistent with the Commission's earlier Order in NUSF-99 (Progression Order No. 1) where the Commission concluded that reimbursing providers either at particular milestones or after the project was completed provided "appropriate accounting and control of support."¹¹⁵ Charter/Cox stated the assertions made by Mr. Davis and Mr. Pfister defied common sense.¹¹⁶ The Charter/Cox comments stated that for other programs funded by the NUSF, payment reasonably follows performance.¹¹⁷

¹¹¹ See TR 74:6-11.

¹¹² See TR 75:13-20.

¹¹³ See TR 76:14-20.

¹¹⁴ See TR 77:9-12.

¹¹⁵ See Post-Hearing Comments of Charter/Cox (May 29, 2019) at 2, citing *In the Matter of the Nebraska Public Service Commission, on its own Motion, to administer the Universal Service Fund High-Cost Program*, Application NUSF-99, Progression Order No. 1, entered Sept. 1, 2015, at 8.

¹¹⁶ See Post-Hearing Comments of Charter/Cox (May 29, 2019) at 3.

¹¹⁷ See *id.*

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The Charter/Cox comments also took issue with the recommendation that up front support subject to audit would meet the Commission's goals for efficiency and accountability. Charter/Cox stated that any suggestion that the prospect of the Commission withholding funding for future projects will serve as an effective deterrent fails in several respects.¹¹⁸ First, no causal connection typically exists between the present project and the success or failure of a future project.¹¹⁹ Moreover, Charter/Cox stated, there is no clear procedural vehicle for punishing an applicant's failures on one project by reducing funds on a future project.¹²⁰ Further, they stated, such an approach would be impracticable given the Commission's limited auditing staff and on-going full-time responsibilities of existing staff. Charter/Cox commented that such an audit and recovery process would not likely be consensual and would likely result in a time-consuming administrative undertaking involving experts to discuss the variations of network design, construction, and implementation.¹²¹

Charter/Cox agreed with Ms. Brigham who stated that the idea that carriers cannot deploy without advance support has been disproven by history.¹²² Charter/Cox pointed at that the Commission's decade-old wireless program provided NUSF support following project completion. In addition, for several years in NUSF-77 and NUSF-92, carriers were allowed to file applications for broadband support with funding being awarded post-construction.¹²³ Great Plains and several other RIC member companies applied for broadband support in that program.¹²⁴

Finally, Charter/Cox pointed that that presently price cap carriers are reimbursed on a post-project basis under NUSF-99.¹²⁵

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *See id.*

¹²¹ *See id.* at 4.

¹²² *See id.*

¹²³ *See id.* at 5.

¹²⁴ *See id.*

¹²⁵ *See id.*

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Charter/Cox disagreed with Mr. Pfister's allegation that the Commission's proposal fails to comport with the NUSF Act and legislative aspirations.¹²⁶ Rather, Charter/Cox stated it is the Commission's responsibility and obligation to ensure that public funds are used efficiently, effectively and that they result in actual network development.¹²⁷ To that end, Charter/Cox stated the Commission must provide the public with an assurance of openness, accountability, and transparency that networks will be built as promised.¹²⁸

Great Plains stated that its proposal is one method by which the Commission can provide a specific level of support in order to incent a carrier to deploy broadband to capped locations and thus the carrier will know the amount of NUSF support available to recover the costs of these investments.¹²⁹ Great Plains stated there is agreement that A-CAM support alone cannot achieve buildout of broadband at speeds of at least 25/3 Mbps to customers in capped locations.¹³⁰ Great Plains indicated that while having the 2020 support integrated with the ongoing support is inadequate, Great Plains supported it to the extent that it is a necessary action to provide some ongoing support to recover some costs for the capped locations. Great Plains urged the Commission to make provision of ongoing support permanent for already built capped locations in ensuing years after 2019 so carriers can be assured of a least some amount of NUSF funding for the already incurred costs of deployment and ongoing expenses.¹³¹ Great Plains also supported Mr. Robbins' testimony making capped locations eligible for ongoing support in the future once those capped locations are built out at 25/3 Mbps and reported to the HUBB.¹³²

¹²⁶ See *id.* at 6.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ See Post-Hearing Comments of Great Plains at 3.

¹³⁰ See *id.* at 4.

¹³¹ See *id.* at 5.

¹³² See *id.*

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Great Plains stated the primary matter at issue is whether and how the Commission will provide a specific amount of supplemental NUSF support so that carriers will undertake the high cost of construction of fiber-based broadband service to all A-CAM capped locations.¹³³ Great Plains recommended modifying the Commission's proposal with the adoption of its plan or some other alternative which provides a level of support up front.¹³⁴ Great Plains stated that it was essential that the amount of support available to a carrier is predictable and announced by the Commission well in advance of the upcoming construction season to enable a carrier time to plan and secure financing at a level large enough to enable a carrier to make inroads in broadband deployment each year.¹³⁵

Great Plains stated that it would need to invest more than \$75 million in addition to advancing all of its 10 years of A-CAM CapEx support to deploy 25/3 Mbps service to its 6,166 capped locations. Assuming an ongoing NUSF support amount of \$3 million per year, Great Plains stated it would take more than 52 years of NUSF support to recoup its investment.¹³⁶ Great Plains reminded the Commission of its statutory requirements and legislative goals relative to the NUSF.¹³⁷

RTCN stated that all areas of the state, whether served by an A-CAM or legacy ROR carrier should receive support for infrastructure capable of providing voice and broadband services.¹³⁸ RTCN stated that support should be provided after deployment by A-CAM carriers.¹³⁹ RTCN stated that the Commission established such a mechanism, known as the Broadband Deployment Funding Mechanism in NUSF-108, Progression Order No. 3, which allows carriers to receive support after completion of deployment in eligible areas.¹⁴⁰

¹³³ See *id.*

¹³⁴ See *id.* at 7.

¹³⁵ See *id.* at 8.

¹³⁶ See *id.* at 10.

¹³⁷ See *id.* at 16.

¹³⁸ See Post-Hearing Comments of RTCN (May 29, 2019) at 2.

¹³⁹ See *id.* at 3.

¹⁴⁰ See *id.*

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RTCN further argued that the witness for Great Plains did not explain how support to capped locations only after deployment will predestine rural Great Plains' customers to inadequate broadband speeds.¹⁴¹ In addition, RTCN noted there were several flaws in Great Plains' assertions. First, Great Plains incorrectly characterized the amount of future support as unknown. RTCN stated the SBCM provides sufficient certainty as to the projected costs.¹⁴² Further, RTCN stated Great Plains did not explain the accusatory conclusions or explain how the Commission plan does not comport with state law.¹⁴³ RTCN stated there was no difference in the mechanism established under Progression Order No. 3 and that proposed under Progression Order No. 4. RTCN further stated if some rural customers will not receive broadband services, it will not be due to unfair treatment by the Commission, it will be due to decisions made by the customers' carrier.¹⁴⁴

Relative to the Commission's proposal, RTCN recommended that estimates should be compared against actual expenses. If a carrier used a less expensive alternative than fiber the support should be reduced accordingly. The Commission should also verify the HUBB data before providing support. RTCN urged the Commission to authorize modeled support for capped locations only if a combination of HUBB and Form 477 reporting clearly indicated fiber connectivity.¹⁴⁵ RTCN argued the Commission's proposed budget control mechanism was consistent with the mechanism established under Progression Order No. 3.¹⁴⁶ RTCN recommended that support for the capped locations remain subject to the Commission's earnings test.¹⁴⁷ Finally, RTCN advocated for a separate allocation under

¹⁴¹ See *id.* at 5.

¹⁴² See *id.* at 5-6.

¹⁴³ See *id.* at 6.

¹⁴⁴ See *id.* at 7.

¹⁴⁵ See *id.* at 7-8.

¹⁴⁶ See *id.* at 8.

¹⁴⁷ See *id.* at 10.

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Progression Order No. 4 so that the allocation of support established under Progression Order No. 3 is not disrupted.¹⁴⁸

RIC believed that the lack of an overall budget for the capped locations and lack of individual carrier allocations would have adverse impact on deployment of 25/3 Mbps broadband-capable networks.¹⁴⁹ RIC requested more details from the Commission to inform the interested parties with regard to the portion of the NUSF budget that will be allocated to all A-CAM electing ROR carriers serving capped locations.¹⁵⁰ Further, RIC wanted carrier specific allocations for the capped locations.¹⁵¹ RIC acknowledged that budgetary limitations will need to be applied to any NUSF support provided for capped locations.¹⁵² RIC further stated the NUSF support for capped locations in 2020 and beyond is even less clear than 2019 NUSF support amounts for capped locations.¹⁵³ RIC summarized the key points in its own accountability proposal.¹⁵⁴ RIC continued to advocate for pre-build out support.¹⁵⁵ RIC indicated that the Commission should open a progression order to address NUSF-EARN Form modifications.¹⁵⁶

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

In 2016, the FCC comprehensively reformed its high-cost distribution mechanism for ROR carriers and gave the option to some ROR carriers to elect a voluntary path to model-based support.¹⁵⁷

¹⁴⁸ See *id.*

¹⁴⁹ See Post-Hearing Comments of the Rural Independent Companies (May 29, 2019) at 3.

¹⁵⁰ See *id.* at 4-5.

¹⁵¹ See *id.* at 5.

¹⁵² See *id.* at 6.

¹⁵³ See *id.* at 9.

¹⁵⁴ See *id.* at 10.

¹⁵⁵ See *id.* at 11.

¹⁵⁶ See *id.* at 12.

¹⁵⁷ See *In the Matter of Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90; WC Docket No. 14-58; CC Docket No. 01-92, 31 FCC Rcd 3087, REPORT

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Certain ROR carriers were given the opportunity to elect Alternative Connect America Cost Model (A-CAM) support in exchange for the obligation to deploy broadband-capable networks to a pre-determined number of eligible locations.¹⁵⁸ The FCC adopted a 10-year term of support for ROR carriers electing to receive A-CAM support.¹⁵⁹ Carriers electing A-CAM support were required to maintain voice and existing broadband service and offer at least 10/1 to all locations "fully funded" by the model and at least 25/3 Mbps to a certain percentage of these locations by the end of the support term.¹⁶⁰

Subsequently, in February of this year, the FCC announced revised A-CAM support offers and deployment obligations to authorized A-CAM companies. Under the revised offer, all locations with costs above \$52.50 are funded up to a per-location fund cap of \$200.00. The FCC adopted additional obligations to provide 25/3 Mbps service and extended the term of the revised offer by two years.¹⁶¹ Eight Nebraska ROR carriers elected to receive A-CAM support. Pursuant to those elections, the FCC authorized amounts of federal support to those eight ROR carriers, which totaled \$34,034,846 annually, fully funding 17,880 locations and partially funding 13,053 locations served by ROR carriers in Nebraska.¹⁶²

In May of this year, the FCC released a revised version of the A-CAM and announced new offers of model-based support to ROR carriers that were still receiving legacy support to fund the deployment of voice and broadband-capable networks in their service

AND ORDER AND ORDER ON RECONSIDERATION, AND FURTHER NOTICE OF PROPOSED RULEMAKING (rel. March 30, 2016) ("2016 A-CAM Order") (stating "the Commission adopts significant reforms to place the universal service program on solid footing for the next decade to "preserve and advance" voice and broadband service in areas served by rate-of-return carriers.")

¹⁵⁸ See 2016 A-CAM Order, 31 FCC Rcd at 3096, para. 20.

¹⁵⁹ See 2016 A-CAM Order, 31 FCC Rcd at 3097, para. 25.

¹⁶⁰ See *id.*

¹⁶¹ See Wireline Competition Bureau announces Offers of Revised A-CAM Support Amounts and Deployment Obligations to Authorized A-CAM Companies to Expand Rural Broadband, WC Docket No. 10-90, Public Notice, DA 19-115 (February 25, 2019).

¹⁶² See *id.*, Illustrative Report 14.1 for Authorized A-CAM carriers.

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territories.¹⁶³ The model results and offer amounts were also predicated upon a monthly funding threshold of \$52.50 and a funding cap of \$200.¹⁶⁴ Carriers had until July 17, 2019 to indicate whether they elect to receive model-based support.

In August, the FCC released a public notice indicating that four additional Nebraska ROR carriers elected model-based support accounting for \$ 12,445,906 in annual support for a 10-year term.¹⁶⁵ These Nebraska ROR carriers were Arapahoe, Hamilton, Northeast Nebraska Telephone Company, and Sometown Telephone Company. With the newly authorized federal A-CAM II support, the four carriers are considered to have full funding for 6,631 locations, and have some funding for 2,502 capped locations in Nebraska.

As the FCC noted in 2011, universal service goals and challenges have evolved and decades-old assumptions fail to reflect today's networks.¹⁶⁶ Access to broadband, in addition to voice service, has become a necessity. Accordingly, the Commission must be able to measure and track progress of broadband deployment made with the universal service fund support it makes available to carriers so it can determine whether these challenges are being met. In response to more highly targeted broadband support provided through the federal universal service program, the Commission started down a path to reform our distribution mechanism to target support in a manner that was not duplicative of federal support. In 2015, when the Commission revised the distribution mechanism for price cap carriers, it concluded that reimbursing providers either at particular milestones or after a broadband project was completed, provided appropriate accounting and control of support.

¹⁶³ See *Wireline Competition Bureau Announces Posting of Information Regarding Revised Deployment Obligations for Incumbent Rate-of-Return Carriers*, WC Docket No. 10-90, Public Notice, DA 19-373, 2019 FCC Lexis 1079 (May 2, 2019).

¹⁶⁴ See *id.*

¹⁶⁵ See *Wireline Competition Bureau Authorizes 171 Rate-of-Return Companies to Receive \$491 Million Annually In Alternative Connect America Cost Model II Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 19-808 (August 22, 2019).

¹⁶⁶ See *In the Matter of Connect America Fund, et al.*, Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17668, paras. 5-6 (2011).

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Further, in Progression Order No. 3, the Commission adopted modifications to the high-cost distribution mechanism for rate-of-return (ROR) carriers designed to correspond to federal universal service support received by ROR carriers, to target state support where a carrier was not receiving federal support, and increase accountability to the Commission for the support provided. In that decision, the Commission targeted ROR funding to census blocks that were not receiving explicit federal universal service support for broadband build out and determined that support would be made in a post-investment reimbursement mechanism. The Commission also allocated support to ROR carriers that had built out broadband networks to a minimum of 25/3 Mbps to support the investments these ROR carriers have made subject to the earnings limitations as a result of the NUSF-EARN Form and annual budget process. The Commission reserved judgment on the specific issue of state universal service support for the capped locations.

The Commission opened this Progression Order to consider the support mechanism for capped locations. These locations are in census blocks where ROR carriers were offered and accepted federal universal service support, but where according to the A-CAM model, the cost to deploy fiber to the location is above the \$252.50 per month per location threshold.

The Commission proposed to provide supplemental state universal fund support for the capped locations as described above. Consistent with other broadband build-out support, the Commission proposed to provide support post-deployment in eligible census blocks based on post-investment data provided to the Commission. However, the Commission's proposal differed inasmuch as rather than filing invoices, carriers would be required to simply detail the locations served with speeds of 25/3 Mbps as filed in the FCC's HUBB database. The Commission proposed that support amounts be allocated to capped locations in a separate budgeted category for the first year¹⁶⁷ with the idea that in subsequent years it would

¹⁶⁷ The exact amount of the capped location budget at the time of the proposal's release was undetermined due to a couple of factors. First, the Commission had been undergoing a change to its remittance structure and remittances into the fund were changing. In addition, there was still uncertainty in ROR carrier elections to the FCC for A-CAM and A-CAM II support thus the number of capped locations at the time was unknown. However, for illustrative purposes, the Commission stated that it envisioned it to be commensurate to the percentage of support received by other carriers in line with current budget limitations.

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become part of the overall ROR carrier allocation included in the Commission's annual budget. A support determination would also be subject to the Commission's earnings test.

As opposed to this framework, some of the ROR carriers recommended that support be made available on a monthly basis in advance of investments with a carrier-prescribed list of commitments and a report of the commitments met. The Commission would have the option to audit the use of support and withhold support in the future if it was not used for the intended purpose. While we understand that ROR carrier resources may be limited, we find the proposal put forward by the RIC carriers lacks the accountability and efficiency the Commission is seeking by this change. While both proposals would purport to give the Commission location data for broadband deployment, the Commission does not believe the timing of the distribution of support for capped locations should differ from other broadband build-out support in this regard. As RTCN stated, there is no difference in the mechanism established under Progression Order No. 3 and that proposed under Progression Order No. 4.¹⁶⁸ Further, the Commission agrees with the post-hearing comments of Charter/Cox that withholding support after the fact or trying to recapture support not spent appropriately would be impracticable and inefficient.¹⁶⁹ Consequently, the Commission finds a post-deployment support mechanism as proposed ensures a greater degree of transparency and accountability of NUSF support.

Commission's Proposal

The Commission proposed to provide support to capped locations that have been built to a minimum speed threshold of 25 Mbps download/3 Mbps upload speeds using fiber-based infrastructure.¹⁷⁰ No party challenged the Commission's proposal to provide some level of support to capped locations to help carriers build networks to 25/3 Mbps. Carriers universally supported using the minimum speed

¹⁶⁸ See RTCN Post Hearing Comments at 7.

¹⁶⁹ See Charter/Cox Post Hearing Comments at 3-4, highlighting concerns with a "pay first, ask questions later" approach.

¹⁷⁰ We noted that the SBCM estimates costs for fiber deployment. Should the carrier decide to utilize alternative technologies, the Commission would want to revisit the support calculation.

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threshold of 25/3 Mbps. We therefore adopt this portion of this proposal.

The Commission also proposed that evidence of deployment could then be submitted on a per location basis through reporting to the Universal Service Administrative Company (USAC) HUBB reporting database. Further, the Commission proposed that relative to the locations reported in the HUBB no invoices would be routinely required as a prerequisite to determining support. However, the Commission proposed to retain the ability to audit the use of the NUSF support by requesting documentation supporting the carriers' buildout costs on a case-by-case basis. Virtually all commenters supported the use of the HUBB reporting database as a way to verify deployment locations. Some commenters questioned the use of the HUBB for a verification tool stating that it was not an audited source. We disagree. We are aware of circumstances where USAC has verified the locations and where support was being withheld for inaccurate reporting. Inaccurate HUBB reporting carries consequences such as the withholding of federal support and administrative penalties. We find the use of the HUBB database will be a sufficient way to verify deployment locations. However, as indicated in our proposal above, carriers will continue to be subject to financial audits on the use of support where deemed appropriate by the Commission. We will also subject all carriers to reporting broadband metrics to ensure that promised broadband speeds are being delivered to consumers. Consequently, the proposal to use the HUBB reporting database as a way to verify deployment locations should be adopted. The Commission finds that carriers will also be permitted to provide locations that have been built to during the "challenge" process outlined in P.O. #3. The Commission will utilize the HUBB data that is filed in the months following the challenge process to validate the information submitted. For carriers that most recently elected A-CAM II support and have not yet reported locations built to in the HUBB, Form 477 data will be used to determine the locations that have been built to 25/3 for the purposes of identifying capped locations, until such a time as HUBB data is available to validate that information. The Commission reserves the right to make adjustments to support should HUBB data not support what was reported via the Form 477 process.

Once the locations built out have been identified, the Commission proposed that the remaining cost (the total modeled cost to serve minus the capped amount and the benchmark) would be

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calculated on a per location basis for the carrier. Commenting parties overwhelmingly supported the use of the SBCM as well as the federal benchmark to determine eligible cost of the capped locations. We also believe it is appropriate to take into account the federal support received by the carrier on a per location basis. We find this portion of the proposal should also be adopted.

The Commission proposed that consistent with all other support, the amount of support available for the capped locations be subject to budget controls and would vary based upon the amount of support and eligible blocks across all rate-of-return areas eligible for support. As indicated above and in the Commission's testimony it had always been the intent to release an annual amount available for support ahead of time and along with the annual budget for the distribution mechanism. This, however, seemed to generate a lot of confusion by commenters who assumed this amount would be determined after the fact. At the time of the proposal however, the Commission did not have an amount certain due to the change in the remittance process and the fact that the number of supportable capped locations was not yet known. However, the Commission's proposed budget control mechanism was consistent with the mechanism established under Progression Order No. 3. We find this proposal should be adopted.

The Commission has determined that \$1.7 million dollars should be allocated to support the capped locations reported as deployed to through the end of 2018. The support amount was determined based on the proportion of modeled cost supported with NUSF ongoing support to rate of return carriers statewide. In ensuing years, support to capped locations will be included in the ongoing support amounts allocated to carriers. Further, consistent with support provided pursuant to Progression Order No. 3 and consistent with RTCN's recommendation, we conclude that support for the capped locations should also remain subject to the Commission's earnings test.

O R D E R

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

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 29th day
of October, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

 Chair



//s//Dan Watermeier

ATTEST:



Executive Director