BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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.	)	Application No. NUSF-108 Progression Order No. 5 ORDER SEEKING COMMENT Entered: December 17, 2019

BY THE COMMISSION:

The Nebraska Public Service Commission (Commission) enters this order to consider certain modifications to the NUSF EARN Form used to determine the ongoing portion of high-cost support in the universal service fund program. Previously, the Commission solicited comments on certain modifications affecting the carriers classified federally as rate-of-return carriers (RORs). The Commission updated the distribution mechanism for ROR carriers designed to target and track Nebraska universal service fund investments in broadband infrastructure. The Commission signaled in the earlier phases of this proceeding that it believed the NUSF EARN Form needed modifications to reflect the current environment. The Commission enters this Order to propose certain modifications it believes are appropriate as ROR carriers continue to invest in their broadband capable networks.

Issues for Public Comment

The Commission proposes several modifications to the distribution and reporting processes as described below.

Carrier Elections:

In our C-1628/NUSF Orders, the Commission allowed carriers the flexibility to report earnings based on a one year or three year test period. The Commission also permitted carriers the flexibility to choose whether to report earnings on a total company, jurisdictional or supported services basis.[1] Carriers were also permitted to change those elections with approval of the Commission. This process provided carriers some flexibility in how they wanted their earnings to be reflected. However, these elections did not provide a way for the Commission to compare earnings in a uniform manner. Further, carriers sometimes overlooked the requirement to file requests with the Commission to make this change prior to filing annual NUSF EARN Form data and sometimes assumed that these elections would be automatically permitted. This has caused delays in the determination of support and can have a significant impact on the support of another carrier.

The Commission seeks comment on setting a uniform basis for reporting earnings, such as a requirement that the NUSF EARN Form data be based on total company earnings. We seek comment on the continued need to allow carriers to choose among the previous three options. In addition, we seek comment on whether to require all carriers to move from a three year average to a single year basis or vice versa. Finally, the Commission has historically allowed some companies to file a collective NUSF EARN for all affiliated entities, while others file separate NUSF EARN forms. The Commission seeks comment on whether it should continue to allow carriers to consolidate affiliate entities into one for NUSF EARN Form filing purposes? Should the NUSF EARN filing be based on the assigned NE code or legal tax entity? Is there any reason not to require carriers to file NUSF EARN forms separately for each NE code? Please explain.

<u>Permitted Expenses, Cost Allocation and Affiliate Transactions</u>:

In 2018, the FCC adopted reforms to ensure that high-cost universal service support provided to ETCs is used only for the provision, maintenance and upgrading of facilities and services. The FCC stated that its limitations did not prevent ROR carriers from incurring any particular investment or expense, but clarified the extent to which investments and

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[1] See, e.g., *In the Matter of the Commission on its own motion, seeking to conduct an investigation into intrastate access charge reform and intrastate universal service fund*, Progression Order No. 5 (March 9, 1999).

expenses may be recovered through support or interstate rates. Specifically, the FCC's 2018 Order adopted a prohibition on ETC recovery in the following expenses categories: personal expenses, expenses unrelated to operations, and corporate luxury goods. Within each category the FCC specified certain types of goods and services that were not eligible for support.[2] The FCC also sought comment on limitations on corporate operations categories.

The Commission seeks comment from interested parties on whether to mirror those rules, particularly as it relates to the FCC's expense limitations. If the Commission should deviate from the FCC's rules, please provide the rationale.

Prescribed Rate of Return:

The Commission further seeks comment on reducing the prescribed rate of return so that it is consistent with that authorized by the FCC. As of July 1, 2019, the authorized rate of return was 10.25 percent. The Commission initially set out to do that, finding that it would adopt a similar transition from 12 percent to the 9.75 percent adopted by the FCC. The Commission lowered the prescribed rate to 11 percent but held off from making any further changes while it was examining other changes to the distribution model in NUSF-108. The Commission seeks comment as to whether to set the transitional rate of return at 10.25 percent. Why or why not? Please explain. Should the Commission simply mirror the FCC's transition to 9.75 percent and administratively have the staff make the adjustment as the FCC's prescribed rate of return changes?

Federal Universal Service Support Distinctions:

Should the Commission create two distinct NUSF EARN Form reports-one for ROR carriers opting to stay on federal legacy support, and another for ROR carriers opting into model-based support? If so, how should the NUSF EARN Form filings differ? What categories of support should be included in each? What about ROR carriers electing incentive regulation under the

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[2] *See In the Matter of the Connect America Fund, et al.*, WC 10-90, et al. Report and Order, 3rd Order on Reconsideration, and Notice of Proposed Rulemaking, 33 FCC Rcd 2990, 2995 (March 23, 2018).

FCC's Broadband Data Services (BDS) Order?[3] The Commission believes that ROR carriers electing incentive regulation will no longer be utilizing part 36 separations accounting and may be following GAAP accounting. Has any Nebraska ROR carrier made this election? Is any Nebraska ROR carrier planning to make this election in 2020? Should the Commission require carriers to keep separations-based accounts for the purpose of receiving NUSF ongoing support? Why or why not? Please explain.

Other Issues:

The Commission finds that interested parties may provide comments on other issues that are germane to the issues raised above. Are there other modifications the Commission should consider? If so, please explain.

Comments and Reply Comments

The Commission requests that interested parties provide comments responsive to the issues raised above on or before **January 17, 2020.** Reply comments may be filed on or before **February 5, 2020.** Commenters should file one (1) paper copy and one (1) electronic copy of their Comments with the Commission. Electronic copies should be sent to Cullen.Robbins@nebraska.gov and Brandy.Zierott@nebraska.gov.

A hearing on these issues may be scheduled after the Commission receives comments and reply comments.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be open for public comment.

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[3] *See In the Matter of Regulation of Business Data Services For Rate-of-Return Local Exchange Carriers, et al.*, WC Docket No. 17-144 et al., Report and Order, Second Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403 (October 24, 2018)("Rate-of-Return BDS Order").

IT IS FURTHER ORDERED that comments responsive to the foregoing questions and issues may be filed on or before **January 17, 2020 and February 5, 2020** in the manner prescribed herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 17th day of December, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director