

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-108
Public Service Commission, on) Progression Order No. 5
its Own Motion, to make)
adjustments to its high-cost)
distribution mechanism and) ORDER SETTING HEARING
make revisions to its)
reporting requirements.) Entered: June 30, 2020

BY THE COMMISSION:

The Nebraska Public Service Commission (Commission) initiated Progression Order No. 5 to consider certain modifications to the NUSF EARN Form used to determine 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.

On December 17, 2019, the Commission entered an order seeking comment. Comments responsive to this request were filed by two entities, the Rural Independent Companies (RIC) and the Rural Telecommunications Coalition of Nebraska (RTCN).

Issues for Public Comment

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

Carrier Elections:

The Commission sought 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. In addition, the Commission sought comment on the continued need to allow carriers to choose among the previous three options. We asked whether to require all carriers to move from a three year average to a single year basis or vice versa. We also asked whether the Commission should continue to allow carriers to

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-108
Progression Order No. 5

Page 2

consolidate affiliate entities into one for NUSF EARN Form filing purposes.

Permitted Expenses, Cost Allocation and Affiliate Transactions:

The Commission also sought comment on whether to mirror those rules, particularly as it relates to the FCC's expense limitations. The Commission asked interested parties to explain any rationale for deviating from the FCC's rules.

Prescribed Rate of Return:

The Commission further sought comment on whether to reduce 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 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 asked whether to set the transitional rate of return at 10.25 percent.

Federal Universal Service Support Distinctions:

In light of changes on the federal level with regard to federal universal service fund support, the Commission asked whether to create two distinct NUSF EARN Form reports. One NUSF EARN Form would be tailored to ROR carriers opting to stay on federal legacy support. A second NUSF EARN Form would be tailor to ROR carriers opting into model-based support. The Commission also asked for comments with regard to how the FCC's Broadband Data Services (BDS) Order¹ impacts the ability for carriers to account for cost categories at the state level.

¹ 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").

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-108
Progression Order No. 5

Page 3

Other Issues:

The Commission invited interested parties to comment on other issues that are germane to the issues raised above.

Comments and Reply Comments

Comments and reply comments were timely filed by RIC and RTCN. The comments are summarized and restated below in relation to the issues identified by the Commission.

Carrier Elections

Both RIC and RTCN recommended the revised NUSF EARN Form should be based on total company earnings. RIC stated that such an approach is rational since the focus of both FUSF and NUSF is deployment of one network by each NETC with that network being capable of providing at least 25/3 Mbps speeds as well as supporting voice services.² RTCN noted that reporting on a total company basis would lead to the most administratively efficient process and will best ensure that state support properly complements federal support.³

RIC supported the use of a one-year earnings calculation with the option of a Commission approved waiver.⁴ RTCN supported a three-year average, stating it would lessen the year-to-year volatility caused by major construction projects.⁵

Further, RIC recommended that the revised EARN Form focus on the NETCs entity. However, RIC stated that the use of any NUSF distribution should be able to be assigned to an affiliated

² See Comments of the Nebraska Rural Independent Companies (February 18, 2020) at 8 (RIC Comments).

³ See Comments of the Rural Telecommunications Coalition of Nebraska (February 14, 2020) at 1 (RTCN Comments).

⁴ See RIC Comments at 9 (stating that the one-year period harmonizes and is consistent with the time period that the Commission has established for NUSF budgetary and distribution purposes).

⁵ See RTCN Comments at 2.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-108
Progression Order No. 5

Page 4

NETC where good cause is shown.⁶ RTCN stated that consolidation of affiliate entities makes it too difficult for the Commission to ensure that carriers are not manipulating earnings and cost information.⁷

Permitted Expenses, Cost Allocation and Affiliate Transactions

Both RIC and RTCN agrees the Commission should follow applicable FCC rules as a basis for permissible and impermissible uses of NUSF support. RIC stated that without the proposed change to the current NUSF EARN Form, NUSF support may unintentionally be used to reimburse companies for expenses excluded by caps that effectively have been established under both FUSF programs applicable to ROR NETCs.⁸

In addition both RIC and RTCN supported mirroring the FCC's authorized rate of return transition to 9.75 percent. RIC supported a gradual reduction stating it would minimize unintended consequences to NETCs that could arise from a more precipitous phase down.⁹

Federal Universal Service Support Distinctions

The Commission questioned whether two NUSF EARN Forms should be created, one for ROR carriers electing to receive federal ACAM funding and one for ROR carriers electing to receive federal legacy funding. RIC recommended that a single NUSF EARN Form be applicable to all NETCs. RIC recommended the Commission adopt the revised NUSF EARN Form it attached to its comments.¹⁰ RTCN also recommended that the Commission utilize a single NUSF EARN Form stating that fairness and equity require

⁶ See RIC Comments at 9.

⁷ See RTCN Comments at 2.

⁸ RIC Comments at 10.

⁹ See *id.* at 11.

¹⁰ See *id.*

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-108
Progression Order No. 5

Page 5

the use of one form.¹¹ Further, RTCN stated that if all carriers are required to report earnings on a total company basis there will be no need to keep separations-based accounts.¹²

Other Issues

We note RIC recommended the Commission take other measures not directly related to changes on the NUSF EARN Form. One recommendation was that the Commission increase BDS support to ACAM-electing NETCs for capped census blocks. RIC suggested that no yearly redistribution of NUSF support should occur based on overearnings identified from the revised NUSF EARN Form process. Rather, RIC suggested that all capped over earning amounts of NUSF support should be transferred to the recipient's NUSF BDS eligibility.¹³ RTCN opposed this recommendation. RTCN stated the proposal was contrary to the Commission's historical approach to distributing support.¹⁴ RTCN further stated that it would eliminate redistribution of support, which the Commission has utilized to ensure carriers receive support for which they are eligible, but otherwise would not receive due to limited and scarce funds.¹⁵

RIC recommended the Commission remove amounts above federally established FUSF expense caps from total company operations.¹⁶ RTCN was concerned with how this would apply, as a practical matter, to ACAM companies.¹⁷

In addition, RIC suggested that NUSF distributions should be subject to transferability among affiliated NETCs and that

¹¹ See RTCN Comments at 3.

¹² See *id.*

¹³ See RIC Comment at 6.

¹⁴ See RTCN Reply Comments at 2

¹⁵ See *id.*

¹⁶ RIC Comments at 6.

¹⁷ See RTCN Comments at 2.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-108
Progression Order No. 5

Page 6

the Commission increase transparency between the NUSF eligibility process and the NUSF distribution process.¹⁸ RTCN also opposed the transferability of high-cost support among affiliates.¹⁹

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

As the RIC reply comments indicated, there is significant agreement on key issues.²⁰ Commenters agree that the Commission should utilize total company earnings on its revised NUSF EARN Form.²¹ Commenters also agree that earnings should be reported by each NETC.²² Both commenters were supportive of the Commission's proposal to apply and follow FCC rules, including the FCC's expense limitations as well mirroring the FCC's transition to the 9.75 percent prescribed rate of return changes.²³

However, there are areas of disagreement as well. RIC was in favor of a default one-year test period for the NUSF EARN Form.²⁴ RTCN on the other hand recommended a three-year average be used and applied to all carriers.²⁵ RIC recommended changes to the distribution model related to how overearnings were treated.²⁶ RTCN disagreed with those recommendations.²⁷ RIC's

¹⁸ See RIC Comments at 13.

¹⁹ See RTCN Comments at 3.

²⁰ See Reply Comments of the Nebraska Rural Independent Companies (March 6, 2020) at 2 (RIC Reply Comments).

²¹ See *id.*

²² See *id.*

²³ See *id.*

²⁴ See RIC Comments at 9.

²⁵ See Reply Comments of the Rural Telecommunications Coalition of Nebraska ((March 6, 2020) at 2 (RTCN Reply Comments).

²⁶ See RIC Comments at 6.

²⁷ See RTCN Reply Comments at 2.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-108

Page 7

Progression Order No. 5

proposed revised NUSF EARN Form included non-regulated revenues while RTCN stated that non regulated revenues should not be included.²⁸

As a preliminary matter, we agree that a three-year average should be used and applied to all carriers. We also believe that earnings should be reported by the assigned NE Code where a separate NUSF EARN Form would be filed for each NE Code. We also propose keeping the distribution mechanism unchanged.

A videoconference hearing will be scheduled in this matter to determine these issues, in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508. The hearing will be held on **September 29, 2020** at 1:30 p.m. The link to the videoconference is as follows <http://tiny.cc/PSCWebex>. The telephone bridge for the audio connection is: 614-655-0003 Access Code 926 434 190.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402)-471-3101. For people with hearing/speech impairments, please call the Nebraska Relay System at (800)-833-7352 (TDD) or (800)-833-0920 (Voice). Advance notice of at least seven (7) days is needed when requesting an interpreter.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a videoconference hearing in this matter be scheduled for **September 29, 2020** at 1:30 p.m. in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508. The link to the videoconference is as follows <http://tiny.cc/PSCWebex>. The telephone bridge for the audio connection is: 415-655-0003 Access Code 926 343 190.

²⁸ See RTCN Reply Comments at 3.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION





Application No. NUSF-108
Progression Order No. 5

Page 8

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 30th
day of June, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Chair

ATTEST:


Executive Director