

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-99
Public Service Commission, on) PROGRESSION ORDER NO. 2
its Own Motion, to Administer)
the Universal Service Fund) ORDER ADOPTING FINDINGS AND
High-Cost Program.) CONCLUSIONS AND INITIATING
) CHALLENGE PROCESS
)
) Entered: November 4, 2020

BY THE COMMISSION:

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

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 September 1, 2015, the Commission adopted a framework by which price cap carrier support would be distributed.¹ The Commission froze the amount of support allocated to price cap carriers at the 2015 calendar level. The Commission adopted a specific allocation for broadband buildout support and for ongoing support. Eighty percent of each price cap carrier's NUSF high-cost allocation was directed to broadband buildout support. The Commission directed carriers to target support to unserved areas. The Commission disqualified the use of NUSF deployment support 1) in areas served by an existing unsubsidized competitor, and 2)

¹See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program*, Progression Order No. 1 (September 1, 2015) ("NUSF-99, Progression Order No. 1").

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 2

where the carrier was receiving federal universal service support.² The Commission adopted a process for price cap carriers to apply for and receive broadband buildout support. The Commission found support should be paid on invoiced costs similar to prior broadband support provided in Commission dockets.³

Last year, the Commission revised the distribution methodology for rate-of-return carriers. While it was modeled largely on the NUSF-99 framework, there were also some significant distinctions. The speeds were updated to reflect the current FCC broadband speed standard. The process for submitting broadband projects was streamlined. A requirement to designate projects and use the funding within two years was also added.

Consequently, on November 13, 2019, the Commission released Progression Order No. 2 in order to solicit comments on whether to update the NUSF-99 framework in a manner that would more closely align price cap carrier high-cost support with our findings in NUSF-108. In the November 13, 2019 order, the Commission sought comment on the following changes:

1. Whether to align the minimum speed requirements with the 25/3 Mbps standard the FCC adopted subsequent to our September 1, 2015 Order and as applied to the rate-of-return carriers.
2. Whether to make the broadband deployment support available similar to the mechanism adopted in NUSF-108, Progression Order No. 3 where projects would be filed for review but not necessarily through an application process.
 - a. Consistent with the process for rate-of-return carriers, the Commission asked whether it should designate eligible census blocks. The Commission asked interested parties to elaborate on how the

² See *id.* at 6. Specifically, the Commission stated it would disallow broadband support in areas that already have an unsubsidized carrier providing comparable broadband service.

³ See *id.* at 8. See also generally Commission orders entered in *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Docket No. NUSF-77, and *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program*, NUSF-92.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 3

- Commission could complement support received from the federal universal service program to extend existing broadband-based networks further out to rural areas that have no broadband service.
- b. The Commission asked whether to prioritize certain areas for broadband deployment and for input on the criteria the Commission should utilize to make those determinations?
 - c. Consistent with the past strategic plan principles, the Commission asked whether it should design the process around support preferences for fiber-based projects.
 - d. Additionally, carriers have, in some cases, utilized fixed wireless technology to meet federal universal service fund obligations. With the assumption that the cost to deploy this technology is lower than the cost to deploy fiber, the Commission asked why state support was necessary to supplement deployment of these technologies. The Commission asked how carrier of last resort obligations (COLR) should be treated if alternative technologies such as fixed wireless services are deployed in the place of replacing or updating the copper-based network with fiber. The Commission further asked how that should impact NUSF support.
3. Consistent with the requirements for rate-of-return carriers, the Commission asked whether to adopt specific timeframes for both requesting to utilize allocated support, and for buildout once projects are approved. The Commission asked what the timeframe should be.
4. The Commission also sought comment on how to better ensure that ongoing support is being used to maintain the quality and performance of both voice and broadband service in Nebraska as it was intended. The Commission asked whether to tie ongoing support to census blocks where the carrier is providing voice and broadband service at speeds of 25/3 Mbps. The Commission asked how it should treat areas that are not receiving adequate voice and broadband service. The Commission asked whether to impose a reporting requirement, such as the EARN Form, to ensure that operational expenses are being used for the purpose of maintaining and improving the network facilities in Nebraska specific high-cost exchanges for which they were

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 4

intended and in support of services offered to Nebraska consumers in high-cost exchanges.

5. The Commission further solicited comments on whether to make any changes to account for the possible future changes in federal support for price cap areas. Connect America Fund Phase II support will likely be transitioning to an auction-based support at some point in time.

Comments Filed

Comments in response to the Commission's November 13, 2019, Order were filed by Charter Communications, Inc. (Charter), Cox Nebraska Telcom, LLC (Cox), Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications (Frontier), Qwest Corporation d/b/a CenturyLink and United Telephone Co of the West (collectively CenturyLink), the Rural Independent Companies (RIC), the Rural Telecommunications Coalition of Nebraska (RTCN), and Windstream Nebraska Inc. (Windstream). Reply comments were filed by CenturyLink, Frontier, RIC and RTCN. Further comments were filed on or around July 30, 2020, by Frontier, CenturyLink, Windstream, RIC, and RTCN.

Minimum Speed Threshold

CenturyLink agreed that broadband projects should meet a minimum 25/3 Mbps standard to be eligible for NUSF broadband buildout support.⁴

Frontier stated that as the FCC has generally adopted the 25/3 Mbps standard, the application of this standard for price cap carriers is not unreasonable going forward.⁵

⁴ See Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (filed December 13, 2019) at 3 ("CenturyLink Comments").

⁵ See Comments of Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (filed December 13, 2019) at 2 ("Frontier Comments").

Application No. NUSF-99,
Progression Order No. 2

Page 5

Cox supported the minimum speed requirement of 25/3 Mbps unless a price cap carrier can provide reasonable justification that such standard is not technically or financially feasible.⁶

RIC also recommended that the minimum broadband network speed requirement should be 25/3 Mbps.⁷ RIC stated this requirement would harmonize the price cap carrier requirement with applicable Nebraska law and with the current Federal Communications Commission (FCC) 25/3 Mbps broadband speed standard.⁸ In addition, this minimum speed standard is found in the Legislature's declaration of policy in Neb. Rev. Stat. § 86-1101(2).⁹

RTCN supported the minimum speed requirement of 25/3 Mbps consistent with the standard established in NUSF-108 relative to rate-of-return carriers. RTCN also stated it matches the threshold for broadband established in LB 994 (2018).¹⁰

Windstream agreed that the deployment obligation should be changed to match the FCC's 25/3 Mbps standard.¹¹ In addition, the review of areas which are not eligible for support due to the presence of an unsubsidized competitor should also be set at 25/3 Mbps.¹²

Selection of Project Areas

CenturyLink stated that the Commission should not designate eligible census blocks; rather, the Commission should rely upon the unserved and underserved criteria.¹³ CenturyLink stated that the sheer number of price cap carrier census blocks would make

⁶ See Comments of Cox Nebraska Telcom, LLC (filed December 13, 2019) at 1 ("Cox Comments").

⁷ See Comments of the Rural Independent Companies in Response to Order seeking Comments (filed December 13, 2019) at 2 ("RIC Comments").

⁸ See *id.* at 3.

⁹ See *id.*

¹⁰ See Comments of the Rural Telecommunications Coalition of Nebraska (filed December 13, 2019) at 2 ("RTCN Comments").

¹¹ See Comments of Windstream (filed December 13, 2019) at 2 ("Windstream Comments").

¹² See *id.*

¹³ See CenturyLink Comments at 3.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 6

this a difficult task administratively for the Commission.¹⁴ CenturyLink recommended the Commission continue to use existing broadband mapping with an enhanced challenge process until the FCC adopts more accurate mapping capabilities.¹⁵ CenturyLink further stated the Commission should employ caution in establishing prioritization criteria.¹⁶ CenturyLink stated that prioritization should focus on factors such as projects in unserved and underserved areas or those providing service to a greater number of residents.¹⁷

Frontier did not believe that a more prescriptive approach by the Commission in terms of potential areas for broadband deployment projects or type of network design would be beneficial.¹⁸

Cox stated the Commission must accurately identify areas where funding is eligible using the best data available.¹⁹ Prioritization should focus on unserved areas, followed by underserved areas.²⁰

Windstream stated that having filed a number of applications, it has a fair understanding of the process Staff uses in reviewing applications.²¹ Windstream stated it shares a mutual understanding of the census blocks which are available for funding.²² However, if Windstream had access to a published list of census blocks, any differences could be reconciled before filing an application rather than after an application has been submitted.²³ Windstream stated however, it was not within the sphere of Commission's

¹⁴ See Reply Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (filed January 10, 2020) at 4 ("CenturyLink Reply Comments").

¹⁵ See *CenturyLink Comments* at 3; see also *CenturyLink Reply Comments* at 4.

¹⁶ See *CenturyLink Comments* at 4.

¹⁷ See *id.*

¹⁸ See *Frontier Comments* at 2.

¹⁹ See *Cox Comments* at 2.

²⁰ *Id.*

²¹ See *Windstream Comments* at 4.

²² See *id.*

²³ *Id.*

Application No. NUSF-99,
Progression Order No. 2

Page 7

jurisdiction to schedule or prioritize areas for broadband deployment support.²⁴

RTCN stated the Commission should take a ground-up approach to prioritizing projects driven by community-based proposals for support to address local needs.²⁵ Such factors should include the number and duration of outages and service interruptions caused by plant failure (as opposed to external causes such as cable cuts), the number of subscriber complaints relative to the total number of subscribers, and customer requests of adjacent providers for service.²⁶ RTCN suggested the Commission continue to allocate on a census block basis.²⁷ In its reply comments, RTCN took issue with Windstream's claim that the Commission lacked the authority to prioritize areas for broadband deployment support.²⁸

RIC recommended the Commission retain and not replace the current application process used for price cap carrier broadband support.²⁹ RIC further stated that it should review and modify its budget allocation to price cap carriers.³⁰ RIC stated that redundant NUSF support should not be provided to census blocks that will receive Rural Digital Opportunities Fund (RDOF) support where such support will result in the deployment and operation of broadband service meeting the 25/3 Mbps minimum speed.³¹ RIC suggested that if a price cap carrier is seeking to obtain NUSF support prior to the establishment of the RDOF, then the price cap carrier should bear the burden to demonstrate to the Commission that the approval of its proposed use of NUSF will be consistent with the FCC-announced RDOF principles.³² RIC further suggested the Commission may want to revisit the factors used to prioritize

²⁴ See *id.* at 5.

²⁵ See RTCN Comments at 6.

²⁶ *Id.*

²⁷ See *id.*

²⁸ See Reply Comments of the Rural Telecommunications Coalition of Nebraska (filed January 10, 2020) at 5-6 ("RTCN Reply Comments") (stating Windstream mischaracterized the statements of the court decision upon which it relied).

²⁹ See RIC Comments at 6.

³⁰ See *id.*

³¹ See *id.* at 8.

³² See *id.*

Application No. NUSF-99,
Progression Order No. 2

Page 8

broadband deployment support.³³ To the extent feasible, NUSF support should be prioritized for establishment of broadband service to currently "unserved" areas, with lower priority given to "underserved" areas.³⁴ In its reply comments RIC took issue with the position taken by RTCN and argued NUSF support is not allocated on a per location basis.³⁵ RIC also stated that the Commission would need to seek further comment on RTCN's community-based redirection of support proposal in order for the Commission to consider it further.³⁶

Technology Distinctions

CenturyLink stated that while fiber has certain advantages, fiber projects are the costliest from both an installation and maintenance standpoint and takes much longer to deploy.³⁷ CenturyLink further stated that the FCC has accepted alternative technologies such as fixed wireless as acceptable broadband solutions.³⁸ CenturyLink suggested the Commission develop a weighted scoring process similar to that of the FCC and other state broadband grant programs.³⁹

CenturyLink stated that universal service support should remain technology neutral as it is limited to those projects which are uneconomical regardless of technology employed. Depending on the unique circumstances of any particular locations, fixed wireless may be the best, long-term solution.⁴⁰

CenturyLink argued that carrier of last resort obligations were associated with carrier receiving state support and not the technology deployed to provide service. If a non-incumbent carrier is awarded NUSF support, any COLR obligations must follow the

³³ See *id.*

³⁴ *Id.* at 9.

³⁵ See Reply Comments of the Rural Independent Companies (filed January 10, 2020) at 4 ("RIC Reply Comments").

³⁶ See *id.*

³⁷ See CenturyLink Comments at 4.

³⁸ See *id.*

³⁹ See *id.*; see also CenturyLink Reply Comments at 6.

⁴⁰ See *id.* at 5.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 9

support.⁴¹ Further, any carrier receiving support must be an eligible telecommunications carrier (ETC).⁴² Once a non-incumbent carrier is the designated COLR/ETC for a given area, the incumbent provider should be relieved of such obligations.⁴³

Frontier stated that fiber to the home may be reasonable in one area, but not in another.⁴⁴ The Commission should not constrain carriers in terms of arriving at the most reasonable deployment technology for any particular area.⁴⁵

RIC reiterated and affirmed its prior statement that the networks have been planned to be scalable regarding broadband speeds consistent with the FCC's statements that it expects carriers seeking federal USF support to be planning to the extent possible for the deployment of "future proof" networks.⁴⁶

RTCN stated the Commission's objective should be to ensure that support is efficiently utilized by ETCs to provide quality voice and advanced information services at rates comparable to urban areas.⁴⁷ RTCN stated that fiber has been demonstrated to be superior when it comes to providing reliable voice services and information services.⁴⁸ RTCN recommended the Commission continue to base price-cap carrier support for broadband deployment projects on invoiced costs.⁴⁹

Windstream stated the process should not focus on the technology of the project but on the goal of bringing broadband capability to unserved and underserved areas with a choice of technology that makes the most sense from a reliability and cost

⁴¹ See *id.*

⁴² See *id.*

⁴³ See *id.* at 6.

⁴⁴ See Frontier Comments at 3.

⁴⁵ *Id.*

⁴⁶ See RIC Comments at 11.

⁴⁷ See RTCN Comments at 7.

⁴⁸ See *id.*

⁴⁹ See *id.*

Application No. NUSF-99,
Progression Order No. 2

Page 10

perspective.⁵⁰ Windstream further stated that although fixed wireless solutions may be less expensive than fiber, it does not mean that such solutions themselves are not expensive.⁵¹

Timeframe for Use of Support

CenturyLink recommended against the use of specific timeframes to utilize support or to buildout designated projects.⁵² CenturyLink stated that every project is unique and may be affected by many variables outside of the carrier's control.⁵³

Frontier stated that if the time requirement to designate projects and use the funding operated the same as the timeframe adopted for rate-of-return carriers, Frontier is not opposed to that requirement.⁵⁴

Cox stated that a two-year completion date for buildout once a project is approved is reasonable.⁵⁵ Although, Cox stated, extensions should be allowed upon the demonstration there are reasonable grounds for delays.⁵⁶

RIC recommended the Commission require timelines for price cap carriers to make application for approval of broadband projects and to utilize any such NUSF support and to complete Commission-approved projects. If a price cap carrier needs additional time to deploy broadband projects supported by the NUSF, it should seek a waiver from the Commission based upon good cause.⁵⁷ RIC further recommended the Commission apply a "shot clock" to NUSF support that has been previously allocated to price cap carriers.⁵⁸

⁵⁰ See Windstream Comments at 5.

⁵¹ See *id.*

⁵² See CenturyLink Comments at 6.

⁵³ See *id.*

⁵⁴ See Frontier Comments at 3.

⁵⁵ See Cox Comments at 2.

⁵⁶ See *id.*

⁵⁷ See RIC Comments at 12.

⁵⁸ See *id.*

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 11

RTCN also agreed the Commission should adopt specific timeframes for requesting and using support once buildout projects are approved.⁵⁹ Windstream agreed that the Commission should adopt specific timeframes.⁶⁰ Windstream recommended a three-year timeframe.⁶¹

Ongoing Support Requirements

CenturyLink recommended against tying ongoing support to census blocks where the carrier is providing voice and broadband service at speeds of 25/3 as CenturyLink stated that it believes voice and broadband are distinct services with separate obligations.⁶² Secondly, CenturyLink states that supported services are basic local exchange services.⁶³ While certain components can be used for support for both voice and broadband, the limited funding offered by NUSF cannot provide ongoing support for both voice and broadband.⁶⁴

Frontier also recommended against tying ongoing support to census blocks where the carrier is providing both voice service and broadband service at speeds of 25/3 Mbps.⁶⁵ Frontier stated this may preclude carriers from maintaining their existing voice service and/or broadband service as needed.⁶⁶ In its reply comments, Frontier stated that revoking a carrier's ETC designation could have a significant adverse impact on consumers, including the lack of Lifeline availability.⁶⁷

RIC stated that given the track record regarding the use of NUSF support by price cap carriers as compared to rate-of-return

⁵⁹ See RTCN Comments at 8.

⁶⁰ See Windstream Comments at 6.

⁶¹ See *id.*

⁶² See CenturyLink Comments at 7.

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ See Frontier Comments at 4.

⁶⁶ See *id.*

⁶⁷ See Reply Comments of Comments of Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (filed January 10, 2020) at 2 ("Frontier Reply Comments").

Application No. NUSF-99,
Progression Order No. 2

Page 12

carriers, it would be appropriate for the Commission to establish even more rigorous requirements for price cap carriers.⁶⁸

Windstream stated that ongoing support is used for operating expenses. As such it should not be tied only in areas which voice and broadband are being provided at speeds of 25/3 Mbps.⁶⁹ Windstream stated that it would be impossible for Windstream to trace expenses down to geographic areas such as census blocks.⁷⁰

Additional Reporting Requirements

CenturyLink recommended against the use of the NUSF EARN Form or any similar reporting requirement.

Frontier stated that it was not clear on the need for such additional reporting.⁷¹ The current levels of NUSF support provided to companies is fundamentally based on the companies' EARN form results.⁷² Frontier believes the current EARN Form reporting process is sufficient to demonstrate the appropriate uses of NUSF support for ongoing maintenance and operational costs.⁷³

RTCN recommended the Commission use an earnings test to ensure that support is being used solely for purpose allowed by law, regulations, policies and orders.⁷⁴

Consideration of Federal Support

CenturyLink stated that revisions based on speculative future changes in federal support for price cap areas are premature. The Commission should not make any changes based on anticipated and speculative revisions to CAF II.⁷⁵

⁶⁸ See RIC Comments at 14.

⁶⁹ See Windstream Comments at 7.

⁷⁰ See *id.*

⁷¹ See Frontier Comments at 4.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See RTCN Comments at 9.

⁷⁵ See CenturyLink Comments at 8.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 13

Cox took no position on whether changes should be made in anticipation of possible updates to federal support for the price cap companies.⁷⁶

RIC urged the Commission to closely monitor developments relating to the RDOF in order that deployment of NUSF support in price cap carrier-served areas can be accomplished in a manner that results in the most efficient utilization of federal universal service support.⁷⁷

RTCN stated the Commission should act quickly to build on efforts to coordinate with the FCC wherever possible.⁷⁸ The FCC set an ambitious timeline to complete the RDOF auction by the end of 2020.⁷⁹ RTCN recommended the Commission take a lead role in ensuring efficient utilization of federal and state support.⁸⁰

Windstream stated that the current process does not provide funding for CAF II census blocks. At the end of the Phase I RDOF auction, the census blocks price cap carriers will have won support for will be known.⁸¹ Using the new set of census blocks post-RDOF auction should prove seamless.⁸²

Proposal

Based on the comments and reply comments submitted, the Commission released a proposal for further comment and scheduled a hearing for August 25, 2020.

All commenters agreed that 25/3 Mbps should be the minimum speed threshold for broadband deployment obligations tied to NUSF support. Accordingly, the Commission proposed to adopt that standard.

⁷⁶ See Cox Comments at 2.

⁷⁷ See RIC Comments at 16.

⁷⁸ See RTCN Comments at 10.

⁷⁹ *Id.*

⁸⁰ See RTCN Reply Comments at 12.

⁸¹ See Windstream Comments at 7.

⁸² *Id.*

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 14

In addition, very few commenters disagreed with the idea of imposing a timeframe for broadband deployment applications to be submitted each year and projects to be completed. The Commission adopted a two-year timeframe for completion of broadband projects in NUSF-108. Most commenters were generally supportive of having matching requirements for price cap carriers. The Commission proposed adoption of a two-year standard timeframe along with the opportunity to seek a waiver or extension of time for good cause shown.⁸³ In addition, the Commission proposed to adopt a one-year timeframe for carriers to file requests for support for projects in a given funding year, and a two-year timeframe for project completion.

The Commission also proposed to release an allocation whereby each exchange within the carriers' territories is assigned an amount of buildout support that would be reimbursed to the carrier once broadband service is provided to all eligible locations within that exchange. Eligible locations would be those that are defined as rural, are not eligible for RDOF support, are not already built to 25/3 Mbps or greater, and do not already have competitive service, defined as broadband at 25/3 Mbps and voice service offered. The technology used for projects must reach every household, regardless of topography, vegetation, or distance. Utilizing this methodology, the Commission proposed to release a list of the exchanges that each carrier covers, assign a maximum reimbursable amount based on SBCM modeled costs of eligible census blocks, and carriers would be required to notify the Commission within one year of the exchanges that they plan to build to with their available buildout support. Carriers would be required to provide notice of projects that use 95% of their available buildout support for that year. If that threshold is not met, any remaining support would be forfeited to fund a reverse auction to bring 25/3 broadband to exchanges within that carrier's territory that do not have projects planned. The specific exchange or exchanges that would be part of the auction would be selected at the discretion of the Commission. The Commission proposed to only prioritize areas if buildout support was not utilized in a timely manner.

The Commission also proposed to make available in the first year of this program any support that has not been allocated through the NUSF-99 program.

⁸³ See Reply Comments of CenturyLink at 7.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 15

Finally, consistent with the other high-cost programs, the Commission proposed to continue its requirement that price cap carriers build out prior to seeking reimbursement for broadband projects.⁸⁴

Issues for Further Comment

In its June 30, 2020 Order, the Commission sought further comment on additional issues.

The Commission asked how it would prioritize areas for buildout support and whether it should identify areas where it has received a number of complaints, like Oshkosh, as a priority area.

The Commission further asked whether price cap carriers should be subject to an NUSF EARN Form process if they continue to receive ongoing support.

The Commission also sought comment on removing RDOF-eligible areas from eligibility for NUSF support. The Commission questioned whether it should provide any supplemental support for areas covered by the RDOF auction. The Commission asked whether to provide support for areas that are eligible but do not receive any auction-based support. The Commission sought comment on whether to support areas that do receive auction-based support but for other technologies such as low-orbit satellite or fixed wireless service.

Further Comments

CenturyLink stated that it assumed the SBCM model would develop exchange funding to support a 25/3 deployment and thought that limiting support to 25/3 speeds may unintentionally encourage buildouts of no greater than 25/3.⁸⁵ CenturyLink also suggested that partial exchange buildouts should be allowed. CenturyLink also suggested that the Commission not require 100 percent buildout unless the SBCM model is enhanced to provide support for realistic on the ground buildout requirements.⁸⁶ CenturyLink expressed

⁸⁴ See NUSF-99, Progression Order No. 1.

⁸⁵ See Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (filed July 30, 2020) at 3 ("CenturyLink Further Comments").

⁸⁶ See *id.* at 4.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 16

concerns with the sufficiency of the buildout window, especially given the unique build schedule required in Nebraska.⁸⁷ CenturyLink supported the proposal of allowing price cap carriers to identify which areas they will build to using buildout support.⁸⁸ CenturyLink stated that if the Commission does establish priority areas, the priority should not be based on the number of customer complaints.⁸⁹ CenturyLink did not believe there was a need for requiring additional reports, however, to the extent additional reporting obligations are adopted, CenturyLink stated, reporting requirements should be implemented on a competitively neutral manner and applied to competitive ISPs who win a reverse auction grant.⁹⁰

CenturyLink agreed there was no public policy rationale in providing financial assistance to multiple providers in the same area.⁹¹ CenturyLink stated while not prohibited in RDOF rules, the Commission should recognize where "double-dipping" could occur and approve NUSF funding for only exceptional circumstances.⁹² For example, if an RDOF auction winner could increase speeds over its RDOF commitment area using supplemental NUSF support it may provide Nebraska with a cost-effective synergy.⁹³ With respect to areas that are initially eligible for RDOF but do not receive any auction-based support, CenturyLink recommended that those areas should be eligible for NUSF support. Finally, CenturyLink stated there would be no justification for the Commission to award broadband grants for areas only to compete with FCC-supported services even if they are fixed wireless or low-orbit satellite services.⁹⁴

CenturyLink further stated its belief that carrier of last resort obligations is inextricably linked to universal service

⁸⁷ See *id.* at 6.

⁸⁸ See *id.*

⁸⁹ See *id.* at 7.

⁹⁰ See *id.* at 8-9.

⁹¹ See *id.* at 9.

⁹² See *id.* at 10

⁹³ *Id.*

⁹⁴ See *id.* at 11.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 17

support.⁹⁵ While the Commission may not need to address that issue in this docket at this time, CenturyLink stated that the sooner the Commission fully addresses this critical issue, the more information would be available prior to a reverse auction so that auction participants fully understand what they are committing to undertake.⁹⁶

Frontier stated that if it understands the Commission's proposal relative to the two-year timeframe, it does not disagree with it.⁹⁷ Frontier stated that ongoing NUSF support for maintenance and operation of the existing network is crucial and must be continued.⁹⁸ Frontier stated the changes proposed may adversely impact broadband deployment for carriers with unexpended funds. As it related to the Commission's proposal to prioritize funds, Frontier did not believe that a prescriptive approach by the Commission would be beneficial.⁹⁹ Finally, Frontier did not see a need to require filing an NUSF EARN Form unless the ongoing support amount is ultimately derived from the form.¹⁰⁰

RIC recommended that the NUSF-108 framework's two-year buildout timeframe should be applicable to price cap carriers.¹⁰¹ At the same time, RIC is concerned that the framework will result in a continuation of poor broadband deployment results for Nebraska consumers in price cap carrier areas.¹⁰² RIC believes the one year period to file requests for support for projects in a given funding year is too long. RIC recommended this could be accomplished in 90 to 180 days.¹⁰³

⁹⁵ See *id.* at 13.

⁹⁶ *Id.*

⁹⁷ See Comments of Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (filed July 30, 2020) at 2 ("Frontier Further Comments").

⁹⁸ See *id.* at 3.

⁹⁹ See *id.*

¹⁰⁰ See *id.* at 4.

¹⁰¹ See Comments of the Nebraska Rural Independent Companies (filed July 30, 2020) at 8 ("RIC Further Comments").

¹⁰² See *id.* at 9.

¹⁰³ See *id.*

Application No. NUSF-99,
Progression Order No. 2

Page 18

In terms of the allocation by exchange, RIC recommended that all interested parties would benefit by the Commission releasing investment and cost from SBCM that are used to arrive at price cap carrier allocations.¹⁰⁴ RIC requested more information about the proposal to require price cap carriers to use 95 percent of their available buildout support in a given year.¹⁰⁵ RIC questioned whether that gave the carrier discretion to designate projects or whether the Commission would prioritize projects.¹⁰⁶ Consistent with the need for transparency, RIC requested that the Commission clarify its proposal regarding the failure of a price cap carrier to provide notice of project designations using 95 percent of the carrier's available support.¹⁰⁷

In response to the further issues for comment, RIC stated it believes prioritizing locations for broadband deployment through the use of NUSF support should first be based on known consumer demands and expressed need.¹⁰⁸ RIC questions why concerns for ongoing support should not be addressed on a carrier-specific basis rather than an NUSF-EARN form process.¹⁰⁹ RIC did not believe the Commission should provide supplemental support to any location that fits within any of the following classes of locations (i) any location subject to awards from the FCC Auction 903; (ii) any location eligible for RDOF Auction I; (iii) any location eligible for RDOF Auction II; (iv) any location that currently is 25/3 Mbps capable; (v) any location with SBCM cost less than \$52.50 per month; (vi) any location already served by an unsubsidized competitor; and (vii) any location that will be funded by NUSF allocated to price cap carriers for years 2017 through 2020 and is built out through use of such funding.¹¹⁰ RIC stated if auction-based support is awarded to an entity that commits to deploy broadband at minimum speeds of 25/3 Mbps for a location, then

¹⁰⁴ See *id.* at 12.

¹⁰⁵ See *id.* at 13.

¹⁰⁶ See *id.*

¹⁰⁷ See *id.* at 13-14.

¹⁰⁸ See *id.* at 15.

¹⁰⁹ See *id.* at 16.

¹¹⁰ *Id.* at 16-17.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 19

supplemental NUSF support should not be provided for such location.¹¹¹

In addition to commenting on the Commission's proposal and issues for further comment, RIC advocated for shifting more NUSF support from the price cap carrier allocation to rate-of-return carrier allocation.¹¹² In support of this argument, RIC provided an Exhibit demonstrating its contention that NUSF-99 eligible locations for price cap carriers constitute only 25.8 percent of the total unfunded eligible investment costs in the state.¹¹³ RIC further advocated that the Commission consider issues presented by the Commission's other June 30, 2020 order as interrelated.¹¹⁴ Those orders included the Commission's NUSF contribution order docketed as NUSF-119 and NUSF-108, Progression Order No. 5 which addresses NUSF EARN Form modifications.¹¹⁵

RTCN stated it has consistently supported a 25/3 standard for both rate-of-return carriers and for price cap carriers.¹¹⁶ However, RTCN stated public reaction indicates a clear animus for a 25/3 standard, especially in cities and villages.¹¹⁷ RTCN advocated the Commission undertake a study of what service packages are available in urban areas. Upon findings in that investigation the Commission should seek legislation, if necessary, and undertake further reforms to ensure that comparable speeds are provided in rural areas.¹¹⁸ RTCN also advocated for a pilot program for funding rural communities at speeds derived from the comparability study.¹¹⁹

In response to the Commission's proposal and questions for further comment, RTCN generally supported the Commission's

¹¹¹ *Id.* at 17.

¹¹² *See id.* at 2-4.

¹¹³ *See id.* at 4, and Exhibit 1.

¹¹⁴ *See id.* at 5-6,

¹¹⁵ *See id.*

¹¹⁶ *See* Further Comments of the Rural Telecommunications Coalition of Nebraska (filed July 30, 2020) at 3 ("RTCN Further Comments").

¹¹⁷ *See id.*

¹¹⁸ *See id.* at 4.

¹¹⁹ *See id.*

Application No. NUSF-99,
Progression Order No. 2

Page 20

timeline for requests for deployment support and for completing projects.¹²⁰ RTCN further supported the Commission's proposal to immediately subject forfeited support to a reverse auction or other vehicle to direct support.¹²¹ RTCN supported the Commission's proposed exchange based approach. However, RTCN encouraged the Commission to maintain its discretion to allocate support on a smaller scale once more location-specific information is available.¹²²

RTCN encouraged the Commission to withhold judgment on eligibility of RDOF-eligible areas until after RDOF awards have been determined. RTCN stated the Commission should not foreclose the possibility of supplementing RDOF support with deployment support and, once deployment has been completed, with ongoing state support.¹²³ RTCN recommended the Commission not provide deployment support to CAFII Auction areas and refrain from making a final decision about eligibility for those areas for ongoing support until analyzing the progress of deployment.¹²⁴ In addition, RTCN stated that areas receiving CARES Act support by the Nebraska Department of Economic Development should be ineligible for ongoing high-cost support if the incumbent carriers received a CARES Act grant.¹²⁵

With respect to the already allocated but unused support, RTCN recommends such support should be used to fund a community pilot program in the same price cap territory for which it was allocated.¹²⁶ The RTCN recommended that the Commission consider prioritization of both price cap and rate-of-return areas that remain unserved and underserved in a separate but expedited proceeding.¹²⁷ RTCN stated the proceeding might investigate cities and villages that remain underserved and make immediate determinations about what should be done with support previously

¹²⁰ See *id.* at 5.

¹²¹ See *id.*

¹²² See *id.*

¹²³ See *id.* at 6.

¹²⁴ See *id.*

¹²⁵ See *id.*

¹²⁶ See *id.*

¹²⁷ *Id.* at 7.

Application No. NUSF-99,
Progression Order No. 2

Page 21

dedicated to the carriers responsible for the exchanges that includes such cities and villages.¹²⁸ RTCN recommended that the EARN Form accountability should be applied by the Commission to all carriers receiving support.¹²⁹ Finally, RTCN stated that once the RDOF support is directed by this fall's reverse auction, the Commission should open an investigation as to the best ways to ensure that future state support supplements and assists RDOF support without duplicating such support.¹³⁰

Windstream generally commented in support of the Commission's proposal.¹³¹ Windstream requested clarification from the Commission as to when the two-year clock for project completion commences.¹³² Windstream stated that it was inadvisable to make the availability of support contingent upon a determination that the carrier is offering broadband service to all eligible locations within an exchange.¹³³ Windstream stated that such a standard would limit the feasibility of both fixed wireless and fiber projects.¹³⁴ As an alternative, Windstream would propose a percentage threshold of 95 percent of all eligible households which is used in the FCC's RDOF and Connect America Fund II programs.¹³⁵ In addition the percentage should be based on project area rather than households.¹³⁶ Windstream also requested clarification on the phrase "voice service offered."¹³⁷ Windstream also requested clarification on whether the Commission's proposal would include support that has not been distributed or applied for, rather than support that has not been distributed.¹³⁸ Windstream recommended the Commission

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *See id.* at 7-8.

¹³¹ *See* Comments of Windstream (filed July 30, 2020) at 2-7 ("Windstream Further Comments").

¹³² *See id.* at 2.

¹³³ *See id.* at 3.

¹³⁴ *Id.*

¹³⁵ *See id.*

¹³⁶ *See id.* at 4.

¹³⁷ *See id.*

¹³⁸ *See id.* at 5

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 22

establish a term for the program, such as ten years.¹³⁹ Windstream stated this would be similar to the structure used by the RDOF.¹⁴⁰ Windstream stated it would welcome input from the Commission on hot-spots or exchanges where complaints are on the rise to use in determining areas for buildout.¹⁴¹ Windstream supported the application of a uniform standard for both price cap and rate-of-return carriers. Windstream was satisfied with the division of ongoing support and project-based funding for price cap carriers.¹⁴² Windstream recommended the Commission allow RDOF-eligible areas to remain eligible for NUSF support.¹⁴³ However, Windstream suggested that the Commission make NUSF support available only to the carrier to whom RDOF support is granted to the exclusion of other carriers.¹⁴⁴

Hearing

A hearing in this matter was held in Lincoln, Nebraska and via videoconference equipment on August 25, 2020. The hearing was held in legislative format. All written comments were offered and received into the record and are found in Exhibit Nos. 2 through 4.

Mr. Cullen Robbins, Director of the Communications and Nebraska Universal Service Fund Department of the Commission, provided a summary and clarification on the proposal described in the Commission's June 30th Order.¹⁴⁵ Mr. Robbins stated that what the Commission has proposed is functionally similar to what the Commission implemented for rate-of-return carriers.¹⁴⁶ He stated he wanted to design a mechanism that incentivizes carriers to build out broadband capable networks where they do not exist today.¹⁴⁷ However, Mr. Robbins testified, there are some key differences.

¹³⁹ See *id.* at 6.

¹⁴⁰ See *id.*

¹⁴¹ See *id.* at 7.

¹⁴² See *id.*

¹⁴³ See *id.* at 8.

¹⁴⁴ See *id.*

¹⁴⁵ See Testimony of Mr. Cullen Robbins, Hearing Transcript (TR) at 13-29.

¹⁴⁶ See TR 14:22-15:4.

¹⁴⁷ See *id.*

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 23

The Commission's proposal would look at the areas served by the price cap carriers on a census block by census block basis within individual exchanges to determine what areas would be eligible for support.¹⁴⁸ He noted that some commenters seemed confused about what the SBCM model is modeling.¹⁴⁹ Mr. Robbins clarified that the SBCM model is what the FCC uses to arrive at modeled costs for its high-cost program and it models a fiber-to-the-home network.¹⁵⁰

Mr. Robbins testified that the proposal would remove RDOF census blocks from NUSF eligibility.¹⁵¹ The staff's position, he explained is that to provide additional support to one or more potential bidders in the auction would fundamentally alter the underpinnings on which the RDOF was designed. The only exception would be if an area was initially eligible but does not receive winning bids at the auction.¹⁵² Mr. Robbins stated he would then work to reincorporate these areas in the methodology. Mr. Robbins further stated that he would propose to remove blocks that are not rural using the definition that the Commission has maintained throughout other proceedings related to high-cost support.¹⁵³ A block is classified as urban if it falls within a census designated city or village or contains more than 20 households and is greater than 42 households per square mile.¹⁵⁴

Mr. Robbins further proposed to exclude blocks where a competitive service was already provided. He would define competitive service as service level having a minimum of 25/3 Mbps broadband speeds as well as the offering of a voice service.¹⁵⁵ If the locations in the block cannot receive broadband service of 25/3 or greater the block may be eligible for broadband deployment support, and that support would only be available at the exchange level.¹⁵⁶

¹⁴⁸ See TR 15:11-15.

¹⁴⁹ See TR 15:22-16:1.

¹⁵⁰ See TR 15:18-21.

¹⁵¹ See TR 16:2-5.

¹⁵² See TR 16:18-22.

¹⁵³ See TR 16:23-17:4.

¹⁵⁴ *Id.*

¹⁵⁵ See TR 17:5-9.

¹⁵⁶ TR 17:19-23.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 24

All eligible locations within a census block would have to be built out according to the proposal.¹⁵⁷ All of the total investment costs for eligible blocks for a given exchange would be aggregated and that amount of support would be the maximum amount a carrier can expect to be reimbursed for building out the exchange.¹⁵⁸ Mr. Robbins proposed to release a list of exchanges served by price cap carriers and the preliminary amounts of support that would be attached to those exchanges.¹⁵⁹ Mr. Robbins also suggested that the Commission initiate a challenge process that would allow input from interested parties about the blocks the Commission considered eligible.¹⁶⁰

Mr. Robbins provided an example of how the Commission's proposal would be implemented and a diagram which demonstrated how each census block would flow through the process.¹⁶¹ These documents were offered and received into the record as Exhibit Nos. 7 and 8.¹⁶²

Finally, Mr. Robbins explained how the NUSF EARN form process has been used and how that may or may not be relevant should the Commission adopt the proposal described in its June 30th Order.¹⁶³ Mr. Robbins testified if the price cap carrier support continues to be frozen and the current 80/20 allocations remain in place, then the NUSF EARN Form process has no bearing on the support that price cap carriers receive.¹⁶⁴

Ms. Stacey Brigham, the Regulatory Director at TCA, testified on behalf of the Rural Telecommunications Coalition of Nebraska (RTCN).¹⁶⁵ Ms. Brigham testified RTCN continues to largely support

¹⁵⁷ See TR 18:1-3.

¹⁵⁸ See TR 18:4-10.

¹⁵⁹ See TR 18:19-23.

¹⁶⁰ See TR 18:24-19:2.

¹⁶¹ See TR 19:3-23:1.

¹⁶² See TR 27:13-22.

¹⁶³ See TR 23:20-24:4.

¹⁶⁴ See TR 24:5-15.

¹⁶⁵ See Testimony of Stacey Brigham, TR 30-56.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 25

the Commission's proposal.¹⁶⁶ The RTCN also encouraged the Commission to accelerate the pace of reform.¹⁶⁷ The RTCN recommended the Commission evaluate the sufficiency of the 25/3 standard going forward.¹⁶⁸ The RTCN believes the Commission should recommend speed standards to the legislature.¹⁶⁹ Future deployment for rural areas should be tied to the eligible telecommunications carrier providing higher speeds in cities and villages.¹⁷⁰ To be clear, the RTCN did not advocate using future deployment support for cities and villages.¹⁷¹ Rather, RTCN suggested a pilot program utilizing price cap deployment support allocated between 2017 and 2019 but not committed to a project.¹⁷² If the Commission were to adopt such a pilot, the deadline for project commitments should correspond with the date of the commission's order formally adopting its reform proposal in this proceeding.¹⁷³

Ms. Brigham clarified that RTCN supported the Commission's proposal to incentivize technology deployment that serves every location in the exchange.¹⁷⁴ The RTCN believes the Commission should clarify that if a deployment project in an exchange utilizes a mix of technologies such as fiber and fixed wireless, appropriate incentives should not be withheld simply because multiple technologies are utilized to reach every eligible location.¹⁷⁵

With respect to the allocations, Ms. Brigham testified that the RTCN agreed with the Commission's proposal.¹⁷⁶ She stated there was no need to allocate differently than what the Commission has

¹⁶⁶ See TR 30:21-25.

¹⁶⁷ See TR 31:1-8.

¹⁶⁸ See TR 33:1-4.

¹⁶⁹ See TR 33:15-21.

¹⁷⁰ TR 33:22-25

¹⁷¹ See TR 34:6-11.

¹⁷² See *id.*

¹⁷³ See TR 12-16.

¹⁷⁴ See TR 35:8-14.

¹⁷⁵ See TR 35:22-36:3.

¹⁷⁶ See TR 36:14-22.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 26

established in NUSF-108.¹⁷⁷ In response to RIC's recommendation that the Commission reallocate support, the RTCN stated that any reallocation should be made with a careful investigation, be based on SBCM modeling, and support should not be moved from one carrier which has not served its territory to another which also has not served its territory by virtue of the manner in which they are regulated by the FCC.¹⁷⁸ Ms. Brigham also stated that if support is reallocated, it should be reallocated consistent with existing allocations between deployment and ongoing support because ongoing support is critical for Nebraska ETCs that have already deployed fiber to the home.¹⁷⁹

The RTCN urged the Commission to refrain from establishing standards related to areas receiving auction support under the FCC's RDOF.¹⁸⁰ The RTCN stated it would be premature for the Commission to adopt this restriction.¹⁸¹

In response to questions from the Commissioners and staff, Ms. Brigham testified that RTCN recommends utilizing support in some of the towns that may have been left out because of the way that the modeling assumptions are worked in the SBCM.¹⁸² However, she did not recommend the Commission update the SBCM modeling process to see what the costs would be.¹⁸³ Ms. Brigham stated the Commission could provide additional support in RDOF areas if it were to decide that higher standards of broadband might be appropriate.¹⁸⁴

Mr. Trent Fellers testified on behalf of Windstream.¹⁸⁵ He testified that Windstream is committed to continuing to build fiber

¹⁷⁷ See *id.*

¹⁷⁸ See TR 37:18-38:5.

¹⁷⁹ See TR 38:6-11.

¹⁸⁰ See TR 38:14-19.

¹⁸¹ TR 39:7-8.

¹⁸² See TR 44:1-7.

¹⁸³ See TR 45:16-24.

¹⁸⁴ See TR 48:4-13.

¹⁸⁵ See Testimony of Mr. Trent Fellers, TR 57-62.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 27

to the home projects in areas eligible for NUSF funding.¹⁸⁶ He stated that Windstream was comfortable with the current structure of the NUSF program.¹⁸⁷

In response to questions, Mr. Fellers testified that because the RDOF census block look something like a quilt, it made it difficult to put together a comprehensive project between the two census blocks. If Windstream had some idea of what it could expect from the NUSF for the areas around RDOF but not included in the RDOF it would make it easier for Windstream's planning team.¹⁸⁸

Mr. Scott Schultheis, a principal of Reynolds, Schultheis Consulting, Inc., testified for RIC.¹⁸⁹ Mr. Schultheis described Exhibit 6 entitled Eligible Investment for NUSF Budget Allocation, which was also attached to RIC's July 30 comments.¹⁹⁰ Mr. Schultheis testified the current budget allocation of approximately 52 percent price cap carriers and 48 percent for rate-of-return carriers should be changed on an ongoing basis to approximately 26 percent for price cap and 74 percent for rate of return carriers based on eligible investments resulting from change and changing circumstances.¹⁹¹

Mr. Schultheis testified that his exhibit represented a rational methodology utilizing SBCM investment data to identify areas in which NUSF is needed and, therefore, allocates NUSF support based on remaining SBCM investment that should be recovered from the NUSF.¹⁹² Consistent with the Commission's proposal RIC removed RDOF eligible areas from eligibility for NUSF support.¹⁹³ Mr. Schultheis stated he used the following additional information sources to develop his exhibit in order to identify census blocks, locations and model investment: publicly available data regarding FCC auction 903 price cap carrier locations; publicly available

¹⁸⁶ See TR 57:10-13.

¹⁸⁷ See *id.*

¹⁸⁸ See TR 60:14-17.

¹⁸⁹ See Testimony of Mr. Scott Schultheis, TR 62-81.

¹⁹⁰ See TR 65:1-77:7.

¹⁹¹ See TR 65:14-21.

¹⁹² TR 66:13-18.

¹⁹³ See TR 67:2-8.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 28

but preliminary price cap carrier RDOF-eligible location data for both Phase I and Phase II auctions and the locations subject to successful challenges; price cap and rate-of-return carrier locations identified in the SBCM file that are capable of providing broadband at minimum speeds of 25/3 Mbps; price cap and rate-of-return carrier locations that have an SBCM cost less than \$52.50 per month; and NUSF funding levels approved by the Commission for price cap carriers in years 2017 through 2020 and for rate-of-return carriers in years 2019 and 2020.¹⁹⁴ The investment amounts shown on various lines were subtracted from the total SBCM investment amounts for both price cap and rate-of-return carriers.¹⁹⁵ Mr. Schultheis concluded that the relative investment allocation for price cap carriers should be 25.8 percent of the Commission's high-cost budget.¹⁹⁶

Mr. Ken Pfister, Vice President of Strategic Policy for Great Plains also testified for RIC.¹⁹⁷ Mr. Pfister testified that it was wholly appropriate for the Commission to modify the existing budget allocation in this proceeding and implement those modifications in the 2021 NUSF funding year.¹⁹⁸ He stated that the unfunded broadband deployment investments represent an approximate 75 percent allocation of the NUSF high-cost budget to rate-of-return carriers and a 25 percent allocation to price cap carriers.¹⁹⁹ Mr. Pfister testified that the public interest of Nebraskans will be served by modifying the high-cost allocation.²⁰⁰ He stated costs supported by the NUSF should be based on SBCM. He further stated that all federal universal service monies should be accounted for to maximize the state's supplemental use of NUSF high-cost support.²⁰¹ Third, he stated, NUSF support should be allocated in a proportionate and fair manner amongst carriers based on the remaining eligible costs.²⁰² Finally, he stated NUSF

¹⁹⁴ See TR 67:14-68:13.

¹⁹⁵ See TR 69:16-20.

¹⁹⁶ See TR 74:20-75:2.

¹⁹⁷ See Testimony of Mr. Ken Pfister, TR 81-106.

¹⁹⁸ See TR 86:17-23.

¹⁹⁹ TR 87:9-13.

²⁰⁰ See TR 89:12-18.

²⁰¹ TR 89:21-24.

²⁰² See TR 89:25-90:2.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 29

recipients must be accountable for the support received.²⁰³ Mr. Pfister testified that it is reasonable to expect that the increased allocation of the NUSF high-cost budget to rate-of-return carriers in 2021 and future years should result in immediate increased investment in broadband deployment.²⁰⁴

In response to the Commission's proposal, Mr. Pfister first recommended the Commission provide more clarity for its definition of rural and particularly what the model cost floor is for eligible locations.²⁰⁵ Second, RIC believes the one year time frame to allow price cap carriers to designate projects is unnecessarily generous.²⁰⁶ The RIC group has no issues in general with the Commission's recommendation that NUSF support unused by price cap carriers should ultimately be subject to a reverse auction, however, this should only occur for areas not served under RDOF Phase I and RDOF Phase II.²⁰⁷ Mr. Pfister stated that entities that successfully bid for RDOF support for specified areas are aware of the FCC requirement to build those areas to broadband capabilities of at least 25/3 Mbps.²⁰⁸ RIC's position then is for those areas, supplemental NUSF high-cost support is not necessary and should not be provided.²⁰⁹

Mr. John Idoux testified for CenturyLink.²¹⁰ Mr. Idoux testified that CenturyLink and others have utilized NUSF broadband grants to bring high-speed internet to tens of thousands of rural Nebraskans.²¹¹ Mr. Idoux testified that a one-size-fits-all approach may not be in the best interest of all stakeholders.²¹² Mr. Idoux testified that CenturyLink does support the general

²⁰³ See TR 90:3-5.

²⁰⁴ See TR 91:19-25.

²⁰⁵ See TR 92:12-15

²⁰⁶ See TR 92:19-24.

²⁰⁷ See TR 93:12-19.

²⁰⁸ TR 95:20-24.

²⁰⁹ See TR 95:15-19.

²¹⁰ See Testimony of Mr. John Idoux, TR 145-155.

²¹¹ TR 146:3-6.

²¹² See TR 149:2-6.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 30

structure of the Commission's proposal.²¹³ Mr. Idoux stated CenturyLink had concerns with the Commission's proposal that the carrier provide service to all unserved eligible locations within the exchange.²¹⁴ Mr. Idoux stated that while aspirational, it is an unrealistic requirement.²¹⁵ He stated that partial exchange buildouts should be the exception, but it should be allowed.²¹⁶ Mr. Idoux further testified that CenturyLink assumes the Commission's model will be developed to exchange funding to the 25/3 deployment level.²¹⁷ If that is the case, CenturyLink encourages the Commission to develop the broadband grant program in such a manner to offer tiered support on the speeds provided with increased support for higher speeds.²¹⁸

Mr. Scott Bohler testified on behalf of Frontier.²¹⁹ Mr. Bohler testified that the additional information provided by Mr. Robbins was helpful to his understanding of the Commission's proposal.²²⁰ However, he thought another round of comments or further discussion about RIC's proposal to reallocate dollars between price cap carriers and rate-of-return carriers would be beneficial.²²¹ Mr. Bohler stated that the June 30th proposal about reaching back into pre-2020 broadband NUSF support is worrisome to Frontier.²²² Frontier would be opposed to that.²²³ Frontier could see making a change beginning with 2020 but would be opposed to changing allocations or the dollars awarded from 2019 going backwards.²²⁴ Mr. Bohler clarified that Frontier would not be opposed to the Commission taking previous allocated but unused

²¹³ TR 149:9-10

²¹⁴ See TR 150:10-22.

²¹⁵ See *id.*

²¹⁶ See TR 151:4-6.

²¹⁷ See TR 151:15-20.

²¹⁸ See TR 151:21-25.

²¹⁹ See Testimony of Mr. Scott Bohler, TR 106-164.

²²⁰ See TR 161:5-19.

²²¹ See TR 161:20-25.

²²² See TR 162:7-12.

²²³ See TR 162:13.

²²⁴ See TR 162:16-18.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 31

support and folding that into the methodology for using such support within a two-year construction window.²²⁵

The following witnesses testified at the hearing about the importance of broadband and provided recommendations to the Commission relative to broadband deployment:

Mr. John Hansen, President of the Nebraska Farmers Union, testified that the 25/3 Mbps speed minimum was too low.²²⁶ In addition, Mr. Hansen testified that we need to do a better job of being able to measure where we are at so we know where the need is.²²⁷

Mr. Jonathan Hladik testified for the Center of Rural Affairs.²²⁸ Mr. Hladik testified that the Commission has an opportunity to respond to the connectivity challenges that rural residents are facing.²²⁹ Mr. Hladik supported implementing a shorter timeframe for the application and use of funds.²³⁰ He also supported the use of accurate data and the implementation of LB 996.²³¹

Mr. Tim Lindahl, a general manager of Wheat Belt Public Power District, testified that much like electricity was in the 1930s and 1940s, he believes broadband is a critical need to ensure the viability of the rural parts of Nebraska.²³² Mr. Lindahl testified that working remotely became a challenge because he did not have enough bandwidth to support the needs of having him work from home and having his children conduct their education online.²³³ Other employees likewise lacked sufficient broadband at home.²³⁴ He

²²⁵ See TR 164:2-5.

²²⁶ See Testimony of Mr. John Hansen, TR 107:16-108:16.

²²⁷ See TR 109:17-24.

²²⁸ See Testimony of Mr. Jonathan Hladik, TR 121-126.

²²⁹ See TR 124:4-7.

²³⁰ See TR 124:17-24.

²³¹ See TR 125:19-25.

²³² See Testimony of Mr. Tim Lindahl, TR 127:19-22.

²³³ See TR 129:10-16.

²³⁴ See TR 129:22-25.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 32

testified that local partnerships would be the only way to efficiently and effectively move forward to finding a solution.²³⁵

Ms. Paige Paradeis, a resident of Hemingford, testified as an advocate for the expansion of rural broadband.²³⁶ Broadband access has allowed her to move back to rural Nebraska from Chicago and conduct her consulting work from home.²³⁷ Ms. Paradeis gave some examples of other co-workers that do not have access to sufficient broadband and the challenges they experience when working from home.²³⁸

Mr. Kyle Arganbright, is a resident of Valentine, Nebraska where he is a community banker and serves as president of the Valentine City Council.²³⁹ Mr. Arganbright testified to help illustrate the challenges rural Nebraskans face as a result of insufficient broadband.²⁴⁰ He testified that at his home he cannot reliably participate in videoconferencing or stream online content.²⁴¹ At the ranch, he cannot receive wired internet or reliable phone service and has had difficulty receiving satellite internet.²⁴² Mr. Arganbright recommended the Commission use a community-based approach to include support for broadband within city limits.²⁴³

Mr. Zac Karpf, chief operating officer for Platte Valley Bank in Scottsbluff, Nebraska testified about the impact of the availability or lack of broadband service.²⁴⁴ Mr. Karpf testified that reliable voice and broadband service in rural Nebraska is critical to economic development for businesses and also for

²³⁵ See TR 130:19-24.

²³⁶ See Testimony of Ms. Paige Paradeis, TR 134:16-18.

²³⁷ See TR 135:3-136:7.

²³⁸ See TR 136:21-137:24.

²³⁹ See Testimony of Mr. Kyle Arganbright, TR 140:1-9.

²⁴⁰ See TR 140:10-16.

²⁴¹ See TR 140:17-19.

²⁴² See TR 140:20-23.

²⁴³ See TR 142:18-19.

²⁴⁴ See Testimony of Mr. Zac Karpf, TR 155:15-19.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 33

consumer use.²⁴⁵ Mr. Karpf testified that the lack of investment is even more noticeable during the pandemic.²⁴⁶ Because of frequent outages, he has concerns about expanding broadband with the same companies that are having trouble keeping up with their commitments currently.²⁴⁷ He recommended stringent reporting and accountability requirements be placed on those providers.²⁴⁸

Mr. Roric Paulman testified about the fiber deployment to his farming operation.²⁴⁹ Mr. Paulman testified that there are over 151 sensors that he relies on for connectivity to devices in his operation.²⁵⁰ Mr. Paulman encouraged the Commission to continue the relationship with public power or rural cooperative power districts.²⁵¹ Mr. Paulman testified that if there were an opportunity or efficiency to be gained by partnership with a community that would make sense from a business standpoint.²⁵²

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

The Commission initiated this proceeding to align the price cap carrier distribution methodology more closely with our findings relative to rate-of-return carrier distribution in NUSF-108 and to take into account more recent changes in the manner in which federal universal service support is distributed. We also take the opportunity to ensure the NUSF support allocated to price cap carriers is spent in a more timely and targeted manner.

In 2015, when we adopted the price cap carrier mechanism used today, we changed the manner in which high-cost support was distributed by targeting the vast amount of support to capital construction. Eighty percent of the price cap carrier allocation was designated for capital improvement projects designed to upgrade aging networks and deliver broadband service. We also

²⁴⁵ TR 156:8-11.

²⁴⁶ See TR 157:5-8.

²⁴⁷ See TR 157:20-158:4.

²⁴⁸ See TR 158:8-15.

²⁴⁹ See Testimony of Mr. Roric Paulman, TR 165-173.

²⁵⁰ See TR 166:2-9.

²⁵¹ See TR 167:2-17.

²⁵² See TR 167:22-168:3.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 34

took into account the federal universal service fund offers of support that were accepted in CAF II areas by price cap carriers. Price cap carriers received FUSF support with the promise of deploying broadband to a set number of locations meeting the FCC's minimum speed criteria of 10/1 Mbps by the end of 2020. In areas where price cap carriers declined support and certain other high-cost areas, support was to be allocated through a CAF Phase II auction, a competitive bidding process in which all providers were given an opportunity to compete. Over \$41 million in support was awarded in Nebraska. In 2018, the FCC established a support term of ten years with deployment milestones requiring broadband buildout to 8,900 locations at speeds of at least 25/3 Mbps.²⁵³ Our 2015 decision in this proceeding took CAF Phase II support into account by requiring carriers to focus on areas that they are not receiving dedicated federal funding but it predated CAF Phase II auction and resulting support areas.

In 2018, the Commission revised its high-cost distribution methodology for rate-of-return carriers. In doing so, the Commission recognized the two distinct pathways of support established by the FCC for rate-of-return carriers. Some carriers were able to elect model support while others remained on a legacy support system. Some rate-of-return carriers had completely built out fiber to the home in their exchanges and were dependent upon federal and state support to pay down loan obligations or otherwise continue operations. Other carriers had not yet deployed fiber throughout their exchanges. In NUSF-108, the Commission set a minimum speed tier of 25/3 Mbps to match the FCC's minimum under the federal program. The Commission also designated areas not funded by federal support which were eligible for NUSF buildout support. The determination of eligible areas also utilized a challenge process, which allowed carrier input to assist in determining eligibility. For the areas in need of broadband deployment, the Commission finalized a list of eligible census blocks and allocated broadband deployment support (BDS) as well as ongoing support. For rate-of-return carriers completely built out, the Commission allocated ongoing support so that carriers could

²⁵³ See *Connect America Fund Auction to Expand Broadband to Over 700,000 Rural Homes and Businesses*, FCC Connect America Fund Phase II Auction 903, State Results Summary, Attachment B, available at <https://docs.fcc.gov/public/attachments/DA-18-887A3.pdf> (last visited September 25, 2020).

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 35

maintain their fiber-based networks and continue providing service on an affordable basis.

In January of this year, the FCC announced its rules for the RDOF auction and established a total budget of \$20.4 billion, with \$16 billion for the Phase I auction areas. The auction for Phase I support is set to occur at the end of October. While the eligible areas have been determined, the auction is not yet complete and the areas that will receive successful bids for broadband deployment in Nebraska are not yet known.

However, we believe updating the process by which price cap carriers elect and receive targeted broadband support is imperative to closing the digital divide. By increasing minimum speed tiers so that they align with FCC universal service support mechanisms we can fill the gaps leftover from the CAF Phase II program and unserved rural areas in price cap territories. We further find that accelerating the timeframe by which price cap carriers must elect broadband deployment support and finish projects is necessary to achieve the goals of the program.

Minimum Speed Threshold

After several rounds of comments, there was nearly unanimous agreement on the Commission's proposal to increase the broadband speed minimum for support to 25/3 Mbps. We hereby adopt this proposal. In 2015, when the parameters of the NUSF distribution mechanism for price cap carriers were established in this Docket, the FCC's minimum speed tier for price cap carriers was set at 10/1 Mbps. Price cap carriers electing CAF support were required to build broadband to a fixed number of locations meeting the minimum speed of 10/1 Mbps.

In its 2015 Order conducting its Section 706 review, the FCC raised the minimum broadband definition to 25/3 Mbps.²⁵⁴ Subsequently, minimum speed qualifications for universal service support was also set at 25/3 Mbps. That standard continues to be the FCC's current minimum broadband speed for federal universal

²⁵⁴ See *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment (February 4, 2015) at paras. 45-53.

Application No. NUSF-99,
Progression Order No. 2

Page 36

service fund support. Although the FCC has discussed increasing the minimum speed, it has not done so.²⁵⁵

Some commenters argue that a baseline of 25/3 Mbps is too low and the Commission should establish a higher minimum speed. However, we make clear that this minimum speed threshold is and always has been a floor and not a ceiling. Our support mechanism is based upon a fiber-to-the-home model where the Commission reimburses the costs of capital deployment. Thus, the support mechanism and the incentives exist for price cap carriers deploy fiber in high-cost areas. We have solicited and approved fiber deployments in a number of NUSF-99 project areas. Further, as carriers are aware, we have explicitly stated our preference for fiber deployment in setting the budget for the contribution mechanism. Accordingly, it is our expectation that price cap carriers will not be dissuaded from deploying fiber irrespective of a 25/3 Mbps minimum speed threshold. We simply adopt the 25/3 Mbps minimum threshold to be consistent with federal universal service support mechanisms.

Selection of Eligible Project Areas

We adopt the proposal described in our June 30, 2020 Order to establish an allocation whereby each exchange within the carriers' territories is assigned a maximum amount of buildout support that would be reimbursed to the carrier once broadband service is provided to all eligible locations within that exchange. Actual reimbursements would be based on the invoiced costs and could not exceed the maximum buildout support amount assigned to that exchange. Eligible locations would be those that are defined as rural, are not eligible for RDOF support, are not already built to 25/3 Mbps or greater, and do not already have competitive service, defined as broadband at 25/3 Mbps and voice service offered. The technology used for projects must reach every household, regardless of topography, vegetation, or distance.

Some commenters expressed concern with the requirement to build to all eligible locations within an exchange. Instead, some commenters supported using a standard with a buildout requirement of 90 of 95 percent of the locations in a support area. We decline to modify our proposal for a few reasons. First, Neb. Rev. Stat. §§ 86-317 and 86-323 clearly establish the legislative policy

²⁵⁵ See *In the Matter of the Rural Digital Opportunity Fund; Connect America Fund*, Docket No. 20-34; WC Docket No. 19-126; WC Docket No. 10-90, Report and Order (Rel. June 11, 2020) at paras. 33-34 (RDOF Order).

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 37

position that our funding mechanism, as a supplement to the federal mechanism, should ensure *all* Nebraskans, without regard to their location have comparable accessibility to telecommunications and information services to those offered in urban areas. We do not think it would be appropriate for the Commission to rewrite this declaration of policy by adopting a different standard for broadband buildout. Second, reaching all high-cost locations within a support area is a realistic requirement given that support made available is based upon a cost model which includes all locations. Invoiced costs of broadband deployment are reimbursed by the Commission as long as they are based upon the costs allocated to the carrier and consistent with the model. We recognize that some locations might be extremely costly to serve and that in some circumstances a carrier may not want to expend the resources to maintain and upgrade service to a consumer in a remote location. However, those areas have most likely been neglected and these locations may be where consumers rely most heavily on their wireline voice and broadband connection for public safety reasons. Accordingly, we adopt the proposal to require price cap carriers to reach every household within an approved project area regardless of topography, vegetation, or distance.

We note however, that we are willing to work with each price cap carrier on a plan to provide service to extremely high-cost locations, even if that means using alternative technologies or additional buildout time. We also remind all price cap carriers of their duty as ETCs to offer adequate voice service throughout their exchange and to fulfill all reasonable requests for service. We further remind carriers of their duty to report any unfilled requests for service on an annual basis.

The Commission proposed to determine eligible areas as those that are rural, are not eligible for RDOF support, are not already built to 25/3 Mbps or greater, and do not already have competitive service defined as broadband at 25/3 Mbps and voice service offered. We conclude this proposal should be adopted. As clarified by Mr. Robbins at the hearing, a block would continue to be classified as urban if it falls within a census designated city or village or contains more than 20 households and is greater than 42 households per square mile. The Commission did not specifically seek comment on changing this standard which has existed in the high-cost program since 2004. The Commission finds it appropriate to continue using this standard for determining rural areas in need of high-cost support. Areas that are now receiving service as a result of the FCC's Connect America Fund (CAF) Phase II auction will also be excluded. We further conclude areas where

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 38

NUSF-99 support has been approved by the Commission but not yet built out should be excluded. In addition, areas where Nebraska Department of Economic Development (DED) broadband support was awarded will be excluded.

There was some disagreement with the Commission's proposal to exclude RDOF areas from eligibility. Some commenters recommended the Commission consider supplemental support in those areas.²⁵⁶ While other commenters were in support of the proposal to exclude RDOF support areas as a baseline.²⁵⁷ Consistent with our earlier proposal, we find that RDOF areas that have been awarded support by the FCC should be excluded from NUSF broadband buildout support eligibility. However, we further find that NUSF high-cost support may be available in price cap areas that are otherwise eligible and where RDOF Phase I auction support is not awarded. If an area was initially eligible but does not receive winning bids at the auction, we plan to reincorporate these areas. Because we believe the FCC intends to gather more granular data through its broadband mapping effort prior to targeting Phase II auction support, and because we find it is important to enable faster broadband buildout to Nebraska consumers through making support immediately available in those areas, we decline to exclude Phase II auction support areas from NUSF eligibility. Excluding support in what will be RDOF Phase II areas would unreasonably disadvantage consumers that we know do not have access to broadband. However, at the point in which the RDOF Phase II auction appears imminent, an adjustment will be made to the remaining list of eligible blocks or exchanges.

We decline to consider supplemental support in the RDOF areas at this time. Our goal with the finite support we have available is to prioritize broadband deployment in areas that are unserved with broadband at speeds of at least 25/3 Mbps. We expect that carriers will maximize their ability to obtain federal support through the bidding process. The FCC's RDOF auction process purports to utilize weights that reflect a preference for higher speeds, higher usage allowances, and low latency.²⁵⁸

All carriers receiving high-cost support under this program must offer a standalone voice service. While the standalone voice

²⁵⁶ See RTCN Further Comments at 6; see also Windstream Further Comments at 8.

²⁵⁷ See RIC Further Comments at 16; CenturyLink Further Comments at 10 (stating it should only be approved in exceptional circumstances).

²⁵⁸ See RDOF Order at para. 38

Application No. NUSF-99,
Progression Order No. 2

Page 39

service can be offered over a VoIP platform, it must be capable of meeting all ETC requirements, including but not limited to, access to emergency services and battery backup. We clarify that we consider an unsubsidized competitor as a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support. We further clarify that a competitive broadband service is that which is offered at speeds of at least 25/3 Mbps. Voice service means a standalone voice enabled service offered by the competitive carrier (and not a third unrelated provider). Voice service not offered by a competitive carrier but offered by virtue of a broadband connection does not satisfy this requirement.

Technology Distinctions

We continue to adhere to the Commission's prior Strategic Plan principles adopted in NUSF-100/PI-193 on February 22, 2017 that endorses using NUSF support on "future proof" networks. We found that the goals should include ubiquitous broadband and fiber-based network deployment everywhere. Some carriers expressed reservations about deployment of fiber in certain areas and asked the Commission to consider technology alternatives.²⁵⁹ However, as carriers continue to replace outdated facilities, the Commission wants to ensure that support will be provided to build infrastructure that will be sustainable for future usage and demands over the long term. We agree with RIC's comments that we should establish a policy baseline that all price cap carrier recipients of NUSF support must demonstrate that the support will be used for networks that are scalable to meet future demand.²⁶⁰ Accordingly, our expectation is that price cap carriers will utilize NUSF support to deploy fiber-based networks. We, however, will consider other technologies on a case-by-case basis where a demonstration has been made that deployment of fiber is too costly and that the technology to be used is, over the long-term, capable of sustaining future growth, usage, and consumer demand.²⁶¹

²⁵⁹ See e.g., CenturyLink Comments at 4 (stating fiber projects are the costliest from both an installation and maintenance standpoints and suggesting the Commission adopt a weighted scoring process similar to the FCC). See also Windstream Comments at 5 (stating the process should not focus on the technology of the project but on the goal of bringing broadband capability to unserved areas with the choice of technology that makes the most sense from a resiliency and cost perspective).

²⁶⁰ See RIC's Comments at 10.

²⁶¹ See Frontier Comments at 3; See also CenturyLink Comments at 4.

Application No. NUSF-99,
Progression Order No. 2

Page 40

Timing Requirements for Broadband Buildout

The Commission also proposed to release a list of the exchanges that each carrier covers, assign a maximum reimbursable amount based on SBCM modeled costs of eligible census blocks, and carriers would be required to notify the Commission within one year of the exchanges that they plan to build to with their available buildout support. Carriers would be required to provide notice of projects that use 95% of their available buildout support for that year. If that threshold is not met, any remaining support would be forfeited to fund a reverse auction to bring 25/3 broadband to exchanges within that carrier's territory that do not have projects planned. For example, if carrier A only utilized 75% of their allocated support, the remaining 25% of their allocated support would be utilized for a reverse auction. The specific exchange or exchanges that would be part of the auction would be selected at the discretion of the Commission. The Commission proposed to only prioritize areas if buildout support was not utilized in a timely manner. Consistent with the other high-cost programs, the Commission proposed to continue its requirement that price cap carriers build out prior to seeking reimbursement for broadband projects.

Commenters were generally supportive of the one-year selection and two-year buildout requirement. However, some commenters advocated that the one-year selection period was too long. After further consideration of these comments, we agree that the proposed one-year timeframe for selecting projects should be shortened. Given that our focus in this proceeding is to accelerate broadband investment with price cap carrier buildout support, we find that price cap carriers shall have up to six (6) months from the time in which the eligible census block list is finalized to make their selections.²⁶² Carriers no longer need to file a formal application like they have done in the past. Rather, price cap carriers will file a notice of the list of projects they intend to build to, choosing from the eligible list of exchanges released by the Commission. In the case where a carrier does not make the selection for use of 95 percent of the allocated NUSF support within the

²⁶² We note that the total timeframe from the date of this Order will actually be closer to nine months as the Commission will release the proposed census block list for challenges and release a final list for support after the challenge process has concluded. Carriers can begin planning based on the areas they know are unserved and included in the initial list of eligible areas.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 41

timeframe adopted, such unused support will be re-allocated for use in a reverse auction.

We further find that a two-year buildout cycle may be longer than needed given the Commission's goal to accelerate the use of broadband deployment spending. Rather, we find that 18 months should be the default period by which buildout must occur. Accordingly, carriers have 18 months to complete the buildout of each approved project unless this timeframe is otherwise extended by the Commission upon a showing of good cause. Consistent with how broadband deployment support is distributed currently, price cap carriers must first make the investment prior to seeking reimbursement. In the case where a price cap carrier does not complete its approved project within the 18 month timeframe and does not seek an extension of time, the Commission will determine whether or not it is appropriate to reallocate that committed support for a reverse auction on a case-by-case basis.

Additional Reporting Requirements

We sought comment on whether to apply an NUSF EARN test to price cap carriers receiving support. The NUSF EARN Form process tracks investment and earnings of carriers and is currently being reviewed and updated in a separate Commission proceeding in Docket No. NUSF-108. Frontier and CenturyLink questioned the necessity of an NUSF EARN test as support levels were frozen in 2015. RTCN commented that the Commission should use an NUSF EARN process to ensure that support was being used consistent with Commission rules and policies. At the hearing, Mr. Robbins testified if the price cap carrier support continues to be frozen and the current 80/20 allocations remain in place, then the NUSF EARN Form process has no bearing on the support that price cap carriers receive.

As it currently exists the NUSF EARN Form process does not have a bearing on a price cap carrier's allocation of support. However, as revised, the NUSF EARN process may be useful in determining the use of ongoing support. Given the fact that we have an open proceeding to modify the NUSF EARN Form process, we will wait until that proceeding has completed before we make a final determination on this issue.

Additional Issues

Some commenters raised additional issues outside of the proposal and specific questions. RTCN for example, recommended the Commission use prior committed but unused support for a pilot

Application No. NUSF-99,
Progression Order No. 2

Page 42

program for community-based projects.²⁶³ Given the fact that this support has been previously allocated to price cap carriers for use in high-cost areas, without the ability to utilize support in communities or towns, we do not find it appropriate to adopt this recommendation. With our proposal price cap carriers have six months to select projects or risk losing support to the reverse auction process.

RIC strongly recommended that the Commission reallocate the support between price cap and rate-of-return carriers.²⁶⁴ Specifically, RIC recommended allocating 75 percent of the high-cost budget to rate-of-return carriers and 25 percent of the budget to price cap carriers. This recommendation was based upon the removal of RDOF Phase I and II census blocks from eligibility. This proposal was also based upon the relative investment data from the SBCM model used by the Commission to determine buildout costs.

We decline to adopt RIC's reallocation proposal at this time. We specifically proposed eliminating areas where federal support is targeted. We do not rule out the suggestion that at some future point, the budget will need to be adjusted. However, such determination should be deferred until after the RDOF auction results. As it is our objective to target support to areas where consumers lack broadband availability, prematurely reducing support in these areas may be harmful to consumers in these areas lacking broadband.

Challenge Process

In his testimony at the hearing, Mr. Robbins proposed to release a list of the exchanges that each carrier covers, assign a maximum reimbursable amount based on SBCM modeled costs of eligible census blocks. We agree that releasing a list of these exchanges and maximum reimbursable amount would be beneficial to the carriers. We find that there should be a limited challenge process so that we are starting with an accurate data set upon which to base area eligibility. Consequently, the Commission hereby releases an initial list of exchanges served by price cap carriers, where each exchange includes the maximum reimbursable amount, based on the remaining eligible blocks and locations in

²⁶³ See RTCN Further Comments at 6-7.

²⁶⁴ See RIC Further Comments at 2-5.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 43

each respective exchange. The initial list of exchanges is posted on the Commission's website at <http://psc.nebraska.gov>. It should be noted that these maximum reimbursable amounts are preliminary, and subject to change based on the results of the challenge process. We find that after the challenge process has concluded and a final list of eligible areas is determined, price cap carriers will be required to provide notice of the projects they plan to build with their available buildout support within six months. Carriers are required to provide notice of projects that use 95% of their available buildout support for that year. If that threshold is not met, any remaining support would be forfeited to fund a reverse auction to bring 25/3 broadband to exchanges within that carrier's territory that do not have projects planned. The specific exchange or exchanges that would be part of the auction would be selected at the discretion of the Commission. The Commission finds that it will prioritize areas if buildout support is not requested and/or utilized in a timely manner.

The Commission hereby releases the initial list of census blocks on the Commission's website at <http://psc.nebraska.gov> to commence the challenge process. All challenges must be filed with the Commission on or before 5:00 p.m. central time on **December 1, 2020**. Challenges must include the specific list of blocks being challenged and the basis for which the challenge is being offered. Examples of such grounds may include, but are not limited to, the following: 1) blocks that are served at 25/3 by the incumbent provider; 2) blocks that are served by a competitive wireline provider at 25/3 or greater which offers voice service; or 3) blocks that are incorrectly identified as being served at 25/3, and should be eligible for buildout support. Interested parties filing challenges to the staff's initial list of census blocks must file an electronic copy as well as a paper copy with the Commission on or before the deadline set forth above. Electronic copies may be sent to Cullen.Robbins@nebraska.gov and Brandy.Zierott@nebraska.gov. In addition, copies of challenges must be served on any other carrier(s) whose census blocks may be affected by the challenge.

Unless otherwise subsequently determined, the Commission will release the final list of eligible census blocks January 13, 2021.

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.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. NUSF-99,
Progression Order No. 2

Page 44

IT IS FURTHER ORDERED that challenges to the attached census block list may be filed on or before December 1, 2020 in the manner prescribed above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 4th day of November, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
Crystal Hender
Tim Schram
Dee Watson

Mary Kadden
Chair

ATTEST:

Michael S. Hyatt
Executive Director