

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## 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        ) CLARIFICATION ORDER AND  
High-Cost Program.                    ) ORDER DENYING MOTION FOR  
  ) PARTIAL RECONSIDERATION  
  )  
  ) Entered: December 8, 2020

BY THE COMMISSION:

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

On November 4, 2020, the Commission entered an Order Adopting Findings and Conclusions and Initiating Challenge Process which established a revised framework for the NUSF high cost distribution methodology for price cap carriers. Among other things, the Commission's November 4, 2020 Order increased minimum speeds and aligned the support more closely with that of rate-of-return carriers.

On November 13, 2020, Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (collectively referred to as CenturyLink) filed a Motion for Partial Reconsideration and Clarification (Motion) of certain issues. In its Motion, CenturyLink sought clarification on two issues. First, CenturyLink sought clarification on the available amount of funding for each carrier and when the six-month selection period starts. Second, CenturyLink sought clarification on whether carriers are allowed to bundle funding for multiple years. CenturyLink also sought reconsideration of two issues. First, CenturyLink sought reconsideration of the 18-month deadline for buildout for projects selected during the 2021 calendar year. Second, CenturyLink sought reconsideration of the Commission's decision not to affirmatively address CenturyLink's request for automatic discontinuance of Carrier of Last Resort Obligations (COLR). On November 23, 2020, the Rural Independent Companies (RIC) filed a Response which was limited to CenturyLink's request for reconsideration on the issue of COLR relief. On December 3, 2020, CenturyLink filed a Reply to RIC's Response. Also, on December 3, 2020, Windstream Nebraska Inc. (Windstream) filed a Joinder and Response in Support of CenturyLink's Motion.

The Commission first turns to CenturyLink's request for clarification. While we believe carriers should have a good idea of past allocated support that has remain unused, as well as the

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projected support in the distribution model released on the Commission's website on November 4, 2020, as indicated in the Commission's November 4, 2020 order in this docket, the Commission will provide carriers with a finalized list of eligible project areas and total allocation in January once the challenge process has been completed and the distribution model is finalized. The total amount of funding available for the next calendar year (2021) will be determined once the challenge process has been completed. The total amount will include the support held in abeyance for 2020, an identical amount allocated for 2021, and any remaining support from years prior to 2020 that has not been used. The final amounts to be utilized in the 2021 calendar year will be referenced via order in early January. The approval of this order by the Commission will also mark the start of the 6-month period (or "six-month shot-clock") within which carriers have to determine where that support will be utilized. However, nothing prevents carriers from starting the project planning and selection process now prior to the Commission finalizing this information.

CenturyLink also asks whether carriers are allowed to bundle funding for multiple years. As the November 4, 2020 Order indicates, for the first year, the support will consist of multiple years' worth of allocated dollars. Carriers necessarily will be required to bundle all support allocated up through 2021 support.

Next we turn to the issues CenturyLink requested the Commission reconsider. First, CenturyLink seeks reconsideration of the 18-month timeframe to complete the buildout of each approved project. We decline to reconsider the 18-month timeframe for project deployment but remind CenturyLink that the period can be extended upon request of the carrier for good cause shown. Harsh weather conditions, and supply chain issues are two examples of conditions the Commission will consider when reviewing extension requests. The Commission will also consider the carriers' good faith attempts to achieve buildout within the 18-month timeframe.

Finally, CenturyLink requested the Commission decide the issue of whether incumbent carriers should be relieved of Carrier of Last Resort (COLR) obligations and other Commission obligations when overbuilt by a subsidized competitor. In framing this issue, CenturyLink claims that the Commission sought comment on this issue. However, we note that CenturyLink misconstrues the Commission's question relative to COLR. In its November 13, 2019 Order, the Commission sought comment on the issue of incumbent carriers deploying alternative technologies such as fixed wireless service

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with NUSF support. The Commission inquired as to the treatment of the incumbent carrier's ongoing COLR obligation to offer voice service throughout their local exchange territory. The Commission was not seeking comment on the issue of whether incumbent carriers should be relieved of COLR obligations in the event that NUSF support would be auctioned and the winning bidder would be a non-incumbent provider.

Contrary to CenturyLink's claim, we do not find the issue to be ripe for consideration. All ETC's have an obligation to offer common carrier voice service throughout their designated area in order to be eligible for state and federal support. Should a carrier wish to relinquish or amend the ETC designation, an application to do so would be required. In addition, as Neb. Rev. Stat. § 86-134 prescribes, no telecommunications company which provides basic local exchange service may abandon or otherwise discontinue such service unless the Commission finds upon application and hearing that one or more other telecommunications companies are furnishing comparable telecommunications service to the subscribers in such local exchange area at the time of abandonment or discontinuance. In its response to CenturyLink's Motion, the Rural Incumbent Companies (RIC) underscores this point by confirming that § 86-134(1) requires a legal process and evidentiary findings that must be satisfied prior to an incumbent local exchange carrier with COLR service obligations discontinuing local exchange service. We acknowledge there are mechanisms upon which a carrier may be able to receive relief from COLR and Commission obligations, however, those mechanisms must be triggered by the carrier through an application and evidentiary process.<sup>1</sup> The Commission does not believe it is appropriate in this particular proceeding to speculate as to how it would consider an evidentiary record in a case that may be filed at some point in the future if a reverse auction is held and if the incumbent is not the winning bidder. Because we find

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<sup>1</sup>In its Reply to RIC's Response, CenturyLink argues that the Commission should address COLR relief on reconsideration because of a Commission rule in Title 291, Neb. Admin. Code, Chapter 10, § 004.02G. We note that this rule has been in place since 2002 and is not relevant to the changes proposed and adopted by the Commission in this particular proceeding. Section 004.02G1 describes a petition and evidentiary process. Moreover, the application of § 004.02G2 requires a petition to be filed by a competitive carrier as a condition precedent to the relief described by CenturyLink. The rule refers specifically to what happens if a competitive carrier's petition is successful.

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it is not ripe for consideration, we deny CenturyLink's request for clarification as it relates to this issue.


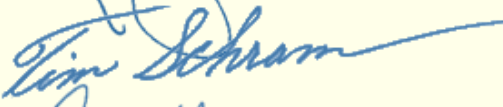

## O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Motion for Partial Reconsideration and Clarification be denied in part and granted in part as described herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 8<sup>th</sup> day of December 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Executive Director