

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	)	Application No. NUSF-108
Nebraska Public Service	)	Progression Order No. 6
Commission, on its Own	)	
Motion, to make adjustments	)	ORDER OPENING DOCKET AND
to its high-cost	)	SEEKING COMMENT
distribution mechanism and	)	
make revisions to its	)	
reporting requirements.	)	Entered: April 21, 2021

BY THE COMMISSION:

### ***Background***

The Nebraska Public Service Commission (Commission) initiates this proceeding to consider certain modifications to the high-cost funding mechanism in the universal service fund program. Previously, the Commission solicited comments on certain modifications affecting rate-of-return (ROR) carriers. In Progression Order No. 3, the Commission adopted a separate distribution mechanism for ROR carriers designed to provide support for carriers that have already extensively deployed fiber to the home throughout their exchange or exchanges and also to target support to unserved areas where federal support was not provided. In Progression Order No. 4, the Commission addressed areas where federal support was made available but where carriers indicated federal support may not be sufficient to deploy broadband service capable of 25/3 Mbps (down/up, respectively) as support levels were capped, specifically referred to as "capped locations."

In addition, the Commission opened a further Progression Order, Progression Order No. 5, to address changes in the NUSF EARN form filings. In that proceeding, the Rural Independent Companies (RIC) suggested other modifications to the distribution mechanism related to the earnings redistribution process and the allocation of broadband deployment support (BDS) to capped locations. The Commission indicated that it was willing to consider the issues raised by RIC in a separate proceeding.

Accordingly, the Commission enters this Order to seek comments on some of the recommendations proposed by RIC in Progression Order No. 5 as well as other modifications to the ROR distribution mechanism.

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## ***Issues for Public Comment***

The Commission seeks comment on modifications to the distribution mechanism as described below.

### **A. Over-earning Redistribution**

Currently, if a carrier's NUSF EARN Form demonstrates that the carrier is earning in excess of the prescribed rate of return, the carrier is not eligible for ongoing support. The support is reallocated through the overearnings redistribution (OER) process to other carriers that have earnings below the prescribed rate of return cap and remain eligible for additional ongoing support according to the model calculations. As indicated in the distribution model released on January 12, 2021, eight ROR carriers have hit the earnings cap while twenty-one ROR carriers receive OER support through the redistribution process.

In Progression Order No. 5, RIC recommended that all capped over earning amounts of NUSF support should be transferred to the recipient's NUSF BDS eligibility. RIC stated this change would result in more locations receiving service at speeds of 25/3 Mbps or higher because the NUSF BDS available to supplement a carrier's investment would be higher.

We seek comment on whether to adopt RIC's proposal to transfer capped over earning amounts to the recipient's NUSF BDS eligibility. We further seek comment on the timing of making such change if this proposal is adopted. Is this a change the Commission should make during the current 2021 support year? How much notice should we provide to the carriers that will be seeing a decrease in NUSF support? In the alternative, should the Commission consider making this change effective for the 2022 distribution year?

Further, in the event that a carrier does not have an area available for BDS support, how should that support be distributed? Should the Commission redistribute that amount to other carriers? Should the support be placed back into the overall mechanism for distribution?

### **B. Calculation and Use of BDS Support**

We further seek comment on whether we should adjust the calculation of BDS support available for capped locations. In

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Progression Order No. 4, the Commission adopted a proposal to provide support post-deployment for capped locations in eligible census blocks based on post-investment data provided to the Commission. Rather than filing invoices, carriers are required to simply detail the locations served with speeds of 25/3 Mbps as filed in the FCC's HUBB database. The Commission proposed that support amounts be allocated to capped locations in a separate budgeted category for the first year with the idea that in subsequent years it would become part of the overall ROR carrier allocation included in the Commission's annual budget. A support determination would also be subject to the Commission's earnings test.

Initially, the Commission included BDS support for capped locations in a separate allocation within the ongoing support distribution; however, the Commission indicated that it may be collapsed within the ongoing support allocation going forward. The reason for this was partially based upon the fact that the Commission would not know ahead of time which capped locations and in which census blocks a ROR carrier would build to in a given year. The trigger would be the reporting of that information and the submission of that data in the HUBB database. Support for capped locations is available through the mechanism set forth in Progression Order No. 4; however, questions about how the support is allocated and the categorization of that support have surfaced.

The Commission seeks comment on whether changes to the support mechanism for capped locations should be made. Specifically, should the Commission set aside a separate allocation for this support and name it something different? In addition, the Commission seeks comment on whether increasing the amount of support for capped locations is warranted? Does this place certain carriers at an advantage over others? If so, how can the Commission address this concern? Should there be a separate accounting of the support used for capped locations? If so, what type of accounting is needed for transparency? Should the Commission be concerned about carriers that are earning above the prescribed rate of return receiving additional support for capped locations? Does the concern about consumers receiving timely broadband in those areas override the concern about a carrier earning more than the prescribed rate of return? Is there a higher threshold that the Commission should look at or should a carrier's earnings be irrelevant? Should the Commission require a carrier to invest a certain percentage of federal support prior to approving

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additional support where a carrier's earnings are above the prescribed rate of return? If so, what should that percentage be? If not, why not?

The Commission is also cognizant of potential opportunities for support through legislation that has been introduced during the 2021 Legislative session. In the event that capped locations are eligible for support through, for example, the Broadband Bridge program, should NUSF support continue be directed to capped locations? Why or why not?

The NUSF has historically defined rural and urban areas based on the number of households in and household densities of census blocks, and whether census blocks are within areas designated as cities or villages via the census. To qualify as rural, a census block must have fewer than 20 households and less than 42 households per square mile. It also must not fall within a census designated city or village. Should the Commission revise the rural definition to include additional areas that might be unserved or underserved?

In NUSF-108, P.O. No. 3, the Commission asked whether there should be a per location cap on support that a carrier could receive. A \$15,000 per location cap was proposed, but ultimately not implemented. We find it prudent to revisit this issue. Should there be a cap on the amount that any individual location could receive in high cost support? If so, what should that cap be?

### **C. Adjustments to Allocations for Ongoing Support**

The Commission seeks comment on how to adjust the ongoing support allocation for carriers. As a threshold question, the Commission seeks comment on whether it should provide ongoing support. If so, why is it needed? If not, why not? Are there areas where ongoing support is no longer needed? What about areas where federal high-cost support is provided?

Some carriers have asked us to consider adjustments to ongoing support levels. The original support mechanism was designed such that as areas were built out through BDS, less BDS support would be needed year over year, and support would gradually transition towards ongoing support. However, through the first years of the NUSF-108 allocations, the relative percentage of support allocated to ongoing and BDS categories have been fixed. The Commission

agrees that the relative allocation percentage should not be static but should change based on the carriers' progress in deploying broadband service throughout their exchanges. Some carriers would like the Commission to increase the BDS support allocation stating that such an increase will accelerate broadband deployment to unserved areas. Other carriers would like to receive more ongoing support now that they have made progress in building to more locations. If the Commission does adjust relative percentages of support categories, how should the percentages be determined? Is this something that should occur annually? If not annually, then how often?

## **D. Transferability of Support to Affiliated Providers**

RIC also recommended that NUSF distributions should be subject to limited transferability among affiliated Nebraska eligible telecommunications carriers (NETCs). RIC stated that as broadband deployment increases, 25/3 Mbps broadband investment in remaining unserved and underserved areas becomes more costly. To restrict investment to a specific study area may result in some census blocks having BDS that cannot be utilized efficiently, and other census blocks having too little support for necessary investments.<sup>1</sup> In response to this recommendation, the Commission seeks comment on whether to permit transferability of support among affiliated NETCs? If so, what sort of limitations should the Commission apply?

## **E. Speed Requirements**

In NUSF-108, P.O. 3, the Commission determined that 25/3 Mbps down/up would be the speed standard on which support designations and BDS buildout requirements would be based. Bills introduced in the 2021 Nebraska legislative session have looked to increase the speed standards for providers receiving grant-based broadband support. Should the Commission modify minimum speed requirements to match what is targeted for support through the Broadband Bridge Program, as outlined in LB 388, and pending before the Nebraska Legislature? The program supports projects that will provide 100/100 Mbps service but allows providers to challenge project applications if 100/20 Mbps service can be provided by the competitor. 25 Mbps Download/3 Mbps Upload (25/3) has been the

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<sup>1</sup> See RIC Comments in NUSF-108, PO 5 (February 18, 2020) at 6.

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standard by which the following is determined in the existing high cost mechanism:

- Whether a census block is competitive - i.e. - does a competitive provider offer a service at or above that speed threshold
- Whether a block is eligible for BDS - i.e. - if a provider cannot yet provide 25/3 service, and isn't competitive, it might be eligible for BDS
- Whether a block is eligible for additional ongoing CapEx support to offset the investment that has already been made - if it is 25/3 capable, it is allocated additional support
- 25/3 is the minimum speed that must be provided through projects supported with BDS
- Capped locations capable of 25/3 are provided additional ongoing support

Which speed standard should the Commission target with its high cost program? How should the Commission verify the ability of a carrier to provide these speeds?

### **F. State Broadband Cost Model / Broadband Mapping Data**

The Commission utilizes the State Broadband Cost Model (SBCM), which models per location costs to build and maintain a fiber optic network to the customer premise, and aggregates information at the census block level. Also, FCC Form 477 data is used as the basis for determining where existing broadband has been deployed. Should the Commission continue to rely on the SBCM and FCC Form 477 data as the basis for determining potential support amounts? With the FCC's Digital Opportunity Data Collection (DODC) mechanism in place to collect more detailed data from carriers regarding broadband deployment, should the Commission look to collect more detailed information from carriers with respect to their existing deployments?

### **G. Affordability of Service Offerings**

Affordability has been consistently cited as a barrier to broadband adoption. To address this concern, we seek comment on whether the Commission should set some parameters or benchmarks to make the supported broadband service provided to Nebraska consumers more affordable. If so, what parameters should the Commission consider?

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In addition, the pandemic has caused an increased need in broadband speeds and capacity, particularly among families that have students learning from home and/or parents working remotely. Are broadband prices keeping families offline? If so, how can the Commission address this? Should we require carriers to offer at least one fixed-rate plan that is considered affordable or benchmarked to what is considered reasonably comparable to urban rates? What data sources or metrics should be used to determine what is affordable and/or reasonably comparable?

## ***Comments and Reply Comments***

The Commission requests that interested parties provide comments responsive to the issues raised above on or before **May 28, 2021**. Reply comments may be filed on or before **June 18, 2021**. Commenters should file one (1) paper copy and one (1) electronic copy of their comments with the Commission. Electronic copies should be sent to [Cullen.Robbins@nebraska.gov](mailto:Cullen.Robbins@nebraska.gov) and [Brandy.Zierott@nebraska.gov](mailto:Brandy.Zierott@nebraska.gov).

## O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be opened.

IT IS FURTHER ORDERED that comments responsive to the foregoing questions and issues may be filed on or before **May 28, 2021 and June 18, 2021** in the manner prescribed herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 27<sup>th</sup> day of April, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Rod Johnson*  
*Cystal Brader*  
*Mary Kadden*  
*Tim Schram*

*Don Watson*  
Chair

ATTEST:

*Michael S. Hyatt*  
Executive Director