

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-108
Public Service Commission, on)
its own Motion, to make)
adjustments to its high-cost) ORDER AUTHORIZING PAYMENTS
distribution mechanism and)
make revisions to its)
reporting requirements.) Entered: January 25, 2022

BY THE COMMISSION:

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

The Commission, on an annual basis, has given the staff authorization to disburse Nebraska Universal Service Fund (NUSF) support to qualifying Nebraska eligible telecommunications carriers (NETCs) pursuant to methodology set in place by the Commission. On November 16, 2021, in the above-captioned docket, the Commission gave authorization to the staff to make disbursements in an amount up to \$46,000,000.00 in high-cost wireline support for the calendar year of 2022. This amount included \$2,000,000 in support allocated to carriers for broadband buildout to capped locations (BDS-CL).

Also in the above-described order, the Commission initiated the challenge process and authorizing the overall level of support in the high-cost distribution model for the 2022 calendar year. Challenges to the Commission's preliminary census block list were due on or before December 17, 2021.

In the present Order, the Commission concludes the challenge process and makes a determination regarding authorized high-cost support for calendar year 2022. In total, the Commission received 11 challenges. The challenges submitted were generally categorized as 1) incumbent provider corrections to their own service coverage; 2) carrier challenges to the certified Form 477 data filed by another provider; 3) carriers claiming to serve an area with 25/3 where it had not been previously reported; and 4) carriers that elected A-CAM support reporting locations that were built to through the end of 2021.

Relative to ROR carrier census blocks, the Commission received challenges from 8 entities for 89 blocks. The Commission staff recommended approval of 84 requests and denial of 5 requests. Relative to price cap carrier challenges, the Commission staff

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reviewed challenges from 2 entities to 104 census blocks. The Commission staff recommended approval of 102 requests and denial of 2 requests. The staff's recommended disposition of the census block challenges is posted on the Commission's website at <https://psc.nebraska.gov>.

In its review of the submitted challenges, the Commission determined that 514 blocks along the Nebraska state border were inadvertently excluded from the challenge process. These blocks will be included within the model for 2022, subject to the Commission's routine revision process later in the year. A list of these blocks will be posted on the Commission website. Carriers with questions regarding the disposition of these blocks may contact the Commission for clarification.

In accordance therewith, the Commission modifies its census block data for the purpose of determining ongoing and broadband deployment support in the model consistent with the findings made herein. We further find for approved challenges that involved updating information relative to FCC Form 477 deployment data, that we would expect this to be reflected in the next FCC Form 477 submission made by the carrier.

For the calendar year of 2022, the Commission hereby authorizes its staff to pay up to \$50,292,000¹ in high-cost wireline support pursuant to the model adopted by the Commission in NUSF-26 as modified by subsequent orders issued in NUSF-50 on December 19, 2006, in NUSF-99, PO No. 2 on November 4, 2020 and in NUSF-108. This amount includes \$2,000,000.00 in support allocated to carriers for broadband buildout to capped locations (BDS-CL). The BDS-CL support has been allocated on a carrier by carrier basis for any company eligible for BDS-CL support. These support amounts are included in the high cost support distribution posted on the Commission's website. Carriers intending to use BDS-CL support must file project notices for all locations the carrier plans to build to with the BDS-CL support. All areas built to through the use of NUSF, including capped locations, are required to construct networks capable of a minimum of at least 100 megabits per second up and down pursuant to Neb. Rev. Stat. 86-324.01.

¹ This authorized amount also includes unused support for rate-of-return carriers from previous years, which has been returned to the rate-of-return budget.

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The overall high cost support amount of \$50,292,000 authorized as outlined in this order, and in the NUSF-99 order issued today in conjunction with this order, includes additional funding due to previously unallocated cash reserves in the NUSF. This additional support is a one-time addition to the typical annual program allocation. The Commission will review the status of the NUSF budget in 2023, but does not expect to be able to provide support at this level in future years.

The 2022 high-cost support distribution mechanism is available on the Commission's website at <https://psc.nebraska.gov>.

O R D E R

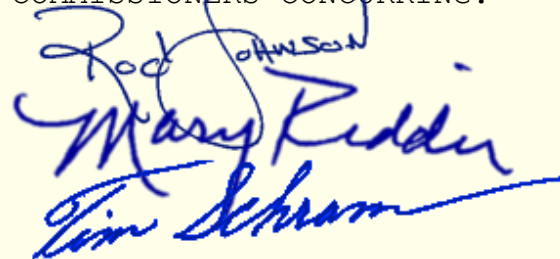
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the challenges received by the Commission by on or before December 17, 2021 in this matter be, and they are hereby, determined as reflected in the census block challenge results posted on the Commission's website.

IT IS FURTHER ORDERED that the Commission staff be authorized to make revised high-cost program disbursements for calendar year 2022 as described above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 25th day of January, 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:




Chair

ATTEST:


Executive Director

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D I S S E N T

By Commissioner Rhoades:

I do not support the NUSF budget allocations outlined in this order and in the accompanying NUSF-99 order issued today. As of the issuance of this order, the Commissioners have not been presented with a breakdown of allocations by carrier. Staff indicated that in order to prepare that information, they needed to perform a series of checks of the model, and they had not completed that work.

This emphasizes my ongoing frustration with staff putting orders in front of the Commission without doing their due diligence, as well as a willingness on the part of the Commission to engage in detrimental deference to the staff for the sake of expediency. This has been a constant internal problem within the Commission and has led to poor outcomes and no accountability. Commissioners are complicit and routinely vote on orders and reports that are incomplete. The Commission should not be voting on a funding order when it does not know how the money will be distributed, in what amounts, and to whom.

I also object to the perpetuation of what has always been done either for expediency or politics. During the course of internal discussions, it became clear to me that we would just divide the money into the NUSF-99 and NUSF-108 with minimal analysis. When I asked staff for data related to unserved, underserved, and capped locations it took several days to compile it, which tells me this is not something staff or other Commissioners are monitoring. The Commission should begin and end these funding decisions by determining who has service where and at what speed, and make allocations on the basis of those needs. Additional factors to consider should include ongoing obligations of the carriers, access to other funding, and historical performance as it relates to building the network when they have sufficient funding. The Commission remains stuck in the old pattern of splitting the money between the two programs, ignores performance of the carriers, and diverts as many dollars as possible to operational expense over capital expenses. All of which is counterproductive to increasing access to highspeed broadband across our state.

Rather than adding additional support to the traditional price cap and rate of return carrier support mechanisms, the Commission should be allocating any new funds to capped locations. We know that providers will build to capped locations; these are carriers with a history of carrying out their projects, and who have committed to building in the capped locations. Moreover, these carriers estimate that they need \$90.5

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million in order to complete necessary upgrades.² At an allocation of \$2 million per year, it will take these carriers 45 years to complete the work. This is unacceptable by every measure.

I also object to the Commission's commitment to pumping large amounts of money into ongoing support for rate of return carriers, in order to pay loans owed by these carriers. If we did not increase the rate of return budget, these carriers would be no worse off. These loans are already funded. While I recognize that rate of return carriers carry debt, this is not at a level that merits this type of ongoing support. In fact, all carriers combined only have a debt of 213 million dollars, which is to be paid over the course of fifteen years or longer.³ At the current funding level, the carriers have adequate funding to continue to pay any outstanding loans as well as all other operational expenses. In fact, they had the money to do that, even prior to fund stabilization, and their support numbers have increased dramatically since that time. The staff and Commission apparently believe that just having loans warrants a never-ending increase in operational support at the expense of capital support, even though they have done no analysis to determine what is actually needed to cover those expenses. I have done the analysis and they are sufficiently funded and new money in this formula should be allocated to the carriers who are not fully built and who need additional support to build to rural Nebraskans.

I understand that not all carriers have exercised the same level of care in network design, resource allocation, and building and maintenance of their networks. That is unfortunate, but we can't allow our current funding decisions to be guided by a desire to reward or punish a specific carrier. We have to remain focused on getting service to customers who don't have it, regardless of which provider they have for service. Carriers have done what the Legislature and the Commission have allowed them to do and we must adjust to a data driven framework that will expedite service to more unserved and underserved areas.

Additionally, it does not make sense to me to invest more money into the NUSF-99 budget, when the result will be that these funds are split between capital expenditures and operating expenses. If we were to invest this money into capped locations, all of it would be used for capital expenditures - i.e., actual build-out of projects to Nebraskans in need. I believe the Commission is shortsighted in continuing to overfund ongoing support at the expense of immediate need.

² See Commission Docket No. NUSF-108 PO #6, Transcript from August 18, 2021 hearing, at 31 (Scott Schultheis testifying).

³ This information is provided to the Commission each year through the carriers' annual report filings.

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We are over-subsidizing the operation costs of rate of return carriers, and unfortunately, this does not turn into building out infrastructure for Nebraska customers.



Commissioner Crystal Rhoades

Attachment A
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Application No. NUSF-99
Progression Order No. 2

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D I S S E N T

By Commissioner Rhoades:

I do not support the NUSF budget allocations outlined in this order and in the accompanying NUSF-108 order issued today. As I discuss in detail in my dissent on the NUSF-108 order, the Commission should be allocating any new funds to capped locations. We know that providers will build to capped locations; these are carriers with a history of carrying out their projects, and who have committed to building in the capped locations. Price cap carriers, frankly, have not shown a wiliness to do so. The price cap carriers have consistently failed to invest in building infrastructure, and have even returned money allocated to them. There is no reason to allocate more money to the price cap carriers when the money they have previously been allocated is not being used.

I also would note that while the NUSF budget will increase funding available for cellular tower projects, while worthy projects, these projects should not be our focus. We have been tasked with broadband deployment. We should not be increasing the budget for cellular tower projects until such time as fiber to the home objectives have been met.

Accordingly, I dissent.



Commissioner Crystal Rhoades