

# 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	)	ORDER AUTHORIZING PAYMENTS
High-Cost Program.	)	AND SETTING PROJECT
	)	SELECTION DEADLINE
	)	
	)	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

On November 16, 2021, in Commission Docket No. NUSF-108, the Commission entered an Order Authorizing Payments and Commencing Challenge Process. This order established the framework for the NUSF high cost distribution methodology for price cap carriers for the calendar year 2022. A preliminary list of census blocks was released on the Commission's website on November 16, 2021. Challenges were due on or before December 17, 2021.

In this Order, the Commission concludes the challenge process and makes a determination regarding authorized high-cost support with regard to price cap carriers for calendar year 2022. The Commission also hereby begins the six-month time clock for price cap carriers to select capital improvement projects using their allocated high-cost support.

Relative to price cap carrier challenges, the Commission staff 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.

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In accordance therewith, the Commission hereby modifies its census block data for the purpose of determining areas eligible for support, and by extension the exchange by exchange support amounts, through 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. In conjunction with the final list of eligible census blocks, the Commission also directs price cap carriers to the list of exchanges posted on the Commission's website. For reference, each exchange includes the maximum reimbursable amount, based on the remaining eligible blocks and locations in each respective exchange.

In the NUSF-108 order entered on November 16, 2021, the Commission authorized up to \$46,000,000 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. It is the intent of the Commission to distribute previously unallocated NUSF cash reserves in this year's NUSF budget, while still holding in reserve appropriate operating expenses. Therefore, the total amount of high-cost wireline support authorized for disbursement for the 2022 calendar year will be increased to \$50,292,000.

For the calendar year of 2022, the Commission hereby authorizes its staff to pay up to \$50,292,000 in high-cost wireline support as outlined in this order and in the NUSF-108 order issued today in conjunction with this order. The 2022 high-cost support distribution mechanism is available on the Commission's website at <https://psc.nebraska.gov>.

The Commission further finds that in order to incentivize additional buildout, the allocation between grant-based support and ongoing maintenance support should be adjusted to 90 percent grant-based support and 10 percent maintenance support.

Additionally, the Commission has determined that due to unused BDS support in both the calendar year 2021 and prior years by Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska ("Citizens"), the support that would

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otherwise be allocated to Citizens in 2022 as BDS will instead be included with the amount available for use in a reverse auction as outlined in docket NUSF-131.<sup>1</sup>

Based upon the foregoing, the price cap carrier support amounts for 2022 are as follows:

NUSF-99 High Cost	Citizens	Redirected*	Qwest	United Tel. Co. of the West	Windstream	Total
Ongoing	\$393,240	–	\$1,111,410	\$309,855	\$785,495	\$2,600,000
BDS	–	\$3,539,162	\$10,002,694	\$2,788,692	\$7,069,452	\$23,400,000

\* - Support amount reflects Citizens BDS allocation that will go towards reverse auction in Citizens exchanges

Consistent with the findings in our November 4, 2020 Order in the above-captioned docket, price cap carriers must file their project selections to utilize 95 percent of the allocated NUSF support within six (6) months from the time in which the eligible census block list is finalized. All projects must construct infrastructure capable of 100 megabits per second uploading and downloading pursuant to Neb. Rev. Stat. 86-324.01.

For clarity, we set the deadline for project selection to be on **Monday, July 25, 2022 at 5:00 p.m. Central Time**. Price cap carriers are not required to file a formal application as in previous years. Rather, price cap carriers will file a notice with the NUSF Department with 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 timeframe adopted, such unused support will be re-allocated for use in a reverse auction.

### 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,

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<sup>1</sup> See Neb. Rev. Stat. § 86-330.

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determined as reflected in the census block challenge results posted on the Commission's website.

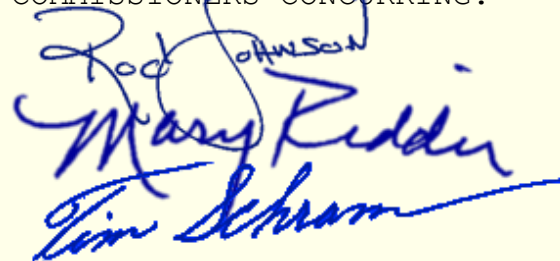
IT IS FURTHER ORDERED that the Commission staff be authorized to make revised high-cost program disbursements for calendar year 2022 as described above.

IT IS FURTHER ORDERED that price cap carriers have until **July 25, 2022 at 5:00 p.m. Central Time** to file project selections with the Commission to utilize 95 percent of the allocated NUSF support consistent with the findings in our November 4, 2020 Order.

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-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

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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.<sup>2</sup> 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.<sup>3</sup> 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.

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

<sup>3</sup> 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