BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements.	Application No. NUSF-108 Progression Order No. 7 ORDER Entered: March 15, 2022

BY THE COMMISSION:

OPINION AND FINDINGS

On October 19, 2021, the Nebraska Public Service Commission (Commission) entered an order to consider how certain accounting rules should be applied and reflected in the NUSF-EARN form for the various federal and state funding sources that provide support for the deployment of broadband. The Commission sought comments on this topic, as carriers currently do not uniformly report this information. Comments and Reply Comments were filed by interested parties on or around November 29, 2021 and December 14, 2021, respectively.

EVIDENCE

A hearing in this matter was held on February 1, 2022. Andrew Pollock appeared on behalf of the Nebraska Rural Broadband Alliance ("NRBA"). Paul Schudel appeared on behalf of the Nebraska Rural Independent Companies ("RIC"). Russell Westerhold appeared on behalf of the Rural Telecommunications Coalition of Nebraska ("RTCN"). Sallie Dietrich appeared on behalf of the Communications and NUSF Department of the Commission ("Commission"). Exhibits 1 through 4 were offered and accepted.

Cullen Robbins testified on behalf of the Department. Mr. Robbins testified that the NUSF-EARN form is the Commission's tool to ensure that rate of return carriers are not receiving NUSF ongoing high-cost support that would allow them to earn more than their prescribed rate of return.[1] Mr. Robbins stated that since the creation of the NUSF-EARN form, various new funding sources

[1] Transcript at 10.

have become available for carriers, including a large number of funding sources in recent years.[2]

Mr. Robbins discussed the proper accounting treatment for federal loan forgiveness, including carrier participation in programs as part of the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), such as the Paycheck Protection Program ("PPP") and the Expanded Economic Injury Disaster Loan Program ("EIDL").[3] Mr. Robbins testified that the Department's recommendation with regard to the accounting treatment of forgiveness of loans under these programs is that carriers should follow the guidance provided by the Federal Communications Commission ("FCC").[4] Under this guidance, any amount of forgiven loans are to be classified as a reduction to the appropriate expense account for USF and cost-study reporting.[5] Any amounts of forgiven loans would be credited to the associated expense account, and would not be included on the NUSF-EARN form as revenue.[6]

Next, Mr. Robbins discussed the proper accounting treatment of federal or state funding sources that provide support for deployment of broadband.[7] In its October 19, 2021 Order in this docket, the Commission asked whether 47 C.F.R. § 32.2000(a)(2) would be applicable to funds carriers receive for broadband deployment through NUSF BDS, NUSF reverse auction support, Nebraska Broadband Bridge Program ("NBBP") support, and other deployment specific funding sources.[8] Mr. Robbins stated that the Department's recommendation is that any funding source received specifically for aid in construction should be deemed a grant and excluded from regulated recovery and subject to 47 C.F.R. § 32.2000 guidance, regardless of whether the payment is received prior to construction or following completion of construction.[9]

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[2] *Id.*

[3] *Id.* at 10-11.

[4] *Id.* at 11. *See also* Ex. 3 at 2-3 (NRBA supporting reliance upon federal regulation).

[5] The NRBA supported this recommendation in comments. Ex. 3 at 2 (stating that that if forgiven funds are not credited to the associated expense account, carriers will effectively be reimbursed twice for the same expenses).

[6] Transcript at 11.

[7] *Id.*

[8] Ex. 1 at 2.

[9] Transcript at 12. *See also* Ex. 3 at 4 (NRBA noting that funds received should be accounted for as a grant regardless of the source of the funds);

Mr. Robbins specified that in order to prevent double recovery, plant that has been paid for with grant funds should not be included in the rate base, nor allowed to earn a rate of return when calculating ongoing NUSF high-cost support.[10] NUSF-BDS support should be treated as construction support and credited to the accounts charged with the cost of construction per 47 C.F.R. § 32.2000.[11] Mr. Robbins stated that these amounts should not be included in the plant investment section of the EARN form, and companies should not report these BDS amounts in the state USF revenue section of the EARN form.[12]

Mr. Robbins further testified that the Department's recommendation is that expenses associated with construction support should not be included on the expense section of the EARN form.[13] Mr. Robbins stated that this determination would also apply to NBBP awards, and any other possible funding source that would meet the "aid in construction" definition, except for any match portion related to investment for any such grant.[14] Mr. Robbins stated that the treatment of NUSF ongoing high-cost support would not change.[15]

Mr. Robbins stated that the Department's recommendation would be that these changes would apply to the 2022 data year included in the EARN form, to be filed with the Department in 2023.[16] The Department also recommends that the due date for the filing of the EARN form be extended to July 31st of each year in order to better coincide with other reporting that serves as a basis for the amounts included with the EARN form, with the 2021 EARN Form to be filed on July 31, 2022.[17]

Id. at 9 (RIC noting that International Accounting Standard 20 supports this treatment).

[10] Transcript at 12.

[11] *Id.* *See also* Ex. 3 at 4 (NRBA stating that BDS support should be treated as construction support).

[12] Transcript at 12-13.

[13] *Id.* at 13.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 14.

[17] *Id.*

Following Mr. Robbins' testimony, Andy Pollock offered a statement on behalf of the NRBA, stating that the NRBA stands on its comments submitted in this docket.[18] Paul Schudel then offered a statement on behalf of RIC, stating that the RIC stands on its comments submitted as well.[19] No further witnesses were called, and the hearing was then closed.

F I N D I N G S

The Commission finds that it is necessary to provide guidance regarding the applicability of accounting rules to NUSF-EARN form reporting. Specifically, the Commission seeks to provide clarity, improve consistency in reporting among carriers, and prevent differential treatment between carriers.

Upon review of comments submitted in this matter and of testimony received at hearing, the Commission finds that the recommendations of the Department should be adopted in full.

In accounting for federal loan forgiveness, carriers are hereby instructed that any amount of forgiven loans are to be classified as a reduction to the appropriate expense account for USF and cost-study reporting. Any amounts of forgiven loans should be credited to the associated expense account, and should not be included on the NUSF-EARN form as revenue.

With regard to the proper accounting treatment of federal or state funding sources that provide support for deployment of broadband, carriers are hereby instructed that any funding source received specifically for aid in construction should be deemed a grant. This funding will be excluded from regulated recovery and subject to 47 C.F.R. § 32.2000 guidance, regardless of whether the payment is received prior to construction or following completion of construction. Plant that has been paid for with grant funds should not be included in the rate base, nor allowed to earn a rate of return when calculating ongoing NUSF high-cost support. Therefore, any grant funding received for aid in construction, such as but not limited to NUSF-BDS support and NBBP awards, should be treated as construction support and credited to the accounts

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[18] *Id.* at 15. The comments of the NRBA may be found in Ex. 3 at 2-7.

[19] Transcript at 16. The comments of the RIC may be found in Ex. 3 at 8-23.

charged with the cost of construction, as set forth in 47 C.F.R. § 32.2000, and should not be included in the EARN form.

Additionally, the Commission finds that the accounting treatment of NUSF reverse auction support should be handled within the reverse auction docket, Commission Docket No. NUSF-131. Further guidance regarding this issue will be released at a later date.

The above-described changes will apply beginning with the 2022 data year included in the EARN form, to be filed with the Department in 2023. The Commission further finds that the due date for the filing of the EARN form should be extended to July 31st of each year. The 2021 EARN Form is therefore required to be filed on or before July 31, 2022.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-described adjustments to the accounting treatment of certain items listed on the NUSF-EARN form shall be, and are hereby, adopted.

IT IS FURTHER ORDERED that the due date for the NUSF-EARN form shall be extended to July 31st of each year, beginning with the 2021 NUSF-EARN form, which shall be due on or before July 31, 2022.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 15th day of March, 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
Mary Ridder
Tim Schram

Dan Watermeier
Chair

ATTEST:

Thomas W. Golden
Executive Director

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D I S S E N T

By Commissioner Rhoades:

The modifications to the EARN form approved today by the majority are ill-advised and will result in double recovery for the carriers. None of the companies will be required to count federal stimulus programs, such as the CARES act, PPP loans, or EIDL loans, as revenue. Any amounts of forgiven loans would be credited to the associated expense account and would not be included in the NUSF-EARN form as revenue. I find it wildly illogical that individuals should be required to pay taxes on federal stimulus money, but that companies receiving stimulus money and COVID support would not have to report these grants as revenue. These corporations received massive influxes of public money, and that money should be counted towards the EARN form - the very form that acts as the basis for which we distribute even more public money.

The purpose of the EARN form is to serve as a mechanism to capture when a company is over-earning, and therefore has money that should have been used for investment. Given where we are today with limited supplies, limited workforce, and other challenges, it does not make sense to exclude from the EARN form these massive additional sums of money from federal stimulus programs - when, in fact, the people paying for those programs are not allowed to treat it as free money in their own accounts. We're allocating so much money the carriers may not even be able to spend all of it and we're now allowing carriers to game the system by excluding this revenue from the EARN form which makes them eligible for even more money via the NUSF program.

As a matter of policy, this is unfair to the taxpayers. I do not see how this order advances our goals of providing broadband as quickly as possible or preserving necessary resources.

It is further illogical that NBBP money is receiving a different treatment than the money for stimulus programs since future funding is expected to be allocated to this program from federal stimulus money. The state anticipates that future allocations for the NBBP will be made possible by money allocated to the states from federal funding for rural broadband deployment. Federal money paid directly to carriers does not have to be reported on the EARN form, however, money from the same source, the federal government, that first is sent to the state and then distributed by the Commission is counted on the EARN form. The source of the money is the federal government and COVID related legislation and the money should be treated consistently and both should be reported on the EARN form. It's also worth noting that the first round of grants for the NBBP which were allocated to Department of Economic Development were funds paid directly with money from the CARES Act. What the Commission did with this order was to say that if you got NBBP money from the first round of funding it can be excluded from the EARN form, but if you got funding is subsequent rounds you must report it on the EARN form, this too is inconsistent and illogical.

Finally, the Commission and staff have adopted the philosophy that as long as the carriers are all in agreement that their proposals should be adopted. That's a horrible way to execute public policy. Simply because the carriers agree doesn't mean it's in the best interest of the state or that it will accomplish the intended policy goals. The Commission has been remiss in not thinking critically about how best to achieve policy goals and should stop rubber stamping policies that do not promote best use of taxpayer money, facilitate over collection of subsidies, and do not have adequate evidence to support what is needed rather than what is wanted by the carriers.

Accordingly, I dissent.

Crystal Rhoades

Commissioner Crystal Rhoades