

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska
Public Service Commission, on
its Own Motion, to Administer
the Universal Service Fund
High-Cost Program.

) Application No. NUSF-99
) Progression Order No. 2

) ORDER DENYING MOTION FOR
) PARTIAL RECONSIDERATION

) Entered: March 15, 2022

BY THE COMMISSION:

On November 16, 2021, in Commission Docket No. NUSF-108, the Commission entered an order establishing 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. On January 25, 2022, in the above-captioned docket, the Commission issued an Order making a determination regarding authorized high-cost support with regard to price cap carriers for calendar year 2022 ("Jan. 25 Order"). As part of this Order, the Commission determined that the allocation between grant-based support and ongoing maintenance support should be adjusted to 90 percent grant-based support and 10 percent maintenance support.¹

On February 7, 2022, Qwest Corporation d/b/a CenturyLink QC ("Qwest") and United Telephone Company of the West d/b/a CenturyLink ("UTC") (collectively "Movants") filed a Motion for Partial Reconsideration and Modification (the "Motion") of the Jan. 25 Order. Specifically, the Movants requested that the Commission reconsider the allocation of Nebraska Universal Service Fund ("NUSF") support as apportioned between "broadband deployment support and ongoing voice support," and allow for "notice, comment, and hearing on the issue of broadband and voice allotment."

As a preliminary matter, the allowable uses of the two Nebraska Telecommunications Universal Service Fund ("NUSF") support types, merits clarification. Over the course of the NUSF-99 and NUSF-108 dockets, the two types of support have been referred to as "ongoing support" and "broadband investment;"²

¹ Commission Docket No. NUSF-99, Progression Order No. 2, Order Authorizing Payments and Setting Project Selection Deadline (Jan. 25, 2022), at 2.

² Commission Docket Nos. NUSF-99 and NUSF-50, Order on Reconsideration and Order Releasing Project Checklist (July 12, 2016).

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"ongoing support" and "broadband build-out support;"³ "ongoing and grant-based support;"⁴ or "high-cost support" and "capital investment support."⁵ The Commission finds that at this time, an explanation as to the purpose of the two types of support would be beneficial. Ongoing support, which is support allocated to carriers on a continuing basis, is to be used for the operating expenses, including maintenance, of a carrier's existing network. Grant-based support is support that is allocated to a carrier with specific requirements to build broadband-capable networks and to serve a specific area. Importantly, the use of each type of funding is not limited to voice or broadband support independently. Rather, NUSF funding is intended to be used for construction and maintenance of broadband-capable networks that support voice. Carriers have the discretion to apply ongoing support to the portions of their networks where there is the greatest need.

The Commission notes that its position with regard to the allocation of ongoing and grant-based support has been set forth in previous Commission orders. In 2017, the Commission noted the following:

The Commission wants assurance that all carriers are making timely upgrades to their outdated plant facilities. The Commission's data indicates that price cap carriers have used support more heavily in the ongoing maintenance of the networks rather than concentrating support on capital investments projects to build out the needed broadband capable networks in Nebraska. We proposed increasing the allocation of grant-based support over ongoing maintenance support in part because of this concern. In addition, however, the Commission has been focused on improving transparency and accountability metrics in its high-cost program. We recognize the need to set clear goals for broadband deployment, particularly in those areas that do not receive federal CAF II program support. Finally, we believed

³ Commission Docket No. NUSF-99, Progression Order No. 2, *Order Seeking Comment* (Nov. 13, 2019) ("Nov. 13, 2019 Order").

⁴ Commission Docket No. NUSF-108, Progression Order No. 3, *Findings and Conclusions* (Nov. 19, 2018).

⁵ Commission Docket No. NUSF-108, *Order Seeking Further Comment and Releasing Proposed 2017 Distribution Calculations* (Dec. 10, 2016).

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a shift to grant based support would be more consistent with the FCC's CAF distribution mechanism that we supplement with NUSF support.⁶

The Commission then determined that in 2017, ongoing support should receive 20% of funding available per carrier, and grant-based support should receive 80% of funding available per carrier. The Commission further noted that "these allocations are transitional in nature and may be further modified by the Commission in subsequent support years."⁷ Unfortunately, the Commission's concerns as set out in the Mar. 28, 2017, Order regarding the use of support have not been alleviated in the ensuing five years.

The Movants seek an opportunity for comment and hearing on the Commission's shift to a 90/10 split in support. This argument refers to 291 Neb. Admin. Code § 1-002.15, "Commission Decisions and Orders." However, this provision of the Commission's rules applies to Commission orders "disposing of a matter." The order set out in NUSF-99 did not close the docket or otherwise end the matters considered in docket NUSF-99. This rule is not applicable in this instance.

The Movants further argue that the reduction in ongoing support to CenturyLink entities due to this shift unfairly burdens the Movants in maintaining its existing network. However, their argument rests upon a fundamental misreading of Neb. Rev. Stat. § 86-324. This statute provides for "assistance" and "support" in providing telecommunications services through the NUSF. It does not provide that telecommunications services should be wholly funded from the NUSF. Assistance to carriers shall be "explicit and sufficient to achieve the purpose of the Act"⁸ - in other words, "to authorize the commission to establish a funding mechanism which supplements federal universal service support mechanisms."⁹ The NUSF is meant to be a supplement to telecommunications carriers' budgets; it is not meant to be the

⁶ Commission Docket No. NUSF-108, *Findings and Conclusions* (Mar. 28, 2017) ("Mar. 28, 2017 Order"), at 5-6.

⁷ *Id.* at 6.

⁸ Neb. Rev. Stat. § 86-324. The word "explicit" as used in Neb. Rev. Stat. § 86-317 is to eliminate ambiguity in the purpose of support being distributed.

⁹ Neb. Rev. Stat. § 86-317.

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budget in its entirety.¹⁰ Given that the amount of total support granted to price cap carriers, including the Movants, was an overall increase from previous years, the Commission finds that the purpose of the NUSF Act is met.¹¹

Furthermore, the distribution of NUSF funds between ongoing and grant-based support is not a figure that must remain static year to year.¹² Notably, in 2021, the Commission sought comment and held a hearing on the question of whether it should continue to provide ongoing support at all.¹³ It is the judgment of the Commission that an adjustment in the NUSF budget to increase the amount available for grant-based support and reduce the amount distributed in ongoing support is needed at this time. This change is not an overall reduction in support; rather, it is a shift intended to encourage increased investment in new projects, which is a policy goal the Commission has expressed repeatedly.¹⁴ In fact, the allocation of support overall in NUSF-99 represents a significant increase in support for price cap carriers, and is indicative of the Commission's focus on the deployment of broadband- and voice-capable networks.¹⁵

The Commission finds that meets the requirements of the Nebraska Telecommunications Universal Service Fund Act. The Commission therefore finds that the motion for reconsideration should be denied.

¹⁰ The Commission notes that the Movants did not provide information in their Motion as to the cost of maintaining their existing networks versus the amount of support allocated. It is therefore difficult to find a compelling argument within the Motion that the shift in support is, in fact, an undue burden.

¹¹ In 2021, Qwest received ongoing and grant-based support in the total amount of \$8,764,797, and United Tel. Co. of the West received \$2,443,574. For 2022, a total of \$11,114,104 was allocated for Qwest, and \$ 3,098,547 was allocated for United Tel. Co. of the West.

¹² Commission Docket No. NUSF-108, Progression Order No. 6, *Order Opening Docket and Seeking Comment* (April 21, 2021) at 4-5 ("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.").

¹³ *Id.* at 4; Commission Docket No. NUSF-108, Progression Order No. 6, *Order Setting Hearing* (July 21, 2021).

¹⁴ Nov. 13, 2019 Order at 3 ("We also seek comment on how to better ensure that ongoing support is being used to maintain the quality and performance of both voice and broadband service in Nebraska as it was intended."); Mar. 28, 2017 Order, *supra* note 6.

¹⁵ See Note 11, *supra*.

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ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the motion for partial reconsideration filed by Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink be, and is hereby, denied.

IT IS FURTHER ORDERED that the allocation of support as set out in the Commission's January 25, 2022 Order in this docket shall proceed as previously set forth.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rob Johnson
Mary Kadden
Jim Schum

Don W. Wampler
Chair

ATTEST:

Thomas W. Golden
Executive Director

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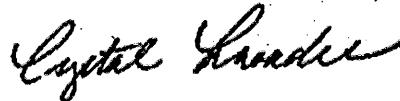
D I S S E N T

By Commissioner Rhoades:

The decision today on this motion is a mistake. The Commission erred in its January 25 order, when it determined that the allocation of funds for price cap carriers should be changed without an opportunity for comment and hearing. This is the process we have used every other time we changed the carriers' funding allocations. Changing the allocations without following that process is unfair to the parties - and, frankly, we missed an opportunity here to collect data and allow the price cap carriers to prove their need for ongoing support and set an appropriate level. In my time at the Commission, I have yet to see a rigorous evaluation of what is actually needed by price cap carriers for ongoing support. Further, I am unaware of any previous order that evaluated the question using data as opposed to preferences stated by carriers in filings, comments, or at hearing. The Commission has been passing out money to carriers without any data to support the decisions, rather has made the decisions based on subjective rather than objective criteria. The Commission should use a more rigorous process to determine need rather than giving money based on what the carriers agree upon, what staff recommends, or arbitrary feelings on the part of Commissioners.

The decision to shift the price cap carriers' funding allocations should not have been made without fair notice to the parties, collection of relevant evidence and data, and a hearing. CenturyLink's motion for reconsideration should have been granted, and the docket should have been set for hearing.

Accordingly, I dissent.



Commissioner Crystal Rhoades