

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Application No. NUSF-108,
Public Service Commission, on	)	Progression Order No. 3
its own Motion, to make	)	
adjustments to its high-cost	)	FINDINGS AND CONCLUSIONS
distribution mechanism and make	)	
revisions to its reporting	)	
requirements.	)	Entered: November 19, 2018

APPEARANCES:

**For the Nebraska Rural Independent Companies:**

Mr. Paul M. Schudel  
Woods & Aitken, LLP  
301 South 13<sup>th</sup> Street  
Suite 500  
Lincoln, NE 68508

**For the Rural Telecommunications Coalition of Nebraska:**

Mr. Andrew S. Pollock  
Rembolt Ludtke, LLP  
1128 Lincoln Mall  
Suite 300  
Lincoln, NE 68508

**For Cox Nebraska Telcom:**

Ms. Deonne L. Bruning  
2901 Bonacum Drive  
Lincoln, NE 68502

**For CTIA Wireless Association and Viaero Wireless:**

Mr. Loel P. Brooks  
Brooks, Pansing Brooks, PC LLO  
1248 O Street  
Suite 984  
Lincoln, NE 68508

**For the Commission:**

Ms. Shana Knutson  
300 The Atrium Building  
1200 N Street  
Lincoln, NE 68508

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BY THE COMMISSION:

The Nebraska Public Service Commission (Commission) initiated this proceeding on September 27, 2016, to consider certain modifications to the high-cost funding mechanism in the universal service fund program. In 2015, in Docket No. NUSF-99, the Commission began the process of reforming high-cost distributions for Price Cap carriers in coordination with changes to the federal high-cost support mechanism, which is now referred to as the Connect America Fund (CAF). Subsequently, the Federal Communications Commission (FCC) adopted a revised support mechanism for ROR carriers. Some carriers had the ability to elect model-based support ("A-CAM" support) while other carriers remained on a revised legacy-based support mechanism. As the federal universal service fund support mechanism for ROR carriers became more defined, the Commission sought comment on modifications to its state universal service support and reporting requirements relative to ROR carriers.

In this particular phase of the proceeding, the Commission focused on modifying its distribution mechanism for rate-of-return carriers (ROR carriers) through a mechanism that is complementary to the changes occurring for ROR carriers through the FCC's Connect America Fund (CAF). On December 19, 2017, the Commission issued a progression order, Progression Order No. 3, seeking comment on proposed changes to the high-cost distribution mechanism and its reporting requirements for rate-of-return (ROR) carriers.

On September 1, 2015, the Commission entered Progression Order No. 1 in Docket No. NUSF-99, whereby the Commission froze the amount of support and made specific allocations for ongoing and broadband support. The Commission found "price cap carriers will be filing more specific information relative to where and when broadband is being deployed, the number of households affected, and the speeds at which the service is being provided." Finally, the Commission found NUSF support should be specifically targeted to extend the reach of broadband deployment where FCC CAF II support was not already being provided. The Commission found its broadband grant approval process should be streamlined in the event that support was not being requested for the FCC CAF II areas.

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***Comments in Response to the December 2017 Order***

Comments on the issues described in our December 19, 2017 Order were filed by interested parties on or around March 5, 2018. Comments were filed by Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (collectively referred to as CenturyLink); Charter Fiberlink-Nebraska, LLC and Time Warner Cable Information Services (collectively referred to as Charter); CTIA-The Wireless Association (CTIA); the Nebraska Rural Independent Companies (RIC); and the Rural Telecommunications Coalition of Nebraska (RTCN). Reply comments were filed on or around April 12, 2018, by Charter, CTIA, RIC, RTCN, as well as CenturyLink joined by Windstream and Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (Frontier).

RIC offered guiding principles for the Commission's consideration.<sup>1</sup> The RIC proposal would use the State Broadband Cost Model (SBCM) to distribute NUSF high-cost support to ROR carriers in each carrier's serving area.<sup>2</sup> RIC proposed an allocation of 53/47 percent between capital expenditures and operations and maintenance expenditures respectively.<sup>3</sup> RIC recommended eliminating the NUSF EARN Form for ROR carriers.<sup>4</sup> RIC further recommended any price cap carrier support not used, should be returned to the uncommitted fund balance for redistribution to other carriers.<sup>5</sup> In terms of accountability, RIC suggested ROR carriers be required to identify the number of actual new passed locations completed using NUSF high-cost program funding during the NUSF funding year and identify new locations for build-out during the upcoming NUSF funding year and any associated assumptions relating to the build-out.<sup>6</sup> For carriers that have deployed fiber throughout their service area, RIC recommended the carrier confirm that capability in its annual filing with the Commission and be

<sup>1</sup> See Comments of the Rural Independent Companies in Response to Order Seeking Comment (March 5, 2018) at 2-5. ("RIC March Comments").

<sup>2</sup> See *id.* at 5-6.

<sup>3</sup> See *id.* at 6.

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*

<sup>6</sup> See *id.* at 7.

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permitted to utilize up to the full amount of their high-cost program support to realize a return on the investment associated with equity funded build-out.<sup>7</sup> In its reply comments, RIC requested the Commission provide assurance of universal service funding over an extended period, specifically at least ten years, to allow for the predictability of support for long-term planning.<sup>8</sup>

RTCN recommended the Commission prioritize support for operations and maintenance of systems currently capable of providing voice and broadband at 25 Mbps download/3 Mbps upload (25/3).<sup>9</sup> Ensuring sufficient and predictable support for carriers that have made investments, utilizing support, loans and private equity to deploy voice and broadband service will help protect those investments and customers served.<sup>10</sup> RTCN recommended the Commission retain and update the NUSF-EARN Form process, as it could be a vehicle for ensuring state support is complementary to the federal support mechanisms. The Commission should not focus on how the carrier funded its plant investment but should focus on whether the investment was made.<sup>11</sup> In its reply comments, RTCN stated the Commission should consider carrier-of-last-resort responsibilities that incumbent local exchange carriers have which unsubsidized competitors do not.<sup>12</sup>

CenturyLink stated that different carriers have built out broadband service at different levels and different speeds within their service territories.<sup>13</sup> Therefore, a "one size fits all" allocation of NUSF support between broadband deployment and ongoing maintenance and operating costs is not

<sup>7</sup> See *id.*

<sup>8</sup> See Reply Comments of the Rural Independent Companies in Response to Order Seeking Comment (April 12, 2018) at 4 ("RIC April Reply Comments").

<sup>9</sup> See Comments of the Rural Telecommunications Coalition of Nebraska (March 5, 2018) at 4 ("RTCN March Comments").

<sup>10</sup> See *id.* at 3-4.

<sup>11</sup> See *id.* at 6.

<sup>12</sup> See Reply Comments of the RTCN (April 12, 2018) at 4 ("RTCN April Reply Comments").

<sup>13</sup> See Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (March 5, 2018) at 3 ("CenturyLink March Comments").

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feasible.<sup>14</sup> CenturyLink recommended the Commission develop objective criteria and a methodology that takes into account the differing levels of broadband availability that it can use to determine the amount of NUSF support that must be used for broadband deployment for each carrier.<sup>15</sup> In its reply comments filed jointly with Windstream and Frontier, CenturyLink stated RIC's proposal created a process for the use of NUSF support that differed dramatically from the process currently used by price cap companies.<sup>16</sup> The joint commenters opposed differential treatment based on how they are regulated by the FCC.<sup>17</sup> The joint commenters recommended an objective methodology for determining the amount of support that all carriers are to use for obtaining approval for broadband projects.<sup>18</sup>

CTIA urged the Commission to look closely at reforming the NUSF rules for ROR carriers in a way that minimizes the size of the fund.<sup>19</sup> CTIA stated RIC's proposal should be rejected because it would impose an excessive burden on Nebraska ratepayers and fail to provide adequate safeguards regarding the use of funding.<sup>20</sup> CTIA stated NUSF support should not be available for operating or maintenance expenses.<sup>21</sup> Further, CTIA supported Charter's proposal for awarding support through an auction or other comparative process.<sup>22</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *See id.*

<sup>16</sup> *See* Joint Reply Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink, Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska, and Windstream (April 12, 2018) at 2 ("Price Cap Carrier April Reply Comments")

<sup>17</sup> *See id.*

<sup>18</sup> *See id.* at 5-6

<sup>19</sup> *See* Comments of CTIA In Response to the Order Seeking Comment (March 6, 2018) at 1 ("CTIA March Comments").

<sup>20</sup> *See* Reply Comments of CTIA In Response to the Order Seeking Comment (April 12, 2018) at 2 ("CTIA April Reply Comments").

<sup>21</sup> *See id.* at 6.

<sup>22</sup> *See id.* at 7.

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Charter stated there was no reason to limit NUSF support to pre-existing local telephone carriers.<sup>23</sup> Charter recommended the Commission adopt a competitive procurement mechanism.<sup>24</sup> Further, Charter stated ROR carriers that voluntarily chose A-CAM support have agreed to deploy broadband to meet required number of locations for each speed tier.<sup>25</sup> Accordingly, Charter stated, for locations supported by A-CAM, no additional state support was needed.<sup>26</sup> In its reply comments, Charter and Cox stated it was important for the Commission to monitor the FCC's July CAF auction to observe the types, cost, and number of proposals that compete for the federal support.<sup>27</sup> Charter and Cox also discussed the need for verification of network construction costs as opposed to reliance on modeled costs.<sup>28</sup>

***Issues for Further Comment and Commission Proposal***

On June 19, 2018, the Commission solicited further comments on proposed modifications to reform the high-cost program distribution mechanism for ROR carriers.<sup>29</sup> These proposed modifications were described in large part as follows:

First, the Commission proposed to isolate census blocks where support should be targeted. In this process, the Commission proposed to remove urban census blocks similar to the historic in-town and out-of-town distribution methodology. The Commission also proposed removing the CAF-

<sup>23</sup> Comments of Charter Fiberlink-Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (March 5, 2018) at 4 ("Charter March Comments").

<sup>24</sup> See *id.*

<sup>25</sup> See *id.* at 6.

<sup>26</sup> See *id.*

<sup>27</sup> Reply Comments by Charter Fiberlink-Nebraska, LLC, Time Warner Cable Information Services (Nebraska), LLC and Cox Nebraska Telecom, LLC (April 12, 2018) at 2 ("Charter and Cox April Reply Comments").

<sup>28</sup> See *id.* at 4.

<sup>29</sup> See *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. 3, ORDER SEEKING FURTHER COMMENTS AND SETTING HEARING* (June 19, 2018) ("June 2018 Order").

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supported census blocks. Finally, the Commission proposed removing census blocks where an unsubsidized competitor is offering wireline voice and broadband service at speeds of at least 25/3 Mbps. The Commission stated its belief that this approach would create a more efficient use of support while targeting limited resources to consumers lacking sufficient broadband service. The Commission further noted this approach was relatively consistent with how it has reformed the distribution mechanism for price cap carriers.

Next, the Commission proposed to publish this list of eligible census blocks. The Commission proposed making that list of all eligible census blocks available on an annual basis to reflect the current state of broadband deployment. Carriers would have the opportunity to challenge or file corrections to the Commission's proposed list through the filing of specific information documenting that the census blocks are served/unserved or should otherwise be considered eligible for support.

Next, the Commission proposed to make an allocation between ongoing and grant-based support based on the overall CapEx/OpEx split for eligible blocks. Similar to how the distribution process is set up today, the Commission proposed to release the high-cost distribution model support on an annual basis.

The Commission proposed carrier eligibility for grant-based support if they had eligible census blocks in their territory. For determining grant-based support, the Commission proposed to use a cost model to guide the calculation of relative costs to deploy broadband at a census block level. The Commission stated its belief that using the State Broadband Cost Model (SBCM) would be a better alternative than maintaining the Benchmark Cost Proxy Model (BCPM) for determining costs to deploy fiber-based broadband networks.

In addition, to ensure that high-cost support investments are spent prudently, the Commission further proposed to establish a per customer location cap of \$15,000 in each census block which may decrease the overall amount of support available for grant-based projects. The Commission stated that carriers could still seek support for consumers in those census blocks, however recovery would be limited to a per customer location cap. In determining this level, the Commission noted that this proposed limitation would only

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impact the highest cost locations. It would not affect approximately 90 percent of customer locations.

The Commission proposed a process for receiving grant-based support where carriers eligible for allocated grant-based support would request support by providing a detailed description of the eligible census block locations they intend to serve, a description of the proposed voice and broadband service to be provided, the estimated budget, and the timeline for completion.

The Commission also proposed to permit ROR carriers to carry over the support on a one (1) time basis. The Commission anticipated this process would provide ROR carriers flexibility in how they put together projects while not creating a significant administrative burden for tracking and cost accounting for committed but unused support.

In order to administer grant support in the most prudent and demonstrable manner, the Commission proposed to reimburse ROR carriers based on actual costs of the grant projects deployed. We proposed to permit ROR carriers to submit invoices as frequently as needed without placing rigid timelines for the invoice submission process. Further, we sought comment on how to establish a process that would make the submission of invoices to the Department easy for the carriers and produce a timely and seamless reimbursement framework. We further proposed to require the ROR carriers to sign an affidavit upon completion with details regarding which census blocks were completed. We sought comment on how to validate this information.

The Commission proposed to give ROR carriers two (2) years to complete each grant project. Upon a showing of good cause, the Commission proposed the carrier could request an extension of this two-year period, not to exceed an additional 12 months, or three years total. Absent an extension, if support was not used, the Commission proposed to de-commit the unused support and return it to the general fund balance.

In addition, the Commission proposed to allow ROR carriers with small grant allocations, or *de minimis* allocations, to request to have those amounts distributed as ongoing support. The Commission sought comment on the threshold level at which this could be requested.

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The Commission proposed to allocate ongoing support to carriers based on the eligible census blocks within their exchanges. Census blocks eligible for support, but not yet capable of 25/3 Mbps broadband service, would receive a portion of the overall ongoing support budget based only on the Operating Expenses portion of SBCM calculations. Conversely, for carriers that have eligible census blocks already built out with broadband networks capable of 25/3 Mbps service, the Commission proposed to provide both operating expenses and capital expenses for these blocks, based on the calculation of support by SBCM. The Commission proposed that all ongoing support would continue to be subject to an earnings test. However, the Commission stated it would most likely modify the NUSF-EARN Form process at a later time. In cases where support was remaining due to overearnings of carriers in this allocation block, such support would be redistributed to other ROR carriers eligible to receive ongoing support.

***Comments in Response to the June, 2018 Order***

Comments on the issues described in the Commission's June 19, 2018 Order were filed on or around July 19, 2018 by RIC; RTCN; CTIA; Charter jointly with Cox Nebraska Telcom, LLC; the American Broadband Companies, the Consolidated Companies, Great Plains Communications, Inc., and Nebraska Central Telephone Company (collectively referred to as A-CAM Companies); a subset of ROR carriers comprising of Arlington Telephone Company, Blair Telephone Company, Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., the Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hershey Cooperative Telephone Company, Inc., the Nebraska Central Telephone Company, and Rock County Telephone Company (collectively referred to as Performance Plan Companies); and a subset of ROR carriers comprised of Clarks Telecommunications Company, Hartington Telecommunications Company, Northeast Nebraska Telephone Company, and Three River Telco (collectively referred to as the Nebraska Cost-Based Companies).

The A-CAM Companies were concerned about the omission of A-CAM Companies' partially funded census blocks from the determination of NUSF-eligible costs.<sup>30</sup> The FCC established a

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<sup>30</sup> See Comments of the American Broadband Companies, the Consolidated Companies, Great Plains Communications, Inc., and the Nebraska Central

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single nationwide maximum level of support of \$146.10 per location.<sup>31</sup> However, the costs of deploying broadband at 25/3 Mbps to locations in the partially funded census blocks exceeds the maximum level support offered by the FCC in its offer of support.<sup>32</sup> The A-CAM funding elected by Nebraska ROR carriers comes with specific buildout requirements.<sup>33</sup> While the A-CAM companies supported the use of SBCM costs as the baseline for determining each ROR carrier's state-eligible costs, the A-CAM companies argued the partially funded locations should be eligible for NUSF support.<sup>34</sup> The A-CAM companies stated that companies that experienced increases in federal support by opting for the A-CAM model cannot be penalized with less NUSF support.<sup>35</sup> The A-CAM companies stated many customers will remain unserved with broadband without adequate NUSF support.<sup>36</sup> The A-CAM companies opposed the suggested per-location cap on receipt of support.<sup>37</sup>

In addition, the A-CAM Companies stated the Commission need not use grants to achieve additional buildout.<sup>38</sup> The A-CAM Companies urged the Commission to continue the practice of making ongoing support available to all ROR carriers for both capital and operating expenses.<sup>39</sup> Of specific concern was that grants would not be considered capital investments on a company's books.<sup>40</sup> If grants were implemented, according to the A-CAM Companies, they would not be able to utilize

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Telephone Company in Response to June 19, 2018 Order Seeking Further Comments and Setting Hearing (filed July 19, 2018) at 2 ("A-CAM Companies' Comments").

<sup>31</sup> See *id.* at 2-3.

<sup>32</sup> See *id.* at 3.

<sup>33</sup> See *id.*

<sup>34</sup> See *id.* at 4.

<sup>35</sup> See *id.* at 13.

<sup>36</sup> See *id.* at 16.

<sup>37</sup> See *id.* at 17.

<sup>38</sup> See *id.* at 8.

<sup>39</sup> See *id.* at 9.

<sup>40</sup> See *id.* at 10-11.

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that money for making capital investments on which the company can continue to earn, which would disrupt cash flows, deteriorate the company's financial health and ultimately result in service degradation.<sup>41</sup>

The Performance Plan Companies offered their own proposal called the NUSF Delivered Services Plan (Performance Plan). These carriers stated their plan meets the stated goals and objectives, incents broadband deployment by increasing funding amounts for carriers that deploy broadband with higher speeds, and provides the Commission with increased accountability in return for increased funding levels.<sup>42</sup> The Plan does not consider a company's capital structure in its determination of a company's support. The Plan pays companies for past deployment as well as providing support for future investment.<sup>43</sup> Under the Performance Plan, the reimbursement percentage is higher for speeds.<sup>44</sup> After a company's past deployment has been calculated, the result is compared to a company's SBCM out-of-town cost.<sup>45</sup> If a company has deployed fiber to the premises (FTTP) facilities to all of its out-of-town locations, then the SBCM out of town cost equals the calculation of compensation for past deployment.<sup>46</sup> For those companies with lesser amounts of deployment, the calculation of compensation for past deployment would be less than the company's SBCM out of town costs.<sup>47</sup> The Performance Plan does not consider a company's capital structure, its relative balance of debt and equity in its determination of a

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<sup>41</sup> *Id.*

<sup>42</sup> See Comments of Arlington Telephone Company, Blair Telephone Company, Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., the Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hershey Cooperative Telephone Company, Inc., the Nebraska Central Telephone Company and Rock County Telephone Company in Response to Order Seeking Further Comments (July 19, 2018) at 2-3 ("Performance Plan Comments").

<sup>43</sup> *Id.* at 6.

<sup>44</sup> See *id.*

<sup>45</sup> *Id.* at 6.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

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company's support.<sup>48</sup> The Performance Plan companies stated with the adoption of the Plan there would be no need for an earnings test.<sup>49</sup>

CTIA was supportive of the Commission's proposal to exclude high-cost support in areas where no support is needed.<sup>50</sup> To CTIA, these areas included areas supported by the FCC's CAF funding, as well as areas served by an unsubsidized competitor.<sup>51</sup> CTIA recommended the Commission recognize all unsubsidized competitors without regard to technology as long as they provide voice and broadband at speeds of 25/3.<sup>52</sup> CTIA stated the same principle of avoiding double-dipping should be applied in partially funded census blocks.<sup>53</sup> CTIA further stated if the Commission decides that NUSF support is warranted in such blocks, it should account for the fact that the A-CAM support will be paying to bring the carrier's facilities into the census block, so the incremental support needed to achieve deployment to any remaining locations should be quite small.<sup>54</sup> CTIA also commented that the Commission should not provide support for both operating expenses and capital expenses for networks capable of 25/3 Mbps service.<sup>55</sup>

Charter and Cox supported the Commission's proposal to target support to qualifying census blocks, to increase transparency by annually publishing the list of qualifying census blocks in conjunction with a challenge process, and to allocate support between ongoing and capital investment with the latter made part of a grant-based regime.<sup>56</sup> Charter and Cox hoped the future alternative providers will be able to

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<sup>48</sup> See *id.* at 7.

<sup>49</sup> See *id.*

<sup>50</sup> See CTIA Comments at 1.

<sup>51</sup> *Id.*

<sup>52</sup> See *id.*

<sup>53</sup> See *id.* at 2.

<sup>54</sup> *Id.* at 3

<sup>55</sup> *Id.* at 5.

<sup>56</sup> See Charter and Cox Comments at 2.

compete for support through an auction approach.<sup>57</sup> Charter and Cox supported the proposed movement towards a grant-based system.<sup>58</sup> Charter and Cox believed that the special density factor of 42 households per square mile was overly generous and recommended the Commission consider linear density.<sup>59</sup>

The Nebraska Cost-Based Companies supported the Commission's goals and concepts to reform the ROR carrier distribution mechanism and to improve its reporting requirements.<sup>60</sup> The Companies supported the continued use of the NUSF-EARN Form which takes into account companies' debt and internal funding used to build out their networks.<sup>61</sup> According to the Nebraska Cost-Based Companies, the largest impediment for carriers in paying back loans or internal funding is not the current allocation of support but rather the insufficiency of the NUSF budget.<sup>62</sup>

The RIC comments were supportive of using the SBCM to determine costs to deploy broadband.<sup>63</sup> However, RIC opposed the proposed per location cap on support.<sup>64</sup> RIC also recommended providing support based upon specified level assumptions rather than providing invoices for project costs and reimbursement.<sup>65</sup> RIC supported the Commission's suggestion that ROR carriers be allowed two years to complete a broadband project.<sup>66</sup> Finally, RIC suggested if a carrier receives \$100,000 or less on an annual basis from the NUSF,

<sup>57</sup> See *id.* at 2-3.

<sup>58</sup> See *id.* at 5.

<sup>59</sup> See *id.* at 3.

<sup>60</sup> See Comments of the Nebraska Cost-Based Companies in Response to June 19, 2018 Order Seeking Further Comments and Setting Hearing (July 19, 2018) at 2 ("Nebraska Cost-Based Companies' Comments").

<sup>61</sup> *Id.* at 4.

<sup>62</sup> See *id.*

<sup>63</sup> See Comments of the Rural Independent Companies in Response to June 19, 2018 Order Seeking Further Comments and Setting Hearing at 4 ("RIC Comments").

<sup>64</sup> See *id.* at 6.

<sup>65</sup> See *id.* at 9.

<sup>66</sup> *Id.*

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that carrier should be permitted to utilize the support for ongoing maintenance costs.<sup>67</sup>

The RTCN commenters applauded the Commission for its progress in this proceeding and supported the Commission's focus on the consumer.<sup>68</sup> RTCN supported the Commission's proposal with a few exceptions. RTCN stated the presence of an unsubsidized competitor should not impact ongoing support.<sup>69</sup> As such, RTCN recommended including those census block in the Commission's ongoing support calculation. Further, RTCN supported a five year review of the census blocks as opposed to an annual review.<sup>70</sup> The RTCN commenters supported the Commission's proposal to provide broadband deployment based support but stated the per customer location cap of \$15,000 was too low.<sup>71</sup> RTCN supported the Commission's proposal to allow rate-of-return carriers with small grant allocations to have those amounts distributed as ongoing support.<sup>72</sup> RTCN recommended the Commission set that threshold at ten percent.<sup>73</sup> Finally, RTCN maintained that the NUSF-EARN Form was a prudent and administratively efficient means of allowing private carriers a reasonable, and not excessive, return on investment while encouraging and protecting investments local telephone companies have made.<sup>74</sup> Further, RTCN argued, the EARN Form is needed to ensure that federal support does not result in over-earnings.<sup>75</sup> Accordingly, RTCN recommended retention of the NUSF-EARN Form process.<sup>76</sup>

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<sup>67</sup> See *id.* at 10.

<sup>68</sup> See RTCN Comments (July 19, 2018) at 2 ("RTCN Comments").

<sup>69</sup> See *id.* at 5.

<sup>70</sup> See *id.* at 5.

<sup>71</sup> See *id.* at 7.

<sup>72</sup> See RTCN Comments at 9.

<sup>73</sup> See *id.*

<sup>74</sup> See *id.* at 11.

<sup>75</sup> *Id.*

<sup>76</sup> See *id.* at 14.

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### **Hearing**

A hearing was held in Lincoln, Nebraska on August 15, 2018, in legislative format. The comments filed in this proceeding were made part of the record.<sup>77</sup> Appearances were entered as indicated above.

Mr. Cullen Robbins, Director of the Communications and NUSF Department testified first to provide an overview of the Commission's proposal. Mr. Robbins described the guiding principles for directing NUSF support.<sup>78</sup> These principles included targeting support to out-of-town areas, excluding census blocks where a competitive wireline service is available at speeds of 25/3 Mbps download and upload respectively, and excluding census blocks where federal support was already targeted, including those blocks that were designated to receive funds under the A-CAM model.<sup>79</sup> The Commission's proposal was designed to prevent duplication of support, to target support for specific locations and to prevent subsidization of competition.<sup>80</sup> In addition, the Commission's proposals were designed to increase accountability for funds distributed to carriers, to incentivize buildout of broadband-capable networks in unserved or underserved areas, and to create a streamlined approach to supporting broadband deployment consistent with the statutory framework.<sup>81</sup>

Mr. Robbins testified the proposal included a number of steps. The first step was a change to the State Broadband Cost Model (SBCM) from the Benchmark Cost Proxy Model (BCPM) used by the Commission in the past.<sup>82</sup> The second step was to create two silos of funding, one for ongoing maintenance and one for broadband deployment.<sup>83</sup> Then, the Commission would determine how to allocate money into those silos. Using

<sup>77</sup> See Exhibit Nos. 2 through 19.

<sup>78</sup> See Testimony of Cullen Robbins, Hrg. Transcript ("TR") 12:17-14:3.

<sup>79</sup> See *id.*

<sup>80</sup> *Id.*, TR 13:14-17.

<sup>81</sup> *Id.*, TR 13:18-25.

<sup>82</sup> See *id.*, TR 14:4-9.

<sup>83</sup> See *id.*, TR 14:10-12.

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factors from the SBCM, the proposed split would be 57 percent of available funds would be placed into ongoing maintenance and 43 percent of available funds would be allocated to broadband deployment.<sup>84</sup> Once the distribution to each silo is set, the amount of support available to each carrier depends on how many eligible census blocks each company had and what the makeup of the blocks within each company's territory consisted of in terms of broadband availability.<sup>85</sup>

For carriers that have eligible blocks in which they already offer 25/3 service, both CapEx and OpEx will be counted towards their allocation based on the modeled amounts and proportional to the funding available.<sup>86</sup> Conversely, for those blocks that are not yet 25/3 broadband capable, only OpEx will be counted towards the allocation since there's not yet been an investment in making the network capable of broadband service.<sup>87</sup> Proportional ongoing funds will be made available.<sup>88</sup> Also, these blocks would be eligible for additional support through the broadband deployment fund if the carrier chose to do a project in the area.<sup>89</sup> Within the ongoing portion of support, each company will still be subject to an earnings test, and consequently, we would still require submission of an NUSF-EARN Form.<sup>90</sup>

Mr. Robbins testified that the proposed process for funding broadband deployment would be reimbursement process.<sup>91</sup> The Commission would release a preliminary set of census blocks that are eligible to receive support for deployment and allow a period of time for any challenges of those blocks from interested parties.<sup>92</sup> Once that period is

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<sup>84</sup> See *id.*, TR 14:22-25.

<sup>85</sup> *Id.*, TR 15:3-8

<sup>86</sup> *Id.*, TR 15:9-14.

<sup>87</sup> See *id.*, TR 15:22-25.

<sup>88</sup> *Id.*, TR 16:4-5.

<sup>89</sup> *Id.*, TR 16:6-9.

<sup>90</sup> *Id.*, TR 16:10-13.

<sup>91</sup> See *id.*, TR 17:1-5.

<sup>92</sup> *Id.*, TR 17:10-17.

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completed, the Commission would release the final list of blocks eligible to receive support, as well as the amount of support available to each carrier for deployment.<sup>93</sup> Carriers would be able to see exactly where projects could be initiated and would know the maximum level of support they could receive for the project.<sup>94</sup> The carrier would submit a request for support and the Commission staff would review the request and make sure they are within the eligible census blocks and review the budget.<sup>95</sup> This process allows the Commission to track exactly where the projects are occurring and how many households are served with the NUSF support.<sup>96</sup>

If the carriers choose to do so, they could carry over support for one year to allow them to complete larger projects that may cost more than their one-year annual support amount.<sup>97</sup> In addition, if there is a carrier that is almost fully built-out with broadband-capable networks, the Commission proposed a *de minimis* threshold of 2 percent below which the broadband allocation funds for buildout would not require a request for support based on a reimbursement basis, but could simply be rolled into their ongoing support.<sup>98</sup> The Commission also proposed a two year period within which carriers must complete their projects starting from the date of approval of their application.<sup>99</sup>

Finally, Mr. Robbins addressed the issue of the census blocks where federal A-CAM support does not cover the cost of building fiber to each location.<sup>100</sup> For example, if the A-CAM model calculates the cost to provide service to a location at \$300.00, it would only be funded up to \$146.10.<sup>101</sup> With the benchmark of \$52.50, which is the rate expected to be

<sup>93</sup> *Id.*, TR 17:17-21.

<sup>94</sup> *Id.*, TR 17:22-25.

<sup>95</sup> *See id.*, TR 18:4-14.

<sup>96</sup> *See id.*, TR 18:15-21.

<sup>97</sup> *Id.*, TR 18:22-25.

<sup>98</sup> *See id.*, TR 19:1-7.

<sup>99</sup> *See id.*, TR 19:8-11.

<sup>100</sup> *See id.*, TR 19:12-23.

<sup>101</sup> *See id.*

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recovered from the consumer, the total would be \$198.60.<sup>102</sup> So, there would be a remaining \$101.40 to fully fund that location with a fiber to the premises build-out.<sup>103</sup> Mr. Robbins further testified the FCC is considering an increase of the support amount from \$146.10 to \$200.00 per location.<sup>104</sup> Mr. Robbins stated that while carriers may not be getting the full amount necessary to bring fiber to the home, it does not mean that they are not getting all of the funding necessary to meet their deployment obligations.<sup>105</sup> Because A-CAM modeled support is a monthly support amount for locations in these census blocks for the next 10 years, it is difficult for the Commission to marry that support mechanism with our proposed deployment plan. For these reasons, he recommended excluding the A-CAM-eligible blocks from support.<sup>106</sup>

Mr. Ken Pfister, Vice-President of Strategic Policy for Great Plains Communications testified on behalf of the Nebraska A-CAM companies. The A-CAM companies support the Commission's goal of increasing broadband deployment in rural parts of the state.<sup>107</sup> The A-CAM companies have significant concerns with some portions of the order as documented in its comments filed July 18<sup>th</sup>.<sup>108</sup> The A-CAM companies support the use of the SBCM as long as it is applied equally to all rate-of-return companies.<sup>109</sup>

Mr. Pfister testified the A-CAM Companies strongly believe that census blocks that are only partially funded by federal A-CAM support should be eligible for NUSF support.<sup>110</sup> Mr. Pfister stated collectively, A-CAM support is 48 percent of the total out-of-town costs for the A-CAM Companies.<sup>111</sup> In

<sup>102</sup> See *id.*

<sup>103</sup> See *id.*, TR 20:3-5

<sup>104</sup> See *id.*, TR 20:11-17.

<sup>105</sup> See *id.*, TR 21:12-17.

<sup>106</sup> See *id.*, TR 22:2-13.

<sup>107</sup> See Testimony of Ken Pfister, TR 30:6-9.

<sup>108</sup> See *id.*, TR 30:21-25.

<sup>109</sup> See *id.*, TR 32:19-33:1.

<sup>110</sup> See *id.*, TR 35:6-9.

<sup>111</sup> See *id.*, TR 36:5-11.

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their view, excluding these census blocks from support eligibility would result in thousands of rural Nebraskans being ineligible for broadband build-out funded by the NUSF.<sup>112</sup> Mr. Pfister testified that, as it related to Great Plains, 5,500 to 6,000 locations are not required to be reached with broadband A-CAM support.<sup>113</sup>

Mr. Pfister also asked the Commission to modify the proposal relative to the use of grants.<sup>114</sup> He stated the Commission, from a public policy standpoint should not use grants or some other special kind of grant-like funding as a means for compensating broadband build out.<sup>115</sup> Mr. Pfister suggested that the Commission provide support and account for what rate-of-return carriers have done with the support through a mechanism like the FCC's database where broadband deployment is reported after the fact.<sup>116</sup>

Mr. Pfister recommended the Commission use the allocation between capital and operating expenses contained in the SBCM which ranges between 50 and 55 percent operating expenses and 40 to 50 percent capital expenses.<sup>117</sup> He indicated there was support in the comments for setting the allocation at or near those levels.<sup>118</sup>

Finally, Mr. Pfister pointed out that the A-CAM support is a far superior system for many companies in accomplishing broadband buildout.<sup>119</sup> The fact that A-CAM resulted in an increase in support for companies from their previous support under legacy rules was very expected, was not a surprise. It has been a positive development for broadband deployments to rural Nebraskans.<sup>120</sup>

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<sup>112</sup> See *id.*, TR 37:19-24.

<sup>113</sup> See *id.*, TR 40:1-3.

<sup>114</sup> See *id.*, TR 41:16-42:18.

<sup>115</sup> See *id.*, TR 42:12-18.

<sup>116</sup> See *id.*, TR 44:20-25.

<sup>117</sup> See *id.*, TR 47:6-14.

<sup>118</sup> See *id.*, TR 47:15-20.

<sup>119</sup> See *id.*, TR 49:9-13.

<sup>120</sup> See *id.*, TR 50:2-8.

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Mr. Gary Warren, Vice-President of Hamilton Telephone Company, testified on behalf of the rural carriers that supported the NUSF Delivered Services Performance Plan (Performance Plan).<sup>121</sup> Mr. Warren testified the Performance Plan will make it easier to articulate progress made in bridging the digital divide and will make carriers more accountable for their use of NUSF support.<sup>122</sup> By incenting carriers to provide higher broadband speeds, the plan's goal is to have broadband service speeds and rates provided in rural areas that are comparable to those offered in urban areas, including the ultimate goal of access to 25/3.<sup>123</sup>

Mr. Warren testified that carriers would receive support for broadband at specified speeds to out-of-town locations.<sup>124</sup> The higher the speed provided, the greater the support.<sup>125</sup> Support amounts would be based on the SBCM to reflect the cost of fiber-to-the-premises facilities.<sup>126</sup> Another objective of the Performance Plan is to treat all rate-of-return carriers in a similar manner, no matter their capital structure or whether they receive their federal funding from A-CAM or the legacy mechanism, according to Mr. Warren.<sup>127</sup> Further, he stated one of the characteristics of the Performance Plan is the elimination of the NUSF-EARN Form. He believes the NUSF-EARN Form has outlived its usefulness and sent the wrong incentives.<sup>128</sup>

Mr. Warren generally described how the Performance Plan worked. A flow chart illustration of the Performance Plan was offered and received into the record as Exhibit No. 20.<sup>129</sup> As

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<sup>121</sup> See *Testimony of Gary Warren*, TR 63:19-64:3.

<sup>122</sup> See *id.*, TR 64:12-16.

<sup>123</sup> See *id.*, TR 64:16-22.

<sup>124</sup> *Id.*, TR 65:5-7.

<sup>125</sup> *Id.*, TR 65:7-8.

<sup>126</sup> See *id.*, TR 65:8-11.

<sup>127</sup> See *id.*, TR 65:12-16.

<sup>128</sup> See *id.*, TR 65:17-24.

<sup>129</sup> See *id.*, TR 67-71, and 82-83.

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described by Mr. Warren, the NUSF support for past performance would be the sum of a carriers' percentage of out-of-town locations at a specified speed multiplied by the NUSF-supported cost for out-of-town locations multiplied by the reimbursement percentage for that speed.<sup>130</sup> To the extent that performance-based compensation does not utilizes all of the NUSF support eligibility for a given carrier for past performance, the remaining NUSF allocated to that carrier may only be used to build facilities to additional out-of-town locations.<sup>131</sup> Mr. Warren testified the Performance Plan allows for flexibility in that the Commission could adjust the tiers of service either initially or over time to incent and support the carrier for the rural services they provide.<sup>132</sup>

Mr. Dan Davis, Director of Policy and Analysis at Consortia Consulting, testified on behalf of RIC.<sup>133</sup> Mr. Davis' testimony focused on the issues presented by the Commission's June 19<sup>th</sup> Order, on which the RIC members had consensus positions.<sup>134</sup> RIC supported the Commission's conclusion that the use of SBCM should replace the current use of the BCPM for determining costs for deploying fiber-based broadband networks.<sup>135</sup> Further, RIC continues to support the Commission's proposal to base the capital expense and operating expense allocations on SBCM data.<sup>136</sup> Next, RIC believed that continuing support for operating expenses is appropriate.<sup>137</sup> Mr. Davis further stated RIC concurred with the Commission's proposal regarding in-town and out-of-town census block eligibility for CapEx support and recommend its adoption. RIC also agreed with the definition of an unsubsidized competitor.<sup>138</sup> However, Mr. Davis stated, rather than publishing the eligible census blocks on an annual basis

<sup>130</sup> See *id.*, TR 67:9-12.

<sup>131</sup> See *id.*, TR 68:20-25.

<sup>132</sup> See *id.*, TR 69:10-14.

<sup>133</sup> See Testimony of Dan Davis, TR 83-99.

<sup>134</sup> See *id.*, TR 84:8-13.

<sup>135</sup> See *id.*, TR 84:14-25.

<sup>136</sup> See *id.*, TR 85:3-8.

<sup>137</sup> See *id.*, TR 85:9-12.

<sup>138</sup> See *id.*, TR 86-89.

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for challenge, the Commission should adopt a one-time challenge approach.<sup>139</sup>

Mr. Davis further encouraged the Commission to adopt the accountability reporting proposal in RIC's comments rather than adopt a grant-based approach.<sup>140</sup> Mr. Davis stated RIC believed that the Commission did not intend to alter the current method of accounting for network additions by ROR carriers.<sup>141</sup> RIC is concerned that utilizing a grant-based distribution process to provide NUSF support may have unintended consequences.<sup>142</sup> RIC believed the adoption of its reporting mechanism would avoid these unintended consequences.<sup>143</sup>

Additionally, Mr. Davis testified about removing the proposed per location cap and adding a 10-year funding commitment.<sup>144</sup> As it related to the cap, Mr. Davis testified RIC supports the elimination of the cap.<sup>145</sup> He stated support should not be capped as RIC believes such would be contrary to the legislative guidance that consumers in all regions have access to telecommunications and information service.<sup>146</sup> With respect to a ten year funding commitment, Mr. Davis stated while RIC supported the 2 year buildout period proposed by the Commission, it believes the Commission should establish a minimum annual funding level and a 10-year funding commitment.<sup>147</sup> A 10-year commitment would create more stability and predictability for carriers.<sup>148</sup>

<sup>139</sup> See *id.*, TR 89-90.

<sup>140</sup> See *id.*, TR 91-92.

<sup>141</sup> See *id.*

<sup>142</sup> See *id.*

<sup>143</sup> See *id.*

<sup>144</sup> See *id.*, TR 93-96.

<sup>145</sup> See *id.*, TR 93:5-6.

<sup>146</sup> See *id.*, TR 95-96.

<sup>147</sup> See *id.*, TR 94:4-20.

<sup>148</sup> See *id.*, TR 94-95.

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Finally, Mr. Davis testified that RIC recommended providing support to the census blocks that are partially funded by federal A-CAM support.<sup>149</sup> According to RIC, providing support to those blocks is consistent with statutory goals of providing ubiquitous broadband as well as modeling costs on a total carrier basis.<sup>150</sup>

Ms. Tonya Mayer, the general manager at Hemingford Cooperative Telephone Company, testified about Hemingford's broadband service.<sup>151</sup> She stated in 1999, Hemingford began upgrading facilities taking fiber to strategically located huts and extending copper from those huts to rural customers' ranches and farms.<sup>152</sup> She further stated, in 2010 Hemingford began the process to fully deploy fiber to the home, including farms and ranches in rural areas.<sup>153</sup>

Hemingford sought financial assistance through USDA.<sup>154</sup> Loans were taken out on the basis of stable and predictable support.<sup>155</sup> The FCC's budget control mechanisms and diminishing state support have caused shortfalls.<sup>156</sup> As a result, she stated, these loan payments are in jeopardy.<sup>157</sup> Ms. Mayer further testified Hemingford has looked at changing ways to be more efficient but at some point there is nothing more that can be cut without jeopardizing current operations. They have looked at changing benefits.<sup>158</sup> They compete with the railroad for employee salaries. Hemingford cut two positions in the spring that were not replaced.<sup>159</sup>

<sup>149</sup> See *id.*, TR 96:5-10.

<sup>150</sup> See *id.*, TR 96-97.

<sup>151</sup> See Testimony of Tonya Mayer, TR 100-106.

<sup>152</sup> See *id.*, TR 100:19-23.

<sup>153</sup> See *id.*, TR 101:12-16.

<sup>154</sup> See *id.* TR 101:23-25.

<sup>155</sup> See *id.*, TR 102:1-6.

<sup>156</sup> See *id.*, TR 102:7-11.

<sup>157</sup> See *id.*

<sup>158</sup> See *id.*, TR 103-104.

<sup>159</sup> See *id.*

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Ms. Mayer stated the Commission's work in NUSF-111 and in this reform proceeding are important.<sup>160</sup> With the reforms the Commission proposed to make, Hemingford would continue to be able to provide the essential infrastructure and services needed to its subscribers.<sup>161</sup>

Mr. Randy Sandman, president of Diller Telephone Company, testified in support of the Commission's work in NUSF-108 and NUSF-111.<sup>162</sup> He testified that Diller Telephone was founded in 1899 by local residents to bring voice telephone service to the village of Diller, Nebraska and nearby farmsteads.<sup>163</sup> In 2005, Diller began to deploy fiber-to-digital loop concentrator cabinets in the rural areas of its exchanges in preparation for the future of broadband needs of its customer base.<sup>164</sup> By 2009, Diller began to deploy fiber to the home in its entire Harbine exchange due to an aging copper plant.<sup>165</sup> Since 2011, they have steadily progressed building out fiber to the home in both village and rural areas of its other exchanges to the point that it is 70 percent finished in those exchanges.<sup>166</sup>

Mr. Sandman further testified that Diller has been cautious and deliberate with its spending due to declines and uncertainty in both federal and state universal service.<sup>167</sup> Unfortunately, the decline has set Diller back about 2.5 years in completing its rural buildouts and created some haves and have-nots even in its own exchanges.<sup>168</sup> Mr. Sandman encouraged the Commission to continue seeking to stabilize and enhance the NUSF as it has laid out in NUSF-108. In

<sup>160</sup> See *id.*, TR 104:5-9.

<sup>161</sup> See *id.*, TR 104:10-16.

<sup>162</sup> See Testimony of Randy Sandman, TR 107-111.

<sup>163</sup> See *id.*, TR 107:13-16.

<sup>164</sup> See *id.*, TR 107-108.

<sup>165</sup> See *id.*, TR 108:5-8.

<sup>166</sup> See *id.*, TR 108:9-13.

<sup>167</sup> See *id.*, TR 108:14-18.

<sup>168</sup> See *id.*, TR 108:19-22.

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addition, he stated, there may be other plans that create substantial winners and losers for NUSF support.<sup>169</sup>

Ms. Colleen Paden, testified for Stanton Telecom.<sup>170</sup> She is the business manager for Stanton.<sup>171</sup> In 1980, when the Paden family purchased Stanton, it was in desperate need of upgrades both in the central office and outside plant. Stanton began offering internet service in 1996<sup>172</sup>. In 2001, a fiber project was completed bringing fiber to many pedestals in the exchange.<sup>173</sup> In 2009 and 200, Stanton buried fiber to the premises throughout the entire exchange.<sup>174</sup> Ms. Paden testified Stanton has always been a forward thinking company.<sup>175</sup>

Stanton is a community-based company that cares about its customers.<sup>176</sup> Stanton provides fast 24 hour installation and response times.<sup>177</sup> Over the years, she stated, there have been very, very few complaints to the PSC.<sup>178</sup> Stanton routinely receives calls from individuals outside of its territory requesting fiber broadband service.<sup>179</sup>

Ms. Paden testified that when Stanton took out a loan to take fiber throughout the exchange it assumed the decades-old system of federal universal service support would be available to service its debt obligations.<sup>180</sup> However, Stanton's federal support has been dramatically reduced.<sup>181</sup>

<sup>169</sup> See *id.*, TR 109:2-8.

<sup>170</sup> See Testimony of Colleen Paden, TR 111-118.

<sup>171</sup> See *id.*, TR 112:3-5.

<sup>172</sup> See *id.*, TR 112:15-19.

<sup>173</sup> *Id.*, TR 113:5-7

<sup>174</sup> See *id.*, TR 113:7-10

<sup>175</sup> See *id.*, TR 113:11-14.

<sup>176</sup> See *id.*, TR 113-115.

<sup>177</sup> See *id.*, TR 114:17-20.

<sup>178</sup> See *id.*, TR 114:21-23.

<sup>179</sup> See *id.*, TR 115:15-18.

<sup>180</sup> See *id.*, TR 116:4-7.

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Ms. Paden testified that the performance plan proposed by some companies was not workable for Stanton Telecom because it provides zero funding to Stanton for ongoing equipment upgrades and new technology services.<sup>182</sup> Upon questioning from staff, Ms. Paden testified she did not know why Stanton's support would go to zero under the performance plan proposed by some companies.<sup>183</sup>

Ms. Stacey Brigham, Director of Federal Policy Analysis and Advocacy at TCA, testified on behalf of the Rural Telecommunications Coalition of Nebraska (RTCN).<sup>184</sup> RTCN support the majority of the Commission's proposals in this proceeding.<sup>185</sup> Specifically, RTCN agrees that reforms to the NUSF should be tailored to ensure the accountability for recipients.<sup>186</sup> RTCN supported first determining the eligible census blocks, bifurcating support for capital and ongoing purposes, requiring evidence of capital investment as appropriate, and retaining the earnings test for ongoing support.<sup>187</sup> Ms. Brigham testified as it related to competitive overlap, RTCN's position is that competitive overlap should not be impacting ongoing support.<sup>188</sup> Moreover, she testified, RTCN believes the census block review should happen no more than every five years.<sup>189</sup>

Ms. Brigham also testified the SBCM has not been properly vetted.<sup>190</sup> Therefore, using actual costs rather than modeled

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<sup>181</sup> See *id.*, TR 116:8-12.

<sup>182</sup> See *id.*, TR 116:21-25.

<sup>183</sup> See *id.*, TR 118:14-18.

<sup>184</sup> See Testimony of Stacey Brigham, TR 119-130.

<sup>185</sup> *Id.*, TR 120:10-11.

<sup>186</sup> *Id.*, TR 120:12-14.

<sup>187</sup> See *id.*, TR 120:17-24

<sup>188</sup> See *id.*, TR 121:8-16.

<sup>189</sup> See *id.*, TR 121-122.

<sup>190</sup> See *id.*, TR 122:8

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costs will ensure that those costs are not over-funding some carriers and under-funding others.<sup>191</sup>

RTCN had concerns about the use of a per-location cap.<sup>192</sup> Ms. Brigham testified that it was unclear to her whether the cap would act as a disqualifier.<sup>193</sup>

Lastly, Ms. Brigham stated, RTCN supports retention of the NUSF EARN form.<sup>194</sup> RTCN maintains the EARN form is a prudent and administratively efficient means of allowing carriers a reasonable but not excessive return on investment while encouraging and protecting investments the local telephone companies have already made.<sup>195</sup>

Mr. Alan Lubeck testified on behalf of CenturyLink.<sup>196</sup> Mr. Lubeck stated CenturyLink should be treated exactly the same as the rural carriers.<sup>197</sup> Mr. Lubeck wanted to correct some of the statements in the record by stating that CenturyLink receives an average of just under \$16 million per year.<sup>198</sup> Its capital expenditures and network operations expenses are nearly \$100 million.<sup>199</sup> In addition, Mr. Lubeck stated, CenturyLink faces fierce competition in its markets.<sup>200</sup> According to Mr. Lubeck, CenturyLink has about 20 percent of the access lines it had in 2001.<sup>201</sup>

Mr. Pat McElroy, CEO and general manager of Northeast Nebraska Telephone Company, testified on behalf of Northeast

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<sup>191</sup> *Id.*, TR 122:13-16.

<sup>192</sup> *See id.*, TR 123:3-11.

<sup>193</sup> *See id.*

<sup>194</sup> *See id.*, TR 124:10-22.

<sup>195</sup> *See id.*

<sup>196</sup> *See* Testimony of Alan Lubeck, TR 131-134.

<sup>197</sup> *See id.*, TR 132:8-9.

<sup>198</sup> *See id.*, TR 133:11-13.

<sup>199</sup> *See id.*, TR 133:13-15.

<sup>200</sup> *See id.*, TR 133:16-23.

<sup>201</sup> *See id.*, TR 133:23-24.

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Nebraska Telephone Company, Hartington Telecommunications Company and Three River Telco (referred to as the cost-based companies).<sup>202</sup> Mr. McElroy testified that they are legacy cost-based companies that were not allowed or would not have elected federal A-CAM support because they were already built out in fiber-to-home projects.<sup>203</sup> The cost-based companies support the Commission's proposal to continue to use the NUSF-EARN Form.<sup>204</sup> Mr. McElroy stated the EARN form encourages and protects investments local telephone companies have made.<sup>205</sup> The EARN form appropriately considers all regulated revenues, investments and expenses, including federal USF support.<sup>206</sup>

Next, Mr. McElroy, stated, the cost-based companies agree with the Commission's proposal to support both operating and capital expenses for carriers with eligible census blocks that are built out with broadband networks capable of 25/3 service.<sup>207</sup> He stated companies that have fully built out their network still continue to have capital expenses.<sup>208</sup>

Lastly, Mr. McElroy testified the cost-based companies have concerns about the NUSF Delivered Services Performance Plan. He stated, the model results negatively impact those companies already meeting the plan's objective.<sup>209</sup> Those companies have already built facilities to subscriber locations will receive less NUSF than they are currently allocated.<sup>210</sup> The cost-based companies oppose the performance plan because it does not reward those who have previously invested in fiber-based facilities.<sup>211</sup>

<sup>202</sup> See Testimony of Pat McElroy, TR 136-143.

<sup>203</sup> See *id.*, TR 137:16-19.

<sup>204</sup> See *id.*, TR 138:8-11.

<sup>205</sup> See *id.*, TR 138:16-18.

<sup>206</sup> See *id.*, TR 138:19-21.

<sup>207</sup> See *id.* TR 140:1-5.

<sup>208</sup> See *id.*, TR 140:6-9.

<sup>209</sup> See *id.*, TR 140:15-23.

<sup>210</sup> See *id.*, TR 141:5-12.

<sup>211</sup> See *id.*, TR 141:15-18.

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***Post-Hearing Comments***

Post-hearing comments were filed on or around September 17, 2018 by the following: CenturyLink; Nebraska Cost-Based Companies; Charter/Cox; A-CAM Companies; the Performance Plan Companies; RIC; and RTCN.

CenturyLink agreed with the rural companies who stated the Commission should not prohibit companies from using NUSF support to deploy broadband in census blocks that receive only partial funding from the FCC.<sup>212</sup> CenturyLink further argued against the use of a per-location funding cap.<sup>213</sup> Finally, CenturyLink agreed with the Commission that NUSF support should not be used in areas where broadband service is already available at sufficient speeds.<sup>214</sup>

Charter and Cox agreed with the Commission's proposal to publish eligible census block information.<sup>215</sup> Charter and Cox further agreed with the Commission's proposal to support broadband deployment through a grant-based process, but had concerns relative to the provision of ongoing maintenance support.<sup>216</sup> Charter and Cox believed this proposal detracted from transparency and accountability.<sup>217</sup> Charter and Cox also encouraged the Commission to explicitly describe how it intends to account for federal funding to ROR carriers to ensure double-dipping is not occurring.<sup>218</sup>

The A-CAM Companies stated many customers in A-CAM partially funded locations would not receive broadband

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<sup>212</sup> Post-Hearing Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (September 17, 2018) at 1 ("CenturyLink Post-Hearing Comments").

<sup>213</sup> See *id.* at 2.

<sup>214</sup> See *id.*

<sup>215</sup> See Post-Hearing Comments of Charter Fiberlink-Nebraska, LLC, Time Warner Cable Information Services (Nebraska), LLC and Cox Nebraska Telcom, LLC (September 17, 2018) at 2 ("Post-Hearing Comments of Charter and Cox").

<sup>216</sup> See *id.* at 2-3.

<sup>217</sup> See *id.*

<sup>218</sup> See *id.* at 3.

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service without targeted, cost-based NUSF support to supplement federal funding.<sup>219</sup> The A-CAM Companies further argued that the record was unclear on the Commission's position on partially funded census blocks.<sup>220</sup> They recommended the Commission include what they consider partially funded census blocks into the support mechanism.<sup>221</sup> As to how A-CAM locations being served at speeds of 10/1 may be ultimately upgraded to 25/3 under the NUSF high-cost program, the A-CAM companies recommend the Commission open a future progression order to address that issue.<sup>222</sup>

The A-CAM Companies also urged the Commission to use the SBCM costs in determining eligible costs and to use the federal HUBB reporting data as well as the RIC accountability proposal to provide assurances that NUSF support is not being used to duplicate federal support.<sup>223</sup> With respect to using the SBCM, the A-CAM companies stated they have continuously supported using the SBCM costs to determine eligible support.<sup>224</sup> To the extent that ROR carriers have federal USF in excess of the SBCM modeled costs, the A-CAM Companies suggest the Commission should consider a rule "grandfathering" in the prior-year support.<sup>225</sup> As opposed to submitting invoices and work orders, the A-CAM Companies argued the HUBB reporting model as well as the RIC reporting proposal would provide sufficient accountability for NUSF support.<sup>226</sup>

The RIC post-hearing comments sought four modifications to the Commission's proposal.<sup>227</sup> First, RIC requested the

<sup>219</sup> See Post-Hearing Comments of the A-CAM Companies (September 17, 2018) at 3.

<sup>220</sup> See *id.* at 4.

<sup>221</sup> *Id.*

<sup>222</sup> See *id.* at 13.

<sup>223</sup> See Post-Hearing Comments of the A-CAM Companies (September 17, 2018) at 16.

<sup>224</sup> See *id.* at 13.

<sup>225</sup> See *id.* at 15.

<sup>226</sup> See *id.* at 16.

<sup>227</sup> See Post-Hearing Comments of the Rural Independent Companies (September 17, 2018) at 3. ("RIC Post-Hearing Comments").

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Commission provide NUSF support for capital expenses for partially funded census blocks for all ROR carriers.<sup>228</sup> Second, RIC recommended using the RIC proposed accountability framework and reporting form as opposed to a grant-like structure as proposed by the Commission.<sup>229</sup> Third, RIC sought confirmation that capital support would not be reduced by the Commission's earning test.<sup>230</sup> Finally, RIC recommended the Commission establish a minimum annual funding level and a 10-year minimum funding commitment from the NUSF.<sup>231</sup>

The Performance Plan Companies addressed what they stated were issues that have been raised in the proceeding and the corresponding changes made to the Plan that address each issue.<sup>232</sup> The Performance Plan Companies made some adjustments to the out of town support calculation and added an input for operating expenses per company to recognize that there is a certain amount of administration and operational costs associated with running a company regardless of size.<sup>233</sup> They also affirmed that the Plan is flexible if the Commission believes that support for a particular level of service needs to be adjusted.<sup>234</sup> The Performance Plan companies further recommended the Commission establish a waiver process for a carrier who believes it will receive insufficient support to repay its debt. Finally, the Performance Plan Companies argue that the Plan does not represent a radical change from the current distribution mechanism.<sup>235</sup> The benefit, according to the Performance Plan Companies, is that companies with lower build-out levels must invest a greater proportion of their NUSF to building out broadband.<sup>236</sup>

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<sup>228</sup> See *id.* at 3-6.

<sup>229</sup> See *id.* at 7.

<sup>230</sup> See *id.*

<sup>231</sup> See *id.*

<sup>232</sup> See Post-Hearing Comments of the Performance Plan Companies (September 17, 2018) at 2.

<sup>233</sup> See *id.* at 2-4.

<sup>234</sup> See *id.* at 4-5.

<sup>235</sup> See *id.* at 7.

<sup>236</sup> See *id.*

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The RTCN supported a number of Commission proposals and suggestion some modifications. The RTCN supported the Commission's proposal to target support to rural areas.<sup>237</sup> The RTCN discussed the partially funded census blocks and recommended the Commission open a separate investigation to determine the best way NUSF might be used to serve the underserved areas.<sup>238</sup> The RTCN recommended the Commission clarify that it would remove census blocks where an unsubsidized competitor is offering wireline voice and broadband service rather than offers wireline voice and broadband service.<sup>239</sup> The RTCN supported the allocation between CapEx and OpEx support and urged the Commission to make clear that any allocation established as a result of this proceeding remain subject to modification based on a myriad of evolving facts and circumstances.<sup>240</sup>

The RTCN also supported the Commission's proposal to require carrier submit broadband deployment plans in advance of Commission approval.<sup>241</sup> To avoid unintended consequences, the RTCN recommended the Commission formally refer to such reimbursement as Broadband Deployment Support.<sup>242</sup> The RTCN expressed concerns with the proposed per-customer cap.<sup>243</sup> The RTCN believed the per-customer cap level seemed low.<sup>244</sup> In addition, the RTCN urged the Commission to reduce the process to writing and believed the process should be spelled out by rule and regulation or written policy rather than through an internal review process.<sup>245</sup> With respect to de minimis broadband deployment support, the RTCN further commented the Commission proposed threshold of two percent of total support

<sup>237</sup> See RTCN Post-Hearing Comments (September 17, 2018) at 2.

<sup>238</sup> See *id.* at 8.

<sup>239</sup> See *id.*

<sup>240</sup> See *id.* at 10.

<sup>241</sup> See *id.* at 11.

<sup>242</sup> See *id.*

<sup>243</sup> See *id.* at 12.

<sup>244</sup> See *id.*

<sup>245</sup> See *id.* at 13.

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seemed low and suggested the Commission increase that to a ten percent threshold.<sup>246</sup>

Further, the RTCN recommended the Commission reject the Performance Plan.<sup>247</sup> RTCN stated the Performance Plan is deficient in its accountability requirements and the proposal released by the Commission is superior in accountability.<sup>248</sup> In furtherance of this recommendation, RTCN recommended the Commission retain the NUSF EARN form to ensure that NUSF is not distributed to a carrier that receives too much federal support and is over-earning.<sup>249</sup> RTCN suggested the Commission consider making the NUSF EARN more robust to make sure that recent increases in federal support for certain carriers is being investing responsibly in deploying broadband-capable networks in Nebraska.<sup>250</sup>

The Nebraska Cost-Based Companies supported a number of the Commission's proposals. The Nebraska Cost-Based Companies recommended the Commission continue the use of the NUSF EARN Form, stating it has provided an incentive for carriers to invest in their networks.<sup>251</sup> The Nebraska Cost-Based Companies also supported the Commission's proposal to provide NUSF support for both operating expenses and capital expenses for eligible census blocks built out with broadband networks capable of 25/3.<sup>252</sup> The Nebraska Cost-Based Companies stated the Commission's proposal would allow carriers that have built out broadband networks capable of 25/3 to recover their initial investment cost.<sup>253</sup> In addition, companies that have fully built out their networks still continue to have capital expenses.<sup>254</sup> The Cost-based Companies supported the

<sup>246</sup> See *id.* at 14.

<sup>247</sup> See *id.*

<sup>248</sup> See *id.* at 15.

<sup>249</sup> See *id.* at 19.

<sup>250</sup> See *id.* at 22.

<sup>251</sup> See Post-Hearing Comments of the Nebraska Cost-Based Companies (September 17, 2018) at 2.

<sup>252</sup> See *id.* at 3.

<sup>253</sup> See *id.*

<sup>254</sup> See *id.* at 4.

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continuation of the Commission's historical practice of targeting NUSF capital support to non-urban areas.<sup>255</sup> The Cost-based companies opposed the adoption of the Performance Plan.<sup>256</sup> They stated the plan's results are seemingly inconsistent with its stated goal.<sup>257</sup> They further stated the results negatively impact those companies that are already meeting the plan's objective, meaning those already providing broadband service to consumers at speeds of 25/3 or greater.<sup>258</sup>

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

The Commission initiated this Progression Order to build upon the reforms triggered by the FCC in its Transformation Order of 2011.<sup>259</sup> Among the core principles of reform was the desire to increase accountability from companies receiving support to ensure that universal service support is targeted wisely and delivering intended results.<sup>260</sup> Another goal of reform was to use universal service support in the most efficient manner possible, including but not limited to targeting support to rural areas that lacked broadband availability and removing areas served by unsubsidized competitors. In 2015, the Commission took steps to reform the distribution mechanism for price-cap

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<sup>255</sup> See *id.*

<sup>256</sup> See *id.* at 5.

<sup>257</sup> See *id.*

<sup>258</sup> See *id.* at 6.

<sup>259</sup> See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*); *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>260</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al. Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3092, para. 7 (2016) ("2016 ROR Reform Order").

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carriers.<sup>261</sup> Over time, the Commission shifted 80 percent of the price cap carriers' allocated universal service support to a grant-based support mechanism to target support to areas lacking broadband availability, to areas where federal CAF support was not provided, and areas unserved by an unsubsidized competitor.

In rural high-cost areas, the FCC has also identified a "rural-rural divide, observing that some parts of rural America are connected to state-of-the art broadband, while other parts of rural America have no broadband access."<sup>262</sup> There appears to be similar variation of broadband deployment among ROR carriers in Nebraska as well as a myriad of ways ROR carriers have leveraged resources to provide the existing broadband capabilities to consumers. This diversity, and how to best address it in the scope of universal service reform, has presented challenges for commenters and the Commission. These challenges, including how to balance the need to sustain existing broadband deployments with the need to deploy new broadband services, have led to disagreements among carriers. We believe, however, that the competing desires to sustain existing broadband and deploy new broadband service are not mutually exclusive and that both serve the common goals and objectives of the NUSF program.

There are certain aspects of the Commission's proposal appear to have consensus among the ROR carriers, and, on a limited scale, among the other commenters in this proceeding depending on how they are implemented. We address those issues first.

A. *Use of the SBCM*

The Commission proposed using the SBCM as a starting point in the distribution mechanism stating its belief that it more accurately captured the costs of deploying the desired level of broadband service than the BCPM model previously used. The RIC commenters as well as RTCN commenters supported the use of SBCM. The RIC commenters stated the record developed in this proceeding supports the

<sup>261</sup> See *In the Matter of the Nebraska Public Service Commission, on its own Motion, to Administer the Universal Service Fund High-Cost Program*, NUSF-99, Progression Order No. 1 (September 1, 2015).

<sup>262</sup> See 2016 ROR Reform Order 31 FCC Rcd at 3089, para. 2, n. 5 (stating this observation is equally true among rate-of-return carriers).

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adoption of the SBCM, which was developed to determine the costs to deploy fiber-based broadband networks.<sup>263</sup> The RTCN commenters stated the SBCM provides a solid basis for the split between capital and ongoing support.<sup>264</sup> The Performance Plan companies endorsed the use of the SBCM in their own proposal as well.<sup>265</sup> Charter and Cox expressed their concern that SBCM inflates the cost of rural broadband overall, but stated they have no reason to conclude that its relative estimate of OpEx and CapEx is flawed.<sup>266</sup> Further, Charter, Cox and the RTCN commenters indicated that the Commission's proposal to migrate to a system where actual deployment costs were reimbursed was reasonable.<sup>267</sup>

Based on the comments submitted and the testimony provided at the hearing, we find no reason to depart from our June 2018 proposal to utilize the SBCM in the place of the BCPM to determine relative costs for building fiber-based broadband networks. The SBCM was derived from the A-CAM model used by the FCC to provide federal universal service support. The SBCM was developed to determine the costs to deploy fiber based broadband networks while the BCPM was not.<sup>268</sup> We find that the SBCM provides a more relevant cost allocation for the buildout goals previously announced by the Commission in its NUSF-100 proceeding.<sup>269</sup>

#### *B. Out-of-Town Census Block Eligibility*

We further find no reason to depart from our proposal relative to allocating support to out-of-town areas. This proposal matches the Commission's historic practice of

<sup>263</sup> See RIC Post-Hearing Comments at 8.

<sup>264</sup> See RTCN Post-Hearing Comments at 10.

<sup>265</sup> See Performance Plan Comments at 4; see also Post-Hearing Comments of the Performance Plan Companies at 2.

<sup>266</sup> See Charter and Cox Comments at 6.

<sup>267</sup> See *id.* at 5.

<sup>268</sup> See RIC Post-Hearing Comments at 8.

<sup>269</sup> See *In The Matter Of The Nebraska Public Service Commission, On Its Own Motion, To Consider Revisions To The Universal Service Fund Contribution Methodology*, NUSF-100/PI-193, ORDER AND ORDER SEEKING FURTHER COMMENTS AND SETTING HEARING (February 22, 2017) ("NUSF-100 February Order").

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targeting support to areas where costs are expected to exceed revenues carriers can generate from retail service offerings. We recognize there are varying ways to determine rural versus urban households.<sup>270</sup> However, we believe continuing with our current definition is the best alternative at the present time.

*C. Definition of Unsubsidized Carrier*

The Commission proposed to eliminate census blocks from NUSF eligibility where an unsubsidized competitor was offering broadband service of 25/3 Mbps.<sup>271</sup> The Commission further clarified that an unsubsidized competitor would be defined as a wireline competitor providing voice and broadband service in the census block.<sup>272</sup> With that clarification, CTIA was the main commenter opposed to this proposal. CTIA commented there was no reason to limit unsubsidized competitors to "wireline" providers.<sup>273</sup> Further, as 5G wireless service is deployed, according to CTIA, wireless carriers' performance will improve exponentially and the NUSF rules should be designed to recognize upcoming important technology changes that can benefit rural consumers.<sup>274</sup>

At some point in time we hope that alternative broadband technologies, such as the use of white spaces and 5G wireless service will be deployed in the rural out-of-town areas of Nebraska where NUSF support is targeted. We believe our current push for more broadband deployment in rural areas may enhance the promise of 5G deployment. However, for the present time, we find that wireline and wireless services are complementary services rather than substitutable broadband services. We have a recognized goal to push out scalable broadband technologies to into rural areas with current NUSF support and we find this mission is consistent with the NUSF

<sup>270</sup> See Charter and Cox Comments at 3.

<sup>271</sup> See June 19, 2018 Order at 4.

<sup>272</sup> See Hearing Exhibit No. 9. (Letter from Hearing Officer Frank E. Landis to Paul M. Schudel dated July 6, 2018).

<sup>273</sup> See CTIA Comments at 4.

<sup>274</sup> See CTIA Comments at 5.

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Act and legislative goals.<sup>275</sup> Likewise, we continue to support the deployment of wireless broadband and voice service separately in rural areas through our wireless infrastructure fund program.<sup>276</sup> In response to these criticisms, we note that the Commission has historically made NUSF support available through other mechanisms.<sup>277</sup> While we recognize universal service is an evolving level of service, we believe the deployment of scalable wireline technology in rural areas will be consistent with consumers' expectations of having broadband service options comparable to those offered in urban areas. Accordingly, based on the comments and testimony in the record, the Commission finds this portion of its proposal should be adopted. The Commission clarifies that as the RTCN recommended, it will remove census blocks where an unsubsidized competitor *is offering* wireline voice and broadband service.<sup>278</sup>

*D. Publication of Census Blocks*

The Commission proposed to publish a list of eligible census blocks on an annual basis. The list would be subject to a challenge process to allow for any corrections. This list of census blocks would serve as a basis for determining whether the census block meets the rural out-of-town definition, served by an unsubsidized competitor, or already

<sup>275</sup> See NUSF-100 February Order at 19.

<sup>276</sup> See generally, *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Nebraska Universal Service Fund Broadband Program*, Docket No. NUSF-92 (making NUSF support available for wireless infrastructure projects).

<sup>277</sup> See e.g., *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, NUSF-77, Progression Order No. 5 (November 21, 2011) (making NUSF grant support available to any broadband service provider and not limiting support to a certain type of carrier or technology); see also *In The Matter Of The Nebraska Public Service Commission, On Its Own Motion, Seeking To Establish A Long-Term Universal Service Funding Mechanism*, Docket No. NUSF-26, FINDINGS AND CONCLUSIONS, paras. 15-16 (November 3, 2004) (finding an applicant could petition the Commission to designate it as the supported network provider in lieu of the current designated provider in a service area or make the case that there should be more than one supported provider).

<sup>278</sup> See RTCN Comments at 5.

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served with broadband at speeds of 25/3 Mbps. There was general support for this proposal.

Some commenters asked the Commission to consider publishing the census blocks on a one-time basis, or publishing the census blocks every five years. With respect to these commenters, the Commission finds publishing this list of census blocks on an annual basis will help the Commission target support more accurately. In subsequent years, the list will not disqualify projects already approved for broadband deployment support already committed to a carrier in a prior year; however, it will account for areas that may be built out by competitors, or through other support mechanisms. Because of the limited number of census blocks involved, the Commission does not perceive this annual challenge process to be a significant burden on the Commission or the ROR carriers. The benefit of having updated data in the targeting of support, in the Commission's opinion, outweighs the potential burden imposed by an annual review. Accordingly, the Commission adopts its proposal relative to this issue.

#### *E. Ongoing Support*

Generally, most commenters agreed with the Commission's proposal to create an allocation between on-going and capital deployment support based on the SBCM allocation. RIC stated that continuing the provision of NUSF support for operating expenses is appropriate and supported by the record and the law.<sup>279</sup> Further, the RTCN stated that the SBCM provides a solid basis for the split recommended by the Commission.<sup>280</sup> There was some disagreement about the Commission's proposal to exclude ongoing support for census blocks that were excluded from the support calculation due to an unsubsidized competitor.<sup>281</sup> The Commission finds this exclusion to be an appropriate way to preserve competition in those areas by not creating what could be considered as an unfair advantage over the unsubsidized competitor through the use of support. Charter and Cox recommended the Commission first determine the statewide total allocation between ongoing support and

<sup>279</sup> See RIC Post-Hearing Comments at 8.

<sup>280</sup> See RTCN Comments at 10.

<sup>281</sup> See *id.* at 5.

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its grant-based system before allocating this total between individual carriers.<sup>282</sup> This recommendation is in line with the Commission's proposal.<sup>283</sup> Accordingly, the Commission finds this portion of its proposal should be adopted.

*F. Per-Location Cap*

The Commission initially believed a per-location cap would be a beneficial cost-control measure for NUSF supported deployment of broadband service in extremely high-cost areas. No commenter supported the proposed per-location cap. As previously stated by the Commission, the cap would have only impacted a small percentage of households. However, the Commission agrees with the commenters that a cap may deter broadband deployment to households that are costly to serve and are also in need of support. Consequently, we do not adopt our per-location cap proposal.

*G. Two-year Build-out Requirement*

The Commission proposed to give ROR carriers two (2) years to complete each broadband deployment project. Upon a showing of good cause, the Commission proposed the carrier could request an extension of this two-year period, not to exceed an additional 12 months, or three years total.

No commenter disagreed with our proposal in relation to the two year build-out requirement. Accordingly, we find this proposal should be adopted.

Next, we turn to the proposals that generated a more diverse response. Those issues include the broadband deployment allocation and how that funding mechanism should operate, the continued use of an earnings test, the Performance Plan offered as an alternative to the Commission's proposal, and the census blocks where the average cost to deploy fiber-to-the-home exceeds the current FCC funding cap.

*H. Broadband Deployment Funding Mechanism*

We find that a revised accountability framework is critical to ensure use of support is appropriate, and in the

<sup>282</sup> See Charter and Cox Comments at 7.

<sup>283</sup> See June 19, 2018 Order at 4.

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case of unserved areas, achieving broadband build-out in a timely and efficient manner. Although there were a number of commenters who recommended the Commission adopt a post-deployment reporting mechanism or plan, we believe the proposed framework, which would include a request for support in advance and payment of support upon documentation of deployment, best achieves the Commission's accountability and transparency goals.<sup>284</sup> Consistent with RTCN's concerns, we will consider support to be broadband deployment support rather than grant support. The Commission will work with carriers to determine the best manner to submit and process documentation for payment. The Commission directs the staff to create an electronic submission process where documentation can be reviewed and payments can be processed in a streamlined manner.

In addition, the Commission sought comment on a proposal to allow ROR carriers with small grant allocations, or *de minimis* allocations, to request to have those amounts distributed as ongoing support. The RTCN commenters supported this proposal but suggested that the Commission consider the *de minimis* threshold to be ten percent rather than two percent.<sup>285</sup> RTCN further suggested that if the Commission later determined that a lower percentage is more prudent that the Commission adjust that rate after notice and comment.<sup>286</sup> We agree with RTCN's recommendation and adopt a ten percent threshold as suggested. We would consider the ten percent threshold to apply to the carrier's total support allocation in a given calendar year. The Commission may revisit this *de minimis* threshold at a later date if it determines that a lower or higher percentage is more prudent.

#### *I. The Continued Use of an Earnings Test*

There was substantial disagreement over the continued use of an earnings test as proposed by the Commission in its June 2018 Order. The RTCN commenters and the Cost-Based

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<sup>284</sup> Some commenters advocated for a fixed ten-year funding commitment. While we understand the FCC has done that for the A-CAM carriers electing model-based support, there are substantial differences between the FCC and the Commission which makes a ten-year commitment untenable. The Commission accordingly declines to adopt that recommendation.

<sup>285</sup> See RTCN Comments at 9.

<sup>286</sup> See *id.*

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Companies supported the Commission's proposal to continue using the NUSF EARN Form in its distribution process. The A-CAM Companies as well as the Performance Plan Companies recommended discontinuing the use of an earnings test.

The Commission finds that for the present time, an earnings test should continue to be utilized as an accountability tool for substantiating the need for ongoing support distributed to the carriers. The Commission agrees with the commenters who have suggested modifications need to be made to overcome outdated accounting practices and include a more holistic picture of broadband investments.<sup>287</sup> Accordingly, the Commission further finds the Commission's NUSF-EARN Form reporting should be modified going forward to align the reporting requirements with the current environment. During that process the Commission will invite comments on whether certain adjustments to ongoing NUSF support are needed in situations where federal support provided to a carrier exceeds the average cost calculated by the SBCM. The Commission anticipates issuing a further Progression Order to modify its NUSF EARN Form process within the next few months.

#### *J. The Performance Plan*

The Performance Plan Companies took the initiative to develop a specific alternative plan for the Commission's consideration. There are a number of attributes in the proposed Performance Plan that the Commission believes are similar to its June 2018 proposal. Both proposals, for example, allocate NUSF support for broadband deployed and making broadband service available to consumers where broadband is lacking.<sup>288</sup> Both plans limit NUSF support costs for out-of-town areas as determined by the SBCM.<sup>289</sup> There were also distinct differences as the removal of the earnings test, reimbursement percentages for speed tiers such as 60

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<sup>287</sup> See Charter and Cox April Reply Comments at 7; see also RTCN March Comments at 6.

<sup>288</sup> See Performance Plan Companies' Comments at 4; see also June 2018 Order at 4-6.

<sup>289</sup> See *id.*

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percent of the NUSF allocation for speeds of 4/1 Mbps, and 50 percent of the NUSF allocation for unserved areas.<sup>290</sup>

Some commenters were critical of the Performance Plan. One main criticism was that the Performance Plan results negatively impacts those companies that are already meeting the plan's objective.<sup>291</sup> The RTCN commenters argued the Commission should reject the plan stating the Commission's proposal is superior in accountability.<sup>292</sup>

We agree with RTCN that at the present time, the Performance Plan does not meet the Commission's accountability objectives which include the broadband deployment fund allocation which would require an accounting of actual broadband buildout costs for the locations where support is targeted to meet the minimum speed goal of 25/3 Mbps and the retention of an earnings test. However, there are some aspects of the Performance Plan that have merit. Therefore, we will continue to give consideration to what we view as the positive Performance Plan characteristics and may draw upon some of its attributes going forward.

*K. Census Blocks Where the Average Cost to Deploy Fiber-to-the-Home Exceeds the Current FCC Funding Cap.*

The Commission considers the most controversial issue in this proceeding to be the issue relative to how we account for census blocks where the average cost to deploy fiber-to-the-home exceeds the current FCC funding cap of \$146.10 per location.<sup>293</sup> The A-CAM Companies elected A-CAM support largely because they saw an increase to their federal funding compared to their previous support under the former legacy system. However, not all ROR carriers could opt for A-CAM support, particularly those that had already built-out broadband to the point where they could provide speeds of

<sup>290</sup> See Performance Plan Companies' Comments at 9. (The Performance Plan Companies argued that companies continue to have carrier-of-last-resort obligations even for locations without broadband; thus expense reimbursement is appropriate. The 50 percent allocation was based on the SBCM cost breakout for expenses versus capital costs.)

<sup>291</sup> See Nebraska Cost-Based Companies' Post-Hearing Comments at 6.

<sup>292</sup> See RTCN Post-Hearing Comments at 14-15.

<sup>293</sup> Many of the commenters refer to these areas as the "partially funded census blocks."

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10/1 to over 90 percent of their customers. The A-CAM companies stated that they should not be penalized with less NUSF support because of this increase.<sup>294</sup> Further, they stated that compared to similarly situated companies across the country, Nebraska A-CAM recipients recover a relatively small portion of their total A-CAM costs with the support thus far made available by the FCC.<sup>295</sup> Charter supported the removal of A-CAM supported census blocks.<sup>296</sup> CTIA commented that the FCC is in the process of deploying additional A-CAM funding, so it is unclear how many areas will remain partially funded.<sup>297</sup> Ultimately, they recommended the Commission ensure that any NUSF support offered in these census blocks does not result in the carrier receiving more total support than is necessary to ensure universal service.<sup>298</sup>

To be clear, the Commission has no intent to penalize certain companies for elections made in response to the FCC's offer of A-CAM support. However, as many of the commenters have discussed, NUSF support is a limited resource.<sup>299</sup> The Commission's goal is to rationalize the support so that it is not duplicating federal support in certain areas and better account for support that is being provided specifically for broadband deployment.

We recognize that some carriers have seen an increase of federal support with concomitant broadband deployment obligations.<sup>300</sup> The Commission further understands that prior support mechanisms may not have incited new investment in the way that it was intended. We further recognize that other ROR carriers have seen a decrease in both federal and state support making it difficult for them to meet their

<sup>294</sup> See A-CAM Companies' Comments at 13.

<sup>295</sup> *Id.*

<sup>296</sup> See Charter and Cox Comments at 2.

<sup>297</sup> See CTIA Comments at 3.

<sup>298</sup> *Id.*

<sup>299</sup> See, e.g., Charter March Comments at 3; RTCN Comments at 8; and CenturyLink Post-Hearing Comments at 2.

<sup>300</sup> See, e.g., CTIA Comments at 2-3, Charter March Comments at 6. See also Charter and Cox Comments at 2.

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operational obligations.<sup>301</sup> While we hope that our recent contribution reform will restore funding levels that have decreased over the years, all measure of support must be rationally based, transparent, and properly accounted for.

Similar to the Performance Plan characteristics, the Commission also wants to allocate support to carriers based upon on where broadband service has been deployed. The Commission cannot overlook the importance of providing support to carriers that have borrowed or privately leveraged other capital resources to deploy broadband services to their customers and continue to have a need for NUSF support, particularly because those were the incentives on which the Commission expected carriers to base investment decisions. The Commission agrees with the Performance Plan commenters' statement that networks must continue to evolve and the speeds at which the support amounts are based must also increase.<sup>302</sup> At the same time, as indicated above, an earnings test remains important. The Commission's expectation would be that carriers utilize NUSF support for continued investment.

In the Commission's efforts to draw clear boundaries between federal supported and state supported broadband deployment, it was made apparent that the manner in which support will be used to meet the FCC's ten-year buildout obligations in Nebraska is still unclear. As Mr. Robbins indicated in his testimony, it is difficult for the Commission to discern where that investment will occur and where targeted support should be applied.<sup>303</sup> To further complicate this issue, the Commission knows the FCC is currently considering comments and requests for additional support in relation to both the legacy and the A-CAM carrier support mechanisms.<sup>304</sup>

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<sup>301</sup> See Testimony of Tonya Mayer, TR 102:7-11; Testimony of Randy Sandman, TR 108:14-22; and Testimony of Colleen Paden, TR 116:4-12.

<sup>302</sup> See Performance Plan Companies' Comments at 4.

<sup>303</sup> See Testimony of Cullen Robbins, TR 22:2-13.

<sup>304</sup> See *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking (March 23, 2018) ("FCC NPRM"). See also Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 (October 22, 2018) (recommending that the FCC fully fund separate budgets for the A-CAM program and legacy support mechanisms).

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Overall, however, enabling broadband deployment to reach those that lack access is a critical Commission goal-one that deserves more specific attention in the context of a plan for support. The Commission believes it can develop a way to allocate supplemental broadband deployment support in a manner that avoids duplication. However, a further record on this issue needs to be made.

The Commission finds it appropriate to adopt portions of its June 19, 2018 proposal as set forth above in sections A through J herein. Consistent with the findings in today's order, a separate progression order will be issued where the Commission will solicit comment from interested parties on how to provide targeted NUSF support for capped locations that may not otherwise be served with broadband at 25/3 even with the use of federal support.

Consistent with the findings in section D above, the Commission directs the staff to release the initial list of census blocks to commence the challenge process on or before November 26, 2018. All challenges must be filed with the Commission on or before 5:00 p.m. central time on January 11, 2019. Challenges must include the specific list of blocks being challenged and the basis for which the challenge is being offered. Examples of such grounds may include, but are not limited to, the following: 1) blocks that are served at 25/3 by the incumbent provider; 2) blocks that are served by a competitive wireline provider at 25/3 or greater which offers voice service; or 3) blocks that are incorrectly identified as being served at 25/3, and should be eligible for buildout support. Interested parties filing challenges to the staff's initial list of census blocks must file an electronic copy as well as a paper copy with the Commission on or before the deadline set forth above. Electronic copies may be sent to [Cullen.Robbins@nebraska.gov](mailto:Cullen.Robbins@nebraska.gov) and [Brandy.Zierott@nebraska.gov](mailto:Brandy.Zierott@nebraska.gov). In addition, copies of challenges must be served on any other carrier(s) whose census blocks may be affected by the challenge.

Unless otherwise subsequently determined, the Commission will release the vetted list of census blocks on or around January 29, 2019, along with an updated high-cost support schedule. Until the Commission's findings herein are implemented high-cost support amounts are considered interim and may be subject to true-up in 2019.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the findings and conclusions described herein be and they are hereby adopted.

IT IS FURTHER ORDERED that challenges to the initial list of census blocks must be filed on or before January 11, 2019, as prescribed herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 19<sup>th</sup> day of November, 2018.

NEBRASKA PUBLIC SERVICE COMMISSION

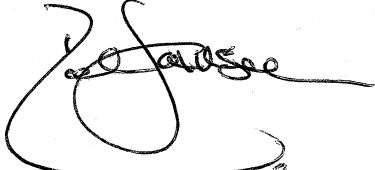
COMMISSIONERS CONCURRING:



Chair

ATTEST:

  
Executive Director

  
//s//Frank E. Landis  
//s//Mary Ridder

Commissioners Dissenting:

//s//Crystal Rhoades

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Commissioner Rhoades Dissenting:

I agree with many of the conclusions of this order and believe broadband deployment is critical to the economic viability of the state. I believe NUSF has the potential to help build additional telecommunications infrastructure I am concerned there are serious defects in this order which will inhibit broadband deployment in the most efficient and expeditious way as directed by the Nebraska legislature.

The Commission should make a decision as to whether or not partially funded census blocks not fully funded by the federal Connect America Fund should be permitted to access the Nebraska Universal Service Fund for the purposes of building out broadband networks. This is a critical question which will have significant funding implications for all of the carriers and is a question that should have been answered in this order. In my view, in order to treat carriers and customers fairly as well as meet the mandates of the legislature we must resolve that question before moving forward. While I appreciate there will be a progression order that intends to look at this question in the future it is my view that is insufficient action and does not guarantee a timeline for resolution of the question nor does it acknowledge that by leaving those carriers and customers in limbo we are doing them a disservice.

I agree that carriers should not be permitted to recover costs from the federal money and then again from the state and believe that reducing support on the basis of what federal funding was made available to carriers is prudent, efficient, and reasonable. I also agree that the continued use of the Earn Form will allow the Commission to attempt to create a framework for holding carriers accountable. My concern stems from the fact that there appears to be different accountability standards for the legacy carriers and A-CAM carriers. In the case of the A-CAM carriers their eligibility is reduced on a per census block based on federal support and the Earn Form. In the case of the legacy companies, their support is not reduced on a census block basis in the same manner as A-CAM carriers, as they are only subject to reductions based on their earnings accounted for on the Earn Form.

This creates a systemic inequity and has the unintended consequence of overcompensating companies for operational

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expenses and underfunding capital expenditures. This imbalance will leave few dollars available for deployment of new capital investments in broadband deployment as most of the allocations will be diverted to pay for projects already completed and which have been funded and supported through federal and state support.

A better approach would to balance federal support against NUSF support for both legacy and A-CAM companies. This is especially important given an order increasing federal support for legacy companies is imminent.

In my view there are still far too many unanswered questions and unresolved issues to proceed with this order and more time and discussion needs to be given to how the funding will be distributed.

Accordingly, I dissent.



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Commissioner Crystal Rhoades