BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion to make adjustments to the universal service fund mechanism established in NUSF-26.	)))))))	Application No. NUSF-50 ORDER Entered: May 13, 2008

BY THE COMMISSION:

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

By Application filed December 3, 2007 Hershey Telephone Cooperative (Hershey) seeks a waiver from the NUSF funding mechanism established in NUSF-26 as modified in NUSF-50. Notice of the Application appeared in The Daily Record, Omaha, Nebraska on December 6, 2007. No protests or interventions were filed. On April 16, 2008, the Commission held a hearing on Hershey’s application. Appearances were entered by Paul Schudel, representing Hershey, and by Shana Knutson, representing the Commission staff.

Hershey presented two witnesses in support of its waiver application. Mr. Rex Woolley is the General Manager of Hershey. Mr. Tim Eklund is a consultant with Consortia Consulting.

Mr. Woolley testified that in 2006, Hershey made the decision to convert from an average schedule to a cost based company for NECA settlements. Hershey’s decision was primarily driven by the decision to make investment to its plant to install a next generation IP switching platform which would provide its customers with the latest features and functionalities. Because of some delays, the cut over to the new platform did not occur until 2007. Because of the timing of this investment and the decision in the Commission’s NUSF-50 proceeding, Hershey’s 2008 high-cost fund support was completely eliminated. Hershey requests a waiver to shorten the lag between the test year and support year so that it may receive support in 2008. Specifically, Hershey would like the Commission to use its 2007 audited NUSF-Earn Form to calculate 2008 high cost support. This calculation would mean Hershey would receive $115,377 in high-cost support for the 2008 support year.

Mr. Eklund testified that in his opinion, Hershey experienced a very unique situation with its conversion from average schedule to cost in 2006 and the unanticipated delay in the Internet protocol switching platform in 2007. Mr. Eklund testified if Hershey were granted a waiver it would be highly unlikely that a precedent would be set and used to support a similar waiver request by another NETC.

Mr. Jeff Pursley, Director of the Nebraska Telecommunications Infrastructure and Public Safety (NTIPS) Department which administers the NUSF, testified in opposition to the waiver request. Mr. Pursley testified that he viewed Hershey’s waiver request to be based on a simple fluctuation in company earnings which can happen on a frequent basis. Mr. Pursley testified that he was concerned that a waiver here would create a precedent for other NETCs. In addition, Mr. Pursley testified that the Commission recently made significant cuts in high-cost support. Finally, Mr. Pursley stated that granting the waiver request in this Application appeared inconsistent with the Commission’s decision to cut high-cost support.

Based on Hershey’s Application and the testimony given at the hearing, the Commission is of the opinion and finds Hershey’s waiver request should be granted. The Commission believes that unique circumstances were demonstrated and that Hershey provided sufficient justification for the waiver. The Commission understands the staff’s concerns presented but believes based on the testimony of Mr. Woolley and Mr. Eklund, that the unique circumstances Hershey faced will unlikely occur with other NETCs.

Mr. Woolley’s testimony reflects that Hershey has been investing in its network consistent with the goals of universal service. Hershey replaced its switch to an Internet Protocol (IP) packet switch platform in 2007 and its customers are receiving the benefits of the plant upgrade, including 100 percent availability of broadband services to its customers. Hershey informed the Commission that it plans to replace its copper loops with fiber to the home. Hershey intends to use its NUSF high-cost support to defray the costs of its plant upgrades consistent with the purpose of the NUSF Act.

The Commission hereby finds that Hershey’s 2007 NUSF-Earn Form should be used to calculate 2008 and 2009 support year high-cost payments. Beginning with the 2010 support year, Hershey's high-cost support payments will again be calculated based on the same schedule as all other NETCs.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application for waiver filed by Hershey Cooperative Telephone be and it is hereby granted.

MADE AND ENTERED at Lincoln, Nebraska this 13th day of May, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

Commissioner Anne Boyle dissenting:

I write separately to dissent from the majority opinion. The circumstances described requesting a waiver were not adequate for two reasons. First, Hershey should be required to revisit its basic local exchange rates. Second, a decline in NUSF support alone is not evidence that a waiver should be granted.

Before any carrier requests further assistance from the NUSF, the Commission should require companies who have not increased their local rates to pursue that option first. Hershey testified at the hearing that it charges customers $17.50 for its basic local exchange rate. On December 19, 2006, the Commission revisited NUSF-50 increasing the minimum benchmark from $17.50 to a maximum of $19.95. Universal Service statutes state that rates should be comparable in all areas of the state. This does not mean that they must be equal. The word “comparable” recognizes that there may be differences in costs; however, it continues to ensure affordable rates for all ratepayers.

It is accepted that rural areas are more expensive to serve; however, in this case, the basic rate is lower than some urban areas for the same service. In NUSF-50, the Commission considered a rural benchmark rate of $19.95, an 11 percent increase from $17.95, which is the current average urban rate, as reasonably comparable to the urban rate. Therefore, the Hershey rate of $17.50 is less than the rural benchmark and is even less than the average urban rate of $17.95. Rates in some densely populated areas are $18.15. Actual costs in densely populated are generally less than rural areas. Ratepayers in densely populated areas should not be required to pay more for service and then contribute to the NUSF for those who do not, at least, take advantage of the range allowed.

Hershey could raise its local rates prior to receiving additional funds from the NUSF. NUSF-50 indicates that a rate of $19.95 is a reasonably comparable rate for rural service. The high-cost support model imputes that amount of revenue for Hershey out-of-town customers when determining overall high-cost support. Nothing precludes Hershey from including all customers in a general rate increase rather than solely out-of-town customers. It is inconsistent for Hershey to charge less than Commission implicitly calculated rates and then ask the Commission to provide additional funds. Customers should be charged their fair share for services before asking all ratepayers to cover more high-cost subsidies.

The Hershey witness testified that the company has approximately 689 access lines. It is recognized that an increase from $17.50 to the allowed $19.95, a $2.45 per month or 8.5 cents a day addition, will not make up the requested amount of $115,377.00 they seek; however, in good faith, the rates should reflect a demonstrated effort that all options have been considered prior to requesting additional support from all state ratepayers.

Setting that aside, it is not apparent that Hershey demonstrated a need for high-cost support. A decline in high-cost support is not the criteria for need. The witness testified that Hershey provided dividends to its stockholders this past year. The dividend amounts shown in late-filed Exhibit 8 demonstrate that Hershey is financially strong. Further, the reason Hershey is not currently receiving support is that the shareholders, by virtue of ownership of Hershey, realized a return on investment well above the 12% cap set by the Commission. While it was stated that dividends had not been received for some time, a conclusion could be that over time the company was overpaid and the dividend provided was a correction.

A struggling national economy does not promise that stockholders will continue to enjoy benefits of the past. Nor does the stock market guarantee constant or consistent revenues. Further, stockholders receiving revenue from a publicly subsidized company should not be compared to stockholders that receive revenue from private sector investments. The public has no choice in investment decisions.

Mr. Pursley testified that the determination for NUSF support can be cyclical and should not be compared to previous investment cycles. The elimination of support for the 2008 funding year was due to Hershey’s chosen, albeit delayed, investment cycle. The events, actions and inaction noted were based on Hershey’s decisions and not brought about by events outside of their control.

Finally, the Public Service Commission should not be required to force carriers to increase their rates. The carriers have been given a range to charge for services. The range allows an increase at their discretion. However, a Commission requirement to meet the benchmark must be considered.

In closing, it is the carrier’s responsibility to exhaust all avenues prior to requesting additional funds that burden all ratepayers. Carriers should charge at least the minimum and, in high-cost areas they should charge the maximum prior to any request for additional high-cost support.

Anne C. Boyle