BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program.	))))))	Application No. NUSF-99 ORDER SEEKING FURTHER COMMENT AND SETTING HEARING Entered: June 16, 2015

BY THE COMMISSION:

The Nebraska Public Service Commission (Commission) initiated this proceeding on October 15, 2014 to consider certain modifications to the high-cost funding mechanism in the universal service fund program. The Commission solicited comments on certain modifications affecting the carriers classified federally as price cap carriers.

In general terms, the Commission proposed to adopt a separate distribution mechanism for price cap carriers designed to target and track Nebraska universal service fund investments in broadband infrastructure. The Commission proposed to distribute support to price cap carriers outside the current distribution mechanism through a mechanism that was more comparable to the FCC's Connect America Fund.

Comments responsive to the Commission's Order were filed by Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink ("CenturyLink"); Charter Fiberlink-Nebraska, LLC ("Charter"); CTIA – The Wireless Association; Cox Nebraska Telcom, LLC; Citizens Telecommunications Company of Nebraska, d/b/a Frontier Communications of Nebraska ("Frontier"); the Rural Independent Companies ("RIC"); Sprint Communications Company LP, Sprint Spectrum LP, Nextel West Corporation, Nextel Boost West Corporation and NPCR, Inc. ("Sprint"); and Windstream Nebraska, Inc. ("Windstream").

CenturyLink did not believe the Commission should revise the manner in which high-cost support was allocated to price cap carriers. CenturyLink stated the creation of a separate fund for price cap carriers would likely lead to disparate mechanisms. CenturyLink emphasized that commenters supporting the Commission's proposal are ignoring the policy that the NUSF should be competitively neutral. CenturyLink further stated the funding from CAF Phase II will be insufficient to deploy broadband service to all Nebraskans in price cap service arears at the FCC mandated baseline speed of 10Mbps download and 1 Mbps upload ("10/1") The shortfall in federal support makes the provision of NUSF funding more critical to provide rural Nebraskans with comparable service in areas ineligible for CAF Phase II support. Finally, CenturyLink stated it was too early to provide detailed recommendations regarding how best to create an NUSF that is complementary to the FCC’s CAF II. CenturyLink recommended the Commission maintain both a grant program and the NUSF.

Charter also recommended a cautious approach stating support under the FCC’s CAF implementation was not yet quantifiable. Consequently, Charter recommended that the Commission wait until the effects of the CAF implementation are fully understood prior to taking further steps to subsidize broadband deployment. Charter stated NEBP funds should not be used for overbuilding or funding network improvements in areas served by facilities-based competitors that do not receive subsidies. In its reply comments, Charter reminded the Commission that areas ineligible for Phase II model support are not “unfunded” as they may become subject to Phase II competitively bidding or, in the case of extremely high-cost areas, be supported through the Remote Areas Fund.

CTIA endorsed the general guidelines for reform. Specifically, CTIA recommended the Commission update the NUSF mechanism and better coordinate state funding with recent changes to the federal high-cost mechanism. Further, CTIA stated the Commission’s reforms should limit state high-cost support to those locations that do not currently have an unsubsidized competitive broadband provider offering service to help ensure that NUSF funds are used efficiently and targeted to where such funds are needed. CTIA reiterated in its reply comments that the Commission should act expeditiously in its reform efforts.

Cox supported the Commission’s effort to align the NUSF with federal principles. To that end, Cox strongly recommended the Commission avoid using NUSF support to overbuild or fund network improvement in service areas where unsubsidized facilities-based competitors are already offering comparable services. Cox supported the general CAF principle that universal service support should be eliminated in areas where an unsubsidized competitor offers comparable service. Further, Cox stated carriers should not be able to receive NUSF money where CAF money has been awarded to support an area. Cox advocated the Commission align its audit requirements with the CAF by requiring explicit documentation showing funds are being used for their intended purposes. In reply comments, Cox agreed with Sprint that in the absence of change, carrier may have a disincentive to seek federal CAF funding since it comes with explicit obligations, knowing that they can instead receive NUSF support.

Frontier stated the Commission achieves carrier-type equity today by using the same funding mechanism for both price cap and rate-of-return carriers. The Commission should be hesitant to adopt changes that may inequitably impact customers. Frontier stated the focus of the NUSF and the CAF are complementary today. As a result, Frontier stated the Commission should not move forward with any changes at this time absent a showing that the existing allocation methodology is flawed. In its reply comments, Frontier argued the Commission should not eliminate NUSF funding in areas where CAF II funding is provided as the NUSF funding and CAF II support mechanisms are not duplicative.

The RIC group recommended revisions in the manner in which high cost support is allocated to price cap carriers. RIC believed many of the factors that caused the FCC to separately consider the provision of CAF II support to price cap carriers should receive consideration by the Commission in this proceeding. RIC recommended the Commission establish separate budgets for price cap and rate-of-return carriers so it can focus the price cap carrier NUSF budget on those price cap areas not supported by CAF II. In response to other commenters, RIC stated that waiting until all carriers are under CAF Phase II will simply delay the accomplishment of the Commission’s goal of coordinating state and federal funding for an indeterminate period of time. RIC recommended the Commission use the CACM for the purposes of developing costs associated with the deployment of networks capable of supporting both voice and broadband services. RIC also recommended the Commission wait for further analysis of support provided under the CAF II to price cap carriers. Using a broadband grant approach similar to the NUSF-92 approach may be a reasonable policy to pursue. RIC further stated if the Commission were to adopt a grant-based process for the provision of NUSF support to price cap carriers, the NUSF-EARN form will likely have little use in determining distribution for such support. Accordingly, the Commission would need to develop new processes to ensure that monies are expended in the designated areas for the approved investments.

Sprint commended the Commission for taking action to re-evaluate the current NUSF high-cost support mechanism to ensure it is administered consistently with federal programs. Sprint encouraged the commission to take steps to align the NUSF mechanism with federal reforms. Sprint recommended the Commission restrict or eliminate support to a price cap carrier that does not take advantage of CAF II funding. Sprint also recommended that NUSF support be eliminated in areas where there are unsubsidized competitors.

Windstream also commended the Commission for exploring revisions to the state high-cost fund that may suitably complement the FCC’s CAF efforts. Windstream stated that state universal service reform is needed. Windstream recommended fixing price cap carrier support for at least the next 6-7 years -- the same time frame as the CAF Phase II support commitment -- at 2015 allocation levels as part of a transition to a new price cap carrier support program. The allocation should be based on each price cap carrier’s 2015 percentage allocation from the fund. This approach will provide critical certainty for funding levels in the budget years after 2015 for carriers serving high-cost areas. Windstream further recommended the Commission focus state funding on remote locations that will not receive federal support to ensure those locations continue to receive supported fixed voice service, and then use remaining funds to provide support for fixed broadband deployment that otherwise would not occur. Windstream also stated the Commission should absolve price cap carriers from state COLR obligations in locations not supported by NUSF.

Further Questions for Consideration

In this Progression Order, after consideration of the initial and reply comments filed, the Commission seeks further comment on its proposal to restructure the NUSF by separately determining price cap carrier support going forward. As one commenter notes, the FCC considered the ‘rural-rural’ divide when structuring the CAF. Specifically, the FCC found that some parts of rural America are connected to broadband while other parts of rural America have no broadband access.[1] The FCC then took action in the 2011

[1] The FCC found that more than 83 percent of the 18 million Americans who lacked access to fixed broadband services were in price cap study areas while 17 percent were in rate-of-return study areas. *See In the Matter of*

Transformation Order to target universal service support to rural areas where it was needed, especially areas served by price cap carriers.[2]

The Commission further notes that price cap carriers have unique challenges, serving very rural and remote areas as well as urban populations where they face competitive pressures. In addition, due to the multi-state operations of price cap carriers, it can be difficult for the Commission to track the use of NUSF support for the expansion of broadband access deployed by price cap carriers in Nebraska.

The Commission wants to create policies that incent carriers to make appropriate investment decisions in Nebraska and extend broadband access where it is needed. Similarly, pursuant to Neb. Rev. Stat. § 86-134, carriers are required to continue to provide voice service throughout their service territory. The Commission recognized the need for ongoing support to those areas not eligible for FCC model-based CAF funding to ensure the continued general availability of voice services in these areas.

Accordingly, the Commission continues to seek further comment on a proposal to separately determine price cap carrier support in a manner that is more consistent with the FCC's CAF mechanism.

Specifically, the Commission seeks comment on a proposal which would:

1. Freeze the amount of support allocated to all price cap carriers at the 2015 calendar year level with adjustments based upon overall NUSF remittance receipts.

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the Connect America Fund, et al., WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, para. 127 (November 18, 2011).

[2] We believe based upon the results posted by the FCC, price cap carriers will receive an estimated $13 million in CAF Phase II support in Nebraska. The proposed support amounts vary by provider. See https://www.fcc.gov/wcb/CAM_4.3_Results_Final_042915.xlsx (last visited on May 29, 2015).

2. Make an allocation of ongoing support to price cap carriers for continued maintenance of existing voice and broadband networks.
   a. The Commission proposes to set aside 50 percent of each price cap carrier’s frozen support for ongoing costs of provisioning service in Nebraska. The Commission would permit price cap carriers to make a showing to the Commission for an alternative allocation of the frozen high-cost support needed in connection with the continued provision of voice service upon request and thereby potentially adjust the allocation for broadband support set forth in paragraph 3 below.
   b. The Commission proposes the allocation of ongoing support would be subject to continued investment by the carriers in their network.
   c. The Commission proposes to relieve price cap carriers from the NUSF-EARN Form filing requirement.
   d. The Commission proposes to establish an alternative approach for determining whether the NUSF support used by price cap carriers was used for its intended purpose, keeping in mind the statutory requirement to audit, on an annual basis, the use of NUSF high cost support received.
3. Make an allocation for broadband support in price cap areas.
   a. The Commission proposes to establish a streamlined process for price cap carriers to annually present a list of the projects for which broadband funding is desired and have the Commission review, and approve or deny the projects.
   b. The Commission proposes to permit price cap carriers to coordinate the use of state high-cost support with their CAF Phase I frozen high-cost support and CAF Phase II support.
   c. Consistent with the position of a number of commenters, the Commission proposes to disallow broadband support in areas that already have an unsubsidized carrier providing comparable broadband service.

In addition, the Commission seeks comments on issues raised by the commenters in this proceeding not specifically listed above. The Commission solicits comments on whether to restrict or eliminate a price cap carrier's ability to take NUSF support if the carrier declines to take advantage of the CAF II funding for Nebraska. If so, what should the threshold be? How would that coincide with the Commission's separate requirement to fulfill the goals of the NUSF Act, specifically in the voice service context?

Comments and Hearing

The Commission requests that interested parties provide comments responsive to the issues raised above on or before **June 30, 2015**. Reply comments may be filed on or before **July 14, 2015**. Commenters should file one (1) paper copy and one (1) electronic copy of their Comments with the Commission. Electronic copies should be sent to Sue.Vanicek@nebraska.gov and Brandy.Zierott@nebraska.gov.

A hearing on these issues will be held on **July 21, 2015** at 1:30 p.m. central time, in the Commission Hearing Room, 1200 N Street, Suite 300, Lincoln, Nebraska 68508. The hearing will be held in legislative format. If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Commission at (402) 471-0213 (TDD) or the Nebraska Relay System at (800) 833-7352(TDD) or (800) 833-0920 (Voice). Advance notice of at least seven (7) days is needed when requesting an interpreter.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that comments and reply comments responsive to the foregoing questions and issues may be filed on or before **June 30, 2015 and July 14, 2015**, in the manner prescribed herein.

IT IS FURTHER ORDERED that a public hearing on this matter will be held on **July 21, 2015**, at 1:30 p.m. in the Commission Hearing Room, 1200 N Street, Suite 300, Lincoln, Nebraska 68508

MADE AND ENTERED at Lincoln, Nebraska this 16th day of June, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

Chairman Gerald L Vap

Crystal Rhoades

ATTEST:

Rod Johnson

Deputy Director

//s//Frank E. Landis
//s//Gerald L. Vap