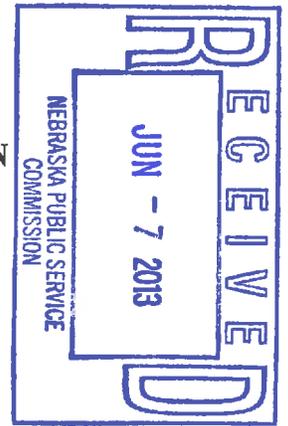


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of the) Application No. NUSF-77
Nebraska Telecommunications Association) Progression Order No. 8
for Investigation and Review of Processes)
and Procedures Regarding the Nebraska)
Universal Service Fund.)



REPLY COMMENTS OF THE RURAL INDEPENDENT COMPANIES

I.
INTRODUCTION

The Rural Independent Companies (“RIC”) submit these Reply Comments in response to the Commission’s Order Seeking Comment entered in this proceeding on April 23, 2013.¹ RIC appreciates the opportunity to provide the following Reply Comments to the Commission.

In Progression Order No. 7, entered on January 15, 2013, the Commission found that the support used for the dedicated wireless fund program (NUSF-69) should be transitioned over a four year period into the NEBP beginning during the 2014 calendar year.² In the *P.O. #8 Order*, the Commission seeks comments on whether it should reconsider its decision to transition this support over four years, and instead, accelerate the combination of these programs.

On May 21, 2013, in addition to comments submitted by RIC, the Commission received comments from Charter Fiberlink-Nebraska, LLC (“Charter Comments”), Citizens

¹ *In the Matter of the Petition on the Nebraska Telephone Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Application No. NUSF-77, Progression Order No. 8, *In the Matter of the Nebraska Public Service Commission on its Own Motion Seeking to Implement Policies and Procedures Related to Providing Dedicated Universal Service Support for Wireless Telecommunications Services*. Application No. NUSF-69, Order Seeking Comment, April 23, 2013, (the “*P.O. #8 Order*”).

² *In the Matter of the Petition on the Nebraska Telephone Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Application No. NUSF-77, Progression Order No. 7, January 15, 2013 at 12 (the “*P.O. #7 Order*”).

Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (“Frontier Comments”), Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (“CenturyLink Comments”), The Rural Telecommunications Coalition of Nebraska (“RTCN Comments”), and N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (“Viaero Comments”).

II. RESPONSES TO FILED COMMENTS

RIC,³ CenturyLink⁴ and Frontier⁵ all urge the Commission to combine the DWFP into the NEBP in a single step in 2014. RTCN⁶ supports acceleration of the timeline for combining the programs, but does not speak to how quickly the transition should occur. Although Viaero supports the Commission’s decision to combine the DWFP with the NEBP, the acceleration of such combination is conditioned on increased funding.⁷ Only Charter believes the Commission should not merge the programs.⁸

Charter makes the following three points against the Commission’s proposal to merge the DWFP with the NEBP:

1. The Commission does not have experience to determine how the merger of the NEBP and the dedicated wireless fund program would affect the ability to realize those programs’ objectives.

³ RIC Comments at 2.

⁴ CenturyLink Comments at 5.

⁵ Frontier Comments at 2.

⁶ RTCN Comments at 3.

⁷ Viaero Comments at 1-2.

⁸ Charter Comments at 2.

2. The NEBP employs a broadband standard of 4/1 Mbps while the DWFP has a much less robust standard.
3. The Commission has not resolved the problem that funds are being used for overbuilding in areas subject to unsubsidized competition.

With regard to Charter's first argument, since the fundamental goal of the Commission with regard to the DWFP as well as the NEBP, is to encourage the deployment of broadband, it is reasonable and prudent policy making for the Commission to combine these two programs for the purpose of facilitating the realization of the Commission's goal of ubiquitous broadband availability in the State based upon a uniform broadband definition. Charter does not provide any rationale to support a claim that maintaining two separate programs would be more advantageous than combining the two programs in an effort to facilitate the realization of the Commission's aforementioned goal.

CenturyLink, RTCN, and RIC all believe that combining the DWFP and the NEBP would be more efficient for the Commission as the Commission could eliminate the duplicative NUSF-69 process.⁹ The Commission could continue to meet its goals, including universal access to wireless telecommunications and broadband service, by targeting support for wireless and wireline broadband in the NUSF-77 proceeding.¹⁰

In addition to being administratively more efficient as previously addressed by combining the two programs, all broadband providers, including mobile and fixed providers, would be eligible to apply for NEBP funding and applications for support would be scored, ranked, and awarded funding based upon the same Commission-approved criteria.¹¹ In addition,

⁹ RIC Comments at 4, CenturyLink Comments at 2, and RTCN Comment at 3-4.

¹⁰ RIC Comments at 4.

¹¹ RIC Comments at 5 and CenturyLink Comments at 2-3. However, RIC continues to urge the Commission to develop a weighting and/or ranking mechanism for each of the criteria it has

by applying the 25% matching requirement to \$5 million that would be added to the NEBP through combining the two funds, an additional \$1.25 million in matching will be available annually to bring broadband to underserved and unserved areas of the state.¹² Maintaining two separate programs as suggested by Charter would eliminate the advantages identified by RIC, CenturyLink, and RTCN that will be realized if the programs are combined.

Charter's second argument actually lends support for merging the two funds. Since the Commission has found that it is important to encourage broadband deployment in its statements of policy regarding the DWFP, and to establish a uniform definition of broadband at the minimum speed thresholds of 4/1 Mbps, both RIC and RTCN believe that as demand for higher broadband speeds continue to increase, it makes sense to require broadband at the minimum speed thresholds of 4/1 for all grant projects and for the Commission to continue to reevaluate on a periodic basis whether such threshold should increase.¹³

With regard to the third issue identified by Charter, RIC agrees that funding should not be provided for fixed broadband service where such service already exists or for mobile broadband service where mobile broadband service already exists.¹⁴ However, Charter cannot demonstrate that the issue or risk of overbuilding where service already exists would decrease with the continued existence of two separate funds, rather than one combined fund targeted for deployment of broadband in unserved and underserved areas. In fact, it would be logical that

listed as part of its review process in advance of seeking applications in order to provide a more structured and streamlined review process. RIC Comments at 8.

¹² RIC Comments at 5, Century Comments at 3, and RTCN at 4.

¹³ RIC Comments at 6 and RTCN Comments at 4.

¹⁴ The Commission has found that comparable access could mean universal service access to one fixed and one mobile broadband provider. See the *P.O. #7 Order*, at 11.

combining the funds would make administration easier and reduce the likelihood that grant funding could be approved for overbuilding an area. Further, although the Commission has previously stated that it will rely heavily on information provided by the applicant in determining whether an area is unserved or underserved,¹⁵ the Commission also stated that it will consider any conflicting information provided by intervenors or protestants which may be involved in the review process.¹⁶ If Charter or any other broadband provider possesses facts that demonstrate an applicant's proposed area is already served with broadband, it may provide the Commission with such information.

Viaero conditions its support to merge the DWFP with the NEBP based upon an allocation of an additional \$10 million from the NUSF. Viaero provides no support to indicate whether the NUSF has additional funding capabilities, and if it does not, the separate funding source for the \$10 million increase that Viaero proposes.

Viaero argues that, "by merging the two funding mechanisms, the overriding consideration of the Commission should be the most cost effective and efficient means of delivering broadband service, regardless of technology."¹⁷ Further, Viaero argues that, "any artificial or non-economic allocation methodology which does not heavily weight costs of deployment on a per-subscriber basis will not satisfy the Commission's funding responsibility to prudently marshal the scarce public resources managed by the Commission in the two funds."¹⁸

¹⁵ *In the Matter of the Petition on the Nebraska Telephone Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Application No. NUSF-77, Progression Order No. 5, November 21, 2011, at 8.

¹⁶ *Id.*

¹⁷ Viaero Comments at 4.

¹⁸ *Id.*

Viaero acknowledges that three of the six criteria measured and weighted by the Commission assign the lowest priority to areas with the lowest population density, which according to Viaero, is economically logical when the prioritization objective is to serve the greatest number of Nebraskans.¹⁹ Conversely, Viaero argues that the Commission's scoring criteria will overlook areas of the state that lack residential households, but are popular areas for work, travel and recreation and that a lower likelihood of grant approvals for such areas will be to the detriment of public safety.²⁰ It is, therefore, unclear whether Viaero is advocating that projects be evaluated and prioritized for funding based on an economic, cost-per-household basis or on alternative criteria such as demand in unpopulated, unserved recreational areas. This contradiction provides the perfect example of why the Commission should have flexibility in awarding grant funding. However, regardless of whether a proposed project is evaluated based upon the number of customers which can be served for the lowest dollar total or the extent of unserved areas which can be served with grant funds, RIC reiterates its recommendation that the Commission should develop a more transparent weighting and/or ranking mechanism for each of the criteria utilized in the review process and issue an Order stating such so each applicant can design its projects to better conform to the Commission's desired network outcomes.

In regard to the 25% matching requirement, Viaero claims that the matching requirement "will significantly deter investment in unserved areas and thereby slow down the Commission's ability to reach more consumers and a faster pace."²¹ Viaero's argument is baseless. Viaero

¹⁹ Viaero Comments at 5.

²⁰ *Id.*

²¹ Viaero Comments at 8.

cannot support its claim that the 25% matching requirement will deter investment. In fact, one only needs to look at the scope of Viaero's own 2012 NEBP application as well as the list of 16 applicants, including Viaero, for the 2013 NEBP funding²² to conclude that many providers are ready and willing to invest 25% of the proposed project costs, on multiple projects, to deploy broadband service to unserved and underserved areas of Nebraska. The areas which are eligible for NEBP grant funding are unserved and underserved because no business case exists for a company to build broadband-capable infrastructure in those locations. Under Viaero's recommendation where no match is required, a carrier could build in areas where little or no revenue will be received, shifting the entire risk of the project to the NEBP.

Further, by combining the two funds, an additional \$5 million in support will be subject to the 25% match requirement of the NEBP. This requirement will add \$1.25 million of matching capital infrastructure to increase the amount of infrastructure built each year. More consumers will be reached with broadband service at an accelerated pace because of this additional matching requirement.

Finally, Viaero suggests that rural LECs may be at an unfair advantage in meeting the 25% matching requirement when operating under a rate-of-return regulatory methodology because of the assurance of other support mechanisms.²³ Viaero has received more federal high-cost support in Nebraska for 2012 than any rural LEC in Nebraska²⁴ and has also been awarded the second-highest Federal Mobility Fund support amount in the Nation and the most in

²² See, http://www.psc.state.ne.us/ntips/ntips_nusf_nusf77.html.

²³ *Id.* at 7.

²⁴ See, <http://www.usac.org/hc/tools/disbursements/results.aspx>.

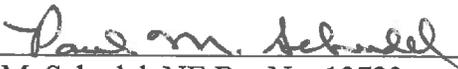
Nebraska.²⁵ If any advantage currently exists with regard to receipt of state and federal broadband support, it is in favor of Viaero.

III. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide the foregoing Reply Comments in response to the comments filed by interested parties in response to the *P.O. #8 Order*.

Dated: June 7, 2013.

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²⁵See, Public Notice, *Mobility Fund Phase I Auction Closes Winning Bidders Announced For Auction 901*, DA 12-1566, Attachment A (rel. Oct. 3, 2012).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of June, 2013, an electronic copy of the foregoing pleading was delivered to:

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A handwritten signature in cursive script that reads "Paul M. Schudel". The signature is written in black ink and is positioned above a horizontal line.

Paul M. Schudel