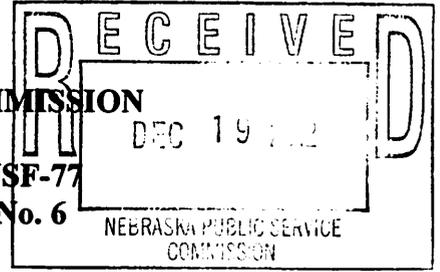


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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION



**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.**) **Application No. NUSF-77**
) **Progression Order No. 6**
)
)
)

COMMENTS OF THE RURAL INDEPENDENT COMPANIES

**I.
INTRODUCTION**

The Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Commission’s Order Establishing a Procedural Schedule and Setting Hearing entered in this proceeding on November 7, 2012.² RIC appreciates the opportunity to provide the following Comments to the Commission.

In the *P.O. #6 Scheduling Order*, the Commission adopted a procedural schedule for addressing the issues set forth in Progression Order No. 6. The Commission asked the Commission’s Staff (the “Staff”) to make recommendations on the issues outlined in Progression Order No. 6 and to release the Recommendations no later than November 13, 2012 (the “*Recommendations*”). The Commission set a hearing date for December 4, 2012 to receive testimony regarding the *Recommendations* and responses from interested parties regarding the

¹Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Co., Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

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. 6, Order Establishing a Procedural Schedule and Setting Hearing, November 7, 2012, (the “*P.O. #6 Scheduling Order*”).

Recommendations. The Commission further ordered that parties desiring to file post-hearing comments could do so on or before December 19, 2012.

II.

THE COMMISSION'S QUESTIONS, THE *RECOMMENDATIONS* AND RESPONSES THERETO

In the *Recommendations* and during the December 4, 2012 hearing, the Staff, represented by Sue Vanicek, Director of Nebraska Telecommunications Infrastructure and Safety Department, explained the *Recommendations* concerning the following groups of issues or single issues.

Issues 1, 2, 6 and 12

1. **Should the goals adopted in 2002 relative to the high-cost funding mechanism be amended or expanded based on the goals of the NEBP as set forth in this proceeding?**
2. **Specifically, should NUSF goal 3 be revised to incorporate a requirement of comparable access to broadband, and should NUSF goal 5 be revised to encourage deployment of infrastructure capable of supporting broadband delivery to consumers?**
6. **Should the Commission's goals be modified to incorporate objectives of the National Broadband Plan created by the Federal Communications Commission?**
12. **In what other respects should the existing NUSF goals be modified, reduced or expanded to more explicitly reflect the policies of the Act to support advanced and information services?**

In the *Recommendations* regarding Issues 1 and 2, the Staff specifically addressed the following two goals for the Nebraska Universal Service Fund (the "NUSF") established in 2002:

1. *The Commission should establish sufficient, specific and predictable state support mechanisms; and*
3. *The Commission should ensure that all Nebraskans have comparable access to quality telecommunications and information services, including interexchange services, advanced telecommunications and information services.*

Based on the comments received from interested parties, the Staff recommended that the Commission modify Goal 1 by adding the term “broadband service” to the goal. The goal would therefore be modified to read:

*The Commission should establish sufficient, specific and predictable state support mechanisms for universal availability of voice telecommunications services and of broadband service.*³

At the hearing, RIC offered its support for this Staff recommendation and requested that the Commission adopt such recommendation.

The Staff further recommended that the Commission use the definition of “broadband” adopted in Progression Order No. 4 entered in this Docket, which is 4/1 Mbps, and recommended that the speed thresholds be re-examined from time to time.⁴ RIC offered support for the use of the 4/1 Mbps speed standard as a basis for the initial definition of broadband. However, RIC recommended that the Commission specify a more definite period in which to review the standard – such as not less than every three years rather than “from time to time.”⁵

With respect to Goal 3 related to comparable access, the Commission asked whether this goal should be revised to incorporate a requirement of reasonably comparable access to broadband. The Staff recommended that the Commission clarify that comparable access means universal broadband service access to one fixed and one mobile broadband provider. The Staff further recommended the Commission make a finding that reasonably comparable access to quality telecommunications service remains the primary goal of universal service and

³ *Recommendations*, p. 3.

⁴ *Id.*

⁵ *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. 6, Transcript of Public Hearing, December 4, 2012 (the “Transcript”), p. 32.

accordingly must be achieved.⁶ In its Comments, RIC supported a modification of Goal 3 to include a minimum goal of comparable access to information services so that all Nebraska consumers have broadband available at speeds of at least 4/1 Mbps from one fixed and one mobile broadband provider.

Viaero's witness, Mr. Newell, testified that the Commission should define comparable access to also mean access to multiple providers of mobile service.⁷ Section 86-323 of the Nebraska Telecommunications Universal Service Fund Act declares that it is the policy of the state for consumers in all regions of the state, including those in rural and high-cost areas, to have access to telecommunications and information services, that are reasonably comparable to those *services* provided in urban areas and that are available at rates that are reasonably comparable to rates charged for *similar services* in urban areas.⁸ Noticeably absent from this statute is language that supports Mr. Newell's suggestion that comparability should be measured by the number of providers offering those services.

In establishing the Mobility Fund, the Federal Communications Commission ("FCC") stated that it would not subsidize competition through universal service in areas that are challenging for even one provider to serve and, therefore, Mobility Fund Phase I would only seek to expand mobile broadband where no mobile provider currently offers such service.⁹ RIC

⁶ *Recommendations*, p. 3.

⁷ *See*, Transcript, pp. 40-41.

⁸ *Neb. Rev. Stat.* § 86-323(3).

⁹ *See, Connect America Fund; A National Broadband Plan for Our Future*; WC Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 F.C.C. Rcd. 17663, para. 319 (2011) (the "*Transformation Order*").

believes that this is a reasonable approach and in the interest of Nebraska consumers given limited NUSF resources and the sparse population that exists in much of the State.

While recommending no specific changes to Goal 3, the Staff did ask that the Commission clarify that “information services” and “advanced telecommunications services” include broadband service as defined by the Commission. RIC urges the Commission to adopt this important clarification so that the Commission is clear with its position that broadband service is both an information service and an advanced telecommunication service. This will be a significant declaration in the future when the Commission considers the scope of its jurisdiction to expand the contribution base for the NUSF program.

In regard to the question as to whether a portion of Nebraska Broadband Pilot Program (“NEBP”) funding should be set aside to promote broadband adoption, the Staff recommended that the Commission lacks authority to utilize NUSF support for broadband adoption given the statutory language found in Section 86-324.¹⁰ Rather, the Staff recommended focusing NUSF support on the building of infrastructure to provide adequate broadband service and continuing to use the broadband adoption grant support from the stimulus grant received by the Commission until 2014.¹¹ RIC continues to agree with this recommendation.¹²

Issues 3, 4, 5 and 9

3. Should the NEBP be modified into a permanent fund to provide grants for infrastructure to provide advanced and information services, including broadband, to consumers located in unserved and underserved areas of the State?

¹⁰ See, *Recommendations*, p. 4. The relevant portion of *Neb. Rev. Stat. § 86-324(1)* states, “A telecommunications company that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”

¹¹ *Recommendations*, p. 4.

¹² See, Transcript, pp 33.

4. How much funding should be committed to the NEBP in order to fulfill its goals?

5. Should the Commission consider combining the goals for the NEBP with the goals of NUSF-69 and combining the two programs into one technology neutral grant program?

9. Is the structure of the NEBP program and its approval mechanism appropriate for the successor fund?

The Commission solicited comments as to whether the NEBP should be continued on a going-forward basis, and offered that it may be appropriate to combine the Dedicated Wireless Fund with the NEBP. The Staff recommended that the NEBP and the Dedicated Wireless Fund be merged over a four-year transition period. The Staff also recommended that the Commission continue to utilize the existing methodology for allocations of NEBP support in 2013.¹³

RIC supports combining the Dedicated Wireless Fund with the NEBP. In RIC's Comments and Mr. Davis' testimony, RIC recommended and supported a future level of NEBP funding consisting of the current NEBP annual allocation of \$4 million, plus transfer of the current Wireless Fund amount of \$5 million to the NEBP. RIC explained that if the current requirement of the 25% match for NEBP grants is applied to the combined funds, an additional \$3 million would be available annually for broadband infrastructure build-out to extend broadband to unserved or underserved areas of the state.¹⁴

Since the fundamental goal of the Commission with regard to the Dedicated Wireless Program, as well as the NEBP, is to encourage deployment of broadband, RIC recommended that the Commission combine the two programs for the purpose of facilitating the realization of the Commission's goal of ubiquitous broadband availability in this State, and recommended a

¹³ *Recommendations*, p. 4.

¹⁴ *See*, Transcript, pp. 33-34.

two-year transition to complete combination of these two funds, meaning the transition would be completed by EOY 2015.¹⁵

Commissioner Landis asked RIC's witness, Mr. Davis, if RIC was concerned about any negative implications of merging the Dedicated Wireless Fund into the NEBP.¹⁶ Mr. Davis explained that RIC's position does not in any way limit or eliminate a mobile provider's ability to apply for NEBP funds following merger of the Programs.¹⁷ During any transition period and following combination of the Programs, all broadband providers, including mobile and fixed providers, would be eligible to apply for NEBP funding and would be scored, ranked, and awarded funding based upon the same Commission-approved criteria.

Issue 7

7. Should the Commission change the process for determining broadband support by permitting carriers to further restrict, but not enlarge, the proposed support area based on negotiations with other providers prior to the Commission staff's review and recommendation?

The Staff recommended that the Commission encourage, but not require, carriers to negotiate the scope of an application for NEBP funding that could lead to a reduction, but not an enlargement of an application area, and that the 30-day negotiation time frame be fixed and not be subject to extension.¹⁸

Cox's witness, Mr. Logsdon, recommended that if an application covers an area already served with broadband, it would be in the parties' best interests to negotiate to restrict the area of overlap. Mr. Logsdon recommended that the NEBP should not fund deployment of broadband

¹⁵ *Id.*, p. 35.

¹⁶ *Id.*, p. 34.

¹⁷ *Id.*, pp. 34-35.

¹⁸ *Recommendations*, pp. 4-5.

within already-served areas.¹⁹ RIC agrees with this position. As stated above, the NUSF Act declares the policy that consumers in rural and high-cost areas have comparable services to those offered in urban areas. It does not declare that consumers should have access to multiple providers.

RIC recommended that the Commission allow more flexibility with respect to the 30-day negotiation period. RIC suggested that if a party to the negotiations believes there is a reasonable basis to conclude that additional time would result in resolution of issues relating to the proposed area to receive NEBP support, the party should be allowed to seek an extension of the 30-day negotiation window from the Commission.²⁰

Issue 8

8. Should the Commission impose a support cap on NEBP support received, as a percentage of available funds, by project or by company and at what level?

The Staff recommended that no cap be imposed for the applications filed in 2013.²¹ RIC recommended that the Commission should annually evaluate the appropriateness of capping individual company NEBP grant amounts depending upon the number of applications received for available NEBP grant funds and other relevant considerations.²² RIC reiterates this recommendation.

Issue 10

10. Should the Commission require carriers to provide sample speed test data as a verification tool so that the Commission can determine whether an approved project was

¹⁹ See, Transcript, pp. 19-21.

²⁰ *Id.*

²¹ *Recommendations*, p. 5.

²² See, Transcript, p. 37.

completed as specified? If so when should this data be provided and how? If not, why not? Is there any other data that should be provided for verification purposes?

Several representatives of interested parties testified concerning this issue. RIC offered its support for the Staff's recommendation that speed test information should be collected to verify that an approved project has been properly completed.²³

Issue 11

11. Should NUSF-77 support received be reflected on the NUSF-EARN form?

In the *Recommendations*, the Staff stated its understanding that ILECs receiving high-cost support are required to file NUSF-EARN Forms while competitive providers and wireless providers are not. The Staff expressed concern that the requirement to record the grant support as revenue in Line 26 of the Form may provide a disincentive to invest in broadband infrastructure and to seek NEBP support as it could reduce the amount or eligibility for high-cost NUSF support. The Staff concluded that creation of such a disincentive would negatively impact the ability of consumers to be provided with reasonably comparable access to broadband service.²⁴

The Staff recommended that for the present time and until the Commission completes its further review of the matter, the Commission should permit grant recipients to exclude the NEBP grant support awarded from NUSF-EARN Form filings in 2012 and 2013. The Staff recommended that companies not be required to record infrastructure improvements made with NEBP grant support as plant investment on the NUSF-EARN Form and companies should not report grant support received on Line 26 on the NUSF-EARN Form.²⁵

²³ *Id.*, p. 37.

²⁴ *Recommendations*, pp. 5-6.

²⁵ *Id.*, p. 6.

RIC supports these elements of the *Recommendations* and urges the Commission, in order to be consistent with Part 32 accounting rules, to adopt this approach for any support awards in 2012 and thereafter.²⁶ RIC further recommends that, given the current NEBP requirement that a carrier must provide a 25% match of the grant funding, the matching portion should be accounted for on the NUSF-EARN Form.²⁷

III.

CONCLUSION

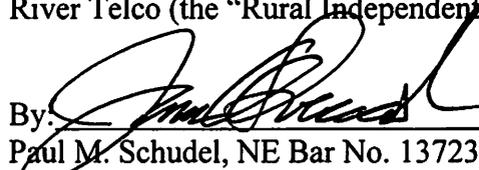
As stated above, the Rural Independent Companies appreciate the opportunity to provide the foregoing comments in response to the questions posed by the Commission and the *Recommendations* provided by the Staff.

²⁶ See, Transcript, p. 38.

²⁷ *Id.*

Dated: December 19, 2012.

Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Co., Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc., and Three River Telco (the "Rural Independent Companies")

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CERTIFICATE OF SERVICE

The original and five paper copies of the foregoing Comments were hand delivered and one electronic copy was delivered on December 21, 2012 to the Nebraska Public Service Commission, 1200 N Street, Suite 300, Lincoln, Nebraska 68508, with a copy of such Comments served electronically on the same date upon Shana Knutson, Legal Counsel, and on Deena Ackerman, Nebraska Public Service Commission, 300 The Atrium, 1200 N Street, Lincoln, NE 68508 and upon legal counsel for the other parties who have filed comments in this docket.

