

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

**In the Matter of the Nebraska Public Service Commission, on its own motion, to investigate and explore federally mandated filing of electronic maps certifying the study area of the Incumbent Local Exchange Carriers in Nebraska.** )  
)  
) **Application No. C-4543/PI-186**  
) **Progression Order No. 1**  
)  
)

**COMMENTS OF THE RURAL INDEPENDENT COMPANIES**

**I.  
INTRODUCTION**

The Rural Independent Companies (“RIC”)<sup>1</sup> submit these Comments in response to the Nebraska Public Service Commission’s (the “Commission”) Progression Order No. 1 entered in this proceeding on February 20, 2013 that seeks comments on several topics relating to electronic mapping. RIC appreciates the opportunity to provide the following Comments to the Commission.

**II.  
BACKGROUND**

On November 6, 2012, the Wireline Competition Bureau (“WCB”) of the Federal Communications Commission (“FCC”) released a Report and Order<sup>2</sup> mandating that incumbent local exchange carriers (“ILECs”) submit certified study area boundary data at the exchange area

---

<sup>1</sup>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., Hamilton Telephone Company, 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.

<sup>2</sup> See *In the Matter of Connect America Fund High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, DA 12-1777 (rel. Nov. 6, 2012) (the “Report”).

level, in ESRI shapefile format to the FCC. The *Report* required ILECs to submit ESRI shapefiles of their study area boundaries with each shapefile representing a single study area served, and allowed either ILECs, state commissions or state telecommunications associations to actually submit ILEC boundary data. The *Report* also required periodic updating of the study area boundary data and filing of revised shapefiles as necessary.

The FCC encouraged the submission of study area boundary data by state entities on behalf of ILECs. According to the FCC, the data submissions were to be based on a diligent effort to identify state-defined ILEC study area boundaries using coordinate geography methods but one which would not require survey-grade field studies. The FCC further required all ILECs to certify the accuracy of their study area boundaries, regardless of whether the boundary data submissions were made by the ILEC or a state entity.

In response to the *Report*, the Commission opened an investigation on December 11, 2012 to assist with determining and implementing the most efficient method of collecting and submitting the electronic boundary map data to the FCC as mandated by the *Report*. On January 16, 2013, the Commission conducted a workshop regarding the issues presented by the *Report*. Numerous parties participated in the workshop. Based on the discussions and comments at the workshop, the Commission released Progression Order No. 1 seeking comments on both the proposed mechanics of collection and compilation of electronic boundary maps and submission of the electronic boundary map data to the FCC.

On February 21, 2013, Mr. Gene Hand, the Director of the Communications Department of the Commission, filed an ex parte with the FCC which expressed concerns with certain aspects of the *Report*. Specifically, Mr. Hand recommended that state regulatory entities which establish exchange boundaries and elect to participate in compliance with the *Report* should

serve as the entities that certify the accuracy of boundary maps to the FCC, not the individual carriers.

Mr. Hand also pointed out that there is a nexus between state commission-approved boundary changes at the sub-exchange level and the annual study area filings provided for in the *Report*. Mr. Hand pointed out that the Commission has the authority to make small boundary changes, usually one or two access lines per application, which allow rural customers to receive broadband service from a nearby provider in those instances in which the customers' current provider is unable to provide the desired broadband service. Mr. Hand observed that allowing these state commission-approved boundary changes to be incorporated in the annual study area filings would be "more efficient and less expensive in lieu of applying the current waiver rule that carries a significant filing fee."<sup>3</sup> Mr. Hand also requested the FCC to clarify the required level of accuracy of the mapping data that it seeks, the level of verification from the entities filing the maps, and the release of the timeline setting out the schedule on which the FCC will be seeking data submissions.<sup>4</sup>

The FCC released an Order on Reconsideration on February 26, 2013.<sup>5</sup> In the *Recon Order*, the FCC concluded that it is more appropriate for state commissions to certify to the accuracy of the study area boundary data at the time of submission of such data on behalf of the ILECs operating in their state. Second, the FCC concluded that the entity submitting data to the Commission is the appropriate entity to certify to the accuracy of the study area boundaries and

---

<sup>3</sup> See Letter from Maurice Gene Hand, Director, Communications Department, Nebraska Public Service Commission, to Chelsea Fallon, Assistant Chief, Industry Analysis and Technology Division, FCC, WC Docket Nos. 10-90, 05-337, p. 2 (filed Feb. 21, 2013).

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

<sup>5</sup> See *In the Matter of Connect America Fund High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, DA 13-282 (rel. Feb. 26, 2013) (the "*Recon Order*").

encouraged states to submit data on behalf of their ILECs. Third, the *Recon Order* permits ILECs that are price cap carriers to submit exchange-level study area boundary data by providing internal wire center boundaries, if they choose, that indicate the exchange(s) associated with the wire center.

The *Recon Order* failed to directly respond to Mr. Hand's request in his ex parte filing for the FCC to expressly allow state commission-approved boundary change filings to be incorporated in the annual study area filings in lieu of applying the FCC's current study area waiver rule. Rather, the *Recon Order* recognizes that "both state commissions and this Commission have a role in overseeing study area boundaries."<sup>6</sup>

As will be more fully discussed below, RIC believes that as a result of the findings in the *Recon Order*, certain of the policy concerns raised in Progression Order No. 1 and in Mr. Hand's ex parte filing have been resolved. However, the important issue regarding the use of state commission-approved boundary area maps to reflect minor study area changes (that are also state commission-approved) rather than the more onerous and costly FCC study area waiver process still has not been clearly addressed by the FCC.

Most recently, on March 18 the WCB announced procedures and deadlines for submissions of study area boundary data.<sup>7</sup> In the *Public Notice* the WCB requires that a state commission notifies the WCB by April 12 of the intention to submit study area boundary data on behalf of the IIECs operating in the state, and that between April 29 and June 28 the submission

---

<sup>6</sup> See *Recon Order*, para. 4 and especially fn. 9 in which the FCC reviews its prior orders concerning frozen study area boundaries and states that "[a] carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to acquire or transfer exchanges."

<sup>7</sup> See *In the Matter of Connect America Fund High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Public Notice, DA 13-456 (rel. Mar. 18, 2013) (the "*Public Notice*").

of data shall be completed. If an ILEC directly submits data to the WCB, such submission shall be completed by May 23.

### III.

#### **RIC's Comments in Response to Progression Order No. 1**

In Progression Order No. 1, the Commission tentatively concluded that it is in the best position to assist Nebraska ILECs with their obligation to file electronic boundary maps with the FCC and proposed that it manage the creation of electronic boundary maps. Recognizing the need to collaborate with the ILECs to create a comprehensive electronic boundary map, the Commission Staff proposed that ILECs elect one of three options to complete the map.<sup>8</sup> Additionally, the Commission posed a series of questions for comment.

In response to Question #1, RIC believes the Staff's three alternative options are reasonable and sufficient. With the WCB's release of the *Public Notice* and this Commission's issuance of Progression Order No. 3 requiring all Nebraska ILECs to notify the Commission by April 5, 2013 of the desire for the Commission to submit study area boundary data to the FCC for the ILEC, RIC believes that this Question #1 has largely become moot as the process is proceeding.

In response to Question #2, *Neb. Rev. Stat. § 86-130* (Reissue 2008) and Section 002.25 of the Telecommunications Rules and Regulation provide the Commission with the requisite authority to mandate ILEC participation in the creation of electronic boundary maps at the Commission to replace the current paper maps.

In response to Question #3, RIC does not believe a rate-of-return ILEC may "opt out" of the creation of electronic boundary maps. While an ILEC may not be required to file its

---

<sup>8</sup> See Progression Order No. 1, pp. 2-3.

electronic boundary map with the FCC through the Commission's submission, it would seem that direct filing by the rate-of-return ILEC with the FCC would be inefficient. RIC also urges the Commission, once it has completed the filing with the FCC of maps for Nebraska rate-of-return ILECs, to adopt a similar coordinated filing approach for the Price Cap ILECs operating in the State.<sup>9</sup>

Based upon the foregoing response to Question #3, RIC does not believe a response to Question #4 is necessary.

In response to Question #5, RIC believes that in the event discrepancies or disagreements arise between carriers regarding ILEC boundaries, the Commission Staff should first consult with the ILECs involved. If informal discussions do not resolve the disagreement(s), RIC recommends that either party be allowed to file a formal complaint with the Commission. This would allow the Commission to hear evidence from both parties and render a decision based on the evidence presented.

The Commission and Staff also sought comments on policy questions and concerns raised at the workshop relative to certain aspects of the *Report*.

In response to Policy Question #1, RIC believes this concern as to certification by an ILEC officer of map accuracy is no longer relevant in light of the clarifications provided in the *Recon Order*.<sup>10</sup> RIC concurs with the clarification that it is more appropriate for state commissions to certify to the accuracy of the study area boundary data when such data is submitted to the FCC on behalf of ILECs.

---

<sup>9</sup> RIC envisions the level of detail to be submitted by the Commission on behalf of Price Cap carriers would comply with the *Recon Order*, para. 11.

<sup>10</sup> See *Recon Order*, paras. 3-8.

In response to Policy Question #2, RIC does not believe that the FCC has yet provided adequate clarification to reliably answer the question as to whether the electronic mapping process supplants the study area waiver process in connection with state commission-approved exchange boundary revisions involving a limited number of customers. It is clear from the *USF/ICC Transformation NPRM* that a waiver of the study area boundary freeze should only be required if a carrier wishes to transfer or acquire additional exchanges.<sup>11</sup> This limited purpose was confirmed by the FCC in its *Transformation Order*, and even though the FCC “streamlined” the waiver process, it did not address the issue at hand.<sup>12</sup> These statements regarding the intended purpose of the waiver process were expressly acknowledged in the *Recon Order*.<sup>13</sup> The study area freeze waiver process should not be interpreted to apply to circumstances for which it was not intended, such as the modification of an exchange boundary caused when one or a small number of consumers file an application with the Commission to obtain advanced telecommunications capability service furnished by a telecommunications company in the local exchange area adjacent to the local exchange area in which the applicant resides, and such

---

<sup>11</sup> *Connect America Fund, et. al.*, WC Docket Nos. 10-90, et. al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, paras. 218, 219-224 (2011).

<sup>12</sup> *Connect America Fund, et. al.*, WC Docket Nos. 10-90, et. al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, paras. 266-267 (2011).

<sup>13</sup> See *Recon Order*, fn. 9 where to FCC describes the intent of the Study Area boundary freeze and the waiver process, stating “the Commission froze all study area boundaries effective November 15, 1984, to prevent the establishment of high-cost exchanges within existing service territories merely to maximize high cost support. See *MTS and WATS Market Structure; Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, 50 Fed. Reg. 939 (1985) (*Part 67 Order*); see also 47 C.F.R. Part 36 App. (“Study area boundaries shall be frozen as they are on November 15, 1984”). A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to acquire or transfer exchanges.”

application is approved by the Commission.<sup>14</sup> RIC urges the Commission to engage in further advocacy with the FCC and the WCB either through an ex parte filing or initiation of a petition for declaratory ruling to finally expressly clarify that the electronic mapping process supplants the study area waiver process in connection with state commission-approved exchange boundary revisions involving a limited number of customers.

In response to Policy Question #3, RIC believes that since (a) the Commission maintains the official boundary maps of each ILEC in this State, (b) approves all applications for boundary changes and (c) intends to make required periodic filings of ESRI shapefile maps with the FCC on behalf of Nebraska ILECs, it should be unnecessary for any Nebraska ILEC whose study area is revised due to Commission-approved boundary changes to seek and obtain a study area waiver from the FCC. As discussed in response to Policy Question #2, Commission-ordered boundary changes should be exempt from the study area waiver process. Thus, RIC believes that the requirement in the *Report* to update mapping data periodically in order to maintain the accuracy of such data is reasonable.

In response to Policy Question #4, RIC believes that the *Recon Order* clarifies the standard for mapping accuracy presented in the *Report*.<sup>15</sup> Specifically, the FCC clarified that in the initial year of implementation of the electronic mapping data collection, a flexible approach

---

<sup>14</sup> See *Neb. Rev. Stat.* §§ 86-135 – 86-138 (2012 Cum. Sup.).

<sup>15</sup> Appendix A of the *Report* provided further guidance on this matter. According to the *Report*, “[I]n short, polygons defining the exchange boundaries may be created in a variety of ways, including but not limited to: conversion of existing GIS and/or CAD data, digitizing from existing paper maps, heads-up digitizing using on-screen data, use of coordinate geometry from physical descriptions, GPS data, and field surveys. To conform to the 1:24,000 national mapping standards, features should have a horizontal accuracy of +/- 40 feet. At this scale of resolution, it is not necessary to perform field surveys or capture GPS data. However, source data must be at a scale of 1:24,000 or better. Possible source data for digitizing may include vector GIS data, digital USGS topographic maps, aerial and satellite photography, and scanned paper maps.”

will be adopted in administering the requirement that shapefiles conform to the 1:24,000 topographic scale of the USGS National Map or to an accuracy level of +/- 40 feet.<sup>16</sup> Further, the FCC emphasized that data filers who undertake reasonable, good faith efforts to submit information within the necessary time frames will not be penalized for errors, even if the filed information is adjusted or corrected in future years.

#### IV.

### CONCLUSION

RIC respectfully requests that the Commission and the Staff would favorably consider the foregoing inputs and recommendations as consideration continues to be given to the issues presented in this Docket. In particular, RIC reiterates its request for the Commission to engage in further advocacy with the FCC and the WCB either through ex parte filings or initiation of a petition for declaratory ruling to obtain an express clarification that the electronic mapping process supplants the study area waiver process in connection with state commission-approved exchange boundary revisions involving a limited number of customers.

RIC appreciates the leadership and efforts that the Commission and its Staff have provided with regard to compliance with federally-mandated electronic mapping, and looks forward to continuing to provide assistance in connection with these efforts.

---

<sup>16</sup> See *Recon Order* at para. 13.

Dated: March 22, 2013.

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., Hamilton Telephone Company, 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")

By: Paul M. Schudel

Paul M. Schudel, NE Bar No. 13723

[pschudel@woodsaitken.com](mailto:pschudel@woodsaitken.com)

James A. Overcash, NE Bar No. 18627

[jovercash@woodsaitken.com](mailto:jovercash@woodsaitken.com)

WOODS & AITKEN LLP

301 South 13th Street, Suite 500

Lincoln, Nebraska 68508

Telephone (402) 437-8500

Facsimile (402) 437-8558

### **CERTIFICATE OF SERVICE**

The original and five paper copies of the foregoing Comments were hand delivered and one electronic copy was delivered on March 22, 2013 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 Nichole Mulcahy, Legal Counsel, and on Deena Ackerman, and upon legal counsel for the other parties who have filed comments in this docket.

Paul M. Schudel