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Via Personal Delivery and Electronic Mail

March 22, 2013

Mr. Steve Meradith, Executive Director
Nebraska Public Service Commission
1200 N Street, Ste. 300
Lincoln, NE 68508
Steve.Meradith@Nebraska.gov

RE: Application C-4543/PI-186, PO No. 1

Dear Mr. Meradith:

Enclosed please find one (1) original and five (5) copies of the *Comments of the Rural Telecommunications Coalition of Nebraska* to be filed in the above-referenced proceeding. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Andrew S. Pollock

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE NEBRASKA)	Application No. C-4543/PI-186
PUBLIC SERVICE COMMISSION, ON ITS)	Progression Order No. 1
OWN MOTION, TO INVESTIGATE AND)	
EXPLORE FEDERALLY MANDATED)	
FILING OF ELECTRONIC MAPS)	
CERTIFYING THE STUDY AREA OF)	
INCUMBENT LOCAL EXCHANGE)	
CARRIERS IN NEBRASKA)	

**COMMENTS OF THE
RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA**

I. INTRODUCTION

The Rural Telecommunications Coalition of Nebraska (“RTCN”),¹ by and through its attorneys of record, hereby respectfully submits these comments to the Nebraska Public Service Commission (“Commission” or “NPSC”) in response to the Commission’s February 20, 2013, Order Seeking Comments (“Order” or “NPSC Order”) in the above-captioned proceeding.

Through its Order, the Commission seeks public comment on the most efficient method of collecting and submitting electronic boundary map data in response to a mandate by the Wireline Competition Bureau (“WCB”) of the Federal Communications Commission (“FCC”) in a Report and Order released November 6, 2012,² as modified by an Order on Reconsideration

¹ For purposes of this docket, RTCN is made up of the following intervening carriers: Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cozad Telephone Company, Diller Telephone Company, Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford Cooperative Telephone Co., Keystone-Arthur Telephone Co., Mainstay Communications, Plainview Telephone Company, Southeast Nebraska Communications, Inc., Wauneta Telephone Company, and WestTel Systems f/k/a Hooper Telephone Company.

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

released February 26, 2013.³ The Commission seeks comments on both the mechanics of compliance with the WCB Report and Recon Order and policies underlying the FCC's mandate and how it relates to action by the FCC years ago to freeze study area boundaries, requiring waivers to alter such boundaries.⁴

II. COMMENTS

A. Mechanics.

Prior to posing specific issues regarding the mechanics of boundary mapping in its Order, the Commission made observations and tentative conclusions relating to the Commission's role, collaboration with incumbent local exchange carriers ("ILECs"), and options for the process of preparing, submitting and certifying electronic boundary maps. The Commission tentatively concluded that it is in the best position to assist Nebraska ILECs with compliance with the WCB Report since it currently maintains official boundary maps, albeit in paper format. The WCB's Recon Order recognizes this fact and supports the Commission's tentative conclusion, acknowledging that "state commissions are the entities responsible for establishing study area boundaries."⁵

In an ex parte filing with the FCC, NPSC Communications Department Director Gene Hand, noting that the Commission's efforts to collect study area boundary maps began prior to the release of WCB Report, asserted that state regulatory bodies which elect to participate in

³ Id., Order on Reconsideration, DA-130282 (rel. Feb. 26, 2013) ("**Recon Order**")

⁴ See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Doc. Nos. 78-72, 80-286, Decision and Order, 50 Fed. Reg. 939 (1985); see also 47 C.F.R. Part 36 App (collectively "FCC Study Area Freeze").

⁵ Recon Order at ¶ 4.

compliance with the Report “should be the entities that certify the accuracy of the maps to the FCC, not the individual carriers.”⁶

The WCB, in its Recon Order, agreed with Mr. Hand, concluding that commissions not only should assist with the mapping process, but also “should be responsible for submitting such boundaries and/or certifying that they are accurate.”⁷ The WCB acknowledged in its Recon Order that some states may lack resources necessary to handle the role of collecting, submitting and certifying data.⁸ In those states the FCC “will continue to rely on individual incumbent LECs to submit data on the study areas they serve.”⁹

Fortunately, Nebraska is not one of those states. The Commission in its Order has recognized its experience in mapping for NUSF purposes, as well as its more recent broadband mapping efforts.¹⁰ It is well known that the Commission has taken an active role, not only at the state level but as a participant and commentator in the WCB’s proceeding as well. To the extent necessary, as the NPSC Order also states, it will secure “the assistance of an outside vendor.”¹¹

In its Order, the Commission proceeds to set forth three options for collaboration between the NPSC and ILECs for assembling electronic maps to submit to the FCC. These three options (“Options”) may be summarized as follows:

Option 1: ILEC requests NPSC to submit NPSC map to ILEC for review, followed by collaboration between ILEC and NPSC to compare NPSC map with ILEC’s, concluding with ILEC, perhaps in collaboration with NPSC, modifying and preparing a final map.

⁶ See *Ex Parte* Correspondence from Maurice Gene Hand, Director, Communications Department, Nebraska Public Service Commission, to Chelsea Fallon, Assistant Chief, Industry Analysis & Technology Division, FCC, WC Doc. Nos. 10-90, 05-337, p. 2 (submitted Feb. 21, 2013) (“Hand Letter”).

⁷ Recon Order at ¶ 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ NPSC Order at 2.

¹¹ *Id.*

Option 2: ILEC submits its electronic map to NPSC, followed by collaboration between ILEC and NPSC to compare maps, concluding with ILEC, perhaps in collaboration with NPSC, modifying and preparing a final map.

Option 3: ILEC requests NPSC map, followed by ILEC modifications, followed by review by NPSC, concluding collaboration by ILEC and NPSC to clear up discrepancies.

After setting forth these Options the Commission sought comments by interested parties on five issues, which are restated below. The RTCN's comments follow each restated issue.

Mechanics Issue No. 1. The methodology and options for collection and creation of Nebraska electronic boundary maps as expressed above. Is the process as proposed reasonable? Sufficient?

RTCN Comment. The RTCN respectfully recommends that the NPSC adopt a single process for assembling the requisite data. A proposed process, including suggested deadlines, is set forth below.

While the RTCN appreciates the Commission's desire to offer flexibility by offering the aforementioned Options, time may not permit such flexibility. Earlier this week, the WCB announced deadlines for submissions of the mandated electronic maps.¹² State commissions, such as the NPSC, may begin submitting data on April 29, 2013, and are required to submit and certify the data no later than June 28, 2013. Given that the Commission and ILECs have slightly over three months to complete the process of preparing accurate boundary maps, certifying them, and submitting them to the FCC, the process must be handled as efficiently as possible.

The RTCN appreciates the NPSC's desire to collaborate with each ILEC in preparing accurate maps, but the potential for disputes between ILECs must not be overlooked. In fact, the potential for such disputes are as likely, if not more likely, as disputes between any ILEC and the Commission. The three-month process must allow for time for resolution of disputes between

¹² *In the Matter of Connect America Fund High-Cost Universal Service Support*, WC Doc. Nos. 10-90, 05-337, Public Notice, DA 13-456 (rel. March 18, 2013) ("Public Notice of Deadlines").

ILECs. Permitting sufficient time should actually head off disputes. It would allow ILECs with adjacent boundaries to collaborate with one another (and the Commission) to resolve initial differences as to proper boundaries.

To facilitate and streamline the process, the RTCN respectfully suggests the following process, which largely follows Option 1, be followed with respect to all ILEC study areas:

1. Commission files Notice of intent to submit and certify study area boundary maps. **FCC Deadline: April 12, 2013.**
2. Submission by the Commission of existing NPSC maps (including all paper maps and ESRI shape files) of each study area to the ILEC (or its consultant) whose study area is depicted (“**Study Area ILEC**”), and to all ILECs (or consultants) with adjacent study areas (“**Adjacent ILECs**”). Suggested Deadline: April 12, 2013.
3. Collaboration between Commission and Study Area ILEC to compare, correct, and update maps. Suggested Window: April 12 – 26, 2013.
4. Submission by Study Area ILEC of study area maps, as corrected, modified, and updated to the Commission, with copies to Adjacent ILECs. Suggested Deadline: May 10, 2013.
5. Collaboration between Commission, Study Area ILEC, and Adjacent ILECs. Suggested Window: May 10 – 20, 2013.
6. If through collaborative efforts the parties fail to reach resolution, the Study Area ILEC and Adjacent ILECS may submit Comments to the Commission, with copies to one another. Suggested Deadline: May 24, 2013.
7. The Commission shall make a final determination as to each study area based upon Collaboration and (if any) Comments. Suggested Deadline: June 7, 2013.
8. Final properly formatted electronic maps shall be prepared by the Study Area ILEC and submitted to the Commission for final review and certification, with copies to Adjacent ILECs. Suggested Window: May 24 (if no disputes) – June 18, 2013.
9. Final certified maps shall be submitted to the FCC. **FCC Deadline: June 28, 2013.**

Mechanics Issue No. 2. The Commission currently maintains the official ILEC boundary maps in paper format. Does the Commission have the requisite authority to mandate ILEC participation in the creation of electronic boundary maps at the Commission to replace paper maps?

RTCN Comment. Unquestionably, the Commission has authority to require all ILECs to submit maps of a type and format acceptable to the Commission. *See* NEB. REV. STAT. § 86-130.

Mechanics Issue No. 3. Whether a carrier may “opt out” of involvement in the creation of electronic boundary maps at the Commission and file its electronic boundary maps directly with the FCC?

RTCN Comment. Based on the statute cited immediately above, and for reasons explained in more depth below, the Nebraska Commission has the authority to require all ILECs to participate in the process already underway in the present proceeding, and should require full participation. It should not allow ILECs to opt out of the process.

The Recon Order allows for different filing requirements for price cap carriers as compared with rate of return carriers.¹³ Maps submitted for study areas of rate of return carriers must be based on exchange-level data.¹⁴ The WCB, after further consideration and cost-benefit analysis in the Recon Order, determined that price cap carriers may submit boundaries of component wire centers, instead of exchange-level data.¹⁵ Price cap carriers, however, must still indicate “the exchange or exchanges associated with each wire center.”¹⁶ A price cap carrier’s filing must also include “a polygon of the outer boundary of the price cap study area, as well as polygons for the individual interior wire center boundaries.”¹⁷

¹³ Recon Order at ¶¶ 9-11.

¹⁴ *Id.* at ¶ 9.

¹⁵ *Id.* at ¶ 11.

¹⁶ *Id.*

¹⁷ *Id.*

While the filing requirements may now differ for price cap carriers and rate of return carriers, the FCC's purpose in mandating filing of electronic mapping data remains unchanged.

As stated in the Report, those purposes are:

[C]reating a complete, publicly-accessible, nationwide set of study area boundaries, which we will use to implement universal service reforms adopted as part of the USF/ICC Transformation Order.¹⁸

As explained above, the Recon Order does not change or deviate from those purposes. It does not alter the central role of state commissions, if they elect to assume that role, in assisting with compliance with the requirements and achievement of the purposes of the Report. The WCB's Recon Order acknowledges that "state commissions are the entities responsible for establishing study area boundaries."¹⁹ This Commission, both in the NPSC Order and the Hand Letter, noted its experience in mapping and its expertise. The WCB, in its Recon Order, concluded that state commissions "should be responsible for submitting such boundaries and/or certifying that they are accurate."²⁰ While the WCB acknowledged that some states may lack resources necessary to handle the role of collecting, submitting and certifying data,²¹ Nebraska is not one of those.²²

The Recon Order, while allowing for different data from price cap and rate of return carriers, clearly anticipates state commissions, except those with insufficient resources, to play the central role in submission of mapping data. In its Public Notice establishing the data filing deadlines, the WCB further demonstrated its expectation that the state commission decide what role it will play. In that Public Notice, the WCB sets forth deadlines for ILECs submitting data directly to the FCC – not going through a state commission. The WCB sets the deadlines:

¹⁸ Report at ¶ 1.

¹⁹ Recon Order at ¶ 4.

²⁰ Recon Order at ¶ 4.

²¹ *Id.*

²² NPSC Order at 2.

“In cases where a state commission does not submit a notification of its intent to file study area boundary data or a state commission plans to submit for some but not all of its state’s study areas.”²³

This statement clearly demonstrates that it is up to the state commission to decide whether it will submit data at all and, if it does, whether it will submit data for all ILECs or only some. The Nebraska Commission has authority under state law to require all ILECs to submit boundary data,²⁴ and nothing in any of the WCB’s releases diminishes or alters that authority.

To ensure complete and accurate study area maps, the Commission should exercise its authority and should not allow ILECs to opt out of the electronic mapping process. The integrity of its certification of study areas depends upon complete participation by all ILECs. Allowing ILECs to opt out would lead to a patchwork map of the state leading to inaccuracies. It would be nearly impossible for the Commission to certify study areas under such circumstances.

Mechanics Issue No. 4. If an ILEC may “opt out” of involvement in the creation of electronic boundary maps at the Commission and opts to instead file directly with the FCC, in the event there is discrepancy between the Commission’s official map of the boundary and the map submitted by the non-participating ILEC to the FCC, what steps should be taken.

RTCN Comment. See the RTCN comment on *Mechanics Issue No. 3*. Opting out of the process should not be allowed. It would be extremely difficult to correct such discrepancies after filing with the FCC, and the fact that the Commission recognizes such discrepancies would exist if opting out was allowed demonstrates the difficulty the Commission would have certifying its maps. An ILEC’s study area does not exist in isolation. In all cases, it will abut the study area of one or more other ILECs. To ensure complete and accurate maps that the Commission may in good conscience certify, it must require full participation by all ILECs in the state.

²³ Public Notice at p. 2.

²⁴ NEB. REV. STAT. § 86-130.

Mechanics Issue No. 5. What process and procedures should be utilized by the Commission in the event discrepancies and disagreements arise between carriers regarding ILEC boundaries? How formal or informal should the process be? If there is some kind of formal dispute resolution process adopted by the Commission what should the process entail?

RTCN Comment. See the RTCN comment on *Mechanics Issue No. 1*. Due to extremely limited time periods established in the Public Notice by the WCB, extended formal dispute resolution will not be viable.

B. Policy.

At this time, the RTCN will reserve comment on the policy issues posited by the Commission. Some of them have been addressed by the Recon Order.

III. CONCLUSION

The RTCN appreciates the opportunity to contribute to this important proceeding and respectfully requests consideration of the comments made above.

DATED this 22nd day of March 2013.

RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA

Arapahoe Telephone Company d/b/a ATC
Communications,
Benkelman Telephone Company, Inc.,
Cozad Telephone Company,
Diller Telephone Company,
Glenwood Telephone Membership Corporation,
Hartman Telephone Exchanges, Inc.,
Hemingford Cooperative Telephone Co.,
Keystone-Arthur Telephone Co.,
Mainstay Communications,
Plainview Telephone Company,
Southeast Nebraska Communications, Inc.,
Wauneta Telephone Company, and
Westel Systems f/k/a Hooper Telephone Company.

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CERTIFICATE OF FILING & SERVICE

The undersigned hereby certifies that an original and five paper copies of the foregoing Comments of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on March 22, 2013, and a copy was served via electronic mail on March 22, 2013, addressed as shown below, to the following:

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