

LINCOLN OFFICE  
SUITE 500  
301 SOUTH 13TH STREET  
LINCOLN, NEBRASKA 68508-2578  
TELEPHONE 402-437-8500  
FAX 402-437-8558

# WOODS & AITKEN

L · L · P

DENVER OFFICE  
SUITE 525  
8055 EAST TUFTS AVENUE  
DENVER, COLORADO 80237-2835  
TELEPHONE 303-606-6700  
FAX 303-606-6701

OMAHA OFFICE  
SUITE 525  
10250 REGENCY CIRCLE  
OMAHA, NEBRASKA 68114-3754  
TELEPHONE 402-898-7400  
FAX 402-898-7401

PAUL M. SCHUDEL  
DIRECT: (402) 437-8509  
EMAIL: PSCHUDEL@WOODSAITKEN.COM  
WWW.WOODSAITKEN.COM

WASHINGTON, D.C. OFFICE  
SUITE 950  
5335 WISCONSIN AVENUE, N.W.  
WASHINGTON, D.C. 20015-2092  
TELEPHONE 202-944-9500  
FAX 202-944-9501

PLEASE RESPOND TO LINCOLN ADDRESS

September 13, 2019

**VIA EMAIL- [Ruralbroadband@nebraska.gov](mailto:Ruralbroadband@nebraska.gov)**

Mr. Ed Toner, Chair  
Nebraska Rural Broadband Task Force  
c/o Nebraska Information Technology Commission  
Office of the Chief Information Officer  
501 South 14<sup>th</sup> Street, 4<sup>th</sup> Floor  
P.O. Box 95045  
Lincoln, NE 68509-5045

Re: Comments in response to the Rural Broadband Task Force Findings and Recommendations, Draft – August 12, 2019; in response to the NUSF Subcommittee Findings and Recommendations – August 9, 2019; and in response to Appendix 7

Dear Mr. Toner:

The following comments are being provided to you as Chair of the Nebraska Rural Broadband Task Force (the “Task Force”) on behalf of the following Nebraska telecommunications companies: Arlington Telephone Company, Blair Telephone Company, 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 Co., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company and Three River Telco (the “Companies”).<sup>1</sup>

### **The Companies’ Status and Interest in the Task Force’s Efforts**

---

<sup>1</sup> Based upon correspondence with Anne Byers, the Companies understand that electronic submission of these Comments will cause the Comments to be forwarded to Ms. Byers acknowledgement of receipt on behalf of the Task Force. Further, based upon such correspondence with Ms. Byers, it is the Companies’ understanding that these Comments will be posted to the Task Force’s website and thereby will become a part of “the record” of the Task Force proceedings.

Each of the Companies is an incumbent local exchange carrier as well as a Nebraska Eligible Telecommunications Company as designated by the Nebraska Public Service Commission (the “Commission”). As such, each of the Companies receives some level of High Cost Program support from the Nebraska Universal Service Fund (the “NUSF”). Thus, the Companies have a keen interest in the Rural Broadband Task Force Findings and Recommendations (the “Findings”) and the NUSF Subcommittee (the “Subcommittee”) Findings and Recommendations (the “Subcommittee Findings”) that will be made a part of the Findings. The Companies’ interest is particularly focused on those portions of the Findings and Subcommittee Findings relating to the NUSF and the accuracy of the data reflected in Appendix 7 relating to broadband availability in the areas in Nebraska served by the Companies.

### **Comments on Findings**

As you are likely aware, the Companies are subject to regulation by the Commission as rate-of-return (“RoR”) carriers. In that regard, and in connection with the Commission’s oversight of the Companies and the Commission’s administration of the NUSF in accordance with the provisions of the Nebraska Telecommunications Universal Service Fund Act,<sup>2</sup> the Commission has adopted certain key findings that materially impact the public policy goals of the NUSF High Cost Program. Such Program provides support to eligible carriers (such as each of the Companies) for the deployment and maintenance of and accessibility to broadband networks in high cost areas of this State.

The Companies respectfully submit that the elements of the Commission’s Strategic Plan discussed below should be acknowledged by the Task Force and the NUSF Subcommittee and referenced in the final Findings and Subcommittee Findings, respectively. Such acknowledgements and references should help to ensure that such Findings contain broadband deployment and maintenance policies and objectives consistent with those already adopted by the Commission.

#### **The Commission’s Strategic Plan**

In 2016, the Commission adopted a “Strategic Plan” in which it declared:

The Commission believes an important goal of reform will be to *support the deployment of ubiquitous broadband availability throughout Nebraska*. The Commission's reforms must be tailored to complement the federal support received in Nebraska. This plan would encompass a goal to extend ubiquitous fixed and mobile broadband services.<sup>3</sup>

---

<sup>2</sup> *Neb. Rev. Stat.* §§ 86-316 through 86-329 (the “NUSF Act”).

<sup>3</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Application No. NUSF-100/PI-193, Order Seeking Comments at 5 (April 5, 2016) (emphasis added).

In establishing the foregoing goal, the Commission recognized the importance of deployment of a fiber-based network to support scalability to meet future Nebraska business and consumer broadband speed demands. The Commission stated:

As carriers continue to invest in their networks and replace outdated facilities, the Commission's plan will have wireline carriers extend or replace facilities with fiber. *Fiber facilities will allow carriers to offer consumers more services at greater speeds.* The Commission hopes to alleviate the incremental minimum speed considerations in its requirements by ensuring the networks are built to sustain growth, usage and demands over the long term. As more fiber is deployed, increased speeds will follow. Coordination with the federal mechanism will be the key to making efficient use of universal service support.<sup>4</sup>

In 2017, the Commission reaffirmed its goal to support ubiquitous broadband availability throughout Nebraska:

We continue to be committed to the goal of ubiquitous broadband. While this goal may be aspirational, we know that broadband service is vital to growing our economy. We also believe this goal to be consistent with the Legislative goals in the NUSF Act which provides in relevant part that "access to advanced telecommunications and information services should be provided in *all* regions of the state." (emphasis in original).<sup>5</sup>

The Companies urge the Task Force and the NUSF Subcommittee to adopt the above-quoted elements of the Commission's Strategic Plan and thereby (1) support deployment of ubiquitous broadband availability in Nebraska and (2) endorse construction of a fiber-based network as the long-term most affordable means to establish scalable broadband service to meet current and future broadband speed demands of Nebraska consumers and businesses. As indicated above, the requested adoption of these elements in the Findings will help to ensure coherent and consistent broadband deployment and maintenance policies for Nebraska.

*NUSF High Cost Program Support as a Supplement to Federal Universal Service Support*

The Companies further urge the Task Force to recognize in its final Findings the past and continuing importance of Federal universal service fund ("Federal USF") support for the construction and maintenance of broadband-capable networks in Nebraska. This support consists of Connect America Fund ("CAF") funding provided to price cap ("PC") carriers that elected such support

---

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Application No. NUSF-100/PI-193, Order and Order Seeking Further Comments and Setting Hearing at 19 (Feb. 22, 2017).

including CenturyLink, Windstream and Frontier;<sup>6</sup> Alternative Connect America Cost Model I (“A-CAM I”) funding provided to several Nebraska rate-of-return (“RoR”) carriers that elected such support such as American Broadband (consisting of four Nebraska local exchange carriers (“LECs”), Consolidated Companies (also consisting of four Nebraska LECs), Great Plains Communications, LLC, K&M Telephone Co. and Nebraska Central Telephone Company;<sup>7</sup> Alternate Connect America Cost Model II (“A-CAM II”) funding provided to a number of Nebraska RoR carriers such as Hamilton Telephone Company and Northeast Nebraska Telephone Company;<sup>8</sup> legacy Federal USF support provided to RoR carriers such as Hartington Telecommunications Co., Inc. and Hershey Cooperative Telephone Company, Inc. that elected not to accept A-CAM I or A-CAM II support; and support that the Federal Communications Commission (“FCC”) proposes to establish through the Rural Digital Opportunity Fund (“RDOF”) to commit up to \$20.4 billion over 10 years to fund networks in rural America for areas served by PC carriers not previously receiving access to 25/3 Mbps broadband services.<sup>9</sup>

The NUSF Act expressly provides that “[t]he purpose of the Nebraska Telecommunications Universal Service Fund Act is to authorize the commission *to establish a funding mechanism which supplements federal universal service support mechanisms* and ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.”<sup>10</sup> The FCC has described this coordination of federal and state universal service support as a “federal-state partnership”, stating as follows:

---

<sup>6</sup> See, *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17667, para. 1 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom. In re FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014).

<sup>7</sup> See generally, *Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime*; WC Docket Nos. 10-90, 14-58, and 07-135, CC Docket No. 01-92; Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893 (2018) ); see also, *Wireline Competition Bureau Announces Offers of Revised A-CAM Support Amounts to 217 Authorized A-CAM Companies to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 18-465 (WCB rel. May 7, 2018).

<sup>8</sup> See, *Wireline Competition Bureau Authorizes 171 Rate-of-Return Companies to Receive \$491 Million Annually in Alternative Connect America Cost Model II Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 19-808 (WCB Aug. 22, 2019).

<sup>9</sup> *In the Matter of Rural Digital Opportunity Fund*, WC Docket 19-126, et al., Notice of Proposed Rulemaking, FCC 19-77 (Aug. 2, 2019).

<sup>10</sup> *Neb. Rev. Stat.* § 86-317 (emphasis added).

Finally, we note that the promotion of universal service remains a federal-state partnership. *We expect and encourage states to maintain their own universal service funds, or to establish them if they have not done so . . . .* The deployment and maintenance of a modern voice and broadband-capable network in rural and high-cost areas across this nation is a massive undertaking, *and the continued efforts of the states to help advance that objective is necessary to advance our shared goals.*<sup>11</sup>

The Companies fully support the coordination of Federal USF and NUSF support.

The Companies respectfully request that the Task Force includes in its final Findings a recommendation that NUSF support for broadband deployment in Nebraska should be coordinated with the provision of Federal USF support in order to maximize accessibility to broadband at speeds of at least 25/3 Mbps for all Nebraskans.

*Reconciliation of Commission and Task Force Definitions of “Rural Areas”*

The Commission and the Task Force have established distinctly different definitions of “rural areas.” In the Findings, “rural areas” are defined as “open countryside with population densities less than 500 people per square mile or places with fewer than 2,500 people.”<sup>12</sup> In contrast, the Commission determines rural versus urban classifications as follows: “Census blocks with households greater than or equal to 20 and greater than 42 households/sq. miles were considered urban. Also, areas classified by the US Census Bureau as cities or villages were also included. Finally, any areas within city limits as defined by the US Census Bureau were considered urban. *All other areas were considered rural.*”<sup>13</sup>

As providers of broadband services, the Companies observe that the wide ranges of population densities of Nebraska “rural areas” as defined in the Findings do not bear a material resemblance to the actual population densities of the rural areas in Nebraska that they serve. Further, both the Federal USF and the NUSF High Cost programs provide targeted support for broadband in areas with low population densities. For the Companies, that density is in many cases less than one (1) person per square mile. These definitional differences appear to have a direct impact on the presentation of data in the Appendices, and Appendix 7, as well as the conclusions to be drawn therefrom as presented in the Findings and in the Subcommittee Findings. The Companies respectfully recommend that the Task Force revisit its definition of “rural areas,” adopt the

---

<sup>11</sup> *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33, para. 184 (2016) (emphasis added).

<sup>12</sup> Findings at 5 and 12.

<sup>13</sup> Exhibit A to July 6, 2018 letter from Commissioner Frank Landis to Paul M. Schudel re NPSC Application No. NUSF-108, Progression Order No. 3 (emphasis added).

Commission's definition of "rural areas" utilized in connection with its administration of the NUSF and revise the Appendices, especially Appendix 7, based upon the revised definition.

### **Comments on Subcommittee Findings**

As discussed below, the Companies respectfully recommend that certain of the Subcommittee Findings be revised and that the following recommendations be accepted by the Subcommittee.

First, in the Subcommittee Findings, the first bullet point states that in 2019 the Commission allocated \$12,049,546 to price cap carriers "for broadband support" and "\$14,100,058 for rate of return carriers." However, for 2019 the Commission allocated \$15,061,934 of *combined* broadband support and ongoing support to PC carriers and \$14,100,058 of *combined* broadband support and ongoing support to RoR carriers. Comparing *only* broadband support for 2019, PC carriers were allocated \$12,049,546 and RoR carriers were allocated \$6,063,025.<sup>14</sup> Ongoing support is provided to a carrier after it has deployed service at 25/3 Mbps or higher. The Companies request that the Subcommittee Findings be revised to reflect the support amounts described above as reflected in the Commission's website.

Second, the Companies note that the Commission has not yet made a determination on how or whether it will make NUSF High Cost Program support available to federally "partially" funded A-CAM I or A-CAM II locations<sup>15</sup> which are not, pursuant to FCC regulations, required to be built to provide 25/3 Mbps broadband accessibility.<sup>16</sup> Due to the pendency of a determination by the Commission on NUSF funding for federally partially supported locations, the Subcommittee Findings should reflect that the Commission has not yet determined the level of NUSF High Cost Program support that will be made available to partially funded A-CAM locations.<sup>17</sup>

Third, any comments or conclusions in the Subcommittee Findings with regard to implementation of reverse auctions in this State are premature and not supported by record evidence or policy determinations by the Commission. Establishing any policies in this regard is subject to the Commission's ongoing rulemaking process associated with the pending Commission Rule and Regulation No. 202 docket. To date, various parties (including the Companies) have filed comments

---

<sup>14</sup> See, Commission website <https://psc.nebraska.gov/telecommunications/high-cost-information> "NUSF High-Cost Support Distribution".

<sup>15</sup> The concept of "partially" funded locations for A-CAM locations refers to the level of unrecovered model-based costs that remain after Federal USF funding is provided for a given location.

<sup>16</sup> See, 47 C.F.R. § 54.310(a)(1).

<sup>17</sup> It is anticipated that the Commission will issue an order regarding the distribution of NUSF High Cost Program support to locations that are partially funded by federal A-CAM support in the late third quarter or early fourth quarter of 2019.

in the Commission docket, and certain of those parties participated in a Commission-sponsored workshop on August 6, 2019. The Companies note that, as part of the workshop process, they submitted comprehensive revisions to the Commission's proposed Rules. Accordingly, the Companies respectfully submit that any Subcommittee conclusions regarding withdrawal of NUSF support or operation of reverse auctions are premature until completion of the administrative process relating to Rule and Regulation No. 202 and adoption of the final rule by the Commission in accordance with the Nebraska Administrative Procedures Act.

Finally, in the "Metrics" table of the Subcommittee Findings, the Task Force should consider updating the data presented based upon newly released FCC data as described below in the first bullet point under the heading "Comments on Appendices".

### **Comments on Appendices**

Several of the Companies are providing separate comment letters to the Task Force for the purpose of updating or correcting data currently set forth in Appendix 7 to the Findings entitled "Broadband Coverage by ILEC Including Fixed Wireless Coverage by Rural Households Not Covered". These Companies are: American Broadband (comprised of Arlington Telephone Company, Blair Telephone Company, Eastern Nebraska Telephone Company and Rock County Telephone Company), Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Great Plains Communications LLC, Hamilton Telephone Company, Hershey Cooperative Telephone Company, Inc., and Nebraska Central Telephone Company. In addition to the individual comments that will be provided by these companies regarding Appendix 7, the Companies also provide the following general comments:

- A note in Appendix 7 states: "Data derived from June 2017 FCC Form 477 Data." On August 29, 2019 the FCC released data regarding "Internet Access Services as of 12/31/17" which can be reviewed and downloaded at <https://www.fcc.gov/internet-access-services-reports>. Further, on September 10, 2019 the FCC released "Form 477 Data on Fixed Broadband Deployment as of June 30, 2018" which may be reviewed and down loaded at <https://docs.fcc.gov/public/attachments/DA-19-897A1.pdf>. The Companies respectfully recommend that the data utilized in the Findings and in the Subcommittee Findings, including Appendix 7, be updated based upon this newly released FCC data.
- While the title to Appendix 7 states that the data presented is "Broadband Coverage by ILEC", there is also a statement in the title of Appendix 7 that the data includes "Fixed Wireless Coverage". The Companies' analysis of this data indicates that fixed wireless coverage furnished by third party carriers is included in the data presented. If this is indeed the case, the Companies submit that it is inappropriate to associate a carrier's name with the 25/3 Mbps service apparently provided by another entity. The Companies believe that these data should be broken out between broadband provided by the LEC and broadband provided by one or more third party fixed wireless providers.

- As discussed above, the Subcommittee and the Task Force should reconsider the definition of “rural areas” that has been adopted in the draft Findings and Subcommittee Findings, and should replace the current definition of “rural areas” which is apparently used in Appendix 7, with the definition adopted by the Commission in connection with its administration of the NUSF High Cost Program.
- Appendix 7 should be properly footnoted to provide, as applicable, explanations of the sources of data presented and the methodology used to calculate the percentages set forth in each column of Appendix 7.
- Since the date of compilation of the data used in Appendix 7, the FCC has provided A-CAM funding to RoR carriers to assist in construction and maintenance of broadband facilities. Many carriers have subsequently made significant progress in improving not only their 25/3 Mbps broadband availability, but also their 10/1 Mbps broadband availability. The Companies urge the Task Force and the Subcommittee to update the Appendices and the Task Force Findings that will be finally presented to the Legislature based upon the most current available data.

The Companies appreciate the opportunity to submit these comments to the Task Force and thank the Task Force and its members for their work in preparing the Findings to be delivered to the Nebraska Legislature.

Respectfully submitted,



Paul M. Schudel  
Legal Counsel for the Companies

cc: Commissioner Mary Ridder (via hand delivery)  
Commissioner Rod Johnson (via hand delivery)  
Commissioner Crystal Rhoades (via hand delivery)  
Commissioner Tim Schram (via hand delivery)  
Commissioner Dan Watermeier (via hand delivery)  
Mike Hybl, Commission Executive Director (via hand delivery)  
Shana Knutson, Commission General Counsel (via hand delivery)  
Cullen Robbins, Director NUSF and Telecommunications Divisions (via hand delivery)  
Representatives of the Companies (via email)