Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	
	)	

COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

I. Introduction

The Nebraska Public Service Commission (NPSC) submits these comments in response to the Commission's Notice of Proposed Rulemaking[1] (NPRM) released on August 2, 2019. The NPSC appreciates the opportunity to provide written comments in response to the Commission's proposed rulemaking. The NPSC supports the Commission's goal of quickly addressing the digital divide. However, we encourage the Commission to explicitly recognize and preserve: 1) funding commitments made by states in coordination with federal support; 2) requirements and obligations for carriers imposed by states in exchange for support already provided; 3) and relationships between states and their consumers who rely on access to vital communications services.

II. Background

The NPSC applauds the Commission's efforts to close the digital divide. More work needs to be done to bring broadband access to many parts of rural America that still lack any broadband access. State commissions and broadband authorities are also working to close the digital divide within their borders. Nebraska consumers commit roughly $40 million annually to

1 *In the Matter of the Rural Digital Opportunity Fund; Connect America Fund, Notice of Proposed Rulemaking.* WC Docket No. 19-126; WC Docket No. 10-90 (rel. August 2, 2019)("NPRM").

deploy broadband in those gaps and preserve broadband capable networks in places where there is not a sufficient return on investment.[2]

In 2015, the NPSC modified its universal service program to address price cap areas in an effort to coordinate support with the rollout of CAF Phase II support. All Nebraska price cap companies accepted the CAF Phase II offers of support.[3] Knowing that there were a number of census blocks not included in the offer of support or were otherwise not included in the price cap carrier build-out plans, the NPSC reformed its state universal service program and dedicated explicit capital expense (CapEx) broadband build-out support in those areas. Accordingly, in NUSF-99, the Commission froze high-cost support for price cap carriers and reallocated the frozen support to the areas not included in the CAF II offer. Eighty percent of the annual price cap carrier allocated funding which has been roughly $12 million per year, or $48 million during the last four years, has been dedicated to specific capital improvement projects in price cap carrier areas.[4] The NPSC provides support to these carriers based on the invoiced cost of the capital investment once the investment is made. The NPSC requires that price cap carriers complete their projects within 2 years from the date of approval; however, due to weather conditions and other unforeseen circumstances, that timeframe may be extended on a case-by-case basis. To date, the NPSC has received 80 applications for specific broadband deployment projects. These projects are in various stages of deployment. A majority of them would most likely not be reflected in the Commission's 477 data.

2 This would include support for the high-cost program, which has a separate budget for price cap carriers and rate-of-return carriers, the wireless tower fund, supplemental lifeline support, and supplemental Telehealth support.

3 In Nebraska, these carriers are CenturyLink, Windstream, and Frontier.

4 In reality, most, if not all, projects are designed to bring broadband deployment to minimum speeds of 25/3 Mbps as carrier applications have evolved with the Commissions' definition of broadband service.

This broadband deployment support is tied to specific criteria. This criteria includes, but is not limited to, the requirement that the carrier provide invoices to demonstrate the cost; meet minimum speed requirements; demonstrate through comparable broadband testing metrics designed by the Commission that the service speeds are being provided; and continue offer voice and broadband service to all customers located within the census blocks for a minimum timeframe of five years post deployment. The NPSC is concerned if somehow the Commission's decision to release carriers from the continued requirement to offer voice service in areas not receiving federal funding would inadvertently release these carriers from state level requirements as well. Consequently, we ask the Commission to clarify its proposal relative to these continued carrier obligations and specifically preserve any ongoing state requirements.

III. Recommendation

Timing of Eligible Area Determination

In paragraph 45, the Commission proposes to target Rural Digital Opportunity Fund Phase I support to census blocks that are wholly unserved with broadband at speeds of 25/3 Mbps. The NPSC recommends the Commission receive input from carriers and states relative to broadband support that has been awarded for census blocks that are not built out to 25/3 Mbps to avoid potential duplication in support. The NPSC is concerned that because of timing issues, RDOF support may be better targeted to areas where no support has been planned or awarded. We do not think Nebraska would be alone in this issue as there are other states that award broadband funding through state universal service programs or state general fund programs.

In footnote 96, the Commission seeks comment on whether price cap carriers should be given an opportunity to certify that they will upgrade service by the end of 2020. We think yes, that opportunity is appropriate given the timing issues some carriers may be facing with build-out plans. For example, the NPSC recently approved funding for fiber projects that are estimated to be completed in 2021 and beyond.[5] From those projects further deployment may be leveraged by the existing incumbent or competing technologies. The NPSC publicizes data relative to projects approved for state universal service support on its state broadband map.[6]

The NPSC further recommends that more granular broadband coverage data be collected prior to selecting areas for the reverse auction. The recent results from USTelecom's pilot mapping project demonstrate that some areas may have previously been considered as served but in reality lack broadband coverage at 25/3 Mbps. We think it is important that the Commission start from a more granular, reliable data set prior to declaring census blocks and/or block groups eligible for the Rural Digital Opportunity Fund Phase I auction. We know that some areas have been overstated and this will help confirm those areas in need of broadband deployment. Additionally, this will ensure that limited universal service resources are targeted to the right areas and not areas that already have service.

Reverse Auction Criteria

While we understand the Commission has determined a reverse auction mechanism should be used to distribute support from the Rural Digital Opportunity Fund, we have concerns with the use of funding to supplant long-term scalable deployments that should be made by the carriers through the combination of federal and state support. Where price cap carriers are

[5] In 2018, for example, the NPSC approved a fiber build in the Valentine Exchange in Cherry County, Nebraska that is estimated to be completed by CenturyLink in three phases and which will take until the end of 2022. *See In the Matter of the Nebraska Public Service Commission, on its own Motion, to administer the Universal Service Fund High-Cost Program: Qwest Corporation d/b/a CenturyLink QC's Broadband Grant Request.*, NUSF-99.09, Order Granting Application (November 2018).

[6] *See* https://broadbandmap.nebraska.gov

unable or unwilling to deploy service at speeds of 25/3 Mbps or better through the distribution mechanism established by the Commission, the NPSC recommends the Commission give significant weight to the ability and willingness of other locally based carriers to extend fiber beyond their incumbent territory in these adjacent unserved areas with federal support. We believe that allowing these carriers this opportunity may be a cost-effective way to extend broadband deployment. We also believe that this ability would provide consumers with broadband in a more timely manner. The NPSC has concerns that in a reverse auction setting, rather than focusing on robust and scalable technology, which may be more expensive, the focus will be on the cheapest way to get to the minimum speed of a given speed tier to a coverage area. In addition, if the Commission chooses to auction off large areas to competitors unfamiliar with the specific geography and localized characteristics of the area, the NPSC is concerned that consumers may not see improved service until year six of the program, if at all. As we have yet to see any deployment from the CAF Phase II auction winners, it is somewhat difficult for us to know whether consumers will in fact receive the promised broadband service and speeds.

Continued Voice Obligations

Nebraska ratepayers have provided considerable supplemental support to price cap carriers for the provision of high-cost services and the deployment of broadband capable facilities in coordination with federal support. We have a strong interest in making sure that these investments are not stranded and that the services we have obligated carriers to deliver continue to be delivered to consumers. Accordingly, we have concerns with how the Commission might release carriers of their common carrier obligations. Specifically, the NPSC has concerns with the proposal to release carriers of "federal ETC high-cost voice obligations." The NPSC recommends the Commission more clearly define exactly what obligations the Commission is releasing and when. 47 U.S.C. § 214(e)(4) provides that it is the state commission that must give permission for a carrier to relinquish its ETC designation. The NPSC has permitted carriers to relinquish an ETC designation upon the showing of the criteria set forth in §214(e)(4). However, the NPSC has not permitted an incumbent carrier to relinquish its designation outside of a transfer of control scenario. Moreover, because there is no requirement that the auction award recipient serve everyone in their territory, only 95 percent, what happens for the consumer that is not being served by the new provider when the incumbent is relieved of the voice obligation? Inasmuch as the NPSC historically has and continues to provide supplemental state support for broadband and voice service, the NPSC wants to ensure that the carrier still has an obligation to provide voice service as the carrier of last resort. The NPSC recommends the Commission make clear that states will continue to be the gatekeeper of ETC designations and relinquishments to the extent that they have previously exercised this role and that the Commission clearly spell out that its proposal impacts only federal obligations and not state obligations.

Transitional Period

Finally, the NPSC recommends the Commission provide more clarity with respect to how federal support will be provided and how high-cost consumers will continue to receive sufficient, affordable access to advanced telecommunications and broadband services during the transitional period. In areas where the auction milestones will not be reached until year five or six, consumers will still need to depend on reliable and affordable services from their provider. Without continued support and obligations that are tied to that support, the NPSC is concerned that Nebraska consumers will be harmed. The Commission should establish a more clearly defined transitional support mechanism with specific metrics for the carriers in the interim. The

Commission should not permit carriers to simply let their networks degrade in anticipation of transitioning support and leaving the market.

While we hope that the Commission's RDOF will be successful, there needs to be a fallback in the event that the carrier that wins auction support is unable to provide service as promised. Consumers should not be left hanging without reliable voice service in addition to their current lack of broadband. The NPSC recommends that the transition period appropriately end where the promised service has in fact been delivered so that consumers will not be harmed in the process.

IV. Conclusion

Overall, the NPSC recommends the Commission coordinate with states that have broadband programs and with carriers to determine which areas will likely be unserved at the time of the auction. Likewise, the NPSC recommends the Commission consider how carriers can leverage existing networks to extend robust scalable technology that will meet future broadband needs of consumers. Finally, the Commission should craft any transition period in a manner that protects state funded investments and safeguards service quality standards so that consumers are not harmed.

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Respectfully submitted,

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