

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE STATE RURAL)
UNIVERSAL SERVICE FUND 2020 PER-)
CONNECTION CHARGE CALCULATION)
AND FUND SIZE)

Case No. 19-00210-UT

FILED IN OFFICE OF

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ORDER SETTING STATE RURAL UNIVERSAL SERVICE FUND SIZE AND
PER-COMMUNICATION CONNECTION CHARGE FOR 2020; ORDER
GRANTING PETITION OF NMECG

NM PUBLIC REGULATION COMM
RECORDS MANAGEMENT BUREAU

THIS MATTER comes before the New Mexico Public Regulation Commission (the “Commission”) upon the State Rural Universal Service Fund (“SRUSF”) Administrator’s 2020 Fund Size and Rate Assessment Memorandum (the “2020 Recommendation”), submitted by the SRUSF Fund Administrator, GVNW Consulting (“GVNW”).

Whereupon, being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. The Rural Telecommunications Act of New Mexico (the “RTA”) provides for the establishment and maintenance of the SRUSF and authorizes the Commission to select a Fund Administrator for the SRUSF. NMSA 1978, § 63-9H-6.G.
2. Pursuant to the RTA, the Commission adopted Commission Rule 17.11.10 NMAC, concerning the SRUSF (the “SRUSF Rule”).
3. The RTA, as amended in 2017, provides that, to fund the SRUSF, “[t]he commission may establish [a] surcharge as a percentage of intrastate retail public telecommunications services revenue or as a fixed amount applicable to each communication connection.” NMSA 1978, § 63-9H-6.B.

4. The Commission's SRUSF Rule, as amended in Docket No. 17-00077-UT, also provides that the Commission may use either a surcharge as a percentage of intrastate retail revenue or a per-communication connection fixed dollar surcharge to fund the SRUSF. 17.11.10.20.B NMAC.

5. In Docket No. 18-00252-UT, the Commission adopted a per-communication connection surcharge of \$1.24 to fund the SRUSF for 2019, which is the current surcharge.

6. The SRUSF Rule requires that the Fund Administrator "determine the amount of the fund for the next calendar year and submit its findings to the commission on or before September 1 of each year to enable commission approval on or before October 1 of each year in order to provide carriers with sufficient time to implement any change in the surcharge rate." 17.11.10.19.A NMAC.

7. On July 23, 2019, the New Mexico Exchange Carriers Group ("NMECG") commenced this docket by filing, on behalf of its members, its Petition to Open New Proceeding, Establish New Residential Affordability Benchmark Rate and, If Required, Grant a Variance or Waiver from Section 17.11.10.9(A)(1) of the Commission's SRUSF Rule (the "Petition"). In the Petition, NMECG stated that, in April 2019, the Federal Communications Commission (FCC) had issued an order eliminating the federal "rate floor."

8. The FCC had established the rate floor in 2011 for the federal universal service fund ("FUSF"), to set a floor on the rates that would be subsidized in high-cost areas. That is to say that the FUSF subsidized service in high cost areas but would not subsidize so much as to support rates in high cost areas that were below the national

average rate for lower cost urban areas. In 2017, the federal rate floor, which had been phased in by the FCC, reached \$18 per month. That same year, the FCC implemented a freeze on increases of the rate floor for two years to allow for a review of the rate floor policy. The review resulted in the decision in April 2019 to eliminate the rate floor.

9. The federal rate floor was relevant to the SRUSF as the Commission's SRUSF Rule, 17.11.10 NMAC, provides that "the residential benchmark rate shall be equal to the rate required by the [FCC] to maintain high cost support, as such rate may change from time to time." 17.11.10.9(A)(1) NMAC. The federal rate floor was used in the calculation of payments to access reduction support ("ARS") recipients from the SRUSF for the same purpose that it was used by the FCC – to avoid subsidizing rates in high cost areas that were below prevailing rates in lower cost, urban areas.

10. In the Petition, NMECG recommended that the Commission establish a new residential benchmark rate of \$18 for 2020 SRUSF payments. NMECG stated that a "determination at this time will enable the Fund Administrator to gather the necessary information from ETCs to make a timely presentation and recommendation to the Commission for determination of a proper Fund size and per-connection surcharge rate for 2020."

11. On August 1, 2019, the Commission issued its Order Directing Staff to Respond to Petition and Inviting Responses from Interested Persons (the "August 1st Order"). In the August 1st Order, the Commission directed Staff to respond to the Petition, providing a procedural recommendation as well as a substantive recommendation, if Staff was prepared to provide a substantive recommendation. The

Commission also invited any interested persons to file responses to the Petition. The deadline for all responses was August 15, 2019.

12. On August 15, 2019, CenturyLink filed CenturyLink's Comments. In those comments, CenturyLink stated that "[e]stablishing an appropriate residential benchmark is important, difficult, and nuanced." CenturyLink further stated:

With a higher residential benchmark, [SRUSF] participants receive smaller subsidies for telephone service and there is more pressure for these [SRUSF] participants to increase prices for telephone service — but there would be more money available to the Commission's broadband fund to support investment in rural broadband. With a lower benchmark, [SRUSF] participants receive more subsidies for telephone service and the pressure on rural telephone prices is reduced, but there is less money available for broadband investment.

[CenturyLink's Comments, p. 1.] CenturyLink repeated the Commission's statement concerning the purpose of the residential benchmark, to avoid subsidizing rates below prevailing rates in lower cost, urban areas, but CenturyLink noted that, on the other hand, "there is a valid interest in keeping telephone rates low and minimizing rate shock for consumers." *[Id.]*

13. CenturyLink further stated that "while the FCC has stopped enforcing the so-called 'urban rate floor,' the FCC still measures the average urban cost for local exchange services." *[Id. at 2.]* CenturyLink stated that the FCC's 2019 survey found that the average urban monthly rate is \$26.98, significantly higher than the \$18 level used as the rate floor until April 2019. *[Id. at 2.]*

14. On August 16, 2019, Staff filed Staff's Response to the Petition. In that response, Staff recommended that the Commission ascertain for the record "the effect of utilization of the \$18.00 benchmark rate on current and future residential rates of affected carriers." [Staff's Response, p. 1.] Staff also recommended that the Commission inquire of the ARS recipients as to what rate changes might be implemented if the Commission did not maintain the \$18.00 benchmark rate.

15. On or about August 20, 2019, GVNW communicated with the Commission's Office of General Counsel concerning the September 1st deadline for the Fund Administrator to "determine the amount of the fund for the next calendar year and submit its findings to the commission," pursuant to 17.11.10.19.A NMAC of the Commission's SRUSF Rule. GVNW stated that an extension of two to three weeks of this deadline, as well as specific instructions from the Commission as to how to address the urban rate floor issue for the 2020 SRUSF calculations, were needed.

16. On August 28, 2019, the Commission issued its Order Issuing Variance from 17.11.10.19.A NMAC of the Commission's State Rural Universal Service Fund Rule; Order Directing The Fund Administrator to Provide Two Alternative Fund Size Calculations; Order to Access Reduction Support Recipients to Provide Information Concerning Potential Rate Increases (the "August 28th Order"). In the August 28th Order, the Commission issued a variance from the requirement of 17.11.10.19.A NMAC that GVNW provide its 2020 fund size and per-connection charge calculations to the Commission on or before September 1, 2019. The Commission ordered all ARS recipients to file, on or before September 18, 2019, information, supported by affidavit, as to whether, when, and to what extent they would raise residential rates in response to

an increase in the affordability benchmark rate from \$18 to \$26.98. Finally, the Commission directed GVNW to file its 2020 fund size and per-connection charge calculation on or before September 25, 2019, including both scenarios for the affordability benchmark rate and taking into account the information to be provided by the ARS recipients.

17. On September 13, 2019, Sacred Wind Communications, Inc. (“Sacred Wind”), filed a response to the August 28th Order despite the fact that Sacred Wind is not an ARS recipient and was not subject to the August 28th Order. Among other statements and recommendations made in its response, Sacred Wind stated that, if the affordability benchmark rate were raised and the ARS recipients raised their residential rates, Sacred Wind would raise its residential rates accordingly.

18. On September 17, 2019, NMECG filed, on behalf of its members, its response to the August 28th Order (“NMECG’s Response”). NMECG’s Response included affidavits on behalf of its members, all of which stated that, if the Commission raised the affordability benchmark rate to \$26.98, they would raise their residential rates accordingly.¹ NMECG stated that “[i]t is evident from the Affidavits that substantial local rate increases are likely to be imposed on rural customers if the Commission increases the benchmark to \$26.98, in some instances more than \$8.00 per month for rural residential customers” [NMECG’s Response, p. 3.] NMECG argued that such a result would be “inconsistent” with the RTA’s policy of providing rural customers with access to telecommunications services at affordable rates. [*Id.* at 2-3 (citing NMSA

¹ The NMECG members’ current basic residential rates range from \$17.00 to \$23.45. In their affidavits, the members stated that they would (or would probably) raise their basic residential rates to \$26.98.

low-income customers, even taking into account the federal enhanced lifeline discount available to low-income consumers living on Tribal lands.” [*Id.* at 2.]

21. On September 17, 2019, Leaco Rural Telephone Cooperative (“Leaco”) filed its response to the August 28th Order (“Leaco’s Response”), in the form of an affidavit, stating that it would probably raise its basic residential rate from \$18.25 to \$26.98 in the event that the Commission raised its affordability benchmark rate to \$26.98. [Leaco’s Response, p. 2.] Leaco argued that such a rate increase “would amount to ‘rate shock’ and would be extremely detrimental to most customers without any equivalent or better corresponding benefit.” [*Id.* at 3.]

22. On September 18, 2019, CenturyTel of the Southwest (“CenturyTel”) filed its response to the August 28th Order (“CenturyTel’s Response”), stating that its current basic residential rate is \$18.³ [CenturyTel’s Response, p. 1.] CenturyTel further stated that, if the affordability benchmark rate were raised to \$26.98, CenturyTel’s ARS payments “would markedly decrease, so we would have some significant pressure to raise rates,” but CenturyTel “could not say with precision whether or how much” it would raise such rates. [*Id.* at 2.] CenturyTel noted, among other things, that most of its customers purchase telephone service as part of a package or bundle, making it difficult to raise rates. [*Id.*]

23. On September 24, 2019, GVNW filed the 2020 Recommendation.⁴ GVNW stated that it followed the directions of the August 28th Order to provide fund size

³ CenturyTel’s Response was not supported by an affidavit. CenturyTel stated that it would file the affidavit “shortly,” but has not done so as of the date of this Order.

⁴ The Commission’s Office of General Counsel filed the 2020 Recommendation on GVNW’s behalf via a Notice of Filing.

and per-connection surcharge calculations under the alternative scenarios of an \$18 and a \$26.98 affordability benchmark rate. [2020 Recommendation, p. 1.] GVNW also stated that, because “[t]here has been less than a year’s experience with the connection-based methodology, thereby providing little track record for a secure number of connections . . . GVNW chose to use the most conservative number of connections . . .,” with an estimate of 26,030,160 communication connections in the state. [*Id.*]

24. As described in the 2020 Recommendation, GVNW provided four alternative calculations of the 2020 fund size and per-communication connection charge. These options vary based upon two factors: (1) the Commission’s choice between an \$18 and a \$26.98 affordability benchmark rate, and (2) the Commission’s option to collect more than the annual \$5 million to be awarded to Broadband Program recipients under Commission Rule 17.11.10.31 NMAC. [*Id.* at 2-3.] According to GVNW, there is expected to be a substantial balance remaining in the SRUSF at the end of 2019, due to a relatively low total amount of disbursements made for Broadband Program projects so far this year.

25. The Commission has jurisdiction over the subject matter of this docket.

26. The Commission finds that the Petition should be granted. The Commission finds that an increase of the residential affordability benchmark rate, from \$18 to \$26.98, would likely result in substantially increased rural basic residential rates in 2020. Such substantial increases would result in rate shock and would be contrary to the RTA’s goal of promoting affordable rural telecommunications service. The Commission further notes that the FCC’s stated policy rationales for eliminating the urban rate floor included promoting affordable rural telecommunications service. Finally, it appears from

the record that the national urban average residential rate of \$26.98 is probably substantially higher than the equivalent average for New Mexico.

27. In light of the substantial projected fund balance at the end of 2019, the Commission finds that the lowest per-communication connection surcharge alternative provided by GVNW, consistent with an \$18 affordability benchmark rate, should be adopted so as to minimize the burden of the surcharge upon New Mexico ratepayers. This is the \$0.88 per-communication connection surcharge, and accompanying fund size of \$26,151,040.84, provided in "Scenario One." [*Id.* at 2.]

IT IS THEREFORE ORDERED:

- A. The Petition is hereby GRANTED.
- B. The Commission adopts and approves a projected State Rural Universal Service Fund size of \$26,151,040.84, and a per-communication connection surcharge of \$0.88 for 2020.
- C. This Order is effective immediately.
- D. Copies of this Order shall be served on all persons listed on the attached Certificate of Service, via e-mail to those whose e-mail addresses are known, and otherwise via regular mail.
- E. This docket is now closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 2nd
day of October 2019.

NEW MEXICO PUBLIC REGULATION COMMISSION


CYNTHIA HALL, COMMISSIONER


JEFFERSON L. BYRD, COMMISSIONER


VALERIE ESPINOZA, VICE-CHAIR


THERESA BECENTI-AGUILAR, CHAIR

VOTED NO

STEPHEN FISCHMANN, COMMISSIONER



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE STATE RURAL)
UNIVERSAL SERVICE FUND 2020 PER)
CONNECTION SURCHARGE AND FUND)
SIZE)**

Case No. 19-00210-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Setting State Rural Universal Service Fund Size and Per-Communication Connection Charge for 2020; Order Granting Petition of NMECG** issued by the New Mexico Public Regulation Commission on October 2nd, 2019, was sent via email to the parties indicated below:

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 Network Comms. Int'l Corp.
 Network Service Billing, Inc.
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 EarthLink Business, LLC
 NobelTel, LLC
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 NOSY A Limited Partnership
 NTS Communications, Inc.
 OneLink Comm., Inc. RM
 Working Assets Funding Service
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 X2Comm, Inc.
 Yucca Coms. Systems L D
 ANPI Business, LLC
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 Holdings, Inc.
 Smith Bagley/Cellular One NE AZ
 PVT Wireless Limited Partnership Northern New Mexico, LP
 T-Mobile West LLC
 CommNet Cellular Inc.
 New Mexico RSA No. 5 LP
 New Mexico RSA 6-1 Partnership
 Verizon Wireless (VA W) LLC
 Sprint Spectrum LP (Sprint PCS)
 Qwest Corporation
 MCI Communications Services
 MCimetro Access Trans. Services
 Tularosa Basin Telephone Co.
 Penasco Valley Telephone Coop.
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 Mescalero Apache Telcom, Inc
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 Centurytel of the Southwest- NM
 Big River Telephone Company
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 Callcatchers Inc/Freedom Voice
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 Puretalk Holdings, LLC
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 Chit Chat Mobile LLC
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NEW MEXICO PUBLIC REGULATION COMMISSION



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