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

In the Matter of	)	
	)	
Eliminated *Ex Ante* Pricing Regulation and	)	WC Docket No. 20-71
Tariffing of Telephone Access Charges	)	
	)	

COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

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EXECUTIVE SUMMARY

The Nebraska Public Service Commission (NPSC) voices concerns with a number of the proposals described in the above-captioned NPRM and urges the Commission to refrain from adopting them. The proposals depart from longstanding policy decisions made by the Commission made in furtherance of the 1996 Telecommunications Act's goals which carry considerable significance to rural consumers. The adoption of the NPRM's proposals would be disruptive for carriers and cause unnecessary confusion for many Nebraskans. Adoption of the mandatory pricing changes would also place carriers and state commissions in the position of having to raise basic local rates to offset the removal of explicit access recovery mechanisms in the midst of a global pandemic. The harms resulting from the adoption of many of the Commission's proposals would outweigh any hypothetic benefit alluded to in the NPRM. Accordingly, the NPSC recommends leaving the current rules in place. If changes are deemed necessary, the NPSC recommends the Commission consider less disruptive alternatives to resolve whatever concerns it may have related to Truth-In-Billing and continued access charge and universal service contribution reform. Finally, we urge the Commission to allow the Federal-State Joint Board processes to continue, so that collaboratively, state and federal stakeholders may evaluate these issues and determine their merit in overall reform.

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I. INTRODUCTION

The Nebraska Public Service Commission (NPSC) appreciates the opportunity to file comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) released on April 1, 2020 in the above-captioned proceeding.[1] The Commission proposes to mandate elimination of currently assessed and tariffed access charges and modify contributions to the universal service fund. For a number of reasons set forth below, the NPSC believes the Commission's proposals would be particularly disruptive to our consumers, and accordingly, oppose their adoption.

II. DISCUSSION

The premise of the Commission's order is based on certain preliminary findings that are not supported by past Commission decisions or data in the record. We are concerned that mandatory shifting of certain interstate costs and allocations may have a particularly harmful impact to our

[1] *See in the Matter of Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71, Notice of Proposed Rulemaking (rel. April 1, 2020) (NPRM).

rural consumers, and we anticipate confusion and concern about why their local carrier is appearing to need a substantial rate increase. The Commission's findings reverse longstanding decisions and commitments without a proper basis for doing so. Moreover, we recommend the Commission work through the Federal-State Joint Board on Jurisdictional Separations (Separations Joint Board) and the Federal-State Joint Board on Universal Service (Universal Service Joint Board) process as a means to consider substantive changes in relation to interstate/intrastate cost allocations and universal service contribution rules.

A. The NPSC has not Received Complaints Regarding the Subscriber Line Charges or Any of the Other Commission-Authorized Access Recovery Charges

The NPSC routinely offers guidance and assistance to consumers relative to their telephone bills. Similar to the Commission, the NPSC puts out information in the form of consumer advisories and FAQs to help consumers understand the charges on their bill and to navigate any disputes they may have with carriers relative to charges. While we are clear with consumers that we do not have regulatory authority over wireless and internet complaints, we maintain valuable relationships with carriers offering these services, and we work together to resolve consumer issues for federally regulated and nonregulated services as well.

In response to the Commission's order, the NPSC reviewed its records and ascertained that it did not have a single complaint about the SLC charge (or any of the other federal access recovery charges) recorded over the last year. Perhaps this is due to the fact that the SLC charge has been on the bill and unchanged for several decades. By now, consumers know what these charges are. Of the complaints we recorded, we note that 32 of them were wireless, 61 were Internet related, and 180 related to wireline service. None of the wireline billing complaints were about the SLC or

the ARC. Even though carrier bills and descriptions may differ, the NPSC has observed no noticeable differences how these line items on the bill discourage informed decision-making by consumers. Rather, in our experience, the more information we can provide consumers about the various charges, the greater ability they have in comparing services and prices. From our experience, consumers are more concerned about knowing what they are paying for and whether the price for that service received is fair.

B. Transparency and Truth-In-Billing Rules Favor Providing Explicit Information about the Subscriber Line Charge and Access Recovery Charges as Explicit Line Items

The NPSC generally supports efforts to make consumer bills more transparent and easily understandable for consumers. However, we do not think that is at the heart of the Commission's proposal. As discussed above, the NPSC has not received any complaints about the subscriber line charge (SLC) or the Access Recovery Charge (ARC).[2] There was no information in the NPRM to gauge how significant of an issue this was for the Commission in comparison to other complaints received.

The Commission's Truth-In-Billing guidelines generally require that consumer telephone bills be:

- Clearly organized, clearly identify the service provider;
- Contain full and non-misleading descriptions of charges that appear; and

[2] We note that even though the SLC is a federal charge, the NPSC still tracks complaints and inquiries about these and other federal or even nonregulated charges.

- Contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges on the bill.[3]

In establishing its guidelines subsequent to the 1996 Act, the Commission found that competitive markets can function properly only if consumers have access to clear and accurate information on the service choices available to them. There, the Commission explicitly rejected the recommendation that it require carriers to combine all regulatory fees into a single charge or forbid them from separating out any fees resulting from regulatory action.[4] Rather, the Commission stated that it is the carriers' business decision whether, how, and how much of their costs they choose to recover directly from consumers through a separately identifiable charge.[5] In the present NPRM, the Commission has provided no justification to depart from this finding. Further, we do not believe as a policy matter the Commission should reverse course. In a competitive market, carriers should be free to separately identify the true nature of these federally authorized charges on the bill. The NPSC finds this particularly important when it results in more clarity rather than less about why a charge is being assessed.

Over eight years ago, the Commission sought comment on whether it should require carriers to advertise the SLC or ARC in materials provided to consumers so that consumers were not surprised or misled by the total bill.[6] This explicit disclosure could also help consumers make an

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[3] *Truth-In-Billing Format*, 14 FCC Rcd 7492, 7496 (1999), recon. granted in part, 15 FCC Rcd 16544 (2000) (Truth-In-Billing).

[4] *Id.* at 7527, para. 55.

[5] *Id.* at 7528, para 56.

[6] *In the Matter of Connect America Fund A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform -- Mobility Fund,* WC Docket No. 10-90, GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket

easy comparison among providers.[7] There were a number of commenters that supported that proposal. However, no action was taken. The NPSC suggests adoption of that proposal might be one way to provide more transparency to consumers.

On the other hand, if the issue is customer confusion due to nomenclature on the bill, the Commission has ample authority through its Truth-in-Billing rules to require more clarity in how line items are worded. Equally imperative, however, is that the Commission treat other line item charges in a similar manner. We know that the Commission is considering other proposed changes to clarify consumer billing rules in response to its 2019 Truth-in-Billing notice refreshing the record.[8] We note that mandating the elimination of certain line item charges and descriptions is not among the Commission's proposals in that proceeding.[9] If the Commission is going to engage in a mandatory framework of what can or cannot be listed on the bill, it should treat all other line-item charges consistently.

No. 03-109; WT Docket No. 10-208, 26 FCC Rcd 17663, para. 1334 (November 18, 2011) ("*Transformation Order*").

[7] *See id.*

[8] *See Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Truth-In-Billing Rules to Ensure Protections for All Consumers of Voice Service*, Public Notice, CC Docket No. 98-170, WC Docket No. 04-36, DA 19-1271 (December 13, 2019).

[9] *See id.* at 2-3. Indeed, the Commission appeared to seek comment about more detail in consumer bills and not less. For example, the Commission asked whether it should consider steps beyond simple separation and require that different charges appear in a distinct section of the consumer's bill, one clearly labeled to show that it contained government-mandated charges. The Commission also did ask how to treat mandatory charges where providers promote all-inclusive prices, with no added line-item charges, for certain offerings.

C. The Assumption that Carriers Can Routinely Absorb these Charges in their Basic Local Rate Structure is Incorrect.

The Commission's NPRM assumes that by requiring the line item to be removed and detariffed that carriers are able to absorb these interstate costs in their basic local exchange rates. Respectfully, that is not the case. In reality, adoption of the Commission's proposal would create significant problems for carriers and confusion for consumers. While Nebraska lawmakers largely deregulated local exchange rates in 1986, rate increases meeting a certain threshold are subject to a mandatory review by the Commission. For example, small local exchange carriers serving less than five percent (5%) of Nebraska's subscriber lines are subject to rate regulation if they increase local service rates by over 30 percent.[10] This requirement is statutory, even where a rate change might be considered revenue neutral. If carriers need to recover the SLC and the ARC from local rates, that would result in a rate increase in excess of the 30 percent threshold triggering a rate case.

Even if the carriers phased in these costs over two years, each rural local exchange carrier would still have to comply with other provisions of Neb. Rev. Stat. § 86-141 in relation to notice and petitions. Section 86-141 states that each telecommunications company not subject to rate regulation shall, at least ninety days before the effective date of any proposed rate change, notify the NPSC and each of the telecommunications company's subscribers of the proposed rate change.[11] Notice is required to be sent by first-class mail and must include a schedule of the proposed rates and the procedure necessary for subscribers to petition the

[10] *See* Neb. Rev. Stat. § 86-141 (1)(b).

[11] *See* § 86-141(2).

NPSC to determine rates in lieu of the proposed rates.[12] Each carrier would need to provide written notice of the rate change to each subscriber, await the 90 day review process, and explain this rate change to their subscribers.

While carriers could conceivably ask the NPSC to otherwise streamline the proceeding like it did when it rebalanced local service rates, the carrier would still be required to provide notice to its subscribers, and the NPSC would still be required to provide a forum such as a public hearing for subscriber challenges, and approve the rate increases. Consequently, rather than eliminating costs and regulatory burdens, the Commission's proposal to have the SLC and ARC absorbed into local rates on the consumer bill would actually impose significant costs on Nebraska providers.

Moreover, assuming the Commission decided to proceed, this action would place carriers and state commissions in the unenviable position of appearing to raise local rates in the midst of a global pandemic. When consumers are already facing the raw realities of economic hardships due to loss of employment or illness, the timing of such an imposition is extremely ill-conceived. Even assuming consumers understand this arcane shifting of costs, there is no denying that such a change would increase customer confusion not alleviate it.

D. The Proposal to Shift Interstate Rates into the Intrastate Rate Base Runs Counter to Previous Decisions of the Commission and should Not be Adopted

Even if the Commission's proposal to require elimination of these access charges wasn't incredibly burdensome for the carriers and confusing for consumers, fundamentally, the NPSC opposes this shifting of explicit interstate costs to an implicit intrastate cost recovery mechanism.

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[12] *See id.*

As an early adopter state, the NPSC had opposed the Commission's proposal to adopt a mandatory bill and keep regime because of the fear that Nebraska consumers would end up with an increased financial burden.[13] The NPSC had already taken significant steps to reduce implicit subsidies from intrastate access rates, provide explicit cost recovery, and rebalance local rates. The NPSC supported intercarrier compensation reform which would fairly recognize a market-based rate for the service provided. To appease the concerns voiced by commenters like the NPSC, the Commission found in its *Transformation Order*, and argued again on appeal, that states ***will not be*** left with the responsibility to recover certain carrier access costs.[14] Specifically, the Commission concluded,

> that a uniform, national framework for the transition of intercarrier compensation to bill-and-keep, with an accompanying ***federal*** recovery mechanism, best advances our policy goals of accelerating the migration to all IP networks, facilitating IP-to-IP interconnection, and promoting deployment of new broadband networks by providing certainty and predictability to carriers and investors. Although states will not set the transition for intrastate rates under this approach, we do follow the State Member's proposal regarding recovery coming from the ***federal*** jurisdiction. ***Doing so takes a potentially large financial burden away from states.*** (Emphasis Added).[15]

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[13] *See* Comments of the Nebraska Public Service Commission for Sections I through XIV and Reply Comments for Section XV, *In the Matter of Connect America Fund,* WC Docket No. 10-90, (filed April 18, 2011) at 27.

[14] *Transformation Order*, 26 FCC Rcd 17663, para. 795 (Emphasis added).

[15] *Id.* at para. 790.

The *Transformation Order* established a ***federal*** recovery mechanism to "provide carriers with recovery for reductions to intercarrier compensation revenue.'"[16] Further, this concern bore out in the challenge to the Commission's Order in *Direct Communs Cedar Valley, LLC. v. FCC*, 753 F.3d (10th Cir. 2014), where "[a]ddressing the specific points raised by petitioners, the FCC assert[ed] as follows… petitioners' assertion that states have been 'left' with the responsibility to recover certain carrier access costs overlooks the Order's explicit holding that 'states will not be required to bear the burden of establishing and funding state recovery mechanisms for intrastate access reductions…'" Yet, it appears that the Commission is indeed saying states should be "left with the responsibility to recover certain carrier access costs."[17] The Commission clearly acknowledged when it established an interstate cost recovery mechanism that it was doing so with careful consideration of states that had already rebalanced rates and set local service benchmarks.[18] Shifting that burden to the states to determine cost recovery is undeniably inconsistent with statements in the Commission's *Transformation Order* and defensive arguments made counter to the challenges posed in the Tenth Circuit. The Tenth Circuit relied on Commission statements when it found in favor of the Commission relative to these issues. A reversal of this course is not supported by the record in the present NPRM, and is clearly arbitrary and capricious.

Additionally, we do not think the Commission has provided justification to depart from its longstanding policy relative to the SLC that "to the extent possible, costs of interstate access should

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[16] *Id.* at para. 795. (Emphasis added).

[17] *Id.*

[18] With the local rate benchmarks required under our universal service fund program along with subscriber line charge and other surcharges, total out-of-pocket local residential rates in the state already exceeds $ 30 per month.

be recovered in the same way they are incurred" [19] and that the "Commission should create explicit universal service support mechanisms that will be secure in a competitive environment."[20] If the Commission's objective is to determine the propriety of that interstate rate it established then it should instead revisit its questions in the *Transformation Order* which sought comment on whether the SLC is set at an appropriate level given the interstate cost of providing access to the network.

Alternatively, the Commission could consider other federal recovery mechanisms if it does not want an explicit federal charge on the bill. The Commission's order does not address those open questions or take into account the Commission's findings in prior decisions that "...one of the major benefits of recovering common line costs through the SLC alone was to encourage efficient competitive entry, particularly providing competing alternatives for loop service."[21] Whether these costs remain properly calculated or whether there should be greater dissagregation or deaveraging in terms of customers, services, or geography were questions posed by the Commission but never answered.

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[19] *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 99-249, CC Docket No. 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45 , 15 FCC Rcd 12962, 12967 (May 31, 2000) at para. 12 ("*CALLS Order*"), aff'd in part, rev'd in part, and remanded in part, *Texas Office of Public Util. Counsel et al. v. FCC,* 265 F.3d 313 (5th Cir. 2001).

[20] *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19625, para. 21 (November 8, 2001) ("*MAG Plan Order*")

[21] *CALLS Order* at para 89.

E. The Commission Should Maintain Flexibility as it Relates to How Charges Are Recovered from Consumers

The Commission's observation about competition in the communications marketplace is also a reason for continued flexibility in how the carriers recover and list these charges. In paragraph 39 of the NPRM, the Commission proposes to find that widespread competition among voice services makes ex ante pricing and tariffing of access charges unnecessary to ensure just and reasonable rates or to otherwise protect consumers. Ironically, promoting a competitive environment was the reason the Commission required the creation of these explicit recovery mechanisms. The NPSC asks the Commission to keep in mind that there are many places where there is not widespread competition. The lack of a business case to serve rural customers creates a natural disincentive to a competitive environment despite deregulatory efforts to promote it. To the extent that rural incumbent carriers have deployed broadband capable networks, many with the help of continued state and federal universal service support, these carriers still have fixed network costs that do not disappear with the presence of a wireless or VoIP alternative. In rural areas in particular, carriers are reliant upon the basic local rate revenue, access charge revenue, as well as state and federal universal service support. At the outset, we see absolutely no benefit to consumers if the Commission mandates detariffing and requires a change in the recovery of these costs.

F. The Commission's Proposal to Preempt State Law Encroaches on Authority Expressly Reserved to the States

In paragraph 66 of the NPRM, the Commission seeks comment on whether to preempt state laws that relate to how communications charges are identified on consumers' bills. The Commission further asks whether it should utilize the impossibility exception as a tool for preempting state laws that might require more complete disclosure. Preemption of state laws

and regulations designed to give consumers more information about the charges on their local telephone bill does not advance nor promote any federal objective and intrudes upon authority expressly reserved to the states.[22] Section 152 of the Communications Act, provides that "nothing in this chapter shall be construed to apply or give the Commission jurisdiction with respect to ....regulations for or in connection with intrastate communication service by wire or radio of any carrier.[23] The Commission's exercise of the impossibility exception referenced in the NPRM at paragraph 66 would wrongfully presuppose the existence of statutory authority where it does not exist. The impossibility exception cannot serve as a substitute for a delegation of power from Congress.[24] Further, the Commission cannot bootstrap itself into preemption authority just by pointing to Section 152.[25] A federal policy of non-regulation cannot sustain preemption either. Preemption of state law must be conferred by Congress. "It cannot be a mere byproduct of self-made agency policy."[26] Based upon the foregoing, and the reasoning provided in the NPRM, the NPSC does not believe the Commission has the authority or the justifiable basis to preempt state laws relative to how these charges are identified on the bill.

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[22] Nor do we believe there is sufficient justification in the NPRM to reverse the Commission's longstanding policy which promotes transparency in Truth-In-Billing. The Commission spent decades implementing the 1996 Act's design to move implicit subsidies to explicit cost recovery mechanisms in order to promote a more open competitive playing field. *See In the Matter of Access Charge Reform et al.*, CC Docket No. 96-262, *et al.,* FCC 97-158, First Report and Order, 12 FCC Rcd 15982, 15986, para. 4 (May 16, 1997). ("Access Charge Reform Order")(quoting the Joint Explanatory Statement of the Committee of the Conference, stating Congress intended that, "to the extent possible,... any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today").

[23] 47 U.S.C. § 152(b).

[24] *See Mozilla Corp. v. FCC*, 940 F.3d 1, 78 (D.C. Cir. 2019).

[25] *See id.*

[26] *Mozilla Corp.*, 940 F.3d at 78.

G. The Commission's Proposal to Fold Interstate Charges into the Intrastate Rate Base Should be Referred to the Federal-State Joint Board on Jurisdictional Separations

The NPSC recommends that the Commission delay consideration of its proposals set forth in the NPRM and refer the issues to the Separations Joint Board. Jurisdictional separations is a procedure that determines what proportion of jointly used plant should be allocated to the interstate and intrastate jurisdictions for ratemaking purposes.[27] Rate-of-return incumbent LECs use their networks and other resources to provide both interstate and intrastate services.[28] To help prevent the recovery of the same costs from both interstate and intrastate jurisdictions, the Commission's rules require that rate-of-return incumbent LECs divide their costs and revenues between respective jurisdictions.[29] The Commission is required to refer to the Separations Joint Board any proceeding regarding "the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking.[30]

In 2001, the Commission, acting pursuant to the recommendation of the Separations Joint Board, froze the jurisdictional separations process. Although the freeze was intended originally to last only five years, it has since been extended and remains currently in effect. Since then, the Commission has extended the separations freeze over seven times, for periods ranging from one

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[27] *MCI Telecommunications Corp. v. FCC*, 750 F.2d 135, 137 (D.C. Cir. 1984).

[28] *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking, 33 FCC Rcd 7261-7262, para. 3 (July 18, 2018).

[29] *Id.*

[30] *See* 47 USC § 410 (c).

year to three years, with the most recent extension, contrary to the position taken by NARUC, for six additional years.

In its 2018 Order, the Commission stated that as a result of recent reforms, that it currently uses separations results only for carriers subject to rate-of-return regulation and only for the limited purposes of calculating *inter alia*, "the charge assessed on residential and business lines known as a subscriber line charge, allowing carriers to recover part of the costs of providing access to the telecommunications network…"[31] Pursuant to that Order, the freeze was extended again for six years so that the Joint Board can "adopt an incremental approach to separations reform by focusing first on cleaning up the existing separations rules and then on long-term steps toward comprehensive reform of the remaining rules."[32] The NPSC is unsure how the Commission can freeze the calculation of the SLC, yet mandate the elimination of the ability of a carrier to charge this rate, all the while assuming such a rate can be added to the intrastate rate base, without offending § 410 (c). However, as the Commission decided to extend the freeze for six years combined with the fact that the Joint Board has already been directed to consider reforming existing separations rules, which would presumably include the SLC, the NPSC does not believe the Commission action proposed in the NPRM is pressing. Rather than adopting reforms described in the NPRM, the NPSC recommends the Commission refer the issues to the Separations Joint Board. To the extent that these issues are already being considered by the Joint Board, the Commission should allow the Board to complete its review and make its recommendation.

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[31] *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order and Waiver, 33 FCC Rcd 12743, 12749, para. 18 (December 17, 2018) (*Separations Freeze Order*).

[32] *Id.* at 12757, para. 41.

H. The Commission's Proposal to Use a Safe Harbor Percentage for USF Contributions Puts More Pressure on Traditional Voice and Does Not Advance Needed Contribution Reform

Likewise, the Commission's proposal to utilize a safe harbor percentage for universal service appears to be aimed at reforming a small portion of the universal service fund contribution system. The Commission asked similar questions, but in a broader context in its 2012 FNPRM.[33] Beginning at paragraph 121, the Commission posed a series of questions about allocating revenues between inter and intrastate jurisdictions. Historically, wireline contributors have been directed to report the amount of total revenues that are intrastate, interstate, and international using information from their books of account or other data systems and, as it relates to rate-of-return carriers, part 36 rules.[34] To the extent that a carrier could not make that determination it could use a "good faith estimate."[35] While some providers may use safe harbors or traffic studies to allocate their revenues, admittedly, they are an imprecise mechanism used to simplify jurisdictional allocations for contribution purposes. In its last order setting the percentage for wireless contributions, the Commission found that "although it adopted the interim wireless safe harbor in part because wireless providers historically have claimed it difficult to identify interstate versus intrastate revenues, it is the Commission's policy preference that providers contribute to the universal service fund based on their ***actual data rather than on a safe harbor percentage where possible***." (Emphasis added).[36] We agree with that policy preference.

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[33] *In re Universal Serv. Contribution Methodology, A Nat'l Broadband Plan* , WC Docket No. 06-122, GB Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5405-5413, paras. 121-142 (April 30, 2012)(*Contribution FNPRM*).

[34] *See Contribution FNPRM* at 27 FCC Rcd at 5404, para. 123.

[35] *See id.*

[36] *In the Matter of Universal Service Contribution Methodology et al.*, WC Docket No. 06-122, *et al.*,

The imprecise nature of safe harbor allocations was again highlighted in the Commission's 2012 FNPRM where the Commission found that the traffic studies on file report interstate/international usage significantly lower than the safe harbors for both wireless and interconnected VoIP.[37] To the extent that carriers currently have a more precise method currently to identify the jurisdictional aspects of wireline voice service there should be no need for a more imprecise safe harbor allocation. Further, as the Commission recently indicated in its *Separations Freeze Order*, imposing a burden on small carriers to develop traffic factors to jurisdictionally separate costs assigned to voice-related services would hit smaller rural carriers with limited resources the hardest.[38] It is difficult to justify that expense.

The NPSC questions what gamesmanship the Commission has detected relative to local voice service contributions. In paragraph 86 of the NPRM, the Commission states that is goal is help ensure that carriers properly attribute revenues to the interstate jurisdiction and prevent carriers from avoiding contributions altogether by allocating all their revenues to the intrastate jurisdiction. How is adopting a safe harbor percentage based on decades old data a proper attribution of revenues? Rather than adopting any of the proposals set forth in the NPRM, the Commission should return to comprehensive reforms that will rationalize contributions for all providers. The NPSC is concerned that the Commission's piecemeal approach to changing carrier contribution rules will unfairly harm some voice consumers of carriers already subject to benchmarked local

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Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7533, para. 28 (rel. June 27, 2006).

[37] *See Contribution FNPRM,* 27 FCC Rcd at 5406, para. 125. Stating that overall the average percentage for VoIP traffic studies is 22.1 percent interstate/international, with the median study reporting 14.7 percent interstate/international. *See also id.* at para. 124, stating that the average percentage for wireless traffic studies is 23 percent interstate/international with the median study reporting 19 percent interstate/international.

[38] *See Separations Freeze Order*, 33 FCC Rcd at 12751, para. 22.

rates and state universal service charges, while other contributors would remain free to artificially decrease or bundle certain services in order to escape contribution requirements. The Commission needs to address contribution reform holistically rather than through piecemeal revisions that are going to exacerbate rather than fix universal service contribution system deficiencies. The NPSC encourages the Commission to address these issues comprehensively and preferably through consultation with the Universal Service Joint Board.

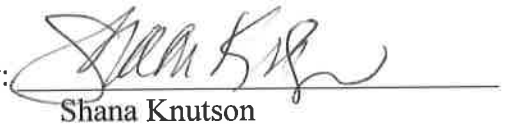
III. CONCLUSION

The NPSC appreciates the opportunity to comment in this proceeding. While, we recommend against adoption of these particular proposals, we encourage the Commission to move forward with rationalizing jurisdictional separations and the universal service fund mechanisms in coordination with its state partners.

Dated this 6th day of July 2020.

Respectfully submitted,

The Nebraska Public Service Commission

By: 

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