

**BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION**

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

**COMMENTS OF CTIA
IN RESPONSE TO THE COMMISSION'S APRIL 5, 2016
ORDER SEEKING FURTHER COMMENTS**

I. INTRODUCTION

As CTIA – The Wireless Association[®] (“CTIA”) has discussed in its comments in this and other recent dockets related to the Nebraska Universal Service Fund (“NUSF”), it applauds the detailed, careful review the Nebraska Public Service Commission (“Commission”) is undertaking to reform its universal service policies. In particular, in its Order Seeking Further Comments (“April 5 Order”), the Commission indicates a strong desire for a holistic NUSF review, evaluating all aspects of universal service funding, which CTIA supports. CTIA agrees that it makes sense for the Commission to consider a proper, forward-looking vision for the NUSF before implementing reforms to the NUSF contribution methodology.

Nonetheless, while CTIA agrees with both the Commission’s establishment of a Strategic Plan and several of the Commission’s proposed goals, CTIA has concerns about the Commission’s approach to the Strategic Plan and with some of its specific components.

II. THE COMMISSION SHOULD MOVE CONSIDERATION OF THE STRATEGIC PLAN TO A SEPARATE DOCKET AND ENSURE THAT ANY ACTION ON CONTRIBUTION REFORM IS CONSISTENT WITH THAT PLAN

In the April 5 Order, the Commission proposed a Strategic Plan to “serve as the foundation for the advancement of universal service in the broadband age.”¹ CTIA believes that a Strategic Plan for the NUSF is commendable and necessary, and supports the establishment of such a plan. However, CTIA also believes that the Commission should open a new docket for consideration of the Strategic Plan.

As noted by the Commission, the present proceeding was opened to consider revisions to the NUSF contribution mechanism.² This approach is aligned with the Commission’s overall approach to recent NUSF reforms, which has been to open separate dockets addressing individual NUSF issues; for example, NUSF-77 sought comment on the Nebraska Broadband Pilot Program, and NUSF-99 sought comment on program modifications regarding price cap carriers.

The Commission’s consideration of a Strategic Plan for the NUSF, as described in the April 5 Order, would extend well beyond the narrower issue of contribution reform to address ubiquitous broadband, deployment of fiber, and accountability measures, among other topics. There are many parties who may be interested in providing comment on such issues; however, because the present docket was initially scoped (and is still currently captioned) to address only the issue of contribution reform, such parties may be unaware that a broader Strategic Plan is being considered in this proceeding. By moving consideration of the Strategic Plan to its own docket, the Commission can assemble diverse, robust input for the Strategic Plan and make the process as fair and inclusive as possible.

¹ April 5 Order, at 5.

² April 5 Order at 1.

Further, such a wide-ranging plan could influence the direction the Commission may want to take on contribution methodology. The Strategic Plan should shape the Commission's action on contribution reforms, and not the other way around, as one part of a holistic NUSF reform strategy. Moving the Strategic Plan to its own docket would allow that step of the Commission's NUSF reforms to be completed, as it should, before any potential contribution reforms. It would also allow the Commission to develop a Strategic Plan that addresses other NUSF objectives that it has expressed an interest in reforming, such as Lifeline and telehealth.

For those reasons, the Commission should move consideration of the Strategic Plan to its own docket, seek comment to guide development of the Strategic Plan, and issue a draft Strategic Plan for comment prior to undertaking any substantive action to change the NUSF contribution methodology.

III. COMMENTS REGARDING THE STRATEGIC PLAN

While CTIA reiterates that the Strategic Plan should be considered and developed in its own docket, should the Commission choose to keep consideration of such a plan in the present docket, the following are CTIA's initial thoughts on the principles that should guide development of the Strategic Plan.

A. The Commission's NUSF Reforms Should be Technologically and Competitively Neutral, Cost Effective for Customers, and Limited to the Bounds of the Commission's Jurisdiction

Ultimately, whether considering a Strategic Plan, specific contribution methodology reforms, or any other decision regarding subsidies or NUSF reform, there are three principles that should guide the Commission: technological and competitive neutrality, cost effectiveness, and the boundaries of the Commission's jurisdiction.

First, and foremost, the Commission must be careful that in providing support it does not tilt the competitive playing field, inhibit consumer choice, or chill innovation. Instead, any action by the Commission must be technologically and competitively neutral. Ubiquitous fiber, which the Commission has set as a goal, does not meet this criteria. The Commission's goal should be universal service without regard to the modality by which it is achieved; the Commission should not be in the business of picking technology "winners and losers." Moreover, because NUSF funding is limited and the cost of the program is ultimately borne by Nebraskans, the Commission has a duty to ensure that NUSF support dollars are spent in the most efficient manner possible to meet the state's universal service goals. Consequently, support recipients should be allowed and encouraged to use the most efficient technology available to meet universal service goals, especially given consumers' strongly expressed preference for mobility. Insisting on fiber networks in low population density areas where NUSF support is made available will eliminate the possibility of lower cost solutions, including wireless solutions.

The FCC's recent Rural Broadband Experiments, which explored how robust Internet access services can be expanded at lower cost in rural America, provided concrete evidence that programmatic cost savings can be realized by expanding funding eligibility to different service modalities. Under that program, applicants competed for funds awarded to the most cost-effective projects. The experiments were open to non-traditional providers, including electric utilities and wireless Internet service providers, and tested service over diverse technologies, including fiber and wireless networks. The program's first awards illustrated that wireless networks can offer cost-effective solutions for broadband deployment in rural America. Two awardees, Consolidated Communications Networks and Delta Communications LLC, proposed to build fiber-based networks with significant performance capabilities (though much lower than

urban fiber speeds) – 10 Mbps download/1 MBps upload service with 100 GB of monthly usage – at a cost of \$18,000 or more per location.³ By contrast, another awardee, Skybeam LLC, committed to building a fixed wireless network with significant performance capabilities – 25 Mbps download/5 Mbps upload at a price and usage allowance comparable to urban areas – at a cost of only \$681 per location.⁴ These examples demonstrate the importance of both technologically and competitively neutral programs, and of seeking cost-effectiveness in NUSF funded projects and programs.

Second, the Commission should ensure that the NUSF achieves universal service goals in a manner that is most cost-effective for consumers. As the example of the FCC’s Rural Broadband Experiments illustrates, different approaches to achieving service goals can produce dramatically different costs – costs which must be borne by consumers contributing to the NUSF. The Commission should remain vigilant to not add new charges to customer bills, as Nebraska’s consumers already face one of the highest wireless bill tax, fee and surcharge rates in the nation.⁵ The Commission should not assume without proof that the current NUSF size is the correct size, or that any growth of the fund, regardless of how incremental, is needed. Similarly, the Commission must consider whether current NUSF distributions achieve programmatic goals in the most cost-effective manner. As part of its reforms, the Commission’s Strategic Plan should establish a means to ascertain the smallest NUSF fund size that will enable the realization of the Commission’s universal service goals.

³ Federal Communications Commission, “Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communications Networks, Inc., Delta Communications, Inc., and Allamakee-Clayton Electric Cooperative, Inc.” DA 15-897, WC Docket Nos. 10-90, 14-259 (August 7, 2015).

⁴ *Id.*, at 6.

⁵ Nebraska ranks second among states for the highest taxes and fees on monthly wireless service, at a combined federal and state rate of 24.99%. See ACTWireless, “State Tax Rankings” (July 2015) *available at* <http://www.actwireless.org/taxes-and-fees/state-tax-rankings/> (last accessed June 2, 2016).

The third key principle to guide the Commission's NUSF reforms is for the Commission to act only within the bounds of its jurisdiction. The Commission must be mindful of the limits of its jurisdiction over broadband under Nebraska and federal law.⁶ Regulation of broadband is reserved to the federal government; a relevant example is the FCC's Net Neutrality Order, which precludes states from assessing new USF contributions on broadband.⁷ In that order the FCC made clear that "we preempt any state from imposing any new state USF contributions on broadband – at least until the [FCC] rules on whether to provide for such contributions."⁸ While state funding of broadband projects may be permissible, the Commission should take care that its determination to fund broadband projects does not overreach and extend into impermissible regulation of broadband itself, whether in contravention of the Net Neutrality Order or any other federal or state law or directive.

By adhering to these three principles, the Commission can help ensure that NUSF reforms remain forward-looking and beneficial to consumers.

B. The Commission Should Take Appropriate Steps to Tailor the NUSF to Complement and Not Duplicate Federal Funding, Most Importantly by Waiting for the FCC's Joint Board Recommendations

The Commission expressly stated in its April 5 Order that one of its goals for the NUSF is to tailor the fund and its programs to complement federal support.⁹ As CTIA expressed in its initial comments in this docket, the best way to tailor the NUSF to complement federal programs

⁶ In past proceedings, CTIA members and others have expressed concerns about the Commission's authority regarding broadband under state law. See, e.g., *In the Matter of the Commission, on its Own Motion, to Increase Broadband Adoption Among Low-Income Consumers Through the Adoption of a Nebraska Broadband Telephone Assistance Program*, Application No. NUSF-91, Verizon's Reply Comments (Oct. 25, 2013) at 3, n. 6 (listing other comments that had also argued that the Commission lacked jurisdiction to create the Broadband Telephone Assistance Program).

⁷ *In the Matter of Protecting and Promoting the Open Internet*, Report & Order on Remand, Declaratory Ruling and Order ("Net Neutrality Order"), GN Docket No. 14-28, FCC 15-24 (rel. Mar. 12, 2015).

⁸ *Id.* at ¶ 432.

⁹ April 5 Order, at 5.

is to wait for pending guidance on modifications to the federal USF. The FCC's Federal-State Joint Board on Universal Service ("Joint Board") was tasked to make recommendations regarding how the FCC should modify the federal universal service contribution methodology: "We ask the Joint Board to focus especially on issues that would impact the important role of the states in accomplishing universal service objectives and protecting consumers. We request that the Joint Board consider, in making its recommendations, how to further the goals of improving the efficiency, fairness and sustainability of the contribution system."¹⁰ In light of pending recommendations from the Joint Board, it would not make sense for Nebraska to implement modifications to the NUSF contribution methodology. Such changes run a considerable risk of being contrary to, or a poor fit with, changes to the federal approach.

Such changes may also be contrary to federal law that precludes state USFs from either relying on or burdening federal support programs; in particular, 47 U.S.C. §254.¹¹ The FCC provided bright-line guidance to the Commission in 2010 when the Commission sought a declaratory ruling on the assessment of interconnected VoIP providers in compliance with Section 254.¹² However, that petition was narrow and addressed only the specific issue of nomadic interconnected VoIP providers.¹³ If the Commission were, for example, to adopt a non-revenue based contribution methodology, the FCC would likely have to provide guidance on how Nebraska could assess providers on that basis without violating Section 254. Until the FCC

¹⁰ *In the Matter of Federal State Joint Board on Universal Service et al.*, Order, WC Docket Nos. 96-45, 06-122, GN Docket No. 09-51 (August 7, 2014) at ¶ 3.

¹¹ "A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms." 47 U.S.C. §254(f).

¹² See *In the Matter of Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, Declaratory Ruling, WC Docket No. 06-112, FCC 10-185 (Nov. 5, 2010).

¹³ *Id.*, at ¶ 11.

provides guidance on non-revenue based contribution methodologies, any contribution reform implemented by the Commission would be at risk of a subsequent FCC conclusion that such a method impermissibly relies on or burdens the federal USF. This lack of certainty is another reason for the Commission to develop its Strategic Plan presently and wait for clear guidance regarding reform at the federal level before seeking to implement any changes to the NUSF contribution methodology.

Many commenters, including CTIA, urged the Commission to refrain from implementing reforms to the NUSF contribution methodology in order to avoid conflict between the Nebraska and the federal programs, and duplication of efforts or support. In contrast, every company supporting prompt action on contribution reform in this docket is drawing from the NUSF. The interests of those companies, however, are not necessarily aligned with the interests of ratepayers and consumers, or with competition.

The Commission should also acknowledge and consider the extraordinary burden and expense imposed on carriers required to implement changes to contribution methodologies more than once in a short period of time. Changes to any USF contribution methodology – federal or state – require carriers to undertake modifications of billing and accounting systems, employee training, customer education, compliance processes and more, all of which require a substantial investment of time, expertise and capital. CTIA’s members have estimated that they may need 12-24 months to make changes to the multiple systems that are involved in accurately collecting NUSF contributions, train their personnel, conduct customer education, and implement compliance processes to ensure accurate collection is occurring. Having to undertake these steps numerous times is wasteful and inefficient, stymies innovation, and reduces funds available for network improvement and expansion. Unless the reforms the Commission implements match

pending reforms at the federal level – which is unlikely – carriers and consumers will endure multiple implementation processes. The Commission should avoid that outcome.

While it is prudent to wait for further developments at the federal level, there are steps the Commission can take to improve the NUSF presently. During the pendency of the Joint Board's recommendations, the Commission can work towards establishing accountability mechanisms that ensure the size of the fund is no more than what is absolutely necessary to achieve universal service in Nebraska. The Commission can also work to develop its Strategic Plan, which, as CTIA mentions above, should be developed in its own docket and completed before NUSF contribution methodology reforms are considered. Although the Commission is understandably concerned about the time the FCC is taking to make a decision regarding contribution reform for the federal USF, the Commission is capable of developing a Strategic Plan without taking action on the complex issue of the NUSF contribution methodology, and leaving NUSF contribution methodology reform to be addressed after the Joint Board's recommendation is issued. Respecting the work of the Joint Board validates a critical avenue for state input into what may be, from a strictly jurisdictional standpoint, federal issues.

For all of these reasons, CTIA reiterates its call for the Commission to wait on any final decisions on contribution or support methodologies until the FCC's Joint Board has completed its work.

C. The Commission Should Reduce the NUSF to the Smallest Successful Fund Size

CTIA agrees with the Commission's stated goal of accountability for NUSF recipients. The Commission should be certain – both at present and going forward – that every dollar of NUSF support is necessary, spent prudently, not duplicative of federal funding, and does not interfere with the competitive market. The broad, holistic review the Commission is undertaking

regarding other aspects of NUSF programs illustrates a forward-looking approach for the NUSF. In pursuing this approach, the Commission should use its review as an opportunity to reform the size of the fund, looking for efficiencies that would result in a smaller fund that is less burdensome to consumers and competition. The Commission should also be mindful of the limits of its jurisdiction and should take such limitations into account when sizing the Fund.

D. The Commission Should Support Funding of Universal Service Through the State's General Fund

As the Commission considers reforms to the NUSF, it should be open to broader, structural changes which improve the Fund. One such change is for Nebraska to transition NUSF funding from carrier assessments to appropriations from the state general fund.

As highlighted by the Strategic Plan goals recommended in the April 5 Order, the goals that state policy makers are seeking to achieve through state universal service programs are intended to enhance the general welfare of the state and its people: ensuring access to voice communications, ensuring access to emergency services, and allowing citizens to communicate with government, transact business, and communicate with family and friends. An NUSF that targets the availability of Internet access services is driven by goals such as expanding educational opportunities, improving health care delivery, expediting economic development activities, and enabling better access to government information and services. These broader societal objectives shouldn't be funded on the backs of telecommunications carriers and their customers alone.

For these reasons, Nebraska should transition NUSF funding from carrier assessments to appropriations from the state's general fund. This will ensure the broadest possible contribution base for the NUSF and will better align those who support the fund with those who benefit from the fund – *i.e.*, all Nebraskans. Such a change would also remove the concern that a carrier- or

customer-based contribution methodology will distort the market. Further, funding the NUSF through general tax revenues will also help to ensure that, through the legislative process which demands political accountability, the NUSF's progress toward meeting identified goals is regularly evaluated and that the NUSF sunsets when it is no longer needed.

While CTIA understands that such a change cannot come directly from the Commission, the Commission should endorse the legislation necessary to implement such a change.

E. The Commission's Strategic Plan Should Include the Adoption of a Prepaid Point-of-Sale Methodology for Collecting the NUSF Assessment from Prepaid Wireless Service

As noted in CTIA's initial comments in this docket, CTIA believes that any new mechanism for the collection of NUSF contributions should include a "point of sale" methodology for the collection of the NUSF assessment from prepaid wireless service, which is an established and growing segment of the wireless telecommunications market. As its initial comments addressed this point extensively (at pp. 3-6), CTIA will not repeat the numerous reasons why such an approach is the most accurate and appropriate system for collecting the NUSF assessment from prepaid wireless consumers, except to note that the implementation of such a system can be accomplished irrespective of whether the Commission continues to base NUSF contributions on a percentage of intrastate telecommunications revenues or moves to a connections-based contribution methodology.

IV. RESPONSES REGARDING ISSUES RAISED BY THE COMMISSION FOR SPECIFIC COMMENT

A. Definitions

In the April 5 Order, the Commission sought comment on certain proposed definitions. CTIA has concerns about the proposed definitions of "Connection" and "Assessable Service."

The Commission proposes to define “Connection” as a “wired or wireless channel used to provide end users with access to any assessable service,”¹⁴ but the term “wireless channel” is not itself defined and has no commonly understood definition. Similarly, the definition of “Assessable Service” is not sufficiently clear. The Commission proposes to define “Assessable Service” as “a service which requires a network connection that is identified through the use of an inter-network routing number as the means to provide the telecommunications.”¹⁵ It is possible that the definition could be read broadly enough to impact services offered under the Lifeline program, non-service initiated devices capable of calling 9-1-1 only, or possibly other devices. Assessing an NUSF surcharge on these services would undermine the federal Lifeline program in the former example, and undermine a program designed to promote public safety in the latter example. Neither is an appropriate policy result. It also is not clear whether, through these definitions, the Commission is seeking to assess mass market internet access services or various services supporting devices that utilize broadband services. While the use of the term “telecommunications” in the definition of “assessable service” suggests that is not the Commission’s intent, the definition does allow for such an interpretation, which would contravene the FCC’s mandate for no new state USF contributions on broadband.¹⁶

The Commission should provide clarification to ensure that the Commission’s proposals neither contravene federal law nor undermine the Commission’s achievement of its policy goals.

¹⁴ April 5 Order, at 7.

¹⁵ *Id.*

¹⁶ See fn. 8, *supra*.

B. Adjustments

Under the caption “Adjustments,” the Commission seeks comment on “a connections based contribution mechanism.”¹⁷ CTIA has concerns with issues raised in this section and suggests that far more clarification from the Commission is needed before parties can comment meaningfully.

For instance, in the subsection captioned “Wireless versus Wireline Connections,” the Commission discusses the development of “a contribution factor [for wireless service] so that the type of technology used by consumers does not significantly affect the distribution of contribution obligations among the other sectors of consumer users.”¹⁸ CTIA supports this goal, but without far more detail regarding the Commission’s Strategic Plan, the formula for achieving such goal, and a common understanding of the Commission’s defined terms, CTIA cannot provide a detailed response.

Further, as discussed above, CTIA is concerned about ambiguities in the way the term “connections” is defined. Without a clear understanding of the intended definition of “connections,” CTIA cannot comment meaningfully on the development of “factors” to apply to “connections.” If the Commission does adopt a connections-based approach, it should not “develop a factor for wireless contributions”¹⁹ if that will subject wireless service to disparate treatment. Each voice connection should be subject to the same assessment, or an assessment based on an approach that impacts different modalities equally – a goal the Commission indicates it supports. However, it is not apparent, without a clear definition of “connections,” how the Commission’s proposal would avoid impacting users of a variety of wireless services that are beyond the Commission’s jurisdiction.

¹⁷ April 5 Order, at 8-10.

¹⁸ *Id.* at 8.

¹⁹ *Id.* at 8.

The Commission indicates that it lacks data on the number of “wireless lines and wireless channels,” and inquires whether it should develop “a factor for wireless contributions such as the average number of phones per household.”²⁰ It is not clear how the Commission would use “the average number of phones per household,” nor is it clear whether wireless carriers – especially pre-paid wireless carriers – have any way of ascertaining or producing such information. As mentioned above, it is not clear what “wireless channel” means, so the Commission’s continued use of that term in the Adjustments section prevents a clear understanding of its inquiry.

The Commission should provide more detail on the issues discussed above so that commenters can offer feedback beneficial to the Commission’s development of plans for NUSF reform.

C. Data

The Commission also sought comment on potential reporting and data requirements it may implement. CTIA urges the Commission to avoid imposing new reporting requirements on providers. Until the Commission advances a plan to change the NUSF contribution methodology, the Commission should rely on data from existing federal and state reports. If additional reports are to be required, they should be limited to such reports as are necessary to verify that NUSF recipient companies are receiving no more funding than is absolutely necessary to achieve universal service goals in Nebraska.

D. Other Comments

The Commission also invited other comments relating to the specific proposals set forth in the Order. There are several issues therein that merit comment.

²⁰ *Id.* at 8.

First and foremost, as CTIA stated above, changes that may result in the implementation of multiple contribution methodologies are inefficient, costly, disruptive, and should be avoided. Consistent with this concern, CTIA strongly opposes any “transitional” or temporary approach to contribution reform. Requiring companies to modify billing and accounting systems, train employees, develop compliance processes, and educate consumers numerous times is wasteful and inefficient for providers, and ultimately for consumers.

The Commission also inquired about how it should address multi-line and enterprise customers. Multi-line and enterprise customers connections must be treated fairly and proportionally, and should not be singled out for disparate treatment. By establishing a separate approach for residential and business connections, the Commission would add unnecessary and inefficient complexity to the administration of the NUSF.

With regard to the Commission’s inquiry on sourcing, the Commission should source services for purposes of NUSF assessment based on the primary place of use, consistent with the Mobile Telecommunications Sourcing Act.²¹

Finally, given the pace of change in the communications space, any strategic plan the Commission adopts should provide for periodic evaluation of each program to ensure that it is meeting its objectives. Each program should include a sunset to ensure review of its effectiveness and efficiency, and its consistency with any changes in technology or the FCC’s rules.

V. CONCLUSION

While NUSF reform is important, comprehensive reform should be examined only after reforms at the federal level have been accomplished. While federal reforms are being developed,

²¹ 4 U.S.C. §122.

the Commission can devise a Strategic Plan in a new, separate docket, while taking steps to ensure that the NUSF is appropriately sized to collect no more than the minimum necessary to achieve universal service goals in Nebraska. Taking these steps will ensure that carriers are not forced to bear the expense of implementing multiple, potentially inconsistent, contribution methodologies, which is expensive for carriers and ultimately consumers.

Respectfully submitted this 6th day of June, 2016.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of June, 2016, a true and correct copy of the foregoing was served on the following:

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