

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



**COMMENTS OF THE RURAL INDEPENDENT COMPANIES IN RESPONSE TO
ORDER SEEKING FURTHER COMMENTS**

I. INTRODUCTION

The Nebraska Rural Independent Companies (“RIC”)¹ submit these comments in response to the Order Seeking Further Comments entered by the Nebraska Public Service Commission (the “Commission”) in this proceeding on April 5, 2016 (the “Order”) and the April 20, 2016 Commission action extending the deadlines for the submission of comments and reply comments. RIC has previously filed Comments and Reply Comments in the above-captioned docket addressing issues raised by the Commission in its Order Opening Docket and Seeking Comment entered in this docket on November 13, 2014.

RIC applauds the Commission for undertaking the difficult factual, legal and public policy challenges associated with reinventing the Nebraska Universal Service Fund (“NUSF”) contribution mechanism due to the inescapable fact that the current revenues-based mechanism is unsustainable. RIC agrees with the Commission that a new contribution mechanism is required.

¹ Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

RIC supports the aspirational goals announced in the *Order* and will further comment on these goals below. Any contribution reform should advance the best interests of all Nebraska consumers, including consumers located in the rural portions of Nebraska that the RIC members and other incumbent local exchange carriers (“ILECs”) serve. At the same time, RIC is confident that the Commission recognizes that the stated goals set forth in the *Order* cannot be separated from the real-world, operational realities of serving high-cost rural areas located in Nebraska and the levels of NUSF monies available for disbursement. RIC is confident that the Commission also recognizes that the public policy goals articulated in the *Order* include the reality that NUSF monies must be available not only for the “maintenance and upgrading” of multi-use networks (*e.g.*, voice and broadband services), but also for the “provision” of services over those networks, *i.e.*, the operational expenses required by a carrier to provide services to customers.² Absent acknowledgement of these necessary uses of NUSF support in accordance with the provisions of relevant statutes and rules, the networks to be deployed may not be available for continued use by consumers. Thus, RIC submits that the Commission’s third goal stated in the *Order*, “Deployment of Fiber-based Network Everywhere,” can only be pursued in the context of providing ILECs with a reasonable opportunity to realize revenue from all sources, including the NUSF, necessary to sustain the operating as well as capital expenditures required to achieve this goal.

With respect to the *Order* itself, RIC makes the following two general observations. First, the breadth of the *Order*’s issues makes clear that the Commission is not undertaking this contribution reform lightly. The *Order* reflects that the Commission has spent considerable time and effort to identify matters that must be addressed in order to ensure that a revised contribution

² See, *Neb. Rev. Stat.* § 86-323(5) (Reissue 2014) and *Neb. Rules and Regs.*, Tit. 291, Chap. 10, § 4.02(f).

mechanism will provide a stable and sustainable level of NUSF contributions. These results – stability and sustainability – are necessary underpinnings to achieve the underlying universal service goals outlined in the *Order*.

Second, consistent with the approach adopted by the Commission in Application Nos. NUSF-26 and NUSF-77,³ RIC recommends that the Commission issue a progression order asking for briefing by interested parties to identify and address legal issues associated with the Commission's jurisdiction to establish an NUSF connections-based mechanism. As discussed in various sections herein, RIC submits that the Commission's jurisdiction to utilize a connections-based NUSF contribution mechanism as described in these comments should not be questioned. Nonetheless, RIC respectfully submits that, just as the Commission has sought comments from interested parties in the past when crucial legal issues relating to the NUSF were being addressed, so too the legal issues associated with reforming the NUSF contribution mechanism should be fully aired.

Accordingly, RIC suggests that the following legal issues be briefed in parallel with the other implementation issues identified herein:

- (1) What jurisdictional considerations are raised with respect to both interstate and intrastate traffic being carried over a given connection on which an NUSF surcharge will be assessed and how can any such issue be addressed?
- (2) What issues may be presented if a state connections-based USF contribution mechanism proposes to assess a regulatory surcharge on a connection through which broadband internet access service is provided

³ *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism*, Application No. NUSF-26, Order Initiating Docket (Aug. 21, 2001) and Progression Order No. 1 (July 23, 2002); and *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Application No. NUSF-77, Progression Order No. 1 (Nov. 3, 2010).

either on a standalone basis or in conjunction with other already assessed services under the applicable Nebraska law?

- (3) How can any identified legal issue be addressed by the Commission in order to minimize or eliminate the adverse impact of such issue on the implementation of a connections-based contribution mechanism?

The suggested briefing may avert, or at least minimize, the uncertainty that could arise if one or more interested parties present after-the-fact claims that Commission action to implement a connections-based NUSF contributions mechanism is unlawful. The importance of the NUSF to the overall universal service objectives for Nebraska warrants full exploration of all legal issues, and to the extent possible, the resolution of all pertinent legal concerns.

RIC understands that the issuance of an additional progression order could somewhat lengthen the time required for the Commission to implement contributions reform. However, the Commission's use of this procedure may assist with a more efficient implementation of a connections-based mechanism, while allowing such implementation in a manner that permits, as necessary, the Commission to stay abreast of contribution reform developments emanating from the Federal Communications Commission ("FCC") and perhaps from other state commissions.

Finally, several aspects of the issues raised by the Commission either implicitly or explicitly address sizing issues of the NUSF and the level of assessment to any given class of assessable connections.⁴ At this time, however, RIC respectfully submits that it is not able to provide definitive observations regarding such sizing issues. Presumably, use of the State Broadband Cost Model ("SBCM") that the Commission has licensed from CostQuest Associates, Inc. ("CostQuest") will be essential in determining the appropriate sizing of the NUSF high-cost program in a manner that will bring the benefits of broadband to all Nebraska consumers. RIC

⁴ See, e.g., *Order* at page 11.

would welcome the opportunity to provide comments on sizing of the NUSF at an appropriate future time. *See* Section II.1(f), below.

II. COMMISSION REQUESTS FOR COMMENTS AND RIC RESPONSES

For the purposes of these comments, the topics on which the Commission has requested comments in the *Order* are set out below in italicized text, consecutively numbered to facilitate cross references within these comments, followed by RIC's responses.

1. *[T]he Commission believes it is important to develop a strategic plan. This roadmap will serve as the foundation for the advancement of universal service in the broadband age. We seek comment on the strategic plan and invite interested parties to recommend other goals the Commission should consider.*

Response: The six (6) elements of the Commission's "roadmap" set forth in the *Order* as the proposed strategic plan for advancement of universal service in the broadband age are: (a) Ubiquitous Broadband; (b) Preserve and Advance Affordable Voice Service; (c) Deployment of Fiber-based Network Everywhere; (d) Accountability; (e) Stability of the Program; and (f) Timeframe for Implementation.

As indicated above, RIC supports these goals based on their aspirational nature. The goals need to be viewed in the context of what can be achieved based on the NUSF funding availability and the realities of operating the networks (and maintaining and upgrading those networks) as is necessary to achieve such goals. Thus, RIC's comments on each of these elements provided below are subject to these general observations.

(a) **Ubiquitous Broadband:** The definition of "ubiquitous" is "present, appearing or found everywhere."⁵ As such, this goal parallels the purpose of the Nebraska Telecommunications Universal Service Fund Act ("NTUSFA") that directs the Commission "to

⁵ Oxford Dictionary.

establish a funding mechanism which . . . ensures that *all Nebraskans, without regard to their location*, have comparable accessibility to telecommunications services at affordable prices.”⁶ (emphasis added) Further, the policy declaration of the Nebraska Legislature set forth in *Neb. Rev. Stat. § 86-323(2)* requires that “access to advanced telecommunications and information services should be provided in *all regions of the state*.” (emphasis added) In § 86-323(3) the Legislature also required that “[c]onsumers in *all regions of the state* . . . should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas” (emphasis added)

RIC strongly supports this goal. Further, RIC supports the statement that the “Commission’s reforms must be tailored to complement federal support received in Nebraska.” While the parameters of federal support for price cap (“PC”) carriers have been largely established since the FCC’s entry of the *December 2014 Connect America Order*,⁷ the rural LEC industry is just now beginning to implement the directives contained in the *March 2016 Connect America Order*.⁸

(b) **Preserve and Advance Affordable Voice Service:** Again, this is a goal that is consistent with policies adopted by the Nebraska Legislature as set forth in the NTUSFA.⁹ The Commission has consistently identified preservation and advancement of affordable voice service as a primary goal to be accomplished in connection with its administration of the NTUSFA.

⁶ *Neb. Rev. Stat. § 86-317* (Reissue 2014).

⁷ *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644 (2014) (the “*December 2014 Connect America Order*”).

⁸ *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (2016) (the “*March 2016 Connect America Order*”).

⁹ See *Neb. Rev. Stat. §§ 86-317 and 86-323* (Reissue 2014).

(c) **Deployment of Fiber-based Network Everywhere:** While RIC certainly concurs with this laudable goal, RIC notes that attaining it needs to at least include the steps of (a) sizing the costs to complete this network build-out, and (b) determining the feasibility of funding these costs (together with operational costs of the network) through NUSF surcharges imposed upon the users of the network (in conjunction with Federal USF support). RIC will address each of these two matters separately.

First, for the reasons discussed herein, sizing should be accomplished through the use of CostQuest's SBCM. In conjunction with stabilizing the NUSF contribution mechanism, the Commission's NUSF sizing efforts should help jump start efforts to achieve further fiber deployment in the rural Nebraska areas served by the RIC members and other carriers.

Second, the Commission should coordinate its efforts to encourage fiber deployment with similar efforts undertaken by the FCC. Not only does the NTUSFA expressly call for use of NUSF support to "supplement federal universal service support mechanisms,"¹⁰ the same concept – also captured within the construct of "federal-state" partnership on universal service – was noted by the FCC in the *March 2016 Connect America Order*. Specifically, the FCC in reaffirming the necessity of a "federal-state partnership," stated the following:

Finally, we note that the promotion of universal service remains a federal-state partnership. *We expect and encourage states to maintain their own universal service funds*, or to establish them if they have not done so. The expansion of the existing ICLS mechanism to support broadband-only loops and the voluntary path to model-based support should not be viewed as eliminating the role of the states in advancing universal service; far from it. The deployment and maintenance of a modern voice and broadband-capable network in rural and high-cost areas across this nation is a massive undertaking, *and the continued efforts of the states to help advance that objective is necessary to advance our shared goals.* (emphasis added)¹¹

¹⁰ *Neb. Rev. Stat.* § 86-317 (Reissue 2014).

¹¹ *March 2016 Connect America Order*, para. 184. However, the FCC has also stated that "we conclude that any state requirements to contribute to state universal service support mechanisms

With one limited modification, RIC believes that the Commission's stated goal should be pursued.

RIC notes the Commission's statement that it "hopes to alleviate the incremental minimum speed considerations" relative to provision of broadband. While RIC concurs that the Commission's current definition of "broadband" that envisions minimum speeds of 4/1 Mbps does not meet many consumers' expectations and needs, Commission specification of minimum broadband speeds in order to qualify for NUSF support is necessary and appropriate. RIC respectfully submits that the Commission can advance its desire to coordinate its efforts with those of the FCC by adopting broadband speeds consistent with those established by the FCC in the *December 2014 and March 2016 Connect America Orders*. Likewise, the Commission can establish a policy baseline for NUSF recipients that requires the demonstration, in some fashion, that aspects of their respective networks have been planned to be scalable regarding broadband speeds, consistent with the FCC's statements that it expects carriers seeking federal USF support to be planning, to the extent possible, for the deployment of "future proof" networks.¹²

that might be imposed on such broadband Internet access services would be inconsistent with federal policy and therefore are preempted by section 254(f) – at least until such time that the Commission rules on whether to require federal universal service contributions by providers of broadband Internet access service. 47 U.S.C. § 254(f)." Report and Order on Remand, Declaratory Ruling, and Order, *Protecting and Promoting the Open Internet*, 30 FCC Rcd 560, , para. 490, fn. 1477(2015).

¹² The FCC has stated that "[w]e encourage recipients of funding to deploy to the extent possible future proof infrastructure that will be capable of meeting evolving broadband performance obligations over the longer term. That will ensure that our policies will continue to support an evolving level of universal service in the future." *Connect America Fund*, WC Docket No. 10-90 *et al.*, FCC 14-190, released December 18, 2014, para. 18; *see also March 2016 Connect America Order*, para. 7.

(d) **Accountability:** The Commission is aware that the RIC members support the objective of accountability by NUSF recipients.¹³ In light of the recent revisions that the FCC has made to reporting requirements applicable to Eligible Telecommunications Carriers (“ETCs”),¹⁴ RIC urges that whenever appropriate the Commission should coordinate and conform Nebraska reporting requirements to those implemented by the FCC. Such coordination should minimize the administrative burdens both on the Commission and on ETCs by eliminating, or at least limiting, duplicative or inconsistent reporting requirements implemented by the FCC and this Commission.

(e) **Stability of the Program:** The trend line data regarding NUSF surcharge receipts in recent years inescapably demonstrates that the current revenue-based NUSF contribution mechanism is not producing adequate or stable revenues. Consequently, it is difficult, at best, to suggest that the continued use of the current NUSF contribution mechanism – assessable revenues – can be reconciled with the NUSF’s statutory purpose and governing policies.¹⁵

As such, RIC once again confirms its support for the implementation of a connections-based contribution mechanism.¹⁶

(f) **Timeframe for Implementation:** RIC certainly agrees with the Commission that its stated goals will not happen “overnight.” In parallel with the progression order process

¹³ See, *Comments of the Nebraska Rural Independent Companies in Response to Order seeking Comments*, Application No. NUSF-50 (filed Dec. 10, 2015). In the context of the accountability for use of 2016 NUSF High-Cost Program support in Application No. NUSF-50, RIC has supported the implementation of reasonable reporting and accountability requirements.

¹⁴ *March 2016 Connect America Order*, paras. 205-223.

¹⁵ See, Nebraska Universal Service Fund website, “Quarterly Remittance and Fund Balance Report”, http://www.psc.nebraska.gov/ntips/ntips_nusf.html.

¹⁶ See, *Comments of the Rural Independent Companies*, Application No. NUSF-100/PI-193 (filed Feb. 13, 2015) and *Reply Comments of the Rural Independent Companies*, Application No. NUSF-100/PI-193 (filed April 13, 2015).

described above in the Introduction, RIC respectfully submits that the logical next step in the Commission's consideration of contribution reform should be the sizing of the NUSF. This effort should proceed immediately with the Commission's release of the SBCM to interested parties for use in conjunction with analysis of the appropriate sizing of the NUSF.¹⁷

2. *The Commission proposes to focus on the following definition of connection:*

Connection. A wired line or wireless channel used to provide end users with access to any assessable service.

Interested parties are invited to comment on the proposed definition. In the alternative, parties should be specific in suggesting an alternative definition.

Response: This proposed definition is identical to the definition of "connection" that the FCC proposed for comment in its *2012 Contributions Reform Further Notice of Proposed Rulemaking*.¹⁸ This proposed definition also builds on the definition used in FCC Form 477. RIC believes that this proposed definition is acceptable.

3. *Further, the Commission seeks comment on the following proposal to define assessable service:*

Assessable service. 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.

Response: RIC proposes slight modifications to this definition such that, as revised, it would read as follows: "A service which allows a connection to other networks through inter-network routing as a means to provide the telecommunications." Two changes are suggested for

¹⁷ The Commission has entered a Supplemental Protective Order in Application NUSF-102 in accordance with CostQuest's requirements. While many RIC members have submitted the necessary paperwork to obtain access to the SBCM, however, access to SBCM continues to be delayed without explanation.

¹⁸ See, *In the Matter of Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, WC Docket No. 06-122 and GN Docket No. 09-51, FCC 12-46, para. 232 (April 30, 2012).

the Commission's proposed definition: (1) The elimination of "requires" and replacement with "allows"; and (2) the elimination of the phrase "inter-network routing number."

The first revision is intended to allow for the most expansive definition of "assessable service." By using the word "requires," RIC is concerned that connections possibly ordered for only "on network" services but capable of "off-network" calling (inter-network routing) may avoid NUSF contribution assessments. While this does not appear to be the Commission's intent, RIC's proposed change is aimed at eliminating potential gamesmanship associated with classification of a service as either "on-network" or "off network."

Second, the elimination of the concept of "inter-network routing number" is suggested because, once again, RIC is concerned that the Commission's wording could limit assessable services to those that use routing numbers, which today include only voice services based on the current structure of the Public Switched Telephone Network ("PSTN"). Routing mechanisms other than those using PSTN-based numbering arrangements are widely in use already with broadband traffic; RIC's change is intended to provide for future flexibility as well as to accommodate assessment of special access services (addressed in the response to Commission Inquiry No. 11, below). For example, RIC's proposed revisions should facilitate future assessment of other services (such as broadband), even though, due to potential legal uncertainties associated with a state commission's current authority, the Commission may decide not to assess such services in the near term.¹⁹

Further, RIC respectfully submits that its proposed second change addresses a potential shortcoming in the *Order*. Specifically, the Commission stated in footnote 7 regarding its

¹⁹ See n. 11, *supra*.

definition of Assessable Service that it “proposes to define as ‘assessable’ a connection that is identified to other networks and routed to other networks as distinguished from internal routing numbers. For illustrative purposes, the Commission would propose a definition be consistent with Open System Interconnection (OSI) model Layer 3 or the Network Layer.” The footnote seems to indicate that “inter-network routing numbers” are applicable to both voice and Internet traffic, which RIC believes is incorrect.

4. ***RIC stated the use of working telephone numbers for routing is a readily available method to identify connections that provide the ability for traffic to be delivered and received from the PSTN. Is this consistent with the Commission's proposed definition? Why or why not?***

Response: Use of working telephone numbers for routing is consistent with the Commission’s proposed definition as modified by RIC, and is appropriate at this stage in reforming the NUSF contribution methodology to a connections-based mechanism. Future clarifications of the law relating to assessment of state USF surcharges on all connections, including broadband service, will ultimately require use of inter-network routing protocols beyond telephone numbers. However, the revised definition proposed by RIC should accommodate this anticipated requirement.

5. ***If the Commission adopts a connections based contribution mechanism, how should it account for different types of connections?***

Response: The following response by RIC to this Commission Inquiry No. 5 is not intended to present a methodology for operationalizing a connections-based contribution mechanism. Development of the operational aspects of a revised contribution mechanism will need to be accomplished in connection with analysis of the proper sizing of the NUSF. As discussed elsewhere in these comments, a necessary predicate to completion of the sizing

exercise is the availability of the SBCM. Once sizing is completed, the process of developing an equitable, competitively-neutral per connection surcharge can proceed.

In the following discussion RIC addresses the different types of connections and assessable services that should be subject to the NUSF surcharge; the interstate/intrastate usage factors applicable to such assessable services; and the proposed continuation of revenues-based assessments on business and special access services.

RIC believes that the NUSF surcharge should ultimately be assessed on all connections for all end users. However, for a to-be-determined transition period, RIC respectfully suggests that certain interim measures be adopted. First, working telephone numbers should be, to the extent possible, utilized as the “inter-network routing” methodology for determining assessable services. Second, existing intrastate/interstate usage factors should be utilized and applied to each assessable service using either FCC-established safe harbors, already reported interstate/intrastate revenues splits, or company-specific studies reflecting intrastate usage. Finally, the NUSF surcharge on business end users and on special access service should be calculated through the continued use of the existing revenue-based collection mechanism.

To minimize or perhaps avoid claims that a typical “telephone number” can be used for interstate and well as intrastate calling, in the Commission’s consideration of this docket RIC respectfully suggests that the Commission establish a record that supports the percentages of intrastate usage associated with a connection based on the various assessable services that may be supported by such connection. Use of the foregoing approach should avoid, in RIC’s view,

the “double charging” concern previously expressed by the FCC in the *Kansas/Nebraska Declaratory Ruling*.²⁰

RIC proposes two steps to assist in the development of the intrastate usage percentage factors. First, issuance by the Commission of a data request to all carriers that are currently contributing to the NUSF, requesting either already-gathered or reasonably accessible data, would provide a current baseline to materially assist the Commission to establish the number of connections of each service provider in this State.²¹ To establish a baseline for intrastate usage for assessable services, RIC recommends utilization of the reciprocals of the existing FCC-prescribed “safe harbors” for the following services: Cellular telephone connections would be assessed based upon a 62.9% factor (the FCC Safe Harbor for Interstate Revenues is 37.1%); interconnected and non-interconnected Voice over Internet Protocol (“VoIP”) connections would be assessed based upon a 35.1% factor (the FCC Safe Harbor for Interstate Revenues is 64.9%); paging company telephone connections would be assessed based upon an 88% factor (the FCC Safe Harbor for Interstate Revenues is 12.0%); and local exchange carrier connections would be assessed based upon a 100%.

Second, with respect to LEC connections in particular, the Commission is well aware that LEC connections are multi-use. A LEC connection through an assigned telephone number can be used not only for local exchange service, but also for long distance toll service by an Interexchange Carrier (“IXC”). Moreover, while IXCs assign toll-free numbers to end users (toll free 8YY numbers (*e.g.* 888, 866, 877, etc.), those numbers are ultimately converted to a “POTS” number which a LEC has assigned to an end user. The Commission’s NUSF Rules and

²⁰ *Universal Service Contribution Methodology*, WC Docket No. 06-122, Declaratory Ruling, FCC 10-185, (rel. Nov. 5, 2010).

²¹ See RIC’s Response to Commission Inquiry No. 13 below.

Regulations specifically provide that interexchange services shall be subject to NUSF surcharge assessment.²² In light of the IXC's use of and reliance on LECs' connections, RIC proposes that IXC connections would be assessed based upon an IXC's reported split between interstate toll and intrastate toll. IXCs would make this report based upon intrastate/interstate revenue which is administratively efficient and non-burdensome since IXCs already report the necessary inputs for this determination through FCC Form 499-A filings.

In each instance, a carrier could demonstrate that the individual percentage applicable to its connections should be changed based upon the carrier's filing with the Commission of a study demonstrating the need for the requested change based upon actual data. Should the Commission grant the request for change of the percentage factor, the new assessment percentages would reflect that decision.

So too, if the FCC changes the safe-harbor percentages noted above, those new percentages would then be used by the Commission. Further, in the event that the FCC ends revenue reporting on its FCC Form 499-A (which revenue split would be certified by the carrier as being consistent with the Nebraska reporting suggested herein), the Commission could require that usage studies be conducted by each affected carrier, failing which the latest percentages applicable to such carrier type would continue to be applied.

Use of the intrastate/interstate factors established for each assessable service that is currently subject to collection of the NUSF surcharge pursuant to Commission Rules²³ would continue to be used with respect to the jurisdictional split between federal and state surcharge assessments. Thus, implementation of a connections-based assessment mechanism neither expands the types of end user telecommunications services currently subject to assessment, nor

²² Neb. Rules and Regs., Tit. 291, Chap. 10, § 002.01B3.

²³ *See generally, id.* § 002.

disturbs the current factors for determination of interstate and intrastate use of such services by end users.

Finally, to help ensure that all readily identifiable network connections are subject to proper NUSF assessments, RIC respectfully suggests that the Commission retain the current revenues-based assessment mechanism for businesses services and for special access service. With respect to these services, RIC notes that these services are already included in NUSF surcharge assessment and RIC has identified no rational reason why these classes of services should not continue to contribute to the networks upon which they rely.

Continuation of the revenues-based assessment of business and special access revenues is supported on several bases, including but not limited to the following:

- (1) Utilization of total business service revenues and special access service revenues would avoid a regressive contribution system in which business users and users of special access would otherwise contribute on a flat rate per connection basis, and would also appropriately recognize the greater use of the network and greater economic benefit of such use in comparison to residential users.
- (2) Avoidance, at least for a period of time until further study can be completed, of determinations as to the proper per connection assessment of multi-line business users and the proper assessment of special access on a capacity or alternative basis.
- (3) Provision of stability for the NUSF through the continuity of current contributions derived from business and special access users rather than potential uncertainty and unpredictability which might result if a new connections-based mechanism were to be implemented “across the board”.
- (4) Provision of a transition mechanism whereby the risks of adverse impacts upon existing NUSF programs will be minimized by diversifying the contribution components of the NUSF contribution system while allowing additional time for the development and implementation of a contribution system that is entirely connections-based.²⁴

²⁴ See also RIC Responses to Commission Inquiries Nos. 6, 8, and 10 through 12 below.

6. *We seek comment on the development of an assessable connections based mechanism that is efficient, fair and sustainable. Would the definitions proposed in Section A supra give the Commission the flexibility to fairly determine contribution obligations among the various types of users? How should family plans or multi-user scenarios be assessed? Should different contribution mechanisms or factors apply for residential versus multi-line business users?*

Response: RIC respectfully suggests that the definition for “connection” and RIC’s revised definition of “assessable service” discussed above should provide the Commission with the flexibility to equitably determine contribution obligations of various types of end users. RIC further submits that its definitions would afford the Commission this flexibility both in the near-term and in the long-term (such as when Internet connections are possibly included as an assessable service). RIC notes that under its proposed framework, the connections being assessed are those with a working telephone number. Thus, for the time being this is the method by which the connections can be categorized until broadband connections may be utilized.

To help ensure reporting consistency between Nebraska-specific information and FCC-required information, RIC recommends that the Commission should consider establishment of a connections-based reporting system that is consistent with certain of the FCC’s Form 477 reporting requirements.²⁵ This approach, in RIC’s view, could readily be expanded in the future to include Section 2.1 of Form 477 (Broadband Connections to End Users).

RIC proposes that assessment of connections as outlined above should occur on a flat-rate basis. RIC anticipates that assessment on a flat-rate basis would assist in eliminating a key problem underlying the current contribution mechanism – erosion of revenues upon which the

²⁵ Refer to Section 2.2 (Wired or Fixed Wireless Local Exchange Telephone Service), 2.3 (Interconnected Voice over Internet Protocol (VoIP) Service), and 2.4 (Mobile Telephony (Mobile Voice) Service) of the instructions to the Form 477.

current NUSF contribution methodology is based.²⁶ A flat-rate assessment would not be affected by the migration of services between classes of providers, the use of the FCC-established safe harbor (or changes thereto) or, potentially, the impacts of bundling of assessed and non-assessed services. Flat-rated NUSF assessments by connections would also avoid the need to disaggregate the telecommunication component from the “over-the-top” components of broadband services. However, calculation of the flat rates for connections that provide end users with access to any assessable service can only occur following the completion of the process for the sizing of the NUSF on a going forward basis. As discussed above, a necessary predicate to completion of the sizing exercise is the availability of the SBCM.²⁷

RIC recognizes that a series of qualitative and quantitative rate design-like decisions will need to be made by the Commission when it ultimately sizes the NUSF and determines the actual level of the NUSF surcharge to be assessed on each type of assessable service accessed through a connection. As part of this process, RIC fully appreciates that, for example, there may be a need to differentiate among end users served by wireless or wired connections and residential versus business end users. This differentiation among classes and services is not unusual. Traditional rate design determinations have differentiated between business and residential services in rate making decisions for years. In addition, due to the nature of the competitive markets today, RIC respectfully suggests that the concept of “competitive equity” be used by the Commission in its determination of NUSF assessment levels between classes of carriers to help ensure that end users’ choices of service are based on quality and attributes of the service *not* on the level of NUSF surcharge passed through as a line item on the end user’s bill.

²⁶ See, e.g., *Order* at 2.

²⁷ See discussions in Responses to Commission Inquiries, pp. 4 and 7 above.

Further, RIC believes that continuation of the current revenue-based contribution mechanism for business and implementation of the connection-based mechanism for residential users is appropriate on an on-going basis. Assessing a greater per user contribution of business users is not unusual, and could assist in thwarting concerns regarding the regressive nature of a uniform per connection surcharge applicable to both residential and business users.

7. ***Should the Commission develop a factor for wireless contributions such as the average number of phones per household? If so, how should that factor be developed?***

Response: The fact that any given household has multiple connections using different numbers does not suggest, as a general matter, that the connections associated with the assigned numbers are not being used or are subject to only light usage. At the same time, RIC recognizes that the Commission may, in its discretion, determine that there is a need for some per connection assessment reduction for second and additional connections per household. As noted in the response to Commission Inquiry No. 6 above, this is another rate design-like decision that would require resolution by the Commission. A similar set of considerations may also apply to other multi-line wireline end users. Therefore, provided that such reduction is reasonable and does not undermine the stability of the NUSF connections-based assessment approach, RIC believes that any overarching concerns associated with equitable treatment of multi-connection users can be addressed.

8. ***Is there any other method by which the Commission's mechanism should account for wireline and wireless users' contribution obligations? If so, on what basis should they be distinguished and accounted for differently? On a household basis? On a capacity or use basis?***

Response: Please refer to RIC's responses to Commission Inquiry Nos. 5, 6 and 7 above.

9. ***The Commission currently determines assessable revenues for wireless carriers under the Mobile Telecommunications Sourcing Rule at Neb. Rev. Stat. § 77 - 2703 .04 where services are generally sourced at the primary place of use.***

Interested parties are invited to comment as to whether they agree or disagree with this assessment.

Response: RIC agrees that the Commission should continue to utilize the Mobile Telecommunications Sourcing Rule (“MTSR”) provided in *Neb. Rev. Stat. § 77-2703.04* to determine assessable revenues for wireless carriers. RIC is not aware of any prior or current controversy associated with the use of the MTSR nor is RIC aware of a basis on which controversy regarding the use of such rule might occur in the future. However, RIC will review the comments from wireless carriers and, if issues are raised with respect to the use of the MTSR, RIC will evaluate such comments and respond as necessary.

10. Should the Commission treat residential and multi-line business/enterprise end user connections differently? If so, how should they be distinguished? Should there be a cap on the number of assessable multi-line business/enterprise connections? Should the multi-line business/enterprise per unit contribution amount be distinguishable from the per unit residential amount? Should the Commission retain some sort of revenues-based contribution factor? Should the per unit assessment for multiline business and enterprise customers be tied to another factor? If so, the Commission seeks comment on objective measures that could be used to distinguish between these categories of connections.

Response: Please refer to RIC’s responses to Commission Inquiry Nos. 5 through 7 above.

As stated above, after much deliberation RIC recommends that a connections-based mechanism should be implemented for residential end users. However, the current revenues-based mechanism should be continued for business end users, special access services (*see* RIC Response to Commission Inquiry No. 11 below) and IXC services (*see* RIC Response to Commission Inquiry No. 5 above). As discussed in the below response to Commission inquiry 11 relating to NUSF surcharge assessment on special access, RIC believes that the assessment of special access is best accomplished through the revenue-based mechanism.

- 11. *Currently, intrastate special access revenues are assessed and remitted to the NUSF. Proponents of the continued assessment of special access services should describe the manner in which special access should continue to be assessed if the Commission moves to a connections-based contribution mechanism.***

Response: As a general matter, special access services should continue to be assessed even though special access services have unique characteristics that are not shared with the other assessable telecommunications services being discussed in these comments. First, special access services are not switched services. Rather, the service is typically ordered as a direct, point-to-point service (or if offered, as a multiple terminating point service) that involves no switching. Second, special access service – or using common nomenclature, a “special access circuit” – also typically follows a dedicated path, although alternative routing may be required at times. This routing is unlike basic local exchange service in which a single routing path to the central office is used. Third, special access services are sized based on the volume of the traffic that the customer anticipates will be carried over the facilities. Fourth, special access circuits are not typically assigned telephone numbers for routing. Finally, since the FCC’s adoption of the 10% mixed use policy (which was supported by the state members of the Federal-State Joint Board on separations),²⁸ most of the special access services are priced as interstate services. Consequently, where at least 10% of the underlying traffic being carried over the facility is interstate, such facility would be billed based on interstate pricing policies.²⁹

Even with these differences between switch-based assessable services and special access services in mind, RIC respectfully submits that special access should not be excluded from “assessable services” as defined by RIC in response to Commission Inquiry No. 3 above.

²⁸ See *MTS and WATS Market Structure, Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, 4 FCC Rcd 5660, 5661 (1989).

²⁹ *Id.*

Rather, the most straight forward means to continue assessment of special access services is through continued application of the revenues-based contribution mechanism to such services.

- 12. *Should the Commission consider a hybrid alternative? How should that be structured? Should some services continue to be assessed on a revenues basis? If so, which services?***

Response: Based on industry discussions, RIC understands that a so-called “hybrid” approach, as this question suggests, may be addressed by the Federal-State Joint Board on Universal Service (“Joint Board”) or the FCC at some point in the future. Of course, as the Commission already is aware, awaiting Joint Board and/or FCC action does nothing to address the current dilemma facing the Commission with respect to the erosion of the NUSF contribution base. Based on the practical, data driven and accountability needs that should be made part of the NUSF contribution process, RIC supports a hybrid approach for specific classes of services as reflected in these comments.

If additional information regarding a “hybrid” approach that might be implemented on a transitional basis becomes available that can assist the Commission in this investigation, such information would warrant study and RIC would be interested in providing comment thereon. In the implementation of a hybrid system that assesses businesses based upon revenues, RIC respectfully submits that the Commission should carefully consider whether data is available to implement such hybrid system, and if data is unavailable, a determination will then be necessary as to how to obtain the necessary revenue data segregated for businesses only.

- 13. *We seek comment on how the Commission would implement a connections-based contribution mechanism including but not limited to what goes into reporting. What measures should the Commission take to ensure that carriers are not avoiding their contribution obligation? What, underlying data should the Commission use to make sure that all connections are being properly assessed?***

Response: RIC agrees wholeheartedly with the underlying premise of this Commission Inquiry No. 13. Absent a method to implement data-driven assessments, the underlying program may suffer from lack of verification and, ultimately, accountability by the carriers. At the same time, RIC understands the burden that reporting may create for carriers, particularly smaller carries, and anticipates that the Commission is also sensitive to this issue. Nonetheless, RIC believes that any burden can be minimized by having Nebraska NUSF reporting entities make the necessary data submissions based on data that is already required to be submitted to the FCC. Not only does this suggested approach minimize burdens, but in RIC's view would also bring consistency and hopefully accountability to the data gathering requirements of the Commission NUSF contribution assessment program.

With these points in mind, RIC urges the Commission to direct each provider currently contributing to the NUSF to report to the Commission the following information for their Nebraska customers:

- (1) Number of current residential and business working telephone numbers that these carriers bill;
- (2) Number of multi-line business accounts;
- (3) Number of wireline accounts with specified line counts (*e.g.*, 1 line, 2 lines, 3, lines, 4 lines, 5 lines, 6-10 lines etc.);
- (4) Number of wireless accounts with specified line counts (*e.g.*, 1 line, 2 lines, 3, lines, 4 lines, 5 lines, 6-10 lines etc.);
- (5) Special access circuits billed and speeds/capacity of these circuits; and
- (6) Intrastate IXC revenues.

While RIC believes that the majority of this information is available either via the FCC's Form 477, Form 499 or Form 502 (all of which reports are filed by carriers with the FCC) or from a carrier's customer account billing information, RIC understands that this data may not be

available to the Commission on a timely basis. Issuance by the Commission of a data request to all carriers that are currently contributing to the NUSF would provide a current baseline from which the Commission can launch a new contributions-based methodology to stabilize the NUSF contribution mechanism. The data to be reported by carriers should be updated on an annual basis following the initial data submissions.

With respect to additional accountability, RIC also respectfully submits that the Commission should consider enhancing its auditing capability of NUSF contributions by hiring an independent third party to conduct regular audits of carriers' contributions under the new methodology. The cost of retaining this entity should, in turn, be made part of the NUSF budget to be met by the connections-based system.

14. Should the Commission rely upon FCC Form 499 or Form 477 data for verification of the collection and remittances provided by the carriers each month? What other data may be relied upon to implement a connections-based contribution mechanism?

Response: Yes. As modified but noted in response to Commission Inquiry No. 13 above, RIC respectfully submits that use of Form 499, Form 477 and Form 502 data can aid the Commission in verifying collections and remittances, subject to the need that the data be made available to the Commission on a timely basis and subject to appropriate confidentiality considerations. It is axiomatic that the timeliness is required to make reported information useful by the Commission.

Procedurally, and in order to avoid any legal hurdle that parties may suggest exists, RIC respectfully suggests that the Commission formally approach the FCC with regard to the need to receive the FCC-filed data on a real-time basis from the FCC. Such a request not only advances the federal-state universal service partnership – a partnership most recently confirmed by the

FCC in the *March 2016 Connect America Order* as noted above,³⁰ but the requested data sharing also advances the cooperative nature of this partnership.

- 15. *If the Commission moves away from a revenues-based contribution mechanism, how would the independent third-party accounting or auditing firm perform a review to ensure the correct billing, collection, and remittance of the universal service surcharge? How would the Commission's audit procedures need to change? Are there any accounting adjustments that should be allowable?***

Response: As indicated above (see Response to Commission Inquiry No. 14), RIC has suggested that the Commission formally approach the FCC to seek timely access to Nebraska-specific information that is submitted to the FCC on FCC Forms 477, 499 and 502. Such information, in RIC's view, can be utilized by the Commission to assist in verifying carriers' accuracy of billing, collection and remittance of NUSF surcharges, as well as any auditing of submissions that the Commission deems necessary. As to the latter point, RIC respectfully submits that NUSF remittances that differ significantly from a carrier's reports to the FCC can be identified and all necessary follow-up actions can be taken by the Commission as may be required to help ensure the overall integrity of the NUSF program.

Moreover, in addition to consistent reporting and data gathering, RIC fully anticipates that a shift to the use of connections as the basis for NUSF surcharge assessments (coupled with access to the related Nebraska-specific information reported to the FCC) should result in a more administratively convenient manner for the Commission to accurately audit collections and remittances. These efforts, in turn, will help ensure carrier accountability for NUSF collections, an objective supported by the RIC members.

- 16. *Specifically, the Commission seeks comment on the length of the transition period the Commission would need to provide carriers in order to implement a connections-based collection mechanism. In the alternative, the Commission seeks comments on the timeline needed for carriers to transition to a hybrid***

³⁰ See n. 11, *supra* and accompanying text.

assessment mechanism comprised of both a connection and revenue component. If we consider a hybrid mechanism to be transitional, how long should that be in place?

Response: For the reasons stated herein, RIC respectfully submits that the Commission should exercise a reasonable degree of caution regarding the transition of the existing NUSF contribution mechanism to the new connections-based mechanism in order to minimize risks of disrupting the NUSF programs. In this regard, RIC offers the following three suggestions.

First, to the extent possible, RIC submits that any implementation of the new contribution-based mechanism should begin after the adopting order becomes a “final, non-appealable order”. The short waiting period to obtain finality – thirty (30) days following service of the final NPSC order,³¹ – is reasonable in order to determine whether any attack on the Commission’s contribution reform order will be filed. If filed, the “finality” aspect of this suggestion by RIC would allow time for completion of the court action reviewing the Commission’s implementation order. During this time, the Commission could undertake the necessary implementation planning so that the new NUSF connections-based contribution mechanism can be implemented either after the appeal period runs (if no appeal is filed) or the period for implementation can be modified (if necessary) based on any appeals or reconsiderations that may be filed. While collateral attacks on the contributions reform order may be made (as the Commission experienced with its subsequently approved effort to assess NUSF contributions on nomadic VoIP providers),³² RIC would anticipate that any such attack is likely to be filed within six months after the issuance by the Commission of a final order implementing the NUSF contribution reform.

³¹ See *Neb. Rev. Stat.* § 84-917(2)(a)(i)).

³² See n. 20, *supra* and accompanying text.

Second, and in an effort to hedge the risk of a collateral attack (if none had occurred by the date for implementation of the new mechanism), RIC also respectfully submits that implementation of the hybrid contributions approach discussed above should be useful in a transition to the new mechanism. For example, such interim transition could take the form of a connection-based charge on residential connections (as those customer classes would have already been defined in the final order approving the new NUSF contribution mechanism). Any such transition plan, in RIC's view, should be aimed at targeting some level of overall NUSF contribution – such as 50% of the NUSF collection requirement – coupled with continuing the current NUSF revenues-based assessment on all other connections.

While this phase-in approach may lengthen the period within which a collateral attack on the Commission's decision could be made, that transition period should also provide additional time for Commission efforts to identify any disgruntled party vis-à-vis the implementation of the connections-based mechanism. Moreover, this transition period should also provide the Commission with additional insights into its implementation of the new connections-based contribution mechanism as well as any federal efforts on reform that may be undertaken.

Finally, RIC respectfully submits that working through the transition period should provide several cycles of data reporting and other administrative processes that can be expected to reveal any unforeseen issues with the new contribution mechanism. If these issues were to arise, correcting them before any "full" implementation is instituted should be beneficial toward ensuring predictable and sustainable NUSF contribution remittance results.

17. Other subjects on which RIC offers comments.

Response: RIC offers the following two matters as additional considerations for the Commission. First, as stated in the Introduction to these Comments, RIC suggests that a

progression order be prepared and issued that seeks comments concerning any legal issues associated with the Commission's potential adoption of a connections-based contribution mechanism. Among the subjects that should be considered for inclusion within the progression order for briefing by interested parties would be:

- (1) What jurisdictional considerations are raised with respect to both interstate and intrastate traffic being carried over a given connection on which an NUSF surcharge will be assessed and how can any such issue be addressed; and
- (2) What issues may be present if a state connections-based USF contribution mechanism sought to assess a regulatory surcharge on a connection that provides broadband internet access service either on a standalone basis or in conjunction with other already assessable services under the applicable Nebraska statutes?

Second, the RIC members have sought access to the SBCM for many months. RIC understands that the documentation required by the Commission's Supplemental Protective Order has been submitted to CostQuest. Accordingly, RIC requests the assistance of the Commission and its Staff to obtain access to SBCM so that analysis through the use of that Model can commence.

III. CONCLUSION

The RIC members appreciate the opportunity to provide these comments in response to the questions posed by the Commission in the *Order*. The RIC members respectfully request that the Commission take action on the matters raised in the *Order* in manner consistent with that discussed in these comments. RIC look forward to further participation in this docket.

Dated: June 6, 2016.

Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc., and Three River Telco (the "Rural Independent Companies")

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of May, 2016, an electronic copy of the foregoing pleading was delivered via electronic mail to:


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