

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 THE
RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA

I. INTRODUCTION

The Rural Telecommunications Coalition of Nebraska (“RTCN”),¹ by and through its attorneys of record, hereby respectfully submits these comments to the Nebraska Public Service Commission (“Commission”) in response to the Commission’s November 13, 2014, Order Opening Docket and Seeking Comment in Application No. NUSF-100, PI-193.²

II. COMMENTS

The Commission opened this proceeding to consider revisions to the contribution mechanism of the Nebraska Universal Service Fund (“NUSF”) with intentions to address the steady decline of NUSF surcharge collections over the past several years resulting from the erosion of the assessable base of NUSF contributors.³ More specifically, the Commission noted that since 2009, remittances to the fund have, on average, declined by more than two percent (2%) per year.⁴ Based on the current trajectory of

¹ For purposes of this proceeding, RTCN is made up of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cozad Telephone Company, Diller Telephone Company, Glenwood Network Services, Inc., The Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford Cooperative Telephone Co., Mainstay Communications, Plainview Telephone Company, Southeast Nebraska Communications, Inc., Wauneta Telephone Company, and WesTel Systems f/k/a Hooper Telephone Company.

² *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, Order Opening Docket and Seeking Comment (November 13, 2014) (the “Order”).

³ *Id.* at 1.

⁴ *Id.* at 2. As of May 28, 2014, the NUSF had a three-month operating reserve, which is the minimum operating reserve recommended by the Nebraska Telecommunications Infrastructure and Public Safety Department of the Commission. *See In*

the NUSF balance, RTCN agrees that a solution needs to be implemented at this time. Thus, RTCN supports the Commission's overall objective in this proceeding and applauds the Commission for pressing forward to help stem the tide of Nebraska's declining fund balance and ultimately to preserve an NUSF system that has and will continue to greatly benefit the State of Nebraska through the facilitation of economic growth, expansion of capabilities to compete, enhancement of public safety, extension of availability of advanced health and medical services, and the provision of a growing number of avenues through which to communicate, educate, conduct business, govern and entertain.

Any changes to the NUSF contribution system made by the Commission must be founded on authority granted to the Commission under Nebraska law, including the Nebraska Telecommunications Universal Service Fund Act (the "NUSF Act"). The NUSF Act empowers the Commission to "require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law,"⁵ but does not specify a particular methodology to be utilized to assess and collect contributions.

Under state law, the Commission has a great deal of discretion, including "original exclusive jurisdiction to determine the validity of a rule or regulation and the scope of meaning of a certificate, permit, tariff, rule, or regulation,"⁶ and the authority to "determine the standards and procedures reasonably necessary, adopt and promulgate rules and regulations as reasonably required, and enter into such contracts with other agencies or private organizations or entities as may be reasonably necessary to efficiently develop, implement, and operate the [NUSF]."⁷ In addition, the Nebraska Supreme Court has acknowledged the deference that should be given to the Commission with regard to telecommunications matters and the NUSF in particular, stating, "[w]e also are guided by the principle

the Matter of the Nebraska Public Service Commission, seeking to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act effective fiscal year beginning July 1, 1999, Application No. NUSF-4, Order Setting Surcharge from July 1, 2014 through June 30, 2015 (May 28, 2014).

⁵ NEB.REV.STAT. § 86-324(2)(d).

⁶ NEB.REV.STAT. § 75-118.01.

⁷ NEB.REV.STAT. § 86-325.

that, generally, regulation of telecommunications is a matter within the expertise of the PSC and involves a breadth of judgment and policy determination to which considerable deference is given even by a reviewing court.”⁸ Thus, the Commission possesses the authority and broad deference necessary to establish and/or reform an NUSF contribution system, so long as such system is consistent with state and federal law, including such policies as:

- (1) Quality telecommunications and information services should be available at just, reasonable, and affordable rates;
- (2) Access to advanced telecommunications and information services should be provided in all regions of the state;
- (3) Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;
- (4) All providers of telecommunications should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;
- (5) There should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service⁹

Based on the foregoing, RTCN concludes that the Commission is within its authority to reform the NUSF contribution methodology consistent with the options and limitations set forth in the Commission’s Order.

As it relates to the particular contribution reform options identified in the Order, and taking note that the Commission is not considering the assessment of broadband services or broadening the base to include additional consumers not already contributing to the NUSF at this time,¹⁰ RTCN suggests that the Commission consider adopting a hybrid approach to NUSF contributions that involves the combination of both a connections-based component and the continuance of a revenues-based component at a markedly lower surcharge rate.

RTCN suggests that on an annual basis, the Commission first determine an NUSF target balance necessary to fund existing programs at levels that are sufficient to carry out the universal service policies

⁸ *Schumacher v. Johanns*, 272 Neb. 346, 366, 722 N.W.2d 37, 52 (2006).

⁹ NEB. REV. STAT. § 86-323; *see also* 47 U.S.C. § 254(b).

¹⁰ RTCN acknowledges the difficult waters the Commission is attempting to navigate until such time that the FCC adopts reform in this area, and thus RTCN reserves the right to comment in future proceedings on the need to broaden the contribution base to include additional consumers not already contributing to the NUSF.

set forth in the NUSF Act.¹¹ Once a target balance has been determined, the Commission would then set a revenues-based surcharge rate and a connections-based assessment amount, with the objective that each of these two contribution components would provide funds making up approximately one-half (1/2) of the target balance each year.

This hybrid approach would result in a significant decrease to the current 6.95% revenues-based surcharge rate, while continuing to capture contributions from existing sources, including interexchange revenues, which may otherwise be lost under alternative approaches. This hybrid approach would also add a greater level of stability to the fund by introducing a potentially more fixed connections-based component to the contribution system.

The use of this hybrid approach would help to reduce risk by diversifying the contribution components of the mechanism, which may help to weather any unforeseen problems that arise with any new and untested system. In addition, unlike the current contribution system under which the Commission has been unable to increase the current 6.95% surcharge, a hybrid approach would allow the Commission to more easily adjust the revenues-based surcharge rate and the connections-based assessment on an annual basis to levels necessary to sustain an adequate fund balance.

In addition, the hybrid approach would provide flexibility should the Commission desire or need to modify its contribution system in the future. For example, if the Commission intends to eventually move to an exclusively connections-based methodology, the hybrid approach could act as an interim step in that transition. In addition, to the extent a path is cleared for the Commission to assess broadband, a hybrid approach or eventual exclusively connections-based mechanism could be adapted to include broadband by adding broadband service revenues and/or transitioning from a physical connections-based approach to a virtual connections-based approach, whereby each service could be designated separately for assessment purposes, without modifying the entire contribution structure.

¹¹ See NEB.REV.STAT. §§ 86-324(1), 86-328.

III. CONCLUSION

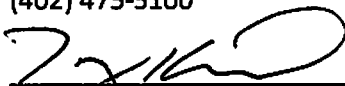
RTCN fully supports the Commission's efforts to find a solution to the steadily declining NUSF balance, and at this time based on the rationale set forth above, RTCN suggests the Commission give strong consideration to adopting a hybrid contribution methodology involving both a connections-based component and the continuation of a revenues-based component. RTCN appreciates the opportunity to contribute to this important proceeding and respectfully submits its comments above.

Dated this 13th day of February, 2015.

RURAL TELECOMMUNICATIONS COALITION OF
NEBRASKA ("RTCN")

ATC Communications,
Benkelman Telephone Company, Inc.,
Cozad Telephone Company,
Diller Telephone Company,
Glenwood Network Services, Inc.
The Glenwood Telephone Membership Corporation,
Hartman Telephone Exchanges, Inc.,
Hemingford Cooperative Telephone Co.,
Mainstay Communications,
Plainview Telephone Company,
Southeast Nebraska Communications, Inc.,
Wauneta Telephone Company, and
WesTel Systems.

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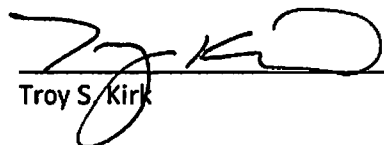
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and one copy of the foregoing Comments of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on February 13, 2015, and a copy was served via electronic mail on February 13, 2015, addressed as shown below, to the following:

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