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 INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies ("RIC")[1] submit these Comments in response to the Commission's Order Opening Docket and Seeking Comment entered in this proceeding on November 13, 2014 (the "*Order*"). RIC appreciates the opportunity to provide the following Comments to the Commission.[2] For the reasons stated herein, RIC respectfully requests that the Commission take action on the issues addressed in the *Order* in the manner suggested herein.

I. SUMMARY OF RECOMMENDATIONS

RIC is well aware of the continued transition of customers' service needs from traditional local exchange and long distance services via wireline networks to mobile and "over-the-top" broadband service platforms. Broadband networks meet the ever-increasing consumer demand for quality data services at higher speeds. As a result, RIC supports the Commission's efforts to ensure that, as consumer demands shift to new services and new delivery platforms for those

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[1] Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Co., 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.

[2] After the "Summary of Recommendations" section, RIC addresses the issues outlined in the *Order* as such issues appear in that document.

services, the Nebraska State Universal Service Fund ("NUSF") High Cost Program and funding for that Program keep pace with those shifts.

Like the Commission, RIC fully appreciates and supports the need for a sustainable and predictable contribution base from which the continued evolution of universal service can be funded. To this end, RIC supports the Commission's effort to ensure that the current NUSF is administered consistently with the policies established by the Legislature that include the requirement that "[t]here should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service."[3] In this regard, RIC respectfully notes that networks deployed to meet universal service needs do not "magically" appear. Planning, deploying, upgrading and maintaining the operation of "universal service" networks in the higher-cost-to-serve and less densely populated rural areas of Nebraska are required to provide and increase the level of universal service enjoyed today by the customers served by RIC member companies. A stable and predictable NUSF contribution base is an absolute necessity in ensuring that rural consumers' expectations and needs for state-of-the-art networks providing quality services are achieved.

At the heart of the migration of consumers' service needs is the shift to increased consumer interest in broadband. Unfortunately, however, it is unclear whether and how federal policies associated with contribution reform will change to make universal service more sustainable, particularly in areas served by rate-of-return ("ROR") carriers. The Commission, once again in the policy forefront, should be commended for tackling the issue of NUSF contribution reform. The Commission's efforts in this docket may provide insight and assistance

[3] *Neb. Rev. Stat.* § 86-323(5) (Reissue 2014).

to federal policy makers as interstate universal service contribution reform takes shape.[4] As with any effort to ensure that policies stay current with technological evolution, open questions exist regarding the legality of ensuring that the users of broadband transmission services, for example, pay their respective and necessary share of universal service funding. Unquestionably, broadband users rely on the networks supported by the NUSF High Cost Program. Funding of the network should be proportionate to such use. Nonetheless, RIC appreciates the potential dilemma that is created for the Commission in resolving the needs for a stable and predictable NUSF contribution base when broadband availability to all rural end users is the current policy objective for at least federal universal service programs.[5]

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[4] RIC is encouraged that the Federal Communications Commission ("FCC") has referred the issue of contribution reform to the Federal/State Joint Board. *See generally In the Matter of Federal State Joint Board on Universal Service, Universal Service Contribution Methodology, A National Broadband Plan For Our Future, Order*, WC Docket Nos. 96-45, 06-122, GN Docket No. 09-51, FCC 14-116, released August 7, 2014 ("*USF Contribution Reform Referral*"). The timing of action by the Federal-State Joint Board – by no later than April 7, 2015 (*see id.* at ¶¶ 1, 5) – may very well provide insights for the Commission as to how to best meld its NUSF contribution reform with that of the FCC. However, the fact that the FCC may act within a year of the April 7, 2015 date announced in the *USF Contribution Reform Referral* (*see* 47 U.S.C. § 254(a)(2)) does not and should not impede the Commission's efforts to fashion a Nebraska-specific NUSF contribution reform proposal to address the concerns it has outlined in the *Order*, particularly if, as the Commission opines, "federal reforms may be several years away." *Order* at 2.

[5] RIC also notes that the advancement of universal service is a federal-state partnership. The Communications Act of 1934, as amended (the "Federal Act"), makes this clear (*see, e.g.*, 47 U.S.C. §254(f)) and this principle has been acknowledged by both the FCC (*see, e.g., In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 et al., 26 FCC Rcd 17663 (2011), *aff'd* In Re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014), *pet. for cert. pending* at ¶¶ 573, 611; *see also* In *the Matter of Connect America Fund, et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, FCC 11-13, released February 9, 2011 at ¶¶84-85) as well as the courts. *See Qwest Corporation v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001) (The Federal Act "plainly contemplates a partnership between the federal and state governments to support universal service."); *see also Qwest Corporation v. FCC*, 398 F.3d 1222, 1232 (10th Cir. 2005).

In an effort to assist the Commission in bridging the gap between continued reliance on traditional telecommunications services for NUSF contributions to support the deployment of advanced broadband networks, RIC's answers to the various questions and issues raised by the Commission support establishment of a contribution framework as described below.

RIC respectfully submits that a connections-based NUSF contribution framework may be the most appropriate framework to ensure a sustainable and predictable NUSF contribution base. Under such a framework, all users of the network – traditional telecommunications service users and broadband users – would fund the deployment of networks upon which each class of these users rely. However, in the absence of FCC direction as to how broadband fits within this framework, the Commission may find itself treading into uncertain waters that, in turn, may undermine the creation of a more stable NUSF contribution base that the *Order* seeks to established.

As an interim step, therefore, RIC recommends that the Commission migrate the current NUSF contribution regime to a connections-based NUSF contribution system requiring that contributions be assessed on any "connection" that requires a working Nebraska-specific telephone number to be assigned in order to allow routing to and from the Public Switched Network ("PSTN"). In this interim step, "connections" for broadband would not be assessed until further guidance is received from the FCC. However, connections that require working telephone numbers for routing over the PSTN would be assessed, regardless of the technology used. For convenience, RIC uses the term "virtual connections" to encompass the full scope of connections that would be assessed for NUSF funding purposes in that some of the connections may be Voice over Internet Protocol ("VoIP") services that are considered "over-the-top" applications riding broadband facilities. RIC notes that this proposal is not intended to be a pure numbers-based proposal. Rather, 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.[6] As explained herein, only the connection will be assessed since it is the ***use of the connection*** that benefits from the existence and capabilities of the PSTN, which is comprised of, in part, the networks of the RIC member companies. Unlike the FCC (which has noted that connections may allow for individual assessments for each service that are accessed through that connection),[7] RIC's proposal would only assess, for example, the local service connection even though such connection may allow long distance calling.

RIC notes that, while broadband is not included in its proposal as this time, it envisions that a virtual connections-based system can also be expandable to include broadband at some later date based on the same underlying concept of the use of routing mechanisms – such as Internet Protocol ("IP") addresses. Just as within traditional telecommunications services, broadband networks have in place routing mechanisms that ensure that an end user can, through the transmission path, reach the location on the Internet that is intended and receive information from the Internet that such user seeks. Therefore, the use of routing requirements in the current PSTN environment could naturally migrate to IP routing when and at the time that the Commission determined that expansion appropriate.

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[6] RIC can envision that suggestions may be made that numbers-based proposals could also be used to stabilize the contribution base for universal service funding purposes. Should such proposals be made, RIC will review such proposals carefully and reserves its rights to respond thereto. At this time, however, RIC continues to believe that the "virtual" connections-based proposal it offers in these Comments (*see generally* Section II.B, *infra*) would facilitate a transition to include other connections where alternative routing methods are used other than telephone numbers (such as, for example, routing of traffic based on Internet Protocol ("IP") addresses).

[7] *See, e.g., In the Matter of Universal Service Contribution Methodology, et al., Further Notice of Proposed Rulemaking*, WC Docket No. 06-122, GN Docket No. 09-51, 27 FCC Rcd 5357 (2012) at ¶ 236.

II. ISSUES FOR COMMENT

A. Revenues-Based Assessment

1. The Commission seeks comment on whether it should keep the current revenues-based contribution mechanism in place with revisions, or whether it should move away from a revenues-based contribution system.

Response: Consistent with the *Order*, RIC respectfully submits that the Commission should, subject to the safeguards discussed *infra*, migrate away from the current NUSF revenues-based contribution mechanism.[8] As RIC indicated above, the migration of end users to broadband and the applications that are allowed through the broadband connection has been expanding. As reported by the FCC, "Internet connections overall are growing. The number of connections over 200 kbps in at least one direction increased by 12% year-over-year to 293 million."[9] The FCC also indicated that "[g]rowth is particularly high in mobile Internet subscriptions," with the "number of mobile subscriptions with speeds over 200 kbps in at least one direction grew to 197 million – up 16% from December 2012."[10]

This shift in telecommunications services consumed by Nebraska households has created reductions in assessable NUSF revenues and, consequently, also creates reductions in NUSF collections. This reduction is driven in part by the fact that, while an ILEC's intrastate end user

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[8] As the Commission notes

> . . . in Nebraska, the assessable base for NUSF contributions erodes as customers migrate to services on which the NUSF surcharge is not remitted and therefore, are not contributing, in whole or in part, to the NUSF. Competitive distortions permitted by the federal USF mechanism have also resulted in differing contribution obligations for the same services. . . . Since 2009, NUSF remittances have experienced an average decline of greater than 2 percent per year.

Order at 1-2.

[9] *Internet Access Services: Status as of December 31, 2013* (Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, October 2014) at 1; *see also id.* at 2 (Figure 1).

[10] *Id.* at 4.

telecommunications services were identified as such and the associated revenues were 100% assessable for NUSF contribution purposes, the services offered by certain alternative providers (such as wireless providers and certain Voice over Internet Protocol ("VoIP") providers) have been subject to FCC-established safe harbor percentages[11] that may or may not correlate to a provider's specific intrastate usage. RIC also notes that the reduction in assessable USF revenues may have been exacerbated by the lack of specific Commission rules regarding the allocation of the revenues associated with "bundled" packages, such as when the consumer revenues of both wireline and wireless providers consist of bundled voice and data services (with data service revenue allocations not being subject to the NUSF surcharge) and allocation of the remaining voice service revenues between state and federal USF assessments.

Consistent with the foregoing, RIC agrees with the Commission that continuing to increase the "NUSF surcharge on a declining base of revenues . . . to replace declining NUSF collections"[12] is not sound policy, particularly when alternative contribution mechanisms that will create greater predictability and stability are present. Accordingly, in order to ensure the sustainability of the NUSF High-Cost Program, and the other current NUSF programs, and to advance the Nebraska Legislature's policy declarations as set forth in *Neb. Rev. Stat.* § 86-323 (Reissue 2008), RIC respectfully submits that the current revenues-based contribution mechanism must be replaced with a new "virtual connections" assessment mechanism as outlined in Section II.B, below.

2. If the Commission retains a revenues-based contribution mechanism, how can surcharge collections generated through this mechanism be stabilized?

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[11] *See, e.g., In the Matter of Universal Service Contribution Methodology, et al., Report and Order and Notice of Proposed Rulemaking*, WC Docket No. 06-122 *et al.*, 21 FCC Rcd 7518 (2006) at ¶¶ 9-10, 25-27, 52-54.

[12] *Order* at 2.

Response: RIC respectfully submits that it is unlikely that the current revenues-based mechanism can be stabilized without (a) broadening the assessment base by including revenues from additional services or (b) increasing the surcharge percentage. For the reasons stated below, however, RIC questions whether either such approach can be achieved.

As noted above, the service category showing the most growth for RIC members is broadband. However, it is unclear whether broadband is assessable by a state commission as part of its universal service program based on the FCC's previous declaration that broadband is subject to federal jurisdiction.[13] In light of this FCC finding, the Commission may rationally decide *at this time* to avoid the uncertainties that are inevitably associated with a possible legal challenge of assessment of the NUSF surcharge on broadband transmission service revenues.[14] Although the Commission could attempt to justify including broadband data connections as part of its NUSF assessment reform efforts, RIC respectfully submits that such an approach should not be adopted at this time.[15]

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[13] The FCC, when it determined that broadband transmission service should be classified as an interstate service, did so on the basis of the 10% mixed use policy that it and the State members of the Federal-State Joint Board on separations had agreed to institute. *See In the Matter of GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, Memorandum Opinion and Order*, CC Docket No. 98-79, 13 FCC Rcd 22466 (1998) at ¶ 23 citing *MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board,* 4 FCC 5660, 5661 (1989).

[14] The Commission is well aware of the "twists and turns" created when it proposed to assess Voice over Internet Providers not only through the courts but ultimately resulting in a decision issued by the FCC. *See generally 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. 06-122, 25 FCC Rcd 15651 (2010) ("*Kansas/Nebraska Declaratory Ruling*").

[15] Based on industry reports, RIC understands that the FCC will address the regulatory status of broadband at its open meeting scheduled for February 26, 2015 as part of its consideration of the "net neutrality" remand arising from *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014). Accordingly, while RIC references broadband transmission services as potentially subject to

The second alternative means to stabilize NUSF surcharge collections by increasing the current 6.95% NUSF surcharge also raises significant policy issues. While RIC members anticipate that the current NUSF surcharge percentage has generally been regarded as a "political hard cap" on such surcharge percentage, it is certainly possible that the Commission could choose to increase this percentage. Moreover, the Commission could move toward the FCC practice of quarterly adjustments to the surcharge percentage rate in order to generate revenues projected to meet an approved total budget for the various NUSF support programs. However, any such action, in RIC's view, would not address the underlying erosion of the revenue base that the *Order* notes and therefore would not address the reason for proper Commission concern and the need for Commission action. Again, as the Commission itself states: "The Commission does not believe increasing the NUSF surcharge on a declining base of revenues is sustainable to replace declining NUSF collections."[16] Consequently, RIC respectfully submits that quarterly surcharge percentage reviews and adjustments do not create the stability vis-à-vis the NUSF contribution methodology that is needed to establish a predictable and sustainable NUSF.

3. How can the Commission continue to achieve the requirements of the Nebraska Telecommunications Universal Service Fund Act (the "NUSF Act") that the NUSF be sufficient and predictable?

<u>Response:</u> The Commission can and should achieve sufficiency and predictability requirements in the NUSF Act by increasing NUSF High Cost Program distributions. To achieve this result, RIC respectfully submits that the Commission should create a sustainable and predictable NUSF assessment mechanism that provides the means by which such distributions

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some form of NUSF contribution in the future, that position may change based on the FCC's action regarding net neutrality.

[16] *Order* at 2.

can be made. In order to return NUSF high cost distributions to levels that can be considered to be sufficient and predictable, RIC respectfully suggests that the Commission should as expeditiously as possible migrate away from the current revenues-based assessment mechanism and implement a virtual connections-based assessment mechanism based upon the description and suggestions provided below.

B. Connections-Based Assessment

1. **The Commission seeks comments on whether it should implement assessment of telecommunications connections. If connections are assessed, how should the term "connection" be defined?**

__Response:__ While specific IP addresses could be used at some time in the future when end user services are generally routed to and from the PSTN based on such addresses, RIC respectfully submits that a "connection" should be defined *at this time* by any service that, when ordered, requires the use of a working 10-digit telephone number that allows access to and from the PSTN. Assessment of a calculated monthly NUSF surcharge amount (a dollar amount rather than a percentage of revenues) would be made with regard to the connection associated with such service. By way of example, therefore, for an ILEC, the "connection" would be that used for local service only; for a Commercial Mobile Radio Service Provider, the "connection" would be the connection made to allow in-state calling; the same concepts would also apply to VoIP providers.

2. **Should the Commission use the connection data used from the FCC's Form 477 data collection?**

__Response:__ Yes, subject to verification and audit when necessary. RIC anticipates that the FCC's Form 477 may be one source that can be used by the Commission. RIC recognizes that reliability and accuracy issues may exist with such FCC Form 477; however, RIC respectfully suggests that any such issues can be addressed when they arise. In any event, use of this information should provide for uniform reporting between the FCC and the Commission regarding "connections" and would otherwise be readily monitored and audited as necessary. As discussed below, RIC proposes to use the definitions contained in the FCC's Form 477 as the basis for assessment. Thus, at a minimum, RIC respectfully recommends that any reporting that the Commission institutes regarding the use of virtual connections for NUSF contribution purposes should include a provider attestation under penalties of perjury that the reported connections are consistent with that reported to the FCC in that provider's FCC Form 477. Moreover, and as an additional safeguard, RIC also respectfully recommends that the Commission make clear in its order adopting the virtual connections-based system that a provider's FCC Form 477 filings would be subject to disclosure to the Commission in an audit or other Commission-sponsored investigation.

3. Currently, the FCC requires four types of providers to report connections: (1) "facilities-based providers of broadband connections to end user locations," whether wireline or wireless; (2) providers of "wired or fixed wireless local exchange telephone service"; (3) "providers of interconnected VoIP service"; and (4) providers of "mobile telephony services." If connections are used, should the Commission's contribution mechanism be based on physical network connections (wired and wireless) or virtual network connections?

__Response:__ In order to answer the preceding question, RIC respectfully suggests that a description of the differences between a "physical connection" and a "virtual connection" would be useful in order to ensure consistent understanding between the Commission and affected stakeholders.

As used herein, RIC defines a "physical connection" to encompass the physical medium linking a customer to the provider's network. This physical connection would include, for example, air waves for a wireless provide or copper wire, coaxial cable, and fiber optic cable for various class of wireline providers. While the physical connection is achieved through the ownership of the physical plant or airwaves by some entity, RIC does note that in some cases the physical connection may exist at a location but no telecommunications service is provided. An example of this situation would be a household that only subscribes to wireless services yet still has loop facilities. Consequently, the use of "physical connections" untethered to whether there is in fact actual service being provided would result in over-counting of connections.

To address this potential, RIC respectfully requests that the Commission adopt the use of a "virtual connection" for purposes of NUSF assessments. RIC defines "virtual connection" as one through which *actual end user services* are provided. At the same time, RIC would not limit "virtual connections" to those connections where the underlying facility or airwaves is owned by the entity being assessed. In eliminating the tie between the ownership of the facility and assessment and, in turn, looking at the provision of service over a connection, RIC's "virtual connection" proposal avoids the double counting of a physical connection such as that outlined in the example above regarding counting a loop as a connection even though no voice service is provided over it. Accordingly, RIC respectfully submits that its use of "virtual connections" will be more appropriate for purposes of NUSF assessments since this definition includes connections over which actual service is provided as well as those where services are provided over facilities that are not used for local service (such as in the case of a "broadband-only" loop).

To the extent that the Commission has concerns regarding the equitable treatment of virtual connections which either carry or have the capacity to carry disparate amounts of traffic, a relatively simple tiering mechanism could be developed. Such a mechanism could be based on either capacity, price or revenues. RIC is analyzing this issue and hopes to provide details on such a tiering mechanism later in this proceeding.

4. **If the Commission assesses connections based upon physical network connections, i.e., wire line or wireless channels, the connection would be the**

focus of the contribution requirement not the services provided over the connection. Would this be an equitable and stable contribution mechanism?

Response: No, RIC respectfully submits that an assessment mechanism based only upon physical network connections would not represent an equitable mechanism, as more fully discussed below.

5. **In the alternative, should the Commission consider a virtual connection-based contribution mechanism?**

Response: Yes. As discussed above, RIC has concluded that use of "virtual connections" is a more equitable assessment mechanism that has acceptable stability. RIC's definition of a "virtual connection", *i.e.*, a component of a given service (a working telephone number) which identifies to networks the location of a customer such that traffic can be routed to the customer, is a similar definition to connections as outlined in Section 2 of the FCC's Form 477 instructions.

However, at this time RIC proposes to limit assessment of virtual connections to those connections where services are actually being provided, identified as such through a working telephone number. To be clear, RIC notes that under its proposed framework it is the connection that being assessed; working telephone numbers is a method by which the connections can be categorized. RIC's effort in this regard is to have the Commission establish a connections-based system that is consistent with certain of the FCC's Form 477 reporting requirements.[17] However, such a definition could be readily expanded to include Section 2.1 of Form 477 (Broadband Connections to End Users) in the future.

6. **If a subscriber purchased two or more assessable services, each service could be assessed. Would this be an equitable and stable contribution mechanism?**

[17] 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.

Response: Yes, consumers with multiple services have the ability for greater use of the network and should therefore contribute a larger amount to support universal service. RIC respectfully submits that this result is conceptually consistent with the current revenue-based contribution policy, where a user consuming more telecommunications services (based on the revenues those services generate) pays a greater amount of NUSF contribution. Such a result is equitable, in RIC's view, since the heavier user derives a greater benefit from the using the network as compared to an end user with less usage. So too, therefore, an end user with multiple virtual connections has the ability to make greater use of the network than an end user with only one virtual connection.

7. **Regarding either a physical or virtual connection-based contribution mechanism, should the Commission use a flat-rate connection charge or should the contribution obligation vary based upon the size or type of connection? Other than Lifeline, are there any types of connections that should be exempt from assessment?**

Response: RIC proposes that assessment of virtual connections as outlined above should occur on a flat-rate basis. Assessment on a flat-rate basis would eliminate a key issue regarding the current contribution mechanism – erosion of revenues upon which the current NUSF contribution methodology is based.[18] 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 per virtual connections would also avoid the need to disaggregate the telecommunication component from the "over-the-top" components of broadband services. Consequently, the use of a virtual connections-based mechanism would

[18] *See, e.g., Order* at 2.

avoid the potential burden on carriers to either report actual intrastate revenues or safe harbor revenues, and is administratively simpler and more efficient to report, update and audit.

Consistent with existing policy, RIC respectfully submits that connections used for Lifeline service should be exempt from a connections-based assessment mechanism. RIC has been unable to identify any service other than Lifeline that should be exempt from a connections-based assessment mechanism.

8. How would the Commission verify the accuracy of remittances filed under this contribution mechanism?

Response: Because it encourages the consistent use of reported information, RIC respectfully submits that the use of the data derived from FCC Form 477, together with the judicious use of individual carrier audits of NUSF remittances compared to connections billed by the carrier to its customers, should provide the Commission with the to verify the accuracy of remittances.

9. Would the application of a connections-based assessment be more efficient for providers? If not, why not?

Response: Yes, for the following reasons, RIC has concluded that a connections-based assessment mechanism that relies on virtual connections for assessments would be more efficient for *both* providers and the Commission. First, a virtual connections-based mechanism should eliminate the need to establish what revenues are intrastate versus interstate for purposes of applying the traditional federal and/or state universal service assessment regimes. Second, changes to "safe harbor" percentage allocations associated with the revenues-based mechanism would be eliminated. Finally, "gaming" of the revenues-based assessment mechanism and associated enforcement issues should be avoided or minimized, thus reducing the Commission's administrative burdens.

C. Numbers-Based Assessment

1. Should the Commission consider assessing a flat amount for each telephone number?

<u>**Response:**</u> RIC recommends that the Commission adopt a virtual connections-based assessment methodology for the NUSF.[19] In the event that the Commission gives favorable consideration to a numbers-based mechanism, RIC respectfully submits that any such numbers-based mechanism should be based upon assessment of a flat amount imposed only on each *working* telephone number. By adopting this approach, the Commission would be able to target those users that benefit from the use of the PSTN – the end user using the service associated with the telephone number. Assessing *non-working* numbers would create contribution obligations where no benefit associated with the use of the PSTN can be identified. As a result, a program that would assess non-working telephone numbers is inequitable and disrupts one of the foundational tenets of universal service policy, *i.e.*, that universal service benefits all actual users of the network.

2. If so, should this assessment be based on North American Numbering Plan Administrator ("NANPA") telephone numbers?

<u>**Response:**</u> Yes, subject to caveat explained and justified in response to Issue II.C.1 above that the telephone numbers must be *working telephone numbers,* not the total number of telephone numbers assigned to a carrier.

3. Should the Commission include all "assigned" numbers consistent with the definition in 47 C.F.R. § 52.15?

<u>**Response:**</u> Yes. The definition of "assigned" numbers in 47 C.F.R. § 52.15 is as follows:

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[19] As noted above (*see* n. 6, supra) RIC believes that adoption of a virtual connections-based assessment mechanism may provide a more readily expandable framework to include IP-based network routing when it is determined that such IP connections should be included within the virtual connections upon which NUSF contributions would be assessed.

> *Assigned numbers* are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers.

47 C.F.R. § 52.15(f)(iii). Accordingly, this definition is acceptable to RIC and is consistent with RIC's responses to Issues II.C.1 and II.C.2 above.

4. **Should the Commission include assigned but not operational numbers or non-working numbers?**

Response: No. Please see response to Issue II.C.1, above.

5. **How would the Commission identify in-service or working telephone numbers?**

Response: RIC respectfully submits that current FCC reporting requirements provide an administratively straightforward and efficient process from which working telephone numbers can be derived. Specifically, NANPA is required to collect, store and maintain number resource utilization and forecast data. Following the FCC's rules, assignees holding geographic and/or certain non-geographic (NPA 5XX and 900) telephone numbers must report on their telephone number holdings twice each year (February 1 and August 1), using the Form 502, the Numbering Resource Utilization/Forecast (NRUF) Report. As with the use of FCC Form 477 data (*see* Response to Section II.B.2, above), at a minimum, RIC respectfully recommends that any reporting that the Commission institutes should include a provider attestation under penalties of perjury that the reported connections are consistent with that reported to the FCC in that provider's FCC Form 502. Moreover, and as an additional safeguard, RIC also respectfully recommends that the Commission make clear in its order that a provider's FCC Form 502 filings would be subject to disclosure to the Commission in an audit or other Commission-sponsored investigation.

6. **What about available but unassigned numbers?**

<u>**Response:**</u> For the reasons stated in response to Issues II.C.1, II.C.2 and II.C.3, RIC respectfully submits that assessment of a flat amount as an NUSF surcharge should be limited to "assigned" numbers as defined by 47 C.F.R. § 52.15(f)(iii). Unassigned telephone numbers are not working telephone numbers and therefore should not be assessed.

7. **How should the Commission treat multi-line, business services or facsimile numbers?**

<u>**Response:**</u> RIC respectfully submits that, should the Commission decide to use a telephone numbers-based system rather than the suggested virtual connections-based contribution system as recommended above by RIC, the most straight-forward approach to address would be to assess all "assigned" numbers that fall within the definition under Section 52.15(f)(iii) of the FCC's rules. However, RIC acknowledges that there may be situations where users with a large number of active telephone numbers may be inequitably burdened by any telephone number-based NUSF assessment. While RIC has not identified where this line would be drawn, RIC respectfully submits that Commission consideration of this issue is necessary to ensure that any proposal not create customer incentives to eliminate or avoid use of telephone numbers and thus undercut the core objectives of contribution reform regarding sufficiency and predictability.

8. **How should the Commission treat special access or private line service?**

<u>**Response:**</u> To the extent that special access or private line service is associated with an assigned telephone number, the assessment of a NUSF contribution would be appropriate for the reasons stated above in response to Issue II.C.1, above.

9. **Should there be any differentiation among users? What should be the treatment of numbers used for toll free services and numbers used for routing purposes?**

Response: With respect to toll-free numbers, RIC understands that when a toll free call is terminated, a toll free number is translated back to a non-toll free 10 digit number (or multiple 10 digit non-toll free numbers depending on routing options based on region, time of day routing, etc.). If the terminating number is assigned to a rate center in Nebraska, RIC's virtual connection proposal would have assessed that telephone number and thus, there would be no reason to assess it again. Moreover, if a telephone number is assigned to a carrier for its routing use (such as a Local Routing Number or "LRN" in the context of number portability), RIC notes that such telephone *not* an "end user" or "customer" telephone number under 47 C.F.R. § 52.15(f)(iii), and therefore should not be assessed.

10. How should exemptions such as the Lifeline exemption be treated?

Response: Consistent with RIC's comments in response to Issue II.B.7, above, RIC respectfully submits that assigned numbers associated with Lifeline service should be exempt from assessment. Although RIC has identified no other service category that should have a similar exemption applied, RIC does recognize that it would be rational to limit the total assessable numbers for a particular customer for the reasons stated in response to Issue II.C.7, above.

11. How would a numbers-based system be tracked and audited?

Response: Please see response to Issue II.C.5, above.

12. Would the application of a numbers-based assessment be more efficient for providers?

Response: As compared to the current use of a revenues-based NUSF contribution system, RIC respectfully submits that a numbers-based assessment mechanism shares the benefits of the efficiencies noted in response to Issue II.B.9, above relating to the connections-based mechanism. However, unlike a virtual connections-based system, expansion of a number-based system to address broadband transmission at some future date is not as straightforward, particularly where such connection does not utilize or have assigned to it a telephone number assigned by NANPA to a Nebraska carrier.

13. **Would the application of a numbers-based assessment mechanism result in improved number conservation? If not, why not?**

Response: As long as only assigned numbers, as opposed to unassigned numbers, were subject to a numbers-based assessment mechanism, this assessment mechanism would presumably be neutral with regard to number conservation because a carrier would not be assessed for unassigned numbers.

D. Other Options

1. **Commenters may propose any other option or a hybrid application of the foregoing options for the Commission's consideration.**

Response: As stated above, RIC supports the connections-based assessment mechanism. However, RIC notes that the current revenues-based mechanism would need to be maintained during a transition period. This period would need to extend beyond any appeal period relating to a final Commission order in this docket and might also include a time required for implementation of the new mechanism. In the absence of this transition period, RIC is properly concerned that no fallback contribution mechanism would be in place in the unlikely event that the Commission-adopted virtual connection-based NUSF mechanism was deemed beyond the Commission's authority to implement.

2. **Please explain how each proposed option would result in a predictable and sustainable NUSF contribution mechanism.**

Response: Based on information gathered from the FCC's Form 477 reports, assessable virtual connections in Nebraska (as proposed by RIC) have increased at an annual rate of 2%

from June 2007 through June 2013.[20] An assessment base which over time is either stable or growing allows the Commission to collect a fixed budget amount without the need for constant increases in the assessment surcharge.

3. Commenters should also address how any proposed contribution reform will fulfill the legal requirements set forth in both state and federal law.

Response: RIC's proposed contribution methodology – use of virtual connections as defined herein – is entirely consistent with applicable state and federal law. Since the virtual connections would be identified by a working telephone number assigned to that connection, then RIC respectfully submits that the presumption is that the virtual connection is being used to make intrastate calls. Thus, a flat-rate assessment of the virtual connection for NUSF contribution purposes is intended to supplant the current intrastate revenue NUSF assessment regime with the common element being that the connection is being used for intrastate communications. Accordingly, RIC respectfully submits that the Commission can and should adopt the RIC proposal.

Under the NUSF Act, the Commission "shall determine the standards and procedures reasonably necessary, adopt and promulgate rules and regulations as reasonably required . . . to

[20] *Compare Local Telephone Competition: Status as of December 31, 2013*, Industry Analysis and Technology Division, Wireline Competition Bureau (FCC, October, 2014) Tables 9 and 18 (available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-329975A1.pdf); *Local Telephone Competition: Status as of June 30, 2013*, Industry Analysis and Technology Division, Wireline Competition Bureau (FCC, June 2014) Tables 9 and 18 (available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-327830A1.pdf); *Local Telephone Competition: Status as of December 31, 2012*, Industry Analysis and Technology Division, Wireline Competition Bureau (FCC, November, 2014) Tables 9 and 18 (available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-324413A1.pdf); *Local Telephone Competition: Status as of June 30, 2012*, Industry Analysis and Technology Division, Wireline Competition Bureau (FCC, June 2013) Tables 9 and 18 (available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-314631A1.pdf).

efficiently develop, implement, and operate the fund."[21] Further, the Commission "[s]hall require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law."[22] Thus, the Legislature provided the Commission with the discretion and authority to may create a contribution mechanism that is needed to facilitate the operation of the NUSF. Provided that the Commission finds that the current contribution mechanism is no longer accomplishing the policies of the NUSF Act, and that a newly created NUSF contribution mechanism would better achieve those policies in light of changed facts and circumstances, then the Commission's authority to enact the RIC proposal is lawful under state law.

Similarly, adoption of the RIC's proposed connections-based contribution methodology is also consistent with the requirements of Section 254 of the Federal Act. Specifically, the Federal Act provides:

> A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. 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***.[23]

Since the RIC proposal would only assess virtual connections that are used for intrastate services, there would be no burden on the federal USF or federal programs. Nor would there be, as addressed in the *Kansas/Nebraska Declaratory Ruling*, any risk of a duplicative assessment by

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[21] *Neb. Rev. Stat.* § 86-325 (Reissue 2014).

[22] *Neb. Rev. Stat.* § 86-324(d) (Reissue 2014).

[23] 47 U.S.C. § 254(f) (emphasis added).

multiple states.[24] Thus, the RIC proposal for intrastate assessments has nothing to do with and does not rely on interstate services or revenues and thus cannot be a burden on the interstate mechanism. Rather, the assessment reflects the intrastate use of the virtual connection and, as discussed above, is permissible to adopt by the Commission under the authority granted to it by the Nebraska Legislature under the NUSF Act. As a result, the qualification contained in Section 254(f) that a state USF cannot "rely or burden" the federal USF (*id.*) is inapplicable to RIC's proposed replacement NUSF contribution mechanism.

4. **More specifically, commenters should address how the proposed mechanism would meet the requirements set forth in 47 U.S.C. § 254(f) which requires the Commission's universal service mechanism to be consistent with and not a burden on the federal mechanism.**

Response: Please see response to D.3, above.

Additionally, the Commission should open a subsequent progression order in this proceeding to consider the necessary and appropriate size of the NUSF in order to support current NUSF Programs.

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[24] *See Kansas/Nebraska Declaratory Ruling* at ¶¶ 19-21. For Local Exchange Carriers, telephone numbers are generally assigned to specific rate centers located within a state. *See, e.g., In the Matter of Numbering Resource Optimization, et al., Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, 15 FCC 7574 (2000) at ¶ 1, n.2. Therefore, since working telephone numbers would be used under the RIC's virtual connection proposal, those numbers would be Nebraska specific. Thus, no other state could be having those numbers assigned to it and thus no risk of duplicative or double assessments would apply. While RIC recognizes that a telephone number used by a wireless end user may be assigned to a rate center where that end user no longer resides. These complications need not deter the Commission from acting on RIC's virtual connections framework. The FCC has already noted that states have, in the past, "resolved allocation of wireless intrastate revenues for purposes of state universal service contributions without the need for Commission intervention." *Kansas/Nebraska Declaratory Ruling* at ¶ 21 citing Letter from Elizabeth H. Ross, Counsel, Nebraska Public Service Commission and Kansas Corporation Commission, to Marlene H. Dortch, Secretary, FCC, at 1–2 (filed Nov. 3, 2009). RIC is not aware of any basis to believe that similar coordination between could not also occur in this instance.

III. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Comments in response to the questions posed by the Commission, and look forward to providing reply comments for consideration by the Commission.

Dated: February 13, 2015.

Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Co., Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., 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")

By: Paul M. Schudel

Paul M. Schudel, NE Bar No. 13723
pschudel@woodsaitken.com
James A. Overcash, NE Bar No. 18627
jovercash@woodsaitken.com
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
Telephone (402) 437-8500
Facsimile (402) 437-8558

Thomas J. Moorman
tmoorman@woodsaitken.com
WOODS & AITKEN LLP
5151 Wisconsin Avenue, N.W., Suite 310
Washington, D.C. 20016
Telephone (202) 944-9502
Facsimile (202) 944-9501

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of February, 2015, an electronic copy of the foregoing pleading was delivered to:

Nebraska Public Service Commission

Sue.Vanicek@nebraska.gov

Brandy.Zierott@nebraska.gov

Paul M. Schudel

Paul M. Schudel