

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 Windstream Nebraska, Inc.

Windstream Nebraska, Inc. (“Windstream”) submits the comments below in response to the Nebraska Public Service Commission (“Commission”) “Order Seeking Further Comments” entered on April 5, 2016. The Commission has asked for comments on draft elements of a proposed strategic plan and on specific aspects of a proposed change in the current Nebraska Universal Service Fund (“NUSF” or the “Fund”) assessment methodology from a revenue based methodology to a connections based methodology.¹

¹ In an earlier order issued in this matter, the Commission stated, “We note at the outset, the Commission is not, at this time, considering the assessment of broadband services or broadening the base to include additional consumers not already contributing to the NUSF.” Order Opening Docket and Seeking Comment, issued November 13, 2014, at p.1. Since that time, the FCC issued the *Open Internet Order* in which the FCC, among other things: (a) reclassified broadband Internet access service (“BIAS”) as a “telecommunications service;” (b) affirmed that BIAS is a jurisdictionally interstate service for regulatory purposes; and (c) granted temporary forbearance of federal USF and relay contribution requirements for BIAS. Protecting and Promoting the Open Internet, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, at para. 336 – 409, 431 – 434 (rel. March 12, 2015) (“*Open Internet Order*”). “With respect to universal service,” the FCC went on to say, “we conclude that the imposition of state-level contributions on broadband providers that do not presently contribute would be inconsistent with our decision at the present time to forbear from mandatory federal USF contributions, and therefore we preempt any state from imposing any new state USF contributions on broadband.” *Open Internet Order*, ¶432. This Commission’s Order Seeking Additional Comments did not directly address the Commission’s previously expressed intent not to change the assessment base, and, in consideration of that and the FCC’s order, for purposes of these comments, Windstream assumes no change to the assessment base.

I. Introduction.

Windstream commends the Commission for initiating a proceeding to develop a Strategic Plan for universal service reform in the broadband age, but cautions the Commission with regard to its proposal to consider contribution methodology first. It is undisputed that there have been many changes to the communications marketplace since the current assessment methodology was implemented in 1999. There have even been changes since the Commission last received comments in this docket over a year ago, in early April 2015. Perhaps the most significant change came late last year when the Commission issued a reconsideration order² calling into question all universal service high-cost disbursements made to price cap and rate of return carriers through the NUSF-7, NUSF-50, and NUSF-99 mechanisms. Such disbursements represent the bulk of the Fund. As of the date of these comments, the issues addressed in the Reconsideration Order have not been fully resolved, and it is not known when they will be.³ Accordingly, Windstream submits that a complicated endeavor like a change to the contribution methodology should not be finalized *before* the high-cost disbursement mechanism is stabilized and the growing list of other Fund issues (including those posed in the Order Seeking Further Comments) have been resolved and consumer impacts are adequately understood.

² See Order on Reconsideration and Setting Hearing, entered November 17, 2015, in Application No. NUSF-99 and Application NUSF-50 (hereinafter, the “Reconsideration Order”).

³ Additional comment filings and a hearing will likely be part of the schedule in the Reconsideration Order matter. Windstream urges the Commission to move quickly to address the Reconsideration Order so that it can then proceed to address the other Funding issues and then ultimately contribution reform. A final decision on the Reconsideration Order is particularly important given the possibility of true-ups and the uncertainty this poses for Windstream and the other price-cap carriers in Nebraska.

Specifically, in this new round of comments, Windstream recommends the following: (1) the Commission should modify the Strategic Plan to ensure that cost considerations and existing broadband deployments are properly taken into account; (2) the Commission should delay its consideration of modifications to the contribution methodology until it determines the overall size of the Fund; (3) the Commission should adopt a schedule for addressing all of the issues in its Strategic Plan; and (4) the Commission should schedule a series of workshops whereby interested persons and the public may address the details of any change to the contribution methodology, the Strategic Plan, and overall Fund size.

II. The Strategic Plan

Windstream generally supports the goals the Commission sets forth in its proposed strategic plan – ubiquitous broadband, preservation and advancement of affordable voice service, deployment of fiber-based networks everywhere, accountability, and stability – to the extent they are fully funded by the Nebraska universal service program. With the introduction of competition -- a good thing for the state and consumers -- the days of relying on access charges and implicit support to pay for universal service requirements are long gone. Universal service obligations must be supported and unfunded mandates avoided.

Because explicit universal service costs are ultimately borne by Nebraskans, the Commission should strike a balance between desired public policy goals and the level of funding necessary to achieve those goals. Recent technological advancements have enabled broadband providers, including Windstream, to offer premium broadband speeds using fiber for the middle mile, but copper for the last mile. These advances have brought faster broadband speeds within

reach of more consumers. We expect that this trend will continue. We recommend, therefore, the Commission not focus on ubiquitous fiber deployment. Instead, the goal should be to drive fiber *closer* to customers thereby shortening copper last-mile connections to enable the deployment of enhanced broadband speeds.

Windstream also proposes that the Commission add guidelines to the Strategic Plan to limit Fund resources from being used to over-build like-kind, existing broadband investment. As Windstream has argued in a number of prior Commission proceedings, such over-building is an inefficient use of scarce Fund resources and a financial deterrent to the private enterprises the Commission hopes will spend millions in broadband investment in the state. To date, the Commission has not issued guidelines or initiated a rulemaking to address the specific circumstances in which over-building should not be permitted. Windstream recommends that the Strategic Plan address this subject of over-building and, as noted below, that the Commission address same in the workshops recommended.

III. Significant Fund Issues and Assessment Methodology.

Windstream recommends that the Commission determine what it will cost to achieve the goals in its strategic plan before it considers what contribution methodology is most appropriate to meet the funding needs, which currently include the broadband / dedicated wireless / broadband adoption, high cost, telehealth, and Nebraska telephone assistance programs. With regard to the high-cost program, the Reconsideration Order issued last November in Applications NUSF-50 and NUSF-99 called into question all current and prospective disbursements. For 2016, the high cost disbursements may constitute (assuming no change) over 75% of the Fund. As noted above, it is unknown when the issues raised in the Reconsideration Order will be

resolved with finality. Windstream maintains that, until the Commission knows the size of the overall Fund, it would be premature to consider what contribution methodology will allow the Commission to meet its funding needs.

In its earlier comments in this proceeding, Windstream advocated that any reform to the contribution methodology be consistent with the following principles:

- (1) the funding level should be stable and predictable,
- (2) providers should contribute in a competitively and technology- neutral manner and provider discretion should be minimized through clear mandates,
- (3) consumer impacts should be equitably distributed consistent with the public interest benefits of the NUSF, and
- (4) administrative efficiency should be maximized.⁴

Windstream continues to support these principles and maintains that the Commission should adhere to these principles in its decisions on contribution reform. We believe, however, that it would be difficult to determine whether a new contribution methodology is in fact consistent with these principles – customer impacts in particular -- without *prior* resolution of the Reconsideration Order and other Fund sizing issues.

The Commission itself has recognized that determination of the Fund size will be a critical component of the Strategic Plan. With respect to the overall size of the Nebraska Fund going forward, the Commission states in the Order Seeking Further Comment that “[a] primary

⁴ Comments of Windstream, dated February 13, 2015.

objective of this proceeding will be to determine the appropriate size of the fund to meet the goals of each NUSF program. The Commission plans to seek comment on this issue in a parallel track.”⁵ With regard to the high-cost program in particular, the Commission states, “A complete record will be developed in a later comment cycle but will be considered in this overall proceeding.”⁶ Windstream believes the Commission should answer these questions first, before finalizing contribution reform.⁷

In order to effectively and efficiently address all the issues at hand, Windstream recommends that the Commission propose a schedule and permit parties and the public to comment on the organization and timing of that proposed schedule at one of the early workshops which Windstream suggests below. This would help the Commission and all parties coalesce around a logical sequence, and appropriate timing, for addressing Fund reforms piece by piece and would permit resources for this significant undertaking to be better anticipated and properly allocated.

⁵ Order Seeking Further Comment, at p. 11.

⁶ Id.

⁷ Also unknown at this time is when analysis/guidance on contribution issues from the Federal-State Joint Board on Universal Service (“Joint Board”) may be available. A Joint Board report addressing possible changes to the contribution methodology for federal universal service was due in April last year, around the time initial comments were filed in this proceeding. That Joint Board report has been delayed for an unspecified period of time. However, the Commission can expect that the appeal(s) of the FCC’s *Net Neutrality Order* will have an influence on the timing and substance of the Joint Board report.

IV. The Need for Workshops.

Whether the Commission proceeds directly to contribution reform or heeds Windstream's advice to first determine the size of the Fund, Windstream recommends that the Commission hold workshops. The number of assessment methodology issues addressed in the Order Seeking Further Comments is substantial. Even without the complicating overlay of Fund-sizing issues, the details that will need to be worked out if the Commission were to change methodology are complex. Windstream believes that after the new round of comments and replies in this docket, the most efficient way for the Commission to proceed would be to host a series of noticed workshops where the Commission, interested parties, and the public can discuss the issues in real time, in a collaborative manner, and identify any additional issues that the Commission and parties may need to address. The Commission should work with the parties to plan such workshops well in advance, and provide enough notice so that the subject matter experts of the parties can participate in person.

V. Conclusion.

Reforming NUSF assessment methodology, developing a Strategic Plan for the NUSF and properly sizing the NUSF – seemingly all at once – will be a very complex and difficult undertaking. The Commission is to be commended for taking on this ambitious task so important to economic development and the social welfare of the state. But the Commission should go about deciding these matters at a measured pace and should properly set expectations. Consistent with the comments above, Windstream urges the Commission to go about reforms in a logical and orderly fashion (after finalizing the Reconsideration Order issues) by looking at the Strategic Plan and Fund sizing issues before it decides on

assessment methodology. The first step the Commission should take to start this process is to publish a schedule for a series of interactive workshops where the issues will be addressed.

Respectfully submitted this 6th day of
June, 2016.

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Certificate of Service

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