

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public) Application No. NUSF-100/PI-193
Service Commission, on its own motion,)
to consider revisions to the universal)
service fund contribution methodology.)

CLOSING COMMENTS OF THE RURAL INDEPENDENT COMPANIES

Dated: September 15, 2017

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**Nebraska
Public Service Commission**

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I. INTRODUCTION AND SUMMARY

The Nebraska Rural Independent Companies (“RIC”)¹ respectfully submit the following closing comments in response to leave granted by the Nebraska Public Service Commission (the “Commission”) at close of the August 30, 2017, public hearing regarding this docket (the “Hearing”).²

As the testimony offered at the Hearing confirms, reform of the Nebraska Universal Service Fund (“NUSF”) contribution mechanism is required for the Commission to fulfill its statutory duties relating to administration of the NUSF. The Commission possesses the legal authority to adopt a connections-based contribution mechanism for the NUSF. The record demonstrates the following:

- (1) The consensus position of interested parties is that a connections-based contribution mechanism should be adopted and that such a mechanism would provide the stability and predictability that are essential to the continued viability of the NUSF;
- (2) Implementation of a connections-based NUSF contribution mechanism can be accomplished in an administratively efficient manner;

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 and Three River Telco.

² The request for leave to file closing comments was made by Charter’s counsel, and was joined by CTIA’s counsel. Charter’s counsel inappropriately suggested that RIC’s hearing testimonies “took substantial liberty” with the permissible scope of the hearing. The Commission’s Orders setting and re-setting the hearing date did not restrict the scope of permissible hearing testimony. This fact was confirmed by the August 22, 2017 email to all parties from Commission General Counsel, Shana Knutson that all pre-filed testimony would be offered into the record, “[t]here will not be a need to go into great detail. If you want to provide a short summary of your testimony/reply testimony that would be fine . . .” and any new exhibit would need to be circulated to all parties at least a week prior to hearing. No time limits or other limitations on the parties’ hearing testimonies were provided.

- (3) The publicly-available connections data available from the Federal Communication Commission (“FCC”) Form 477 Reports can be relied upon by the Commission in administering a connections-based NUSF contribution system;
- (4) Any costs and other potential administrative issues associated with the establishment of a connections-based contribution mechanism are manageable; and
- (5) Implementation of a connections-based NUSF contribution mechanism will facilitate accountability for the correct amount of remittances to the NUSF by all voice providers in Nebraska.

In light of the foregoing, RIC respectfully submits that the Commission should promptly proceed to enter an order adopting a connections-based NUSF contribution mechanism.

II. CONTRIBUTION REFORM IS REQUIRED FOR THE COMMISSION TO FULFILL ITS STATUTORY DUTY TO ACCOMPLISH THE PURPOSE OF THE NEBRASKA TELECOMMUNICATIONS UNIVERSAL SERVICE FUND ACT (THE “ACT”)

The purpose of the Act “is to authorize the Commission to establish a funding mechanism which supplements federal universal service support mechanisms and ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.”³ In connection with the performance of this responsibility, the Commission is directed to design and implement “specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service.”⁴

The record unequivocally demonstrates that NUSF remittances have materially decreased in recent years. Quarterly remittances to the NUSF that totaled approximately \$12.4 million for the first quarter of 2014 have fallen to approximately \$9.2 million for the first quarter of 2017, a

³ *Neb. Rev. Stat.* § 86-317 (Reissue 2014).

⁴ *Id.*, § 86-323(5). The duty and authority to accomplish these policies was delegated to the Commission by the Legislature under § 86-324(2).

decrease of almost 26 percent.⁵ Further, the Commission has found in a recent Order that during 2018, NUSF remittances are projected to fall by an additional 23 percent.⁶ As Commission Staff witness Robbins, Director of the NUSF, properly states:

This decline jeopardizes the ability of the Commission to carry out its statutory requirements to ensure that all Nebraskans, without regard to their location, have comparable access to telecommunication services at affordable prices and that there should be specific, predictable, sufficient and competitively neutral mechanisms to preserve, excuse me, and advance universal service.⁷

CenturyLink witness Lubeck confirmed Mr. Robbins' testimony that "the contributions have been declining and are starting to threaten the universal service principles that Nebraskans have supported for decades. Maintaining the current mechanism won't work."⁸ RIC agrees with the positions stated by both witnesses.

No interested party disputes that NUSF remittances have materially decreased and that absent adoption of the connections-based contribution mechanism there is no means to reverse this decline other than (if the revenues-based mechanism is retained) to increase the surcharge percentage applicable to assessable intrastate revenues.⁹ However, any such increase would run

⁵ Hearing Transcript, testimony of Ken Pfister, 72:19-73:1. *See also*, testimony of Edit Kranner, 88:7-20.

⁶ *See Order and Order Seeing Further Comments and Setting Hearing*, Application No. NUSF-100, PI-193, entered February 22, 2017 at p. 1 (the "*February NUSF-100 Order*").

⁷ Hearing Transcript, testimony of Cullen Robbins, 18:6-14.

⁸ Hearing Transcript, testimony of Alan Lubeck, 23:5-9.

⁹ Hearing Transcript, testimony of Joseph Gillan, 37:23-38:4, and testimony of Don Price, 64:10-12. However, while recognizing the significant reductions in NUSF remittances, the Commission recently declined to increase the current 6.95% surcharge percentage. *See, In the Matter of the Commission, on its own motion, 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, 2017*, Application No. NUSF-4, Order Setting Surcharge, p. 5 (June 13, 2017).

counter to the “political hard cap” on the current 6.95% revenues assessment surcharge that the Commission has followed since the advent of the NUSF.¹⁰

Reforming the NUSF contribution mechanism is necessary for the Commission to fulfill the policies of the Act and to discharge its duties as delegated by the Nebraska Legislature.

III. THE COMMISSION POSSESSES THE LEGAL AUTHORITY TO ADOPT A CONNECTIONS-BASED CONTRIBUTION MECHANISM

As stated above, the Commission possesses all necessary authority to implement, update and ensure that the NUSF achieves the policies of the Nebraska Legislature as set forth in *Neb. Rev. Stat.* § 86-323. Commission action to implement these Nebraska legislative policies is consistent with and serves the Congressional policy expressed in 42 U.S.C. § 254 that encourages a “federal/state” partnership that has been acknowledged by the FCC.¹¹

¹⁰ See Comments of Nebraska Rural Independent Companies, Application No. NUSF-100/PI-193, filed February 13, 2015, p. 9.

¹¹ For example, in the context of § 254(f) the FCC has indicated,

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.

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”) at para. 184; *see also Federal-State Joint Board on Universal Service, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 18 FCC Rcd 22559, 22568 para. 17 (2003). (The Communications Act of 1934, as amended, “makes clear that preserving and advancing universal service is a shared federal and state responsibility.”)

Courts have previously said that the Act “plainly contemplates a partnership between the federal and state governments to support universal service,” and that “it is appropriate – even necessary – for the FCC to rely on state action.” *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange*

RIC respectfully submits that the course the Commission has set in this proceeding relating to contribution reform is consistent with the directive from Section 254(f) that “[a] State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.”¹² Nothing in Part 54 of the FCC’s Rules¹³ precludes a state commission from adopting its own state universal service policies and mechanisms provided the directives as illustrated in the *Kansas/Nebraska Declaratory Ruling*¹⁴ are met.

Likewise, the Commission has clearly stated that Broadband Internet Access Service or “BIAS” will not be the subject of assessment with regard to a connections-based NUSF

Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 10-90, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 4554 (2011), at para. 85 (citing *Federal-State Joint Board on Universal Service, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 18 FCC Rcd 22559, 22568 para. 17 (2003) (“The Act makes clear that preserving and advancing universal service is a shared federal and state responsibility.”) (citing *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001))); and *Qwest Communications Int’l Inc. v. FCC*, 398 F.3d 1222, 1232 (10th Cir. 2005). And, as noted above, courts have acknowledged the same. *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001); and *Qwest Communications Int’l Inc. v. FCC*, 398 F.3d 1222, 1232 (10th Cir. 2005).

¹² 47 U.S.C. § 254(f).

¹³ See, 47 C.F.R. § 54.1, *et seq.*

¹⁴ See *Universal Service Contribution Methodology, Declaratory Ruling, Declaratory Ruling*, WC Docket No. 06-122, 25 FCC Rcd 15651 (2010) (the “*Kansas/Nebraska Declaratory Ruling*”). As the FCC has stated “[w]e conclude . . . that we should not preempt the imposition of such [state universal service contribution] requirements on nomadic interconnected VoIP providers so long as (1) the relevant state’s contribution rules are consistent with the Commission’s universal service contribution rules and (2) the state does not apply its contribution rules to intrastate interconnected VoIP revenues that are attributable to services provided in another state.” See *id.*, para. 11.

contribution mechanism,¹⁵ since both at the federal level and state level, the only defined “universal service” for high cost recovery is “voice” or, as the FCC describes it, “voice telephony.”¹⁶ The Commission possesses the legal authority to implement contribution reform through adoption of a connections-based contribution mechanism.¹⁷

IV. THE CONSENSUS POSITION OF INTERESTED PARTIES IS THAT A CONNECTIONS-BASED CONTRIBUTION MECHANISM SHOULD BE ADOPTED

The Commission’s tentative conclusion in its *February NUSF-100 Order* that a connections-based mechanism should be adopted continues to be consistent with the consensus views expressed by interested parties. The Commission Staff, CenturyLink, RTCN, Citizens, RIC and Windstream unqualifiedly support adoption of a connections-based contribution mechanism; Level 3 and Cox do not oppose adoption of this mechanism; and only Charter and CTIA oppose adoption of a connections-based contribution mechanism, yet neither party disputes that intrastate voice revenues are declining.¹⁸

¹⁵ The FCC has found BIAS to be a telecommunications service (and such finding has been confirmed by the Courts. *See generally USTA v. FCC*, No. 15-1063, *slip op.* (June 14, 2016). Nonetheless, the FCC has stated that “we conclude that any state requirements to contribute to state universal service support mechanisms 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).” *Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order*, 30 FCC Rcd 560, para. 490, fn. 1477 (2015) (“*Open Internet Order*”).

¹⁶ *See* 47 C.F.R. §54.101.

¹⁷ *See also, February NUSF-100 Order*, pp. 17-18 wherein the Commission concluded that “nothing in state or federal law requires the Commission to maintain its universal service fund mechanism based on provider revenues.

¹⁸ *See*, Hearing Transcript, testimony of Cullen Robbins, 18:15-20; testimony of Alan Lubeck, 24:4-25:1; testimony of Stacey Brigham, 31:25-32:2; testimony of Scott Bohler, 66:21-25; testimony of Ken Pfister, 75:6-19; testimony of William Kreutz, 101:5-11; testimony of Pamela

V. DATA INDICATE THAT THE NUMBER OF CONNECTIONS IN NEBRASKA IS STABLE OR SLIGHTLY INCREASING

Evidence in the record supports the conclusion that a connections-based assessment mechanism will indeed be a more stable and predictable basis for assessment and collection of NUSF contributions. Ms. Kranner submitted an attachment to her pre-filed direct testimony that presented actual connection count data for December 2008 through December 2015, and this data reveals stability and some growth of total voice connections in Nebraska during that period.¹⁹ Further, Ms. Kranner's projections of the number of voice connections for the period of 2016 through 2019 also demonstrates stability and slight growth.²⁰ During the five months between the filing of Ms. Kranner's direct testimony and the hearing, the FCC published its Form 477 Report containing actual connection data for June 2016. A comparison of Ms. Kranner's projected connection count for June 2016 as set forth in Attachment One to her direct testimony to the actual connection count for June 2016 that is provided in the most recent Form 477 Report confirms the reliability of her projected growth in the number of connections.²¹

Hollick, 47:23-48:1; testimony of Rob Logsdon, 52:10-18; testimony of Joseph Gillan, 33:21-22; and testimony of Don Price, 60:10-21.

¹⁹ See, Exhibit 12, Attachment One, p. 2. As March 24, 2017, the date on which Ms. Kranner's direct testimony was filed, actual connection count data for 2016 had not yet been published by the FCC in a Form 477 Report.

²⁰ See, *id.*, pp. 7-9.

²¹ See, Hearing Transcript, testimony of Edit Kranner, 85:12-86:7. See also, Exhibit 27, p. 2. This data rebuts the challenge by Mr. Gillan of the connection projections which, at the Workshop held in this docket, were described by Mr. Gillan as "implausible and improbable."

Other witnesses testified that a connections-based assessment mechanism would be more sustainable, stable and predictable.²²

VI. DATA REQUIRED TO IMPLEMENT A CONNECTIONS-BASED CONTRIBUTION MECHANISM IS AVAILABLE FROM FCC FORM 477 REPORTS

In order to implement a connections-based NUSF contribution mechanism, reliable data is required that establishes the number of assessable connections over which voice service is provided. This requirement is fulfilled through the public accessible, non-confidential data that is available from FCC Form 477 Reports. These Reports set forth the number of assessable connections for wireline/VoIP consumer-grade voice service, business and government-grade voice service and mobile telephony. While apparently certain parties dispute the Commission-defined term “connections,” nothing in that definition is inconsistent with the detailed instructions issued by the FCC for submission of data in Form 477 reports. Accordingly, RIC urges the Commission to expressly find in its final order to be entered in this docket that all voice providers are expected to remit connections-based NUSF surcharge amounts based upon the number of connections reported to the FCC for purposes of Form 477 Reports.²³

RIC also submits that the concern particularly advanced by Charter witness Gillan that the shift to Internet Protocol platforms would cause a connections-based mechanism “to assess something that is fleeting” is misplaced.²⁴ In response to this concern, RIC witness Davis pointed out that the Form 477 instructions issued by the FCC address this issue and require the reporting of “interconnected VoIP subscriptions based on the maximum number of

²² See, Hearing Transcript, testimony of Cullen Robbins, 18:15-20; testimony of Alan Lubeck, 24:23-25:1; and testimony of Stacey Brigham, 30:3-11.

²³ See, Hearing Transcript, testimony of Dan Davis, 92:8-25.

²⁴ See, Hearing Transcript, testimony of Joseph Gillan, 34:14-23.

interconnected VoIP calls that their [providers'] customers may simultaneously have active between their physical location and the public switched network."²⁵

Further, Commission reliance on the Form 477 connections data enhances accurate reporting. Voice service providers certify the accuracy of the number of connections reported to the FCC for Form 477 purposes and the FCC makes its Form 477 Reports available for public access and review. Thus, the data in the Form 477 Reports will facilitate the implementation of a connections-based assessment mechanism to accomplish NUSF contribution reform in Nebraska.

VII. IMPLEMENTATION COSTS AND OBSTACLES IDENTIFIED TO DATE ARE MANAGEABLE

At the hearing and in pre-filed testimonies some witnesses expressed concerns regarding implementation costs and other obstacles associated with a connections-based NUSF contribution mechanism. While Level 3 witness Hollick raised general concerns about implementation,²⁶ Citizens witness Bohler stated that the new connections-based mechanism should be easy to implement in Citizens' billing systems.²⁷ Further, RIC witness Pfister corroborated Mr. Bohler's position, testifying that billing system costs are minimal, and further, that no material administrative issues relating to implementation of the connections-based mechanism have been identified, but if any such issue arises, it can be addressed by the Commission and providers.²⁸

VIII. IMPLEMENTATION OF A CONNECTIONS-BASED MECHANISM WILL FACILITATE ACCOUNTABILITY FOR CORRECT NUSF REMITTANCES

²⁵ See, Hearing Transcript, testimony of Dan Davis, 94:2-21.

²⁶ See, Hearing Transcript, testimony of Pamela Hollick, 41:16-42:10.

²⁷ See, Hearing Transcript, testimony of Scott Bohler, 69:1-3.

²⁸ See, Hearing Transcript, testimony of Ken Pfister, 79:9-80:14.

In the *February NUSF-100 Order* the Commission recognized the need to develop “specific reporting and certification procedures” for NUSF remittances relating to any reformed contribution mechanism.²⁹ As pointed out by Mr. Pfister, “[u]se of Form 477 data should enhance your [the Commission’s] ability to confirm that providers’ remittances to the NUSF are consistent with the FCC-reported connections multiplied by the Commission’s per-connection rate.”³⁰ As a result, review of the accuracy of provider remittances by the Commission Staff should be vastly simplified with a connections-based mechanism as compared to the current revenues-based mechanism. This is a valuable benefit that would be derived from adoption of the connections-based contribution mechanism by the Commission.

IX. CONCLUSION

At the opening of the Hearing, Commissioner Landis, when placing the published notice of this proceeding in the record, questioned whether the listed publication date of November 17, 2014 was correct. Commission General Counsel, Ms. Knutson, assured him that the date was correct and that “[t]his docket has been open that long, yes.”³¹ Indeed, this docket has been open for nearly three years during which time span there have been four rounds of comments, two rounds of briefing, two rounds of pre-filed testimonies³² and now the submission of these Closing Comments.

In light of the continuing material reductions in NUSF remittances under the current revenues-based assessment mechanism as described above, RIC respectfully submits that the

²⁹ *February NUSF-100 Order*, p. 19.

³⁰ *See*, Hearing Transcript, testimony of Ken Pfister, 78:21-25.

³¹ *See*, Hearing Transcript, 8:23-9:5.

³² *See*, Hearing Transcript, testimony of Ken Pfister, 72:4-8.

time has come for the Commission to act in this docket and more specifically to approve adoption of the connections-based assessment mechanism as supported by the record in this docket.

As these Closing Comments again confirm, the consensus among interested parties is that the Commission should adopt the NUSF connections-based contribution mechanism. RIC respectfully urges the Commission to enter a final order in this docket as soon as possible that adopts this connections-based NUSF assessment mechanism. Thereafter, RIC further requests the Commission to proceed with the next phase of this reform effort – sizing and rate design – in order to implement the connections-based assessment mechanism on the time frame described by Mr. Pfister in his testimony.³³

³³ *Id.*, 76:4-22.

Dated: September 15, 2017.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of September, 2017, an electronic copy of the foregoing Closing Comments was delivered via electronic mail to:

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