

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

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Nebraska Public Service Commission

REPLY COMMENTS OF THE RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies ("RIC")¹ submit these reply comments in

response to the Order Granting Motion for Extension of Time and Allowing for Reply

Comments entered by the Hearing Officer in this proceeding on September 18, 2017.

I. THE RECORD DEMONSTRATES MATERIAL DECLINES IN NUSF REMITTANCES DERIVED FROM THE REVENUES-BASED MECHANISM AND NO PROSPECT OF REVERSAL OF THIS TREND

Undisputed evidence demonstrates that Nebraska Universal Service Fund ("NUSF") remittances have materially declined.² The Commission has found that this decline can reasonably be expected to continue in 2018.³ These assessable NUSF revenue declines are consistent with a similar decline experienced by the federal Universal Service Fund ("USF") programs.⁴

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 See Order and Order Seeking Further Comments and Setting Hearing, Application No. NUSF-100/PI-193, entered February 22, 2017 ("February Order") at p. 1; see also Hearing Transcript, testimony of Ken Pfister, 72:19-73:1; testimony of Edit Kranner, 88:7-20.

³ See February Order at p. 1.

⁴ See Hearing Transcript, testimony of Edit Kranner, 88:21-89:17. RIC notes that, to compensate for declines in federal USF assessable revenues, the federal contribution percentage rate has been consistently increased. As publicly-released on September 12, 2017, the Federal

No amount of revisionist arguments by either Charter or CTIA in their recently filed Comments⁵ can change the fact that remittances to the NUSF have steadily and materially declined, or alter the testimonies of their witnesses that the only means to stabilize remittances generated by the current revenues-based mechanism is to increase the surcharge percentage.⁶ Thus, rather than providing evidence that the revenues-based mechanism represents a stable source for NUSF remittances (a result that the record supports with regard to a connections-based contribution mechanism), Charter and CTIA acknowledge that the only means to stabilize NUSF remittances produced by the current revenues-based assessment mechanism is to implement increases in the NUSF contribution percentage to be applied to NUSF-assessable revenues. However, Charter's and CTIA's solution represents a course of action that the Commission has been unwilling to take.⁷ Accordingly, the Charter and CTIA position that stabilization of the NUSF contribution should rely on increases in NUSF contribution

Communications Commission ("FCC") announced that the federal USF rate for the fourth quarter of 2017 would be 18.8% (*see Proposed Universal Service Contribution Factor, Public Notice*, CC Docket No. 96-45, DA-17-884, released September 12, 2017), an increase of 1.7% over the third quarter 2017 rate of 17.1%. *See Proposed Universal Service Contribution Factor, Public Notice*, CC Docket No. 96-45, DA-17-580, released June 13, 2017

⁵ *See* Comments of CTIA in Response to the Commission's August 30, 2017 USF Contribution Hearing, pp. 2-3 (Sept. 19, 2017) (the "CTIA Comments") and Post Hearing Comments by Charter Fiberlink – Nebraska, LLC, pp.1-2 (Sept. 15, 2017) (the "Charter Comments").

⁶ At the public hearing of this matter Commissioner Schramm asked Charter witness Gillan "what remedies are available to stabilize the fund and to maintain predictability of the fund?" Gillan's response was: "The answer is the one that nobody wants to say. And that is that *the assessment rate has to go up*. It's math. If the revenues – as the revenues go down and you want to collect the same amount of money, *the assessment rate has to go up*." (emphasis added). Hearing Transcript, testimony of Joseph Gillan, 37:20-38:4. CTIA witness Price agreed with this response. Hearing Transcript, testimony of Don Price, 64:10-16.

⁷ 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).

percentages should be rejected, and an NUSF connections-based assessment mechanism should be approved.

II. CTIA AND VIAERO CLAIMS THAT A CONNECTIONS-BASED MECHANISM WOULD BE REGRESSIVE AND HARM LOW INCOME NEBRASKANS ARE BEYOND THE SCOPE OF THE CURRENT PROCEEDING

The Commission has clearly stated at least *twice* that the scope of this docket is to determine whether the existing NUSF revenues-based mechanism shall be continued or shall be replaced by a connections-based mechanism.⁸ Nonetheless, in its Post-Hearing Comments, Viaero asserts that “[a] connections-based methodology will impose the same charge on all customers, regardless of usage, which will result in a regressive surcharge system that will harm low-income consumers . . .”⁹ Similarly, and even though it acknowledges that “the size of the NUSF and the magnitude of the contributions necessary to fulfill the NUSF’s obligations’ *will be determined in another docket*”,¹⁰ CTIA claims that “a connections-based system would impose identical unitary contribution burdens on all consumers, regardless of their usage or ability to pay.”¹¹ These contentions that relate to rate design are beyond the scope of the current proceeding.

In short, Viaero and CTIA can raise their respective claims when appropriate. At this time, however, criticisms of an as yet-to-be-determined connections-based assessment rate design should not in any way dissuade the Commission from reaching the conclusion supported by the record that a connections-based NUSF contribution mechanism should be adopted.

⁸ See *Order Denying Motion*, Application No. NUSF-100/PI-193, p. 2 (May 9, 2017) and *Order*, Application No. NUSF-100/PI-193, p.1 (July 5, 2017).

⁹ Post-hearing Comments of NE Colorado Cellular, Inc., d/b/a Viaero Wireless, p. 2 (Sept. 15, 2017).

¹⁰ CTIA Comments, p. 3 (emphasis added).

¹¹ *Id.* at pp. 3-4.

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

Charter criticizes RIC witness Kranner's March 2017 testimony regarding the projected number of June 2016 connections as compared to actual June 2016 connections released in April 2017 by the FCC in its Form 477 report of June 2016 data.¹² However, the record supports the accuracy of RIC's projection regarding the stability of or slight increases in June 2016 connections when compared to actual June 2016 Form 477 data. Thus, the record supports the stability of NUSF-assessable connections in contrast to the material deterioration and instability of NUSF remittances produced by the current revenues-based mechanism.¹³

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

No rational question should exist that FCC Form 477 Reports contain reliable, publicly-available data that are sufficient to implement a connections-based assessment mechanism.¹⁴ Attempts in the post-hearing comments to distract the Commission from this fact should be rejected.

By way of example, the claim by Charter that "Form 477 and TRS data sources are not consistent"¹⁵ ignores the fact that no record evidence was provided to support a finding that a "TRS data source" even exists. The number of TRS connections concerning which Windstream witness Kreutz testified was merely derived from a mathematical calculation he performed by

¹² Charter Comments, p. 5.

¹³ See Attachment One to Exhibit 12, Direct Testimony of Edit Kranner, and Exhibit 27. See also RIC's Closing Comments, pp. 7-8 (Sept. 15, 2017) (the "RIC Comments"). RIC has provided evidence confirming the historical stability of Nebraska connection numbers and has provided reasonable projections of continued stability of connection numbers through 2019.

¹⁴ See generally RIC Comments, pp. 8-9; Exhibit 11, Direct Testimony of Dan Davis; and Exhibit 23, Reply Testimony of Dan Davis.

¹⁵ Charter Comments, p. 4.

dividing reported June 2015 TRS remittances by a \$0.02/connection assessment factor.¹⁶

Witness Kreutz observed that there are reasons why his calculation of assessable TRS connections differs from Form 477 reported connections, including the existence of a per customer cap on assessable TRS connections.¹⁷ Finally, the fact that TRS is successfully assessed, billed and collected by voice service providers without administrative difficulties undercuts CTIA's claim that implementation of a connections-based NUSF mechanism "would take considerable time, expense, and effort to implement."¹⁸

V. SIGNIFICANTLY, NO PARTY FILING POST-HEARING COMMENTS QUESTIONED THE COMMISSION'S LEGAL AUTHORITY TO ADOPT AND IMPLEMENT A CONNECTIONS-BASED NUSF ASSESSMENT MECHANISM

No filer of post-hearing comments – including those that oppose adoption or question the advisability of a connections-based mechanism – disputes that the Commission has the requisite legal authority to adopt and implement a connections-based NUSF contribution mechanism. Accordingly, for the reasons set forth in the record and provided by RIC,¹⁹ the Commission should conclude that it possesses the legal authority to adopt and implement a connections-based NUSF assessment mechanism.

VI. CONCLUSION

For all of the reasons set forth herein and in prior RIC filings in this proceeding, the RIC members respectfully urge the Commission to enter a final order that adopts a connections-based NUSF assessment mechanism and thereafter to proceed with the next phase of this reform effort

¹⁶ See Hearing Transcript, testimony of William Kreutz, 101:20-102:20.

¹⁷ *Id.* at 103:7-15.

¹⁸ CTIA Comments, p. 4.

¹⁹ See RIC Comments, pp. 4-6.

– sizing and rate design – in order to implement the connections-based assessment mechanism on the time frame described by RIC witness Pfister in his testimony.²⁰

Dated: September 26, 2017.

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²⁰ Hearing Transcript, Testimony of Ken Pfister, 76:4-22.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of September, 2017, an electronic copy of the foregoing Reply Comments was delivered via electronic mail to:

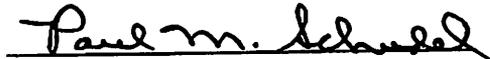
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