

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))

Post-Hearing Reply Comments by Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC

1 In accordance with the Commission’s September 18th *Order Granting Motion for*
2 *Extension of Time and Allowing for Reply Comments*, Charter takes this opportunity to provide
3 reply comments as follows:

4 **A. There is no consensus in favor of a connections-based approach.**

5 As an initial matter, RIC claims that there is a “consensus” in favor of moving to a
6 connections-based approach. This claim is simply not true. A consensus is “an opinion or
7 position reached by a group as a whole,” or a “general agreement or accord.”¹ In this matter,
8 Charter and CTIA have expressly opposed a connections-based approach, while other interested
9 parties have expressed reservations about moving to a connections-based approach, based on the
10 difficulty in doing so. There is no “general agreement” that the PSC should move to a
11 connections-based approach.

12 The issue here, though, is not just one of counting hands. The issue is whether the reasons
13 for moving to a connection-based approach are well founded. As Charter and others have already
14 shown, there are serious obstacles to implementing a connections-based approach successfully.
15 Those issues are addressed further below.

¹ The American Heritage Dictionary of the English Language (5th ed. 2011).

1 **B. The Commission does not have clear authority to implement a connections-based**
2 **approach.**

3 In its post-hearing comments, RIC argues that the Commission has the legal authority to
4 adopt a connections-based contribution mechanism.² RIC, however, fails to acknowledge FCC
5 authority to the contrary. In 2010, the FCC ruled that it has only authorized states to assess
6 *intrastate* revenues:

7 “[T]o avoid a conflict with the Commission’s rules, a state imposing
8 universal service contribution obligations on interconnected VoIP
9 providers must allow those providers to treat as intrastate for state
10 universal service purposes the same revenues that they treat as
11 intrastate under the Commission’s universal service contribution
12 rules.”³

13 A connections-based mechanism, which by its nature is unrelated to intrastate revenue, is
14 incompatible with the FCC’s directive.

15 **C. RIC’s support of a connections-based mechanism is a Trojan horse.**

16 The Commission has repeatedly stated that the purpose of the present docket is to
17 determine whether a connections-based mechanism is more useful than the current revenue-
18 based approach for collecting USF charges – not to increase the size of the fund itself. RIC,
19 however, admits that its support for a connections-based approach is founded, at least in part, to
20 avoid “the political hard cap” on the 6.59% revenue surcharge⁴. In other words, RIC’s advocacy

² *Closing Comments of the Rural Independent Companies*, at 4 – 6.

³ *Declaratory Ruling, 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*, WC Docket No. 06-122, rel. November 5, 2010, at ¶ 17. (Emphasis added.)

⁴ *Closing Comments of the Rural Independent Companies*, at 4.

1 is a Trojan horse; It supports a new methodology so it can argue (in a later phase) for a larger
2 fund.

3 The Commission should not be lead down the path to a larger fund simply because a new
4 collection methodology is adopted – or said in the reverse, it should not go down the path of
5 adopting a new collection methodology, so that it may adopt a larger fund. As Charter has noted
6 in the past, the connections-based methods become increasingly unstable as the size of the fee
7 grows. Or, as Charter’s witness Joe Gillan has put it: “Small fee, small problems.” If the ultimate
8 purpose of the move to a connections-based mechanism is to facilitate an increase in the size of
9 the fund, that is especially problematic.

10 For these reasons, Charter reiterates its belief that the people of Nebraska are best served
11 by staying with the current revenue-based funding mechanism. At a minimum, the Commission
12 should defer making any final decision on moving to a connections-based mechanism until the
13 facts are more fully developed.



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