

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

REPLY COMMENTS OF QWEST CORPORATION d/b/a CENTURYLINK QC AND UNITED TELEPHONE COMPANY OF THE WEST d/b/a CENTURYLINK

The Nebraska Public Service Commission (“Commission”) opened Application No. NUSF-100 on November 13, 2014 to consider revisions to the Nebraska Universal Service Fund (“NUSF”) contribution methodology. Contributions into the fund continue to decline and changes are needed to ensure the continued stability and viability of the fund. Parties filed initial and reply comments on February 13, 2015 and April 13, 2015 respectively. On April 5, 2016, the Commission issued an Order Seeking Further Comments on a number of issues, and interested parties filed initial comments on June 6, 2016. Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (collectively, “CenturyLink”) respectfully submit these reply comments in response to the initial comments filed on June 6, 2016 in this proceeding.

In its comments, Windstream cited four principles that the Commission should follow as it ventures down the path of contribution methodology reform. These principles are: (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.¹ CenturyLink agrees with these principles and encourages the Commission to incorporate them into its Strategic Plan.

I. Need for Workshops

In its initial comments, CenturyLink noted the need for the Commission to hold workshops where interested parties may discuss the many varied and complex issues surrounding contributions methodology in a collaborative setting. Two other parties also recommended the Commission hold workshops. Cox and Charter state, “The intricate details of implementing such a massive change....will be tedious if left for analysis and execution by way of written comments. The most robust and constructive input will be derived from a workshop setting where ideas can be presented, considered and evaluated openly by all interested stakeholders.”² Windstream also sees a need for the Commission to hold workshops, stating, “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.”³ CenturyLink agrees and again encourages the Commission to consider holding a series of workshops where it can discuss the many issues surrounding a change to the NUSF contribution methodology and receive feedback from the parties.

Additionally, CTIA recommends the Commission open a new docket for consideration of a Strategic Plan for the NUSF.⁴ CenturyLink agrees. The instant proceeding was opened with the intention of developing a new contribution methodology for the NUSF. A development of a Strategic Plan, along with goals and objectives of the NUSF, fall outside the scope of the original docket. The Commission’s

¹ Comments of Windstream Nebraska, Inc. page 5:

² Joint Comments of Cox Nebraska Telcom, LLC and Charter Fiberlink – Nebraska, LLC, page 4.

³ Comments of Windstream Nebraska, Inc. page 7.

⁴ See Comments of CTIA, page 3 (“Moving the Strategic Plan to its own docket would allow that step of the Commission’s NUSF reforms to be completed, as it should, before any potential contribution reforms. It would also allow the Commission to develop a Strategic Plan that addresses other NUSF objectives that it has expressed an interest in reforming, such as Lifeline and telehealth.”)

focus in NUSF-100 should be limited to the creation and development of a new NUSF contribution methodology. Development of a Strategic Plan for the NUSF should be accomplished as part of a separate proceeding, which can occur on a parallel track with the development of a new contribution methodology.

II. FCC Action on Contribution Methodology Reform

Several parties indicated that the Commission should either delay its actions on contribution methodology reform until after the Federal Communications Commissioner (“FCC”) has acted in its docket on contributions reform to try and coordinate state actions with any potential action from the FCC.⁵ While CenturyLink understands there are risks associated with proceeding with contributions methodology reform while the FCC is also considering changes to its contribution methodology, it is also important to note that the FCC has been investigating contributions methodology reform for more than a decade and does not appear to be close to issuing an order. CenturyLink also notes that different states have different methodologies for collecting state universal service contributions today, some of which mirror the FCC’s methodology, others of which do not.⁶

⁵ See Comments of CTIA, page 7 (“In light of pending recommendations from the Joint Board, it would not make sense for Nebraska to implement modifications to the NUSF contribution methodology. Such changes run a considerable risk of being contrary to, or a poor fit with, changes to the federal approach.”); Joint Comments of Cox Nebraska Telcom, LLC and Charter Fiberlink – Nebraska, LLC, page 1 (“Due to the many complexities the Commission will encounter in implementing a connections-based or hybrid approach, the Joint Commenters encourage the Commission to wait to change its methodology until the FCC acts and provides guidance.”); and Comments of NE Colorado Cellular, Inc. d/b/a Viaero Wireless, page 3 (“[A]ny effort by the Commission to implement a new contribution mechanism which precedes, and therefore does not incorporate the recommendations of the Joint Board, and ultimately FCC action, could result in extensive regulatory confusion, the need to undertake further compliance reform proceedings, and an enormous waste of private resources and investments dedicated to NUSF reform that would have to be restructured during or immediately following the implementation of the Commission’s directives.”)

⁶ Kansas used a two-tier methodology for KUSF contributions, whereby incumbent local exchange companies were assessed on a per-line basis for local revenues as well as a percentage basis for non-local revenues. Other providers were assessed on a percentage basis. The Kansas Corporation Commission eliminated this bifurcated approach in 2015, holding that this approach did not conform with the statutory requirements that assessments be made on an equitable and non-discriminatory basis. See *In the Matter of an Investigation to Determine the Assessment Rate and Affordable Local Service Rate for Rate-of-Return Regulated Carriers for the Nineteenth Year of the Kansas Universal Service Fund, Effective March 1, 2016*, Docket No. 15-GIMT-073-GIT, Order Eliminating KUSF Local Service Per Line Rates, entered May 21, 2015. Utah is also experiencing a decline in state USF contributions

The Commission can continue with contributions methodology reform for the NUSF and provide a glide path that the FCC can follow. The Commission should not delay progress on contributions methodology reform because the FCC might implement something different in the future, which may or may not be complementary to Nebraska's methodology. The Commission should not be distracted from the important public policy issue of ensuring the NUSF is stable and adequately funded.

III. Commission's Goal of Fiber Everywhere

In its Order Seeking Further Comments, the Commission stated that one of its goals was to deploy fiber everywhere. In its initial comments, CenturyLink warned the Commission that, while a laudable goal, the cost of deploying fiber everywhere would be significant and that it was necessary for the Commission to balance that cost with the burden placed on consumers that are ultimately paying for that fiber through NUSF contributions. RIC also noted that the Commission would have to "determin[e] the feasibility of funding these costs (together with operational costs of the network) through NUSF surcharges imposed on users of the network."⁷ However, other parties also noted that technological advances were making it so that it may not be necessary to deploy fiber everywhere. Windstream states, "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."⁸ Citizens also notes that "[w]hile this 'fiber to every Nebraskan' approach is a wonderful aspirational goal, from a practical perspective the use of non-fiber technologies will play a very large part in the provision of broadband for the foreseeable future. Copper, coaxial, and wireless technologies are practical and cost-effective

and is considering changing its contribution methodology from a revenues based to a connections based methodology. See *In the Matter of Utah Universal Service Fund Surcharge*, Docket No. 16-R360-02.

⁷ Comments of the Rural Independent Companies in Response to Order Seeking Further Comments, page 7.

⁸ Comments of Windstream Nebraska, Inc. pages 3-4.

means to provide broadband service.”⁹ CenturyLink agrees. Much research is being done in using existing copper networks to provide broadband service at ever increasing speeds. As noted in CenturyLink’s initial comments, the FCC admitted that it didn’t have the resources necessary to offset the high cost of building broadband networks in rural areas nationwide and, therefore, decided on a model to allocate its limited resources to specific locations in Nebraska and across the country. CenturyLink agrees with other commenters that there are alternatives available and encourages the Commission to investigate the use of cost effective technologies for providing broadband service to rural areas of the state in a manner that balances the broadband goals with the financial burden on consumers.

IV. Proper Use of NUSF Support

The Commission’s Order Seeking Further Comments alludes to the use of NUSF support for the deployment of broadband service throughout the state. However, as Citizens points out in its comments, another appropriate use of the NUSF support is for operating and maintenance expenses.¹⁰ CenturyLink has consistently recommended that the Commission provide incumbent local exchange carriers with adequate support to operate and maintain not only the current voice network, but the new broadband network as it is deployed. The Commission should not turn a blind eye to the high costs associated with operating and maintaining the network, especially in rural areas of the state, in its zeal

⁹ Comments of Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska, page 1.

¹⁰ See Comments of Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska, page 2 (“The ‘intended purpose’ of the NUSF is not limited only to the expansion of service to new areas of the deployment of new capabilities brought about by new investment dollars, but also to the preservation and support of existing services. The statutory basis for the NUSF states that the policy of the state is to ‘preserve and advance universal service.’ Further the statute states that there should be sufficient mechanisms in place to ‘reserve and advance universal service,’ and that the funds distributed by the NUSF should encourage the ‘continued development and maintenance of telecommunications infrastructure.’ Carriers are to use the NUSF funding for the ‘provision, maintenance, and upgrading of facilities and services.’ The Commission’s Universal Service Fund Rules and Regulations also state that funding is to be used for the ‘provision, maintenance, and upgrading of facilities and service.’ Clearly, the legislature did not intend to limit the use of NUSF funding to only supporting new investment, but also intended the funding to be used to preserve existing services through the support of the ongoing provisioning and maintenance of those services.” Footnotes omitted).

to extend broadband to as many Nebraskans as possible. The Federal CAF II program incorporates operating and maintenance costs into its model, which the PSC has licensed, and including these costs in the NUSF distributions would align Commission goals with the FCC. Many of the service areas where the Commission is encouraging broadband deployment are uneconomic to build and uneconomic to operate. While the goal of ubiquitous broadband is a worthy one, it is just as important to ensure that the network is maintained properly so that customers served by that network can continue to receive broadband service well into the future.

Windstream also encourages the Commission to include in its Strategic Plan a restriction that would prevent NUSF support from being used to over-build like-kind existing broadband. Windstream states that “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.”¹¹ CenturyLink agrees. The Commission’s goal should be to get broadband deployed to as many Nebraskans as possible. Using NUSF monies to support the deployment of broadband in areas where broadband is already available is not an efficient use of the support, especially given there are so many other necessary uses of the funding.

V. Fund the NUSF from the General Fund

CTIA states in its comments that the Commission should consider a change to “transition NUSF funding from carrier assessments to appropriations from the state general fund.”¹² CTIA goes on to argue that one of the goals of the NUSF is to “enhance the general welfare of the state and its people: ensuring access to voice communications, ensuring access to emergency services, and allowing citizens to communicate with government, transact business, and communicate with family and friends.”¹³ CTIA notes that these “broader societal objects shouldn’t be funded on the backs of telecommunications

¹¹ Comments of Windstream Nebraska, Inc. page 4.

¹² Comments of CTIA in Response to the Commission’s April 5, 2016 Order Seeking Further Comments, page 10.

¹³ Ibid.

carriers and their customers alone.”¹⁴ CenturyLink would like to note, however, that virtually all adult Nebraskans and Nebraska businesses have a telephone, either wireline, wireless, or both, and nearly all pay into the NUSF by virtue of the NUSF surcharge on their bills (with the exception of those people enrolled in the Nebraska Telephone Assistance Plan, who are exempted from paying the surcharge). Therefore those same consumers and businesses that benefit from a robust telecommunications network are supporting the NUSF. It is also important to note that these consumers and businesses that are paying into the NUSF are also paying Nebraska income taxes. Therefore, moving funding for the NUSF to the state’s general fund does not necessarily broaden the contribution base. Long-term network investment decisions by the providers in uneconomic areas should not be subject to annual funding decisions of the state legislature.

Further, the Nebraska Supreme Court ruled that the NUSF surcharge was not created to generate revenue for governmental purposes, but rather to rebalance and restructure local telecommunications rates, and that the NUSF surcharge is not a tax.¹⁵ It would be inappropriate to now change course and fund the NUSF through general funds rather than a separate surcharge.

VI. Transitional or Interim Steps

Several parties provided comments regarding transitional or interim steps the Commission should take in implementing the change to a connections based methodology. Citizens states that “[s]uch an approach would be complicated to design and administer, and Frontier would urge the Commission not to adopt such a plan.”¹⁶ CTIA states, “[C]hanges that may result in the implementation of multiple contribution methodologies are inefficient, costly, disruptive, and should be avoided....Requiring companies to modify billing and accounting systems, train employees, develop compliance processes, and educate consumers numerous times is wasteful and inefficient for providers,

¹⁴ Ibid.

¹⁵ Schumacher v. Johanns, 272 Neb. 346, 722 N.W.2d 37 (2006).

¹⁶ Comments of Citizens Telecommunications Company of Nebraska d/b/ Frontier Communications of Nebraska, pages 3-4.

and ultimately for consumers.”¹⁷ CenturyLink agrees that the Commission should make the change to a new contributions methodology in one step and encourages the Commission to hold a series of workshops to discuss the issues related to any transition to a connections based contributions methodology.

VII. Long Distance and Special Access Revenues

RIC states, “[T]o help ensure that all readily identifiable network connections are subject to proper NUSF assessments, RIC respectfully suggest that the Commission retain the current revenues-based assessment mechanism for business services and for special access service.”¹⁸ Viaero notes that “a definition of ‘accessible [*sic*] connection’ which relies on numbers would also, by definition, exclude from assessment all services that do no [*sic*] not rely on numbers.”¹⁹ Long distance and special access revenues are subject to the current revenue based surcharge of 6.95%. However, under a connections based methodology, with the connection determined using a working telephone number, would these revenue sources be assessed? RIC suggests continuing with the current revenues based assessment for these services.²⁰ CenturyLink also noted in its initial comments that a revenues based methodology may need to be retained for special access revenues. However, mixing connections based and revenue based contribution methodologies on the same customers (such as when the customer subscribes to both local and long distance service from the same provider) will cause consumer confusion and complaints, as well as surcharge billing and collection complexity. If the Commission determines that a connections based contribution methodology is the correct method for a class of customers, there should be no additional revenues based contributions for those same customers. The Commission should perform a thorough review of all services that currently contribute to the NUSF through the revenue based

¹⁷ Comments of CTIA in Response to the Commission’s April 5, 2016 Order Seeking Further Comments, page 15.

¹⁸ Comments of the Rural Independent Companies in Response to Order Seeking Further Comments, page 16.

¹⁹ Comments on NE Colorado Cellular, Inc. d/b/a Viaero Wireless, page 5.

²⁰ See Comments of the Rural Independent Companies in Response to Order Seeking Further Comments, page 20.

methodology and determine what other services, beyond intrastate long distance and special access, do not have a “connection” as defined by the Commission.

VIII. Coordination With FUSF Support

Cox and Charter state that “[s]upport received from the Connect America Fund (‘CAF’), inter-carrier compensation reform, adoption of federal price floor benchmarks, a remote area fund, etc. are all factors that should be taken into consideration as the NUSF is updated and revised to meet current needs and objectives,”²¹ however they make no comment regarding what consideration the Commission should give support received from these different programs nor how that support should be considered in the calculation of NUSF support. CenturyLink supports using NUSF as a complement to CAF II, as did the FCC in paragraph 28 its 2014 CAF II Order *“We also note that the states have an important role to play in advancing universal service goals. We welcome and encourage states to supplement our federal funding, whether through universal service funds or other mechanisms.”* There are several ways for the NUSF to complement federal funding, from funding middle mile broadband infrastructure to funding unserved areas to enhancing funding for CAF II areas to create incentives for higher speed broadband in rural areas.

IX. Development of Interstate/Intrastate Usage Factors

CenturyLink will address the issue of intrastate/interstate usage factors as part of the briefing ordered by the Commission in its July 12, 2015 Order in this docket.

X. Data Collection and Reporting

RIC provides the Commission with a list of six pieces of information it believes the Commission should request of all carriers currently contributing the NUSF.²² CenturyLink cautions the Commission that much of the information RIC believes the Commission should seek is confidential. In addition, while RIC believes that the majority of the information is currently available from various FCC reports, some of

²¹ Joint Comments of Cox Nebraska Telcom, LLC and Charter Fiberlink – Nebraska, LLC, page 3.

²² Comments of the Rural Independent Companies in Response to Order Seeking Further Comments, page 23

the very detailed information, such as the number of wireline accounts with a specified number of lines, is extremely difficult, if not impossible, to determine. While the Commission will need to request certain information of carriers contributing into the NUSF at some point in time during this proceeding, CenturyLink urges the Commission to ensure that the information requested is truly needed and not so granular that it would be extremely time consuming and difficult for carriers to gather.

Dated July 15, 2016

Respectfully submitted,

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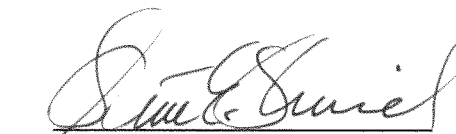
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of July, 2016, a true and correct copy of the foregoing was to the following:

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