

**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 CTIA
TO THE FURTHER COMMENTS FILED IN RESPONSE
TO THE COMMISSION'S APRIL 5, 2016 ORDER**

I. INTRODUCTION

CTIA – The Wireless Association[®] (“CTIA”) appreciates the opportunity to provide these Reply Comments to assist the Nebraska Public Service Commission (“Commission”) in analyzing potential reforms to the Nebraska Universal Service Fund (“NUSF”).

CTIA was pleased to see significant agreement among diverse participants on several key issues of importance to CTIA’s members. In particular, a broad range of commenters agreed that the Commission should wait for the Federal Communications Commission (“FCC”) to implement reforms to the federal Universal Service Fund’s (“USF’s”) contribution methodology and to clarify its approach to providing federal USF funding for rural broadband before implementing specific changes to the NUSF’s contribution methodology. Several parties also agreed that it is important for the Commission to avoid requiring implementation of multiple contribution methodology changes. This is best accomplished by waiting for clarity regarding federal USF reform. Waiting for such clarity is also key to avoiding duplicative funding.

There was also broad support for the Commission to develop a strategic plan before taking other steps to reform the NUSF. CTIA agrees with the many commenters suggesting

workshops as an appropriate way to move forward with strategic planning, and with those commenters recognizing that the appropriate first step in the strategic planning process is to determine the limits of the Commission’s jurisdiction to implement certain proposed NUSF reforms.

As always, CTIA believes that the impact on consumers must be paramount in consideration of any NUSF reforms. Reforms should promote consumer choices while minimizing consumer impacts, always keeping in mind that taxes, fees, and surcharges on Nebraska consumers’ wireless bills are already substantial and should not be increased. The Commission’s strategic planning process should reflect a set of clear goals for universal service in Nebraska, key among them that the size of the NUSF should be limited to the minimum necessary to achieve universal service goals in Nebraska.

II. THE COMMISSION SHOULD AWAIT FCC ACTION BEFORE IMPLEMENTING CONTRIBUTION REFORM

As CTIA has argued consistently, the Commission should await action by the FCC or, at a minimum, the Federal-State Joint Board on Universal Service before attempting to make specific reforms to the NUSF contribution methodology. Other parties agreed with CTIA’s position. Only by waiting for the FCC to act can the Commission ensure circumvention of significant, avoidable costs from multiple resource-intensive implementation processes.

CenturyLink and Viaero both raised concerns about the burdens of having to change billing systems and engage in customer education twice¹ – a problem that was previously noted

¹ See Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink, Application No. NUSF-100/PI-193 (June 6, 2016) (“CenturyLink Comments”) at 9; Comments of NE Colorado Cellular, Inc., d/b/a Viaero Wireless, Application No. NUSF-100/PI-193 (June 6, 2016) (“Viaero Comments”) at 2-3.

by CTIA.² Cox and Charter also agreed.³ The concerns voiced by CTIA, CenturyLink, Viaero, Cox, and Charter also weigh against the hybrid or transitional approaches to contribution reform advocated by some parties. Such approaches would almost certainly be inconsistent with eventual federal USF contribution methodology reform, and any inconsistency would require revision of all affected carriers' billing systems. Misalignment with the federal program would also require a revision of the NUSF itself, as state programs cannot be inconsistent with or burden federal universal service support mechanisms.⁴

Should the Commission proceed inadvisably and reform the NUSF contribution methodology in advance of the FCC's pending reforms, carriers should be able to recover from the NUSF their costs for implementing NUSF reforms. This step would fairly compensate carriers for the considerable costs involved in implementing differing federal and state contribution methodologies multiple times.

Although CTIA and many commenters agree that the Commission should wait for FCC action before implementing contribution methodology reforms, this does not mean that the Commission's overall NUSF reform efforts must come to a halt. In its Further Comments, CTIA noted that it makes sense for a strategic plan to be developed before considering the more detailed and granular steps involved in NUSF reform, and that development of a strategic plan should be conducted in a dedicated docket instead of the instant contribution methodology reform docket.⁵ Although the Commission should await FCC action before implementing NUSF reform, planning and goal setting for NUSF reform can begin in the meantime.

² See Comments of CTIA in Response to the Commission's April 5, 2016 Order Seeking Further Comments, Application No. NUSF-100/PI-193 (June 6, 2016) ("CTIA Comments") at 6-9.

³ See Joint Comments of Cox Nebraska Telcom, LLC and Charter Fiberlink – Nebraska, LLC, Application No. NUSF-100/PI-193 (June 6, 2016) ("Cox and Charter Comments") at 1-2.

⁴ See 47 U.S.C. § 254(f).

⁵ CTIA Comments at 2-3.

III. THE COMMISSION SHOULD FIRST CONSIDER ITS JURISDICTION OVER BROADBAND BEFORE PROCEEDING WITH NUSF REFORM PLANNING

A threshold issue the Commission should address is the scope of its jurisdiction over broadband. The preemption of state regulation of broadband cabins the parameters of any strategic plan the Commission may devise.

CTIA raised jurisdictional issues regarding broadband in its Further Comments,⁶ as did Cox, Charter, and Viaero.⁷ The Rural Incumbent Carriers (“RICs”) acknowledged this as an issue on which the Commission should solicit briefing.⁸ As CTIA pointed out in its Further Comments, regulation of broadband is reserved to the federal government.⁹ Further, the FCC’s recent Net Neutrality Order precludes states from assessing new USF contributions on broadband.¹⁰ Thus, the Commission’s jurisdiction relative to broadband service is entirely circumscribed. The Commission should ensure, as it begins the NUSF reform process, that any changes to the NUSF reflect accurately the boundaries of the Commission’s jurisdiction over telecommunications services, and its lack of jurisdiction over broadband, in order to avoid any uncertainty or potential legal issues.

IV. THE STRATEGIC PLAN SHOULD ESTABLISH A CLEAR PROCESS AND GOALS FOR NEBRASKA UNIVERSAL SERVICE REFORM

After assessing its jurisdiction, the Commission should proceed with the development of its strategic plan for NUSF reform. As noted in its Further Comments, CTIA believes that the broader issues that must be addressed by a strategic plan are more appropriately considered in a

⁶ See CTIA Comments at 6.

⁷ See Cox and Charter Comments at 2; Viaero Comments at 5-6.

⁸ See Comments of the Rural Independent Companies in Response to Order Seeking Further Comments, Application No. NUSF-100/PI-193 (June 6, 2016) (“RIC Comments”) at 27-28.

⁹ See CTIA Comments at 6.

¹⁰ See *In the Matter of Protecting and Promoting the Open Internet*, Report & Order on Remand, Declaratory Ruling and Order (“Net Neutrality Order”), GN Docket No. 14-28, FCC 15-24 (rel. Mar. 12, 2015) at para. 432. While the FCC has reclassified broadband internet access service as a telecommunications service (*Id.* at para. 363), that does not change the fundamental point that broadband remains an interstate service, and it is well-settled that states cannot regulate interstate services.

separate, dedicated docket;¹¹ however, CTIA offers further thoughts on such a plan here in the event the Commission chooses to not open a separate docket.

A. CTIA Agrees That Workshops are the Most Appropriate Way to Develop the Commission's NUSF Strategic Plan

Numerous commenters suggested that workshops are the most appropriate way to develop the Commission's NUSF strategic plan and address many of the difficult issues implicated by NUSF reform.¹² While CTIA did not suggest workshops in its Further Comments, it supports such an approach. Workshops would allow the Commission to move forward productively while awaiting action by the FCC. They would also allow the Commission to obtain broad input from stakeholders on a variety of topics relevant to the strategic plan. Nonetheless, it bears repeating that, while workshops would provide valuable input for development of a strategic plan, no plan should be finalized or implemented until the FCC has acted on federal USF reforms.

B. The Commission's Strategic Plan Should Delineate Goals that Benefit all Nebraska Consumers, are Competitively Neutral, and are Technology Neutral

The Commission should begin development of a strategic plan by making a forward-looking assessment of the Commission's goals for universal service, because what constitutes "universal service" has surely changed over the time the NUSF has been in existence. The Commission should set appropriate, clear goals and principles at the start of the reform process so that all parties understand the Commission's vision for the NUSF's targets and future.

The Commission's overarching goals should be to ensure the fund is no larger than necessary and to limit the funding burden on consumers. Other goals that will help the

¹¹ See CTIA Comments at 2-3.

¹² See CenturyLink Comments at 6; Cox and Charter Comments at 4; Comments of Windstream Nebraska, Inc., Application No. NUSF-100/PI-193 (June 6, 2016) ("Windstream Comments") at 7.

Commission achieve those objectives, or will complement them, are ensuring that the fund is competitively neutral, technology neutral, avoids duplicative funding, and promotes transparency and accountability.

1. The Commission Should Determine the Appropriate Size of the Fund in Light of Limited NUSF Funding and Consumer Burdens, and Ensure That the Fund is Competitively-Neutral

The Commission should not automatically maintain the fund at its present size without data establishing that the current size of the fund is necessary to meet universal service goals. The Commission should reassess the size of the NUSF based on current goals and needs, not those established when the NUSF was initially created.

To minimize the burden on consumers, the fund should be set at the minimum size necessary to ensure universal service today. Doing so will also support the important goal of competitive neutrality by ensuring that market participants succeed by achieving efficiencies and implementing successful business plans, and not through receipt of excess subsidies that distort the marketplace.

Another step the Commission should take is to determine whether the NUSF would be more appropriately funded from the state's general fund. Receiving funding from Nebraska's general fund may be more appropriate for the NUSF in light of the broad public benefits it provides and the public policy goals it was envisioned to achieve. Such a step would also help ensure that the appropriate level of funding is reviewed on a continual basis to ensure that the fund is minimally-sized to achieve its objectives. While such a change is beyond the direct authority of the Commission, the Commission could ask the Legislature to implement such a change.

2. The Commission Should Ensure that the Fund is Technology-Neutral

Ensuring that changes to the NUSF are technology-neutral is another goal the Commission should establish and pursue. As CTIA has noted in this proceeding, such a goal would benefit consumers by promoting consumer choice and innovation in the telecommunications marketplace.¹³ CTIA agrees with CenturyLink's and Windstream's statements in their Further Comments indicating that "fiber everywhere" is an inappropriate goal, as it is too expensive for the limited NUSF funding available.¹⁴ CenturyLink and Windstream argued instead for continued use of copper last-mile facilities.¹⁵ While CTIA takes no position on the use or support of copper last-mile facilities, CenturyLink's and Windstream's position reinforces a point made by CTIA – that any NUSF reforms must be technology-neutral and allow support for the most cost-efficient technology to serve a given market.

3. NUSF Reforms Should Avoid Duplicative Funding

As CTIA stated in its Further Comments,¹⁶ another important goal for NUSF reform is to ensure that federal and state funding is not duplicative, which will help to minimize unnecessary burdens on consumers and avoid distorting the competitive marketplace.

The most important step in avoiding duplicative funding is for the Commission to wait for certainty regarding federal USF funding following implementation of reforms by the FCC. In particular, the Commission should wait for the FCC to clarify its funding for rural areas through the Connect America Fund II ("CAF II") program and subsequent funding programs for higher-cost areas not covered by CAF II. By waiting for clarity regarding the distribution of federal funding in Nebraska, the Commission can ensure the NUSF is addressing the remaining

¹³ See CTIA Comments at 4-5.

¹⁴ See CTIA Comments at 4; CenturyLink Comments at 4-5; Windstream Comments at 3-4.

¹⁵ *Id.*

¹⁶ See CTIA Comments at 6-8.

service gaps only, and is not providing duplicative funding or acting in conflict with federal USF programs.

Many parties, including CTIA, are in agreement that the NUSF should not provide support where an unsubsidized competitor is already serving a community. Windstream adds that NUSF funding should not be used for overbuilding of “like-kind” broadband.¹⁷ While CTIA agrees with Windstream’s principle, there is no sound policy reason to avoid like-kind overbuilding only. It is inefficient to use limited NUSF funds to support overbuilding whether the broadband technologies are alike or diverse.

By avoiding duplicative funding the Commission will help ensure that the taxes, fees and surcharges on Nebraska consumers’ bills are not increased (and if possible, that they may be reduced).

4. Any NUSF Reforms Should Promote Accountability

Accountability is another key to ensuring that the burden the NUSF places on consumers is minimized. The Commission must ensure that scarce NUSF funds are spent for appropriate expenses only. This will help ensure both that the amount of funding is the minimum necessary to achieve the Commission’s universal service goals, and that consumers are not unnecessarily burdened by high taxes, fees, and surcharges on their bills.

The Commission has sought comment on data collection procedures, which are important to establish accountability for individual fund recipients and to guide the Commission when reviewing the results of NUSF funding against the goals set in its strategic plan. CTIA believes appropriate reporting mechanisms are a useful tool for promoting accountability. However, as CTIA has noted,¹⁸ a balance must be struck between efficient administration of the program and

¹⁷ See Windstream Comments at 4.

¹⁸ See CTIA Comments at 14.

burdensome new reporting requirements. CTIA suggests that the Commission should start by taking the steps necessary to obtain Form 477 data for Nebraska directly from the FCC. The Commission then could analyze the data to determine if it satisfies the Commission's requirements. This approach would maximize the information (and the timeliness of the information) the Commission can obtain while minimizing the burden on carriers. It would also ensure that there are no inconsistencies in maintaining the confidentiality of this competitively sensitive data because the FCC requires states receiving 477 data to afford it equivalent or greater protection than that available under federal law.

V. CONCLUSION

CTIA applauds the Commission's comprehensive NUSF reform efforts. Adopting a strategic plan that avoids duplicative support, ensures that lowest-cost technologies have a level playing field, and takes steps to require accountability with a minimum of reporting burden will help minimize the financial burden on Nebraska consumers while maximizing the beneficial impact of limited NUSF funds. CTIA believes that controlling the fund's size is an integral part of any NUSF reform.

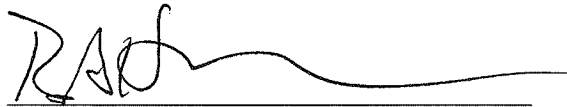
The Commission should develop dedicated dockets and a schedule conforming to the following steps:

- Analyze the Commission's jurisdiction (and the limitations on its jurisdiction) regarding broadband;
- Hold workshops to develop a draft strategic plan for the NUSF, including setting clear goals for the NUSF;
- Wait for FCC action and then determine the parameters of the revised federal programs (and adjust the NUSF strategic plan if necessary);
- Determine the minimum size of the NUSF necessary to realize, efficiently and effectively, the goals set forth in the Commission's strategic plan; and

- Determine the need to reform contribution methodology and other elements of the NUSF based on the strategic plan and fund size.

Once these steps have been followed, the Commission can proceed with implementing NUSF reforms knowing that it has taken an efficient, data-driven, forward-looking approach to achieving universal service goals that will best serve Nebraska consumers.

Respectfully submitted this 15th day of July, 2016.



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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 served on the following:

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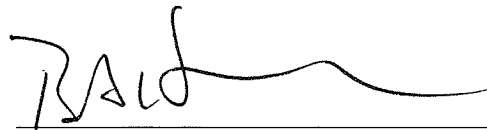
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