

**Before the  
NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public Service )  
Commission, on its own motion, to make ) Application No. NUSF-108  
adjustments to its high-cost distribution ) Progression Order No. 3  
mechanism and make revisions to its reporting )  
requirements )

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**REPLY COMMENTS OF CTIA  
IN RESPONSE TO THE ORDER SEEKING COMMENT**

Nebraska  
Public Service Commission

CTIA respectfully submits its reply comments in response to the initial comments filed in response to the Nebraska Public Service Commission's ("Commission's") Order Seeking Comment entered December 19, 2017 in the above-captioned docket.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

In its initial comments, CTIA urged the Commission to closely look at reforming the Nebraska Telecommunications Universal Service Fund ("NUSF") rules for rate-of-return ("ROR") incumbent local exchange carriers ("ILECs") in a way that minimizes the size of the fund, and thus, the burden it imposes on Nebraska's wireless consumers. To this end, the Commission must reject the Rural Independent Companies' ("RICs'") "Guiding Principles" and similar proposals from the Rural Telecommunications Coalition of Nebraska ("RTCN"). In addition to being incomplete, the RICs' proposals would impose an unnecessary burden on Nebraska ratepayers, disburse funding for areas where none is needed, and provide for inadequate safeguards on the use of scarce NUSF funds. Similarly, proposals from RTCN and the RICs to direct significant amounts of support towards maintaining existing networks rather than extending new service to unserved and underserved areas are flawed and cannot be accepted

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<sup>1</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements, Application No. NUSF-108 Progression Order No. 3, Order Seeking Comment (Dec. 19, 2017) ("Order").*

as proposed. In contrast, Charter's proposal for competitively awarded support has merit, and the Commission should give it serious consideration.

## **II. THE NEBRASKA RURAL INDEPENDENT COMPANIES' PROPOSED "GUIDING PRINCIPLES" ARE INCOMPLETE AND WOULD IMPOSE AN UNJUSTIFIABLE BURDEN ON NEBRASKA RATEPAYERS**

The RICs acknowledge that their proposal is not yet complete "since additional development work is needed to complete the plan," yet somehow propose that the information in their comments "is sufficiently detailed to be adopted by the Commission."<sup>2</sup> For the same reasons that CTIA observed that the Commission should not have adopted a connections-based NUSF contribution mechanism in principle,<sup>3</sup> the last thing that NUSF reform needs is the adoption of additional incomplete proposals.

Even if the RICs' proposal were complete, it must be rejected because it would impose an excessive burden on Nebraska ratepayers, allowing for funding in areas where none is needed, and failing to provide adequate safeguards regarding the use of funding.

First, the RICs' proposal for the NUSF to support a "fiber-based network everywhere" is costly and inefficient.<sup>4</sup> The RICs acknowledge that their proposal is based on the State Broadband Cost Model ("SBCM") "which models the cost of a fiber-based, broadband-capable network."<sup>5</sup> As CTIA noted in its comments, it is "consistent with the imperative to avoid burdening Nebraska ratepayers with larger NUSF surcharges than necessary" for the Commission to "consider the use of technologies other than fiber to reach consumers that could

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<sup>2</sup> Comments of the Nebraska Rural Independent Companies at 1-2 (filed Mar. 5, 2018) ("RIC Comments").

<sup>3</sup> *See, e.g.*, Comments of CTIA – The Wireless Association, App. Nos. NUSF-100/PI-193 (filed Sept. 19, 2017) ("CTIA NUSF-100 Comments"); *see also* Reply Testimony of Don Price on Behalf of CTIA – The Wireless Association, App. Nos. NUSF-100/PI-193 (filed Apr. 21, 2017); Direct Testimony of Don Price on Behalf of CTIA – The Wireless Association, App. Nos. NUSF-100/PI-193 (filed Mar. 23, 2017).

<sup>4</sup> RIC Comments at 3.

<sup>5</sup> *Id.* at 5.

be served more economically with other technologies.”<sup>6</sup> Even the RTCN “recognize[s] that it is not always cost-effective or sensible to deploy fiber to remote areas where there are few residents” and notes the Act’s call for competitive neutrality necessitates consideration of alternative technologies.<sup>7</sup>

Requiring the NUSF to support fiber everywhere would unnecessarily increase the economic burden borne by all Nebraska ratepayers. Indeed, based on the SBCM’s assumption about excessive fiber, the RICs stunningly state – in a footnote – that “it is of utmost importance” for the Commission to “implement a rate design that will yield annual remittances to the NUSF of approximately \$60 million.”<sup>8</sup> As Commissioner Frank Landis recently observed, the goal of this process should be to “stabilize” the fund, not make it larger, to avoid “creat[ing] rate shock.”<sup>9</sup> There is no reason for the Commission to waste Nebraska ratepayers’ money deploying the most-costly technology throughout the state when other technologies may be better suited to delivering high-quality service to some locations. Thus, the Commission should reject ubiquitous fiber and the SBCM and instead focus on making the NUSF as efficient as possible.

Inadvisably, the RICs’ proposal would also provide NUSF funding for areas where it is not needed. The RICs propose that the Commission provide NUSF support to ROR carriers in areas where a competitor offers service without a subsidy, unless the competitor is required to serve the entire area that the ROR carrier serves and is subject to carrier-of-last-resort

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<sup>6</sup> Comments of CTIA – The Wireless Association at 5 (filed Mar. 6, 2018) (“CTIA Comments”).

<sup>7</sup> Comments of the Rural Telecommunications Coalition of Nebraska at 10 (filed Mar. 5, 2018) (“RTCN Comments”) (citing NEB. REV. STAT. § 86-317).

<sup>8</sup> RIC Comments at 2 n.2.

<sup>9</sup> Paul Hammel, Nebraska Plans to Start Collecting Flat Fee for Each Phone Connection, Omaha World-Herald (Nov. 21, 2017), [http://www.omaha.com/news/nebraska/nebraska-plans-to-start-collecting-flat-fee-for-each-phone/article\\_893d868b-9b57-5752-8590-aa47c0746f05.html](http://www.omaha.com/news/nebraska/nebraska-plans-to-start-collecting-flat-fee-for-each-phone/article_893d868b-9b57-5752-8590-aa47c0746f05.html). Commissioner Landis said he doesn’t envision making the fund bigger, just more efficient. *Id.* See also CTIA Comments at 3.

obligations.<sup>10</sup> Similarly, RTCN argues that the “presence of unsubsidized competing carriers should not affect support for system upgrades in ILECs’ territories.”<sup>11</sup> In other words, the RICs and RTCN are asking the Commission to ignore that customers can obtain service from an unsubsidized competitor, and provide subsidies to fund ROR carriers’ efforts to overbuild their competitors, except in limited, extreme cases that may never actually even occur. As CTIA pointed out, “there is no basis to provide a subsidy for broadband service in an area where no subsidy is needed” and “this restriction is a necessary step to protect Nebraska consumers from excessive NUSF costs.” Similarly, Charter observed that “universal service subsidies will always be a scarce resource that must be allocated efficiently, which necessarily means that no competitor should be overbuilt....”<sup>12</sup>

In addition to their requests that the Commission bloat the NUSF to fund unnecessary fiber investments on which they can earn their prescribed rate of return, and provide that funding even in areas where no support is needed, the RICs ask the Commission to provide them with NUSF funding without adequate accountability safeguards to ensure that they will spend it appropriately.<sup>13</sup> Specifically, the RICs propose that the Commission eliminate the current NUSF-EARN form and replace it with apparently minimal reporting obligations whereby ROR carriers could essentially just show that their expenditures were not above the inflated amounts shown in the SBCM.<sup>14</sup> Even more alarmingly, the RICs propose that ROR carriers that have deployed fiber to the home throughout their service areas should receive the full SBCM-

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<sup>10</sup> RIC Comments at 13.

<sup>11</sup> RTCN Comments at 7.

<sup>12</sup> Comments of Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC, at 2 (filed Mar. 5, 2018) (“Charter Comments”).

<sup>13</sup> See generally RIC Comments at 5-7.

<sup>14</sup> *Id.* at 4, 6.

identified support amount without any accountability at all.<sup>15</sup> Even RTCN acknowledges that “[a]ccountability is critical to ensure responsible use of limited funding.”<sup>16</sup> As Commissioner Crystal Rhoades recently noted in her concurring statement in NUSF-100, “the Commission should take additional steps to develop more robust accountability standards on the carriers so the Commission can be assured that universal service support is being used appropriately....”<sup>17</sup> The Commission owes Nebraska ratepayers a much higher duty of care as the steward of the NUSF to ensure that scarce NUSF funds are used appropriately.

Ironically, the RICs – who have long urged the Commission to adopt a per-connection USF contribution mechanism *inconsistent* with the federal mechanism<sup>18</sup> – make a plea for *consistency* with the federal mechanism in terms of a ten-year term of support.<sup>19</sup> This turnaround makes plain that the RICs’ advocacy is driven simply by what will most benefit them, not by the needs of Nebraska’s consumers.

As this discussion shows, there is essentially no aspect of the RICs’ proposal that the Commission can or should adopt. The Commission should therefore reject the RICs’ proposals for NUSF support.

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<sup>15</sup> *Id.* at 7.

<sup>16</sup> RTCN Comments at 8.

<sup>17</sup> *In the Matter of the Nebraska Application No. Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Order, App. Nos. NUSF-100/PI-193 (Oct. 31, 2017) (Statement of Commissioner Crystal Rhoades), available at <http://psc.nebraska.gov/orders/ntips/NUSF-100.PI-193.72.pdf>.

<sup>18</sup> *See, e.g.*, Comments of the Nebraska Rural Independent Companies, App. Nos. NUSF-100/PI-193, at 1-2 (filed Sept. 15, 2017) (“RIC NUSF-100 Closing Comments”).

<sup>19</sup> *See* RIC Comments at 8-9.

### III. NUSF SUPPORT SHOULD NOT BE AVAILABLE FOR OPERATING OR MAINTENANCE EXPENSES

While acknowledging that, “[c]ertainly, the Act envisions extensions of facilities necessary to push broadband to areas of the state where residents and businesses are unserved or underserved,” RTCN nevertheless quixotically argues that the Commission should instead prioritize support for operations and maintenance (“O&M”) of existing broadband networks.<sup>20</sup> Meanwhile, the RICs’ misguided proposal would allocate fully 47% of ROR carriers’ support to O&M expenses.<sup>21</sup> Each of these proposals is flawed.

As discussed *infra*, the Commission’s goal must be to allocate scarce resources efficiently. To allocate resources efficiently the Commission must scrutinize both whether expenses are reasonable and whether the network receiving NUSF funding is the lowest-cost option to achieve universal service goals for any given area. Neglecting these inquiries in favor of funding by-rate O&M expenses will exponentially deplete funding available in future years for broadband deployment. For example, if \$10 million is available for broadband deployment, the entire amount will be available to support network deployment in the first year. However, if 47%, as suggested by the RICs, is committed to O&M expenses during the second year, only \$5.3 million will be available to deploy networks to unserved or underserved areas the following year. Again assuming that deployed networks are also awarded 47% of their initial cost as ongoing support, only \$2.8 million will be available for broadband expansion in year three, \$1.5 million will be available in year four, \$0.79 million in year five, and so on. This example illustrates that unless the Commission pursues a program that targets scarce funding for networks that are the most efficient and deployed and operated at the lowest cost – both initial and ongoing

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<sup>20</sup> RTCN Comments at 3.

<sup>21</sup> RIC Comments at 6.

– the program will quickly become stuck in a cycle of ever-increasing funding obligations for past projects that will hinder the Commission from pursuing future broadband deployment. Nebraska consumers that already pay among the highest surcharges in the nation<sup>22</sup> will see their surcharges increase to unsustainable levels and the state’s goal of broadband deployment will be forfeited. Declining to fund by-rate O&M expenses at any fixed level is a critical step to avoid the above described, self-defeating cycle. Moreover, CTIA pointed out that the plan to support O&M expenses for ILECs would violate the principle of competitive neutrality, given that the state does not provide such support for wireless carriers.<sup>23</sup>

It is unfair to ask Nebraska ratepayers to make open-ended payments, at a set level and with no showing of need, to continually fund networks built with scarce subsidy funds. Accordingly, the RTCN and RICs’ proposals should be rejected.

#### **IV. THE COMMISSION SHOULD CONSIDER CHARTER’S PROPOSAL FOR COMPETITIVELY AWARDED SUPPORT**

As Charter correctly points out, universal service subsidies are a scarce resource, and the “most efficient mechanism to allocate subsidy is a comparative (i.e., auction) process....”<sup>24</sup> Charter compellingly explains why an auction-based process would be more efficient and accurate than an approach based on a cost model such as the SBCM.<sup>25</sup> This is consistent with CTIA’s criticism of the use of the SBCM.<sup>26</sup> Charter also observes that the Federal Communications Commission has moved away from the use of cost models and legacy ROR

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<sup>22</sup> See Tax Foundation, “Wireless Taxes and Fees in 2017,” available at <https://taxfoundation.org/cell-phone-taxes-2017/> (Nebraska consumers paid the 2<sup>nd</sup> highest rate (25.10%) of state and federal taxes, fees, and surcharges on their wireless bills in 2017.)

<sup>23</sup> CTIA Comments at 4.

<sup>24</sup> Charter Comments at 3-4.

<sup>25</sup> *Id.* at 4-6.

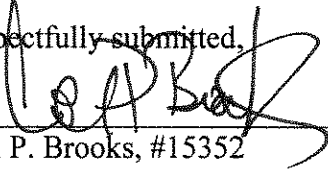
<sup>26</sup> See *supra* Section II.

approaches and now favors auction-based systems for all high-cost support at the federal level.<sup>27</sup> CTIA supports the use of a competitively neutral, comparative process such as an auction to allocate scarce NUSF resources, and urges the Commission to consider this issue further as it contemplates NUSF reform.

## V. CONCLUSION

CTIA reiterates its support of the Commission's goal to reform the NUSF. However, it urges the Commission to incorporate the points raised above as it considers reform to ensure that scarce NUSF resources are used efficiently and to ensure that the NUSF minimizes the economic burden on Nebraska consumers.

Respectfully submitted,

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<sup>27</sup> Charter Comments at 2. See also, e.g., *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17732 ¶ 178 (2011) (“*Transformation Order*”) (“we anticipate that funding will soon be allocated on a fully competitive basis”), *aff’d sub nom. In re FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014); *Connect America Fund, et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7062 ¶ 36 (2014) (“One reason why the Commission established a five-year term [of support] for the areas subject to model-based support was to move to competitive bidding processes in a timely manner in those areas where support initially would be awarded through the acceptance of state-level commitments.”).




**CERTIFICATE OF SERVICE**

I certify that on the 12<sup>th</sup> day of April, 2018, one original, five copies and an electronic copy of the foregoing Reply Comments on behalf of CTIA-the Wireless Association, in Application No. NUSF-108, Progression Order No. 3, were delivered to:

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I certify that on the 12<sup>th</sup> day of April, 2018, an electronic copy of the foregoing Reply Comments on behalf of CTIA-the Wireless Association, in Application No. NUSF-108, Progression Order No. 3, were delivered to:

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