

**Before the
NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public Service Commission, on its own motion, to determine a rate design and address implementation issues with a connections-based contribution mechanism)
Application No. NUSF-111/PI-211)

RECEIVED

JAN 30 2018

**COMMENTS OF CTIA IN RESPONSE TO THE ORDER
OPENING DOCKET AND SEEKING COMMENT** Nebraska
Public Service Commission

CTIA¹ respectfully submits its comments in response to the Nebraska Public Service Commission's ("Commission's") Order Opening Docket and Seeking Comment entered December 19, 2017 in the above-captioned docket.²

I. INTRODUCTION AND SUMMARY

As CTIA previously has expressed, the Commission must develop a comprehensive strategic plan for the Nebraska Telecommunications Universal Service Fund ("NUSF") before it proceeds to implement changes to the NUSF.³ Such a plan should drive the analysis of many of the questions posed in the Order. The need for a strategic plan at the outset is demonstrated by the prevalence of questions in the Order that focus *not* on issues germane to the contribution mechanism, but rather to the size and design of the state's high-cost support program. Such

¹ CTIA – The Wireless Association® ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st-century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984.

² *In the Matter of the Nebraska Public Service Commission, on its own motion, to determine a rate design and address implementation issues with a connections-based contribution mechanism*, Application No. NUSF-111/PI-211, Order Opening Docket and Seeking Comment (Dec. 19, 2017) ("Order").

³ See e.g. Direct Testimony of Don Price on Behalf of CTIA-The Wireless Association, App. No. NUSF-100/PI-193 ("NUSF-100") (filed March 24, 2017), at 9-10.

questions are addressed appropriately in a strategic plan that defines the Commission's short-term, intermediate, and long-term goals, and establishes the sequential steps it will take to achieve them – including the size and design of the state's high-cost support program. Before making any decisions regarding the structure of the NUSF contribution mechanism, CTIA therefore urges the Commission to first develop a strategic plan for the NUSF.

In addition to concerns regarding the absence of a comprehensive strategic plan, CTIA continues to have significant concerns about the feasibility of implementing a connections-based contribution mechanism consistent with the statutory obligation to construct an equitable, nondiscriminatory, and competitively neutral NUSF.⁴ CTIA's concerns are amplified in the context of a state such as Nebraska where no mechanism currently exists to collect NUSF contributions from prepaid wireless consumers purchasing services through third-party retailers.

II. RESPONSES TO SPECIFIC QUESTIONS

Rate Design

1. **The Commission seeks comment on establishing a rate design that is consistent with the NUSF Act's statutory goals. More specifically, we seek comment on how to structure a connections-based rate design that will result in a specific, predictable, sufficient, and competitively neutral contribution mechanism.**

Consistent with the Commission's prior conclusions and CTIA's past advocacy, it makes little sense for the Commission to attempt to develop a rate design for connections-based contributions without first establishing a detailed strategic plan for the NUSF, ideally through a workshop process.⁵ The Commission noted less than two years ago that, "[a]s we consider the

⁴ CTIA has filed a judicial challenge to the Commission's NUSF-100 Order entered on October 31, 2017, to convert the NUSF to a per-connection charge, and these comments are submitted without prejudice to the issues raised in CTIA's appeal.

⁵ *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Order Seeking Further Comments (April 5, 2016) at 5 (available at <http://psc.nebraska.gov/orders/ntips/NUSF-100.PI-193.3.pdf>) ("*April 2016 Order*"); CTIA

overall vision of where universal service should evolve, the Commission believes it is important to develop a strategic plan. This roadmap will serve as a foundation for the advancement of universal service in the broadband age.”⁶

CTIA continues to believe that a strategic plan for the NUSF is a necessary first step for ensuring that the Commission’s reform efforts are coordinated, rational, and appropriately achieve statutory goals. Indeed, the questions in the Order demonstrate the danger inherent in attempting to proceed with reform in the absence of a strategic plan.⁷ Rather than trying to assemble the car while it is rolling down the road, CTIA urges the Commission to develop a holistic NUSF reform plan before making any specific decisions on any of the moving parts.

CTIA also reiterates its concern that *no* connections-based contribution mechanism could meet the statutory requirement to be “equitable and nondiscriminatory”⁸ and “competitively neutral”⁹ in the wireless context absent the ability to collect the charge from prepaid wireless providers at the point of sale. In order to collect a per-connection assessment in the absence of a point-of-sale collection mechanism, prepaid wireless providers are left with no non-discriminatory, competitively neutral option that would satisfy the statutory requirements. They could add the per-connection charge to the price of their prepaid wireless products, such as top-up cards. But, to do so, they would have to change their current national/regional pricing model, resulting in increased costs and competitive harm. They would have to print special cards specifically for the Nebraska market and reconfigure their card distribution channels in order to ensure that the Nebraska-specific cards are distributed only in Nebraska. They also would have

Comments, App. No. NUSF-100/PI-193 (filed April 6, 2016) at 1-3 (“CTIA June 2016 Comments”); CTIA Reply Comments, App. No. NUSF-100/PI-193 (filed July 15, 2016) at 4-6 (“CTIA July 2016 Reply Comments”).

⁶ *April 2016 Order* at 5.

⁷ *See, e.g., infra* response to question 3.

⁸ Nebraska Rev. Stats. § 86-323(4).

⁹ *Id.* at § 86-323(5).

to print new cards whenever the Commission modified the per-connection assessment and void/destroy old cards.

To avoid these burdens and harms, prepaid providers could decide simply to pay the assessment without collecting the surcharge through rate increases,¹⁰ but to do so would put them at a competitive disadvantage to postpaid providers, because their advertised prices would have to internalize the NUSF assessment, while their postpaid competitors' advertised prices would not.

Alternatively, if in the face of these concerns, or because prepaid wireless services are often sold by retailers that are not subject to the Commission's jurisdiction, the Commission decided not to impose the per-connection assessment on certain prepaid wireless services, then the mechanism would be inequitable and discriminatory to postpaid providers, and other telecommunications service providers, who are subject to the charge while their prepaid competitors are not.

For all these reasons, CTIA urges the Commission to recognize that it is not possible to structure a statutorily sufficient, non-discriminatory, competitively neutral NUSF per-connection charge absent a point-of-sale collection system, and urges the Nebraska Legislature to create such a system.

2. **Further, the Commission seeks comment on a proposed rate design that will reasonably balance the burden of the surcharge with the requirement that the NUSF provide reasonably comparable access to telecommunications and advanced communications services in rural and high-cost areas.**

This question perfectly demonstrates why the Commission must develop a strategic plan for the NUSF before beginning specific reform efforts. Although the instant docket ostensibly

¹⁰ This approach only will be feasible if the Commission allows carriers to internalize the surcharge in prices rather than collect and remit a separately-stated charge.

pertains to designing a contribution mechanism, this question appears to seek comment on how much NUSF support is necessary to provide “reasonably comparable access to telecommunications and advanced communications services in rural and high-cost areas.” This question thus fundamentally addresses how to structure the high-cost fund – it is separate from questions about how to design a per-connection assessment mechanism. In a parallel proceeding, CTIA noted that all parties’ legal briefs supported the need to size the NUSF before deciding on a contribution mechanism.¹¹ To be sure, the size of the fund will drive the level of a per-connection surcharge – just as it today drives the percentage contribution factor. But the policy issues that underlie the two questions are in most respects distinct, and should be addressed in separate proceedings. The effort to reconcile the two sets of policy questions is precisely why an overall strategic plan for the NUSF is critical. CTIA therefore urges the Commission to return to its original commitment to begin by developing a strategic plan.

To the extent that the Commission considers issues related to the size and structure of the NUSF, CTIA reiterates its concern that the Commission should focus on minimizing the size of the fund and thus the burden it imposes on Nebraska consumers. “To minimize the burden on consumers, the fund should be set at the minimum size necessary to ensure universal service today.”¹² The Commission should seek to use the most efficient technology for each area, including wireless and satellite as appropriate, and abandon a short-sighted focus on extending fiber to areas where the cost to deploy is excessive. The Commission must determine how to properly size the NUSF before it can confront questions about how to balance the burden of the fund through the contribution mechanism.

¹¹ CTIA Reply Comments in Response to July 12, 2016 Order Soliciting Legal Briefs, App. No. NUSF-100/PI-193 (Aug. 25, 2016) at 8-9 (“CTIA Aug. 2016 Reply Comments”).

¹² CTIA July 2016 Reply Comments at 6.

3. **We solicit comments on how to design a contribution mechanism in light of the estimated costs to deploy broadband service to the remaining areas of Nebraska and the ongoing costs to maintain areas that have already been built out. On the one hand, the Commission currently uses the Benchmark Cost Proxy Model (BCPM) which was a cost model we recommended to the FCC for universal service Docket No. C-1663. More recently, we made the State Broadband Cost Model (SBCM) available to interested parties through a licensing agreement. The SBCM estimates broadband deployment costs throughout the state. Are there other broadband deployment costs the Commission should consider? How should these costs be considered when determining a connections-based surcharge?**

CTIA incorporates by reference its response to Question 2, as it is equally applicable here.

4. **It was suggested by some commenters in NUSF-100/PI-193 that a per-line connection assessment could result in a significant impact on enterprise business customers. In the workshop held in that proceeding, some participants discussed the potential use of a cap similar to that used in the Telecommunications Relay Service (TRS) program, which is capped at the first one hundred telephone numbers or functional equivalents per subscriber. Should the Commission likewise adopt a rate design which uses a cap for business lines for NUSF remittance purposes? If so, please provide comments or recommendations related to the method by which the Commission could calculate the cap. What source data should the Commission use to determine the cap? We ask interested parties that have an interest in a surcharge cap to assess the impact such a cap would have on the overall annual remittances either by an individual carrier or as a whole relevant to the total remittance base and provide the Commission with that information for its consideration.**

This question seeks comment on how to ensure that a per-connection assessment retains an appropriate proportionality in order to ensure that the fund is “equitable and nondiscriminatory” and “competitively neutral.” CTIA agrees that proportionality is important to realizing these statutory principles. The need to design mechanisms to ensure proportionality simply illustrates why the Commission should retain a revenue-based contribution mechanism: A revenue-based approach inherently ensures proportionality. Indeed, any effort to implement a

cap or other mechanism would effectively be an effort to restore the proportionality inherent in a revenue-based system.

5. **In order for the Commission to assess the comparative contribution differences among categories of service moving from a revenue basis to a connections basis, we ask commenters to provide the following aggregate data.**

As a trade association that provides no services to customers, CTIA has no specific data responsive to this question.

Data Sources

6. **In providing responses to the questions posed in questions 1-5 above, the Commission requests that the commenters explain how connections data reported to the FCC on Form 477 was used, if applicable, and if so, how the instructions for Form 477 were relied upon for definitional or other determinations.**

As CTIA previously has noted, there are no data available that would allow the Commission to establish a per-connection NUSF assessment that would categorically avoid impermissibly burdening the federal mechanism or discriminatory collections.¹³ In particular, the data collected on FCC Form 477 will not be sufficient or appropriate for the development of a per-connection mechanism for the NUSF for a number of reasons. For instance, the Form 477 data is collected only from facilities-based providers; it therefore is not useful for setting charges for resellers.

Similarly, as CTIA also has discussed, the Form 499 data also do not provide useful information for this purpose because the form does not collect state-specific revenue or connection information.¹⁴

7. **If a commenter believes that a state-wide data source other than the FCC Form 477 data is appropriate, please explain how that data source meets the objectives of the Commission regarding the need for**

¹³ See CTIA Aug. 2016 Reply Comments at 6-7.

¹⁴ *Id.*

data to implement the connections-based mechanism. As part of this explanation, please explain why such a data source should be used and how compliance with Commission objectives would be achieved through its use.

CTIA reiterates and incorporates by reference its response to Question 6.

Implementation

- 8. We seek comment on how a connections-based system should be implemented. What are the associated costs and benefits of moving to a connections-based system? How would the costs differ from any other flat rate charge currently established by the Commission such as the E911 or the TRS surcharge?**

CTIA's members remain concerned that the Commission does not fully appreciate the extent of the changes and effort that would be necessary to switch from a revenue-based contribution mechanism to a per-connection mechanism. As CTIA previously has noted, a change to the NUSF collection mechanism would "require carriers to undertake modifications to billing and accounting systems, employee training, customer education, compliance processes and more, all of which require a substantial investment of time, expertise, and capital."¹⁵

CTIA's members have estimated that they will need considerable time to make these necessary operational changes.¹⁶ To make the scheduling burden more manageable, any such change, if ordered, should be implemented at the beginning of a fiscal quarter, at least nine months after the effective date of an order.

There are no discernable benefits to moving to a connections-based charge that would balance the considerable costs and burdens of doing so. Thus, the significant costs of the transition would constitute a dead-weight loss to Nebraska consumers and the state's economy.

- 9. We ask interested parties to provide the Commission with an estimation of cost of a billing system conversation as well as the time required to complete such a conversation to implement a connections-**

¹⁵ CTIA June 2016 Comments at 8.

¹⁶ *Id.*

based NUSF contributions mechanism. Please include any supporting data.

CTIA reiterates and incorporates by reference its response to Question 8.

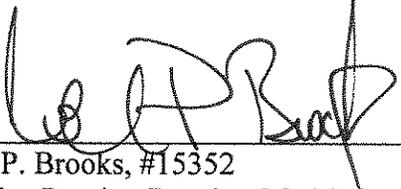
- 10. Please identify and quantify other costs which may be associated with implementation of connections-based mechanism, including necessary supporting data as well as a timeline for implementation.**

CTIA reiterates and incorporates by reference its response to Question 8.

III. CONCLUSION

CTIA urges the Commission to consider the important issues raised in these comments as it considers NUSF reform.

Respectfully submitted,

By: 

Loel P. Brooks, #15352
Brooks, Pansing Brooks, PC, LLO
1248 O Street, Suite 984
Lincoln, NE 68508
(402) 476-3300
lbrooks@brookspanlaw.com

and

Benjamin Aron
Mathew DeTura
CTIA
1400 16th Street NW
Suite 600
Washington, D.C. 20036
(202) 736-3683

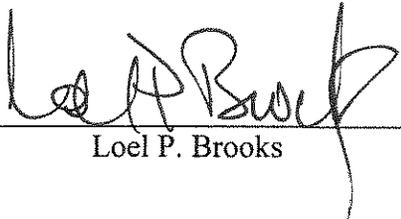
January 30, 2018

CERTIFICATE OF SERVICE

I certify that on the 30th day of January, one original, five copies and an electronic copy of the foregoing Comments on behalf of CTIA – the Wireless Association, in Application No. NUSF-111/PI-211, were delivered to:

Cullen Robbins
Cullen.robbsins@nebraska.gov

Brandy Zierott
brandy.zierott@nebraska.gov



Loel P. Brooks