

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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

POST-HEARING COMMENTS OF THE RURAL INDEPENDENT COMPANIES

I. INTRODUCTION.

The Nebraska Rural Independent Companies ("RIC")<sup>1</sup> submit these Post-Hearing Comments in response to leave granted by the Nebraska Public Service Commission (the "Commission") at the close of the public hearing in this docket held on May 1, 2018. RIC appreciates the opportunity to provide the following Post-Hearing Comments to the Commission and RIC looks forward to continuing participation in this docket and other pending dockets as the Commission completes its work on Nebraska State Universal Service Fund ("NUSF") contribution reform.

II. RATE DESIGN

A. The Hybrid Rate Design of the Reformed NUSF Contribution Mechanism Advocated by RIC Should Be Adopted by the Commission.

In its Comments filed in this docket, RIC advocated that the Commission should implement a rate design that assesses an NUSF surcharge on all providers of telecommunications service utilizing a combination of connections-based and revenues-based assessment

1 Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company and Three River Telco.

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mechanisms.<sup>2</sup> Adoption of this hybrid rate design, and in particular continuing the current revenues-based assessment on (among other services) business wireline services, was endorsed by Cox and Charter in their respective reply comments filed in this docket and by the Charter witness at the May 1 public hearing.<sup>3</sup>

Moreover, at the public hearing Windstream's witness, William Kreutz, testified that the hybrid rate design has appeal and "deserves some additional attention."<sup>4</sup> Similarly, CenturyLink's witness, Al Lubeck, did not oppose the hybrid rate design in his testimony nor did Loel Brooks, the witness representing CTIA – The Wireless Association ("CTIA").<sup>5</sup> Of course, RIC's witness, Ken Pfister, reaffirmed RIC's support of the hybrid rate design and discussed three specific details regarding such design.

First, Mr. Pfister recommended that the current revenues-based assessment mechanism should continue to be applied to business wireline telecommunications services and should also continue to be applied to those providers of intrastate telecommunications services that do not have reportable FCC Form 477 connections such as interexchange carriers, local private line and special access service providers, nomadic interconnected VoIP service providers and radio paging service providers.<sup>6</sup> Second, Mr. Pfister also confirmed that with regard to residential wireline telecommunications services and wireless mobile telecommunications services which

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<sup>2</sup> See, Comments of the Rural Independent Companies in Response to Order Opening Docket and Seeking Comment, p. 3 (Jan. 30, 2018) ("RIC Comments").

<sup>3</sup> See, Reply Comments of Cox Nebraska Telecom, LLC, p. 4 (Mar. 23, 2018); Reply Comments by Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC, pp. 5-6 (Mar. 23, 2018); and Hearing Transcript, 53:24-54:5..

<sup>4</sup> Hearing Transcript, 14:1-3 and 14:15-16.

<sup>5</sup> *Id.*, 66-68 and 70-73.

<sup>6</sup> *Id.*, 24:18-25:19 and 32:9-11.

do have reportable Form 477 connections, a uniform, flat-rated, connections-based assessment mechanism should be implemented based upon the number of connections reported in Form 477 for these services.<sup>7</sup> Finally, Mr. Pfister provided six reasons supporting continuation of the revenues-based surcharge on business telecommunications services.<sup>8</sup>

Accordingly, for the reasons stated in the RIC Comments,<sup>9</sup> in the RIC Reply Comments,<sup>10</sup> and by the RIC witnesses during the hearing, RIC submits that its hybrid rate design should be approved by the Commission. The RIC hybrid rate design for NUSF contribution reform is consistent with the requirements of the Nebraska Telecommunications Universal Service Fund Act (the “Act”), and further, no party testifying at the hearing opposed the RIC proposal. Because RIC’s recommended hybrid rate design will, as required by the Act, result in all providers of telecommunications in this State making an equitable and non-discriminatory contribution to the preservation and advancement of universal service,<sup>11</sup> approval by the Commission advances the public interest and is consistent with the Act.

**B. RIC’s Proposed Rates for the Connections-Based and Revenues-Based Surcharges Reasonably Balance the Burden of the Surcharge with the Act’s Requirement of Comparable Access to Telecommunications and Advanced Information Services in Rural High-Cost Areas.**

RIC provided data in response to Question 5.a of the Order Opening Docket and Seeking Comment (the “Order”) that the RIC member companies’ average per customer revenues-based

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<sup>7</sup> See, Reply Comments of the Rural Independent Companies in Response to Order Opening Docket and Seeking Comment, pp. 7-8 (Mar. 23, 2018) (“RIC Reply Comments”).

<sup>8</sup> Hearing Transcript, 29:3-30:19.

<sup>9</sup> See, RIC Comments, pp. 1-5.

<sup>10</sup> See, RIC Reply Comments, pp. 2-3 and 5-6.

<sup>11</sup> *Neb. Rev. Stat.* § 86-323(4) (Reissue 2014).

contribution for consumer-grade (residential) service customers (excluding toll revenues) converted to a per connection basis was \$1.70 per month.<sup>12</sup> The record contains no other specific public information responsive to Question 5.a of the Order that would support a different level of current monthly NUSF contribution by residential wireline customers.<sup>13</sup> Neither CTIA nor any wireless service provider furnished information to the Commission in response to Question 5.c of the Order.<sup>14</sup>

Based upon the evidence in the record, RIC proposed a uniform per connection rate for mobile telephony and consumer-grade wireline switched access lines and interconnected VoIP subscriptions of \$1.76/connection/ month, a 3.2% increase as compared to the per connection per month assessment amount referenced in the preceding paragraph.<sup>15</sup> Further, unless and until the Commission adjusts the current 6.95% revenues-based surcharge on business wireline telecommunications services and on services of intrastate telecommunications services providers

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<sup>12</sup> See, RIC Comments, p. 7.

<sup>13</sup> Contribution information was redacted from Windstream's Initial Comments, p. 7 (Jan. 30, 2018) and therefore, is not publicly available. The Comments of Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska, p. 3 (Jan. 30, 2018), contain only the general statement that a rate design based upon a \$1.50/month residential surcharge and a \$2.00/month business surcharge "would be less than what Frontier's customers are currently contributing, on a per-line basis."

<sup>14</sup> See, Comments of CTIA in Response to the Order Opening Docket and Seeking Comment, p. 7 (Jan. 30, 2018).

<sup>15</sup> See, RIC Comments, p. 7. In response to a question from NUSF Director Robbins, Mr. Pfister inadvertently stated that RIC is "proposing a \$1.70 surcharge for residential consumers and then an equal amount for wireless consumers on a per connection basis." (emphasis added) Hearing Transcript, 37:11-13. The correct surcharge amount proposed by RIC is \$1.76/connection/month.

that do not involve a reportable FCC Form 477 connection, RIC assumes that the current 6.95% surcharge would continue to be applied to these services.<sup>16</sup>

Although RIC does not possess data that will allow it to project with precision the annual NUSF remittances that will be produced by the foregoing rate design, RIC believes that annual remittances will be approximately \$60 million,<sup>17</sup> a remittance level that will have a material positive impact in advancing the Act's requirement of comparable access to telecommunications and advanced information services in rural high-cost areas of Nebraska as compared to urban areas. This positive impact would be consistent with the Legislature's statement of intent in LB 994 that "broadband telecommunications service in rural areas of the state should be comparable in download and upload speed and price to urban areas in the state where possible and that state resources should be utilized to ensure that the rural residents of the state should not be penalized simply because of their rural residence."<sup>18</sup>

At the same time, RIC respectfully submits that the monthly surcharge amounts that are proposed by the RIC hybrid rate design represent the fair and reasonable balance that the Commission seeks between consumer burden and promotion of universal access to advanced voice and broadband services, and do so in a manner consistent with legislative directives.<sup>19</sup> As such, RIC respectfully requests the Commission's approval of the rate design described above.

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<sup>16</sup> Hearing Transcript, 30:2-13.

<sup>17</sup> Hearing Transcript, 27:5-17 and 37:7-11.

<sup>18</sup> LB 994, section 1 (2018).

<sup>19</sup> *Id.*, 27:17-22.

RIC believes that this rate design meets the requirements of the Act that there should be specific, sufficient, and competitively neutral mechanisms to preserve and advance universal service.<sup>20</sup>

**C. In Order to Satisfy the “Predictability” Requirement of the Act, the Commission Should Establish a Minimum Annual NUSF Remittance Level for a Ten-Year Period.**

RIC respectfully submits that, consistent with federal policy that has established multi-year set amounts of federal universal service support for Rate-of-Return (“ROR”) model-based companies,<sup>21</sup> the policy of predictability established by the NUSF Act can best be ensured if the Commission establishes a *minimum annual NUSF remittance level for an extended period of years*.<sup>22</sup> RIC believes that it is sound public policy consistent with the Legislature’s statement of intent in LB 994 to establish predictability of the NUSF for an extended time period as an element of rate design.<sup>23</sup>

In order to advance consistency of policy objectives between Nebraska and federal universal service positions, and thus to advance the federal/state partnership on universal service, RIC respectfully requests that the Commission adopt a 10-year funding commitment for the

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<sup>20</sup> *Neb. Rev. Stat.* § 86-323(5) (Reissue 2014).

<sup>21</sup> *See, e.g., In the Matter of Connect America Fund, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, 31 FCC Rcd 3087 (2016) at para. 22.

<sup>22</sup> *See, Neb. Rev. Stat.* § 86-324(2) (Reissue 2014) and RIC Comments, p. 11, note 25. It should be borne in mind that this proposed 10-year funding commitment does not constitute indebtedness of the State of Nebraska in violation of Article XIII, Section 1 of the Nebraska Constitution. Rather, this funding results from the assessment of NUSF surcharges on providers of telecommunications in this State. *See*, §§ 86-323(4) and 86-324(2)(a). Further, the Nebraska Supreme Court has ruled that the NUSF surcharge is not a tax, but rather is a regulatory surcharge. *See, Schumacher v. Johanns*, 272 Neb. 346, 363 (2006); *see also* RIC Comments, pp. 9-10 and Hearing Transcript, 31:4-11..

<sup>23</sup> Hearing Transcript, 30:22-31:2.

NUSF High Cost Program. This long-term funding commitment would be comparable to the duration of funding approved by the FCC for federal model-electing ROR carriers.<sup>24</sup>

**D. The Commission Should Utilize the State Broadband Cost Model (“SBCM”) to Establish the CapEx/OpEx Ratio for NUSF Support for Broadband-Capable Networks.**

As the Commission is aware, the SBCM calculates an operating and maintenance factor that represents the costs that are necessary for continuing utilization of the network by consumers to obtain both voice and data services. Based on a review of SBCM outputs, RIC notes that on average for all Nebraska ROR carriers the capital expenditure portion of the SBCM-calculated costs accounts for 53% of the total model costs and the operations expenditure portion accounts for 47% of the total model costs (these percentages reflect all costs of both served and unserved areas of the State).<sup>25</sup> RIC respectfully submits that these SBCM-calculated costs should be subject to recovery by ROR carriers and that this cost recovery should be acknowledged to be part of the NUSF hybrid rate design adopted for the new NUSF contribution mechanism.

**III. The Evidence in the Record Establishes that FCC Form 477 is the Only Viable Publicly-Available Source of Data to Implement the Connections-Based Assessment Mechanism.**

Connections data provided by FCC Form 477 should be the primary driver of telecommunications provider reporting of Nebraska-specific connection data to the Commission for implementation of a connections-based NUSF contribution mechanism. Because telecommunications providers in Nebraska are required by the FCC to otherwise capture connection data for FCC reporting purposes, once the hybrid rate design is established by the Commission, each contributing provider that must file a FCC Form 477 should be able to report

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<sup>24</sup> See, RIC Comments, pp. 9-10 and Hearing Transcript, 31:4-11.

<sup>25</sup> See, RIC Comments, p. 14.

on a periodic basis its Nebraska-specific assessable connections for each type of connection reported on FCC Form 477.<sup>26</sup>

Some commenters have criticized the sufficiency of Form 477 connections data.<sup>27</sup> However, on questioning by Commissioner Schramm, Windstream's witness acknowledged that Form 477 "has probably most of what is needed."<sup>28</sup> CenturyLink's witness described Form 477 as "a fine source of information" although he pointed out that such information is historical (currently, December 2016 data is the most recent published data).<sup>29</sup>

The only publicly-available data source that would provide reliable connections data of which RIC is aware is the connections data issued by the FCC taken from FCC Form 477 data.<sup>30</sup> As such, RIC recommends that Nebraska-specific FCC Form 477 connection information be the data required and used by the Commission for implementing the connections-based aspect of the NUSF contribution mechanism.

#### **IV. The Record Amply Demonstrates that Implementation of RIC's Hybrid Rate Design and Contribution Mechanism would not be Burdensome.**

As a general matter and as the record reflects, costs to implement a flat rate connections-based NUSF surcharge should not materially differ from adding any other flat rate fee or surcharge, such as TRS or E-911 charges, to a carrier's monthly end user billings. Based on information gathered by the RIC member companies, billing vendor estimated costs to convert a carrier's existing billing system from the current revenues-based NUSF contribution mechanism

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<sup>26</sup> See, *Id.*, pp. 17-18; RIC Reply Comments, pp. 13-15; and Hearing Transcript 40:2-42:17.

<sup>27</sup> For RIC's responses to such criticisms, see *generally*, Hearing Transcript, 40:17-42:17.

<sup>28</sup> *Id.*, 19:9-14.

<sup>29</sup> *Id.*, 66:19-67:3.

<sup>30</sup> *Id.*, 40:11-17.

to a connections-based NUSF contribution mechanism would not be material.<sup>31</sup> Specifically, Mr. Pfister testified that he had checked with his Company's billing vendor and that the vendor "advised that implementation of a hybrid connection and revenues-based contribution mechanism will result in minimal costs and be easy to develop."<sup>32</sup>

CenturyLink's witness, Mr. Lubeck, in response to questioning by Commissioner Landis as to whether conversion of CenturyLink's billing system would be costly stated that "if you use a revenue base on business, and a connections base on residential, no that wouldn't be significant cost for us."<sup>33</sup> Likewise, and with regard to the time to implement the hybrid assessment mechanism, a sixty to ninety day implementation period is suggested by RIC, Windstream and Cox.<sup>34</sup> CenturyLink's witness estimated implementation time frame ranged from "just a few months" to "nine to twelve months."<sup>35</sup>

In summary, no serious impediments to prompt implementation of a hybrid connections and revenues-based contribution mechanism have been identified in the record of this proceeding.

## V. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Post-Hearing Comments to the Commission, and look forward to continued participation in this docket.

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<sup>31</sup> See, RIC Comments, p. 19; RIC Reply Comments, p. 16; and Hearing Transcript, 32:21-33:3.

<sup>32</sup> *Id.*, 33:7-12.

<sup>33</sup> *Id.*, 68:19-21.

<sup>34</sup> See, RIC Reply Comments, p. 17.

<sup>35</sup> Hearing Transcript, 68:6:11.

Dated: May 18, 2018.

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**CERTIFICATE OF SERVICE**

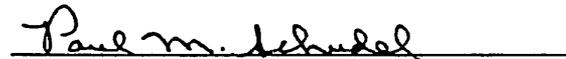
The undersigned hereby certifies that on this 18th day of May, 2018, an electronic copy of the foregoing pleading was delivered to:

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