

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.**)
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) **Application No. NUSF-111, PI-211**
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**POST HEARING COMMENTS OF
CHARTER FIBERLINK – NEBRASKA, LLC AND TIME WARNER CABLE
INFORMATION SERVICES (NEBRASKA), LLC**

In accordance with the Nebraska Public Service Commission’s (the “Commission”) direction at its hearing on May 1, Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (collectively, “Charter”) take this opportunity to provide the following brief post hearing comments.

In our reply comments of March 16, 2018, we made three core points:

1. The Commission should not adopt a connections-based contribution rate design in the business market;
2. The Commission should not use a change in the contribution rate design to increase the size of the fund; and,
3. The Commission should continue to analyze the underlying data to understand trends affecting contributor revenues and respond accordingly.

The May 1st hearing unequivocally supported these recommendations. No party provided *any* evidence that declining contributor revenues are attributable to business services, while there is broad consensus that implementing a connections-based contributor rate design in this market would be exceedingly difficult. As such, implementing a connections-based system – a system that is effectively an experiment – in the business market is a solution in search of a problem.

Second, only RIC has suggested the Commission should use a change in rate design to increase the fund, while most support the Commission’s decision to keep these issues separate. Finally, updated data provided at the hearing (and as explained in more detail later in these Comments) showed that contributions to the NUSF under the existing revenue-based approach *increased* in December 2017, while the growth in wireless subscriptions in Nebraska has slowed significantly, as has the decline in residential wireline subscriptions (the two factors most responsible for the perceived attractiveness of a connections-based approach).

Given the growing consensus that a connections-based system should not be adopted in the business market and that the fund not be increased, we limit these post-hearing comments to two points. First, we explain why the Commission should firmly reject RIC’s *revised* position that “Over-the-Top” (or “OTT”) VoIP should be treated differently than the residential VoIP services provided by the owner of the broadband facility. Second, we summarize information on contributor remittances and subscription trends that reflect the most current data released by the Commission and the FCC in the time since our previous Comments were filed.

The Commission Must Assess Over-the-Top VoIP Subscriptions in the Same Manner that it Assesses other Residential VoIP Subscriptions

At the hearing, RIC distributed a proposed “Nebraska Universal Service Fund – Monthly Contribution Remittance Form” that would assess a connections-based charge on residential VoIP subscriptions provided by the broadband provider (or its affiliate), while applying a revenue-based surcharge on residential Over-the-Top VoIP services.¹ There is simply no reason – and RIC

¹ Exhibit One to RIC witness Davis Testimony. Although the Exhibit uses the term “Over-the-Top” (presumably to match the terminology of the FCC’s Form 477), the distinction is not technological (as the name implies), but rather corporate. That is, Form 477 categorizes VoIP by whether it is provided by the broadband provider (reported as standard Interconnected VoIP subscriptions), and other VoIP services provided over the broadband connection of an unaffiliated provider (reported as “Over-the-Top VoIP”).

offered none – to discriminate between the residential VoIP subscriptions provided by the broadband provider (or its affiliate) and the VoIP subscriptions provided by unaffiliated providers that use that broadband connection.

RIC has traditionally been an advocate of competitive neutrality and non-discrimination, pointing out that such standards are statutory compulsions that the Commission must respect.² Moreover, in *previous* testimony, RIC treated Over-the-Top VoIP subscriptions and other VoIP subscriptions equivalently in its estimated rate calculations.³ The fact that RIC has reversed its position on VoIP – first proposing to treat all forms of VoIP equivalently and now proposing they be treated differently – diminishes the credibility of RIC’s positions overall (including its repeated call that the fund be increased to \$60 million/year, and that its members be guaranteed subsidies for 10 years).

Although we have previously expressed the view that there may be legal issues concerning the Commission’s authority to assess VoIP through a connections-based approach, our overriding concern is that the Commission not discriminate between different forms of VoIP, particularly in a manner that could grant VoIP providers that are *not* deploying physical broadband networks a competitive advantage:

Consequently, as presented [by Staff],⁴ the proposed approach will assess VoIP when offered by the provider of the physical connection, but not when it is offered by an unaffiliated provider. The problem is that these OTT services compete directly with the VoIP and wireline services offered by the broadband and

² See Comments of the Rural Independent Companies in Response to Order Opening Docket and Seeking Comment, January 30, 2018, at 2.

³ See Direct Testimony of Edit Kranner, Application No. NUSF-100 PI-193, March 24, 2017, Attachment 1.

⁴ Staff later made clear at the hearing that it did not intend to discriminate between different forms of VoIP, and that its failure to include Over-the-Top VoIP subscriptions in its sample rate calculations was an oversight, not a policy recommendation.

telephone companies that are assessed, providing an advantage to the services offered by non-facility based (*i.e.*, companies without local networks) providers.⁵

Now that the Staff has made clear that it did not intend to treat unaffiliated VoIP subscriptions differently from those of the broadband provider (or its affiliate), the Commission should similarly reject RIC's revised recommendation to do so here. Moving to a connections-based system is not Charter's first choice, but if the Commission chooses to do so, it is vital that it not discriminate between different forms of residential VoIP. Over-the-Top VoIP subscriptions are reported on Form 477 in the same manner as affiliated VoIP and there is no reason to treat the two differently.⁶

The Commission Should Continue to Analyze Contributor and Subscription Trends

As noted above, one of our core recommendations is that the Commission continue to monitor and evaluate data concerning contributor revenues and connections to understand underlying trends. These trends suggest – but we would agree do not yet prove – that the factors that have made a connections-based methodology attractive may be moderating, perhaps significantly, while the factors causing contributor revenues to decline may be changing as well.

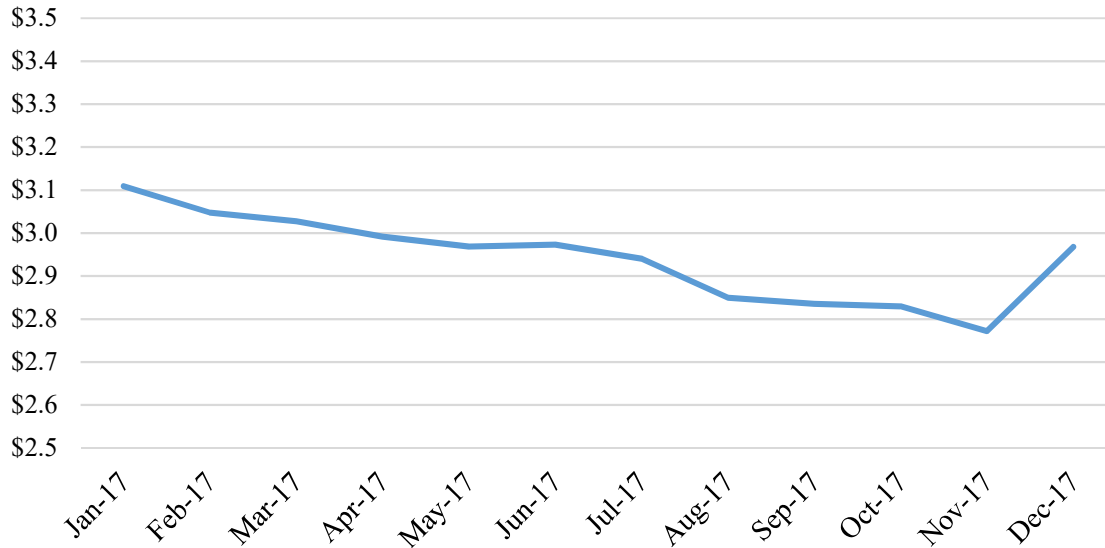
First, the existing revenue-based contributor system resulted in *increasing* revenues in December 2017. Certainly, a single month does not demonstrate that a new trend has emerged. It does mean, however, that the Commission should continue to monitor the performance of the existing system to determine whether the effort to change its approach (which will inevitably expose additional issues as a new system is designed and implemented) is justified by the

⁵ Gillan Reply Testimony, Application No. NUSF-100 PI-193, April 21, 2017, at 8.

⁶ We note that RIC has never explained the legal reasoning that would permit such discrimination (particularly as discrimination is prohibited by statute), much less its policy rationale.

underlying facts. If contributor revenues stabilize, the Commission should evaluate what it should do in response.

Monthly NUSF Contributor Remittances⁷
(\$ millions)



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Second, the most recently released subscriber count information from the FCC Form 477 submissions for Nebraska suggests that the *growth* in wireless subscriptions has slowed, as has the *decline* in residential wireline subscriptions. Between 2015 and 2016, the growth in wireless subscriptions declined by 25%. Even more significantly, wireless subscriptions in the second *half* of 2016 grew by only 0.8% – further evidence that the historic growth rates in wireless subscriptions cannot be sustained as the industry approaches saturation.

Form 477 Subscriptions – Nebraska
(Thousands)

Category	Subscriptions			Growth Rate	
	2014	2015	2016	2015	2016
Wireless	1,822	1,886	1,935	3.5%	2.6%
Residential Wireline	387	363	360	-6.2%	-0.8%

⁷ http://www.psc.nebraska.gov/ntips/ntips_nusf.html

Finally, in the time since our Reply Comments were filed, the Commission updated its contributor remittances, and the FCC released more current Form 477 information (as summarized above).⁹ In our Reply Comments we provided a table that explained the differences between the *average* rate calculations in our Comments and the comments of others. As a threshold point, this *average* rate does not match our rate design recommendation because we are recommending that the status quo (a 6.95% surcharge on intrastate revenues) be retained for business services. That said, we update below our analysis based on the most current information available.

Table 1 (updated): Comparing Estimated Contribution Rates

Component	Charter	Windstream	RIC
Size of Fund	\$35.4 million ¹⁰	\$44.0 million	\$60.1 million
Basis for Fund Size	NUSF 2017 Contributions	NUSF 2016 Disbursements	Unclear ¹¹
Connections Measure	Form 477 Voice Subscriptions		
Vintage	2017 est. ¹²	2015	June 2016
Estimate Rate/month	\$1.08	\$1.44	\$1.76 Residential \$2.64 Business

As the updated Table 1 shows, the estimated *average* rate per subscription is \$1.08/month, slightly above our previous monthly estimate of \$1.00 per subscription. The principal reason for the difference is that the decline in contributor remittances in the fourth quarter was less than we had estimated (largely because of the increase in remittances in December).

⁹ Voice Telephone Services as of 12/31/16, Federal Communications Commission, available at: <https://www.fcc.gov/voice-telephone-services-report>

¹⁰ RIC Witness Pfister Exhibit One. Note: Contributor remittance information on the Commissions website indicates a slightly lower 2017 collection of \$35.3 million.

¹¹ In its filed comments, RIC explained its recommendation as being derived from its proposed contributor rate design. At the hearing, RIC suggested that its recommendation was derived from prior remittance levels (Pfister Exhibit One).

¹² The subscription count for 2017 is estimated by applying the 2015-2016 growth rate to the December 2016 count.

As explained in our earlier Reply Comments, we recommend that the Commission retain the existing 6.95% surcharge on intrastate business revenues rather than moving to a connections-based charge in this market. Because business revenues per connection are typically higher than residential revenues, the actual contributor rate per residential/wireless subscription should be materially *less* than \$1.08 per subscription calculated above, although we do not have the data to provide a better estimate. It is clear, however, that the rate levels estimated and/or recommended by Windstream and RIC are far higher than necessary and would result in significant increases in the size of the NUSF and the burden that it places on Nebraska consumers.

Respectfully submitted this 18th day of May, 2018.

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