

**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  
**RECEIVED**

JAN 30 2018

Nebraska  
Public Service Commission

**COMMENTS OF THE RURAL INDEPENDENT COMPANIES IN RESPONSE TO  
ORDER OPENING DOCKET AND SEEKING COMMENT**

The Nebraska Rural Independent Companies (“RIC”)<sup>1</sup> submit these Comments in response to the December 19, 2017 Order Opening Docket and Seeking Comment entered in this proceeding by the Nebraska Public Service Commission (the “Commission”). RIC appreciates the opportunity to provide the following Comments to the Commission and, as noted at the end of these Comments, RIC seeks an order from the Commission that provides interested parties with the opportunity to file reply comments in this proceeding.

The Commission seeks comment on the following issues:

**RATE DESIGN**

***Question 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.*

**Response:** RIC supports the Commission’s reliance on the “statutory goals” referenced in this question. Commission action regarding rate designs should be consistent with the Legislature’s

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<sup>1</sup> 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.

declaration of Nebraska Universal Service Fund (“NUSF”) policies set forth in *Neb. Rev. Stat.* § 86-323 (Reissue 2014). In pertinent part, this statute provides:

(4) All providers of telecommunications should make an equitable and non-discriminatory contribution to the preservation and advancement of universal service;

(5) There should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service. . . .

The Commission acknowledged these statutory policies in its recent Order adopting a connections-based NUSF contribution mechanism.<sup>2</sup> In the *October 2017 Order*, the Commission clearly stated that the definitions of “connection” and “assessable service” that it adopted “are intended to capture the services *subject to contribution requirements today*.” (emphasis added)<sup>3</sup>

**Competitive Neutrality.** A claim has been made that the *October 2017 Order* does not satisfy the policy pronouncements of § 86-323(4) because application of surcharges on a per-connection basis will exclude certain providers of telecommunications that do not utilize separately reported connections when providing their services, such as interexchange carriers and over-the-top Voice over Internet Protocol (“VoIP”) providers.<sup>4</sup> It can reasonably be anticipated that CTIA-The Wireless Association (“CTIA”) will advance similar claims in its appeal of the *October 2017 Order*.<sup>5</sup> An opportunity is presented in this proceeding for the Commission to

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<sup>2</sup> *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, Order at pp. 29-30 (Oct. 31, 2017) (the “*October 2017 Order*”).

<sup>3</sup> *Id.* at p. 30.

<sup>4</sup> Application No. NUSF-100/PI-193, *Motion for Reconsideration of CTIA in Response to The Commission’s Oct. 31, 2017 Order* at pp. 4-5 (Nov. 13, 2017).

<sup>5</sup> *In re Matter of Nebraska Public Service Commission v. CTIA*, Case No. A-17-01244 before the Nebraska Court of Appeals (filed Nov. 30, 2017).

address claims such as those made by CTIA.

Nothing in the Nebraska Telecommunications Universal Service Fund Act (the “NUSF Act”)<sup>6</sup> requires the Commission to utilize only one specific contribution mechanism with regard to the implementation of its legislatively-delegated duties “to efficiently develop, implement and operate the fund.”<sup>7</sup> Indeed, in the *October 2017 Order*, the Commission properly found “that the absence of limiting language in state law suggests that we must make a reasoned interpretation of how best to require telecommunications carriers to contribute on an equitable and nondiscriminatory basis in a manner that will achieve the goals of the NUSF Act.”<sup>8</sup> Therefore, consistent with this finding in the *October 2017 Order*, the Commission should implement a rate design that assesses an NUSF surcharge on all providers of telecommunications service and thus establish a “hybrid” NUSF contribution mechanism that utilizes a combination of connections-based and revenues-based assessments.

If the Commission concludes that in the application of the connections-based assessment mechanism, any provider of telecommunications in this State will not, due to technological or other barriers, make an “equitable and non-discriminatory contribution to the preservation and advancement of universal service”, then the Commission should require that provider to continue to contribute to the NUSF pursuant to the current revenues-based mechanism which has been in place since the inception of the NUSF 20 years ago. For example, continuation of the revenues-based assessment may be appropriate with regard to those providers which do not report on Federal Communications Commission (“FCC”) Form 477 a separate connection for the

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<sup>6</sup> *Neb. Rev. Stat.* §§ 86-316 to 86-329 (Reissue 2014).

<sup>7</sup> *Neb. Rev. Stat.* § 86-325 (Reissue 2014).

<sup>8</sup> *October 2017 Order* at p. 30.

provision of telecommunications. These entities may include, but not be limited to, providers of local private line and special access services, interexchange services, nomadic interconnected VoIP services and radio paging services.<sup>9</sup> Whether the foregoing services would continue to be subject to the current 6.95% of intrastate revenue surcharge or some other level of surcharge contribution percentage would be determined by the Commission in conjunction with the establishment of the rate design for the connections-based mechanism, thus assuring that all providers of telecommunications in this State make an equitable and nondiscriminatory contribution to the NUSF.<sup>10</sup>

The Commission has properly exercised its authority as delegated by the Nebraska Legislature relative to the issuance of the *October 2017 Order* and the adoption therein of a connections-based NUSF contribution mechanism. As such, RIC respectfully submits that its foregoing comments set forth a construct for the Commission to implement NUSF contributions reform in a manner that will achieve competitive neutrality and will also be consistent with the policy of the NUSF Act that all telecommunications providers make an equitable and nondiscriminatory contribution to the NUSF.<sup>11</sup> The statutory policy that the contribution

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<sup>9</sup> See, Title 291, Chap. 10, §§ 002.01B1b and 002.01B3 through 002.01B5 of Nebraska Universal Service Fund Rules and Regulations.

<sup>10</sup> RIC's support of a hybrid assessment mechanism is not a matter of first impression for the purposes of these Comments. In RIC's June 6, 2016 Comments in Response to Order Seeking Further Comments RIC advocated continuation of the current revenues-based mechanism for certain business end user services, for special access services and for interexchange services. See *RIC Comments in Response to Order Seeking Further Comments*, Application No. NUSF-100/PI-193 at p. 20 (June 6, 2016) ("*RIC 2016 Comments*"). RIC explained its rationale for continuation of the revenues-based assessment on these services in the *RIC 2016 Comments* at pp. 14-16 and 21-22.

<sup>11</sup> In addition to the requirements for an "equitable and nondiscriminatory" contribution pursuant to § 86-323(4) that is to be "competitively neutral" pursuant to § 86-323(5), § 86-324(2)(d) directs the Commission to "require every telecommunications company to contribute to any

mechanism should be specific, predictable and sufficient will be addressed in the following comments.

**Question 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 high-cost areas.*

**Response:** Initially, RIC notes that in the Legislature’s statement of the purpose of the NUSF Act the concept of “balancing” the burden of the NUSF surcharge against the requirement of comparable access is not found. The stated purpose of the NUSF Act and its funding mechanism is to supplement the federal universal service support mechanism which “ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.”<sup>12</sup> The Legislature also adopted the policy principle that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the state.”<sup>13</sup> Nonetheless, RIC recognizes that the level of NUSF surcharges established by the Commission for assessment on Nebraska consumers of telecommunications services should be consistent with the Legislature’s policy that quality telecommunications and information services are provided “at just, reasonable and affordable rates.”<sup>14</sup>

During the course of the Commission’s consideration of Application No. NUSF-100/PI-193, the Commission announced a “Strategic Plan” setting forth its “overall vision of where

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universal service mechanism established by the Commission pursuant to state law.” RIC respectfully submits that the hybrid mechanism described in these Comments would comply with this statutory requirement.

<sup>12</sup> *Neb. Rev. Stat.* § 86-317 (Reissue 2014).

<sup>13</sup> *Neb. Rev. Stat.* § 86-323(2) (Reissue 2014).

<sup>14</sup> *Neb. Rev. Stat.* § 86-323(1) (Reissue 2014).

universal service should evolve.”<sup>15</sup> Consistent with the Legislature’s policy set forth in § 86-323(2), the Commission stated that its goal is to support deployment of ubiquitous broadband availability throughout Nebraska, and to do so through the deployment of a fiber-based network everywhere.<sup>16</sup> RIC agrees with these goals.

In the pre-filed March 24, 2017 Direct Testimony of RIC witness, Edit Kranner, submitted to the Commission in Application No. NUSF-100/PI-193, Ms. Kranner provided a study that sets forth the estimated size of the NUSF calculated through the use of the State Broadband Cost Model (“SBCM”) licensed by the Commission for use in that docket (copy attached to these Comments as Exhibit One). This SBCM-calculated annual cost of accomplishing the above-stated goals of the Commission, based upon costs above a \$52.50 revenue benchmark, was \$252,449,733. After application of estimated federal funding for Nebraska universal service to this cost calculation, the remaining need for NUSF support as shown in Ms. Kranner’s study was \$152,308,154.

RIC recognizes that the level of consumer surcharges that would be required to obtain annual NUSF remittances equivalent to the foregoing SBCM-calculated costs would not result in “just, reasonable and affordable rates”. However, based upon the current levels of NUSF revenues-based contributions per consumer-grade and business/government-grade service customer converted into a per connection contribution, RIC believes that the rate design attached to these Comments as Exhibit Two represents just, reasonable and affordable rates that would, over an extended support commitment period (for example, ten years), allow for significant

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<sup>15</sup> *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, Order Seeking Further Comments at pp. 5-6 (Apr. 5, 2016) (the “April 2016 Order”).

<sup>16</sup> *Id.* at p. 5.

progress toward accomplishment of the above-discussed goals of the Commission's Strategic Plan.

**Rate Design.** Using the most recent June 2016 connections data provided in the FCC Form 477 for Nebraska, RIC has prepared the rate design set forth in Exhibit Two attached to these Comments that yields total NUSF connections-based remittances of approximately \$60 million. The per connection rate for mobile telephony and consumer-grade wireline switched access lines and interconnected VoIP subscriptions is proposed to be \$1.76/connection/month and the rate for business and government-grade wireline switched access lines and interconnected VoIP subscriptions is proposed to be \$2.64/connection/month (both amounts are subject to reduction depending upon the assessments produced for continuation of the revenues-based mechanism on certain services as described above).

The \$1.76 per month per connection surcharge in the proposed RIC rate design for consumer-grade service customers, compares to the RIC member companies' current average revenues-based contribution for such customers (converted to a per connection basis) of \$1.70 per month.<sup>17</sup> This represents a modest 3.5% increase in the current surcharge assessment level. A similar comparison of the \$2.64 per month per connection surcharge in the proposed RIC rate design for business and government-grade service customers to the RIC member companies' current average revenues-based contribution for such customers (converted to a per connection basis) of \$2.32 per month<sup>18</sup> represents a 13.8% increase in the current surcharge assessment level. Due to the need to increase broadband capability and availability in rural areas of Nebraska in order to serve the policies of the NUSF Act, both of these increased percentages are

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<sup>17</sup> See, RIC Response to Commission Question 5.a below.

<sup>18</sup> See, RIC Response to Commission Question 5.b below.

reasonable and can be justified on a variety of bases, not the least of which is the economic benefits that are derived from the availability to broadband-based e-commerce to both businesses and residents of this state. RIC submits that the connections-based rate design proposed by RIC represents just, reasonable and affordable rates for these classes of customers. Accordingly, RIC respectfully suggests that the Commission adopt the rate design set forth in Exhibit Two attached to these Comments.<sup>19</sup>

With regard to RIC's proposed rate design, two important points should be noted. First, if the hybrid contribution design discussed in response to Commission Question No. 1 above were to be implemented, the per connection surcharge amounts presented in Exhibit Two would be reduced based upon the calculated total remittance amounts estimated to be produced from the assessment on telecommunications services that are subject to continuation of a revenues-based surcharge. Second, in addition to disbursements pursuant to the NUSF High Cost Program, other NUSF Programs as well as the costs for administration of the NUSF are supported by remittances to the NUSF. *For 2017, these additional disbursements are estimated to be \$6.5 million.*<sup>20</sup> Therefore, any connection-based rate design, together with the continuation of any revenues-based rate design on selected telecommunications services must produce total remittances to fund not only the NUSF High Cost Program, but also the other NUSF Programs and costs to administer the NUSF.

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<sup>19</sup> RIC does not possess data relative to the NUSF contribution currently made by mobile telephony consumers in order to calculate a per connection surcharge amount. It is presumed that CTIA or other wireless providers will provide this data in response to Commission Question 5.c below. *See*, RIC Response to Commission Question 5.c below.

<sup>20</sup> The disbursements from the NUSF in addition to support provided through the High Cost Program include: Mobile Wireless Broadband Support of \$4.0 million; Low Income Voice Support of \$.9 million; Tele-Health Support of \$.6 million; and administration costs of \$1 million.

**Specific.** For something to be specific, it must be explicit or definite.<sup>21</sup> RIC's proposed connections-based rate design set forth in Exhibit Two is explicit and definite and, in addition, meets the policy objective that the NUSF be a "specific" recovery mechanism in accordance with the policy stated in Section 86-323(5), just as the Commission's current (and historically utilized) revenues-based contribution mechanism is explicit and definite, and thus is specific.

In establishing the rate design and contribution levels in this proceeding, RIC anticipates that the Commission possesses the historical contribution data that will enable it to calculate any necessary modifications to the revenues-based surcharge on the telecommunications services identified above. Therefore, RIC submits that its proposed connections-based surcharge design, together with any Commission revisions to the continuing application of the revenues-based surcharge to the services that are not subject to the connections-based mechanism, will constitute specific mechanisms to preserve and advance universal service.

**Predictable.** To be predictable a thing must be able to be foretold or declared in advance.<sup>22</sup> The policy of the NUSF Act regarding predictability can best be ensured if the Commission includes in its order approving the NUSF rate designs a requirement that the total annual estimated NUSF remittance to be produced for the initial annual remittance period under the reformed contribution rate design will be the *minimum annual NUSF remittance level for an extended period of years*.

In order to advance consistency of policy objectives between Nebraska and federal

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<sup>21</sup> See, <http://www.dictionary.com/browse/specific>, definition of "specific".

<sup>22</sup> *Id.* definition of predictable.

positions, and thus to advance the federal/state partnership on universal service,<sup>23</sup> RIC respectfully requests that the Commission adopt a 10-year funding commitment for the 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>

In proposing this funding commitment, RIC is not suggesting that the build out of ubiquitous broadband accessibility will be accomplished during a 10-year funding period. The NUSF High Cost Program funding level provided by RIC's proposed rate design will support only a portion of the SBCM-calculated annual costs of ubiquitous broadband access in Nebraska. Thus, there will be a continuing need for the NUSF High Cost Program to provide funding for the construction of a statewide broadband capable network as well as the need for continuing support of on-going operations and maintenance costs in rural, high-cost areas. As a result, the Commission will need to evaluate the demands upon the NUSF High Cost Program beyond the proposed 10-year funding period. RIC suggests that prior to the end of this funding period that the Commission should issue a progression order to obtain comments and to evaluate the status of broadband build out in Nebraska in order to reach a determination as to the appropriate duration and terms of a continuing commitment to support deployment of ubiquitous broadband accessibility in this state.

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<sup>23</sup> The Commission is well aware that the 1996 revisions to the Communications Act of 1934, as amended, envisions, and the FCC has encouraged a federal-state partnership regarding universal service. *See, e.g., October 2017 Order* at pp. 29-30; *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) ("*FCC ROR Reform Order*") at para. 184; *In the Matter of Federal-State Joint Board on Universal Service, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 18 FCC Rcd 22559, para. 19 (2003).

<sup>24</sup> *See, e.g., FCC ROR Reform Order* at para. 22; *see also* 47 C.F.R. § 54.311(c).

RIC recognizes that Section 86-328 of the NUSF Act requires the Commission to annually review and establish the surcharge levels needed to carry out the purpose and policies of the NUSF Act. However, that requirement is not an impediment to establishment of the predictability of minimum annual NUSF funding levels that will satisfy the predictability policy of the NUSF Act.<sup>25</sup> The Commission certainly possesses the authority to adjust the rate designs for both a connections-based surcharge and a revenues-based surcharge so as to yield annual surcharge remittances that will maintain NUSF High Cost Program support (as well as other NUSF Programs) at a consistent, predictable level that will facilitate progress toward accomplishment of the build out of ubiquitous broadband-capable facilities in accordance with statutory policies and the Commission's stated goals.

**Sufficient.** To be sufficient a thing must be adequate for the purpose or enough.<sup>26</sup> With regard to the NUSF Act's sufficiency policy, based upon the annual costs produced by the SBCM and the size of the gap between federal funding above the \$52.50 customer revenue benchmark, there is no apparent way for the NUSF to fill this gap while at the same time

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<sup>25</sup> RIC observes that the need for predictability has already been noted by the FCC, and thus adoption of the 10-year proposal outlined herein will also advance the federal/state partnership on universal service. With respect to the need for predictability, the FCC eliminated the Quantile Regression Analysis originally proposed by the FCC in 2011 (*see, e.g., In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), *aff'd* In Re: FCC 11-161, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014), *pet. for cert. denied* at para. 216; *see also In the Matter of 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*, WC Docket No. 10-90, *et. al.*, FCC 14-54, released June 10, 2014 at paras. 8, 104, and 134)) and, in 2016, the FCC stated that, in the context of the interstate ROR model-electing companies, bringing "certainty of receiving specific and predictable monthly support amounts over the 10 years" as well as establishing "predictable support" such a policy, in turn, "will enhance the ability of these carriers to deploy broadband throughout the term." *FCC Reform Order* at para. 22.

<sup>26</sup> *See, <http://www.dictionary.com/browse/sufficient>*, definition of "sufficient".

allowing consumer rates to be “fair, just and reasonable.”<sup>27</sup> Thus, referring back to the “balancing concept” that is the subject of this Commission Question No. 2, RIC respectfully submits that funding of the NUSF High Cost Program based upon the \$60 million level of total NUSF remittances for a 10-year commitment period pursuant to the rate design attached to these Comments as Exhibit Two (subject to adjustment based upon the anticipated remittances pursuant to the continuation of the revenues-based mechanism on selected services as described above) strikes an appropriate balance between the sufficiency and affordability policies of the NUSF Act.<sup>28</sup>

**Question 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 in Nebraska and the ongoing costs to maintain areas that have already 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 in Docket No. C-1633. 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?*

**Response:** The Commission endorsed the Benchmark Cost Proxy Model (“BCPM”) in April of 1998.<sup>29</sup> Nearly 20 years have passed since the Commission’s approval of BCPM, and the

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<sup>27</sup> *Neb. Rev. Stat. § 86-323(1)* (Reissue 2014).

<sup>28</sup> RIC respectfully reminds the Commission, however, that to the extent that federal universal service support and NUSF support in combination fall short of the total costs above the \$52.50 benchmark requirement for Nebraska produced by the SBCM, the Commission should anticipate that there will be locations in Nebraska that will not be provided with fiber-based broadband access. The number of unserved locations at various support shortfall levels was illustrated in Attachment Three to the Direct Testimony of Edit Kranner filed in Application No. NUSF-100/PI-193 on March 24, 2017.

<sup>29</sup> *In the Matter of the Nebraska Public Service Commission, on its own Motion, to conduct an investigation to determine which cost proxy model should be recommended to the FCC for determining federal universal service support*, Application No. C-1633, Order (Apr. 27, 1998).

context for such approval was a voice-centric rather than a broadband-centric network. During that 20-year period, the extent of changes in the telecommunications industry and the consequent changes in federal and state universal service mechanisms have been far-reaching.

The SBCM replicates the processing logic, inputs and reporting formats of the FCC Connect America Cost Model (“CACM”) adopted by the FCC in connection with its actions taken regarding the Connect America Fund (“CAF”). The CACM and the Alternative Connect America Model (“A-CAM”) are used by the FCC for the same calculations to address the deployment of scalable broadband capable network, something the BCPM was not designed to address. The SBCM, in turn, is the state-centric outgrowth of the CACM and was licensed by the Commission from CostQuest Associates, Inc. for use in connection with its consideration of contribution reform.<sup>30</sup> In light of the reliance on the SBCM to date, and in order to provide for consistent results associated with determination of the underlying costs of broadband networks, the SBCM should also be utilized in the development of rate designs for a connections-based NUSF contribution mechanism. As such, and based upon the Commission’s use of SBCM in conjunction with its consideration of the issues presented in Application No. NUSF-100/PI-193, RIC respectfully submits that the SBCM is the logical model of choice for use in this docket.

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<sup>30</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, to investigate and consider the cost model used by the Federal Communications Commission for Connect America Fund Support, and its corresponding state counterpart, Application No. NUSF-102/PI-194, Progression Order No. 1 (Aug. 18, 2015).* RIC has been advised that the Commission Staff has concluded that the Commission’s license of the SBCM should not be renewed for this year. While RIC recognizes that there may be a desire to avoid incurring the licensing fees associated with the renewal, RIC believes that it is necessary to renew the SBCM license for 2018 in order that the Commission and interested parties have access to the SBCM in conjunction with this docket as well as the Commission’s consideration of Progression Order No. 3 entered in Application No. NUSF-108.

As the Commission is aware, the SBCM not only calculates the capital costs associated with build out of a fiber-based network that supports access to ubiquitous, scalable broadband as well as voice services, but also calculates an operating and maintenance factor that is necessary for continuing utilization of the network by consumers. Based on a review of SBCM outputs, RIC notes that, on average for all Nebraska rate-of-return 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). RIC respectfully submits that these SBCM-calculated costs should be subject to recovery by rate-of-return carriers and that this cost recovery should be supported by the NUSF High Cost Program that utilizes a connections-based surcharge.

**Question 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 a 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.*

**Response:** First, as demonstrated by the data provided by RIC in response to Question 5.b below, the current level of NUSF revenues-based surcharge contributions by business and government-grade customers, when converted to a per connection surcharge amount, will support the rate design submitted in Exhibit Two attached to these Comments, and this rate design does not represent a material increase to current business customers' NUSF

contributions.<sup>31</sup> Therefore, it is at best premature to suggest that it is proper to impose a “cap” on the number of business and government-grade connections for any single entity.

Second, as a practical matter, RIC is unaware of any publicly-available database from which the Commission could reach a rational and verifiable determination as to either the type of entity that should be allowed to be subject to the cap or the level of capped connections. To obtain this data, the Commission would be required to issue data requests to all providers of telecommunications, seeking connection counts for all business and government-grade customers served. Even if such data requests were pursued, it is unlikely that such data would be voluntarily provided even subject to the most stringent protective orders. Thus, such requests would likely subject the Commission and the parties to this proceeding to the risk of litigation and delays regarding the ability of the Commission to seek under state law such highly confidential and proprietary information.

Accordingly, RIC recommends against any structure of the connections-based mechanism that would require connections data *other than* the data that is publicly available through use of FCC Form 477.

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

- a. *The average monthly NUSF contribution per consumer-grade service customer under the current revenues-based contribution mechanism as well as a calculation of that current contribution on a per connection basis for both circuit-switched and interconnected VoIP customers.*

**Response:** Data has been obtained from each of the RIC member companies with regard to the current revenues-based contribution per consumer-grade service customer converted to and calculated on a per connection basis. Based on this aggregated data, the average per connection

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<sup>31</sup> See, discussion of “Rate Design” in RIC’s Response to Commission Question No. 1 above.

consumer-grade customer revenues-based NUSF monthly contribution from the RIC member companies' customers (converted to a per-connection amount) is \$1.70.<sup>32</sup> This per connection amount does not include intrastate services that would remain subject to the current revenues-based NUSF surcharge (*e.g.* interexchange service) pursuant to RIC's proposed "hybrid" assessment mechanism design discussed in its response to Commission Question No. 1 above.

- b. *The average monthly NUSF contribution per business and government grade service customer under the current revenue-based contribution mechanism as well as a calculation of that current contribution on a per connection basis for both circuit-switched and interconnected VoIP customers.*

**Response:** RIC has obtained data from each of its member companies with regard to the current revenues-based contribution per business and government-grade service customer converted to and calculated on a per connection basis. The average per connection business and government-grade customer revenues-based NUSF monthly contribution based upon this RIC-provided aggregated data (again converted to a per connection amount) is \$2.32. As stated above, this per connection amount does not include intrastate telecommunications services that would remain subject to the current revenues-based NUSF surcharge (*i.e.* interexchange service) pursuant to RIC's proposed "hybrid" assessment mechanism design.

- c. *The average monthly NUSF contribution per mobile telephony service customer under the current revenues-based contribution mechanism as well as a calculation of that current contribution on a per connection basis.*

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<sup>32</sup> The description of the calculation methodology is that each RIC member company calculated monthly revenues-based NUSF remittance for intrastate services (excluding intrastate long distance, intrastate private line/special access and off-premises extensions) per connection; that result was multiplied by the number of the Company's residential connections. These individual company results were totaled and the resulting total for all 17 RIC member companies was divided by the aggregate residential connections for all 17 RIC member companies to yield a monthly average NUSF assessment per residential connection. This same methodology was used for calculation of the business and government-grade NUSF assessment per business connection average amount. (*See*, response to Question 5.b.)

**Response:** RIC does not possess this information.<sup>33</sup>

## **DATA SOURCES**

***Question 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.*

**Response:** Connections data provided by Form 477 should be the primary driver of telecommunications provider reporting of Nebraska-specific connection data to the Commission for NUSF contribution purposes. Because telecommunications providers in Nebraska are required by the FCC to otherwise capture connection data for FCC reporting purposes, once a connections-based rate design is established by the Commission, each contributing provider should be able to report on a periodic basis its Nebraska-specific assessable connections for each type of connection reported on FCC Form 477.

To the extent that any question arises as to how to report connections that would be subject to NUSF remittances (e.g., how remittances are made on resold connections), RIC recommends that, in the first instance, reliance on the FCC Form 477 instructions for guidance is appropriate. In the event that the required guidance is not addressed in the FCC Form 477 instructions, the issue can be presented to the Commission for resolution (which would then be provided publicly in summary fashion by the Commission for the benefit of all providers reporting consistently the assessable connections they have).

***Question 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 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.*

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<sup>33</sup> See, footnote 19 *supra*.

**Response:** The only publicly-available data source that would provide reliable connections data of which RIC is aware is the aggregated connections data issued by the FCC taken from FCC Form 477 data. As such, RIC recommends that Nebraska-specific FCC Form 477 be the required data used by the Commission for implementing the connections-based NUSF contribution mechanism. While claims regarding other data sources – namely TRS data – have been made, such claims should be rejected.

First, the TRS surcharge is a surcharge based upon telephone numbers or the functional equivalent (*see Neb. Rev. Stat. § 86-313*), not on connections. Second, since the TRS surcharge shall only be collected on the first one hundred telephone numbers or functional equivalents per subscriber, RIC knows of no public data source that could be used to ascertain the amount of exempt numbers on which the TRS surcharge is *not* assessed and which are therefore excluded from any “Nebraska TRS connections database”. Third, due to the process for collection of the TRS surcharge on prepaid wireless numbers, RIC understands that the quantity of such assessable numbers must be estimated through a reverse calculation that takes the aggregate monthly TRS surcharge amount remitted to the Commission by the Nebraska Department of Revenue, which is responsible for collection of the TRS surcharge (*see Neb. Rev. Stat. § 86-904(5)*), divided by the monthly per telephone number TRS surcharge rate (currently \$0.01/month) to derive an *estimate* of the total amount of prepaid wireless numbers.

### **IMPLEMENTATION**

***Question 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?*

**Response:** As a group, the RIC member companies provide the following information responsive to this Commission question. In identifying and then reporting the costs to

implement a connections-based system, the RIC member companies isolated the billing system conversion and testing costs as was otherwise described in the response to Commission Question No. 9 below. With this as background, and as a general matter, the benefits of moving to a connections-based assessment mechanism have been described by RIC in its various filings and testimonies provided to the Commission with regard to Application No. NUSF-100/PI-193 and in these Comments.

Consistent with its prior submissions, the RIC member companies confirm that their costs to implement a flat rate connections-based NUSF surcharge should not be significant and would otherwise not materially differ from implementation of any other flat rate regulatory surcharge such as the TRS surcharge or the E-911 surcharge.

***Question 9:*** *We ask interested parties to provide the Commission with an estimation of cost of a billing system conversion as well as the time required to complete such a conversion to implement a connections-based NUSF contributions mechanism. Please include any supporting data.*

**Response:** As a general matter and as stated above, implementation costs for a flat rate connections-based NUSF surcharge should not materially differ from adding any other flat rate fee to carrier monthly billings such as TRS or E-911 surcharges. 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 to a connections-based NUSF contribution mechanism would not be material. Additionally, staff time for individual carriers to test the changes made to the billing systems to assure successful implementation is not expected to be material. Further, the RIC member companies do not anticipate any material implementation problems associated with the "hybrid" contribution system outlined in the response to Commission Question No. 1 above, namely, the continuation of the revenues-based surcharge on certain identified telecommunications services while at the

same time implementing the connections-based mechanism with regard to connections as reported on FCC Form 477.

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

**Response:** Generally, RIC member companies estimate that a sixty (60) to ninety (90) day period should be sufficient for implementation of a connections-based NUSF contribution mechanism.

### **REQUEST FOR THE OPPORTUNITY TO FILE REPLY COMMENTS**

In the Order Opening Docket and Seeking Comment entered on December 19, 2017 in this proceeding, the Commission only provided for comments and did not mention reply comments or scheduling of a public hearing. RIC anticipates that comments will be submitted by multiple parties.<sup>34</sup> To provide each interested party with an opportunity to provide responses to the advocacy of other commenting parties, RIC respectfully requests that not later than February 13, 2018 the Commission enter an order granting all interested parties leave to file reply comments within thirty (30) days following the date of such order. After receipt of reply comments, RIC anticipates that the Commission will set a date for a public hearing regarding this proceeding and RIC looks forward to participating in such hearing.

### **CONCLUSION**

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Comments in response to the questions posed by the Commission, and look forward to continued participation in this docket.

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<sup>34</sup> As a point of reference, in Application No. NUSF-100/PI-193, the predicate docket to this proceeding, a total of ten (10) individual parties or associations filed comments, reply comments and/or legal briefs.

Dated: January 30, 2018.

Respectfully submitted,

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 (the "Rural Independent Companies")

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**EXHIBIT ONE**  
**NUSF SIZING ESTIMATE**

Description of Data	Dollars/Year
State Model Calculated cost above the \$52.50 benchmark	
RoR Carriers	\$130,523,215
PC Carriers	121,926,518
Total	<b>\$252,449,733</b>
FCC offer to PC carriers in NE	23,215,615
Estimate of RoR carriers A-CAM electors' support in NE	32,067,860
CAF ICC support to NE model electors	6,645,816
Estimated Federal Legacy Support to NE RoR Carriers	38,212,288
Total Estimated Federal Funding	\$100,141,579
Remaining need for funding Nebraska	<b>\$152,308,154</b>

**EXHIBIT TWO**

**CONNECTIONS-BASED RATE DESIGN – JUNE 2016 FCC DATA (NOTE 1)**

<b>Data element</b>	<b>Connections June 2016</b>	<b>Fee/ Line/ Month</b>	<b>Assessment (dollars)</b>	<b>Percent of Total</b>
Mobile telephony	1,919,000	\$1.76	\$40,529,280	67%
Wireline End-User Switched Access Lines and Interconnected VoIP Subscriptions	748,000			
Consumer-grade service	364,000			
Local exchange -Switched Access Lines	239,000	1.76	5,047,680	8%
NTAP lines	13,508	1.76	(285,289)	
Interconnected VOIP	125,000	1.76	2,640,000	4%
Business & Government-grade service	384,000			
Local exchange -Switched Access Lines	248,000	2.64	7,856,640	13%
Interconnected VOIP	136,000	2.64	4,308,480	7%
<b>Total</b>	<b>2,667,000</b>		<b>\$60,096,791</b>	<b>100%</b>

Source: Voice Telephone Services Report, fcc.gov.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 30th day of January, 2018, an electronic copy of the foregoing pleading was delivered to:

**Nebraska Public Service Commission**

Cullen.Robbins@nebraska.gov

Brandy.Zierott@nebraska.gov

A handwritten signature in cursive script, reading "Paul M. Schudel", is written over a solid horizontal line.

Paul M. Schudel