

**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)
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)

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

CTIA respectfully submits its reply comments in response to the initial comments filed in response to the Nebraska Public Service Commission's ("Commission's") Order Opening Docket and Seeking Comment.¹

As an initial matter, CTIA reiterates its concern that a connections-based approach is, on its face, inconsistent with the federal revenue-based approach.² That inconsistency threatens to burden the federal universal service program,³ and raises a host of other problems discussed below.

I. THE COMMISSION SHOULD DEVELOP A COMPREHENSIVE PLAN FOR OVERALL NUSF REFORM BEFORE IMPLEMENTING CONTRIBUTION CHANGES

As CTIA has noted throughout its advocacy in this and other related Nebraska Universal Service Fund ("NUSF") dockets, it is vitally important that the Commission formulate a comprehensive plan for NUSF reform rather than taking a piecemeal approach which isolates

¹ *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").*

² *See* 47 U.S.C. § 254(f) ("A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.").

³ *See id.* (state universal service mechanisms may not "rely on or burden Federal universal service support mechanisms").

related issues in a vacuum.⁴ The comments in this proceeding only reinforce the importance of devising a comprehensive strategic plan *prior* to implementing any changes to the contribution mechanism.

In its comments, Charter urged the Commission to “separate the issue of rate design from the issue of contribution levels (i.e., the desired overall size of the NUSF).”⁵ Charter also raised important concerns about proceeding with a connections-based mechanism,⁶ noting that “the Commission will need to engage in further proceedings before a ‘workable transition’ to a connections-based contribution mechanism is practicable.”⁷ Charter thus urged the Commission, if it proceeds with a connections-based mechanism, not to change the fund size for at least two years after the change is implemented.⁸ Charter further raised important objections to using data such as the State Broadband Cost Model (“SBCM”) to size the NUSF, and recommended a reverse auction approach instead.⁹ Similarly, Cox urged the Commission to proceed cautiously, take further comment before identifying a rate design, and not attempt to increase the size of the fund while also changing the contribution methodology.¹⁰ Even CenturyLink, which supports the transition to a connections-based mechanism, pointed out that the Commission has included

⁴ *See, e.g.*, Comments of CTIA – The Wireless Association at 1 (filed Jan. 30, 2018) (“CTIA Comments”).

⁵ Comments of Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services at 3 (filed Jan. 30, 2018) (“Charter Comments”).

⁶ *Id.* at 4-5.

⁷ *Id.* at 1.

⁸ *Id.* at 3-4.

⁹ *Id.* at 8-11.

¹⁰ Comments of Cox Nebraska Telecom, LLC at 1-3 (filed Jan. 30, 2018) (“Cox Comments”).

too wide a range of disparate issues here.¹¹ As CenturyLink noted, “before the Commission can determine the appropriate size of the fund, it must decide on the purpose of the fund.”¹²

Not surprisingly, the Nebraska Rural Independent Companies (“RICs”) proposed that the Commission press ahead with a bloated NUSF that would squander funding on fiber-based services even in areas where other technological alternatives should be considered to meet the vital need to connect rural communities. The connectivity needs of rural communities must be examined in conjunction with the concomitant need to consider the burden on consumers throughout the state who support the NUSF.¹³ The RICs pointed to their witness’ testimony in the Commission’s workshops in the NUSF-100 proceeding,¹⁴ without acknowledging that the issue of the appropriate size of the NUSF remains an open issue. CTIA’s witness refuted these same elements of the RICs’ witness’ testimony, demonstrating in particular that the RICs’ reliance on the SBCM is misplaced given its excessive reliance on fiber technologies, particularly in rural areas.¹⁵

Windstream also acknowledged that the appropriate size of the NUSF is a separate issue for a separate proceeding.¹⁶ Nonetheless, Windstream urged the Commission to press ahead with implementation at the current NUSF fund size¹⁷ – even though there is substantial evidence

¹¹ Comments of Quest Corporation d/b/a CenturyLink QC, United Telephone Company of the West d/b/a CenturyLink, and Level 3 Communications, LLC at 1-2 (filed Jan. 30, 2018) (“CenturyLink Comments”).

¹² *Id.* at 3.

¹³ Comments of the Nebraska Rural Independent Companies at 6-7 (filed Jan. 30, 2018) (“RIC Comments”).

¹⁴ *Id.*

¹⁵ See Direct Testimony of Don Price on Behalf of CTIA – The Wireless Association, App. No. NUSF-100/PI-193 (“NUSF-100”) (Mar. 24, 2017), at 16-18 (“Price Testimony”).

¹⁶ Comments of Windstream Nebraska, Inc. at 5 (filed Jan. 30, 2018) (“Windstream Comments”).

¹⁷ *Id.*

in this and the NUSF-100 docket that a great deal of additional work is required to appropriately size the NUSF.¹⁸

Taken as a whole, the initial comments in this proceeding demonstrate that the purpose of the fund, the size of the fund, and its surcharge design are complex issues. The Commission needs to develop an overarching strategic plan to address those issues while avoiding conflicts or discontinuity between the NUSF's many moving parts or violations of state or federal law. The Commission should reject calls to proceed with a contributions mechanism change before all of these issues have been considered both individually and in concert.

II. A PER-CONNECTION ASSESSMENT FOR THE NUSF CANNOT BE IMPLEMENTED IN A COMPETITIVELY NEUTRAL, EQUITABLE, AND NONDISCRIMINATORY FASHION AS REQUIRED BY LAW

CTIA pointed out in its comments that the Commission has not grappled with the significant problems that the shift to a connections-based mechanism would create given the Commission's statutory obligation to adopt a contribution mechanism that is competitively neutral, equitable, and nondiscriminatory.¹⁹ Among other things, CTIA pointed out the difficulty of making a connections-based mechanism proportional, in the way that revenue-based assessments inherently are.²⁰ Many of the other comments reinforced this concern.²¹ For example, ATSI observed that the Commission's proposal of using a one-hundred-line cap to prevent excessive surcharges on business customers would "not even provide a useful basis" for starting the discussion.²² Similarly, Securus alleges that it would escape contribution under a

¹⁸ See generally Price Testimony; see also CTIA Comments at 5.

¹⁹ CTIA Comments at 2-3.

²⁰ *Id.* at 6-7.

²¹ See, e.g., Comments by Association of Teleservices International, Inc. at 2-3 (filed Jan. 30, 2018) ("ATSI Comments").

²² *Id.*

connections-based methodology, and requested that the Commission either allow providers such as itself to continue to contribute based on revenues or make clear that the Commission intended Securus and similarly situated companies to escape contribution.²³ Cox also expressed concern about the seemingly intractable problem of designing a connections-based system that does not over-assess multiline businesses, particularly those using new technologies.²⁴ Charter raised related, important concerns about whether a connections-based mechanism is consistent with the FCC's limited reservation of state authority to assess interconnected VoIP services,²⁵ and observed that the Commission should not make a transition until these issues are resolved.²⁶

In their initial comments, the proponents of a per-connection assessment consistently failed to address these concerns.²⁷ CenturyLink did not acknowledge or attempt to meet these statutory requirements, instead arguing for a flat per-connection assessment on all connections in the state, regardless of capacity.²⁸ Frontier similarly proposed arbitrary amounts of \$1.50 per residential connection and \$2.00 per business connection without any discussion of how these amounts are equitable, competitively neutral, or non-discriminatory.²⁹ The RICs acknowledged that the per-connection approach would create inequity, discrimination, and competitive harm by omitting certain providers including interexchange carriers and others.³⁰ The RICs therefore advocate a "hybrid" mechanism that would continue to assess revenues-based charges on such

²³ Comments of Securus Technologies, Inc. at 1-2 (filed Jan. 29, 2018) ("Securus Comments").

²⁴ Comments of Cox Nebraska Telecom, LLC at 4-5 (filed Ja. 30, 2018) ("Cox Comments").

²⁵ Charter Comments at 4-5.

²⁶ *Id.* at 1-2.

²⁷ *See, e.g.*, RIC Comments at 7-8; Windstream Comments at 3-5.

²⁸ CenturyLink Comments at 2-4.

²⁹ Comments of Citizens Telecommunications Company of Nebraska, Inc. d/b/a Frontier Communications of Nebraska at 2-3 (filed Jan. 25, 2018) ("Frontier Comments").

³⁰ RIC Comments at 3-5.

providers.³¹ The RICs failed to explain, however, why it would not be superior simply to retain revenue-based assessments on all providers.³²

As CTIA has noted, the Commission's obligations to promote universal service do not supersede its statutory obligations to avoid relying on or burdening the federal fund, ensure the NUSF is not inconsistent with the federal program, and make the fund competitively neutral, equitable, and nondiscriminatory: all are equally required by law.³³ CTIA continues to caution the Commission that switching to a connections-based collection mechanism before the FCC does so is likely to result in a surcharge that impermissibly applies surcharges to interstate revenue.

Other issues, such as burdening or relying on the federal fund by applying surcharges to no-charge Lifeline connections, must be examined carefully lest violations of federal law arise. The Commission should therefore not proceed with implementing a connections-based mechanism until a plan to conform the NUSF to all statutory requirements and proscriptions has been established.

III. THE RECORD DOES NOT REVEAL ANY APPROPRIATE DATA SOURCES TO FORMULATE A PER-CONNECTION ASSESSMENT

Commenters highlighted issues with using the FCC's Form 477 data, as suggested by the Commission, to determine a per-connection assessment. For example, CenturyLink observed that Form 477 data often are not state-specific.³⁴ Separately, Cox described the use of Form 477 data as "problematic," noting that it could create "incredibly onerous and burdensome assessments on large business users" due to the Form's multiplication of connections for

³¹ *Id.*

³² *Id.*

³³ CTIA Comments at 6-7.

³⁴ CenturyLink Comments at 5.

business customers.³⁵ And although Charter believes Form 477 data could be used as a “simplified starting point,” it noted that the Commission will have to address important issues including the exclusion in such data of certain telecommunications providers including intrastate special access and wireless resellers.³⁶ On the other hand, Frontier advocated a new collection of connection numbers for this purpose,³⁷ but any new data collection represents a new burden on carriers operating in Nebraska. Additionally, CTIA cautions the Commission that regardless of the data used, the Commission’s application of surcharges must be consistent with the requirements of the Mobile Telecommunications Sourcing Act of 2000, 4 U.S.C. § 116-26.

The comments described above highlight the difficulties in moving to a connection-based approach: current data sources are insufficient and problematic, while new data collections would take time and resources to develop and implement, and run the risk of further unintended consequences if not designed correctly. A revenue-based assessment, on the other hand, has been used for years by carriers, is relatively easy to calculate, and would require no time or resources on the part of the Commission or carriers to maintain.

IV. IMPLEMENTING A PER-CONNECTION ASSESSMENT WOULD IMPOSE A SIGNIFICANT ADMINISTRATIVE BURDEN

Beyond the data collection issues, as CTIA and others have noted, the changes needed to implement a per-connection assessment would be considerable, including billing system modifications and training.³⁸ For example, as CenturyLink observed, a new connection-based assessment could take more than 6-12 months to implement and cost “hundreds of thousands of

³⁵ Cox Comments at 7.

³⁶ Charter Comments at 6-7, 12-14.

³⁷ Frontier Comments at 3-4.

³⁸ CTIA Comments at 8.

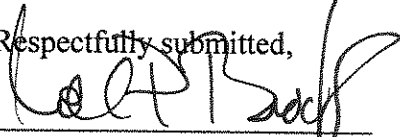
dollars.”³⁹ Charter observed that there will be unexpected consequences likely with the implementation and urges a two-year assessment window.⁴⁰ CTIA therefore again urges the Commission, if it insists on making this transition to a connection-based mechanism, to allow at least nine months for any transition and make the transition effective at the beginning of a fiscal quarter so as to minimize the disruption from what will still be an extensive and costly burden on carriers.

V. CONCLUSION

CTIA urges the Commission to consider the important issues raised by CTIA and other commenters as it considers NUSF reform.

Respectfully submitted,

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³⁹ CenturyLink Comments at 7.

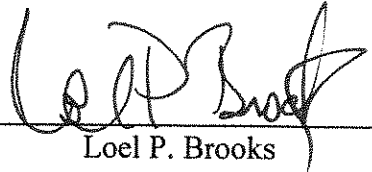
⁴⁰ Charter Comments at 15.

CERTIFICATE OF SERVICE

I certify that on the 23rd day of March 2018, one original, five copies and an electronic copy of the foregoing Reply Comments of CTIA – the Wireless Association, in Application No. NUSF-111/PI-211, were delivered to:

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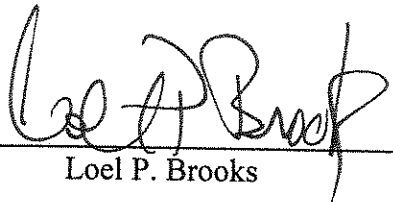
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