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**

REPLY COMMENTS BY
CHARTER FIBERLINK – NEBRASKA, LLC AND TIME WARNER CABLE INFORMATION SERVICES (NEBRASKA), LLC

In accordance with the Nebraska Public Service Commission's (the "Commission") *Opinion and Findings* dated February 23, 2018, Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (collectively, "Charter") take this opportunity to provide reply comments.

I. Introduction.

As the Commission seeks to address its NUSF concerns, certain realities have become more and more apparent. First, the business and consumer markets function differently, and therefore should be treated differently. In the discussion below, we recommend that the Commission move to a connections-based method only for residential wireline and wireless subscriptions, while retaining the revenue-based method (at existing levels) for business services.

Second, changing the contribution method has the potential to become a stalking horse (at least to some) for increasing the size of the fund. The Commission has steadfastly maintained that the size of the fund and the contribution methodology are separate issues and it should not only maintain this clear separation here but remove all opportunity for future confusion.

Finally, facts provide a critical baseline to the issues in this proceeding. The Commission should monitor all available data to determine trends and to better understand the causes (and therefore the potential solutions) to the decline in contributor revenues as it moves to implement the changes contemplated by this proceeding.

II. The Commission should address the business and consumer markets differently.

The parties' opening comments clearly demonstrate that assessing a connections-based charge on business customers will disrupt the business market. Securus, for example, pays on revenue, but it cannot pay based on connections because all of its "connections" are established on a call-by-call basis.[1] And Securus is not an outlier. As Charter has previously explained, many IP-based business services offered by cloud-based providers operate by creating temporary "call paths" using SIP protocols on Ethernet facilities that are otherwise dedicated to Internet service.[2]

ATSI identifies a more fundamental concern: "One of the essential characteristics of high capacity facilities is that their per-channel cost declines significantly as capacity is increased. Linear rate schemes such as an assessment per VGE [voice grade equivalent] or working telephone number do not recognize this characteristic at all, and therefore become more and more excessive as the capacity of the facility increases."[3] A connections-based regime imposes high charges on a business customers because such "connections" bear no relation to (i) the actual transport layer connectivity that is traditionally assessed (because a connection in a circuit switched world is the

[1] Securus Comments, at 2. Although not detailed by Securus, any effort to assess a connections-based methodology on a per-call basis would confront numerous issues; for instance, how the necessary information such as call detail records would be collected and validated.

[2] *See* Charter Response 4(b) at 11. Although we characterize these OTT cloud-based providers as establishing a temporary "call path," what is happening in an IP network is that these voice packets are assigned different protocols relating to priority and packet-loss more appropriate to the real-time requirements of voice service. In this way, the traditional voice experience can be emulated without creating a voice channel as with legacy technology.

[3] ATSI Comments, at 2.

transport layer circuit), and (ii) what the business customer is actually purchasing. Were the Commission to impose connection-based assessments in the business environment it could stifle innovation and efficiencies of modern technologies because the economic incentive would be to decrease the number of "connections" that could be effectively accomplished over a broadband connection in order to reduce the cost of providing service.

One of the proposed solutions to avoid the distortions that connections-based approach creates in business markets is to impose a cap on the number of per-connection fees that are assessed on a business customer. That way, the ability to count and assess fees are fixed, predicable, and transparent. The TRS statute, for example, imposes a connections-based assessment on business customers, but "the TRS assessment is limited to the first 100 lines per subscriber. Thus, a business customer whose provider is capable of efficiently providing 200 lines or its equivalent is not penalized for that efficiency because it would only be assessed on 100 of those lines, limiting the TRS cost to a reasonable amount."[4] In this case, though, certain parties oppose, or at least question, the use of such a cap.[5] Cox, for example, notes that a "hard cut-off will potentially result in a medium-sized business customer paying the same NUSF surcharge as a multi-thousand connection business,"[6] which, on its face, appears to raise fairness concerns. Cox also asserts that modern technology makes connections cheap, and even a cap will not prevent the "rate-shock" that business customers will experience under a connections-based system.[7]

Not only does a connections-based system create significant problems in the business market, there is no evidence that there is a problem to solve with respect to business revenues or

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[4] Frontier Comments, at 2 (referring to Neb. Rev. St. § 86-313(1)(a)(capping TRS surcharge)).

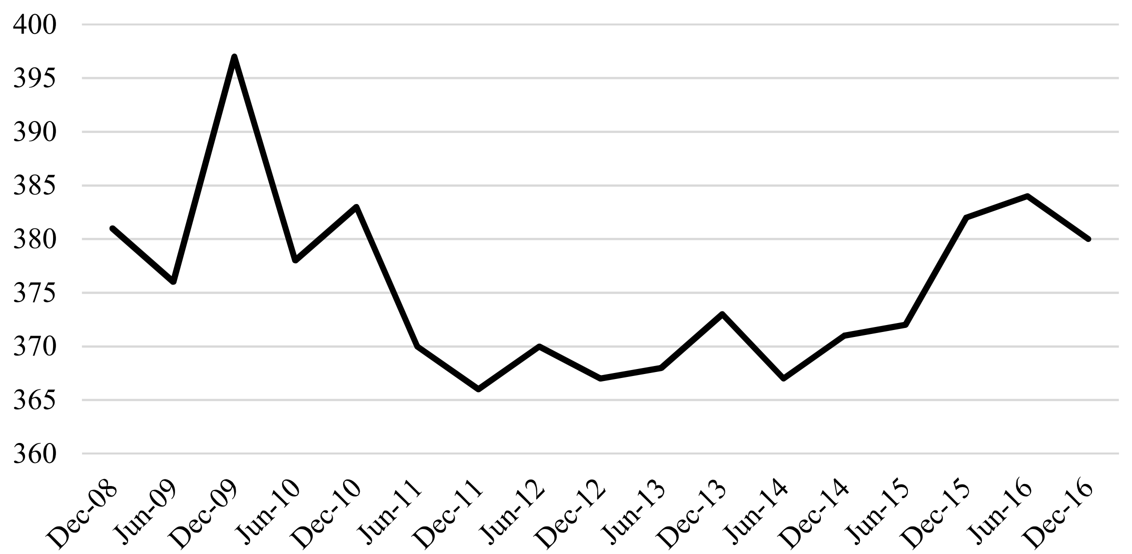
[5] RIC Comments, at 14-15.

[6] Cox Comments, at 4.

[7] *Id*.

that moving to a connections-based system will produce any benefit with respect to business services. Figure 1 depicts the number of business and government voice subscriptions (based on Form 477) in Nebraska over the last 8 years (the period over which this data is available).[8]

Figure 1 - Business and Government Voice Subscriptions (Nebraska - thousands)



In 2008, there were 381,000 voice subscriptions provided to business customers and government entities in Nebraska; in 2016, there were 380,000 such subscriptions. If the Commission had imposed a connections-based system on the business market during this period, it would have seen its collections swing up and down, but end where they started. A connections-based system is not a solution to any problem that has been demonstrated with regard to business and government revenues, particularly when the Commission considers the serious difficulties that would be caused by such a system with the wide variety of business customers, services and the technologies used to serve them. On the Cox example alone, we know that connections-based approaches in the business market could raise legitimate concerns over discriminatory and/or anti-

[8] *Voice Telephone Subscription Report, Nationwide and State-Level Data for 2008-Present*, Federal Communications Commission at www.fcc.gov/voice-telephone-services-report

competitive effects. Moreover, there is no evidence that business service revenues are falling or otherwise have contributed to the overall decline. To the contrary, the available evidence suggests that the decline in assessable revenue can be attributed primarily to wireless substitution in the residential market. For instance, the FCC estimates that in Nebraska, *over 86%* of the decline in intrastate end-user revenues between 2009 and 2014 (the most recent year for which the FCC has released data) is attributable to the declining intrastate revenues of wireless providers.[9] There is no empirical evidence of a significant decline in business revenues during this period.

Because business revenues are not likely part of the decline, moving business customers to a connections-based scheme imposes unnecessary cost and uncertainty in the market, lays the foundation for competitive distortion and therefore harms the Commission's ability to collect funds in the first place. Again, as Figure 1 illustrates, business connections over the past eight years have changed only by a trivial amount. In light of these obstacles, it is reasonable to turn to a solution that RIC first proposed in 2016[10] (and continues to promote a variant of today)[11]: Impose a connections-based system on residential customers and wireless subscriptions but retain the current revenues-based system for business customers. Although revenues are not a perfect mechanism, they are well understood and have significant advantages. As Charter has stated

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[9] *See* Universal Service Monitoring Reports, Prepared by Federal and State Staff for the Federal-State Joint Board on Universal Service. Specifically, Table 3 of Supplementary Material (Intrastate Telecommunications Revenue by Provider 2014), 2016 Monitoring Report Rel. Jan. 13, 2017 and Table 3 (Intrastate Telecommunications Revenue by Provider 2009) of Technical Appendices of Supplemental Material of the 2011 USF Monitoring Report, Rel. Dec 29, 2011, available at https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports. Note: Providers do not report end-user telecommunication revenue information on a state-by-state basis. Therefore, it is necessary to estimate revenues per state in order to derive contributions made per state. The methodology used by the FCC to estimate interstate and intrastate retail end-user revenues by state is provided in the technical appendices cited here.

[10] *See* Comments of the Rural Independent Companies in Response to Order Seeking Comment, NUSF-100, June 6, 2016 at 16.

[11] *See* RIC Comments, January 30, 2018 at 3-4.

before, revenues provide a common metric that all providers record, even though there is great diversity in business plans and technologies.[12] Likewise, other parties have pointed out that "a revenues-based approach inherently assures proportionality."[13]

In short, attempting to impose a connections-based method on business customers creates a host of difficulties – and there is no sound reason to impose greater complexity and higher costs on business services. For these reasons, Charter agrees with RIC on this point and recommends that the Commission maintain the current assessment of 6.95% of intrastate retail revenue for business services. The Commission can then implement its experiment with a connections-based mechanism, designed to produce the same revenue as today, for residential wireline connections and wireless subscriptions.[14]

III. Changes in the contribution rate-design should not be used to expand the fund.

Most of the commenting parties agree that the Commission should not use the rate-design process to increase the size of the fund. Although there is some disagreement as to whether setting a budget for the fund should take place before or after the task of designing a rate is accomplished, the only party that advocates changing the size of the fund is RIC. RIC, whose members expect to receive a significant portion of the fund, predictably advocates for increasing the fund to $60 million.

Besides being self-serving, RIC's suggestion is not consistent with the goals of this docket. The problem this docket is meant to solve is to address declining fund *revenues*. The Commission has determined elsewhere that its goal is to *stabilize* the fund against further declines. NUSF rates

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[12] *See* Pre-filed Reply Testimony of Joseph Gillan, at 5.

[13] *See* CTIA Comments, at 6.

[14] Although there are certainly wireless services purchased by business customers, wireless is inherently a service for the *individual* and, as a result, is most similar to other consumer connections.

should be designed with that goal in mind. Whether the fund should be expanded to take on new initiatives is a separate issue altogether and deserves its own proceeding.

Various rate levels have been suggested by the parties to this proceeding, including Charter, that calculated a steady-state contribution rate (which does *not* reflect the business approach recommended above) of $1.00 per month per voice subscription. The table below is intended to assist the Commission in understanding why these rates differ. It should be noted that Charter and Windstream started with a fund size and calculated rates, while RIC started with rates and then calculated the fund size its rates would produce.

Table 1: Comparing Estimated Contribution Rates

Component	Charter	Windstream	RIC
Size of Fund	$32.0 million	$44.0 million	$60.1 million
Basis for Fund Size	Estimate of NUSF 2017 Contributions[15]	NUSF 2016 Disbursements	Based on recommended rates.[16]
Connections Measure	Form 477 Voice Subscriptions		
Vintage	June 2016	2015	June 2016
Estimate Rate/month	$1.00	$1.44	$1.76 Residential $2.64 Business

IV. The Commission should continue to collect the appropriate data.

This docket arises from a decline in assessable revenue. The decline is largely the result of factors in the wireless market that may moderate.[17] At the interstate level, we are in fact seeing that the decline in assessable revenues has slowed.[18] (See Figure 2 below.)

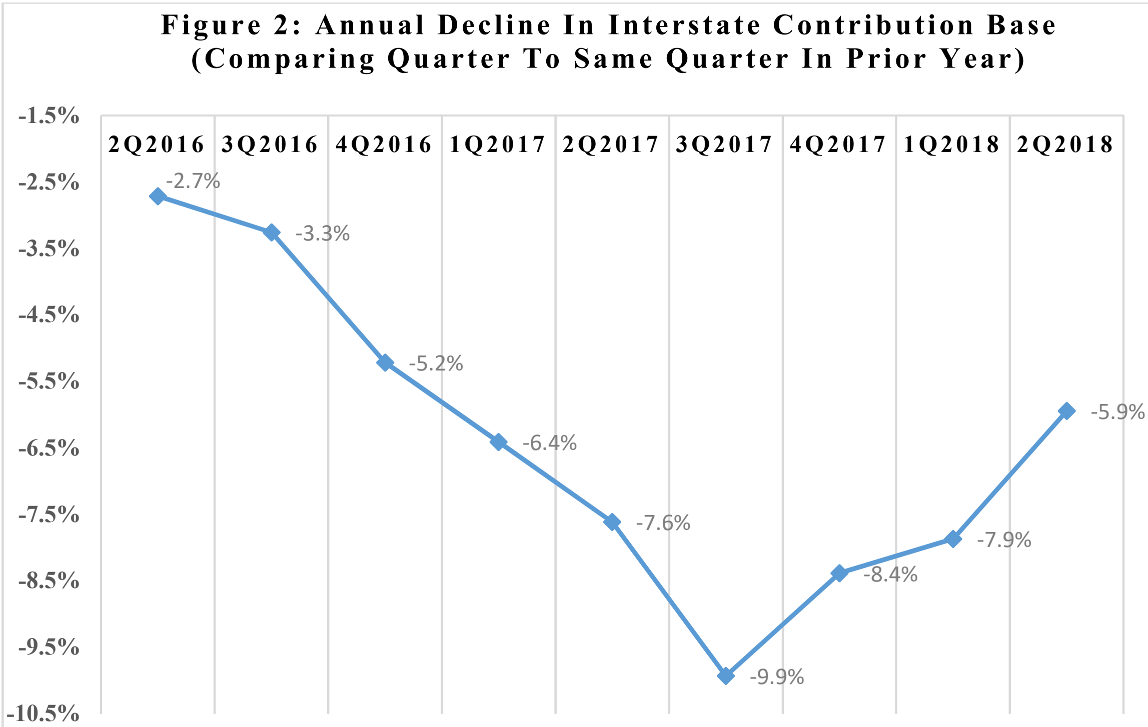
[15] Assumes collections in the 4thQ 2017 reflect same decline.

[16] RIC proposed rates that are similar, but higher than, the actual contribution per line that its customers pay today, which is $1.70 per month residential and $2.32 per month business.

[17] *See* Charter Post-Hearing Comments, NUSF-100, at 2:

> "[T]he evidence suggests that the decline [in revenues] will moderate. AT&T and Sprint were the last major wireless carriers to unbundle the device (at the beginning of 2016), suggesting that the impact from this market change will largely conclude by the end of 2017. Smartphone penetration is estimated at 80% and slowing, further suggesting that the decline in wireless revenues will likely moderate in 2018.

[18] Source: Billy Jack Gregg, Universal Consulting, Summary of USAC Quarterly filings with the FCC, March 2, 2018.



Charter recommends that the Commission employ a data-driven approach to determining whether, in fact, there is an actual overall decline in collection or, as the data shows, whether in fact, there has been a shift in business conditions that is levelling out and expected to remain stable. For instance, the Commission should make aggregate contributor revenue available for analysis, split into categories (if available) of business and residential, and wireline and wireless.

V. Conclusion

In the end, the Commission should monitor all available data to determine trends and to better understand the causes of (and therefore better understand potential solutions to) the decline in contributor revenues. For the reasons discussed above, Charter recommends that the Commission move to a connections-based method only for residential wireline and wireless subscriptions, while retaining the revenue-based method (at existing levels) for business services.

Respectfully submitted this 23rd day of March, 2018.

*<u>/s/ Russell A. Westerhold #22498</u>*________________

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