

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 OF WINDSTREAM

Windstream Nebraska, Inc., together with its affiliates (“Windstream”),¹ hereby respectfully files these reply comments as permitted by the Order issued by the Nebraska Public Service Commission (“Commission”) on February 23, 2018, as amended by the Order Extending Reply Comment Deadline issued on March 9, 2018, and states as follows:

I. Introduction

Nearly five months ago, the Commission unequivocally adopted a connections-based methodology to provide a stable source of revenue for the Nebraska Universal Service Fund (“NUSF”).² This decision was made in response to an urgent need to stop the erosion of fund revenue, which has declined by millions of dollars annually and is expected to continue to decline by another \$8 million in 2018 alone.³ Thereafter, the

¹ McLeodUSA Telecommunications Services, LLC, PAETEC Communications, Inc., Windstream Communications, Inc., Windstream IT-Comm, LLC, Windstream KDL, Inc., Windstream Norlight, Inc., Windstream NTI, Inc., Windstream of the Midwest, Inc., Windstream Systems of the Midwest, Inc., Business Telecom, LLC, DeltaCom, LLC, and EarthLink Business, LLC.

² See *In re the Nebraska Public Service Commission, on its own Motion, to Consider Revisions to the Universal Service Fund Contribution Methodology*, NUSF-100, PI-193, Order (Oct. 31, 2017) (“NUSF-100 Order”) at 28.

³ See NUSF-100 Order at 26.

Commission opened this docket, as the style of the case indicates, to determine a rate design and address implementation issues with a connections-based contribution mechanism.⁴ The purpose of this docket is neither to revisit the merits of a contribution-based methodology nor to put up roadblocks against its implementation. Nonetheless, some commenters who are dissatisfied with the Commission's decision are using this docket to do just that. Others criticize proposed rate design solutions without offering detailed alternatives, thereby failing to advance the purposes of this docket.

As stated in Windstream's Initial Comments, Windstream supports a uniform, per-connection charge and a cap on assessable lines similar to the mechanism currently used to calculate the state's Telecommunications Relay System ("TRS") surcharge.⁵ No party has suggested a viable alternative. Given the vital need to stabilize the fund, the Commission should adopt Windstream's proposal without delay.

II. Windstream's Response to Party Comments

A. Rate Design and Implementation Should Move Forward Expeditiously Based on the Existing NUSF Budget.

Perhaps the biggest potential roadblock to implementation of a connections-based surcharge would be to postpone implementation until after a "comprehensive strategic plan" or restructuring of the NUSF is completed. CTIA, which opposed a connections-based surcharge in the NUSF-100 docket, seeks to delay resolution of this docket by asserting that the size and design of the NUSF program must be resolved before moving

⁴ See Order Opening Docket and Seeking Comment (Dec. 15, 2017) ("Order Opening Docket") at 1; NUSF-100 Order at 31.

⁵ See Initial Comments of Windstream (Jan. 30, 2018) ("Windstream's Initial Comments"). Windstream's Initial Comments are incorporated herein by reference.

to rate design and implementation issues.⁶ Windstream disagrees. The size and design of the program are important issues, but they are not as pressing as the need to stabilize the fund. The program is already sized and designed and, most importantly, operational—at least until it implodes under the current, inadequate revenue-based surcharge mechanism. Stabilizing the funding first will in fact aid the Commission’s subsequent development of a strategic plan, since it will provide greater certainty of funding into the future to better understand the specific impact on consumers of potential changes in the fund size.⁷

Moreover, the issues associated with a new strategic plan are numerous, controversial, and unlikely to be resolved quickly. Among the issues are those listed by CenturyLink: whether the broadband program should be limited to rural areas; whether it should continue to support both wireline and wireless technologies; whether it should help offset the costs of operating and maintaining networks in rural areas; and whether the Commission should continue other programs such as telehealth, low-income, etc., and at what levels.⁸ Cox would add the quantification of federal support received by carriers and consideration of local rate increases.⁹

⁶ See Comments of CTIA in Response to Order Opening Docket and Seeking Comment (Jan. 30, 2018) (“CTIA Comments”) at 1.

⁷ Charter agrees that the Commission should “gain experience” with a connections-based system before making any major changes to the fund. See Comments by Charter FiberLink—Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (Jan. 30, 2018) (“Charter Comments”) at 3.

⁸ See Comments of Qwest Corporation d/b/a CenturyLink, United Telephone company of the West d/b/a CenturyLink and Level 3 Communications, LLC (Jan. 30, 2018) (“CenturyLink Comments”) at 3.

⁹ See Comments of Cox Nebraska Telcom, LLC (Jan. 30, 2018) (“Cox Comments”) at 5.

The parties' already-stated positions on the fund size alone illustrate the controversial nature of these issues. For example, RIC wants to the fund to grow to \$60 million¹⁰ while CTIA wants to minimize the fund.¹¹ Charter states that rate design should support current funding levels¹² but it bases its "current" number (\$32 million) on the declining funding level projection¹³ instead of the current budget. By comparison, Windstream based its analysis on the \$43,934,096 funding level for 2016.¹⁴

These issues could take years to resolve. Meanwhile, the NUSF surcharge revenues continue to decline and the viability of the fund is at risk. It is therefore critical that the Commission move forward with the implementation of a connections-based mechanism to stabilize the fund before the Commission attempts to address broader program issues. Once the connections-based surcharge is implemented, the Commission can focus on the other issues, and the amount of the surcharge can then be adjusted to meet the budget associated with any revised plan.

B. A Cap on Assessable Connections is Needed to Mitigate the Impact of a Connections-Based Surcharge on Multi-Line Business Customers.

Many parties express concern about the potentially excessive burden that a connections-based surcharge may place on businesses with multiple connections. In the

¹⁰ See Comments of the Rural Independent Companies in Response to Order Opening Docket and Seeking Comments (Jan. 30, 2018) ("RIC Comments") at 7, 12.

¹¹ See CTIA Comments at 5.

¹² See Comments by Charter FiberLink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (Jan. 30, 2018) ("Charter Comments") at 3.

¹³ See *id.* at 6.

¹⁴ See Windstream's Initial Comments at 7. This sum was included in the spreadsheet Staff provided in support of its NUSF-100 testimony.

case of Cox, this concern is related to the potential fund size, and therefore Cox prefers that the size of the fund be determined before implementing a cap.¹⁵

Windstream has also expressed concern about the impact on business even at current NUSF funding levels, and therefore Windstream urges the Commission to implement a cap on assessable connections at the same time the connections-based surcharge is implemented.

However, ATSI flatly rejects this type of cap because it allegedly does not recognize and compensate for the economic efficiencies of high-capacity facilities.¹⁶ ATSI apparently wants a non-uniform surcharge but does not offer any details regarding such an alternative and does not provide any data in response to the Commission's request. This is unfortunate. Whatever the potential merits of a "non-linear" solution for business customers, no proposal is on the table. With NUSF support continuing to erode, the Commission must adopt the best *available* solution, which Windstream submits is a cap on the number of connections.

Cox states that a cap with a "hard cut-off" will potentially result in medium-sized businesses being charged the same as "multi-thousand" connection customer such as a call center.¹⁷ This is a policy outcome that Windstream is willing to accept. Windstream is unaware of how many "multi-thousand" connection customers there are in Nebraska, but in any event, Windstream wishes there were more. In this regard, a 100-connection cap could be favorable from an economic development standpoint. In addition, a 100-

¹⁵ See Cox Comments at 5.

¹⁶ See Association of Teleservices International Inc. Response to Request for Information ("ATSI Comments") (Jan. 30, 2018) at 2.

¹⁷ See Cox Comments at 4.

connection cap would ease the burden on governmental entities, which in turn, could reduce the tax burden on citizens.

On the other end of the spectrum, RIC claims that a connections-based surcharge would not materially increase the amount of the surcharge paid by its members' business and government customers, and therefore it is premature suggest a cap.¹⁸ This conclusion is based on an average derived from customer data aggregated at the association level.¹⁹ Windstream submits that averaging the data, even at only the carrier level, obscures the impact on individual multi-line businesses because these businesses vary greatly in the types of services and number of connections they purchase. This is why Windstream submitted specific customer examples in its Initial Comments. Perhaps RIC members do not have many customers with access lines exceeding the 100-connection threshold of the proposed cap, but other carriers do. As demonstrated in Windstream's Initial Comments, Windstream analyzed surcharge results for certain business customers both with and without a cap on the assessable connections and provided confidential examples in its Initial Comments. Windstream's data clearly demonstrate the need for the cap that Windstream supports.

RIC also considers a cap to be impractical because it claims there is no publicly-available data that could verify the type of entity that would qualify for the cap as well as the number of capped connections.²⁰ RIC's concern about qualifying entities is misplaced. A cap has been discussed in the context of businesses and governmental

¹⁸ See Comments of the Rural Independent Companies in Response to Order Opening Docket and Seeking Comment (Jan. 30, 2018) ("RIC Comments") at 14-15.

¹⁹ See RIC Comments at 16.

²⁰ See *id.* at 15.

entities because these are the kinds of customers that have multiple access lines. While there may be policy reasons for specifically mitigating the impact of the surcharge on businesses and governmental entities, such as promoting economic development and minimizing taxes, the proposal to cap assessable connections is not and need not be limited to any particular type of customer. In addition, RIC's concern about verification of connection counts is unfounded. This data should be provided by the carriers as discussed in Section C. below. No outside data source is necessary for verification due to the Commission's audit authority under Section 86-324(2)(d).

In summary, a cap on assessable connections is needed to mitigate the impact of a connections-based surcharge on multi-line customers. A cap similar to the TRS cap would be relatively easy to implement and is the best available option.

C. The Commission Should Seek Precise and Current Data from Carriers

The Commission requires precise and current connections data in order to set an appropriate per-connection charge and cap. Although the Order Opening Docket sought connections-based data, the Commission did not receive much useful data in response. In order to obtain the data the Commission needs, it must issue a bench request to all contributing carriers, not just participants in this docket. In addition, the request must facilitate accurate responses. To accomplish this, the Commission should include a matrix of various provisioning types of connections with room to populate counts as of a specified, recent date, as previously suggested by Windstream.²¹ Once the surcharge

²¹ See Windstream's Initial Comments at 3-4.

is implemented, updated information could be provided in an annual report, as suggested by CenturyLink.²²

D. The Viability of a Contribution Mechanism is Not Dependent on a Carrier's Inability to, or Choice Not to, Pass It Through to Customers.

Securus, who did not participate in the NUSF-100 proceeding, claims that it would be unable to “determine or charge” a connections-based surcharge because the connections used for inmate calls are neither subscribed by the inmates nor the parties receiving calls from inmates, explaining that it charges for its services on a per-call basis.²³ However, this does not mean that Securus can't be assessed the surcharge based on the connections, if any, it provides to correctional facilities to enable voice calls.²⁴ If Securus wants to recover the cost of such assessment from its customers, it can seek permission from the Commission to factor the cost into its rates. There is no regulatory requirement to pass through the surcharge as an add-on to service charges. Notably, Charter uses “all in one pricing,” meaning that it does not separately assess a surcharge for NUSF.²⁵

III. Summary

For the reasons stated above, Windstream urges the Commission to proceed expeditiously with the design and implementation of a connection-based NUSF surcharge. The surcharge should be a uniform, capped, per-connection mechanism

²² See CenturyLink Comments at 6.

²³ See Comments of Securus Technologies, Inc. (Jan. 30, 2018) (“Securus Comments”) at 1-2.

²⁴ It is unclear what connections from the Securus Comments what connections Securus provides.

²⁵ See Charter Comments at 13. Incidentally, despite Charter's assertion to the contrary, this does not mean that its customers do not bear the cost of the surcharge.

similar to the TRS surcharge in an amount sufficient to meet the current NUSF budget. In addition, the Commission should provide an implementation period of at least three to nine months, depending on the nature of the mechanism. Nothing contained in the latest round of comments should impede the Commission from taking this critical action as soon as possible.

Respectfully submitted,

s/ Blake E. Johnson

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Certificate of Service

The undersigned hereby certifies that on this 23rd day of March, 2018, five (5) paper copies of the foregoing Reply Comments of Windstream were hand-delivered to the Nebraska Public Service Commission at 1200 N St. #300, Lincoln, NE 68508 and an electronic copy was emailed to the following:

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