

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public)	
Service Commission, on its own motion, to)	Application No. NUSF-119/PI-233
consider revisions to the contribution)	
methodology and determine a rate design)	
for services currently subject to a)	COMMENTS
revenues-based surcharge.)	
)	
)	

INTRODUCTION

The Rural Telecommunications Coalition of Nebraska (“**RTCN**”),¹ by and through its attorneys of record, submits these *Comments* (“**Comments**”) pursuant to the *Order Opening Docket and Seeking Comment*, entered by the Public Service Commission (“**Commission**”) on June 30, 2020.

The Commission began its endeavor to reform the mechanism by which contributions are made into the Nebraska Telecommunications Universal Service Fund (“**NUSF**” or “**Fund**”) almost six years ago by an order opening the NUSF-100/PI-193 investigatory docket and seeking comments.² The mechanism had not been adjusted since first established in 1999. The investigation was undertaken to address a steadily declining level of contributions that jeopardized the Fund and the ability of carriers not only to deploy infrastructure, but also operate fiber-based systems they had previously deployed. As the Commission noted at the time, remittance levels had been declining at a rate of more than two percent annually

¹ For purposes of this proceeding, the RTCN is made up of the following carriers: Benkelman Telephone Company, Inc., Cambridge Telephone Company, Cozad Telephone Company, Diller Telephone Company, Glenwood Network Services, Inc., The Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Hemingford Cooperative Telephone Co., Hooper Telephone Company, Mainstay Communications, Pierce Telephone Company, Plainview Telephone Company, Southeast Nebraska Communications, Inc., Stanton Telecom, Inc., and Wauneta Telephone Company.

² In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Consider Revisions to the Universal Service Fund Contribution Methodology, DOC. NO. NUSF-100/PI-193, *Order Opening Docket and Seeking Comment* (Nov. 13, 2014).

since 2009.³ Following that trend, Fund levels proceeded to plummet an additional 18.5 percent over the three years that the Commission conducted the investigation NUSF-100.⁴ As the Commission noted throughout the proceeding, “the current revenues-based contribution mechanism is not sustainable.”⁵ The Commission said, “Without reform, our efforts to preserve and advance the deployment of affordable and reasonably comparable access to communications services as required by the NUSF Act cannot succeed.”⁶

In its October 31, 2017, Order bringing the NUSF-100 docket to a close, the Commission adopted a connections-based mechanism, but put off the particulars of designing the connections-based assessment rate, stating its intention “to open a separate proceeding to study the issue of rate design.”⁷ On December 19, 2017, the Commission initiated its investigation into rate design.⁸ After receiving two sets of comments, a hearing, and another round of comments, the Commission adopted a connections-based surcharge of \$1.75 on residential wireline, wireless, and interconnected VoIP services, deciding to hold off on changing the mechanism for business, government, toll, and other service until further study could be undertaken.⁹ In making this decision, the Commission wrote:

“In our judgment, phasing in the connections-based contribution mechanism will allow the Commission to carefully evaluate business service revenues and determine the appropriate way to

³ *Id.* at p. 2.

⁴ In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Consider Revisions to the Universal Service Fund Contribution Methodology, DOC. NO. NUSF-100/PI-193, *Order* (Oct. 31, 2017), at p. 26.

⁵ *Id.* at p. 27.

⁶ *Id.*

⁷ *Id.* at 30-31

⁸ 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, DOC. NO. NUSF-111/PI-211, *Order Opening Docket and Seeking Comment* (Dec. 19, 2017).

⁹ 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, DOC. NO. NUSF-111/PI-211, *Order* (Aug. 7, 2018) (“*NUSF-111 Order*”, at pp. 24-28.

account for business services while stabilizing contributions for the residential market.”¹⁰

The Commission determined it would be appropriate to collect data for at least one year before returning to the issue of what contribution methodology to apply to business services.¹¹

The connections-based surcharge on residential services was implemented on April 1, 2019.¹² The Commission’s objective in moving to the new methodology was to put an end to the steadily *precipitous* decline and stabilize the Fund.¹³ The Commission’s reform of the residential line surcharge has proven to be an effective step toward accomplishing the Commission’s objective.

During the five quarters *prior* to implementation, NUSF remittances averaged \$2,761,818.51 quarterly.¹⁴ In the five quarters *following* implementation, the average has been more than \$1 million higher per quarter. Extrapolating from the average of the past four quarters of reported remittances results in remittances of over \$47 million annually. The Commission had targeted an annual remittance range between \$46 million and \$54 million.¹⁵ Its reform of the residential surcharge has put it just above the bottom end of the target range. The Commission’s reform to date undeniably has helped begin to stabilize the Fund. The RTCN applauds the Commission’s success, which is critical to ensuring the availability of reliable communications at affordable rates throughout the state.¹⁶

¹⁰ *Id.* at p. 25.

¹¹ *Id.* at p. 25-26.

¹² 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, DOC. NO. NUSF-111/PI-211, Procedural Order (Nov. 27, 2018).

¹³ NUSF-111 Order, at p. 24.

¹⁴ Commission’s Quarterly Remittance and Fund Balance Report.

¹⁵ NUSF-111 Order, at p. 26.

¹⁶ See NEB. REV. STAT. § 86-323.

On June 30, 2020, the Commission began its final phase of contribution reform.¹⁷ After two years of collecting data, the Commission has commenced its inquiry as to whether it will extend a connections-based surcharge to business and government services, as well as other services now subject to a revenues-based surcharge.¹⁸ The Commission has recommended little in the way of a proposal, but has posited a number of issues for comment.

Before addressing the issues presented by the Commission, the RTCN would reiterate its gratitude for the Commission undertaking this reform. The Commission established the target level for annual remittances between \$46 million and \$54 million in the *NUSF-111 Order*, stating that “given the recent Legislative emphasis on rural broadband deployment, we find this range to be a fair and reasonable starting point.”¹⁹ The public need for broadband is no less than it was two years ago. In fact, the COVID-19 pandemic has added dramatic emphasis to that need, as demonstrated by the public’s interest in the CARES Act broadband program recently administered by the Nebraska Department of Economic Development.

While the RTCN continues to applaud the Commission’s work, it believes the pace of reform must be accelerated. Much of rural Nebraska remains unserved or underserved. Present remittance levels will come nowhere close to providing sufficient deployment support while also providing ongoing support critical to operating and maintaining existing infrastructure.²⁰ While the RTCN is not saying the Fund size should be increased to levels to complete statewide deployment of fiber as soon as it is needed, it is critical that the Commission continue to make the progress toward ensuring that all rural Nebraskans have

¹⁷ In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Consider Revisions to the Universal Service Fund Contribution Methodology and Determine a Rate Design for Services Currently Subject to a Revenues-Based Surcharge, DOC. NO. NUSF-119/PI-2333, *Order Opening Docket and Seeking Comment* (June 30, 2020).

¹⁸ *Id.* at p. 1.

¹⁹ *NUSF-111 August 2018 Order*, at p. 26.

²⁰ See *Email from Gary Warren to the Nebraska Information Technology Commission*, re NITC: Broadband Updates and attachments (Aug. 4, 2020).

access to services comparable to those provided in urban areas at comparable rates.²¹ In addressing the issues framed by the Commission, the RTCN not only has Fund stability in mind, but also recommends the Commission establish a methodology that ensures fairness between residential and non-residential customers, simplicity in administration, and predictability for both carriers and consumers.

COMMENTS ON ISSUES

A. Whether to Adopt a Connections-Based Mechanism for Business and Government Lines Currently Subject to the Revenues-Based Mechanism.

- i. We first seek comment on whether the Commission should adopt and implement a connections-based contribution framework for business and government service. If answering in the affirmative, please explain the rationale. Interested parties are also invited to file proposed rate design models for the Commission's consideration.**

The RTCN supports prompt implementation of a connections-based contribution mechanism for business services. A review of the record of NUSF-100, its appeal, as well as NUSF-111 shows consensus eventually resulting in this fundamental issue. Notably, a call-center advocacy group, after mentioning it preferred the revenue-bases surcharge, immediately acknowledged a properly structured connections-based assessment is its “second choice.”²² Its rationale would serve as excellent rationale upon which the Commission could decide to adopt a connection-based surcharge on business and government lines:

“The principal virtue of a properly structured connections methodology is that, similar to a revenues-based methodology, assessing the amount of network capacity subscribe to by users

²¹ See NEB. REV. STAT. § 86-323.

²² In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Consider Revisions to the Universal Service Fund Contribution Methodology, DOC. NO. NUSF-100/PI-193, *Association of Teleservices International, Inc., Response to Order Opening Docket and Seeking Comments* (February 13, 2015), at p. 26.

does at least bear a rough correlation to the value of service provided to users and to the usage of the network by users, while eliminating the need to parse the exact nature of the services (telecom or information) being provided to the users. Employing such a methodology thus should be good and permanent fix to the problem of an eroding NUSF contribution base due to the increasing shift by the public to what are now classified as non-telecommunications or information services under current rules.”²³

At this time, the RTCN declines to submit a proposed rate design model. The principles upon which the Commission based rate design for the residential connections-based surcharge remain sound. Those principles will ensure a fair and equitable rate design and protect the interests of business customers as much as any other stakeholder. A complicated model would suit no one’s interests, certainly not the rural public. Rather than taking the time and expending the resource to engage in sophisticated study, the Commission should adopt a connection-based assessment at a level that achieves the sound principles established long ago. Later comments will further explain the RTCN’s position.

- ii. **If interested parties are of the opinion that the Commission should keep business and government service on the existing revenues-based contribution mechanism we invite those commenters to explain the justification for maintaining the current revenues-based mechanism for those services.**

The Commission should not continue to assess business and government services based on revenues.

- iii. **If the Commission were to adopt a connections-based contribution framework for business and government services, the Commission seeks comment on how the term “connection” should be defined?**

²³ *Id.*

Should the Commission utilize the same definition it adopted in NUSF-111 relative to residential connections? If not, why not?

The RTCN is not opposed to utilizing the same definitions that were adopted before. They have been sufficiently debated. There was remarkably little public complaint about the change in residential surcharge when it first appeared on customer invoices, and there has been little since. That said, the RTCN acknowledges that business users are different, and more diverse in their needs. The RTCN would give a respectable degree of deference to business customers in defining critical terms.

B. Whether the Relative Contribution Percentages between Residential Versus Business Services Should be Considered and Adjusted.

- i. **Currently, residential-based contributions make up roughly 70 percent of the total NUSF remittances and business remittances make up roughly 30 percent of the total NUSF remittances. Historically, remittances were estimated to be approximately 60 percent residential and 40 percent business. Should the contribution mechanism be structured so that the remittance percentage is more equitably divided between residential and business services? Why or why not?**

Under the current paradigm, remittance obligations are out of balance. Residential consumers are paying more than their share of the cost of building, operating, and maintaining communications infrastructure in rural areas of the state. In other words, urban residential ratepayers are paying enough right now. The business community should be paying more. How much more remains to be addressed, but the RTCN firmly believes that businesses operating in Nebraska – both in small towns and urban centers – understand the importance of connectivity. Driven primarily by the lingering pandemic, large Omaha businesses are looking to move more jobs out of headquarters and are considering partnerships with rural communities. Without connectivity, they will be unable to hire rural Nebraskans. The RTCN believes the businesses in Nebraska will agree to pay their fair share of the cost of broadband infrastructure.

This is not to say that businesses should pay the total remaining funding gap in building the network. But the RTCN believes creative partnerships will soon be formed to help fund the gap.

- ii. **Another key question is how the Commission should approach the relative distribution of the contribution burden between multi-line business and enterprise users versus single line business and residential users, as well as among different types of enterprise users and consumers. Should there be an increased connections-based assessment relative to business lines which takes into account capacity or usage? Is a 60/40 split a fair distribution of the contribution burden in light of actual usage value of the network? Are there modifications that could be made to a connections-based methodology to make the level of assessment more fair to residential or low-volume users compared to multi-line business or enterprise customers? How should the Commission measure this? Is there publicly available data the Commission should use? If so, how often should this data be re-evaluated?**

This is an important question. The RTCN believes enterprise and other users of many connections are best-positioned to render helpful ideas for designing a surcharge that applies to services they use to ensure that they are contributing a share that is fair and equitable, considering all principles of the Commission's policy. The RTCN encourages the Commission to actively solicit the opinions and ideas of Nebraska's business community on this question. The RTCN will weigh in once those ideas are before the Commission.

- iii. **Should there be a separate per connection surcharge amount for residential versus business service? Should they be set at the same amount?**

Without a specific number in mind, the RTCN expects that the connections surcharge on business users will need to be higher than \$1.75 to achieve an equitable balance between residential and business ratepayers' obligations to sustain the system called for under the NUSF Act. The Act clearly calls for broadband services in rural areas that are comparable to services in urban areas at comparable rates. Twenty-three years ago, the Legislature declared a number of policies it believed critical to the state. Those policy objectives remain

unachieved in too many areas of the state. The public patience is understandably waning, and swift action is needed to address these policy shortfalls.

Through NUSF-100 and NUSF-111 reform, the Commission has hit near the bottom of its target range. It is time for the Commission to aim for the top. The connections surcharge on businesses should be sufficient to raise Fund remittances to at least the top target level established by the Commission two years ago, which was \$54 million.²⁴ As the Commission noted in its NUSF-111 Order, historic remittance levels, according to the record, “averaged \$56.6 million before we began experiencing the precipitous decline in our remittances.”²⁵

In short, the connections surcharge should be established so that it at least produces annual total remittances at a level of \$54 million. The RTCN stops short of recommending the Commission consider adjusting the Fund size in this proceeding. The RTCN is simply asking the Commission to return the Fund to an average level realized before changes in various practices, including billing and use, set the Fund on its downward spiral.

- iv. In NUSF-100, for example, CenturyLink stated “scaling the assessment on each connection or number in a way that equitably reflects the end user’s burden on the network can be more complex than under a revenues-based approach.” To overcome this challenge CenturyLink suggested the Commission may have to define classes of connections based upon factors.²⁶ The Commission proposed devising a mechanism to allocate contribution obligations for business and residential related to the burden on the network or the value of the connection. Should that approach be considered relative to multi-line business connections? Why or why not? If so, what data is available to support such an approach?**

See response to Issue B(ii) above.

- v. Should the Commission as an alternative to revising the contribution mechanism for business and government services consider raising the surcharge percentage to increase the amount of contributions**

²⁴ NUSF-111 Order, at p. 26.

²⁵ *Id.*

compared to residential contributions and to meet the fund demand?
Please explain.

No. The Commission should move to a connections-based methodology.

C. How to Account for the Wide Variations in Business and Government Service Offerings.

- i. Based on the data collected thus far, we know there is a wide variation among business service offerings. Should the Commission structure connections-based remittance tiers which would vary based upon the type of offering? If so, how should the Commission account for the varying business sizes and diverse product offerings?

See response to Issue B(ii) above.

- ii. Should the Commission adopt pure connections approach where the type of offering is not relevant?

See response to Issue B(ii) above.

- iii. Based on how the services and packages offered by carriers are structured for business customers, some businesses may contribute a significant amount of revenue for a small number of connections. A shift to a connections-based surcharge for business service may result in some business users paying less in NUSF remittances than they do currently while others may be remitting a larger amount. It is apparent from the data collected that there are wide variances of business service products and offerings. Take, for example, a scenario where a carrier remits \$40,000 monthly for approximately 200 connections. Alternatively, certain businesses or government entities could have several thousand connections but would be remitting more than what they otherwise would using a flat “per unit” charge. Moving to a pure connections-based contribution mechanism may benefit some business users and disadvantage others. Should the Commission take this into account? Should the Commission consider the value of the service or the capacity of the connection? How should the Commission account for the differences in the way that providers package and provide services to business customers?

See response to Issue B(ii) above.

- iv. Should the Commission consider a tiered approach based on the type of service where higher capacity would be assessed at a higher level?

See response to Issue B(ii) above.

- v. Should residential and single-line businesses be assessed at one flat rate? Should multi-line business customers be assessed at a higher rate?

See response to Issue B(ii) above.

D. Whether to Make any Exceptions to the Contribution Requirement for Customers Tied to Long-Term Contracts or for Services Supported by Federal E-Rate Programs.

- i. In addition, the Commission seeks comment on how it should address long-term contracts for services which may be more common for business and government services. For example, services provided through the E-Rate program for schools and libraries are often subject to a four-year agreement term. A change in the contribution mechanism could impact the surcharge obligations under those agreements and have a significant impact on those customers. How should the Commission address these situations?

This, like those the Commission has asked about business ratepayers, is an important question. The RTCN believes educational leaders and library directors are best-positioned to render helpful ideas for designing a surcharge that applies to services they use to ensure that they are contributing a share that is fair and equitable, considering all principles of the Commission's policy. The RTCN encourages the Commission to actively solicit the opinions and ideas of the education and library communities. The RTCN will weigh in once those ideas are before the Commission.

E. Whether to Adopt a Cap on the Number of Connections Carriers Are Required to Contribute for on a Per-Entity Basis.

- i. In our NUSF-111 proceeding, there was some discussion about implementing a cap on the number of connections counted for contribution purposes. In the telecommunications relay service (TRS) program, the surcharge is capped at 100 access lines. Should the Commission consider a cap for NUSF contribution purposes? If so, at what level? If not, please explain. Should the Commission consider a cap on the number of business connections for each entity?

See response to Issue B(ii) above.

F. Whether to Modify the Contribution Mechanism as it Relates to Private Line and Toll Services.

- i. Currently, private line and toll service revenues make up approximately \$3 million in remittances annually. Should a per line surcharge replace all revenues-based remittances including activation, toll, private line, and paging? Are there some services that should continue to be subject to a revenue-based surcharge? If so which services?

If the revenues-based surcharge is discontinued, all lost remittances should be factored into the Commission's ultimate decision on the surcharge it places on all non-residential connections in order to ensure contribution equity and a stable Fund.

- ii. If some services are left on a revenues-based surcharge, would we run the risk of "double assessing" in some cases?

No comment at the present time.

- iii. If the Commission were to move to a pure connections-based mechanism for all services does this mean the fund would forego remittances for toll revenues completely?

See response to Issue F(i) above.

- iv. Would this be consistent with the requirements in the NUSF Act? Please explain.

Yes. It would be consistent with the requirements of the NUSF Act. That question is not in dispute.

G. Whether to Move Prepaid Wireless Services to a Connections-Based Surcharge.

- i. Currently, prepaid wireless service is assessed on a revenues basis and remittances are provided to the Nebraska Department of Revenue. The statute states the remittances should be based on the percentage obtained by multiplying (i) the Nebraska Telecommunications Universal Service Fund surcharge percentage rate set by the Public Service Commission by (ii) one minus the Federal Communications Commission safe harbor percentage for determining the interstate portion of a fixed monthly wireless charge. Does this statutory language mean the Commission must leave prepaid wireless service on a revenues-based surcharge?

This, like those the Commission has asked about business and other ratepayers, is an important question. The RTCN believes the wireless and prepaid wireless industry are best-positioned to render helpful ideas for designing a surcharge that applies to such services to ensure that their customers are contributing a share that is fair and equitable, considering all principles of the Commission's policy. The RTCN anticipates comments from the wireless industry. The RTCN will weigh in once their ideas are before the Commission.

CONCLUSION

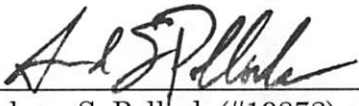
The RTCN is confident the Nebraska community will reach consensus about how to complete the re-establishment of Fund stability through remittance methodologies that ensure equitable contributions by all infrastructure users and consumers. Fund stability is necessary to incentivize accelerated deployment of critical rural broadband infrastructure. We look forward to participating in discussions led by the Commission.

Dated: August 31, 2020.

RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA

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Cozad Telephone Company, Diller
Telephone Company, Glenwood
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Glenwood Telephone Membership
Corporation, Hartman Telephone
Exchanges, Inc., Hemingford
Cooperative Telephone Co., Hooper
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and five copies of the above **Comments** of the Rural Telecommunications Coalition of Nebraska were filed with the Public Service Commission on August 31, 2020 via postage prepaid U.S. Mail, and a copy was served via electronic mail, to the following:

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