

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service)
Commission, on its own motion, to consider)
revisions to the contribution methodology and)
determine a rate design for services currently)
subject to a revenue-based surcharge.)

Application No. NUSF-119 / PI-233

**JOINT COMMENTS OF COX NEBRASKA TELCOM, LLC, CHARTER FIBERLINK –
NEBRASKA, LLC, AND TIME WARNER CABLE INFORMATION SERVICES
(NEBRASKA), LLC**

Cox Nebraska Telcom, LLC; Charter Fiberlink – Nebraska, LLC, and Time Warner Cable Information Services (Nebraska), LLC (the “Joint Commenters”) submit these Comments in the above-captioned docket pursuant to the Order entered by the Commission herein on June 30, 2020. While the Commission posed numerous questions, the Joint Commenters file the foregoing Comments to convey two key points: (1) the Commission should determine the appropriate size of the fund prior to taking any action to change contributions to the fund, and (2) the Commission should retain the revenue-based contribution assessment for business services and consider other actions besides changing the contribution methodology to address any shortfall in the fund, if warranted.

I. The Desired Size of the NUSF Should be Determined Before Any Action is Taken

The Joint Commenters believe in order to expedite this process, providers need to fully understand the issues the Commission is attempting to address. If there are questions about the current size of the fund, restructuring the current NUSF revenue-based methodology should be put on hold until the Commission determines how much money the NUSF needs, and for what purposes. It is essential the Commission first appropriately size the NUSF before deciding how it should be revised. Maintaining or increasing the present revenue-based surcharge of 6.95 percent

or adopting a new methodology should occur only *after* the Commission has appropriately determined the size of the fund that it seeks to amass, as well as the specific disbursement goals of that amount. It is then that the Commission can properly determine the methodology that should be employed to collect that amount from end users.

The Commission stated in its Order that residential-based contributions currently make up roughly 70 percent of the total NUSF remittances, and historically that number was approximately 60 percent.¹ Is it the Commission's goal to reinstate that historic ratio? Or is the purpose of this docket to raise more money for the NUSF? If so, by what amount?

It is critical the Commission first determine the necessary size of the NUSF so the business customer impact of a connections-based methodology can be gauged, and the questions posed herein can be accurately answered. For example, it is difficult to indicate that a cap is necessary without knowing the overall amount the Commission wants to recoup. These issues would best be addressed in the NUSF-4 docket. At a minimum, though, the Joint Commenters encourage the Commission to release a Progression Order herein that indicates the size of fund it aims to collect so that issues can be properly addressed directly, if the Commission intends to move forward with this docket.

II. The Commission Should Maintain the Revenue-Based Assessment and Could Increase the Surcharge if More Revenue is Deemed Necessary

To the extent that the Commission's current concerns are that the overall size of the NUSF is insufficient to meet its goals or that the current burden of funding the NUSF is not fairly distributed between residential, wireless, and business consumers, a restructuring of the current

¹ *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the contribution methodology and determine a rate design for services currently subject to a revenues-based surcharge*; Application NUSF-119 / PI-233; Order entered June 30, 2020.

contribution mechanism is not necessary. To the contrary, it would be simpler and less burdensome for providers and consumers to raise the current assessment rates instead of creating a new connections-based contribution assessment mechanism for business services.

The concerns and complexities raised in NUSF-100 and NUSF-111 of implementing a connections-based methodology on large business users have not diminished. For example, business customers' connections may fluctuate, and under a tiered-approach the applicable surcharge would need to be examined, and potentially changed on a monthly basis. Such would be confusing for customers, burdensome, and inordinately complicated. In fact, implementing this scenario likely exceeds the capabilities of even the most sophisticated and robust billing systems.

It was pointed out by Frontier in its NUSF-111 Comments that businesses have more communications options than residential customers.² And if the cost of pricing is burdensome on business customers, they have the ability to transition to other, 'non-telecommunications' products that are outside the Commission's reach.³

Additionally, as Cox stated in NUSF-111, the Form 477 has inherent flaws when it comes to calculating business connections.⁴ The Form 477 essentially counts one connection for each residential customer line, i.e. in a 1:1 ratio, which makes the implementation of a connections-based methodology workable. However, such is not the case for business connections. The Form 477 tallies business connections, but it does not do so on a per-customer basis. Rather it uses voice

² *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 NUSF-111 / PI-211, Comments of Citizens Telecomm. Co. of NE, d/b/a Frontier Comm. of NE filed Jan. 30, 2018.

³ *Id.*

⁴ *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 NUSF-111 / PI-211, Comments of Cox Nebraska Telcom, LLC filed Jan. 30, 2018; Reply Comments of Cox Nebraska Telcom, LLC filed March 23, 2018.

grade equivalent ratios ("VGEs"), equating numerous connections to individual business customers. For example, the Form 477 calculates a business customer PRI as 23 VGEs and a legacy T-1 as 24 VGEs. In other words, the numbers are aggregated data. This makes the Form 477 problematic in determining the number of business connections per customer, potentially yielding overly burdensome assessments on large business users. The Joint Commenters are not aware of another data source that would remedy the inherent flaws of the Form 477.

Also, as Cox indicated in NUSF-111, it is critically important that modifications to the contribution methodology do not result in inflicting rate shock on customers. Large business customers who use hundreds, if not thousands of connections can, over time, relocate their operations to a lesser taxed state if the Commission's actions cause dramatic price increases. And as the Commission is aware, there are many large telecommunications users in Nebraska, particularly in the Omaha metropolitan area. Even a modest connections-based surcharge could present massive price increases for the businesses and institutions that have thousands of connections.

And as was stated previously, creating tiers to avoid rate shock creates unresolvable billing problems. Business customers could fluctuate from one revenue band to another, as well in their number of connections monthly. This would entail a monthly assessment of individual accounts to determine the appropriate surcharge level. Customers would find their bills confusing and lacking predictability. It would be burdensome, and for Cox, impossible to correctly perform. Furthermore, creating tiers is not a pure connections-based approach. The easiest and most direct way to assess the surcharge that takes into consideration the value of and burden on the network is to retain the revenue-based methodology. That is, those that utilize the network more and hence have larger telecommunications bills remit more to the NUSF.

The goal in adopting the connections-based methodology in NUSF-100 was to promote a stable, predictable and sufficient funding mechanism to curtail the revenue decline in projected forecasts.⁵ The recent testimony provided by Mr. Cullen Robbins, Director of the NUSF Department, at the hearing in NUSF-4 to set the NUSF surcharge reflected that goal had largely been achieved.⁶ Mr. Robbins stated after a full year of collecting remittances under the connections-based methodology, remittances have been stable month to month, and the Commission no longer sees the steep declines and unpredictability that was experienced under the revenue-based methodology.⁷ Furthermore, Mr. Robbins stated the amount collected, \$47.1 million was within the predicted range of 46 to 54 million the Commission anticipated.⁸ Accordingly, the objectives of NUSF-100 and the revenues forecasted in NUSF-111 have been realized. Because of that, the Commission should retain the present assessment structure on businesses and if needed, increase the 6.95 percent surcharge to ensure the contributions from businesses are appropriate and reasonable.

The Commission has acknowledged that nothing in the NUSF Act requires it to utilize one specific contribution mechanism.⁹ As such, the Commission is under no obligation to require business customers use the same methodology as residential customers. The Joint Commenters suggest the Commission maintain the revenue-based assessment on business connections. The revenues-based assessment is a predictable and well-understood structure, and retaining it avoids

⁵ In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology; NUSF-100, Order entered Oct. 31, 2017

⁶ In the Matter of the Commission on its own motion seeking to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act effective fiscal year beginning July 1, 2020; Application NUSF-4; Hearing held May 20, 2020, Order entered June 2, 2020.

⁷ *Id.*

⁸ *Id.*

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; Application NUSF-111 / PI-211, Order entered Aug. 7, 2018.

the potential adverse repercussions that would be experienced under a connections-based methodology.

If, after review of the current distribution obligations of the NUSF, the Commission determines that the NUSF requires additional funding, then an increase of the business surcharge can be considered. Increasing the current surcharge is far simpler and less complicated than changing the overall methodology. If, instead or in addition, allocation of the contribution assessment between residential and business is a concern, then adjusting the current business surcharge would still accomplish a reasonable reallocation without the difficulties of designing a new contribution mechanism for business services.

Thus, whether a change to the current assessment rate is appropriate depends on whether the current system is meeting the goals the Commission has for the NUSF program. Until there is a clear articulation and review of the Commission's goals, it is not possible to know whether a change to the assessment rate – or any other change to the system – is necessary.

CONCLUSION

As stated previously, the Joint Commenters encourage the Commission to first size the fund to determine the amount of money that is necessary, which will enable the Commission to determine whether the current 6.95 percent surcharge is sufficient. To properly size the fund, the Commission must accurately quantify the federal support that flows to Nebraska. As was pointed out by Commissioner Rhoades in a Concurring Opinion to the NUSF-100 Order that adopted the connections-based methodology, it is important to eliminate the possibility of “double dipping” with carriers receiving both federal and state support for the same area.¹⁰

¹⁰ In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology; NUSF-100, Order entered Oct. 31, 2017; Concurring Opinion of Commissioner Rhoades.

The Joint Commenters have consistently advocated contribution reform be as unnoticeable to customers as possible. And furthermore, the Joint Commenters have repeatedly stressed the importance of a NUSF that is open and transparent. Due to the uncertainty a connections-based methodology will have on business customers, and the significant difficulty it presents to fairly and openly implement such a methodology on enterprise customers, the Joint Commenters recommend the Commission retain the revenue-based surcharge.

If the Commission deems an increase in the size of the NUSF is necessary, the current business surcharge could be increased, rather than changing the contribution methodology to achieve that desired outcome. It would be a more open, transparent and easily understood manner to collect additional revenue.¹¹

In closing, while the connections-based methodology has been used with residential customers since last year, the concerns relating to its application on business customers remain. The Joint Commenters urge the Commission to retain the revenue-based assessment methodology and increase the surcharge if it is deemed necessary. This will allow for easy and immediate implementation to collect more revenue, provide predictability, remove unexpected consequences and prevent some services from avoiding remittances going forward.

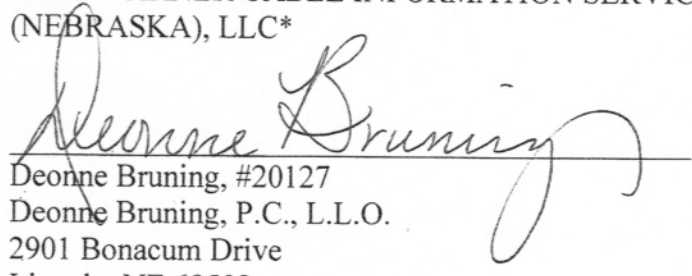
¹¹ The 6.95 percent surcharge presently assessed on business customers has not increased since the NUSF's inception over 20 years ago. See *In the Matter of the Commission on its own motion seeking to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act effective fiscal year beginning July 1, 1999*; Application NUSF-4, Order entered June 2, 1999.

Respectfully submitted this 28th day of August, 2020.

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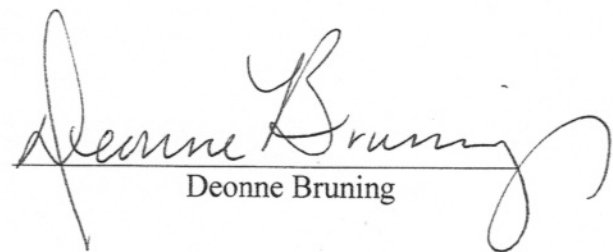
Certificate of Service

The undersigned hereby certifies that on August 28, 2020 an original and five copies of the Joint Comments of Cox Nebraska Telcom, LLC and Charter Fiberlink – Nebraska LLC and Time Warner Cable Information Services (Nebraska), LLC in Application NUSF-119, PI-233 were mailed to to the Nebraska Public Service Commission, and a copy of the same was e-mailed to:

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* Counsel for Cox states that Charter has authorized counsel to represent that Charter agrees with and joins in these comments.