

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-100
Public Service Commission, on)	PI-193
its own motion, to consider)	
revisions to the universal)	ORDER SEEKING FURTHER COMMENTS
service fund contribution)	
methodology.)	Entered: April 5, 2016

BY THE COMMISSION:

I. Background

The Nebraska Public Service Commission (the "Commission") opened the above-captioned proceeding to consider revisions to the contribution mechanism of the Nebraska Universal Service Fund ("NUSF") on November 13, 2014. The Commission sought comments on various contribution reform options.

The contribution mechanism is the system by which the Commission's universal service programs are funded. The Commission opened this proceeding to account for the significant changes in telecommunications which have taken place since 1999 when the Commission's NUSF contribution mechanism was established. The Commission noted that the assessable base for NUSF contributions has eroded as customers continue to migrate to services not subject to NUSF surcharge remittance requirements. Competitive distortions permitted by the federal USF mechanism have also resulted in differing contribution obligations largely driven by the bundling of services subject to NUSF assessments with services which are not subject to assessment. In addition, due to the strain on the federal universal service mechanism to generate surcharge revenues to meet all federal USF obligations, safe harbor allocations have resulted in more and more surcharge revenues being captured by federal rather than by state support mechanisms. Since 2009, NUSF remittances have experienced an average decline of greater than 2 percent per year.

The Federal Communications Commission ("FCC") has been looking at ways to stabilize the federal contribution mechanism since 2002.¹ After adopting sweeping universal service fund reforms in 2011,² the FCC again released several contribution

¹ See generally, *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002) ("2002 Contribution Order").

² See *Connect America Fund et al.*, WC Docket No. 10-90 et al. Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("USF/ICC Transformation Order").

reform proposals for public comment in 2012.³ On August 7, 2014, the FCC referred contribution reform to the Federal-State Joint Board on Universal Service for consideration.⁴

The Commission solicited comments on the following contribution reform options:

- *Revised Revenues-Based Assessment*
- *Connections-Based Assessment*
- *Numbers-Based Assessment*
- *Hybrid/Combination of Assessments*

II. Comments Received

The Commission received comments from Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink ("CenturyLink"), CTIA-The Wireless Association ("CTIA"), Charter Fiberlink-Nebraska, LLC ("Charter"), Cox Nebraska Telcom, LLC ("Cox"), Rural Independent Companies ("RIC"), Rural Telecommunications Coalition of Nebraska ("RTCN"), the Association of Teleservices, International, Inc. ("Teleservices"), and Windstream Nebraska Inc. ("Windstream"). Reply comments were filed by CenturyLink, CTIA, Charter, Cox, RIC, RTCN and Windstream.

CenturyLink supported the Commission's efforts to reform the contribution mechanism. CenturyLink suggested the Commission consider the following core principles: Competitive Neutrality, Flexibility, Predictability, Scalability, and Easy/Simple/Reliable. CenturyLink supported a contribution base that includes both broadband and voice services. CenturyLink recommended the Commission convert from the revenues-based contribution methodology to a connections-based or numbers-based methodology. If connections are used, CenturyLink recommended defining a connection as any point the subscriber connects to

³ See *In the Matter of Universal Service Contribution Methodology; A National Broadband Plan for our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357 (April 13, 2012) ("2012 Contributions FNPRM").

⁴ See *In the Matter of the Federal State Joint Board on Universal Service et al.*, WC Docket No. 96-45 et al., Order (August 7, 2014) ("Referral Order").

the communications network enabling wireline and wireless local exchange telephone service, interconnected voice over internet protocol (VoIP) service and any other retail telecommunications end-user service. Each residential connection should be included in the assessment base, and each business connection should be likewise counted up to a "connection cap" that is calculated by each provider. In reply comments, CenturyLink urged the Commission not to delay contribution reform. CenturyLink further commented that a hybrid methodology could be used as an interim step but is concerned about the potential implementation and cost of a hybrid approach. Overall, CenturyLink recommended the Commission move forward with a connections based methodology.

CTIA recommended the Commission adopt a point-of-sale methodology for collecting the NUSF assessment from prepaid wireless service. In addition, the CTIA recommended the Commission wait and allow parties to consider the potential impact of the Federal-State Joint Board's Recommendations to the FCC.

Charter stated Nebraska should not get out in front of the FCC's reform efforts. It stated changing the contribution methodology at this time would be difficult and costly for providers given the FCC currently uses a revenue based assessment methodology. In its reply comments, Charter renewed its recommendation that the Commission refrain from making a change at this time.

Cox did not dispute that a change to the contribution methodology may be necessary in order to continue accomplishing the goals and objectives of the NUSF. However, Cox suggested an investigatory docket be opened to determine whether the receipt of Connect America Funds would lessen the need for future NUSF support, therefore resulting in a smaller-sized NUSF going forward. Cox suggested holding this docket in abeyance due to the ongoing review of federal universal service fund contributions. In its reply comments, Cox suggested the Commission seek an additional round of comments in response to the Federal-State Joint Board Recommendation after its release.

RIC supported the Commission's efforts to reform the contribution mechanism. Specifically, RIC supported a connections-based NUSF contribution framework. As an interim step, RIC stated, it may be appropriate to migrate the current NUSF contribution regime to a connections-based NUSF contribution system requiring contributions be assessed on any "connection" that requires a working Nebraska-specific telephone number to be assigned in order to allow routing to and from the

Public Switched Network. ("PSTN"). In its reply comments RIC stated overall commenters were supportive of a connections-based mechanism. As a result RIC requested the Commission move forward with an investigation of specific details regarding the implementation of a connections-based system.

RTCN also supported reform efforts saying a solution needs to be implemented at this time. RTCN stated the commission has a great deal of discretion including broad authority under state law to establish a new contribution system. RTCN suggested the Commission consider adopting a hybrid approach to NUSF contributions that involves a combination of both a connections-based component and the continuance of a revenues-based component at a lower rate. RTCN suggested that, on an annual basis, the Commission first determine an NUSF target balance necessary to fund existing programs at levels that are sufficient to carry out the universal service policies set forth in the NUSF Act. Once a target balance has been determined, the Commission would then set a revenues-based surcharge rate and a connections-based assessment amount, with the objective that each of these two components would provide funds making up approximately one-half of the target balance each year. In its reply comments, RTCN opposed the suggestion that the Commission should suspend this docket pending action by the Federal-State Joint Board on Universal Service and/or the FCC.

Teleservices agreed with the Commission that a connections-based contribution mechanism, properly structured, would result in a more stable and predictable universal service support mechanism. Teleservices also agreed that the Commission should use data reported on FCC 477 as the foundation for the assessment. Teleservices further recommended that the connection-based assessment should vary based upon the size and type of connection, and should not be a flat-rated charge. Finally, Teleservices opposed a numbers based assessment mechanism and stated it should be unequivocally rejected by the Commission as a reform option.

Windstream also supported the Commission's reform efforts. Windstream recommended the Commission consider the following principles: stability, competitive and technological neutrality, consumer impact and administrative efficiency. In reply comments, Windstream disagreed with Cox's recommendation to first investigate the size of the fund needed against federal support levels. Windstream also expressed concern that a hybrid contribution methodology may be difficult to administer.

III. Strategic Plan

As we consider the overall vision of where universal service should evolve, the Commission believes it is important to develop a strategic plan. This roadmap will serve as the foundation for the advancement of universal service in the broadband age. We seek comment on the strategic plan and invite interested parties to recommend other goals the Commission should consider.

Ubiquitous Broadband. The Commission believes an important goal of reform will be to support the deployment of ubiquitous broadband availability throughout Nebraska. The Commission's reforms must be tailored to complement the federal support received in Nebraska. This plan would encompass a goal to extend ubiquitous fixed and mobile broadband services.

Preserve and Advance Affordable Voice Service. Next, the Commission believes it must also ensure that robust voice services continue to be offered to consumers at affordable rates. The Commission expects that such service will be [continue to be] offered over broadband networks. As consumer preferences change, the Commission anticipates voice will be an over the top service that some but not all consumers will continue to use.

Deployment of Fiber-based Network Everywhere. As carriers continue to invest in their networks and replace outdated facilities, the Commission's plan will have wireline carriers extend or replace facilities with fiber. Fiber facilities will allow carriers to offer consumers more services at greater speeds. The Commission hopes to alleviate the incremental minimum speed considerations in its requirements by ensuring the networks are built to sustain growth, usage and demands over the long term. As more fiber is deployed, increased speeds will follow. Coordination with the federal mechanism will be the key to making efficient use of universal service support.

Accountability. Additionally, the Commission proposes to modify accountability measurements to coincide with the changing environment. Specific reporting and certification procedures are necessary to allow the Commission to determine whether it is achieving program goals and to ensure that NUSF support is being used for the intended purpose in the designated areas. Carriers will be required

to track and report network investments in Nebraska to coincide with the support amounts provided.

Stability of the Program. Further, the Commission plans to stabilize the contribution base and size it according to funding needs. The contribution methodology must be designed to keep pace with changes in the way consumers use services in the market. Serious consideration must be given to an alternative contribution mechanism that would be applied on a stable assessment base immune from the growing complexities and inequities that currently exist with the revenues-based collection system. Accordingly, as detailed further below, the Commission seeks further comment on a connections-based contribution proposal.

Timeframe for Implementation. Finally, the implementation of the Commission's goals won't happen overnight. The Commission proposes to articulate immediate and far-ranging milestones to get where we need to be. In the near future, the Commission hopes to tackle contribution reform. Next, the Commission hopes to size the fund using the state broadband cost model ("SBCM"). After we stabilize the fund and estimate universal service needs, build-out milestones and accountability standards will be established.

IV. Issues for Further Comment

The majority of commenters supported moving to a connections-based contribution mechanism. There are a number of reasons why a connections-based mechanism makes the most sense in the current environment. First, as the FCC recognized in its *2012 Contributions FNPRM* the number of connections has remained stable while assessable revenues have been declining.⁵ Further, as the commenters acknowledged, using a connections-based approach will increase stability and predictability in the NUSF. In addition, a connections-based methodology would be easier in many respects to administer. Carriers would not be required to allocate revenues among jurisdictions or between types of services. Because a connections-based contribution methodology is less dependent upon jurisdictional considerations and less likely to be subject to be dependent upon the individualized packaging or marketing of the service to the end-user, a connections-based methodology may mitigate the number of complex issues the Commission currently encounters.

⁵ See *2012 Contributions FNPRM* para. 247.

A. Definitions

The Commission proposes to focus on the following definition of connection:

*Connection. A wired line or wireless channel used to provide end users with access to any assessable service.*⁶

Interested parties are invited to comment on the proposed definition. In the alternative, parties should be specific in suggesting an alternative definition.

Further, the Commission seeks comment on the following proposal to define assessable service:

*Assessable service. A service which requires a network connection that is identified through the use of an inter-network routing number as the means to provide the telecommunications.*⁷

In its comments, RIC recommended the Commission define "assessable connection" as any connection that requires a working telephone number to be assigned in order to allow routing to and from the PSTN. RIC stated the use of working telephone numbers for routing is a readily available method to identify connections that provide the ability for traffic to be delivered and received from the PSTN.⁸ Is this consistent with the Commission's proposed definition? Why or why not?

The Commission understands under the current framework it is limited to assessing telecommunications. Accordingly, the Commission proposes to assess the services which include a telecommunications component. The FCC has held that origination and termination of a communication using the PSTN is "telecommunications." Accordingly, the contribution obligation would continue to be imposed on all providers of telecommunications when they provide their users with the

⁶ See 2012 Contributions FNPRM para. 232.

⁷ The Commission proposes to define as "assessable" a connection that is identified to other networks and routed to other networks as distinguished from internal routing numbers. For illustrative purposes, the Commission would propose a definition be consistent with Open System Interconnection (OSI) model Layer 3 or the Network Layer.

⁸ See RIC Comments (February 13, 2015) at 5.

ability to originate and terminate a communication via the PSTN regardless of whether they do so by way of their own facilities or transmission from third parties.⁹

B. Adjustments

If the Commission adopts a connections based contribution mechanism, how should it account for different types of connections? 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."¹⁰ To overcome this challenge CenturyLink suggested the Commission may have to define classes of connections based upon factors. We seek comment on the development of an assessable connections based mechanism that is efficient, fair and sustainable. Would the definitions proposed in Section A *supra* give the Commission the flexibility to fairly determine contribution obligations among the various types of users? How should family plans or multi-user scenarios be assessed? Should different contribution mechanisms or factors apply for residential versus multi-line business users?

i. Wireless versus Wireline Connections

One alternative would be for the Commission to develop a contribution factor so that the type of technology used by consumers does not significantly affect the distribution of contribution obligations among the other sectors of consumer users. The Commission seeks comment on the propriety or need to develop such a factor. The Commission does not presently maintain data that establishes the number of wireless connections in service like it does for wired access lines. However, the FCC collects data that tracks the number of wired lines and wireless channels as well as interconnected VoIP services. Should the Commission develop a factor for wireless contributions such as the average number of phones per household? If so, how should that factor be developed?

Is there any other method by which the Commission's mechanism should account for wireline and wireless users contribution obligations? If so, on what basis should they be distinguished and accounted for differently? On a household basis? On a capacity or use basis? Interested parties are

⁹ See *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd. at 7539-40, para. 41 (2006) ("2006 Contribution Methodology Order").

¹⁰ Comments of CenturyLink (February 13, 2015) at 6.

invited to comment by providing information which may be helpful in deciding whether to create a factor and/or developing what the contribution factor should be.

The Commission currently determines assessable revenues for wireless carriers under the Mobile Telecommunications Sourcing Rule at Neb. Rev. Stat. § 77-2703.04 where services are generally sourced at the primary place of use. The Commission believes reliance upon this provision would continue to be appropriate for determining wireless connections subject to assessment in Nebraska. Interested parties are invited to comment as to whether they agree or disagree with this assessment.

**ii. Residential versus Multi-Line
Business/Enterprise Connections**

Should the Commission treat residential and multi-line business/enterprise end user connections differently? If so, how should they be distinguished? Should there be a cap on the number of assessable multi-line business/enterprise connections? Should the multi-line business/enterprise per unit contribution amount be distinguishable from the per unit residential amount? Should the Commission retain some sort of revenues based contribution factor? Should the per unit assessment for multi-line business and enterprise customers be tied to another factor? If so, the Commission seeks comment on objective measures that could be used to distinguish between these categories of connections.

iii. Special Access

Currently, intrastate special access revenues are assessed and remitted to the NUSF. Proponents of the continued assessment of special access services should describe the manner in which special access should continue to be assessed if the Commission moves to a connections-based contribution mechanism.

iv. Other Considerations

Some commenters recommended the Commission adopt a hybrid approach at least during the transition period.¹¹ Others suggested that may be administratively difficult.¹² Should the

¹¹ See, e.g., Rural Telecommunications Coalition of Nebraska (RTCN) Comments at 3.

¹² See, e.g., Windstream Reply Comments at 3.

Commission consider a hybrid alternative? How should that be structured? Should some services continue to be assessed on a revenues basis? If so, which services?

C. Data

We seek comment on how the Commission would implement a connections-based contribution mechanism including but not limited to what goes into reporting. What measures should the Commission take to ensure that carriers are not avoiding their contribution obligation? What underlying data should the Commission use to make sure that all connections are being properly assessed? The Commission believes the definition of an assessable connection proposed above would largely be consistent with what carriers are required to collect and report to the FCC by way of Form 477 data. For example, FCC Form 477 filings include reporting for the following connections: (1) facilities-based providers of broadband connections to end user locations, whether wireline or wireless; (2) providers of wired or fixed wireless local exchange telephone service; (3) providers of interconnected VoIP service; and (4) providers of mobile telephony services.¹³ Should the Commission rely upon FCC Form 499 or Form 477 data for verification of the collection and remittances provided by the carriers each month? What other data may be relied upon to implement a connections-based contribution mechanism?

Pursuant to Neb. Rev. Stat. § 86-324(d) the Commission has a statutory obligation to audit carrier remittances to the NUSF. If the Commission moves away from a revenues-based contribution mechanism, how would the independent third-party accounting or auditing firm perform a review to ensure the correct billing, collection, and remittance of the universal service surcharge? How would the Commission's audit procedures need to change? Are there any accounting adjustments that should be allowable?

D. Transition

Undoubtedly, the implementation of a new contribution mechanism will take time. It would necessitate changes in carrier billing and collection systems. It would also require a revised data collection and reporting mechanism for the Commission. In light of these changes, the Commission seeks comment on the timeline of a transition from a revenues based contribution system to a connections based contribution mechanism. Specifically, the Commission seeks comment on the length of the transition period the Commission would need to

¹³ See RIC Comments at 11.

provide carriers in order to implement a connections-based collection mechanism. In the alternative, the Commission seeks comments on the timeline needed for carriers to transition to a hybrid assessment mechanism comprised of both a connection and revenue component. If we consider a hybrid mechanism to be transitional, how long should that be in place?

V. Programs Subject to Reform

In the scope of this proceeding, the Commission intends to review the goals and support needed for all NUSF programs including but not limited to the Nebraska Telecommunications Assistance Program (NTAP), Telehealth, the Wireless Broadband Grant Program and the Broadband Adoption Program. The Commission plans to engage in a comprehensive review of the objectives of these programs in light of the strategic plan ultimately adopted by the Commission. The Commission will study the effectiveness of each program and decide how each can be improved to meet the needs of consumers. Additionally, the Commission will re-evaluate the funding resources needed to meet those objectives.

VI. Sizing the NUSF

A primary objective of this proceeding will be to determine the appropriate size of the fund to meet the goals of each NUSF program. The Commission plans to seek comment on this issue in a parallel track. However, understandably the contribution mechanism must be restructured in order for the Commission to meet its stated objectives.

In relation to the high-cost program, the Commission recently obtained access to the State Broadband Cost Model (SBCM) developed by CostQuest Associates, Inc. The Commission believes this information will be useful in appropriately sizing the NUSF. A complete record will be developed in a later comment cycle but will be considered in this overall proceeding. Interested parties may start analyzing the SBCM now in preparation for response on that issue. Credentials for access to the SBCM may be obtained through the mechanism provided in the Supplemental Protective Order entered in this docket.

VII. Comment Period

The Commission requests that interested parties provide comments responsive to the issues raised above, on or before **May 6, 2016**. Reply Comments may be filed on or before **May 24, 2016**. Commenters should file one (1) original and five (5) paper copies with the Commission. Electronic copies should be sent to psc.nusf-filings@nebraska.gov.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that further comments in above-captioned investigation may be filed by interested parties.

IT IS FURTHER ORDERED that interested parties provide comments responsive to the issues raised above on or before **May 6, 2016**. Reply comments may be filed on or before **May 24, 2016** in the manner prescribed herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 5th day of April, 2016.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Gerald L. Vay

Crystal Knodes

Reg Johnson

//s//Frank E. Landis
//s//Tim Schram

Tim Schram
Chairman

ATTEST:

Jeffrey L. Puley

Executive Director