

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)
service fund contribution) ORDER
methodology.)
)
)
) Entered: October 31, 2017

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. Notice of this proceeding appeared in The Daily Record, Omaha, Nebraska on November 17, 2014.

The contribution mechanism is the system by which the Commission's universal service programs are funded. Since 1999, the Commission has funded its universal service programs through a surcharge based on revenues. However, significant changes in telecommunications market have taken place since 1999 when the Commission's NUSF contribution mechanism was established. The Commission previously 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 2005, NUSF remittances have declined by more than 34%. Current forecasts estimate that remittances will decline by 16% between 2016 and 2017 and then by 23% in 2018.

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

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").

reforms in 2011,² the FCC again released several contribution 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

Like the FCC, this Commission solicited comments on various contribution reform options including a revised revenues-based assessment, a connections-based assessment, a numbers-based assessment and a hybrid or combination of revenues and connections. A majority of commenters supported the Commission's efforts to reform the contribution mechanism. Overall, commenters in favor of change supported the adoption of a connections-based or hybrid mechanism.

II. Comments Responsive to the Commission's November Order

CenturyLink recommended defining a connection as any point the subscriber connects to 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.

CTIA recommended the Commission adopt a point-of-sale methodology for collecting the NUSF assessment from prepaid wireless service.⁵ 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.⁶

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*").

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*").

⁵ See Reply Comments of CTIA-The Wireless Association in Response to the Commission's November 13, 2014 Order Opening Docket and Seeking Comment (April 13, 2015) at 1 ("*CTIA April 2015 Comments*").

⁶ See *id.* at 2.

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.⁷

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.⁸ 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.⁹ Cox suggested holding this docket in abeyance due to the ongoing review of federal universal service fund contributions.¹⁰ 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.¹¹

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").¹² 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.¹³

RTCN also supported reform efforts saying a solution needs to be implemented at this time. RTCN suggested the Commission consider

⁷ See Initial Comments of Charter FiberLink-Nebraska, LLC (February 13, 2015) at 3 ("Charter February 2015 Comments").

⁸ See Comments of Cox Nebraska Telcom, LLC (February 13, 2015) at 3 ("Cox February 2015 Comments").

⁹ See *id.*

¹⁰ See *id.*

¹¹ Comments of Cox Nebraska Telcom, LLC (April 13, 2015) at 2 ("Cox April 2015 Comments").

¹² Comments of the Rural Independent Companies (February 13, 2015) at 4 ("RIC February 2015 Comments").

¹³ See Comments of the Rural Independent Companies (April 13, 2015) at 3 ("RIC April 2015 Comments").

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.¹⁴ 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.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸ Finally, Teleservices opposed a numbers based assessment mechanism and stated it should be unequivocally rejected by the Commission as a reform option.¹⁹

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.²⁰ In reply comments, Windstream disagreed with Cox's recommendation to first investigate the size of the fund needed against federal support

¹⁴ See Comments of the Rural Telecommunications Coalition of Nebraska (February 13, 2015) at 3 ("RTCN February 2015 Comments").

¹⁵ See *id.*

¹⁶ See Reply Comments of the Rural Telecommunications Coalition of Nebraska (April 13, 2015) at 1 ("RTCN April 2015 Comments").

¹⁷ See Association of Teleservices International, Inc., Response to Order Opening Docket and Seeking Comments (February 13, 2015) at 5 ("Teleservices Comments").

¹⁸ Teleservices Comments at 6.

¹⁹ *Id.*

²⁰ See Comments of Windstream Nebraska, Inc. (February 13, 2015) at 1 ("Windstream February 2015 Comments").

levels.²¹ Windstream also expressed concern that a hybrid contribution methodology may be difficult to administer.²²

III. Comments Responsive to the Commission's April Order

On April 5, 2016, the Commission solicited additional comments on a number of other issues including its proposed strategic plan, definitions, adjustments, data collection, distinctions between residential and business services, distinctions between wireline and wireless services, special access or broadband data services (BDS), and the transition period assuming a change is implemented.

Comments were filed by Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (Frontier); Cox Nebraska Telecom LLC and Charter Fiberlink-Nebraska, LLC, CTIA-The Wireless Association, NE Colorado Cellular Inc., d/b/a Viaero Wireless, the Nebraska Rural Independent Companies (RIC), Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink, the Rural Telecommunications Coalition of Nebraska (RTCN), and Windstream Nebraska, Inc.

A. Strategic Plan

The Commission sought comment on a strategic plan moving forward believing that a specific roadmap would assist in the development of a predictable NUSF mechanism. As we considered the overall vision of where universal service should evolve, the Commission sought comment on the following issues:

- o *Ubiquitous Broadband*
- o *Preserve and Advance Affordable Voice Service*
- o *Deployment of Fiber-based Network Everywhere*
- o *Accountability*
- o *Stability of the Program*
- o *Timeframe for Implementation*

²¹ See Reply Comments of Windstream Nebraska, Inc. (April 13, 2015) at 2 ("Windstream April 2015 Comments").

²² See Windstream April 2015 Comments at 3.

Frontier noted that while fiber to every Nebraskan is a wonderful aspirational goal, however from a practical perspective, the use of non-fiber technologies will play a very large part in the provision of broadband for the foreseeable future.²³ Frontier agreed with the Commission that there should be tracking and reporting requirements in place and agreed with the Commission's goal of accountability.²⁴ However, Frontier asked the Commission to include not only investments but also the need for support generally for ongoing maintenance costs of the services provided as well.²⁵

CTIA recommended the strategic plan be considered and developed in its own docket.²⁶ CTIA further stated the Commission's reforms should be technologically and competitively neutral, cost effective for consumers and limited in the bounds of the Commission's jurisdiction.²⁷ A plan to provide ubiquitous fiber deployment is not technologically and competitively neutral according to CTIA.²⁸

The RIC commenters supported the Commission's goals.²⁹ RIC strongly supported the Commission's objective to promote universal broadband service. While RIC supported the Commission's objective to promote deployment of fiber-based networks everywhere, RIC stated the Commission would need to (a) size the costs to complete this network build-out, and (b) determine the feasibility of funding these costs. RIC further recommended the Commission adopt broadband speeds consistent with those established by the FCC in the December 2014 and March 2016 Connect America Orders. In addition, RIC urged the Commission to adopt accountability standards in coordination and in conformity with reporting requirements implemented by the FCC where possible. Such coordination would minimize administrative burdens both on the Commission and ETCs. RIC recommended a connections-based mechanism

²³ See Comments of Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (June 1, 2016) at 1 ("Frontier 2016 Comments").

²⁴ Frontier 2016 Comments at 2.

²⁵ *Id.*

²⁶ See Comments of CTIA in Response to the Commission's April 5, 2016 Order Seeking Further Comments at 2 (June 6, 2016) ("CTIA 2016 Comments").

²⁷ CTIA Comments at 3.

²⁸ CTIA Comments at 4.

²⁹ See Comments of the Rural Independent Companies in Response to Order Seeking Further Comments (June 6, 2016) ("RIC 2016 Comments").

to achieve the goal of stability for the program. RIC recommended the next logical step is sizing the fund.

CenturyLink encouraged the Commission to hold workshops where each of the proposed goals could be discussed and the Commission can take feedback from interested parties. While CenturyLink supported the goal of ubiquitous broadband it cautioned the Commission that ensuring ubiquitous broadband will come at a significant cost.³⁰ CenturyLink recommended the Commission keep an open mind regarding its proposed goal of ubiquitous broadband.³¹ CenturyLink further commented that it does not believe any entity receiving NUSF support has used that funding for purposes other than for which it was intended.³² While it supported minimal reporting, CenturyLink is concerned about crossing the line between absolutely necessary reporting and the diminishing returns received from requiring very detailed data that creates heavy regulatory burdens on carriers.³³ CenturyLink supported the Commission's decision to take a measured and methodical approach to the changes but is concerned about the Commission's decision to reform the contribution methodology prior to sizing the fund.³⁴

RTCN stated its primary interest in this reform proceeding is the re-establishment of a solid foundation for an adequate and stable source of universal service funding.³⁵ RTCN requests that the implementation strategy for any new contribution methodology address the threat of a legal challenge and potential rejection by the courts on appeal.³⁶

Viaero generally supported the Commission's goal of developing a strategic plan to modernize and reform the contribution mechanism.³⁷

³⁰ See CenturyLink 2016 Comments at 2

³¹ *Id.* at 3.

³² *Id.* at 5.

³³ *Id.*

³⁴ *Id.* at 6.

³⁵ See Comments of the Rural Telecommunications Coalition of Nebraska (June 6, 2016) at 3 ("RTCN 2016 Comments").

³⁶ *Id.*

³⁷ See Comments of NE Colorado Cellular, Inc. d/b/a Viaero Wireless (June 6, 2016) at 1 ("Viaero 2016 Comments").

Cox and Charter did not provide comments in response to the Commission's strategic plan questions.

B. Definitions, Adjustments, Data, and Transition

In its April 5, 2016 Order, the Commission found a connections-based contribution mechanism made the most sense in the current environment. The Commission found that the number of connections has remained stable while assessable revenues have been declining.³⁸ In addition, as the commenters acknowledged, using a connections-based approach will increase stability and predictability in the NUSF. Finally, 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. The Commission then sought further comments on how to define a "connection" and whether any factors or adjustments should be applied.

RTCN continued to recommend a hybrid mechanism which may, at least for an interim period, be the best option.³⁹ RTCN would also support the adoption of a connections-based contribution approach to the extent that such model and the implementation is structured in a way to address RTCN's two concerns, namely that the methodology address possible legal challenge by having the implementation date beyond the relevant appeal period, and that it be structured to avoid the loss of any current sources of funding.⁴⁰

i. Defining a "Connection"

CenturyLink commented that a service should be assessable when the service is capable of touching the public switched telephone network ("PSTN").⁴¹ Right now, the PSTN routes most

³⁸ See *In The Matter Of The Nebraska Public Service Commission, On Its Own Motion, To Consider Revisions To The Universal Service Fund Contribution Methodology*, Order Seeking Further Comments (April 5, 2016) citing the 2012 Contributions FNPRM at para. 247.

³⁹ See RTCN 2016 Comments at 4.

⁴⁰ See RTCN 2016 Comments at 3.

⁴¹ CenturyLink 2016 Comments at 7.

traffic by telephone number, so using working telephone numbers would be an acceptable way of determining an assessable service. However, as technology moves towards internet protocol, using telephone numbers to define a connection or assessable service may not cover all potential connections or services⁴². In addition, according to CenturyLink, as special access customers pay into the NUSF, but do not have telephone numbers, the Commission may have to consider retaining the current revenues based methodology for these customers.⁴³

Viaero stated that each type of definitional term raises a host of related issues. For example, "wireless channel" according to Viaero has no definitive meaning.⁴⁴ Similarly, an assessable connection which relies on numbers would also by definition, exclude from assessment all services that do not rely on numbers.⁴⁵

CTIA also echoed the concern voiced by Viaero that "wireless channel" is not itself defined and has no commonly understood definition.⁴⁶ Similarly CTIA stated that the definition of "assessable service" was not sufficiently clear.⁴⁷

RIC agreed with the Commission's proposed definition of connection stating it is identical to the definition of "connection" that the FCC proposed for comment in its 2012 Contributions Reform Further Notice of Proposed Rulemaking.⁴⁸ In addition, this definition builds on the definition used by the FCC in its Form 477 data collection. RIC proposed a slight modification to the Commission's definition of "assessable service." RIC proposed the following language: "A service which allows a connection to other networks through interworking routing as a means to provide telecommunications."⁴⁹

RIC proposed the Commission take steps to develop intrastate percentage usage factors. First, RIC suggested the issuance by the

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Viaero 2016 Comments at 4.

⁴⁵ *Id.*

⁴⁶ See CTIA 2016 Comments at 12.

⁴⁷ *Id.*

⁴⁸ See RIC 2016 Comments at 10

⁴⁹ *Id.*

Commission of a data request to all carriers that are currently contributing to the NUSF to provide a baseline to assist the Commission to establish the number of connections of each service provider in the state.⁵⁰ To establish a baseline for intrastate usage for assessable services, RIC recommended utilization of the reciprocals of the existing FCC prescribed "safe harbors" for cellular service, Voice over Internet Protocol (VoIP) and paging companies.⁵¹ Further, RIC proposes that IXC connections would be based upon an IXC's reported intrastate/interstate revenue, which IXCs already report through FCC Form 499-A filings.⁵² Finally, RIC suggested that the Commission retain the current revenues-based assessment mechanism for business services and for special access service.⁵³ RIC stated these services are already included in NUSF surcharge assessment and provided several policy reasons why these services should continue to be assessed.⁵⁴

Frontier agreed that defining "connection" and "assessable service" as proposed may be acceptable.⁵⁵ Frontier provided specific examples of what a "connection" would include.⁵⁶ In addition, Frontier agreed that making use of existing information from the FCC Form 477 data would streamline the reporting and administrative burdens of managing the NUSF.⁵⁷ Frontier recommended that the Commission strive for simplicity and clarity. Frontier recommended against a hybrid contribution mechanism.⁵⁸

ii. Determining Adjustments

With respect to adjustments, CenturyLink recommended that business customers continue to pay their fair share of the NUSF costs.⁵⁹ Thus, CenturyLink recommended the surcharge be adjusted or scaled depending on the type or class of service that is being

⁵⁰ RIC 2016 Comments at 14.

⁵¹ See *id.*

⁵² See RIC 2016 Comments at 15.

⁵³ See *id.* at 16.

⁵⁴ *Id.*

⁵⁵ See Frontier 2016 Comments at 2-3.

⁵⁶ See *id.*

⁵⁷ *Id.* at 3.

⁵⁸ *Id.*

⁵⁹ CenturyLink 2016 Comments at 8.

provided.⁶⁰ To determine the appropriate surcharge for each class of service, CenturyLink recommended the Commission review the current rates for each class of service.⁶¹ The Commission should exercise caution, however to ensure that large business customers and subscribers of very large connections do not end up with significantly increased NUSF surcharges.⁶²

CTIA voiced concerns with the issues raised by the Commission relative to potential adjustments. CTIA supported the goal of developing a contribution factor so that the type of technology used does not significantly affect the distribution of contribution obligations among the other sections of consumer users.⁶³ CTIA suggested the Commission provide more detail as to how the Commission would develop a factor for wireless contributions.⁶⁴

RIC recognized the Commission may in its discretion determine that there is a need for some per connection assessment reduction for second and additional connections per household.⁶⁵ However, a similar set of considerations may also apply to other multi-line wireless end users.⁶⁶ RIC agreed the Commission should continue to utilize the Mobile Telecommunications Sourcing Rule provided in Neb. Rev. Stat. § 77-2703.04 to determine assessable revenues for wireless carriers.⁶⁷

Further, RIC recommended that a connections-based mechanism should be implemented for residential end users. However, the current revenues-based mechanism should continue to be used for business end users, special access services and IXC services.⁶⁸

Frontier recommended against the adoption of adjustments stating the process of counting connections should be simple and

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See CTIA 2016 Comments at 13.

⁶⁴ *Id.*

⁶⁵ RIC 2016 Comments at 19.

⁶⁶ *Id.*

⁶⁷ See *id.* at 20.

⁶⁸ See *id.*

transparent.⁶⁹ Frontier believed the addition of adjustment factors would engage the Commission in arguable and arbitrary decisions.

iii. Data

Many of the commenters were generally supportive of the Commission's recommendation to utilize FCC Form 477 data to determine the number of connections for reporting purposes. RIC recommended the Commission formally approach the FCC to seek timely access to Nebraska-specific information.⁷⁰ CenturyLink stated the FCC's 477 report is a good starting point for verifying the accuracy of NUSF remittances.⁷¹ However, because it is filed only twice a year, CenturyLink stated, the Commission may need to implement other reporting to determine the number of assessable connections each month.⁷²

iv. Transition

CenturyLink did not recommend the Commission transition to a connections based methodology for NUSF contributions by first adopting a hybrid approach.⁷³ Transitioning to a connections based methodology in a two-step process will necessitate two programming changes to billing systems and delay the final transition.⁷⁴ Viaero expressed concerns about the transition to an alternative methodology as well, and recommended the Commission consider the length of time required to make necessary changes.⁷⁵ RIC stated the Commission should exercise a reasonable degree of caution. Both RIC and RTCN recommended the Commission wait until the adopting order becomes a final order prior to transitioning to a new mechanism.⁷⁶

⁶⁹ See Frontier 2016 Comments at 3.

⁷⁰ See RIC 2016 Comments at 24.

⁷¹ See CenturyLink 2016 Comments at 9.

⁷² *Id.*

⁷³ See *id.*

⁷⁴ *Id.*

⁷⁵ See Viaero 2016 Comments at 6.

⁷⁶ See RIC 2016 Comments at 26; and RTCN 2016 Comments at 3.

IV. Arguments Presented in the Initial and Reply Briefs

CenturyLink, CTIA, and RIC filed initial Briefs. CenturyLink, CTIA, Cox, Charter, RIC, and the RTCN filed Reply Briefs.

A. Jurisdictional Considerations

CenturyLink and RIC argued there are no insurmountable jurisdictional issues preventing the Commission to migrate to a connections-based NUSF contribution mechanism providing that the Commission assess only that part of the connection that is used for intrastate traffic.⁷⁷ Section 254(f) provides that "[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service" and "nothing in Part 54 precludes a state commission from adopting its own state universal service policies and mechanisms."⁷⁸ Nothing in state law requires the Commission to utilize a universal service contribution mechanism based on revenues.

CTIA urged the Commission to wait to revise its NUSF contribution rules until pending FCC action on federal contribution reform has been completed.⁷⁹ CTIA was concerned that a state mechanism that targets the same revenues or services as the federal mechanism may be seen as a burden the federal mechanism and thus violate § 254(f).⁸⁰

CenturyLink disagreed arguing nothing in the United States Constitution or the Communications Act including § 254 compels that non-traffic sensitive telephone plant be allocated by a rigid formula.⁸¹ CenturyLink argued its connections-based proposal does not preclude compliance with the federal contributions mechanism and does not rely on interstate services or interstate revenues because it is calculated without reference to interstate service and interstate revenue.⁸² In addition, CenturyLink argued it is not

⁷⁷ CenturyLink's Reply Brief in Response to the Commission's Solicitation for Legal Briefs (August 26, 2016 at 2 ("CenturyLink Reply Brief"); see also Brief of the Rural Independent Companies in Response to July 12, 2016 Order Soliciting Briefs (August 3, 2016) at 4-5 ("RIC Brief").

⁷⁸ CenturyLink Reply Brief at 2-3.

⁷⁹ Comments of CTIA in Response to the Commission's July 12, 2016 Order Soliciting Briefs (August 3, 2016) at 3 ("CTIA Brief").

⁸⁰ *Id.*

⁸¹ CenturyLink Reply Brief at 4.

⁸² *Id.* at 5.

inequitable to assess a flat charge for an intrastate connection without regard to usage or intrastate revenue because every such connection has the capability of intrastate calling.⁸³ Emergency 9-1-1 charges are one such example.⁸⁴ Finally, a flat state universal service charge for an intrastate connection, without regard to usage or revenues is nondiscriminatory because it assesses the same amount to every connection having the capability for intrastate calling.⁸⁵

Likewise, RIC argued the Commission has the authority pursuant to state law to issue decisions that conform with and advance the legislative policies of the NUSF.⁸⁶ *Neb. Rev. Stat. § 86-323(5)* states "there should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service." Section 86-325 further states "the Commission shall determine the standards and procedures reasonably necessary, adopt and promulgate rules and regulations as reasonably required. . . to efficiently develop, implement, and operate the [NUSF]." RIC further argued that nothing in part 54 of the FCC Rules precludes a state from establishing its own contributions mechanism when it does not intrude upon the interstate/international contribution mechanism that the FCC has established.⁸⁷ RIC advised that adherence to the FCC's Kansas/Nebraska Declaratory Ruling directives would minimize, if not entirely avoid any jurisdictional concerns.⁸⁸ Further, RIC stated that compliance with the second constraint found in § 254(f)-the lack of any reliance or burden on the FUSF- can be easily achieved as outlined in its proposed method by which the "intrastate" component of a state connection can be isolated.⁸⁹

RTCN emphasized the Commission should not delay this reform contrary to the request of CTIA.⁹⁰ The cost of not moving forward

⁸³ *Id.* at 9.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ RIC Brief at 7.

⁸⁷ *Id.* at 10.

⁸⁸ *Id.* at 11.

⁸⁹ *See id.* at 22.

⁹⁰ *See Reply Brief of the Rural Telecommunications Coalition of Nebraska (August 26, 2016) at 6 ("RTCN Reply Brief").*

with state-level contribution reform would be severe.⁹¹ The stability of the fund is critical to whether Nebraska consumers have access to affordable and reliable telecommunications services.⁹²

B. Application of a Connections-Based Mechanism

Despite its pronouncement at the outset of this proceeding that the Commission did not propose to assess broadband service, at the request of RIC, the Commission asked what issues may be presented if a state connections-based contribution mechanism was established where a regulatory surcharge was assessed on a connection through which only broadband Internet access service is provided versus a connection where both broadband and voice is provided. No party supported the assessment of broadband services.

As CenturyLink points out, however, the FCC has not preempted states from assessing universal service fund surcharges on VoIP service. VoIP does not meet the definition of broadband Internet access service (BIAS). VoIP, however, is an application on broadband, not the underlying broadband capability. The VoIP application does not provide the capability to transmit data and receive data from all or substantially all Internet endpoints and therefore does not meet the definition of BIAS. Further, unlike BIAS, the FCC subjects VoIP to federal universal service fund contributions. Finally, CenturyLink argues the FCC's 2010 Nebraska Kansas ruling eliminates any doubt that states are not preempted from imposing universal service contribution obligations on providers of nomadic interconnected VoIP service.

CenturyLink, RTCN, and RIC each argued that the Commission can tailor its application of the connections-based assessment in a way that is consistent with and not in violation of § 254(f).

C. Identification of Other Issues and Recommendations

Cox and Charter responded to the questions surrounding a data gathering process proposed by RIC. These parties voiced concerns about the highly confidential nature of FCC Form 477 and 499-A data. They recommended the Commission gather input through workshops.

⁹¹ *Id.*

⁹² *Id.*

V. Testimony and Reply Testimony

The Commission requested pre-filed testimony and reply testimony be filed prior to the hearing in this matter. Pre-filed testimony was filed by CenturyLink, Cox, CTIA, Charter Fiberlink, Frontier, Level 3, the RIC, the RTCN, Windstream, and the Commission staff. Comments were also filed by Viaero. Reply testimony was filed by CenturyLink, Cox, CTIA, Charter Fiberlink, Frontier, Level 3, RIC, RTCN, and Windstream.⁹³

CenturyLink, Windstream, Frontier, RIC, and RTCN supported the idea of moving the contribution mechanism from a revenues-based to a connections-based mechanism. CenturyLink supported the move to a connections based contribution mechanism for the NUSF which will help the Commission stabilize the NUSF.⁹⁴ RIC stated the Commission's current mechanism is unstable and thus lacks predictability.⁹⁵ RIC's analysis concluded that the use of connections will establish a stable assessment base for NUSF remittances.⁹⁶ RTCN stated its primary concern is that the Commission take expeditious steps to stabilize the NUSF, which is unsustainable under its current revenues-based methodology.⁹⁷ Windstream stated a connections-based mechanism should be less volatile than a revenues-based mechanism.⁹⁸ Frontier stated a "per connection" assessment could provide a more stable and reliable basis for funding.⁹⁹

Some carriers expressed concern with changing the manner in which contributions to the NUSF are assessed. Level 3 has generally supported the exploration of alternatives to a revenues-based contribution mechanism but expressed concern with the manner in

⁹³ The pre-filed testimony, reply testimony, and comments filed in March and April of 2017 were offered and received into the Commission's record at the hearing. As requested, the Commission took administrative notice of the comments filed during the pendency of this proceeding.

⁹⁴ See Direct Testimony of Alan Lubeck on behalf of United Telephone Company of the West d/b/a CenturyLink and Qwest Corporation, Inc. d/b/a CenturyLink QC (March 24, 2017) at 1.

⁹⁵ See Direct Testimony of Ken Pfister on behalf of the Nebraska Rural Independent Companies, (March 24, 2017) at 4.

⁹⁶ See Direct Testimony of Edit Kranner on behalf of the Rural Independent Companies (March 24, 2017) at 5.

⁹⁷ See Direct Pre-Filed Testimony of Stacy Brigham (March 24, 2017) at 4.

⁹⁸ See Direct Testimony of William F. Kreutz (March 24, 2017) at 7.

⁹⁹ See Direct Testimony of Scott Bohler for Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (March 24, 2017) at 2.

which a connections-based mechanism could be applied.¹⁰⁰ Level 3 believed a connections-based mechanism entails complexities that have not fully been assessed.¹⁰¹ Level 3 was also concerned with the potential cost associated with modifying its billing and reporting systems.¹⁰² Charter viewed a connections-based mechanism as something fraught with complexity and transactional costs.¹⁰³ Charter encouraged the Commission to stay with the existing revenues-based mechanism.¹⁰⁴ CTIA stated a transition from a system of carrier assessments to a system of appropriations from the state's general fund will ensure the broadest possible contribution base and will support the fund with those who benefit from the fund.¹⁰⁵ CTIA did not agree with the Commission that there was a need for contribution reform.¹⁰⁶ CTIA also recommended a point-of-sale methodology for contributions from prepaid wireless carriers.¹⁰⁷ Cox expressed concerns with the Commission's proposal to move to a connections-based mechanism as proposed but stated the Commission should adopt a true connections-based method for business customers to ensure fair contributions from all categories of customers.¹⁰⁸

In reply testimony, CenturyLink recommended the Commission use the same rules for billing the connections-based NUSF surcharge as it uses for the TRS surcharge.¹⁰⁹ CenturyLink stated using the same rules will make programming the billing systems for the NUSF

¹⁰⁰ Direct Testimony of Pamela Hollick Level 3 Communications, Inc. (March 24, 2017) at 2.

¹⁰¹ *Id.*

¹⁰² See Reply Testimony of Pamela Hollick on behalf of Level 3 Communications, (April 21, 2017) at 3.

¹⁰³ See Pre-Filed Initial Testimony of Joseph Gillan on Behalf of Charter Fiberlink-Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (March 24, 2017) at 4.

¹⁰⁴ See *id.*

¹⁰⁵ See Direct testimony of Don Price on Behalf of CTIA-The Wireless Association (March 24, 2017) at 12.

¹⁰⁶ See *id.* at 25.

¹⁰⁷ See *id.* at 33.

¹⁰⁸ See Testimony of Robert Logsdon on behalf of Cox Nebraska Telcom, LLC (March 24, 2017) at 4.

¹⁰⁹ See Reply Testimony of Alan Lubeck on Behalf of United Telephone Company of the West, Inc. d/b/a CenturyLink and Qwest Corporation d/b/a CenturyLink QC (April 21, 2017) at 3.

surcharge easier.¹¹⁰ Frontier also supported a more simple connection-based approach saying parity between wireless and wireline surcharges would promote a level playing field.¹¹¹ RTCN stated the connections-based framework does not have the same problem of discerning jurisdiction as a revenues-based surcharge.¹¹² The definition can apply to both fixed wireline and mobile connections.¹¹³

Level 3 commented that Nebraska isn't the only state that is seeing an erosion in assessable revenues. Over the last two years, the Indiana Commission saw decreases in assessable revenue of 10.72 percent and 12.65 percent.¹¹⁴ Level 3 expressed a concern with using connections for businesses if there isn't a cap on the number of connections being assessed.¹¹⁵

Charter stated there is no perfect answer as to how to collect revenues for high cost subsidies.¹¹⁶ However, Charter recommended the Commission keep a revenues-based contribution methodology because the flaws in the current system are at least known flaws.¹¹⁷ Charter maintained there was no commonly understood method to quantify "connections" or a clear definition of "connections" and further argued Form 477 data has not been litigated in the same ways as Form 499.¹¹⁸

Cox stated more information must be provided before a connections-based methodology is ripe for implementation.¹¹⁹ Cox suggested the Commission hold workshops so that collaboration can

¹¹⁰ See *id.*

¹¹¹ See Reply Testimony of Scott Bohler for Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (April 19, 2017) at 6.

¹¹² See Reply Testimony of Stacy Brigham (April 21, 2017) at 5.

¹¹³ *Id.*

¹¹⁴ See Reply Testimony of Pamela Hollick Level 3 Communications (April 21, 2017) at 7.

¹¹⁵ See *id.* at 5.

¹¹⁶ Pre-Filed Reply Testimony of Joseph Gillan on behalf of Charter FiberLink-Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (April 21, 2017) at 3.

¹¹⁷ See *id.*

¹¹⁸ See *id.* at 5-10.

¹¹⁹ See Rebuttal Testimony of Robert Logsdon on behalf of Cox Nebraska Telcom, LLC (April 21, 2017) at 4.

occur between staff, carriers and affected customers to develop a workable mechanism that is understood.¹²⁰

CTIA maintained the Commission should not modify the NUSF contribution mechanism.¹²¹ CTIA disputed the Commission's claim for a need to stabilize the fund.¹²² CTIA also stated Nebraska is not unique in seeing declining revenues for its universal service program stating other states are seeing similar trends.¹²³

RIC on the other hand argued that CTIA failed to take into consideration the impact on the NUSF reserve balance transferred to the high cost program this year due to the ongoing reductions in the level of remittances.¹²⁴ In addition, RIC stated Ms. Kranner has demonstrated the implementation of a connections-based mechanism is demonstrably more stable since total voice connections in Nebraska as an assessment base have, during the period of December 2008 through December 2015 not only remained stable but also have somewhat increased.¹²⁵ RIC supported the Commission's proposed use of a connections-based mechanism and stated that a connections-based mechanism.¹²⁶ Contrary to the claims of others, RIC stated, a connections-based mechanism will not be costly to administer. A RIC member company sought input from its billing vendor, National Information Solutions Cooperative, and was advised that implementation of a per-connection charge should not be costly.¹²⁷

Windstream stated most parties to this case support a connections-based funding mechanism for the NUSF but they found the specific mechanism, especially the multi-tiered business surcharges to be problematic.¹²⁸ Windstream supported moving to a

¹²⁰ See *id.*

¹²¹ See Reply Testimony of Don Price on Behalf of CTIA-The Wireless Association (April 21, 2017) at 4.

¹²² See *id.*

¹²³ See *id.* at 5.

¹²⁴ See Reply Testimony of Dan Davis on Behalf of the Nebraska Rural Independent Companies (April 21, 2017) at 3.

¹²⁵ See *id.*

¹²⁶ See Reply Testimony of Ken Pfister on Behalf of the Nebraska Rural Independent Companies (April 21, 2017) at 9.

¹²⁷ See *id.* at 12-13.

¹²⁸ See Rebuttal Testimony of William Kreutz (April 21, 2017) at 2.

connections-based contribution methodology for the NUSF. Windstream believed the guiding principle should be technological neutrality where each line should be assessed the same amount.¹²⁹

VI. Commission Workshop

At the request of a number of carriers, the Commission held a public workshop on July 11, 2017 to discuss many of the questions raised by its February Order. The Commission had previously clarified its intent that the scope of the current proceeding is to first determine whether the Commission should move from the current revenues-based surcharge to a flat connections-based charge to support its universal service programs and to enter an order thereon.¹³⁰

VII. Commission Hearing

The Commission held a hearing on August 30, 2017 in Lincoln, Nebraska. Appearances were entered as shown above. All pre-filed testimony filed on or around March 24, 2017 and reply testimony filed on or around April 17, 2017 was identified, marked and entered into the record. The Commission took administrative notice of all comments, reply comments and briefs filed previously in this docket.

Mr. Cullen Robbins, the Director of Communications and NUSF Departments provided initial testimony to summarize his pre-filed testimony offered and accepted as Exhibit No. 3. He briefly described the Commission and Commission staff's previous proposals offered for comment.

Mr. Alan Lubeck, State Operations Director for CenturyLink, provided a summary of his pre-filed direct and reply testimony offered and received in the record as Exhibit Nos. 4 and 16. He stated Nebraska has always been a leader in recognizing the importance of universal service for its rural consumers. The NUSF has supported the network and maintenance of the voice network in the highest cost areas of state. The NUSF supports both wireless and wireline service to uneconomic areas that would otherwise be left behind. Mr. Lubeck emphasized that maintaining the current mechanism will not work. The FCC's docket on contribution reform has been open for 10 years or longer. CenturyLink believes a simple voice connection mechanism would be a fair, easy to administer,

¹²⁹ See *id.* at 3.

¹³⁰ See *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/PI-193 Order Denying Motion, May 9, 2017.

and be sustainable mechanism. Mr. Lubeck further stated that no mechanism is perfect; but the flaws in the current mechanism outweigh the cost of changing to a connection mechanism that provides a solution that is simple, efficient, fair, sustainable, predictable and enforceable.

Ms. Stacey Brigham, a Senior Regulatory Consultant at TCA, Inc., provided a summary on behalf of the RTCN. Her pre-filed testimony and reply testimony was offered and accepted into the record as Exhibit Nos. 6 and 18. Ms. Brigham stated RTCN's primary concern was the stability of the NUSF while ensuring equitable treatment for all providers and customers of intrastate services. Between 2005 and 2017, she stated the fixed broadband program has incurred reductions dropping from \$73 million to \$35 million. She stated that this trend is unsustainable and it is critical that the Commission place the NUSF back on a solid foundation. RTCN supported assessing contributions on the basis of connections rather than intrastate revenues. RTCN also supported the Commission definition of connection.

Mr. Joseph Gillan, of Gillan Associates, an economic consultant for Charter, provided a summary of his pre-filed testimony and reply testimony offered and accepted into the record as Exhibit Nos. 7 and 19. Mr. Gillan recommended the Commission stay with revenues as a basis for funding the NUSF. He gave three reasons for this recommendation. First, the business market will make a determination whether the price it pays for the service is reasonable or not. Particularly, in the business market, he stated, services that have similar characteristics are priced very, very differently. Secondly, Mr. Gillan stated that connections are not nearly as stable as some people would like the Commission to understand. Finally, he was concerned about competitive neutrality. It is important that the nonaffiliated provider of the service be treated the same as the affiliated provider.

Ms. Pamela Hollick, Associate General Counsel for Level 3 Communications, provided a summary of her pre-filed testimony and reply testimony offered and accepted into the record as Exhibit Nos. 5 and 17. Ms. Hollick stated that how the Commission defines a connection is of critical importance. The amount of the surcharge is also important when assessing it to each connection for a business customer when they compare it to the total cost of the service. Particularly for new products, Level 3 wants to make sure that we are setting clear definitions and implementation standards. Upon questioning, Ms. Hollick did not have a definition of connection to recommend, although she stated they are not opposed to moving toward connections.

Mr. Robert Logsdon, Director of Regulatory Affairs for Cox Nebraska Telcom LLC, provided a summary of his pre-filed testimony and reply testimony offered and accepted into the record as Exhibit Nos. 8 and 20. Cox continues to believe it is premature to adopt a connections-based contribution methodology. However, if the Commission decides to proceed, Cox urges the new methodology to be as simple as possible to implement in order to minimize the accompanying costs that will be incurred. Finally, Cox asked the Commission to give consideration to the proposal that was presented by Windstream in the workshop held on July 11, 2017.

Mr. Don Price, a consultant specializing in public policy retained by CTIA, offered some corrections to his pre-filed testimony and reply testimony accepted into the record as Exhibit Nos. 9 and 21. Mr. Price testified that the Commission perceives the NUSF is in financial harm which has led to tentative conclusions that the remedy is changing the funding method to this new connections-based mechanism. Mr. Price further said his ability to offer helpful and instructive comments has been limited by the fact that there has not been a comprehensive proposal that CTIA can review. Mr. Price further stated that there is inadequate data that supports the proposal to move to a connections-based funding methodology. CTIA's position is for the Commission to wait until the Federal-State Joint Board on Universal Service completes its review of a comprehensive fix to the federal universal service funding mechanism.

Mr. Scott Bohler, Manager of Government and External Affairs for the central region for Frontier, provided a summary of his pre-filed testimony and reply testimony offered and accepted into the record as Exhibit Nos. 10 and 22 as corrected. Frontier supports the Commission's stated purpose in this docket which is to move to a funding mechanism for the NUSF that assesses against connections rather than intrastate revenue. Frontier believes the framework should not be based on technology and that the same per-connection surcharge should apply whether it's a wireline connection, a wireless connection or a VoIP connection. In addition, care should be taken so that the surcharge assessed to multi-line businesses are reasonable and not excessive. Any new funding mechanism should be easy for providers to implement in their billing system.

Mr. Ken Pfister, Vice President-Strategic Policy for Great Plains Communications testified on behalf of RIC. His pre-filed testimony and reply testimony were offered and received into the record as Exhibit Nos. 13 and 25. Mr. Pfister stated that many rural customers across the state would not have access to advanced telecommunications and information services without the NUSF program. He stated no question should exist that the NUSF surcharge

remittances have materially declined in recent years and as a consequence disbursements for universal access to quality services have also declined. RIC believes that this decline conflicts with the NUSF Act's requirements that support be predictable and sufficient. Mr. Pfister further stated the FCC Form 477 connection data is sufficient to implement a connections-based surcharge. He stated the FCC has described the Form 477 data as the principal tool used to gather data on the availability of communication services.

Using the FCC Form 477 data will have a number of benefits, according to RIC. First, it will preclude additional reporting burdens. Second, it will not create confidentiality issues for providers. Third, it will lessen provider reporting obligations by eliminating the need to provide monthly intrastate revenue data to the Commission as is currently required.

Ms. Edit Kranner, an economic consultant at Consortia Consulting, also testified on behalf of RIC. In addition to her pre-filed direct and reply testimony marked and received into the record as Exhibit Nos. 12 and 24, Ms. Kranner also sponsored Exhibit No. 27 which was received without objection. Exhibit No. 27 shows actual connections for June 2015 and June 2016 and her June 2016 forecast. Ms. Kranner concluded from her data analysis that Nebraska connection forecasts have not only been realistic, but they have proven to be conservative.

In addition, Ms. Kranner stated the reasonableness of the Commission's projection is supported by recently released data from USAC regarding the federal universal service fund program which reveal that assessable revenues in the federal contribution base for 2016 accounted to \$58.4 billion, the lowest annual revenues in the history of the federal universal service fund program. If the 4th quarter 2017 assessable revenues are equal to the 3rd quarter 2017, then the federal contribution factor will increase to 18.7 percent, the highest factor in history.

Mr. Dan Davis, Director of Policy Analysis at Consortia Consulting, was the final witness for RIC. His pre-filed direct and reply testimony was marked and received into the record as Exhibit Nos. 11 and 23. Mr. Davis indicated that because the Commission is currently addressing voice services only, it is reasonable to expect that the Commission will not assess NUSF connections-based surcharges on connections associated with nonworking telephone numbers. Mr. Davis further stated that according to the Form 477 instructions, providers are to report interconnected VoIP subscriptions based on the maximum number of interconnected VoIP calls that their customers may simultaneously

have active between their physical location and the public switched network.

Mr. William Kreutz, Senior Advisor-Policy and Strategy for Windstream Communications, provided testimony on behalf of Windstream. His pre-filed direct and reply testimony were offered and received into the record as Exhibit Nos. 14 and 26. Windstream supported moving on with the connections-based mechanism. Windstream stated the Commission may want to take notice of the TRS assessable surcharges that are being collected. TRS remittances are another indicator that connections is going to be a more stable source. TRS has a limit of a cap of 100 lines per customer. So for large, multi-line business customers this cap would be a reason that TRS connections are lower than Form 477 as reported. The TRS model is familiar to carriers that are billing TRS units today.

VIII. Post Hearing Comments and Reply Comments

The Commission permitted the filing of post hearing comments and reply comments. Some carriers disputed the characterization of certain positions or comments made during the hearing.

Charter, CTIA, Cox and Viaero continued to recommend the Commission stay with a revenues-based mechanism for the present time. Charter advocated the Commission should investigate the underlying causes of declining revenues prior to changing its contribution methodology.¹³¹ Charter further warned the Commission that Form 477 instructions are not unambiguous.¹³² Cox also indicated it has not changed its position that the Commission should wait for the FCC to take action on this subject.¹³³ CTIA argued the information gathered through the comments does not support action to change the NUSF contribution methodology. CTIA further argued the per-connection contribution mechanism will not reduce the aggregate burden on consumers and will require extensive changes to carriers' billing systems.¹³⁴ Viaero indicated there was great uncertainty that a connections-based contribution mechanism would create a more equitable, sustainable or predictable contribution mechanism than the continued reliance on

¹³¹ See *id.*

¹³² See *id.* at 3.

¹³³ See Post-Hearing Comments of Cox Nebraska Telcom, LLC (September 15, 2017) at 1.

¹³⁴ See Comments of CTIA in Response to the Commission's August 30, 2017 USF Contribution Hearing (September 19, 2017) at 2-4.

telecommunications revenue.¹³⁵ Teleservices recommended the Commission resolve the issue of how to adequately identify high capacity facilities for the purposes of a connections-based mechanism.¹³⁶

CenturyLink reiterated the harms associated with maintaining the current revenues-based mechanism. CenturyLink stated the current mechanism is neither sustainable nor technology neutral.¹³⁷ CenturyLink urged the Commission to adopt a per-line contribution methodology that will bring it back into compliance with the fund's policy objectives.¹³⁸

Moreover, RIC stated the course the Commission has set in this proceeding is consistent with the principles established by the Legislature in Neb. Rev. Stat. § 86-323 and consistent with Section 254(f).¹³⁹ RIC recommended the Commission find all voice providers are expected to remit connections-based NUSF surcharge amounts based upon the number of connections reported to the FCC for purposes of Form 477 Reports.¹⁴⁰ Voice service providers certify the accuracy of the number of connections reported to the FCC for Form 477 purposes and the FCC makes its Form 477 Reports available for the public to access and review.¹⁴¹

Windstream stated most of the parties in this case favor a connections-based methodology to provide a stable source of NUSF funding consistent with the statutory mandate that universal service mechanisms be specific, predictable and sufficient. Windstream further stated those who oppose a connections-based methodology have not refuted the fact that connections don't have volatile fluctuations. Accordingly, Windstream stated, the Commission should confirm its intention to adopt a connections-based methodology.

¹³⁵ See Post-Hearing Comments of NE Colorado Cellular, Inc., d/b/a Viaero Wireless (September 15, 2017) at 1.

¹³⁶ Association of Teleservices International, Inc. Reply to RIC Post-Hearing Comments (September 26, 2017) at 2.

¹³⁷ Post Hearing Reply Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (September 27, 2017) at 1.

¹³⁸ *Id.* at 3.

¹³⁹ See Closing Comments of the Rural Independent Companies (September 15, 2017) at 2-5.

¹⁴⁰ See *id.* at 8.

¹⁴¹ *Id.* at 9.

O P I N I O N A N D F I N D I N G S

We opened this proceeding almost three years ago, in November of 2014. At that time we observed that remittance levels had been declining at a rate of over 2 percent per year since 2009. In the intervening period since this proceeding was initiated, total collections declined from \$49.5 million in 2014 to approximately \$40 million in 2016, a decline of approximately 18.6 percent.¹⁴² In our February 2017 Order, we further noted that NUSF remittances have declined by more than 34 percent since 2005. The Commission's forecasts estimated that remittances would decline by roughly 6 million or 16 percent between 2016 and 2017 and then by roughly 8 million or 23 percent in 2018.¹⁴³

The Commission finds the erosion of support jeopardizes the Commission's ability to meet the goals and requirements of the NUSF Act. Specifically, the Legislative goals in the NUSF Act call upon the Commission to preserve and advance universal service by supporting access to quality telecommunications and information services available at just, reasonable rates through the creation of specific, predictable, sufficient, and competitively neutral mechanisms.¹⁴⁴ As one of the commenters observed, among the harms associated with maintaining the current revenues-based mechanism is that the NUSF may not be sustainable or technologically neutral.¹⁴⁵

We note that we are not the only commission considering contribution reform. Connections-based approaches have been under consideration for some time. The FCC has been considering contribution reform relative to the federal universal service fund since the early 2000s.¹⁴⁶ As noted *supra*, the FCC released a

¹⁴² Since 2014, the Commission's remittance and fund balance data has been published quarterly on the Commission's website at http://www.psc.nebraska.gov/ntips/ntips_nusf.html under the link "Quarterly Remittance and Fund Balance Report."

¹⁴³ See *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/PI-193, ORDER AND ORDER SEEKING FURTHER COMMENTS AND SETTING HEARING (February 22, 2017) at 1. See also Hearing Transcript 73:2-7.

¹⁴⁴ See generally, Neb. Rev. Stat. § 86-323. See also, Hearing Transcript, Testimony of Alan Lubeck, 23:5-9.

¹⁴⁵ See Post Hearing Reply Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (September 27, 2017) at 1.

¹⁴⁶ In 2002, the FCC sought comment on a hybrid connections and revenues proposal and a hybrid numbers and connections proposal stating,

connections-based proposal in 2012 and in 2014 referred various contribution reform options to the Federal-State Joint Board on Universal Service for recommendation.¹⁴⁷ The Utah Public Service Commission recently initiated a rulemaking which shifted contributions from a revenues-based mechanism to a connections-based mechanism based in part on its investigation that a per-connection surcharge would provide greater financial stability to the fund.¹⁴⁸ The New Mexico Public Regulatory Commission has also been considering modifications to its contribution mechanism and is seeking information from carriers relative to communications connections.¹⁴⁹

As the Commission previously concluded, the current revenues-based contribution mechanism is not sustainable. No commenter to date has convinced us that as a policy perspective, the Commission should not address this decline through contribution reform. Without reform, our efforts to preserve and advance the deployment

[A] connection-based assessment may address the difficulty of applying regulatory distinctions inherent in the existing system to new services and technologies. By harmonizing the contribution system with the telecommunications marketplace, a connection-based assessment approach may help to ensure the stability and sufficiency of the universal service contribution base over time. Such an approach also may provide contributors with greater certainty, reduce administrative costs, and avoid marketplace distortions, ultimately benefiting consumers.

In the Matter of Federal-State Board on Universal Service et al., CC Docket No. 96-45 et al., Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3760, paras. 16-18 (rel. February 26, 2002) (*2002 Contribution Reform Order*) See also, *High Cost Universal Service Support et al.*, CC Docket No. 96-45 et al., Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6686, App. B, para. 81 (rel. Nov. 5, 2008) (seeking comment on assessing business connections.) Subsequently, in 2012, the FCC again sought comment on a connections-based contribution mechanism. See *2012 Contributions FRPRM*, 27 FCC Rcd at 5436-5453 paras. 219-270.

¹⁴⁷ Once the Joint Board provides a recommendation to the FCC, the recommendation is released for comment. The FCC has one year to act on the recommendation. At this point, the Joint Board has not released a recommendation.

¹⁴⁸ *In the Matter of Utah Public Service Commission Rule R746-360. Universal Public Telecommunications Service Support Fund and R746-360-4, Application of Fund Surcharges to Customer Billings*, Notice of Rulemaking and Response to Comments (May 16, 2017) at 2.

¹⁴⁹ *In the Matter of the State Rural Universal Service Fund 2018 Surcharge Collection and Fund Size*, Case No. 17-00202-UT, Order Amending Title of this Docket and Requesting Information from Contributing Carriers, Staff of the Telecommunications Bureau of the Commission, and Solix, Inc., at 4 (August 30, 2017).

of affordable and reasonably comparable access to communications services as required by the NUSF Act cannot succeed.¹⁵⁰ The critical question is what the Commission should do in response to the declining remittance base to promote a stable, predictable, sufficient and competitively neutral funding mechanism. Charter and CTIA suggest one means to stabilize the NUSF would be to increase remittances by increasing the surcharge.¹⁵¹ However, increasing the surcharge percentage on a declining base does not address the underlying erosion of assessable telecommunications revenue.

After thorough consideration of the several rounds of comments, briefs, and hearing testimony, the Commission is of the opinion and finds the best alternative is to adopt a connections-based contribution mechanism. In as early as 2002, connections-based contribution mechanisms were regarded as providing stability in a marketplace that was constantly evolving.¹⁵² Public FCC data indicates that from 2013 to 2015 voice connections in Nebraska were relatively stable, increasing 0.2% per year.¹⁵³ Data presented by RIC's witness indicated that voice connections in Nebraska have also remained stable.¹⁵⁴ The Commission's predictive judgment is that adopting a connections-based mechanism will provide more stability and predictability than the current revenues-based mechanism and is the best option to preserve and advance universal service consistent with the purpose and requirements of the NUSF Act.

We also previously concluded that nothing in state or federal law requires the Commission to maintain its universal service fund

¹⁵⁰ See Neb. Rev. Stat. § 86-323 (Reissue 2014).

¹⁵¹ See Hearing Transcript, Testimony of Joseph Gillan, 37:18-25 and Testimony of Don Price, 64:10-16.

¹⁵² See *2002 Contribution Reform Order*, 17 FCC Rcd at 3784 at para. 71 (Because the number of connections historically has been more stable than interstate revenues, a connection-based assessment may provide a more predictable and sufficient funding source for universal service. A connection-based assessment approach would not require carriers to distinguish between interstate and intrastate revenues, or telecommunications and non-telecommunications services, distinctions that do not apply easily or naturally outside of the traditional wireline context, and may become more and more difficult to apply as the marketplace evolves.)

¹⁵³ See *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/PI-193, ORDER AND ORDER SEEKING FURTHER COMMENTS AND SETTING HEARING (February 22, 2017) at 16.

¹⁵⁴ See Hearing Exhibit No. 27.

mechanism based on provider revenues.¹⁵⁵ Rather, we know the FCC has been contemplating a numbers-based or connections-based contribution mechanism for some time and has cited the many positive benefits of making this change.¹⁵⁶ In addition, there are other universal service mechanisms which currently rely upon a fixed or flat rate surcharge.¹⁵⁷ As RIC emphasized in its brief and as we have indicated before, universal service is a joint federal and state partnership.¹⁵⁸ Section 254(f)¹⁵⁹ provides the states with the ability to preserve and advance universal service with the establishment of their own mechanism. In fact, the FCC expects and encourages states to maintain their own universal service funds, or to establish them if they have not done so.¹⁶⁰

The NUSF Act likewise directs the Commission, without specific guidance as to the type of surcharge, to establish a universal service mechanism that requires all telecommunications companies to make equitable and nondiscriminatory contributions that will provide consumers in all regions of the state with quality, affordable and reasonably comparable access to

¹⁵⁵ See CenturyLink Reply Brief at 5; (A state's USF mechanism does not have to be based on an allocation of non-traffic sensitive plant, an allocation of revenues, or jurisdictional usage factors...").

¹⁵⁶ See e.g., *2002 Contribution Reform Order*, 17 FCC Rcd 3752, 3760, paras. 16-17.

¹⁵⁷ See *State Universal Service Funds 2014*, National Regulatory Research Institute, Report No. 15-05, Sherry Lichtenberg, Ph.D. (June 2015).

¹⁵⁸ See RIC Brief at 11 n. 21.

¹⁵⁹ Section 254(f) provides,

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional 'specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

¹⁶⁰ See *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3156 at para. 184 (rel. March 30, 2016).

telecommunications and information services.¹⁶¹ The Legislature declared the Commission shall determine the standards and procedures reasonably necessary to efficiently develop and operate the NUSF.¹⁶² We find that the absence of limiting language in state law suggests that we must make a reasoned interpretation of how best to require telecommunications carriers to contribute on an equitable and nondiscriminatory basis in a manner that will achieve the goals of the NUSF Act.

We make clear that the revised contribution mechanism will be based on intrastate voice connections and not on standalone broadband Internet access services. Through several rounds of comments, the Commission proposed a definition of "connection" and "assessable service." These definitions are intended to capture the services subject to contribution requirements today. This mechanism would include wireline and wireless connections as well as VoIP connections, each of which contribute on a revenues basis today. The definitions adopted herein would be thus applied.

The Commission adopts the definition of "connection" as follows:

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

This definition was proposed by the FCC in its 2012 Contribution Reform Order.¹⁶³ While the term "wireless channel" is not a specifically defined term that terminology is utilized in the FCC's Form 477 instructions in its generally descriptive language.¹⁶⁴ For the purpose of this definition, the Commission would rely on the general and common understanding of the phrase wireless channel, meaning a wireless pathway or frequency used to transmit information. If a wireless connection capable of transmitting voice service is reported to the FCC for Form 477 purposes, likewise, it will fall under the definition of "connection." Whether or not it would be an assessable connection would be subject to the Commission's determination of an "assessable service."

The Commission adopts the definition of "assessable service" as follows:

¹⁶¹ See Neb. Rev. Stat. § 86-323 (4)-(5).

¹⁶² See Neb. Rev. Stat. § 86-325.

¹⁶³ See *2012 Contribution FNPRM* 27 FCC Rcd at 5441, para. 232.

¹⁶⁴ See Viaero 2016 Comments at 4.

Assessable service: A service which allows a connection to other networks through inter-network routing as a means to provide telecommunications.

Based upon the comments submitted previously, we find this definition of "assessable service" should be adopted. We further clarify that the assessment would continue to be on the end users.¹⁶⁵

While we adopt a connections-based mechanism in today's Order, the Commission will have several other issues to consider prior to a workable transition to a connections-based contribution mechanism. Until those decisions have been made we continue to require NUSF remittances be filed pursuant to the Commission's existing revenues-based methodology.

We intend to open a separate proceeding to study the issue of rate design, utilization of the publicly available Form 477 or TRS data for identifying and capping connections, and the costs associated with implementation of the connections-based mechanism. We will also determine an appropriate timeline for implementation. We encourage all interested carriers to participate in that proceeding and to file any proposals they wish the Commission to consider.

Finally, we acknowledge the comments made encouraging us to wait for the FCC to reform the federal contribution mechanism. We are unpersuaded that this is the best approach. It is possible that the FCC will continue to review ways to reform its contribution mechanism to alleviate the pressure on the federal fund. As recognized by the RIC witness at the hearing, the FCC's universal service fund contribution factor is predicted to be at an all-time high of roughly 18 percent.¹⁶⁶ We are also mindful of the fact that the mechanism adopted should be implemented in a manner that does not rely on or burden the mechanism for collecting federal universal service support. We do not believe our adoption of a connections-based mechanism assessing intrastate voice connections will rely on or burden the federal mechanism. However, we find that at such time as when the FCC makes a decision on contribution reform, the Commission will open a proceeding to determine whether any changes in the state NUSF contribution mechanism should be made.

¹⁶⁵ We further agreed with RIC that the use of working telephone numbers for routing would serve as a readily available method to identify assessable connections. For purposes of this order inter-network routing numbers are limited to working telephone numbers.

¹⁶⁶ See Hearing Transcript, Testimony of Edit Kranner, 89:4-12.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the findings and conclusions made herein be and they are hereby adopted.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 31st day of October, 2017.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Mary Redden

Ed Jensen

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

Tim Schram

Chairman

ATTEST:

Michael J. ...

Executive Director

Commissioner Crystal Rhoades Concurring:

I write separately to state for the record that while I agree with the steps taken today to change the current contribution mechanism, I wish the Commission would have gone further to make holistic reforms to the universal service program. For example, I believe the Commission needs to act expeditiously to develop the total cost and timeline for building out broadband networks at Commission-defined standards. I also believe the Commission should take additional steps to develop more robust accountability standards on the carriers so that the Commission can be assured that universal service support is being used appropriately, that the networks are being built out with the minimum required speeds, and to reduce any chances of "double dipping" by the carriers eligible for Connect America Fund and state universal service fund support. With the limited funding available, I would like to see the Commission be more granular in its reporting requirements so that I can be confident that carriers are not using federal funds in the same census tracts in which state support is being provided. Additionally, I would like to see the Commission determine how much funding will continue to be allocated to the maintenance of the network versus capital construction costs on a going forward basis.

For me, this Order simply does not go far enough. I hope that we can continue to take affirmative steps to reshape our program in a way that can better ensure accountability, efficiency, and sufficient funding in areas that truly need support.



Crystal Rhoades