

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Application No. NUSF-119/
Public Service Commission, on	)	PI-233
its own motion, to consider	)	
revisions to the contribution	)	ORDER
methodology and determine a rate	)	
design for services currently	)	
subject to a revenues-based	)	
surcharge.	)	Entered: May 11, 2021

### APPEARANCES:

#### **For AT&T and CTIA The Wireless Association**

Mr. Loel P. Brooks  
Brooks, Pansing Brooks  
1248 O Street  
Suite 984  
Lincoln, Nebraska 68508

#### **For Cox Nebraska Telcom, LLC**

Ms. Deonne Bruning  
Deonne Bruning, P.C.  
2901 Bonacum Drive  
Lincoln, Nebraska 68502

#### **For Charter Communications**

Mr. Kevin M. Saltzman  
Kutak Rock, LLP  
The Omaha Building  
1650 Farnam Street  
Omaha, Nebraska 68510

#### **For the Nebraska Rural Broadband Alliance**

Mr. Andrew S. Pollock  
Rembolt Ludtke, LLP  
3 Landmark Centre  
1128 Lincoln Mall  
Suite 300  
Lincoln, Nebraska 68508

#### **For the Nebraska Rural Independent Companies**

Mr. Paul M. Schudel  
Woods & Aitken

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301 South 13<sup>th</sup> Street  
Lincoln, Nebraska 68508

**For the Rural Telecommunications Coalition of Nebraska**

Mr. Russell A. Westerhold  
Nowka & Edwards  
1233 Lincoln Mall  
Lincoln, Nebraska 68508

**For Windstream Nebraska, Inc.**

Mr. Blake Johnson  
Bruning Law Group  
1201 Lincoln Mall  
Suite 100  
Lincoln, Nebraska 68508

**For the Nebraska Public Service Commission**

Ms. Shana Knutson  
300 The Atrium Building  
1200 N Street  
Lincoln, Nebraska 68508

BY THE COMMISSION:

***Background***

In NUSF-100/PI-193,<sup>1</sup> the Commission determined that it was necessary to reform the NUSF contribution methodology in order to stabilize the Nebraska Universal Service Fund (NUSF) program. After several rounds of comments, briefs, testimony and post-hearing comments, the Commission determined the best way to stabilize the NUSF was to move to a connections-based mechanism.

On December 19, 2017, in NUSF-111/PI-211 (NUSF-111) the Commission opened a proceeding to determine the appropriate rate design, data sources and implementation schedule.<sup>2</sup> Ultimately, on

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<sup>1</sup> See NUSF-100/PI-193, *In the Matter of the Nebraska Public Service Commission, on its own Motion, to Consider Revisions to the Universal Service Fund Contribution Methodology*, ORDER (October 31, 2017) ("NUSF-100").

<sup>2</sup> See NUSF-111/PI-211, *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Determine a Rate Design and Address Implementation Issues With a Connections-Based Contribution Mechanism*, ORDER OPENING DOCKET AND SEEKING COMMENT (December 19, 2017) ("NUSF-111").

August 7, 2018, the Commission adopted a connections-based surcharge for residential service. The connections-based mechanism for residential service was implemented on April 1, 2019.<sup>3</sup>

In its August 7, 2018 Order, the Commission found a revenues-based surcharge should continue to apply to business and government, toll, operator, local private line, special access, prepaid wireless, and radio paging services at the surcharge rate of 6.95 percent.<sup>4</sup> The Commission further found that for a period of at least one year it should collect data relative to business services in order to help formulate a decision as to whether and how a connections-based methodology could be applied to business and other services.<sup>5</sup> In doing so, the Commission revised its remittance worksheet to add an entry line for voluntary reporting of business lines.

After collecting this data for over a year, the Commission opened this proceeding to determine whether and how to extend a connections-based surcharge to business and government services, as well as other services currently subject to a revenues-based surcharge. As the Commission indicated, nothing in this proceeding is intended to alter or amend the Commission's prior findings in NUSF-100 or NUSF-111 or the implementation of the connections-based contribution mechanism for residential services.

## ***Questions Posed***

In its June 30, 2020 Order opening this proceeding, the Commission solicited comments on a number of issues including the following:

- A. Whether to Adopt a Connections-Based Mechanism for Business and Government Lines Currently Subject to the Revenues-Based Mechanism.
  - i. The Commission sought comment on whether to adopt and implement a connections-based contribution framework for business and government service. Interested parties were also invited to file proposed rate design models for the Commission's consideration.
  - ii. The Commission also invited commenters in favor of maintaining the current revenues-based surcharge to explain the justification for maintaining the current revenues-based mechanism for those services.

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<sup>3</sup> See NUSF-111, ORDER (August 7, 2018).

<sup>4</sup> See *id.* at 28.

<sup>5</sup> See *id.* at 26.

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- iii. The Commission sought comment on how the term "connection" should be defined and whether it should utilize the same definition it adopted in NUSF-111 relative to residential connections.

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

- i. The residential-based contributions make up roughly 70 percent of the total NUSF remittances and business remittances make up roughly 30 percent of the total NUSF remittances. Historically, remittances were estimated to be approximately 60 percent residential and 40 percent business. The Commission sought comment on whether the contribution mechanism should be structured so that the remittance percentage is more equitably divided between residential and business services.
- ii. The Commission also asked how it should approach the relative distribution of the contribution burden between multi-line business and enterprise users versus single line business and residential users, as well as among different types of enterprise users and consumers. The Commission asked whether there should be an increased connections-based assessment relative to business lines. The Commission asked whether a 60/40 split was a fair distribution of the contribution burden in light of actual usage value of the network. The Commission further asked whether there were modifications that could be made to a connections-based methodology to make the level of assessment more equitable to residential or low-volume users compared to multi-line business or enterprise customers. The Commission asked how it should measure this. The Commission asked for publicly available data the Commission could use and how it could be evaluated.
- iii. The Commission asked whether there should be a separate per connection surcharge amount for residential versus business service or whether they should be set at the same amount.
- iv. The Commission cited to CenturyLink's comments in Docket No. NUSF-100 which stated that "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."<sup>6</sup> To overcome this challenge CenturyLink suggested the Commission may have

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<sup>6</sup> See NUSF-100, Comments of CenturyLink (February 13, 2015) at 6.

to define classes of connections based upon factors.<sup>7</sup> The Commission proposed devising a mechanism to allocate contribution obligations for business and residential related to the burden on the network or the value of the connection. The Commission asked whether that approach should be considered relative to multi-line business connections. The Commission asked what data was available to support such an approach.

- v. The Commission asked whether, as an alternative to revising the contribution mechanism for business and government services, it should consider raising the surcharge percentage to increase the amount of contributions compared to residential contributions and to meet the fund demand.

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

- i. Based on the data collected thus far, we know there is a wide variation among business service offerings. The Commission asked whether it should structure connections-based remittance tiers which would vary based upon the type of offering. The Commission further asked how it should account for the varying business sizes and diverse product offerings.
- ii. The Commission asked whether it should adopt a pure connections approach.
- iii. Based on the how the services and packages offered by carriers are structured for business customers, some businesses may contribute a significant amount of revenue for a small number of connections. A shift to a connections-based surcharge for business service may result in some business users paying less in NUSF remittances than they do currently while others may be remitting a larger amount. It is apparent from the data collected that there are wide variances of business service products and offerings. Take, for example, a scenario where a carrier remits \$40,000 monthly for approximately 200 connections. Alternatively, certain businesses or government entities could have several thousand connections but would be remitting more than what they otherwise would using a flat "per unit" charge. Moving to a pure connections-based contribution mechanism may benefit some business users and disadvantage others. The Commission asked whether it should take this into

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<sup>7</sup> See *id.*

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- account and consider the value of the service or the capacity of the connection.
  - iv. The Commission asked whether it should consider a tiered approach based on the type of service where higher capacity would be assessed at a higher level.
  - v. The Commission asked whether residential and single-line businesses should be assessed at one flat rate. The Commission also asked whether multi-line business customers should be assessed at a higher rate.
- D. Whether to Make any Exceptions to the Contribution Requirement for Customers Tied to Long-Term Contracts or for Services Supported by Federal E-Rate Programs.
- i. In addition, the Commission sought comment on how it should address long-term contracts for services which may be more common for business and government services. For example, services provided through the E-Rate program for schools and libraries are often subject to a four-year agreement term. A change in the contribution mechanism could impact the surcharge obligations under those agreements and have a significant impact on those customers. The Commission asked how it should address these situations.
- E. Whether to Adopt a Cap on the Number of Connections Carriers Are Required to Contribute for on a Per-Entity Basis.
- i. In our NUSF-111 proceeding, there was some discussion about implementing a cap on the number of connections counted for contribution purposes. In the telecommunications relay service (TRS) program, the surcharge is capped at 100 access lines. The Commission sought comment on whether it should consider a cap for NUSF contribution purposes and if so, at what level.
- F. Whether to Modify the Contribution Mechanism as it Relates to Private Line and Toll Services.
- i. Currently, private line and toll service revenues make up approximately \$3 million in remittances annually. The Commission asked whether to set a per line surcharge to replace all revenues-based remittances including activation, toll, private line, and paging. The Commission questioned whether there were some services that should continue to be subject to a revenue-based surcharge.

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- ii. The Commission asked whether if some are left on a revenues-based surcharge, whether it would be "double assessing" in some cases.
- iii. The Commission asked whether in a pure connections-based mechanism for all services it would mean the fund would forego remittances for toll revenues completely.
- iv. If so, the Commission asked whether that would be consistent with the requirements in the NUSF Act.

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

- i. Currently, prepaid wireless service is assessed on a revenues basis and remittances are provided to the Nebraska Department of Revenue. The statute states the remittances should be based on the percentage obtained by multiplying (i) the Nebraska Telecommunications Universal Service Fund surcharge percentage rate set by the Public Service Commission by (ii) one minus the Federal Communications Commission safe harbor percentage for determining the interstate portion of a fixed monthly wireless charge. The Commission asked whether this statutory language meant that the Commission must leave prepaid wireless service on a revenues-based surcharge.
- ii. If not, the Commission asked whether it should revise the contribution mechanism for pre-paid wireless service.

### ***Comments and Reply Comments***

The Commission requested comments and reply comments which were filed on or around **August 31, 2020** and **September 30, 2020** respectively. The following entities filed comments: AT&T Corporation, Teleport Communications America, LLC, New Cingular Wireless PCS, and AT&T Mobility (collectively "AT&T"); Citizens Telecommunications Co of Nebraska d/b/a Frontier Communications of Nebraska ("Frontier"); Cox Nebraska Telcom, LLC filing jointly with Charter Fiberlink-Nebraska and Time Warner Cable Information Services Nebraska, LLC (collectively "Charter"); CTIA-The Wireless Association; Qwest Corporation d/b/a CenturyLink QC and United Telephone Co of the West; the Rural Independent Companies ("RIC"); the Rural Telecommunications Coalition of Nebraska ("RTCN"), Securus Technologies, LLC, and Windstream Nebraska, Inc.

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AT&T filed comments but is also a member of CTIA-the Wireless Association.<sup>8</sup> AT&T strongly believed the Commission should maintain business and government service on the existing revenues-based contribution mechanism.<sup>9</sup> AT&T stated that a change presents both carriers and the Commission with challenges that would be complex, costly and confusing.<sup>10</sup> AT&T stated that these changes cannot be made overnight.<sup>11</sup> The shared nature of connections in the business and government services context means those services are more complex to separate jurisdictionally.<sup>12</sup> AT&T was concerned that carriers could potentially be forced to apply the NUSF assessment to interstate services provided over a jurisdictionally shared connection.<sup>13</sup> In contrast, the existing revenues-based surcharge would maintain consistency, and would assure the Commission of a more accurate understanding of the impact of the NUSF assessment on business and government customers.<sup>14</sup>

However, AT&T did recommend that the NUSF contribution mechanism be structured to provide a more equitable division of the remittance percentage.<sup>15</sup> The remittance percentages should be rebalanced between residential and business services to more equitably distribute the contribution burden<sup>16</sup> AT&T also recommended that states like Nebraska should rethink how USF supported services and programs are funded as the contribution mechanism which is based on traditional voice services continue to see declining revenues.<sup>17</sup>

Frontier stated that the first question the Commission should address is whether there is any need at this time to change the assessment approach for business and government services at all.<sup>18</sup> Frontier stated the current hybrid framework that the Commission implemented a year ago under NUSF-111 is working and generating sufficient support for the NUSF to fulfill its obligations.<sup>19</sup>

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<sup>8</sup> See Comments of AT&T Corp., Teleport Communications America, LLC, and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (collectively "AT&T") (filed August 31, 2020) at 1 ("AT&T Comments").

<sup>9</sup> See AT&T Comments at 2.

<sup>10</sup> AT&T Comments at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *id.*

<sup>14</sup> AT&T Comments at 4.

<sup>15</sup> See AT&T Comments at 5.

<sup>16</sup> *Id.*

<sup>17</sup> See *id.*

<sup>18</sup> See Comments of Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (filed August 31, 2020) at 2 ("Frontier Comments").

<sup>19</sup> Frontier Comments at 3.



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Frontier urged the Commission to maintain the current revenues-based contribution in place for business and government services.<sup>20</sup>

Frontier did not have a position regarding what is an equitable relationship between the residential and business contribution percentages.<sup>21</sup> However, it is possible to modify the contribution percentage without adopting a connections-based framework for business services.<sup>22</sup> Frontier believed changes could more easily be made to the surcharge levels in the existing framework to achieve that goal.<sup>23</sup> Frontier stated that there is a substantial risk that implementing a connections-based framework for business services will impose significant additional costs on some businesses without a clear indication that moving to such a framework would have any positive benefits generally.<sup>24</sup> In response to the question of a cap on the number of connections carriers are required to contribute on a per-entity basis, Frontier recommended a cap would lessen the impact of a change.<sup>25</sup> Frontier recommended a limitation to 100 connections, like the TRS approach would be easier for Frontier to implement.<sup>26</sup> Frontier stated that retaining a revenues-based contribution framework for private line and toll services would be reasonable and would retain the surcharge revenue that exists today for these types of services.<sup>27</sup>

Cox and Time Warner jointly filed comments. The Joint Commenters suggested the Commission should determine the desired size of the NUSF before any action is taken.<sup>28</sup> The Joint Commenters recognized that the issues would be best addressed in the NUSF-4 docket which is the Commission's vehicle to determine the appropriate surcharge level on an annual basis.<sup>29</sup> The Joint Commenters also recommended the Commission maintain the revenue-based assessment on business customers and increase the percentage if necessary.<sup>30</sup> The Joint Commenters stated that the concerns and complexities raised in NUSF-100 and NUSF-111 of implementing a connections-based methodology on large business users have not diminished.<sup>31</sup> In addition, the Joint

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<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> *Id.*

<sup>23</sup> Frontier Comments at 4.

<sup>24</sup> *Id.*

<sup>25</sup> See Frontier Comments at 5.

<sup>26</sup> See *id.*

<sup>27</sup> *Id.*

<sup>28</sup> See Joint Comments of Cox Nebraska Telcom, LLC, Charter Fiberlink-Nebraska, LLC, and Time Warner Cable Information Services (Nebraska) LLC (filed August 31, 2020) at 1 ("Cox/Charter Comments").

<sup>29</sup> See Cox/Charter Comments at 2.

<sup>30</sup> See *id.*

<sup>31</sup> Cox/Charter Comments at 3.

Commenters stated it was important that modifications adopted by the Commission do not result in rate shock on consumers. Creating tiers to avoid rate shock creates unresolvable billing problems.<sup>32</sup> The Joint Commenters referenced the Commission staff testimony from the NUSF-4 proceeding to indicate that the Commission no longer sees the steep declines and unpredictability that was experienced under the revenue-based methodology.<sup>33</sup>

CTIA stated that the applicable statute is clear relative to prepaid wireless services and that prepaid wireless services must be assessed on the basis of revenues.<sup>34</sup> CTIA stated the Commission cannot ignore the plan and obvious meaning of the word "percentage" without upsetting the statutory formula.<sup>35</sup> CTIA stated that it was important for the Commission to remain cognizant of the burden wireless consumers bear in supporting the federal and state programs.<sup>36</sup> CTIA stated the Commission should not cap business and government access lines.<sup>37</sup> CTIA stated this would shift more of the contribution burden to wireless and residential consumers.<sup>38</sup> Finally, CTIA stated the Commission should not alter the definition of "connections" previously agreed upon in NUSF-111.<sup>39</sup>

CenturyLink while not opposed to a connections-based contribution framework for business and government service, recommended the Commission continue to monitor USF contribution trends prior to making and implementing any changes to business or government accounts.<sup>40</sup> CenturyLink was concerned that revisions to surcharges during the unprecedented time could be detrimental for businesses struggling to survive and government services attempting to maintain normalcy.<sup>41</sup> If the Commission did adopt a connections-based contribution framework for business and government services, CenturyLink stated it should use the same definition adopted for residential connections.<sup>42</sup> With regard to the contribution percentage between residential and business customers, CenturyLink stated that residents ultimately pay the surcharge either directly

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<sup>32</sup> Cox/Charter Comments at 4.

<sup>33</sup> See Cox/Charter Comments at 5.

<sup>34</sup> See Comments of CTIA (filed August 31, 2020) at 2 ("CTIA Comments").

<sup>35</sup> CTIA Comments at 3.

<sup>36</sup> *Id.*

<sup>37</sup> CTIA Comments at 4.

<sup>38</sup> *Id.*

<sup>39</sup> CTIA Comments at 5.

<sup>40</sup> See Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (filed August 31, 2020) at 2 ("CenturyLink Comments").

<sup>41</sup> See CenturyLink Comments at 2.

<sup>42</sup> See CenturyLink Comments at 3.

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or through prices they pay for purchases from the businesses.<sup>43</sup> CenturyLink recommended an equal per-connection charge for residential, single line business, multi-line business and enterprise.<sup>44</sup> CenturyLink stated it has consistently recommended that the per-connection charge be equal for residential and business connections with a limit on business connections per account.<sup>45</sup> CenturyLink stated if the Commission opts for a connections-based assessment, it should, consistent with E-911 and TRS collections, limit the maximum amount of connections to 100.<sup>46</sup> Further, CenturyLink does not agree that contribution obligations should be related to the burden on the network or the value of the connection.<sup>47</sup> CenturyLink stated that the burden on the network of a voice connection is rather negligible compared to the burden from broadband.<sup>48</sup>

While CenturyLink was not opposed to maintaining a revenues-based charge on business services, the Commission should not raise the surcharge percentage on businesses for the sole purpose of meeting a historical percentage of contributions from businesses.<sup>49</sup> In response to questions surrounding toll and private line services, CenturyLink recommended that if the assessment is associated with a connection, no extra charge should be incurred for toll services.<sup>50</sup>

RIC recommended that the connections-based mechanism should be applied to business service connections provided by mobile carriers, wireline carriers and Voice over Internet Protocol (VoIP) providers.<sup>51</sup> At the same time, RIC suggested that the Commission should retain the existing revenues-based assessment mechanism for "Toll" revenues and "other" revenues (such as directory, private line and paging services) as reported on the NUSF Remittance Worksheet (Ancillary Business Services).<sup>52</sup> In addition, RIC stated, pre-paid wireless services should remain on a revenues-based NUSF assessment mechanism.<sup>53</sup>

RIC stated that the proposed extension of connections-based NUSF contributions for business services represents a more equitable

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<sup>43</sup> See *id.*

<sup>44</sup> See CenturyLink Comments at 4.

<sup>45</sup> CenturyLink Comments at 5.

<sup>46</sup> CenturyLink Comments at 7.

<sup>47</sup> See CenturyLink Comments at 5.

<sup>48</sup> *Id.*

<sup>49</sup> See CenturyLink Comments at 6.

<sup>50</sup> See CenturyLink Comments at 10.

<sup>51</sup> See Comments of the Nebraska Rural Independent Companies (filed August 31, 2020) at 4 ("RIC Comments").

<sup>52</sup> See RIC Comments at 5.

<sup>53</sup> *Id.*

assessment approach that is less likely to be subject to gaming.<sup>54</sup> In addition, RIC requested the Commission include a requirement that enhances remittance accountability by including a requirement that any reporting entity must explain any material change in the reported number of business connections with sufficient detail to allow the Commission staff to confirm the validity of such change.<sup>55</sup> RIC recommended the Commission retain the definition of connection adopted by the Commission previously.<sup>56</sup> In response to questions regarding the contribution level for residential versus business, RIC stated that it believes a 70 percent contribution level for residential services is excessive and agrees that the Commission may want to generate a more equitable contribution allocation between residential and business end users.<sup>57</sup> RIC noted that it may be useful to use the data presented in Attachment A to its comments in order to calculate a rate design aimed at achieving modifications to the existing contribution split between residential and business users' contributions<sup>58</sup> RIC believed that a 60/40 split would be reasonable.<sup>59</sup>

RTCN applauded the Commission's work but believed the pace of reform must be accelerated.<sup>60</sup> Present remittance levels will come nowhere close to providing sufficient deployment support while ongoing support is also critical to operating and maintaining existing infrastructure.<sup>61</sup> RTCN declined to submit a proposed rate design model.<sup>62</sup> However, RTCN stated the Commission should not continue to assess business and government services based on revenues.<sup>63</sup> RTCN stated that under the current paradigm, remittance obligations are out of balance.<sup>64</sup> Residential consumers are paying more than their share of the cost of building, operating and maintaining communications infrastructure in rural areas of the state.<sup>65</sup> RTCN stated the business community should be paying more.<sup>66</sup> RTCN stated that business users are best positioned to render helpful ideas and suggested the Commission actively solicit the opinions and ideas of Nebraska's business community on this question.<sup>67</sup> RTCN stated that without a specific number in mind, it

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<sup>54</sup> *Id.*

<sup>55</sup> *See* RIC Comments at 6.

<sup>56</sup> *See* RIC Comments at 8.

<sup>57</sup> *See* RIC Comments at 9.

<sup>58</sup> *See id.*

<sup>59</sup> *See* RIC Comments at 10.

<sup>60</sup> *See* Comments of the Rural Telecommunications Coalition of Nebraska (filed August 31, 2020) at 4 ("RTCN Comments")

<sup>61</sup> *Id.*

<sup>62</sup> *See* RTCN Comments at 6.

<sup>63</sup> *Id.*

<sup>64</sup> RTCN Comments at 7.

<sup>65</sup> *Id.*

<sup>66</sup> *See id.*

<sup>67</sup> RTCN Comments at 8.

expects that the connections surcharge on business users will need to be higher than \$1.75 to achieve an equitable balance between residential and business ratepayers' obligations.<sup>68</sup>

Securus stated that since it is an Institutional Operator Service provider, it does not have "voice-enabled telephone access lines."<sup>69</sup> Its services are limited to providing institutional operator services in correctional institutions.<sup>70</sup> Securus stated it does not have the ability to determine or charge the NUSF applying a connections-based methodology. Securus is able to apply the USF on the current NUSF revenues-based assessment.<sup>71</sup> Securus requested the Commission either allow it to continue to be subject to a revenues-based surcharge, provide an alternative method of applying the NUSF for those companies that do not provide services on a connection or access line basis, or exempt those companies from accessing and paying into the NUSF.<sup>72</sup>

Windstream stated it was wary of any changes to the NUSF contribution methodology that would increase the financial burden on business and government subscribers or carriers in light of the COVID-19 pandemic.<sup>73</sup> In the short-term Windstream supported the continuation of the revenues-based contribution methodology.<sup>74</sup> However, if a connections-based contribution methodology is adopted, Windstream supported the adoption of a cap on business connections.<sup>75</sup> Windstream also recommended that the Commission request precise and current data from carriers in order to better formulate a connections-based methodology proposal and corresponding audit process.<sup>76</sup>

## **Reply Comments**

Reply Comments were filed by the following entities: AT&T, Cox/Charter, CTIA-The Wireless Association, CenturyLink, RIC, and RTCN.

AT&T stated it agreed with Cox/Charter that the Commission should maintain the revenues-based assessment on business

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<sup>68</sup> See *id.*

<sup>69</sup> See Comments of Securus Technologies, LLC (filed July 31, 2020) at 2 ("Securus Comments").

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See *id.*

<sup>73</sup> See Comments of Windstream (filed August 31, 2020) at 2 ("Windstream Comments").

<sup>74</sup> See Windstream Comments at 3.

<sup>75</sup> See Windstream Comments at 4.

<sup>76</sup> See *id.*

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connections.<sup>77</sup> Similarly, AT&T agreed with Frontier that the Commission should maintain the current revenues-based contribution mechanism for business and government services as the questions raised in the proceeding implicates a variety of complex issues.<sup>78</sup> AT&T cited to both CenturyLink's and Windstream's concerns about making a change during the current COVID-19 pandemic.<sup>79</sup> AT&T opposed RTCN's suggestion that the Commission engage enterprise and other users of many connections in the business community for ideas and assistance.<sup>80</sup> AT&T opposed RIC's suggestion that in the event that the Commission determines to pursue a connections-based methodology the existing revenues-based assessment mechanism be retained for Toll revenues.<sup>81</sup> AT&T would be concerned that the assessment for intrastate toll revenue would be a "double dip."<sup>82</sup> Finally, while AT&T voiced its support for a rebalancing of remittance percentages for a more equitable distribution of the contribution burden, AT&T stated the Commission should not use rebalancing to increase the size of the fund.<sup>83</sup>

Cox and Charter reiterated their previous position to encourage the Commission to first determine if more money is required to adequately fund the NUSF.<sup>84</sup> The Joint Commenters stated if the NUSF requires additional funding it should adjust the current business surcharge.<sup>85</sup> The Joint Commenters stated that whether they are capped at 100 connections or pay for every connection, a new connections methodology will modify the amount being remitted from businesses of all sizes.<sup>86</sup> The Joint Commenters asked the Commission to retain the revenue-based assessment methodology for businesses and increase the surcharge if such is deemed necessary after further review and study.<sup>87</sup>

CTIA noted that among the commenters who addressed the issue of prepaid wireless providers, there was unanimous agreement with CTIA's position relative to Neb. Rev. Stat. § 86-903.<sup>88</sup> CTIA also

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<sup>77</sup> See Reply Comments of AT&T (filed September 30, 2020) at 2 ("AT&T Reply Comments").

<sup>78</sup> See AT&T Reply Comments at 3.

<sup>79</sup> See *id.*

<sup>80</sup> See AT&T Reply Comments at 4.

<sup>81</sup> See AT&T Reply Comments at 5.

<sup>82</sup> See *id.*

<sup>83</sup> See AT&T Reply Comments at 6.

<sup>84</sup> See Joint Reply Comments of Cox Nebraska Telcom, LLC, Charter Fiberlink-Nebraska, LLC, and Time Warner Cable Information Services (Nebraska), LLC (filed September 30, 2020) at 1 ("Cox/Charter Reply Comments").

<sup>85</sup> Cox/Charter Reply Comments at 2.

<sup>86</sup> Cox/Charter Reply Comments at 3.

<sup>87</sup> See Cox/Charter Reply Comments at 4.

<sup>88</sup> See Reply Comments of CTIA (filed September 30, 2020) at 1 ("CTIA Reply Comments").

asked the Commission to maintain its current definition of "connections" which it said was supported among multiple commenters.<sup>89</sup> Finally, CTIA reiterated that it opposed capping the number of connections.<sup>90</sup>

In its reply comments, CenturyLink stated it is not opposed to a properly structured connections-based contribution framework.<sup>91</sup> However, it stated a delay of a connections-based methodology is further complicated by ever-increasing complexities in the telecommunications market.<sup>92</sup> Therefore, it recommended the Commission not implement a connections-based contribution framework for business and government service at this time, but rather to continue to monitor contribution trends until such time as business certainty returns.<sup>93</sup> CenturyLink suggested that any significant change to the NUSF fund size be coordinated with the work efforts of the Rural Broadband Task Force.<sup>94</sup>

RIC reiterated the need to further reform the NUSF contribution framework to properly balance the contribution levels between residential and business users and to advance efforts in achieving ubiquitous broadband deployment.<sup>95</sup> RIC put forth its five-step reform proposal. First, RIC recommended the Commission implement a connections-based assessment mechanism applied to business connections provided by mobile, wireline and VoIP carriers.<sup>96</sup> Second, RIC proposed retention of the existing revenues-based assessment mechanism for toll revenues consisting of switched toll, private line toll and other toll consistent with the current reporting of those revenues by carriers on the remittance worksheet.<sup>97</sup> Third, RIC proposed the Commission retain the existing revenues-based assessment mechanism for "other" revenues consisting of directory, private line, and paging services.<sup>98</sup> Fourth, RIC proposed the Commission retain the existing revenues-based assessment mechanism for prepaid wireless services.<sup>99</sup> Finally, RIC proposed the

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<sup>89</sup> See CTIA Reply Comments at 1-2.

<sup>90</sup> See CTIA Reply Comments at 2.

<sup>91</sup> See Reply Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (filed September 30, 2020) at 1 ("CenturyLink Reply Comments").

<sup>92</sup> CenturyLink Reply Comments at 2.

<sup>93</sup> See CenturyLink Reply Comments at 7.

<sup>94</sup> See CenturyLink Reply Comments at 6.

<sup>95</sup> See Reply Comments of the Nebraska Rural Independent Companies (filed September 30, 2020) at 2 ("RIC Reply Comments").

<sup>96</sup> See RIC Reply Comments at 3.

<sup>97</sup> See *id.*

<sup>98</sup> See *id.*

<sup>99</sup> See *id.*



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Commission resize the NUSF to not less than the mid-point of the \$46 to \$64 million per year range.<sup>100</sup>

RIC also argued that the opposition by other comments to implementation of a connections-based surcharge mechanism was not well founded.<sup>101</sup> RIC stated that AT&T contentions that the number of business connections would not be ascertainable because they may be shared use facilities is significantly undercut by the fact that carriers have been reporting business connection counts to the Commission at the bottom section of the remittance worksheet.<sup>102</sup> The Commission's data discloses that between June 2019 through May 2020, the average monthly reported business connection count was 760,626.<sup>103</sup> RIC also stated that AT&T's contention that adoption of a connections-based surcharge assessment mechanism applicable to business services would violate federal law should be rejected.<sup>104</sup>

Further, RIC stated that CenturyLink's recommendation to adopt a single uniform per-connection charge for residential, single line, multi-line and enterprise customers would only exacerbate the overall funding disparity between residential and business customers.<sup>105</sup> Second, CenturyLink's proposal to not apply the NUSF surcharge to activation and toll services conflicts with the directive of Neb. Rev. Stat. § 86-323(4) that all providers should make an equitable and non-discriminatory contribution to the preservation and advancement of universal service.<sup>106</sup> RIC stated as a practical matter the adoption of the CenturyLink recommendation would result in an annual loss of nearly \$2.8 million in remittances.<sup>107</sup>

RIC agreed with the commenters who advocated that prepaid wireless services should remain subject to a revenues-based surcharge.<sup>108</sup> RIC also agreed with RTCN that the Commission should adopt a rate-design that will achieve a budgetary range between \$46 and \$54 million for the NUSF High Cost Program.<sup>109</sup> RIC stated there was a need for additional NUSF support to accomplish deployment of ubiquitous broadband deployment.<sup>110</sup>

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<sup>100</sup> See *id.*

<sup>101</sup> See *id.*

<sup>102</sup> RIC Reply Comments at 4.

<sup>103</sup> *Id.*

<sup>104</sup> RIC Reply Comments at 6.

<sup>105</sup> See RIC Reply Comments at 7.

<sup>106</sup> See *id.*

<sup>107</sup> RIC Reply Comments at 8.

<sup>108</sup> See *id.*

<sup>109</sup> See *id.*

<sup>110</sup> See RIC Reply Comments at 11.



RTCN reiterated its position that the Commission reach out to the business community to seek their input.<sup>111</sup> RTCN disagreed with CenturyLink's position that change should be postponed.<sup>112</sup> RTCN recommended that if the Commission retained the revenues-based surcharge for businesses, then it should increase the surcharge to stabilize the fund and restore balance.<sup>113</sup> RTCN suggested if the Commission retains and increases the revenues-based surcharge, the several granular issues with regard to enterprise and other businesses that have a large number of lines mostly becomes moot.<sup>114</sup> If the Commission determines it is appropriate to adopt a connections-based surcharge mechanism for business lines, RTCN recommended the Commission craft a fair means of assessment, whether it be a cap on the lines or otherwise.<sup>115</sup> However, RTCN stated, the Commission should avoid imposing arbitrary controls such as a cap that mirrors the TRS fund or 911.<sup>116</sup> Instead, RTCN stated, such controls should strive to achieve the objectives of stability, administrative efficiency, and fairness for all users.<sup>117</sup>

## **Hearing**

A hearing was held on January 6, 2021 in the Commission Hearing Room and via WebEx. Appearances were as shown above. RIC, RTCN, CenturyLink, Cox, Charter, Frontier, and the Nebraska Rural Broadband Alliance (NRBA) provided testimony in addition to the Department Director. The testimony provided is generally summarized and restated below.

Mr. Cullen Robbins, the Director of the Commission's NUSF and Communications Department testified and provided an overview of some of the data the Commission staff had collected.<sup>118</sup> Mr. Robbins provided a summary of the Commission's findings in NUSF-100 and NUSF-111 which led to the decision to adopt a hybrid contribution methodology to stabilize remittances flowing into the NUSF.<sup>119</sup> In NUSF-111, the Commission decided to apply a connections-based surcharge on residential services which was set at \$1.75 and that was intended to bring in between \$46 and \$54 million annually into

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<sup>111</sup> See Reply Comments of the Rural Telecommunications Coalition of Nebraska (filed September 30, 2020) at 2 ("RTCN Reply Comments").

<sup>112</sup> See *id.*

<sup>113</sup> See RTCN Reply Comments at 3.

<sup>114</sup> See *id.*

<sup>115</sup> *Id.*

<sup>116</sup> RTCN Reply Comments at 4.

<sup>117</sup> *Id.*

<sup>118</sup> See Testimony of Cullen Robbins, Hearing Transcript (TR) at 11:3-31:22.

<sup>119</sup> See TR at 11:12-13:8.

the NUSF.<sup>120</sup> That change was implemented on April 1, 2019.<sup>121</sup> The Commission left other services such as prepaid wireless, toll, and business and government services on a percentage-based surcharge which remained at 6.95 percent.<sup>122</sup> The Commission also collected data on businesses lines so that it might have better information to inform the decision-making process if the Commission were to decide to reform the contribution methodology for business, government, toll, and other services.<sup>123</sup>

Mr. Robbins testified that with the surcharge set at \$1.75 and 6.95 percent, the Commission receives \$30.3 million from residential consumers, \$4.2 million from prepaid wireless consumers, and \$12 million annually from business services, toll, and private line combined.<sup>124</sup> Overall, Mr. Robbins testified, that totals about \$47.5 million annually.<sup>125</sup> Mr. Robbins stated that since the changes adopted by the Commission in NUSF-111, remittances from residential services has remained steady.<sup>126</sup> Mr. Robbins presented the Commission with three charts to depict the month to month remittance collections from residential wireline, residential mobile, and residential VoIP remittances, as well as prepaid and then business service remittances.<sup>127</sup> Mr. Robbins testified that there has been a gradual increase in business connections over time and a flat trend for VoIP connections.<sup>128</sup> However, Mr. Robbins stated, there has been a decline in mobile business service remittances.<sup>129</sup> Mobile remittances were relatively steady until August of 2020 when remittances dropped about 25 percent and then declined further in September by about 23 percent over the previous month.<sup>130</sup> Mr. Robbins testified that the staff attributes this volatility to a major wireless carrier shifting costs away from what is assessable.<sup>131</sup> This drop, if the staff extrapolated over a year, means a reduction in the remittances of approximately \$1.3 million.<sup>132</sup> To make up for this drop, Mr. Robbins stated, we would need to adjust the surcharge percentage to somewhere around 8.25 percent.<sup>133</sup>

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<sup>120</sup> See *id.*

<sup>121</sup> See *id.*

<sup>122</sup> See *id.*

<sup>123</sup> See TR at 12:6-11.

<sup>124</sup> TR at 12:23-13:5.

<sup>125</sup> TR 13:1-6.

<sup>126</sup> TR 13:6-8.

<sup>127</sup> See TR at 13:9-16:5.

<sup>128</sup> See *id.*

<sup>129</sup> See *id.*

<sup>130</sup> See *id.*

<sup>131</sup> TR at 16:6-10.

<sup>132</sup> TR at 16:11-15.

<sup>133</sup> TR at 16:25-17:3.

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Mr. Robbins further testified that the staff collects connection-based data from carriers through the remittance worksheet and also from carriers remitting to the TRS program and mobile data through the 911 department.<sup>134</sup> Voice subscription data is also available through the FCC Form 477 data collection process.<sup>135</sup> According to Mr. Robbins, each of these data sources have their limitations. The 911 data for example is for mobile carriers only.<sup>136</sup> The TRS data does not separate residential from business and has a line limitation of 100 lines per entity for reporting and collecting.<sup>137</sup> The NUSF data collection has been voluntary.<sup>138</sup> The FCC 477 data does not separate business and residential voice subscriptions.<sup>139</sup> Based on the data we collect through our NUSF remittance system, the staff estimates that there are approximately 809,000 business lines in use in any given month.<sup>140</sup> That consists of 477,000 wireless business lines, about 257,000 wireline business lines, and about 74,000 VoIP lines.<sup>141</sup> Mr. Robbins stated that the staff's estimate may be higher than actual business line counts.<sup>142</sup>

Finally, Mr. Robbins testified, if the Commission were to set the business connection surcharge at \$1.75, similar to the residential, it would equal approximately \$17 million in remittances.<sup>143</sup> He stated the overall fund size would increase by about \$5 million if the Commission leaves toll, private line, and other services on a percentage basis.<sup>144</sup>

In response to questions, Mr. Robbins stated that the staff is not able to determine from the TRS data what the line count is above the 100-line cap.<sup>145</sup> He further agreed with Commissioner Rhoades that instituting a connection-based formula would be a better way to avoid some of the gamesmanship and provide more stability.<sup>146</sup> Mr. Robbins testified that businesses customers contribute roughly 19 percent of overall fund remittances.<sup>147</sup> Residential consumers contribute about 65 percent.<sup>148</sup> Prepaid wireless consumers contribute

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<sup>134</sup> TR at 17:11-15.

<sup>135</sup> *Id.*

<sup>136</sup> TR at 17:17-18.

<sup>137</sup> TR at 17:18-20.

<sup>138</sup> TR at 17:20-21.

<sup>139</sup> TR at 17:24-18:2.

<sup>140</sup> TR at 18:3-6.

<sup>141</sup> TR at 18:7-10.

<sup>142</sup> See TR at 19:6-10.

<sup>143</sup> See TR at 20:1-5.

<sup>144</sup> TR at 20:6-8.

<sup>145</sup> See TR at 21:2-6.

<sup>146</sup> See TR at 26:3-25.

<sup>147</sup> See TR at 30:2-5.

<sup>148</sup> TR at 30:7-9.

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roughly 9 percent of the overall amount.<sup>149</sup> If the Commission were to adopt a connections-based surcharge for business and government, then those users would contribute roughly 31 percent of overall remittances into the NUSF if the surcharge was set at \$1.75.<sup>150</sup>

Mr. Paul Schudel testified for RIC.<sup>151</sup> RIC offered five exhibits which were marked as Exhibits RIC-1 through RIC-5.<sup>152</sup> As a general proposition, RIC believed that the resolution of the issues presented in this matter should be focused on achieving the State's and Commission's policies supporting ubiquitous broadband service at minimum speeds of 25/3 Mbps for all Nebraska consumers.<sup>153</sup> Mr. Schudel stated that publicly available Commission data shows that the new contribution mechanism adopted in NUSF-111 has yielded NUSF remittances from residential services that have had a positive impact on stabilizing previously declining NUSF remittances from residential telecommunications services.<sup>154</sup> This docket focuses on the NUSF surcharge remittances from business services and whether a fair and equitable contribution to deployment of ubiquitous broadband service is being made by providers of business telecommunications services and the users of those services.<sup>155</sup>

The data collected through the remittance worksheet and the compilation of this data was received as RIC-1 and RIC-2.<sup>156</sup> Mr. Schudel explained that Exhibit RIC-3 illustrated the current inequities in applying the 6.95 percent NUSF revenues-based remittance mechanism to business mobile service and to business local exchange carrier service as compared to the NUSF connections-based remittance mechanism applicable to residential services.<sup>157</sup> RIC-3 demonstrated that mobile business service NUSF contributions averaged 27.6 cents per connection per month.<sup>158</sup> In contrast, he stated, performing the same calculation to convert wireline and VoIP business service remittances to a per connection amount, the local exchange carrier contribution averaged \$1.71 per connection per month for September and October 2020.<sup>159</sup> Further, Mr. Schudel stated, residential service NUSF contributions account for approximately 70 percent of total NUSF remittances that support all NUSF programs.<sup>160</sup>

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<sup>149</sup> See TR at 30:9-13.

<sup>150</sup> See TR at 31:1-3.

<sup>151</sup> See Testimony of Mr. Paul Schudel, TR at 32:24-55:20.

<sup>152</sup> See TR at 34:12-15.

<sup>153</sup> See TR at 35:1-8.

<sup>154</sup> TR at 36:2-8.

<sup>155</sup> TR at 36:11-18.

<sup>156</sup> See TR at 37:1-12.

<sup>157</sup> TR at 37:15-22.

<sup>158</sup> See TR at 37:23-38:5.

<sup>159</sup> TR at 38:11-17.

<sup>160</sup> TR at 40:1-12.

RIC's view is that the existing 70 percent residential contribution level is excessive.<sup>161</sup>

Mr. Schudel stated that RIC's approach would create a more equitable contribution allocation between residential and business service users.<sup>162</sup> RIC recommended the changes shown in Exhibit RIC-5.<sup>163</sup> He stated if the residential service per connection surcharge remains at \$1.75 per month, and business service connection surcharge is set at \$2.10 per month, it is projected that total remittances to support a fifty-eight and a quarter million dollar budget would be realized.<sup>164</sup> In this scenario, 59.88 percent of total annual NUSF surcharge remittances and contributions from business service would constitute 40.12 percent of total annual NUSF surcharge remittances.<sup>165</sup>

Mr. Schudel provided further testimony in response to other carriers' comments. He stated that AT&T asserted that implementation of a connections-based assessment mechanism would be time consuming and costly.<sup>166</sup> However, Mr. Schudel noted that when the Commission sought comment on the conversion of revenues-based to connections-based NUSF assessments on residential services, similar concerns were voiced.<sup>167</sup> However, the implementation of a residential connections-based assessment was accomplished without the problems for which AT&T expressed concern.<sup>168</sup> In addition, RIC is concerned with CenturyLink's proposed suggestion to adopt an equal per connection assessment on all connections.<sup>169</sup> RIC stated this would limit the Commission's rate design flexibility required to align contribution levels more equitably between business and residential users.<sup>170</sup>

In addition, in response to the commenters who advocated in favor of a cap on business lines, Mr. Schudel stated that no data exists to allow the Commission to ascertain the total number of Nebraska multi-line business telecommunications users or the number of lines in service for each of these multi-line business service users.<sup>171</sup> Thus, RIC did not believe it was currently possible for the Commission to ascertain equitable NUSF per-connection rate

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<sup>161</sup> See TR at 40:16-18.

<sup>162</sup> TR at 40:25-41:2.

<sup>163</sup> See TR at 42:14-43:16.

<sup>164</sup> See *id.*

<sup>165</sup> TR at 43:17-20.

<sup>166</sup> See TR at 44:18-23.

<sup>167</sup> See TR at 45:1-4.

<sup>168</sup> TR at 45:5-9.

<sup>169</sup> See TR at 45:10-18.

<sup>170</sup> See *id.*

<sup>171</sup> See TR at 47:1-12.

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levels required should an assessment cap be instituted let alone what the business user line count cap should be.<sup>172</sup>

As far as increasing the current 6.95 percent revenues-based assessment rate, Mr. Schudel testified that neither Frontier nor the cable providers provided any data to establish the percentage contribution rates that would be required.<sup>173</sup> He stated that in order to sustain the high cost and other NUSF programs, the revenues-based surcharge assessment for business services would likely need to be increased from the current 6.95 percent rate to 12 percent or more.<sup>174</sup> Further, he stated, continuation of the revenues-based contribution mechanism on business service revenues would perpetuate the significant contribution inequities between mobile business and local exchange carrier business services as previously discussed.<sup>175</sup>

Ms. Stacey Brigham, the Regulatory Director for TCA Inc., testified for the NRBA.<sup>176</sup> She stated that the NRBA is a newly formed alliance but all of its members were members of RTCN.<sup>177</sup> She incorporated the comments filed by RTCN in her testimony.<sup>178</sup>

Ms. Brigham testified that unlike any other telecommunications carrier or coalition, members of the NRBA have robustly built out fiber infrastructure throughout their territories.<sup>179</sup> All of its members have either completed fiber deployment in their territories or were very close to completion.<sup>180</sup> Accordingly, Ms. Brigham stated that it is critical to ensure stabilized ongoing support.<sup>181</sup> Second, she testified, it is critical to ensuring deployment in areas that have been neglected by the current incumbent local exchange carriers.<sup>182</sup>

Ms. Brigham stated that residential ratepayers are paying more than their fair share of the costs of rural broadband deployment.<sup>183</sup> She recommended the Commission take swift action to correct the imbalance whether the Commission retains a revenues-based surcharge or moves to a connection-based assessment.<sup>184</sup> Ms. Brigham further

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<sup>172</sup> See *id.*

<sup>173</sup> TR at 47:24-48:11.

<sup>174</sup> TR at 48:15-19.

<sup>175</sup> TR at 48:20-49:1.

<sup>176</sup> See Testimony of Stacey Brigham, TR at 56:7-62:4.

<sup>177</sup> See TR at 56:15-20.

<sup>178</sup> See TR at 56:21-23.

<sup>179</sup> TR at 57:2-6.

<sup>180</sup> TR at 57:13-16.

<sup>181</sup> See TR at 57:18-22.

<sup>182</sup> See TR at 57:23-58:7.

<sup>183</sup> TR at 59:11-13.

<sup>184</sup> TR at 59:19-21.

noted that the pandemic does not justify prolonging the current inequity.<sup>185</sup>

Mr. Idoux, CenturyLink's Director of Governmental Affairs, testified for CenturyLink.<sup>186</sup> Mr. Idoux testified that CenturyLink is not opposed to a properly structured connection-based contribution mechanism.<sup>187</sup> However, Mr. Idoux had a few caveats. First, he stated the Commission's key objective to stabilize the fund has already been successfully achieved with the actions taken on the residential side.<sup>188</sup> Second, he stated, with the uncertainties due to COVID, simply moving to a connections-based assessment methodology may also result in unfavorable trends.<sup>189</sup> Mr. Idoux recommended the Commission hold off just a little bit longer to monitor trends and see what happens in the first six months of 2021.<sup>190</sup> Mr. Idoux stated that a properly structured mechanism would include a cap for these businesses.<sup>191</sup> CenturyLink recommended the Commission adopt a 100-line cap similar to TRS.<sup>192</sup>

Mr. Rob Howley, Senior Director of Regulatory Affairs for Cox's central region division, testified for Cox.<sup>193</sup> Mr. Howley testified that the methodology used is important to Cox because it serves some of Nebraska's largest business customers.<sup>194</sup> Because of this, Cox is deeply concerned about adjusting NUSF from a revenue to a connections basis.<sup>195</sup> Mr. Howley testified that if it must be done, it must be done carefully to avoid rate shock.<sup>196</sup> He stated it was important for the Commission to establish a cap on the number of business connections for each customer.<sup>197</sup>

Mr. Howley further testified that the size of the program is reasonable and stability has been realized.<sup>198</sup> However, if the Commission wants to meet its objective of an equitable contribution between residential and business customers, one simpler solution would be to increase the current surcharge of 6.95 percent.<sup>199</sup> If the Commission does change its methodology, Cox would like at least a

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<sup>185</sup> See TR at 60:3-14.

<sup>186</sup> See Testimony of John Idoux, TR at 62:12-73:12.

<sup>187</sup> See TR at 62:23-63:1.

<sup>188</sup> See TR at 63:3-7.

<sup>189</sup> See TR at 63:8-64:3.

<sup>190</sup> See TR at 64:20-25.

<sup>191</sup> TR at 65:4-6.

<sup>192</sup> See TR at 65:16-18.

<sup>193</sup> See Testimony of Rob Howley, TR at 73:22-91:18.

<sup>194</sup> See TR at 75:5-9.

<sup>195</sup> TR at 77:1-5.

<sup>196</sup> *Id.*

<sup>197</sup> See TR at 77:24-78:1.

<sup>198</sup> See TR at 79:2-8.

<sup>199</sup> See TR at 80:22-81:3.



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three-month phase in to modify its corporate centralized billing system and to notify its customers of the change.<sup>200</sup>

Mr. Kevin Saltzman, regulatory counsel for Charter, testified to reiterate Charter's support for maintaining the revenues-based methodology for business customers.<sup>201</sup> Mr. Saltzman testified that if the Commission is inclined to move to a connections-based methodology for business customers, Charter would request the opportunity to provide other comments and information to the Commission.<sup>202</sup>

Mr. Russ Westerhold, counsel for RTCN testified to reiterate that RTCN remains fully supportive of the Commission moving to a connections-based methodology.<sup>203</sup> Mr. Westerhold also testified in support of Mr. Schudel's conclusions and justification for changing the contribution methodology for business services.<sup>204</sup>

Mr. Scott Bohler testified for Frontier.<sup>205</sup> Mr. Bohler testified that the nature of many of the services that businesses typically purchase do not easily translate to a per connection itemization or categorization.<sup>206</sup> Creating a framework that would reasonably and fairly categorize all of the business services into a simple per connection common denominator would be difficult.<sup>207</sup> Frontier does not have a position on whether the contribution mechanism should be structured more equitably between residential and business service.<sup>208</sup> However, Mr. Bohler stated, it would be possible to achieve the Commission's goal without adopting a connections-based contribution mechanism for business service.<sup>209</sup> Mr. Bohler recommended adjusting either the residential surcharge amount or the business surcharge percentage.<sup>210</sup>

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

Neb. Rev. Stat. § 86-317 established the NUSF Act which authorizes the Commission to create a funding mechanism, based in part, to ensure that all Nebraskans, without regard to their location, have comparable access to telecommunications services at

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<sup>200</sup> See TR at 81:4-9.

<sup>201</sup> See Testimony of Kevin Saltzman, TR at 92:4-96:3.

<sup>202</sup> See TR 93:3-15.

<sup>203</sup> See Testimony of Russ Westerhold, TR at 96:7-98:10.

<sup>204</sup> See TR at 97:9-18.

<sup>205</sup> See Testimony of Scott Bohler, TR at 98:13-105:3.

<sup>206</sup> TR at 100:12-15.

<sup>207</sup> TR at 100:22-25.

<sup>208</sup> See TR at 101:15-18

<sup>209</sup> TR at 101:22-24.

<sup>210</sup> See TR at 102:1-5.



affordable prices. Every telecommunications company is required to contribute to any universal service mechanism established by the Commission pursuant to state law.<sup>211</sup>

In the Commission's NUSF-100 proceeding, after several rounds of comments, briefs, and a hearing, the Commission concluded it had the legal authority to adopt a connections-based contribution mechanism.<sup>212</sup> The Commission further determined that a connections-based contribution mechanism was a necessary step towards stabilizing the fund.<sup>213</sup>

Subsequently, in NUSF-111, the Commission opened a proceeding to determine the best way to implement a connections-based mechanism. The Commission considered the overall fund size to meet the objectives of the NUSF Act, a rate design capable of generating revenues necessary to obtain that goal, and an implementation schedule to allow carriers to make the necessary changes. The Commission found that a connections-based contribution mechanism should first be established for residential lines as such a change was relatively straightforward. Those changes were implemented in April of 2019.

However, assessing business connections was arguably more complicated. Consequently, the Commission determined that it was appropriate to collect more data relative to business lines prior to deciding whether these other services should be contributing in the same manner on a per-connection basis. Specifically, the Commission left business, government, toll, private line, prepaid and other services on the same revenues-based contribution mechanism.<sup>214</sup> The Commission determined that it would collect data for a period of at least one year "prior to determining how a connections-based methodology can be applied to business service."<sup>215</sup> The Commission found it would be able to isolate remittances from business services and analyze trends.<sup>216</sup> Additionally, the Commission found after sufficient data has been collected, it would then consider an investigation to seek further comments on the feasibility and necessity of a connections-based contribution mechanism as applied to business services.<sup>217</sup>

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<sup>211</sup> Neb. Rev. Stat. § 86-324(2) (d).

<sup>212</sup> See NUSF-100, Order (October 31, 2017) at 28.

<sup>213</sup> See *id.* at 27-28.

<sup>214</sup> See NUSF-111 at 28.

<sup>215</sup> NUSF-111 at 26.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

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As Cox/Charter pointed out in their comments, the Commission staff provided information for the record in the Commission's surcharge hearing in 2020 which indicated the change to a connections-based methodology for residential services provided some overall stability to the NUSF.<sup>218</sup> Residential connections and remittances have been steady since the change was implemented in 2019. Due to the pandemic and the complexities involved with business services, a number of other commenters also recommended that the Commission keep the status quo relative to business service contributions.

However, there are some compelling factors that lead us to conclude that reform is still necessary as it relates to business services in order to stabilize remittances, promote a more equitable contribution mechanism, and to achieve the objectives enumerated by the Legislature. However, as it relates to prepaid wireless services, we agree with the commenters that Neb. Rev. Stat. § 86-325 requires us to retain the current revenues-based remittance framework. We also find that other services described below should continue to remit based on their assessable revenues.

First, as a number of commenters recognized, stability of the fund is critically important. Neb. Rev. Stat. § 86-323(4) declares that it is the policy of the state to preserve and advance universal service based upon specific, ***predictable***, sufficient, and competitively neutral mechanisms. (Emphasis added). Our prior decision to reform the contribution mechanism to require connections-based contributions relative to residential services was effective in stabilizing the NUSF remittances in large part due to the fact that the number of residential connections has remained constant over time. However, as Mr. Robbins indicated in his hearing testimony, according to the data collected by the Commission, revenue-based remittances on business services lack stability due to the present ability and actions of carriers to unilaterally change the proportion of the bill to non-assessable revenues. Mr. Robbins indicated that while the number of business connections has remained relatively static, remittances have decreased due to the shifting of consumer costs to non-assessable services.

In 2017, we concluded that moving to a connections-based contribution framework provided greater stability and reduced marketplace distortions.<sup>219</sup> Indeed, in our NUSF-100 proceeding, we recognized that other states had already moved from revenues-based assessments to connections-based assessments in their state

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<sup>218</sup> See Cox/Charter Comments at 5; Frontier Comments at 3.

<sup>219</sup> See NUSF-100 at 26.

universal service fund programs.<sup>220</sup> We also previously concluded that nothing in state or federal law required the Commission to maintain its universal service fund mechanism based on provider revenues.<sup>221</sup> We are unpersuaded by arguments challenging the Commission's ability to move contribution requirements for business lines to a connections-assessment.<sup>222</sup> These commenters raise the same or similar arguments to those that were considered but rejected in the Commission's prior decision relative to residential assessments.<sup>223</sup>

Extending the connections-based contribution surcharge framework to business services would provide the needed stability. A number of commenters made recommendations based upon their belief that the contribution mechanism was stable. However, recent changes to one carrier's business service revenues-based remittances caused a dramatic decline. Based upon Mr. Robbins' testimony and data submitted in Hearing Exhibits 7-9, we find that the current business service remittances are not stable. Indeed, we are concerned that if not remedied, the instability relative to business user contributions will place more pressure on residential subscribers to maintain the overall stability of the NUSF.

Second, the Commission noted concerns about the equitable contributions among various network users. There were a number of commenters in agreement that the current relative percentage of contributions were not properly balanced.<sup>224</sup> The Commission sought comment on whether the relative contribution percentages between residential versus business services should be considered and adjusted noting that as of the June 30, 2020 residential user contributions amounted to roughly 70 percent of the overall fund. Historically, the Commission noted the relative percentages were roughly 60/40. Given the current instability of business user remittances referenced above, business users may continue to contribute less than 20 percent to the overall NUSF. To address these concerns about a more equitable and balanced contribution level, the Commission believes that an important next step includes reducing potential competitive distortions among providers and service offerings. To that end, we find that moving business services to a connections-based assessment is an important step toward addressing these potential distortions.

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<sup>220</sup> See *id.* at 27 (referencing these changes in Utah and New Mexico).

<sup>221</sup> See *id.* at 28.

<sup>222</sup> See AT&T Comments at 4.

<sup>223</sup> See NUSF-100, Order (October 31, 2017) at 28-29.

<sup>224</sup> See, e.g., RIC Comments at 9; RTCN Comments at 7; AT&T Comments at 5. See also Testimony of Mr. Westerhold, TR at 97:19-24 .

In response to the issues raised by the Commission, commenters suggested that the Commission could take action by either increasing the business surcharge percentage or moving business contributions to a connections-based assessment.<sup>225</sup> We are not persuaded that increasing the surcharge on assessable business revenues is the solution to the current instability. First, by some accounts, the Commission would have to increase the surcharge to in excess of 12 percent.<sup>226</sup> In addition, increasing the surcharge on business service does not address the continued instability and inequities caused by recent shifts away from assessable revenues.

Finally, we acknowledge the points made by the commenters that the resolution of the issues presented in this matter should be focused on achieving legislative goals and Commission's articulated policies supporting ubiquitous broadband service at minimum speeds of 25/3 Mbps for all Nebraska consumers.<sup>227</sup> As we noted in our NUSF-111 proceeding, the Legislature has asked the Commission to ensure that broadband telecommunications service in rural areas of the state be comparable in download and upload speed and that state resources should be utilized to ensure that rural residents of the state should not be penalized simply because of their rural residence.<sup>228</sup> Recently, there was legislation which increased broadband speeds and requires support to be used for broadband deployment projects scalable to one hundred megabits per second or greater for downloading and one hundred megabits per second or greater for uploading.<sup>229</sup> To achieve these objectives, the Commission finds that contribution reform must be complete and that contributions from business users must be stabilized to achieve overall stability to the NUSF. We find the best way to stabilize business user remittances is to move them to a connections-based assessment mechanism similar to what we have done for residential user remittances.<sup>230</sup>

Likewise, we are not persuaded by commenters' arguments that the Commission wait until a better time to institute this change. First, the pandemic has highlighted the importance of having sufficient broadband capabilities throughout the state as students, parents, and other residents of the state have been expected to learn and work from home. In addition, the effects of the pandemic are no less significant for residential users than they are for

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<sup>225</sup> See Cox/Charter Comments at 2; RTCN Reply Comments at 3; Frontier Comments at 4.

<sup>226</sup> See Testimony of Mr. Schudel, TR at 48:15-19. See also RIC Reply Comments at 11, referencing Exhibit B at 20.

<sup>227</sup> See *id.* at 35:1-15; see also RIC Comments at 4; RIC Reply Comments at 2.

<sup>228</sup> See LB 994 Slip Law (2018).

<sup>229</sup> See LB 338 (2021) as amended.

<sup>230</sup> See RIC Comments at 4.

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business users. The variances we see between contribution levels from business users, particularly wireless business users, and residential users compels us to act expeditiously. Waiting on contribution reform will only exacerbate the current contribution burdens placed on residential users. Finally, we note that based on past experience, carriers will necessarily need time to update their billing and tracking systems to accommodate the connections-based methodology for business and government services. The Commission also requires time to update its remittance system.

We further are not persuaded that the passage of time will yield more information about the impact on business users. As Mr. Robbins stated there were shortcomings with the several data sources that were available such as the TRS data which is capped at 100 lines, the 911 data which is only collected for wireless service, the Form 477 data which does not break out residential and business service, and the data we solicited on the remittance worksheet. However, we believe we provided ample opportunity for carriers to weigh in with specific proposals or data supporting an alternative framework. We received generalized comments that we could increase the surcharge to create more equity, or cap the number of assessable lines, but no concrete proposals. We provided carriers with a number of opportunities to provide the Commission with more specific data so that we may weigh any specialized concerns relative to big business or government users. However, while carriers provided some additional detail, there was nothing specific in the responses compelling us to keep the current mechanism in place.

In sum, we find that a connections-based contribution mechanism should be adopted for the following services: business and government user mobile activation and usage charges, business and government user local exchange services, and business and government user VoIP services. Consistent with RIC's and Securus' comments, we find that certain services do not lend themselves to a connections-based assessment mechanism. These services include: Fixed local private line, radio paging, alternative access and directory, switched toll, toll private line, and other toll private services. These services, including the services provided by Securus, should remain on a revenues-based assessment mechanism.

We further find, consistent with the current connections rate for residential services, that we should initially set the per connection surcharge for business and government services at equal amounts. We note that there was extensive discussion and support for restructuring the contribution mechanism so that the remittance percentage is more equitably divided between residential and business services. Recommendations to balance the contribution

percentages between business and residential users are persuasive. Accordingly, we anticipate making further adjustments which may include lowering the residential connection surcharge after the business connection surcharge has been established. We will also give consideration to the recommendation of the NUSF Advisory Board and the testimony presented in the NUSF-4 proceeding where the annual surcharge levels are established.<sup>231</sup>

Consistent with the recommendation of certain commenters like Cox, we will provide adequate time for implementation of this new contribution requirement for business and government services. We recognize that carriers will need to make changes to their billing and remittance systems. The Commission will also need to make changes to its remittance processing system in coordination with its contractor. Accordingly, we find that the implementation date should be January 1, 2022.

Additionally, for the present time, we decline to adopt a specific cap on the number of assessable lines. Some commenters opposed adoption of a cap,<sup>232</sup> while other commenters supported capping the number of assessable connections per entity.<sup>233</sup> We emphasize that we sought comment on this issue concerned about the impact of a connections-based assessment on large business and government accounts.<sup>234</sup> However, despite this, we received only generalized concerns and no specific data or rate design proposals which included a cap.<sup>235</sup> We also sought specific comment on low-volume versus high-volume users in order to mitigate concerns about low-volume ratepayers absorbing costs for high-volume users.<sup>236</sup> However, again that request failed to yield specific or useful information, many carriers stating that such information was not collected. Without specific data, it is difficult if not impossible, to reasonably determine an appropriate cap on assessable connections.<sup>237</sup> In the absence of such, we agree with the commenters who argued against the adoption of a cap.<sup>238</sup>

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<sup>231</sup> See *supra* Section B, RIC Comments at 9 (Attachment A) (providing a specific proposal for a rate-design framework), AT&T Reply Comments at 6 (supporting a rebalancing of the remittance percentages for a more equitable distribution of the contribution burden as long as it does not increase the size of the fund); RTCN Comments at 7 (stating the business community should be paying more).

<sup>232</sup> See CTIA Comments at 5. RTCN Reply Comments at 4.

<sup>233</sup> See Windstream Comments at 4; CenturyLink Comments at 5; Frontier Comments at 5.

<sup>234</sup> See *supra* Section E.

<sup>235</sup> RIC was the only entity that provided a proposed rate design for the Commission's consideration. However, RIC did not endorse the use of a cap.

<sup>236</sup> See *supra* Section B. See also NUSF-119/PI-233, POST-HEARING ORDER REQUESTING LIMITED DATA (February 17, 2021) at 2.

<sup>237</sup> See Testimony of Mr. Schudel, TR at 47:1-12.

<sup>238</sup> See *id.*

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However, again we remind interested parties that on an annual basis, we are required to open a proceeding and schedule a public hearing on the surcharge level pursuant to Neb. Rev. Stat. § 86-328, which is generally done in our NUSF-4 proceeding in May. Interested parties will have an opportunity to provide testimony and information for the Commission to consider going forward not only this year, but after the implementation of the connections-based business surcharge next January. At that point, the Commission may have additional information to consider on the specific impact of the connections-based surcharge on larger businesses and governmental entities.




### O R D E R

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

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 11th day of May, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Executive Director



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Commissioner Tim Schram dissenting:


The record supports closing the residential/business contribution gap to be more equitable, with a mechanism that is predictable and sustainable. A fixed contribution fee for all residential, government and business users will simplify collections for industry billing systems. However, I dissent because I believe the Commission should have adopted a cap on the number of assessable connections for each multi-line business and government entity. Nebraska is home to many entities that utilize large multi-line internal networks. Examples include military installations, railroads, trucking companies, educational entities, state agencies, county and city governments, and data and national call centers that all employ many Nebraskans. Caps have worked with TRS and E-911. Without caps I am concerned that costs may be excessive for large multi-line users based on the limited data. I am also disappointed that carriers did not submit accurate granular data. Lack of crucial data has made it difficult to make an informed decision relative to caps.

Cost of doing business in a state is a determining factor in retaining and attracting economic development. Increased costs incurred by local governments are mainly funded by property taxes. I believe periodic review of the level of a cap for government and businesses would allow the Commission to make appropriate adjustments to the size of the NUSF fund.

I believe there is some merit in commenters' arguments that COVID-19 has been a difficult time for businesses, especially those that are service oriented. Any increase in cost may delay recovery for struggling entities. The issue of what is equitable in forming a contribution mechanism is particularly challenging given this current environment.

I recognize that the Commission has already determined the desired size of NUSF fund, and that collections will be reviewed the first quarter of 2022. I would strongly encourage my colleagues to carefully analyze these collections to ensure that business contributions are not excessive.

After reviewing the record and considering ramifications of making a change with what I consider to be deficient data, I respectfully dissent from the majority.



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Tim Schram