

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-100/  
Public Service Commission, on its ) PI-193  
Own motion, to Consider Revisions to )  
Universal Service Fund Contribution )  
Methodology. ) ORDER DENYING MOTION  
)  
)  
) Entered: May 9, 2017

BY THE COMMISSION:

By Motion filed April 5, 2017, CTIA-The Wireless Association ("CTIA") seeks a procedural order to permit CTIA to conduct discovery, and a hearing where witnesses will give sworn testimony and be subject to cross-examination. In support of its Motion, CTIA states that there are a number of evidentiary questions that cannot be adequately analyzed without the ability to engage in discovery and conduct cross-examination at the hearing.

On April 11, 2017, the Hearing Officer entered an order setting an April 21, 2017 deadline for any responsive motions. Responses were filed by the Rural Independent Companies (RIC) and the Rural Telecommunications Coalition of Nebraska both in opposition to the CTIA motion. RIC argues that CTIA essentially failed to recognize the Commission sets the surcharge rate and program budgets annually through the proceedings opened for that purpose. In addition, RIC points out that CTIA had participated in this proceeding for over two years and had made six filings without the need for discovery. Finally, RIC stated due process and the Commission's procedural rules do not require the conduct of pre-hearing discovery or cross-examination at the hearing on this matter.

RTCN argued the Rules of Commission procedure expressly authorize the conduct of investigatory proceedings such as the present docket. RTCN further argued that consistent with the manner in which it has conducted all other investigatory proceedings, the Commission has invited comment and participation openly. No one has intervened in this proceeding and no carrier or organization has status as a formal intervenor or protestant; accordingly, allowing discovery and cross-examination privileges would be improper.

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

Upon consideration of the motion and the responses filed, the Commission is of the opinion and finds the motion filed by CTIA should be denied. In this present docket, we are re-examining the policy determination about whether the NUSF surcharge should be billed as a percentage-based or flat connections based charge. Consequential to that, the Commission is re-examining the policy goals involved in establishing revised contribution framework. RIC is correct in pointing out that the Commission will still determine specific funding levels through an annual review as it has consistently done in the past. For example, the Commission annually determines what the NUSF fund level should be through its docket in NUSF-4, after consultation with the NUSF Advisory Board and holding a public hearing. The Commission is required by Neb. Rev. Stat. § 86-328 to do so. The Commission also determines annually what the calendar year high-cost (i.e. fixed broadband) budget should be based upon historical remittances and remittance forecast information. The Commission necessarily needs to make modifications and adjustments that correlate with changes in overall remittances into the fund. The Commission progressively revises the goals and budgets of each program, as it has done in NUSF-50, NUSF-92, NUSF-99 and NUSF-108. These dockets have been the vehicle for annual high-cost, broadband adoption, and wireless funding determinations.

Moreover, while the Commission has asked for comments in the form of testimony, it frequently does so for the administration of an expedient and organized hearing format that involves a number of potentially interested commenters. This does not signal an intent to convert this proceeding from an investigatory docket into a contested case.

Finally, the Commission believes it has been transparent with the information that formed the basis for its policy proposals. Source information was included with the proposals released for comment. Aggregate historic and current remittance levels are available in the public domain on the Commission's website and in the Commission's annual report to the Legislature. The same is true for specific information relative to the current budgets and demand for each NUSF program. Access to the state broadband cost model data, which is not public information, but subject to a licensing agreement and a Protective Order, was noticed and made available earlier in this proceeding on June 23, 2016. If questions remain, such questions can and should be raised in the context of the comments and reply comments so the Commission and other interested commenters

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providing alternatives can address such questions at the upcoming hearing.<sup>1</sup>

In sum, we find no good cause to modify the format of the proceeding at this late date. The Commission finds the CTIA motion should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Motion filed by CTIA be, and it is hereby, denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 9th day of May, 2017.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s//Frank E. Landis

//s//Tim Schram

//s//Crystal Rhoades

COMMISSIONERS DISSENTING:

//s//Mary Ridder



Chairman

ATTEST:



Executive Director

<sup>1</sup> RIC is correct that the Commission recently denied a request by a carrier to conduct discovery on the Commission during the pendency of an investigation finding the Commission and its advisory staff was not a party for the purpose of discovery and cannot be compelled to respond to interrogatories. See *in the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program*, Application No. NUSF-99, Order Denying Motions and Ruling on Discovery (December 15, 2015).