

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-100
Public Service Commission, on)	PI-193
its own motion, to consider)	
revisions to the universal)	ORDER OPENING DOCKET AND
service fund contribution)	SEEKING COMMENT
methodology.)	
)	
)	Entered: November 13, 2014

BY THE COMMISSION:

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

The Nebraska Public Service Commission (the "Commission") hereby opens the above-captioned proceeding to consider revisions to the contribution mechanism of the Nebraska Universal Service Fund ("NUSF"). The contribution mechanism is the system by which the Commission's universal service programs are funded. We note at the outset, the Commission is not, at this time, considering the assessment of broadband services or broadening the base to include additional consumers not already contributing to the NUSF. Rather, the Commission proposes to modernize and reform the contribution mechanism to promote an equitable and sustainable framework in an evolving communications environment.¹

Significant changes in telecommunications have taken place since 1999 when the Commission's NUSF contribution mechanism was established. To the benefit of consumers, the 1996 Telecommunications Act (the "Act") has resulted in innovation that has brought new technologies, a more robust infrastructure, and a wide array of communications services to consumers. At the same time, however, federal and state universal service mechanisms have been affected by changes in consumers' telecommunications services preferences. Specifically in Nebraska, the assessable base for NUSF contributions erodes as customers migrate to services on which the NUSF surcharge is not remitted and therefore, are not contributing, in whole or in part, to the NUSF. Competitive distortions permitted by the federal USF mechanism have also resulted in differing contribution obligations for the same services. In addition, due to the strain on the federal universal service mechanism to generate surcharge revenues to meet all federal USF obligations,

¹ See 47 U.S.C. § 254(c)(1).

safe harbor allocations have resulted in more and more surcharge revenues being captured by federal rather than by state support mechanisms. Since 2009, NUSF remittances have experienced an average decline of greater than 2 percent per year.

The Federal Communications Commission ("FCC") has been looking at ways to stabilize the federal contribution mechanism since 2002.² After adopting sweeping universal service fund reforms in 2011,³ the FCC again released several contribution reform proposals for public comment in 2012.⁴ On August 7th of this year, the FCC referred contribution reform to the Federal-State Joint Board on Universal Service for consideration.⁵ A proposed recommendation is due from the Joint Board on or before April 7, 2015. The FCC has one year thereafter to decide whether to adopt, modify or reject the Joint Board's recommendations. We believe federal reforms may be several years away.

Issues for Public Comment

The Commission solicits comments on the various contribution reform options described in further detail below:

A. Revenues-Based Assessment

Currently, the Commission requires contributions to the NUSF based upon intrastate end-user telecommunications revenues. As stated previously, erosion of the assessable base has resulted in a steady decline in NUSF surcharge collections over the past several years. The Commission does not believe increasing the NUSF surcharge on a declining base of revenues is sustainable to replace declining NUSF collections. Accordingly, the Commission seeks comment on whether it should keep the current revenues-based contribution mechanism in place with revisions, or whether it should move away from a revenues-based

² 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").

³ 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").

⁴ 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").

⁵ See *In the Matter of the Federal State Joint Board on Universal Service et al.*, WC Docket No. 96-45, Order (August 7, 2014) ("Referral Order").

contribution system. If the Commission retains a revenues-based contribution mechanism, how can surcharge collections generated through this mechanism be stabilized? How can the Commission continue to achieve the requirements of the Nebraska Telecommunications Universal Service Fund Act (the "NUSF Act") that the NUSF be sufficient and predictable?

B. Connections-Based Assessment

As an alternative to the current revenues-based contribution mechanism, the Commission seeks comments on whether it should implement assessment of telecommunications connections. As the FCC noted in the *2012 Contributions FNPRM*, nothing in the Act requires a contribution system to be based upon revenues.⁶ Likewise, the NUSF Act does not require the Commission to utilize a revenues-based contribution mechanism. The Commission preliminarily believes that a connections-based contribution mechanism may result in a more stable and predictable universal service support mechanism.⁷ Further, since providers report connections to the FCC, a connections-based mechanism may facilitate a simpler, more straight-forward calculation of support to be remitted to the NUSF. Providers would be relieved of the monthly obligation to separate and calculate assessable intrastate revenues.

If connections are assessed, how should the term "connection" be defined? Should the Commission use the connection data used from the FCC's Form 477 data collection? Currently, the FCC requires four types of providers to report connections: (1) "facilities-based providers of broadband connections to end user locations," whether wireline or wireless;⁸ (2) providers of "wired or fixed wireless local exchange telephone service"; (3) "providers of interconnected VoIP service"; and (4) providers of "mobile telephony services."⁹ If connections are used, should the Commission's contribution mechanism be based on physical network connections (wired and wireless) or virtual network connections?¹⁰

⁶ See *2012 Contributions FNPRM* ¶219.

⁷ See *2012 Contributions FNPRM* ¶264.

⁸ However, as stated above, the Commission is not currently considering the assessment of broadband services.

⁹ See *2012 Contributions FNPRM* ¶229.

¹⁰ See *id.* ¶ 231, where the FCC discussed these alternatives but used the terms "facilities-based" and "service-based" connections.

If the Commission assesses connections based upon physical network connections, i.e., wire line or wireless channel, the connection would be the focus of the contribution requirement not the services provided over the connection. Would this be an equitable and stable contribution mechanism? The Commission requests commenters to explain their response to this inquiry.

In the alternative, should the Commission consider a virtual connection-based contribution mechanism? Under a virtual connection contribution system, the Commission would focus on the service or services delivered over the facility. Each service could be designated as a separate "unit" for assessment calculation purposes.¹¹ Accordingly, if a subscriber purchased two or more assessable services, each service could be assessed. Would this be an equitable and stable contribution mechanism? The Commission requests commenters to explain their response to this inquiry.

Regarding either a physical or virtual connection-based contribution mechanism, should the Commission use a flat-rate connection charge or should the contribution obligation vary based upon the size or type of connection? Other than Lifeline, are there any types of connections that should be exempt from assessment? How would the Commission verify the accuracy of remittances filed under this contribution mechanism? Would the application of a connections-based assessment be more efficient for providers? If not, why not?

C. Numbers-Based Assessment

As an alternative to a connection-based assessment mechanism, the Commission notes that moving to a number-based system has been widely discussed in the past. Should the Commission consider assessing a flat amount for each telephone number? If so, should this assessment be based on North American Numbering Plan Administrator ("NANPA") telephone numbers? Should the Commission include all "assigned" numbers consistent with the definition in 47 C.F.R. § 52.15? Should the Commission include assigned but not operational numbers or non-working numbers? How would the Commission identify in-service or working telephone numbers? What about available but unassigned numbers? How should the Commission treat multi-line, business services or facsimile numbers? How should the Commission treat special access or private line service? Should there be any differentiation among users? What should be the treatment of numbers used for toll free services and numbers used for routing

¹¹ See *id.* ¶ 236.

purposes? How should exemptions such as the Lifeline exemption be treated? How would a numbers-based system be tracked and audited? Would the application of a numbers-based assessment be more efficient for providers? Would the application of a numbers-based assessment mechanism result in improved number conservation? If not, why not?

D. Other Options

Commenters may propose any other option or a hybrid application of the foregoing options for the Commission's consideration. Please explain how each proposed option would result in a predictable and sustainable NUSF contribution mechanism. Commenters should also address how any proposed contribution reform will fulfill the legal requirements set forth in both state and federal law. More specifically, commenters should address how the proposed mechanism would meet the requirements set forth in 47 U.S.C. § 254(f) which requires the Commission's universal service mechanism to be consistent with and not a burden on the federal mechanism.

Comment Deadline

The Commission requests that interested parties provide comments responsive to the issues raised above on or before **February 13, 2015**. Reply comments may be filed on or before **April 13, 2015**. Commenters should file one (1) paper copy and one (1) electronic copy of their Comments with the Commission. Electronic copies should be sent to Sue.Vanicek@nebraska.gov and Brandy.Zierott@nebraska.gov.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned investigation be and it is hereby opened to the public for comment.

IT IS FURTHER ORDERED that interested parties provide comments responsive to the issues raised above on or before **February 13, 2015**. Reply comments may be filed on or before **April 13, 2015** in the manner prescribed herein.

MADE AND ENTERED at Lincoln, Nebraska, this 13th day of
November, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. NUSF-100/PI-193

PAGE 6

MADE AND ENTERED at Lincoln, Nebraska, this 13th day of November, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Arue Bayle

Tim Schram

Peck Johnson

Gerald Wyp

Frank E. Landis
Chairman

ATTEST:

Steve Meredith
Executive Director

//s//Frank E. Landis