



BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-100/PI-193
Public Service Commission, on )
its own motion to consider )
revisions to the universal )
service fund contribution )
methodology. )

REPLY COMMENTS OF THE RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies ("RIC")<sup>1</sup> submit these Reply Comments in response to the Commission's Order Opening Docket and Seeking Comment entered in this proceeding on November 13, 2014 (the "Order") and in response to the comments filed herein by other interested parties.<sup>2</sup> RIC appreciates the opportunity to provide the following Reply Comments to the Commission. For the reasons stated herein, RIC respectfully requests that the Commission take action on the issues addressed in the Order in the manner suggested in RIC's Comments and as set forth below.

I. Consensus that a Revenues-Based Contribution Mechanism is Unsustainable

Among the eight commenters that submitted comments in response to the Order, seven explicitly acknowledged that the current revenues-based contribution mechanism is

1 Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

2 In addition to RIC, the following parties submitted comments in response to the Commission's Order: The Association of Teleservices International, Inc. ("Teleservices"); CTIA - The Wireless Association ("CTIA"); Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink ("CenturyLink"); Charter Fiberlink - Nebraska, LLC ("Charter"); Cox Nebraska Telcom, LLC ("Cox"); Windstream Nebraska, Inc. ("Windstream");<sup>2</sup> and The Rural Telecommunications Coalition of Nebraska ("RTCN").

unsustainable over the long term.<sup>3</sup> The eighth commenter – CTIA – did not disagree with this general consensus, but rather, reserved its view on the contribution proposals.<sup>4</sup>

There is substantial unity of perspective expressed in the comments filed with regard to the need to reform the NUSF contributions mechanism. Multiple factors including the shift in consumer preferences from voice to broadband service (revenues from the latter not being subject to NUSF surcharge assessment), technological change from circuit-switched to IP-enabled networks, bundling of services with the resulting reduction in the allocation of assessable revenues to the intrastate jurisdiction and other factors as noted in the *Order* have combined to materially reduce surcharge remittances to the NUSF. It is clear that the representatives from across the telecommunications industry that have submitted comments in response to the *Order* recognize that the current revenues-based contribution mechanism is unsustainable. Thus, the next logical inquiry is “what should replace the current mechanism?”

## **II. Commenters Favor a Connections-Based Contribution Mechanism**

---

<sup>3</sup> See Teleservices Comments at 4 (“the revenues-based NUSF assessment is not tenable over the long term as currently structured . . .”); CenturyLink Comments at 1-2 (The “rapid technological changes and evolving consumer preferences have resulted in a declining revenue base for NUSF contributions, which translates into annual reductions of NUSF funds available to support consumers in high cost rural areas of the state.”); Charter Comments at 2 (“The contribution base supporting the federal universal service system [also revenue-based] is undergoing significant change, including from the decline of traditional wireline service and the growth of mobile wireless services.”); Cox Comments at 3 (Cox “does not dispute that a change to the contribution methodology may be necessary in order to continue accomplishing the goals and objectives of the NUSF.”); Windstream Comments at 2 (“Whatever contribution mechanism the Commission adopts should ensure that the current decline in the assessable base is halted . . .”); and RTCN Comments at 2 (The group “applauds the Commission for pressing forward to help stem the tide of Nebraska’s declining fund balance and ultimately to preserve an NUSF system . . .”)

<sup>4</sup> RIC Comments at 7.

RIC is not alone in its view that a more stable contribution methodology would result from replacement of the current revenue-based contribution mechanism with a form of connections-based mechanism.<sup>5</sup> CenturyLink, Teleservices and RTCN each conceptually agree<sup>6</sup> with the remaining four commenters not addressing the subject of migration to a connections-based NUSF contribution mechanism.

As a result, RIC respectfully requests that the Commission moves forward with investigation of specific details regarding implementation of a connections-based system. In this regard, RIC respectfully submits that it has demonstrated a viable framework in its Comments – a “virtual” connections-based system – that could be implemented with relative ease and would also accommodate any future action by the Federal Communications Commission (“FCC”) regarding inclusion of broadband internet access services in the universal service contribution

---

<sup>5</sup> At this time, RIC’s specific recommendation regarding a connections-based proposal would define a “connection” as any service that, when ordered, requires the use of a working 10-digit telephone number that allows access to and from the PSTN. Further, RIC recommends that a “virtual” connection rather than a “physical” connection be employed in the new mechanism with a “virtual connection” being one through which actual end user services are provided. In this way, the Commission can avoid over-counting of “connections” where no service is actually provided and thus no benefit derived for access to and from the Public Switched Telephone Network. *See id.* at 10-15.

<sup>6</sup> *See* CenturyLink Comments at 6 (In addition to the ease of administration and audit, CenturyLink “believes that a connections-based approach will similarly provide the Commission with a more stabilized stream of contributions into the NUSF than the current revenues-based assessment”, with each connection capable of providing telecommunications potentially being the basis for assessing a defined fee, with scale of the connection taken into consideration when determining the amount of the fee); Teleservices Comments at 5-6 (Contending that adoption of a connections-based assessment methodology would be more stable and predictable than the current system, and that data reported on FCC Form 477 could be used as a foundation for this assessment); RTCN Comments at 3-4 (The development of a “hybrid” assessment mechanism in which a connections-based methodology is implemented and the revenues-based assessment mechanism continues would be more stable and provide flexibility for future modifications in the NUSF contribution mechanism, thus helping the NUSF “weather any unforeseen problems that arise with any new and untested system.”).

base.<sup>7</sup> While Commission action in this proceeding should, in RIC's view, be informed by the FCC's action on the Joint Board's recommendations regarding universal service contributions, RIC also continues to believe that Commission action to fashion a Nebraska-specific state universal service contribution proposal would advance the public interest and may, in turn, assist the FCC in fashioning its response to the Joint Board action.<sup>8</sup>

### **III. Concerns Regarding the Implementation of a Numbers-Based Assessment Mechanism can be Addressed if and when a Proposal for Operationalizing this Mechanism is Presented**

Of the commenting parties, only three addressed the Commission's potential implementation of a numbers-based mechanism for NUSF contributions – RIC, CenturyLink and Teleservices. RIC and CenturyLink agreed that working numbers should be assessed and that some limitation on the contribution requirement should be considered for holders of a large quantity of numbers.<sup>9</sup>

In light of this acknowledgment, RIC would not be opposed to the Commission's expansion of this concept to address the concern of users of purportedly "low-value" or "low usage" telephone numbers such as Teleservices.<sup>10</sup> However, RIC cautions that the definitions applicable to "low-value" or "low usage" telephone numbers need to be established in a manner

---

<sup>7</sup> As noted by RIC, at the time of the submission of comments in this proceeding, the FCC reportedly intended to address the issue of inclusion of broadband services in the federal universal service contribution base in its then up-coming meeting on February 26, 2015 in connection with the "net neutrality" order. *See* RIC Comments at 8-9, n. 15. Although the FCC addressed this issue in such order, it did so by deferring the issue to the Federal State Joint Board's recommendation currently scheduled to be released by April 7, 2015. *See, e.g., In the Matter of Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order*, GN Docket No. 14-28, FCC 15-24, released March 12, 2015 ("Net Neutrality Order") at ¶ 489; *see also* RIC Comments at 3, n.4.

<sup>8</sup> *Id.*

<sup>9</sup> RIC Comments at 18; CenturyLink Comments at 8-9.

<sup>10</sup> Teleservices Comments at 8-9.

that is narrowly tailored and will avoid a material increase in NUSF administrative expense and elimination of numbers already in use. In the absence of this approach and as RIC has acknowledged:

[w]hile RIC has not identified where this line would be drawn, RIC respectfully submits that Commission consideration of this issue is necessary to ensure that any proposal not create customer incentives to eliminate or avoid use of telephone numbers and thus undercut the core objectives of contribution reform regarding sufficiency and predictability.<sup>11</sup>

Unfortunately, Teleservices has not proposed any concrete measure to operationalize its concerns without undermining the objective of equitable NUSF assessments. Consequently, RIC is unable to verify Teleservices's contention that a pure numbers-based proposal would result in a less stable and predictable source of support for the NUSF. At the same time, however, RIC finds it difficult to agree with Teleservices that a modified numbers-based proposal that addresses the Teleservices members' use of large amounts of numbers<sup>12</sup> would be a more complicated mechanism than the current revenues-based mechanism since the foundation for any such numbers-based contribution proposal – numbers in use – should be readily reportable by the carrier that is providing service through the use of those numbers.

Of course, the issues raised by Teleservices are avoided by RIC's "virtual" connections-based proposal. Nonetheless, if the Commission were to adopt a numbers-based assessment mechanism, it is possible that Teleservices' concerns could be addressed should Teleservices propose a concrete proposal that other commenting parties could then review and assess.

---

<sup>11</sup> RIC Comments at 18.

<sup>12</sup> Teleservices Comments at 9.

#### **IV. The Commission Should Allow a Supplemental Round of Comments Following Release of the Joint Board Recommendations On Contribution Reform**

Three commenters cautioned the Commission not to “get out in front of the FCC” in proceeding with contributions reform.<sup>13</sup> The recommendations of the Joint Board on Universal Service are due to be released on April 7, 2015; however, release has been delayed.<sup>14</sup> Foremost, RIC disagrees with the concept proffered by Cox and Charter that the Commission should hold this proceeding in abeyance in light of the anticipated Joint Board action. For the reasons stated in Section I above, and as amply supported in the comments filed in this proceeding, the need for reform of the NUSF contribution mechanism is readily apparent and is required to ensure that the statutory directives entrusted to the Commission regarding the NUSF are achieved.<sup>15</sup> Moreover, neither Cox nor Charter has refuted the fact, as the Commission has stated, that even with the Joint Board’s anticipated recommendation, “federal reforms may be several years away.”<sup>16</sup> Thus, particularly in light of the consensus in this proceeding that the continuation of the NUSF revenues-based contribution mechanism is not sustainable, holding in abeyance the Commission’s investigation of a replacement contribution mechanism should be rejected.

---

<sup>13</sup> See Cox Comments at 2 (Requesting that the Commission to hold this docket in abeyance until the Joint Board’s recommendations are released and available for review and comment); Charter Comments at 3 (Advancing similar position as Cox); and CITA Comments at 6-7 (Encouraging the Commission to provide interested parties an appropriate amount of time to consider the Joint Board’s recommendations and to determine whether such recommendations “affect the proposed contribution mechanism types in NUSF-100.”).

<sup>14</sup> See *In the Matter of Federal State Joint Board on Universal Service, Universal Service Contribution Methodology*; WC Docket No. 96-45, WC Docket No. 06-122, et.al., adopted Aug. 6, 2014; see also RIC Comments at 3, n. 4.

<sup>15</sup> *Neb. Rev. Stat.* § 86-323(5) (Reissue 2014).

<sup>16</sup> *Order* at 2.

At the same time, RIC agrees with CTIA's suggestion that the Commission should allow "supplemental comments" based on the Joint Board's action.<sup>17</sup> Although it appears unstated, the logical outgrowth of CTIA's suggestion is that supplemental comments will allow for the development of a fuller record based on the Joint Board's recommendations. Accordingly, RIC respectfully requests that the Commission grants interested parties a period of thirty (30) days following release of the Joint Board's recommendations on contribution reform to submit supplemental comments in this proceeding. In granting this opportunity, RIC respectfully submits that the Commission makes clear that the supplemental comments should relate to the impact of the Joint Board's recommendations on the Commission's consideration of the subjects that are being addressed in the instant docket,<sup>18</sup> and not be used as a round of "sur-replies" to the reply comments submitted today.

## **V. Conclusion**

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Reply Comments in response to the questions posed by the Commission, and look forward to continued participation in this important docket.

---

<sup>17</sup> See CITA Comments at 6-7.

<sup>18</sup> RIC notes that the FCC has indicated that in light of its issuance of its *Net Neutrality Order*, it "recognize[s] that a short extension of that deadline [April 7, 2015] for the Joint Board to make its recommendation to the Commission may be necessary in light of the action we take today." See *Net Neutrality Order* at ¶ 489, n. 1471.

Dated: April 13, 2015.

Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc., and Three River Telco ("RIC")

By: Paul M. Schudel

Paul M. Schudel, NE Bar No. 13723  
pschudel@woodsaitken.com  
James A. Overcash, NE Bar No. 18627  
jovercash@woodsaitken.com  
WOODS & AITKEN LLP  
301 South 13th Street, Suite 500  
Lincoln, Nebraska 68508  
Telephone (402) 437-8500  
Facsimile (402) 437-8558

Thomas J. Moorman  
tmoorman@woodsaitken.com  
WOODS & AITKEN LLP  
5151 Wisconsin Avenue, N.W., Suite 310  
Washington, D.C. 20016  
Telephone (202) 944-9502  
Facsimile (202) 944-9501

**CERTIFICATE OF SERVICE**

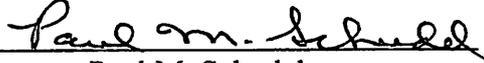
The undersigned hereby certifies that on this 13th day of April, 2015, an electronic copy of the foregoing pleading was delivered to:

**Nebraska Public Service Commission**

Sue.Vanicek@nebraska.gov

Brandy.Zierott@nebraska.gov

**All Other Commenting Parties**

  
Paul M. Schudel