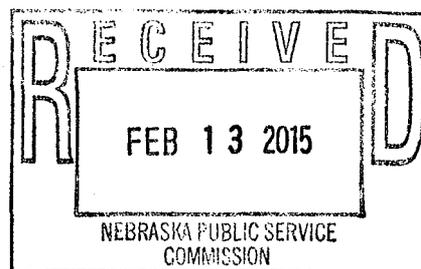


**BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION
LINCOLN, NE 68508**

In the Matter of the Nebraska Public)
Service Commission, on its own)
motion, to consider revisions to the)
universal service fund contribution)
methodology)

Application No. NUSF-100
PI-193



To: The Commission

**ASSOCIATION OF TELESERVICES INTERNATIONAL, INC.
RESPONSE TO ORDER OPENING DOCKET AND SEEKING COMMENTS**

THE ASSOCIATION OF TELESERVICES INTERNATIONAL, INC.

(ATSI), by Jeffrey W. Zindel, its President, and by its attorneys, respectfully submits its comments to the Public Service Commission in the captioned proceeding, in response to its Order Opening Docket and Seeking Comments (the "Order") dated November 13, 2014. In summary, ATSI vigorously opposes the adoption of a numbers-based assessment as outlined in the Order at pp. 4-5, but would support either an expansion of the pool of contributions in a revenue-based assessment system or a switch to a properly structured connections-based assessment system applicable to filers of FCC Form 477, as outlined in the Order at pp. 3-4. ATSI further urges the Commission, prior to any adoption of a revised contribution mechanism, to further review such mechanism to address the potential impact of that

mechanism on participants in industries which heavily rely on telecommunications and to ensure that such mechanism will not adversely impact Nebraska's business climate (e.g. that it will not encourage companies to locate or relocate outside Nebraska) and will not unduly impact a particular demographic segment of the Nebraska population.

In support of its position, ATSI respectfully states as follows:

Introduction and Background

ATSI (www.atsi.org) is an international trade association established in 1942 by and for entrepreneurs in the Telephone Answering Services (TAS) business. Referred to as Private Sector Critical Response Centers (PSCRCs) in the modern era, inbound contact centers operated by ATSI members typically are small, locally owned and operated businesses providing a wide variety of human communications services within their local communities. The gross revenues of PSCRCs average on the order of \$550,000 annually, of which approximately 45% go to direct payroll expenses for their employees.

Entrepreneurial in their approach to business issues, ATSI members offer innovative human solutions to business communications problems and provide essential response services in disaster situations. PSCRCs serve over 1.4 million professional, commercial, not-for-profit, governmental agencies, and local emergency respondent clients, including doctors; emergency response centers; public

utilities; public safety offices; local, state, and federal government offices; rape and suicide crisis centers; and Red Cross emergency centers. PSCRC agents, who are US citizen employees, assist neighbors in some 3.6 billion inbound call transactions annually.

Under current federal and state rules, ATSI members are end users that pay contributions indirectly to the USF through assessments on their telephone bills imposed by carriers and, in some cases, by interconnected VoIP providers. Also, ATSI members are substantial users of telephone numbers,¹ typically assigned to the PSCRC in blocks of 100 or 1,000 by its serving ILEC or CLEC for a monthly fee. According to data previously collected by ATSI, its members are assigned an average of approximately 2,000 telephone numbers each.

Calls associated with telephone numbers utilized by a typical ATSI member are predominantly intrastate in character; and the telephone numbers assigned to ATSI members typically generate less than three minutes of usage per day, compared to an average of approximately 25-30 minutes of usage per day common for conventional wireline and wireless telephone numbers.² Additionally, the telephone numbers assigned to ATSI members characteristically are used for internal

¹ These numbers are predominantly local Direct Inward Dial (DID) numbers, but also include quantities of toll-free (8XX) telephone numbers.

² Data compiled by the cellular industry association show, e.g., that postpaid wireless subscribers generated an average of 826 minutes of usage for the month of December 2007. See FCC Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-337, *et al.*, FCC 08-262, adopted and released November 5, 2008, and published at 73 Fed. Reg. 66821 (November 12, 2008) (the "2008 FNPR"), at Attachment A & ¶138, p. A-60.

network signaling or call distribution purposes. They generally are not used for the origination or termination of telephone calls by the public at large.

As contributors to the NUSF through members operating in Nebraska, ATSI will be directly affected by the Commission's decision in this case; and ATSI anticipates that the Commission's decision likely will influence the actions of other state commissions that now have or will establish USFs in jurisdiction where ATSI members operate. ATSI also has participated actively in the various FCC proceedings in recent years which have considered possible revisions to the federal USF contribution methodology. ATSI appreciates the opportunity to present its views to the Commission and will discuss the various options as presented in the Order.

Comments

A. Revenues-Based Assessment

ATSI agrees with the Commission's observation that the revenues-based NUSF assessment is not tenable over the long term as currently structured, in light of the significant changes in telecommunications that have taken place since the NUSF contribution mechanism was established. As explained to the FCC, ATSI's preferred solution to this problem is expanding the pool of contributors to include broadband service providers. ATSI continues to adhere to this view, but acknowledges the Commission's statement in the Order that such an alternative is not under

consideration in this proceeding. ATSI accordingly will focus its discussion on the remaining options outlined in the Order.

B. Connections-Based Assessment

ATSI's second choice for NUSF contribution reform is a properly structured connections-based assessment methodology. The principal virtue of a properly structured connections methodology is that, similar to a revenues-based methodology, assessing the amount of network capacity subscribed to by users does at least bear a rough correlation to the value of services provided to users and to the usage of the network by users, while eliminating the need to parse the exact nature of the services (telecom or information) being provided to the users. Employing such a methodology thus should be good and permanent fix to the problem of an eroding NUSF contribution base due to the increasing shift by the public to what are now classified as non-telecommunications or information services under current rules.

ATSI therefore agrees with the Commission that a connections-based contribution mechanism, properly structured, will result in a more stable and predictable universal service support mechanism. ATSI also agrees that the Commission should use data reported on FCC 477 as the foundation for the assessment, since that form is the only official source it is aware of for obtaining the data necessary to use for this purpose. Accordingly, ATSI agrees with the Commission that a connections-based assessment methodology utilizing Form 477 data will facilitate

a simpler and more straight-forward calculation of the amount of support that needs to be remitted to the NUSF to fund its activities.

ATSI further submits that the contribution mechanism should be based on physical network connections rather than virtual network connections. ATSI agrees that utilizing physical network connections would make it unnecessary to consider the specific nature of the service being provided by a particular facility, and would avoid attendant classification intricacies and regulatory difficulties, and thus would be a stable and equitable contribution mechanism over the long term.

Finally, in this regard, ATSI submits that the connection-based assessment should vary based upon the size and type of connection, and should not be a flat-rated connection charge. As indicated above, one of the central features of an equitable and fair contribution mechanism is a reasonable correlation between the NUSF fees paid by users and the relative value to the users of the services they receive and their relative usage of the network. Varying the assessment based upon the size and type of connection is therefore central to the ability of that methodology to pass the test of fundamental fairness.

C. *Numbers-Based Assessment*

ATSI's principal message in response to the Order is that a numbers-based contribution methodology fails the tests of fairness, efficiency and sustainability and should be unequivocally rejected by the Commission as a reform option. A

numbers-based assessment methodology is fatally flawed philosophically because it is premised on assessing the same flat fee per month on every telephone number in use, despite the wide variation in the price of services to which telephone numbers are assigned, and despite the similarly wide variation in the burden on or usage of the network represented by the different services associated with assigned telephone numbers. The result of such facially “equal” treatment of telephone number usage in fact would be a massive, unjustified shift in the burden of USF contribution obligations among user groups, unrelated to the Commission’s regulatory objectives for universal service.

ATSI members represent a classic case in point. The DID numbers utilized by ATSI members generally are used for internal routing and caller identification rather than for the public at large to access telephone stations connected to the PSTN. In general, they are predominantly used in connection with intrastate services; and they are utilized only briefly in comparison to general PSTN traffic.

Under current rules, when last calculated by ATSI, the federal USF contributions paid by members to their service providers translated into less than \$0.10 per number per month. Changing to a numbers-based assessment methodology at the federal level thus would mean a drastic increase in USF assessments for ATSI members that is entirely unrelated to either USF distribution side reforms or the purposes of the universal service programs. Such an increase not only would be

unfair in the abstract, but also would violate principles of competitive neutrality as well.³ ATSI has not been able to calculate the exact impact on its members from adopting a numbers-based assessment methodology for the NUSF, but there is every reason to believe that a similarly substantial adverse impact would be the inevitable result.

ATSI further points out that the drastic increase in NUSF contributions expenses under a numbers-based assessment would cause many users of low-value or low usage telephone numbers to eliminate as many telephone numbers from their services as possible. They would do so either by finding alternate ways to accomplish addressing and routing functions that do not require such intensive use of telephone numbers,⁴ and/or by eliminating various offered services that require the use of telephone numbers.

This would cause a decline in assessable telephone numbers and an associated increase in the monthly NUSF fee per telephone numbers, which would start a cycle of creating greater incentives to reduce the use of telephone numbers, thereby increasing the monthly NUSF fee per number. In short, ATSI submits that adopting a numbers-based contribution methodology would not in fact put universal ser-

³ See Comments filed with FCC in WC Docket No. 06-122, *et al.*, at Appendix A for more extended discussion of this point. A copy of the Appendix A is attached hereto for convenient reference.

⁴ However, as explained in Appendix A, ATSI members ordinarily would not have this option, because SMDI technologies generally have been found less reliable and less robust than using DID numbers for internal routing and caller identification functions, and they can lead to inferior service experiences to the customers of ATSI members. As a result, ATSI members in practice would be unfairly targeted for drastic cost increases under a numbers-based contribution methodology.

vice on a reasonably stable or sustainable funding basis for the future, contrary to one of the important objectives for reform identified by the Commission.

ATSI recognizes, of course, that adjustments can be made in the monthly fee in a numbers-based assessment methodology to account for the varying value of services that utilize telephone numbers and for the varying usage burdens different services place on the network. Indeed, ATSI submits that making such adjustments would be absolutely necessary in order for a numbers-based assessment methodology to have any chance of surviving legal challenges. But making such adjustments necessarily would make a numbers-based assessment methodology vastly more complicated, contrary to the Commission's goal of a simpler and more straight-forward contribution system.

Under these circumstances, ATSI respectfully submits that a numbers-based contribution methodology should not receive any serious consideration as an alternative NUSF contribution system; and the Commission should so conclude as part of its decision in this proceeding.

D. *Recommendation For Enhanced Study*

As the Commission is aware, most states impose USF assessments based on revenues-based assessments. Any change to Nebraska's current revenues-based assessment would significantly impact ATSI's members and other industries which heavily utilize telecommunications as a necessary part of their operations. This

change could impact whether ATSI's members, and other businesses, would locate in, or even move out of, Nebraska. ATSI appreciates that the Commission has begun the process of reviewing the USF assessment methodology by asking for public comments to many potential methodologies. The Commission can, and should, go further before changing the Nebraska USF assessment methodology. Consequently, ATSI urges the Commission to perform or commission a study to determine the incidence of the proposed methodologies for USF assessments. This study would determine, among other objectives, the impact of the proposed methodologies for USF assessments on Nebraska's business climate and on the different demographic segments of Nebraska's population.

ATSI also urges the Commission to seek the opinion of the Nebraska Department of Economic Development regarding a revised methodology for USF assessments before such methodology is adopted. The Department of Economic Development may be best qualified to advise the Commission regarding the impacts of this change, both quantitative and qualitative, on Nebraska's business climate.

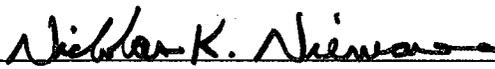
In addition, in light of the 2006 Nebraska Supreme Court decision in *Schumacher v. Johanns*, ATSI urges the Commission to seek the opinion of the Nebraska Attorney General to determine whether any revised USF assessment methodology would be considered as a "tax" under Nebraska law. The Attorney General should also advise whether the 2012 U.S. Supreme Court decision in *National*

Federation of Independent Business v. Sebelius (in which the U.S. Supreme Court broadly determined that the governmental charge imposed by the Affordable Care Act was a “tax”) may impact whether the USF assessment would be considered as a “tax” under Nebraska law under a revised USF methodology. If such a revised USF is a tax on account of either ground, then its validity (and the process for its enactment) should be further considered by the Commission.

Respectfully submitted,

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**HOW PSCRCs USE "PROXY" TELEPHONE NUMBERS AND
WHY SMDI DOES NOT WORK FOR COMPETITIVE TELEMESSAGERS**

How PSCRCs¹ use "proxy" telephone numbers –

PSCRCs receive inbound calls redirected by subscribers using PSTN (Public Switched Telephone Network) Complementary Network Services (CNSs) such as Call Forwarding Variable.²

Inbound calls are delivered to the PSCRC on "proxy" telephone numbers provided by the PSCRC's telephone company for the purpose of signaling the identity of the subscriber's redirected telephone number.³

Each subscriber telephone number redirected to a PSCRC requires a minimum of one PSCRC telephone number to accurately identify the subscriber's redirected telephone number(s).⁴

PSCRC ACD (Automatic Call Distributor) systems use the signaling data provided by the telephone company to route calls to call center agents trained to assist callers for that subscriber. The signaling data are also used to display subscriber-unique information required by PSCRC agents to handle the call, and serve as an index to create billing records.

An alternative to the use of "proxy" telephone numbers –

Upon the entry of RBOCs into voice messaging,⁵ the telephone industry developed alternative technologies to streamline the economics of identification of voice messaging subscriber calls redirected to telephone company voice messaging systems. These (and incremental successor) technologies are generically described as "Simplified Message Desk Interface" or "SMDI" technologies.

¹ Private Sector Critical Response Center (PSCRC) call center agents handle emergency calls for government, not-for-profit, professional, healthcare and commercial entities.

² Callers dial the PSCRC subscriber's telephone number, not the "proxy" telephone number assigned by the PSCRC to receive calls redirected by the PSCRC subscriber. "Proxy" telephone numbers are never made public or dialed directly.

³ The PSCRC's telephone company signals to the PSCRC the identity of the "proxy" telephone number assigned by the PSCRC, not the PSCRC subscriber's telephone number. Databases maintained by the PSCRC associate the "proxy" PSCRC telephone number with the PSCRC subscriber's telephone number.

⁴ In many cases, multiple PSCRC telephone numbers are required to serve each PSCRC subscriber because: PSCRC subscribers often receive emergency calls on multiple telephone numbers, calls to each must be redirected to the PSCRC with identification, and because varying conditions which result in redirected calls must be accurately signaled to PSCRC personnel.

⁵ The competitive dangers inherent in RBOC entry into the telemessaging business was recognized by Congress, which incorporated competitive safeguards into Section 260 of the Communications Act.

SMDI technologies permit RBOC voice messaging systems to identify voice messaging subscribers' redirected telephone numbers with out-of-band signaling.⁶ As a result, RBOC voice messaging systems typically require a fraction of the quantity of telephone numbers required by independent telemessaging competitors such as traditional telephone answering services.

In some cases, tens of thousands of voice messaging subscribers' telephone numbers (within a single network) can be redirected to a single telephone number and identified at a success rate acceptable for automated voice messaging applications.

SMDI fails competitive telemessagers⁷...

ATSI, recognizing the challenge to the traditional telephone answering service (TAS) business model posed by "captive" RBOC voice messaging, collaborated with the telecom industry in an attempt to adapt SMDI technology so that it could also be used by competitive telemessagers.⁸

In today's world of intermodal voice telephony competition, PSCRCs trialing SMDI technologies report a dramatic rate of failure. Telephone companies do not consistently and reliably deliver all required SMDI data to PSCRCs.

These attempts by ATSI and PSCRC ACD vendors to improve PSCRC telephone number efficiency have, to date, proven unsuccessful.⁹ In the estimation of those who've participated in trials and limited rollouts of SMDI technologies in PSCRCs, SMDI has not been widely accepted by the industry because the SMDI data delivered by telephone companies to PSCRCs is too often insufficient to accurately identify subscribers' redirected telephone numbers.

Where the fault lies – with the telephone company serving the PSCRC subscriber, with the telephone company serving the PSCRC, with intermediate parties, with the application of legacy signaling protocols deployed in an environment of intermodal competition, or with PSTN infrastructure vendors – is an inscrutable question for PSCRCs. PSCRC ACD vendors can prove their systems function flawlessly, but their ACDs and related systems can only operate on SMDI data if it arrives intact and complete.

⁶ Other telephone companies, including CLECs and wireless telephone companies also use SMDI technologies within their circuit switched voice networks.

⁷ Telemessagers provide telemessaging services. Telemessaging service is defined at 47 U.S.C. 260(c): "...the term 'telemessaging service' means voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services."

⁸ This work was an outgrowth of previous Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) efforts and was largely accomplished through coordination within the Exchange Carriers Standards Association's (ECSA) Information Industry Liaison Council (IILC) and successor technical standards bodies. IILC Issue #028, Inter-Switch SMDI, was adopted by the IILC on April 23, 1992.

⁹ Telemessagers are incentivized to adopt SMDI technologies through reduced operating costs associated with use of fewer telephone numbers.

... but works for "captive" voice messaging providers...

Telephone company voice messaging operations are not similarly disadvantaged in their use of SMDI technologies for several reasons.

These "captive" voice messaging operations typically only serve subscribers of their associated telephone company. Their limited mandate awards important advantages to "captive" telemessagers - the networks of the "captive" voice messaging operation and the associated telephone company are well known, under common control, and can be finely-tuned for optimum inter-operability.

Employees of "captive" voice messaging operations and their associated telephone company tasked with ordering the Complementary Network Services on the associated telephone company's network can easily ensure that the joint customer's Basic Serving Arrangement (BSA) is properly configured to facilitate correct operation and delivery of SMDI data. The same benefit accrues to the "captive" voice messaging provider, the associated telephone company and the joint customer when the joint customer's BSA is reconfigured or moved.

...and the reasons are obvious –

By contrast, the subscriber base of competitive telemessaging providers such as PSCRCs is composed of telephone customers of every telephone company in every local market around the country. PSCRC subscribers' Telecom Service Providers include Incumbent Local Exchange Carriers (ILECs), Competitive Local Exchange Carriers (CLECs), cellular and PCS wireless telephone companies as well as Interconnected VoIP Providers. This heterogeneous mix of competing voice telephone service providers seemingly presents many challenges to the free flow of the SMDI signaling data required to support competitive telemessaging.

None of the above-described benefits enjoyed by "captive" voice messaging providers also accrue to competitive telemessagers. PSCRCs must, instead, master intricacies of the increasingly opaque variety of networks that comprise the intermodal PSTN. PSCRCs bear unique burdens to create internal knowledge bases and facilitate training, engage in fact-finding and analysis of subscribers' serving arrangements, maintain current documentation of PSCRC subscribers' BSAs and perform troubleshooting – all at a significant disadvantage to providers of "captive" telemessaging.

A lack of incentives for telephone companies to support competitive telemessagers –

Because the financial interests of the "captive" voice messaging provider and the associated telephone company are well aligned, there is a significant incentive for the associated telephone company to take all necessary measures to support the "captive" voice messaging provider and deliver robust SMDI data on a reliable basis.

At the same time, there is a lack of incentives for PSCRC subscribers' telephone companies to support competitive telemessaging and reliably deliver robust SMDI data. PSCRC subscribers are often not customers of their PSCRC's telephone company.

In the era of traditional telephone answering services (TASs), RBOCs were financially incentivized to support TASs to increase call completion revenue. Those financial incentives are largely extinct and apparently no longer motivate telephone companies to support competitive telemessaging.

PSCRCs cannot rely on SMDI technologies; PSCRCs must use "proxy" telephone numbers –

Because PSCRCs often handle critical calls including those involving the life and safety of callers, the failure of telephone companies to consistently and reliably deliver required SMDI data places the life and safety of callers and others at risk.¹⁰

As a result, few PSCRCs have experimented with or adopted SMDI technologies. Instead, PSCRCs will require the use of "proxy" telephone numbers for the purpose of consistently and reliably signaling the correlated identity of subscribers' redirected telephone numbers for the foreseeable future.

PSCRCs and PSCRC subscribers require "bullet-proof" identification of redirected subscriber telephone numbers. "Proxy" telephone numbers, deployed as network addresses for the delivery of redirected calls, constitute the only proven, reliable and available means of identification.

¹⁰ PSCRCs and subscribers are also exposed to increased potential liability when redirected calls cannot be properly identified due to incomplete or missing SMDI data.