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August 23, 2023

Universal Service Fund Working Group
c/o Senator Ben Ray Luján
498 Russell Senate Office Building
Washington, DC 20510

Re: Universal Service Fund (USF) Working Group Request for Comment

Dear Senator Luján:

The Nebraska Public Service Commission (“NPSC”) hereby submits this letter in response to the Universal Service Fund Working Group’s Request for Comment issued on July 25, 2023. Responses to select questions posed by the Working Group are listed below.

Question 2: To what extent have the existing USF programs been effective in carrying out section 254 of the Communications Act of 1994?

Section 254 of the Communications Act of 1994, codified at 47 U.S.C. § 254, sets forth several important principles for ensuring all people have access to telecommunications service in the United States. Quality, affordable service is to be provided in all regions of the Nation. Access to advanced telecommunications and information services should be provided, and consumers, including low-income consumers and those in hard to reach areas, should have access to these same services. Schools, libraries, and health care providers should have access to these services as well.

Nebraska, like several other states, administers a Nebraska Universal Service Fund (“NUSF”) which augments the federal USF.¹ The purposes of the NUSF run largely parallel to the goals of the federal USF.² The NPSC administers the NUSF, and in doing so, has created several programs which are designed to be companions to federal programs. For example, the

¹ NEB. REV. STAT. § 86-317. The NUSF is designed to supplement federal universal service support mechanisms and ensure that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.

² Compare 47 U.S.C. § 254 with Neb. Rev. Stat. § 86-323.

NUSF provides supplemental funding to telehealth providers; E-rate special construction funds; Lifeline; and high-cost ongoing and project support.³ These programs work in conjunction with federal programs, and often provide supplemental funding to increase the overall amount of support received by companies and consumers. In administering these programs, the NPSC relies upon work performed at the federal level in terms of the total amount of funding available to recipients, as well as guidance for the distribution of funding.

The NPSC's companion programs to federal USF programs have allowed us to extend substantial amounts of aid. We have supported projects to reach 11,000 Nebraska households since 2019 with High Cost Funds.⁴ We have also committed \$1 million to E-Rate Special Construction projects in Nebraska to date, and continue to accept applications for funding.⁵ In our current grant cycle for Telehealth funding, we have received requests for \$1.6 million in funding.⁶ Additionally, Nebraska Telephone Assistance Program participants can receive an additional \$3.50 per month towards telephone support.⁷ These programs act to supplement the federal USF High Cost, E-Rate, Healthcare Connect Fund, and Lifeline programs, respectively.

We believe each of the above-described programs is important to the welfare of Nebraskans, and we rely heavily on federal USF programs and guidance in creating and maintaining these state programs. Absent state and federal support through USF programs, it is highly unlikely that citizens outside of major cities and towns would have robust telecommunications infrastructure. The NPSC seeks to maintain this infrastructure, with an eye towards the speed requirements of today and into the foreseeable future.

Question 5: What additional policies beyond existing programs are necessary for the preservation and advancement of universal service?

Since the passage of the Communications Act of 1994, the landscape of telecommunications has changed significantly. Most notably, present discourse nationally and among states is focused on the development of broadband networks in previously unserved or underserved areas. The development of these networks is the development of new and essential

³ See generally NPSC Dockets Nos. NUSF-99, NUSF-108, and NUSF-117.

⁴ Detailed information regarding NUSF high cost programs can be found here: <https://psc.nebraska.gov/telecommunications/high-cost-information>.

⁵ See NPSC Docket No. NUSF-117. Additional information is available here: <https://psc.nebraska.gov/telecommunications/nebraska-e-rate-special-construction-matching-fund-program-nusf-117>.

⁶ See NPSC Docket No. NUSF-57. Additional information is available here: <https://psc.nebraska.gov/telecommunications/nusf-57-telehealth>.

⁷ Currently, Lifeline provides support at the federal level up to \$9.25 per month or \$5.25 per month for voice only. Nebraska's Lifeline program supplements this with an additional \$3.50 per month for eligible participants subscribing to voice service. To the extent that the continuation of the federal Lifeline program remains in question, the NPSC supports the continuation of voice-only support within the federal Lifeline program.

infrastructure, much like the development of traditional voice networks transformed the nation in the previous century.

In Nebraska, certain NUSF programs support the development of new broadband infrastructure and provide ongoing maintenance support to carriers. However, the NPSC has found that once a broadband network is developed, its ability to ensure consumers receive quality service is limited. The scope of state versus federal authority to regulate matters of broadband service quality is currently unclear, leading to confusion among consumers, regulators, and the industry alike.

The NPSC would support clarification of the extent to which states are able to enforce minimum service quality standards for broadband services which are federally subsidized and/or provided over federally subsidized infrastructure. Because states often are the “front line” to receive information or complaints about these services, they are in the best position to quickly and effectively respond to issues which arise. A clarification as to the extent of states’ authority would support the goals of the USF to ensure access to advanced telecommunications services in all regions of the Nation.

Question 6: Should Congress eliminate the requirement that a provider must be an “Eligible Telecommunications Carrier” to receive USF subsidies?

The NPSC opposes the proposal to eliminate ETC designations. At a state level, the ETC designation is an important tool for ensuring state funds are distributed to carriers with adequate financial and technical resources. The screening process for Nebraska ETCs (“NETCs”) is thorough and is based upon requirements set forth at the state and federal levels.⁸ This review includes demonstrations that a carrier can, among other requirements, provide adequate services, serve customers in a timely manner, remain functional in emergency situations, and satisfy consumer protection and service quality standards.⁹ Once a carrier is designated as an NETC, it is subject to annual reporting requirements, including information on outages, requests for service, complaints, ability to function in emergency situations, and a carrier’s use of support received to date.¹⁰ Receiving and reviewing this information is essential to ensuring that federal and state support is only distributed to carriers who will be good stewards of public funds.¹¹

An example of the importance of state ETC designation occurred recently in the context of RDOF awards. One bidder received significant preliminary awards in the RDOF auction, including areas in Nebraska. However, that carrier was unable to obtain ETC designation in Nebraska and other states following the preliminary award, due to concerns about its technical

⁸ See generally 291 NEB. ADMIN. CODE. § 5-009.02 and 47 C.F.R. § 54-202.

⁹ 291 NEB. ADMIN. CODE § 5-009.02.

¹⁰ 291 NEB. ADMIN. CODE § 5-009.04.

¹¹ Beyond its use for distribution of NUSF, ETC designation is also used to supplement carriers’ applications to receive state broadband grant funding.

ability to actually provide service to customers. This led to a determination by the FCC's Wireline Competition Bureau that the bidder could not comply with the requirements of RDOF, a decision which prevented the waste of RDOF funding. The NPSC believes the states' role in reviewing RDOF bidders for fitness to receive an ETC designation prevented harm to consumers, and would urge lawmakers to ensure this cooperative process continues in future awards and proceedings.

Question 7: Currently, telecommunications companies must pay a contribution factor to the Universal Service Fund proportional to interstate end-user revenues. What reforms are necessary to ensure that the contribution factor is sufficient to preserve and advance universal service?

a) Some have advocated for assessing USF contributions on broadband service and edge providers. What would the impact of such reforms on ratepayers and the marketplace?

b) Some have advocated the funding for the USF to an appropriations model. What impact would that have the USF?

The USF contribution base has been decreasing rapidly. In 2021, the USF contribution base totaled \$37.92 billion, down from \$65.81 billion in 2012.¹² However, disbursements from the USF have increased in order to support services beyond the conventional telecommunications services subject to USF contribution requirements. Issues of sustainability, fairness, and efficiency persist in considering the future of the USF.¹³

These issues have been echoed on the state level as well. In Nebraska, NUSF remittance levels declined at a rate of over 2 percent per year between 2009 and 2014.¹⁴ Starting in 2014 and extending through 2018, the NPSC observed year over year declines in remittances that ranged between 5% and 13%. Finding the decline in remittance levels unsustainable, the NPSC moved to a connections-based NUSF surcharge mechanism in 2019.¹⁵ By doing so, the NPSC

¹² FCC, Federal-State Joint Board on Universal Service, Universal Service Monitoring Report 2022, CC Docket No. 96-45 *et al.*, (FCC, Feb. 13, 2023), (Data Through Sept. 2022) (2023 Monitoring Report), Table 1.5 at 17.

¹³ See generally *In the Matter of Federal State Joint Board on Universal Service*, WC Docket No. 96-45 *et al.*, Recommended Decision (Oct. 15, 2019), at 6-9.

¹⁴ NPSC Docket No. 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 (Oct. 31, 2017) ("NUSF Contributions Order"), at 26.

¹⁵ NPSC Docket No. 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 (Aug. 7, 2018), at 27-28. The NPSC initially only adopted a connections-based contribution mechanism for residential wireline, wireless, and VoIP services. However, in 2021, the NPSC expanded the connections-based contribution mechanism to include business and government user mobile activation and usage charges, business and government user local exchange services, and business and government user VoIP services. Fixed local private line, radio paging, alternative access and directory, switched toll, toll private line, and other toll private services remain on a revenue-based mechanism. NPSC Docket No. NUSF-119/PI-231, *In the Matter of the*

sought to achieve stability and predictability – both for the industry, in the amount of surcharge levied, and for the NUSF, in the amount of funding available annually. The adoption of the connections-based surcharge has achieved these goals. Once the connections-based surcharge was implemented, the largest reduction in surcharges year to year was 2%. Given the success of this change for Nebraska’s fund, the NPSC would support a similar contribution change at the federal level as well.

Question 10: Is Congressional guidance needed to ensure future high-cost program rollouts, such as RDOF phase II, are improved? Would a thorough and upfront vetting process be more efficient for federal dollars and recipient ISPs?

In 2022, Nebraska implemented a funding redirection program to reallocate unused support (“Reverse Auction”).¹⁶ The design of the Reverse Auction was largely based upon RDOF, but with some key changes. Most notably, the NPSC determined in structuring the Reverse Auction that prospective bidders should be thoroughly vetted before being allowed to participate in the auction. Essentially, prospective bidders were required to complete a “long-form application” as a preliminary step, with the NPSC releasing a list of qualified bidders after reviewing these applications. Because of this requirement, the NPSC was able to decline one prospective bidder which did not meet the financial or technical capability requirements of the auction.¹⁷ The NPSC stands behind this approach and recommends it be adopted for future iterations of RDOF as well.

Conclusion

The NPSC appreciates the diligence of the Working Group in reviewing these issues and welcomes further discussion on all of the above topics. Please feel free to contact our office if you have any questions.

Sincerely,



Dan Watermeier, Chair
District 1
Nebraska Public Service Commission

Nebraska Public Service Commission, on its own motion, to consider revisions to the contribution methodology and determine a rate design for services currently subject to a revenues-based surcharge, Order (May 11, 2021).

¹⁶ See NEB. REV. STAT. § 86-330; NPSC Docket No. NUSF-131. Additional information on Nebraska’s Reverse Auction process is available here: <https://psc.nebraska.gov/telecommunications/reverse-auction-nusf-131>.

¹⁷ See NPSC Docket No. NUSF-131, *In the Matter of the Nebraska Public Service Commission, on its own motion, to establish reverse auction procedures and requirements*, Order Issuing List of Qualified Bidders (July 26, 2022).