BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to consider implementing a program to incentivize new fiber construction for E-Rate eligible entities.	)))))	Application No. NUSF-117

COMMENTS OF COX NEBRASKA TELCOM, LLC

Cox Nebraska Telcom, LLC ("Cox") hereby files these comments for the Nebraska Public Service Commission's ("Commission") consideration in the above-captioned docket, NUSF-117. These comments are being filed pursuant to the Commission Order entered herein December 10, 2019.

Cox is a participant in the federal E-rate library program in the Omaha metropolitan area, as are its affiliates in other states in its national footprint. As such, Cox offers the following comments to the Commission drawing upon its experience of involvement in the federal E-rate program and from its familiarity with programs administered in other states. If the Commission implements a program to supplement the federal E-rate special construction fund for Nebraska's libraries, Cox encourages the following factors be taken into consideration:

I. Eligibility Criteria

First, the proposed program is described as an "E-Rate Special Construction Matching Fund", and the title of the Order describes a program to "incentivize new fiber construction". Accordingly, it seems readily apparent the purpose of the program is to bring broadband to unserved or underserved areas; however, such is not specifically addressed. Cox encourages the Commission to incorporate language that clearly designates the program is to aid libraries located in unserved or underserved areas so as

to prevent ambiguity or confusion, and the inefficient use of public funds. This should be the primary threshold that libraries meet to achieve program eligibility. Prioritization of projects should focus on unserved areas, followed by underserved areas.

Second, Cox suggests the Commission incorporate criteria similar to that recently published in the Federal Register by the Rural Utilities Service ("RUS") for broadband applications in the ReConnect Program.[1] In December 2019, the RUS announced its criteria for 2020 applications, including scoring preferences for the rurality of the proposed area. Points are awarded for serving the least dense rural areas, as measured by the population per square mile. The RUS also provided service areas be located at least one hundred miles away from a city or town that has a population greater than 50,000. While those exact figures certainly do not need to be replicated, it illustrates the process the RUS has employed to score its broadband applications to prioritize those areas that most need funding.

Third, the Commission may wish to consider assigning a value for the performance of the offered service, which is also a RUS scoring factor.[2] RUS projects capable of providing at least 100 Mbps symmetrical service are awarded a higher score. The RUS requires certification from the applicant that the proposed system is capable of delivering the higher speed.

Finally, as it is possible demand could exceed the amount of funding available, the Commission may wish to create a process whereby funding is prioritized based on rurality tiers. Recently, the FCC created such tiers for the Rural Health Care Program to

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[1] Federal Register, Vol. 84, No. 239, Dec. 12, 2019 [Docket: USDA–2017–0002–0001] at 67920.
[2] *Id.*

address its funding shortfalls.[3] The FCC Order provided funding would be based on the tiers of Extremely Rural, Rural, Less Rural and Not Rural, with extremely rural areas getting the highest priority over less rural areas.[4] The FCC stated its actions were designed to promote transparency and predictability, and further the efficient allocation of limited resources.[5] The FCC also indicated this process best fulfilled the statutory objectives governing the program.[6]

The Commission could create rural tiers prior to the submission of applications, thereby enabling libraries to know upfront their assigned rurality status. If demand exceeds funding, the tiers provide an open and transparent rationale why some locations are awarded funding over others. Furthermore, providing assistance to the most rural locations comports with the Nebraska Legislature's policy objectives, and benefits those libraries that are most likely located in hard-to-reach areas that may not receive broadband service without a subsidy.

II. Eligible Telecommunications Carrier Status Should Not Be Required

The federal E-rate program does not require Eligible Telecommunications Carrier ("ETC") status and it is unclear what benefit requiring such would bring to library recipients of this fund. As a result, it is imperative such standard not be imposed at the state level. Otherwise, the obvious predicament will be a library receives federal E-rate funding from a non-ETC, and cannot avail itself of the state supplemental opportunity unless that carrier has gone through the expense and administrative process to be designated a Nebraska ETC. For example, Cox receives federal E-rate support, but it is

[3] In the Matter of Promoting Telehealth in Rural America, WC Docket No. 17-310, Report and Order, Aug. 1, 2019.
[4] *Id.* at 56.
[5] *Id.* at 3.
[6] *Id.* at 56.

not an ETC in Nebraska. In fact, numerous other E-rate carriers assist Nebraska libraries and are not Nebraska ETCs, including Nebraska Link, Precision Technology Inc., Cable One, Charter Communications and Eagle Communications.[7] For the state program to successfully supplement the federal E-rate program with the utmost cost-effective potential, libraries should not be limited in their choices of carriers. Quite simply, a state ETC requirement penalizes libraries by limiting the carriers they have to choose from. The Commission should not originate an ETC standard when such requirement has not been deemed necessary in the decades-old federal E-rate program.

III. Other Considerations

The Commission should establish a matching requirement from the applicant, even if only in a de minimus amount. Cox has provided input on this subject at the federal level in the E-rate program.[8] Specifically, Cox indicated requiring E-rate participants to pay a small portion of the cost is an important safeguard that helps schools and libraries make cost-effective choices.[9] If a combination of state and E-rate funds pay the service in full, an important financial safeguard is eliminated. In fact, the FCC specifically stated in its E-Rate Order that another governmental entity (such as the Nebraska Commission) that chooses to pay a portion of the cost of the E-rate supported service has an incentive to ensure cost effective purchasing.[10] Other states, such as the

[7] Nebraska's ETCs can be found at: https://psc.nebraska.gov/sites/psc.nebraska.gov/files/doc/ETC_4.pdf.
[8] *See* Letter from L. Charles Keller, Counsel to Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-184, at 2, (filed Dec. 4, 2014).
[9] *Id.*
[10] In the Matter of Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, Second Report and Order on Reconsideration, Dec. 11, 2014 at 25.

Oklahoma Corporation Commission Rules specify special construction charges will be evaluated for the lowest reasonable cost.[11]

The Commission's Order opening this docket indicated nearly 90% of the state's public libraries do not have scalable fiber as their primary internet connection. A match provided by the applicant, even of a modest amount would leverage the limited NUSF resources to finance additional projects.

Second, Cox recommends the Commission specify that a review of the program shall be conducted in three (3) years. This period would enable enough time to pass that a thorough evaluation of the program could be made, and the review of how many, if any libraries, still needed financial assistance. Furthermore, such examination would enable an assessment of regulatory changes made by the FCC and/or Commission that may have impacted the program. For example, will the implementation of reverse auction rules in Rule and Regulation Docket 202 have an impact on the number of libraries still needing assistance? Launching the program with an upfront, anticipated three-year review will provide the Commission with the opportunity to predictably assess whether the program should be continued, eliminated or transformed in some fashion.

Finally, several other states provide matching opportunities for special construction projects so schools and libraries may leverage the receipt of additional federal E-rate support. Some programs are administered through the state regulatory commission, while others are managed by the state department of education. It would be prudent for the Commission to examine these other programs and take advantage of their lessons learned to design a program that best suits Nebraska. For example, the Idaho Legislature created a program whereby school districts may apply for up to 10 percent

[11] OK Corp. Commission, Title 165, Chap. 59, 165:59-7-2.

(10%) of a district's project costs for broadband infrastructure.[12] Similarly, the Kansas Connect and Learn Initiative funds ten percent (10%) for one-time, new construction charges.[13] As stated above, Oklahoma also has implemented a state program.

Kansas advises schools wanting to take advantage of the state's matching opportunity to file the appropriate E-rate forms during the federal application window and, if necessary, indicate service is contingent on the receipt of state funding.[14] If the state match is denied, or if state funds are exhausted prior to the school receiving funding, the school can opt to utilize the available E-rate discount to complete the project or walk away altogether.[15]

Alternatively, the Arizona Corporation Commission requires applicants to file a request for state matching funds with the Department of Education prior to submitting a request to USAC.[16] If approved for state support, the applicant receives a certification letter that can be included with the Form 471 sent to USAC indicating state matching funds have been awarded.[17] The various approaches utilized in other states can provide guidance to the Commission to initiate a program that best meets the needs of Nebraska's libraries, and the funding available.

IV. Conclusion

In closing, Cox appreciates the Commission seeking input from interested parties on the implementation of this new program. Cox suggests before the program is launched, the Commission release a second, more detailed proposal for comment. Items

[12] Idaho Senate Bill 1034 (Eff. March 20, 2017), codified at ID State Statute §33-910.
[13] In Nov. 2016, the launch of the KS Connect and Learn Initiative was announced, a partnership between the KS Dept. of Ed., the Governor's Office, and the non-profit, EducationSuperHighway (ESH) providing state matching funds for technology infrastructure.
[14] *See* http://e-rateks.ksde.org
[15] *Id.*
[16] AZ Corp. Commission, Chap. 2, Article 2, R14-2-B1221.
[17] *Id.*

such as the proposed eligibility criteria, terms and conditions of the match, and other more specific aspects of the program should be presented for comment so an optimal, cost-effective program can be designed.

Respectfully submitted this 17th day of January, 2020.

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