

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public)	
Service Commission, on its own Motion)	Docket NUSF-117
to consider implementing a program to)	
incentivize new fiber construction for)	January 17, 2020
E-rate eligible entities.)	

REPLY COMMENTS FROM THE NEBRASKA LIBRARY COMMISSION

- 1. Does the Commission have authority to implement a program to supplement the federal E-Rate Special Construction matching fund program. Specifically, the Commission seeks comment on whether Neb. Rev. Stat. 86-323 provides the Commission with the authority to create this program for libraries and schools. Why or why not? Please explain.**
 - a. The Nebraska Library Commission (hereinafter referred to as "NLC") defers to the Public Service Commission's interpretation of Neb. Rev. Stat. 86-323 et. seq. to determine its authority. In addition to the provisions set forth in Neb. Rev. Stat. 86-323 (6), citation of Neb. Rev. Stat. 86-324 is instructive when considering the authority of the Commission regarding the implementation of the proposed program.
 - b. The NLC recognizes that the Nebraska Special Construction Matching Fund Program, as proposed, could become an extension of the FCC E-Rate program and utilize Nebraska Universal Service Funds.
 - i. A Nebraska public library is eligible for E-rate if it is recognized by the Nebraska Library Commission under the Library Services and Technology Act (20 U.S.C. § 9122 et. seq.) and if it does not operate as a for-profit business, and have a budget that is completely separate from any school (including, but not limited to, elementary schools, secondary schools, colleges, or universities). Libraries also must be eligible for assistance from the state library administrative agency (NLC). The Nebraska statutory definition of a public library can be found at Neb. Rev. Stat. 51-201 et. seq.
- 2. If so, how should the Commission determine a carrier's eligibility for the program? Should the Commission create a mechanism to designate eligible telecommunications carriers specifically for this purpose?**
 - a. NLC defers to the Public Service Commission's interpretation of Neb. Rev. Stat. 86-323 (5) as to the eligibility of telecommunications carriers.
 - i. Neb. Rev. Stat. 86-323 (5): "Funds for the support of low-income customers, schools, libraries, and providers of health care to rural areas will be available to any entity providing telecommunications services, maintenance, and upgrading of facilities."
 - ii. The Commission may want to consider limiting telecommunications carriers' eligibility to fiber to enable the libraries to qualify to receive federal dollars from the Federal Special Construction Matching Funds.

3. If implemented, what should the filing requirements be for the program? What criteria should the Commission consider relevant? Should the program operate similar to the Commission's Telehealth program where the Commission provides an overall budget for the program? Should the Commission provide reimbursement to the eligible carriers at a specific level for each site? How should funding for each site be determined? Should the Commission utilize a grant process?

- a. NLC defers to the Public Service Commission to make decisions about operating the fund, but NLC is very familiar with E-rate for libraries, and the following three types of public library eligible entities can apply for E-rate from the State of Nebraska including:
 - i. Public libraries (~265; 21% connected by fiber)
 - ii. Public library systems (2; 100% connected by fiber)
 - iii. Consortia of public libraries

All of the above entities are eligible to participate in Network Nebraska.

- b. The Commission will need to determine the list of eligible applicants for the Nebraska Special Construction Matching Funds. The list of libraries eligible applicant is i-iii above.
- c. Since the FCC's Special Construction Matching Fund Program is tied to E-rate procurement and E-rate filing for federal Universal Service Fund support, it seems logical that Nebraska would parallel the E-rate processes and timelines and have E-rate filing be a pre-requisite for eligibility in the Nebraska Special Construction Matching Fund.
- d. The State Office of the CIO, in partnership with the State Purchasing Bureau, regularly post RFPs for E-rate eligible Ethernet circuits for schools and libraries and awards circuit contracts (48 months) to contractors based on lowest cost, which is a compilation of Non-recurring (special construction) costs, Monthly Recurring Costs, and Taxes/Fees. These Ethernet circuits are exclusively leased lit fiber services and are directly or indirectly connected back to Network Nebraska.
- e. Public Libraries also post FCC Forms 470 (intent to procure) for telecommunications services, which may include fiber-based internet services that are eligible for E-rate. These "internet delivered" services may also include copper DSL, cable modem, or fixed based wireless and are provided by Internet Service Providers (ISPs).
- f. Nebraska Public Libraries have used either and both of these procurement methods.
- g. Criteria and reimbursement amounts, once an E-rate eligible procurement for fiber-base services has resulted in a legally binding contract that designates special construction costs, the option to participate in Special Construction Matching Funds program is a checkbox on the FCC Form 471 (application for E-rate support). The eligible entity would then be required to also submit an application for NUSF support from the Nebraska Universal Service Fund that indicates the entity's E-rate discount, and the amount of special construction charges documented by the legally binding contract. The Public Service Commission would then review and approve the application and award up to an additional 10% discount of special construction funding to the telecommunications provider, which will be matched by up to an additional 10% from the FCC, with the eligible entity paying the non-discounted portion. Sample estimated discounts:
 - i. 50% E-rate Discount + 10% NUSF + 10% FCC = 30% paid by the Applicant
Ten libraries qualified for a 50% discount in 2019.

- ii. 60% E-rate Discount + 10% NUSF + 10% FCC = 20% paid by the Applicant
Sixty libraries qualified for a 60% discount in 2019.
- iii. 70% E-rate Discount + 10% NUSF + 10% FCC = 10% paid by the Applicant
Seventy-one libraries qualified for a 60% discount in 2019.
- iv. 80% E-rate Discount + 10% NUSF + 10% FCC = 0% paid by the Applicant
Eighty-six libraries qualified for a 60% discount in 2019.
- v. 90% E-rate Discount + 5% NUSF + 5% FCC = 0% paid by the Applicant
Three libraries qualified for 90% discount in 2019.
- h. Experience indicates that the amount of special construction costs bid by a telecommunications provider for a given site will be highly diverse, dependent on a variety of variables, and therefore would be challenging for the Commission to stipulate or predict a specific amount of funding per site. Instead, the Commission may want to budget an annual program budget “not to exceed...” and then apply a prioritization criteria to the applications, should an individual year’s requests ever exceed available NUSF program support for that year.
- i. By applying for E-rate and accepting a Special Construction Build on the 471 form, the library agrees to be evaluated using an award criterion on an annual basis.

4. If implemented, what should the timeline be? What dates does the Commission need to factor in for library participation in the federal E-Rate program?

- a. NLC offers up a draft timeline for the Commission to consider as Phase 1 of the Nebraska Special Construction Matching Fund Program:

Network Nebraska *

June-July, 2020	Public Service Commission issues Rules, Priorities, and Procedures concerning the Special Construction Matching Funds program
July-September, 2020	State Purchasing Bureau releases an RFP that includes Phase 1 of the school and library fiber circuit requests and local entities post their FCC Forms 470 to procure fiber-based internet services
October, 2020	Local entities open and evaluate bids for their Forms 470
November, 2020	State Purchasing Bureau opens and evaluates bids on its RFP
November, 2020	Intents to Award are disclosed; 4-year contracts are signed
December, 2020	Schools and libraries decide whether to move ahead with their fiber circuits and apply for Special Construction Matching Funds
January, 2021	Public Service Commission notifies schools and libraries of matching funds decision

February, 2021	E-rate Form 471 Applications are submitted and Work Orders are sent to Providers
June 30, 2021	Fiber construction is completed
July 1, 2021	Service Start Date for new fiber circuits

*Nebraska Public Libraries may also elect to file a 470 form to select a private ISP vendor to contract for Special Construction Services to the library. The timeline for this filing may be slightly different from the Network Nebraska timeline. However, the Service Start Date, July 1, 20XX is the same for both methods of procurement.

5. What other factors should the Commission take into consideration?

- a. The Commission may consider an initial duration for the program (e.g. 4-5 years). The Commission may provide for an evaluation of the program after the initial timeframe, and set forth criteria that would lead to program continuation;
- b. While the Commission and NLC would not restrict eligibility for libraries that meet the minimum requirements outlined in state and federal statutes, both the Commission and NLC might target promotion of participation for certain communities. Some factors that might be considered include:
 - i. Community size;
 - ii. Libraries that currently are offering unserved (0-12 Mbps) and underserved (12-24 Mbps) service;
 - iii. Communities with a higher percentage of E-rate discount eligibility, based on free and reduced lunch data;
 - iv. Communities with increased out-migration, as indicated by Census data;
 - v. Town and rural locales, including fringe and remote areas; and
 - vi. Prioritization for new libraries and libraries that are adding on new square footage to the building.

Respectfully submitted,

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