

BEFORE THE NEBRASKA PUBLIC SERVICE COMMTSSION

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

COMMENTS OF THE RURAL INDEPENDENT COMPANIES

I. INTRODUCTION

The Nebraska Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Order Seeking Further Comment and Setting Hearing entered by the Nebraska Public Service Commission (the “Commission”) in this docket on March 3, 2020 (the “*Order*”). In the following discussion, each of the Commission’s inquiries presented in the *Order* is set forth in italicized text and is then followed by RIC’s comments in response thereto.

II. DISCUSSION

A. Budget and Support Window

- 1. If an E-rate special construction program is implemented, the Commission proposes to establish an overall budget for the program. The Commission seeks comment on an allocated budget of \$1 million for the program as a whole. Once the \$1 million in the program is exhausted, the Commission could then re-evaluate the need to provide additional support. The Commission seeks comment on the \$1 million proposed budget.*

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, LLC, Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company and Three River Telco.

Response: Based upon the foregoing Commission statement, RIC believes that it is reasonable that the “allocated budget of \$1 million for the program as a whole” be re-evaluated at such time that such amount is fully committed. Any further budgetary allocation to the E-rate special construction program (the “Proposed Program”) should be based upon demonstrated need.

2. *In order to make efficient use of the support and lessen the need to make subjective judgments related to specific project value, the Commission proposes that the NUSF support be made available on a first-come, first-served basis. Is this type of allocation appropriate? If not, why not?*

Response: Implementation of a “first-come, first-served” policy for distribution of support pursuant to the Proposed Program is not, in RIC’s opinion, an appropriate way to allocate limited NUSF support. If the Commission proceeds with establishing the Proposed Program, RIC is of the opinion that specific evaluation criteria such as those provided in Section I.A.3 below should be established and used by the Commission. Such criteria can be used to balance the budgetary need for a specific project with the overall budgetary needs relative to proposed project applications that the Commission receives within a given application window.²

In short, projects should be approved on fact-based judgements rather than on a “race to the Commission”.

3. *Alternatively, we seek comment on whether the Commission should prioritize applications based on the amount of an entity's E-rate discount. For example, should the Commission place the highest priority on the largest E-rate discounted project? This proposal would be based on the idea that the lower the discount, the more able the library is to pay the cost itself. Are there other alternative criteria upon which the Commission should base its funding priorities?*

² RIC submits that criteria should be established to determine how any over-subscribed federal E-Rate program should be addressed in connection with the Proposed Program in Nebraska.

Response: Consistent with its response in Section I.A.2 above, RIC regards the Commission’s rationale for prioritizing applications (which can be established as “evaluation criteria”) as sound. Considering the level of an entity’s E-Rate discount as a metric for ability to pay for services is rational. Additional criteria that RIC submits should be considered in prioritizing funding are:

- Evaluation of the unmet service level needs of the library and whether the library is currently using the service level that is available.
- Consideration of the number of potential community members served by the library.
- Consideration of the ability of the recipient library to utilize the special construction once it is completed,³ including sub-criterion such as: How many hours per week is the library open to allow use of the newly constructed facilities? Does the library have the Information Technology support needed to implement use of the newly constructed facilities?
- Demonstration by the library as to its ability to fund the ongoing costs of using the newly constructed facilities.⁴

With respect to the final bullet point, RIC notes that the Proposed Program does not cover maintenance costs associated with the new facilities or the ongoing monthly charges associated with underlying services. The Commission should ensure that the library has a plan for paying those ongoing costs before granting NUSF support for special construction.

4. The Commission contemplates this program would encompass a one-time buildout support period which would not include recurring or ongoing NUSF support. As such, the Commission proposes to make the support available to applicants for a specific window of time. The Commission seeks comment on whether a window of four (4) one-year periods for applying for and receiving support is sufficient.

³ See Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink at 6 (Jan. 17, 2020).

⁴ *Id.*

Response: Subject to the overall budget of \$1,000,000.00 noted in Section I.A.1 and subsequent budgets based on an evaluation of need, four one-year periods for applying for and receiving support is, in RIC's opinion, reasonable.⁵

B. Eligibility

- 1. The Commission believes it is necessary under § 86-324 to limit eligibility [to] Nebraska eligible telecommunications carriers (NETCs). Similar to its findings in other contexts such as Telehealth, the Commission seeks comment on whether to allow carriers to obtain designation as an NETC for E-rate Special Construction Program purposes only. We note that the Commission has designated carriers as eligible for Telehealth, or Lifeline-Only programs. Would this type of designation serve as an incentive for carriers to participate in the program while staying consistent with the statutory intent? Why or why not? Please explain. If the Commission does permit carriers to obtain designation as an NETC for E-rate Special Construction Program purposes, what type of designation process should the Commission adopt?*

Response: RIC agrees with the Commission that it is necessary to limit eligibility for the Proposed Program to Nebraska eligible telecommunications carriers ("NETCs"). Whether or not the Commission develops a special designation as an NETC for E-rate purposes only,⁶ the Commission must ensure that recipients of the state matching funds provided under the Proposed Program have full accountability to and oversight by the Commission.

- 2. The Commission proposes that all public libraries that are not already fiber-connected would be eligible for support. Should the Commission only support fiber projects where the fiber connection does not already exist?*

Response: Yes, the Commission should only support special construction of fiber facilities where a fiber connection does not already exist. RIC has already pointed out existing

⁵ This position is based, however, on the assumption stated earlier in these Comments that the \$1 million budget for the Proposed Program is a *total budget* rather than an *annual budget*.

⁶ If such new designation process and class of NETCs were established, the Commission should, for administrative efficiency, make clear that the existing NETCs would already be included in any such new classification.

examples in which E-rate funds, in conjunction with state matching funds for special construction, are being used to overbuild existing fiber networks.⁷ RIC respectfully suggests that the Commission should be wary of proposals claiming that overbuilding is not an issue when buried fiber facilities are being replaced with aerial fiber facilities that will be owned by the schools. Such proposals should properly be regarded as overbuilding which needs to be avoided. Therefore, the Commission should be vigilant in disallowing NUSF support from the Proposed Program to be used for any type of overbuilding of existing fiber facilities.

3. *The Commission further proposes that libraries must first avail themselves of E-rate support. In order to be eligible, libraries would need to demonstrate that they have in place, or have taken material steps towards a contract for procurement of fiber-based services that identifies special construction costs, and would have to have Special Construction Matching funds checked on their FCC Form 471. Is this a reasonable expectation? Should the Commission require libraries to file a copy of their FCC Form 471 with their application? Should the Commission require the libraries to file an application jointly with the carrier(s) they plan to use for the fiber construction? Should libraries be required to utilize E-rate support for their ongoing services as well? In addition, we seek further comment on whether schools should also be eligible for E-rate Special Construction program support or whether such support should be limited to libraries.*

Response: RIC agrees that the Commission must ensure that E-Rate funding is being sought by a library pursuant to Federal Communications Commission (“FCC”) Form 471. From a timing perspective, it could be challenging to require approval of FCC Form 471 prior to granting the Nebraska state match under the Proposed Program; however, receipt of NUSF support should be contingent on FCC Form 471 approval. The library receiving NUSF support from the Proposed Program should be required to prove that its filed FCC Form 471 has been approved prior to the ultimate release of any NUSF support.

⁷ See Comments of the Rural Independent Companies, fn.4 at 3-4 (Jan. 17, 2020).

The Rural Broadband Task Force encouraged the implementation of the Proposed Program *specifically* for public libraries in Nebraska.⁸ If the Commission desires to consider whether schools should also be eligible for the Proposed Program, a new docket should be opened to investigate that proposal.

C. Timeline

- 1. If implemented, the Commission proposes to initiate the program in time for the 2021 E-Rate support year. The Commission proposes to open the grant window in November 2020 and close the grant window by the last day of December 2020. The Commission would then plan to release its decision on proposed grant awards by the end of January 2021. Does this timeframe allow sufficient ability to carriers and libraries to take advantage of the federal 2021 E-Rate support window? If not, how should the timeframe be modified?*

Response: In order to establish the Proposed Program in time for the 2021 E-Rate funding year, the Commission would need to establish a timeline that complements the FCC's E-Rate program timelines. Unfortunately, the FCC's E-Rate Program has not yet established specific deadlines for its 2021 funding year. In its prior comments, the Nebraska Library Commission proposed a reasonable timeline based on program history that would likely allow libraries to take advantage of the 2021 E-Rate support.⁹ Regardless of the timing adopted for the Proposed Program, RIC again submits that the Commission should ensure that no NUSF support would ultimately be released without an applicant's proof of the approval of an associated FCC Form 471 application.

D. Reporting

- 1. If implemented, what type of reporting should be required to ensure that support is being used for its intended purpose and does not duplicate existing support or*

⁸ Rural Broadband Task Force Findings and Recommendations, Executive Summary at 6 and Digital Inclusion, Homework Gap and Leveraging E-Rate Funding at 25-28 (Oct. 2019).

⁹ See Reply Comments of Nebraska Library Commission at 4-5 (Jan. 17, 2020).

facilities? Should there be an ongoing reporting requirement to measure the effectiveness of the program? Why or why not?

Response: As indicated above, the Commission should ensure that it does not grant NUSF support for special construction of facilities that duplicate existing supported facilities. As such, RIC respectfully suggests that the Commission: (1) require applicants to certify that the special construction grant request does not involve overbuilding existing facilities; and (2) establish a time period for possible challenges to a pending grant application based on duplication of facilities.

Once a library special construction proposal is approved, the accountability regarding the use of NUSF funds should not end. The Commission should require ongoing reporting to measure the effectiveness of the Proposed Program in delivering the promised services to an applicant library and the community it serves.

IV. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Comments in response to the *Order* and look forward to continuing participation in this docket.

Dated: April 14, 2020.

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, LLC., 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 and Three River Telco (the "Rural Independent Companies")

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of April 2020, an electronic copy and one paper copy of the foregoing pleading were delivered to:

Nebraska Public Service Commission

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Copies have also been served via email on all other parties filing comments in this docket.


Paul M. Schudel