

Nebraska E-Rate Special Construction Matching Fund Program (NUSF-117)

Overview

I. Background

In April 2018, LB 944 was signed into law and created the Rural Broadband Task Force to review issues relating to availability, adoption, and affordability of broadband services in rural areas of Nebraska.

In October 2019, the Rural Broadband Task Force released its Findings and Recommendations. Among its recommendations, the task force encouraged the implementation of a program within the Nebraska Universal Service Fund (NUSF) to incentivize new fiber construction to public libraries in order to maximize federal support through the Federal Communications Commission's (FCC) E-Rate Special Construction program.

In December 2019, the Nebraska Public Service Commission (NPSC) opened docket NUSF-117, to consider implementing a program to incentivize new fiber construction for E-Rate eligible entities in response to the Rural Broadband taskforce recommendation and Legislative session.

In January 2020, LB 992 was introduced in the Nebraska legislature, and approved by the Governor on August 15, 2020. The bill implements elements of the Rural Broadband Task Force report, including authorizing the NPSC to create the E-Rate Special Construction Matching Program.

On May 19, 2020, the NPSC entered the order adopting the NUSF-117 E-Rate Special Construction Matching Program. The final order can be found at: <https://www.nebraska.gov/psc/orders/telecom/2020-05-19%20NUSF-117%20Order.pdf>

II. FCC E-Rate Program Overview

This high-level overview is not intended to be a substitute for the FCC or USAC rules, USAC rules, form instructions or other official guidance materials.

The Federal Communications Commission (FCC) E-Rate program provides discounts to assist eligible schools and libraries in obtaining affordable high-speed internet access. This discount program provides discounts on a portion of bills paid for eligible products and services received by eligible schools and libraries. Discounts provided by the FCC E-Rate program range from 20% to 90% of the costs of eligible services, based on the level of poverty and the urban/rural status of the population.

The FCC E-Rate program provides support for broadband connections in schools and libraries under two categories of service: Category 1 services which provide connections to schools and libraries (data transmission services and internet access and voice services); Category 2 services that deliver internet access within schools and libraries (internal connections, basic maintenance of eligible internal connections, and managed internal broadband services).

The FCC has adopted rules in the E-Rate program that includes a matching program for special construction charges for high-speed broadband. The E-Rate program will increase an applicant's discount rate for these charges up to an additional 10% on a dollar to dollar basis, not to exceed 100% of costs. For the purposes of the E-Rate program, special construction charges are the upfront, non-recurring costs of deploying new fiber or upgrading facilities to E-Rate eligible entities. Special construction consists of three components: (1) Construction of network facilities; (2) Design and Engineering; and (3) Project management. Special construction does not include charges for Network Equipment.

The E-Rate special construction matching is only available for eligible entities when the source of matching funding is authorized directly by a state legislature or one or more state agencies, when the special construction project will provide high-speed broadband connections that meet the FCC's connectivity targets (100 Mbps for public libraries under 50,000 LSA & 1 Mbps per student in public schools), and may not be applied to any other cost.

Applicants seeking additional E-Rate discounts to match state funding for special construction must submit information with their FCC filings that the Universal Service Administrative Company (USAC) will use to determine eligibility for the match.

III. Nebraska E-Rate Special Construction Matching Program (NUSF-117) Overview

Through NUSF-117, the Nebraska Public Service Commission (NPSC) has allocated \$1 million from the Nebraska Universal Service Fund (NUSF) for the E-Rate Special Construction Matching Program. The funding will be spread over a four one-year funding periods from 2021 to 2024, with \$750,000 available in the first year of the program (2021). The program has been established to incentivize new fiber special construction builds to connect E-Rate eligible entities where there is no existing fiber connection. As a supplemental support mechanism, NUSF-117 support will enable entities to maximize federal E-Rate special construction program support by providing E-Rate matching support of up to 10% of the total eligible one-time special construction charges, but does not include funding for recurring costs or ongoing NUSF support.

As the NUSF-117 dollars are intended to leverage additional federal E-Rate discounts, eligibility for the Nebraska E-Rate Special Construction Matching Program largely mirrors the Federal E-Rate program. Any applicant for NUSF-117 E-Rate Special Construction Matching Program support would need to avail itself of federal E-Rate support and go through the necessary steps in the FCC's E-Rate program. This process includes selecting a provider through a competitive bid process. Participating entities will be required to demonstrate that they have gone through this process prior to filing an application with the Nebraska Public Service Commission (NPSC).

A. Eligibility Criteria:

Applicants are required to complete the NUSF-117 Nebraska E-Rate Special Construction Matching Program application. Along with the application, the applicant should provide the FCC Form 470 and a copy of the selected bid response, which indicates that the participating entity has gone through the competitive bid process and identified a provider. Additional supporting documentation may also be submitted with the application.

Support will only be considered for projects utilizing Fiber to the Premises (FTTP), with the service starting on or after the start of the funding year. Projects may be considered for any E-Rate eligible entity, such as a public school/library, where there is not already a fiber connection.

If applications that we receive exceed the available support, the NPSC will prioritize applications based on a needs-based assessment. The priority determination will be based on the amount of an entity's E-Rate discount, with a greater priority weight to entities receiving higher E-Rate discounts. The priority assessment reasoning is based on the idea that the lower the E-Rate discount, the more able the library is to pay the cost itself.

Any eligible public school or library can apply for funding under this program. However, grant support can only be distributed to an entity classified as a Nebraska Eligible Telecommunications Carrier (NETC) as required by Nebraska Revised Statute 86-324. For this program, all incumbent local exchange carriers and competitive local exchange carriers that currently have a Certificate of Public Convenience and necessity will be considered NETCs for the purpose of receiving E-Rate Special Construction program support. However, this NETC designation is limited to the areas where such carriers are authorized to provide service. Any other provider wishing to be designated as an NETC for the purpose of E-Rate Special Construction Matching program support, or a provider wishing to expand the scope of an eligible service area, would need to apply for and receive an NETC designation from the NPSC.

B. Granting Process:

1. The annual application window for the NUSF-117 Nebraska E-Rate Special Construction Matching Program opens in November and closes the last day of December for the subsequent E-Rate support year. Priority will be given to applications submitted within the application window. Late applications may be considered if funding is still available and time permits.
2. Applicants must attach to their NUSF-117 application: a copy of their FCC Form 470 for special construction, a copy of the selected bid response, letter of agency if applicable, along with any other supporting documentation.
3. Once the annual application window for NUSF-117 has closed, an internal review of the applications will be completed by NPSC staff.
4. In mid-January, the NPSC will provide notice to applicants indicating whether their NUSF-117 application has been approved. A letter accompanying the order will be sent to the applicants regarding funding decisions. This information can be used by applicants in their FCC filings to indicate approval for state matching.
5. Subsequent to the NUSF-117 initial application process and filing of the FCC 470, applicants must proceed with filing the associated forms with USAC, including the FCC 471 in which they must indicate their interest in special construction matching funds as well as submit the necessary information with their FCC Form 471 filing for USAC to determine eligibility for special construction matching funds. Because state funding may not be applied to costs other than eligible special construction costs, applicants should create separate funding requests on the FCC 471 for special construction. Applicants must be approved through the Universal Service Administrative Company (USAC) for E-rate special construction matching funding in order to receive NUSF-117 special construction matching funds.
6. Only one-time costs of construction can be considered for the special construction match. Monthly recurring costs and construction costs that are included in recurring fees may not be covered by the matching grant.

C. Reimbursement Process:

1. The NUSF-117 reimbursements are contingent upon the NPSC receiving documentation of USAC approval, project completion, proof of service delivery, and verification of federal funding amounts received. Upon project completion, submit to the NPSC copies of the FCC 472 (if applicant has paid in full) or FCC 474 (if applicant was billed the non-discount amount), as well as the FCC 486 to verify the project completion, project details, total project costs, and the amount billed to the applicant (i.e. non-discounted amount).
2. The NPSC will provide reimbursement directly to the NETC for the eligible portion of the state-match of up to 10% of the cost of construction.
3. The total amount of support, including any matching funds, may not exceed 100% of the cost of the special construction project.
4. Reimbursement requests should be submitted to the NPSC in a timely fashion. The timeline for NUSF-117 reimbursement should closely align with the reimbursement timelines required by the federal E-Rate program. Reimbursement requests submitted to the NPSC over 30 days beyond the FCC/USAC deadlines for reimbursement may not be considered.
5. Prior to reimbursement, the NPSC may also verify information through FCC/USAC or may request additional information or documentation by the participating entity and/or the NETC.

D. Reporting

1. The expectation is that the special construction projects approved through the program will be completed within the timelines required by the E-Rate program, and that the term of service and service speeds as outlined in the special construction procurement contract is being provided over the duration of the contract.
2. In order to gauge the effectiveness of this program we will require participating entities and carriers seeking reimbursement to provide the Nebraska Public Service Commission (NPSC) with data on an annual basis which is designed to measure the broadband speeds delivered and the utilization of the services.
3. The carriers' use of support under this program is subject to annual review and audit by the NPSC.