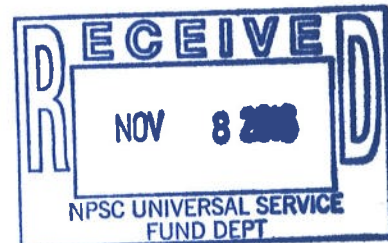


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own Motion, seeking to establish guidelines for the administration of the Nebraska Telephone Assistance Program))))

Application No. NUSF-2



JOINT INITIAL COMMENTS OF VERIZON AND SPRINT

Verizon¹ and Sprint² respectfully jointly respond to the Commission’s October 12, 2016 Progression Order No. 11 seeking comments on issues relating to the administration of the Nebraska Telephone Assistance Program, or “NTAP” (“Order”).

While reserving their right of reply to other carriers’ comments, Verizon and Sprint focus here on whether the Commission may use NTAP funds to support: (1) voice service offered in conjunction with a Broadband Internet Access Service (“BIAS”), and/or (2) stand-alone BIAS. See Order at 2. The answer in both cases is “no.”

- 1. The NTAP Program Is Statutorily Limited to Supporting Traditional, Circuit-Switched Residential Basic Local Exchange Service Offered by Local Exchange Carriers. A. The NTAP Statute Does Not Permit the Commission to Repurpose NTAP Funds to Support Internet Protocol (“IP”)-Enabled Voice Service Offered in Combination with BIAS, or Stand-Alone BIAS.

The Nebraska Legislature has outlined the purposes and goals of the NTAP. Neb. Rev. Stat. § 86-329 directs the Commission to establish the NTAP “to promote the provision of

1 “Verizon” refers to the Verizon-owned wireline (MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services; MCI Communications Services, Inc. d/b/a Verizon Business Services; TTI National, Inc.; Verizon Long Distance LLC and Verizon Select Services, Inc.) and wireless (Alltel Communications of Nebraska LLC; Omaha Cellular Telephone Company; and Sioux City MSA Limited Partnership) affiliates operating in Nebraska. 2 “Sprint” refers collectively to Sprint Communications Company LP, Sprint Spectrum LP, and Virgin Mobile USA LP.

universal service to low-income households *by local exchange carriers*³” and expressly limits the use of NTAP support by mandating that “[s]upport provided by the program shall be specifically targeted to maintain affordable rates *for residential basic local exchange services* supported by federal and state universal service mechanisms” (emphasis added). By no stretch can the definition of “residential basic local exchange services” be read to encompass either IP-enabled voice services offered in combination with BIAS, or stand-alone BIAS. Nor does the term “local exchange carrier” extend to providers of such services. The statutory definition of “basic local exchange service” is expressly limited to “the access and transmission of *two-way switched voice communications within a local exchange area*” (emphasis added) and does not encompass interstate information services such IP-based voice services provided in conjunction with BIAS (which are not circuit-switched or limited to a local exchange area) or stand-alone BIAS (which is not a voice service of any kind). Neb. Rev. Stat. § 86-105. Thus, while continuing to use the NTAP to subsidize traditional, two-way, circuit-switched basic local exchange voice service offered by local exchange carriers in combination with BIAS is permissible, the Commission may not expand the reach of the NTAP statute to subsidize IP-enabled voice services offered in combination with BIAS, or stand-alone BIAS.

³ This term is not defined in the Nebraska statutes, although Neb. Rev. Stat. § 86-115 defines “local exchange area” as “a territorial unit established by a telecommunications company for the administration of telecommunications service within a specific area generally encompassing a city or village and its environs as described in maps filed with and approved by the commission.” Similarly, the Commission’s rules define “competitive local exchange carrier” (“A person holding a permit to offer contract carriage or a certificate to offer common carriage telecommunications services within Nebraska issued after February 8, 1996. Competitive local exchange carriers are not required to offer dial tone service or any other specific service unless authorized or required by the terms of their permit or certificate.”) and “incumbent local exchange carrier” (“A person holding a certificate to offer local exchange telecommunications services within Nebraska issued on or before February 8, 1996. The issuance of a new certificate in conjunction with the acquisition of a certificate issued on or before February 8, 1996, gives the acquiring entity incumbent local exchange status in the pre-February 8, 1996, certificated area.”) strictly in terms of providers of telecommunications service pursuant to the 1996 federal Telecommunications Act. *See* Nebraska Administrative Code Title 291, Ch. 5, §§ 001.01M and 001.01AA. The term plainly does not encompass providers of IP-enabled voice services or stand-alone BIAS.

As a creature of statute, the Commission may not exceed the authority granted to it by Neb. Rev. Stat. § 86-329. *See Project Extra Mile v. Neb. Liquor Control Comm'n*, 283 Neb. 379, 399 (2012) (administrative agency has no power or authority other than that specifically conferred by statute; agency may not use rulemaking authority to modify, alter or enlarge enabling statute); *County Cork v. Neb. Liquor Control Comm'n*, 250 Neb. 456, 459-60 (1996) (administrative agency's rulemaking authority limited to powers delegated to the agency by statute); *Cornhusker Christian Children's Home, Inc. v. Dept. of Social Svcs.*, 227 Neb. 94, 111 (1987) (same). While the Commission has previously relied on general policy statements in Neb. Rev. Stat. § 86-323 to conclude that it could use Nebraska Universal Service Fund ("NUSF") monies to support broadband deployment, the Commission cannot rely on those general policy statements to "trump" the specific and explicit statutory limitations that Neb. Rev. Stat. § 86-329 places on the use of NTAP funding. *See, e.g., State v. County of Lancaster*, 272 Neb. 376, 383 (2006) (special statutory provisions prevail over general).

B. Even if the NTAP Statute Permitted the Commission to Use NTAP Funds to Support IP-Enabled Voice Service Offered in Combination with BIAS or Stand-Alone BIAS (and It Does Not), Using It in Such a Manner Would Harm Consumers.

While the Commission must fulfill the legislative mandates of Neb. Rev. Stat. § 86-329, it must not exceed its authority thereunder. Indeed, the Commission has a separate statutory obligation to limit the financial burden that the NUSF places on the Nebraska consumers of telecommunications services who must contribute to it. *See, e.g. Neb. Rev. Stat. § 86-102(1) and (3)* (state policy to preserve affordable telecommunications services and ensure that consumers pay only reasonable charges for telecommunications services). Increasing Nebraskans' telecommunications bills to subsidize interstate information services such as IP-based voice services or stand-alone BIAS is inconsistent with this state policy. Nebraskans purchasing

intrastate telecommunications services already pay a substantial NUSF surcharge of 6.95% on their intrastate telecommunications bills,⁴ on top of a hefty federal USF surcharge on their interstate telecommunications bills set at 17.4% for the fourth quarter of 2016.⁵ Expanding the NTAP program in the manner suggested would not only violate the NTAP statute, it would cause the USF assessments on Nebraskans' phone bills to soar.

Given the Federal Communications Commission's ("FCC") efforts to reform the federal USF and combat waste, fraud and abuse in the federal Lifeline program,⁶ it is imperative that this Commission similarly do what it can to prevent unfettered NUSF growth, particularly given that the incremental burden of still-higher NUSF surcharges could ultimately force Nebraskans to scale back or cancel their communications services. As the Fifth Circuit noted years ago, "[b]ecause universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, *thereby pricing some consumers out of the market.*"⁷ The Commission should strive to avoid this result by keeping the NUSF in check and not expanding the NTAP beyond its statutory limits. Only the legislature can modify the NTAP statute to extend to IP-enabled voice services offered in conjunction with BIAS and stand-alone BIAS.

⁴ Order Setting Surcharge from July 1, 2016 through June 30, 2017, *In the Matter of the Commission, on its own motion, seeking to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act effective fiscal year beginning July 1, 2016*, Application No. NUSF-4 (June 7, 2016).

⁵ See Public Notice, "Proposed Fourth Quarter 2016 Universal Service Contribution Factor," DA 16-1024 (rel. September 12, 2016), available on-line at https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1024A1.pdf.

⁶ See *Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*FCC ICC/USF Reform Order*"); *In the Matter of Lifeline and Link Up Reform and Modernization, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) ("*FCC Lifeline Reform Order*").

⁷ See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2001).

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