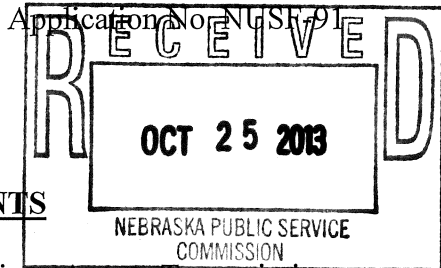


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on Its Own Motion, to)
Increase Broadband Adoption Among Low-Income)
Consumers Through the Development of a Nebraska)
Broadband Telephone Assistance Program.)



VERIZON'S REPLY COMMENTS

MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission

Services and MCI Communications Services, Inc. d/b/a Verizon Business Services (together, "Verizon") respectfully submit these reply comments pursuant to the Commission's October 8, 2013 "Order Extending Comment Deadline."

Introduction

Given the diverse array of commenters, the parties' recommendations reflect a surprising degree of consensus that: (1) the Commission lacks authority to add a broadband component to the Nebraska Telephone Assistance Program ("NTAP"); and (2) it would be inadvisable for the Commission to leapfrog the Federal Communications Commission's ("FCC") ongoing Low-Income Broadband Pilot Program by launching ahead with a costly new subsidy program without the benefit of FCC data and analysis. The FCC Pilot Program is designed to collect data that will enable the FCC to evaluate whether subsidizing broadband access to low-income households has the desired effect of increasing broadband adoption and use.

Consistent with this consensus, the Commission should decline to introduce a broadband component to the NTAP, which would only add to the significant financial burden that the Nebraska Universal Service Fund ("NUSF") already imposes on Nebraskans without a sound factual basis to conclude that such a program would have the desired effect.

Verizon again comments on Issues 1, 2, 4 and 6. Because Verizon urges the Commission not to implement a broadband component to the NTAP program, it does not address issues regarding the design of such a program.

2. Does the Commission have the authority under its current statutory framework to implement a broadband component to its NTAP program? Why or why not?

Issue 2 poses the critical threshold question: under current law, does the Commission have authority to add a broadband component to the NTAP? As detailed in Verizon's initial comments,¹ the answer is "no." The NTAP statute (Neb. Rev. Stat. § 86-329) expressly limits the use of NTAP support to maintaining affordable rates for "residential basic local exchange services" provided by "local exchange carriers." Neb. Rev. Stat. § 86-329(1). It does not permit the Commission to use the NTAP to subsidize broadband services offered by broadband service providers. As a creature of statute, the Commission may not exceed the limited authority granted by Neb. Rev. Stat. § 86-329 by expanding the NTAP to broadband.²

There is nothing in the other parties' comments to the contrary. Several commenters altogether ignore the question of whether the Commission has statutory authority to expand the NTAP to broadband, advocating for such action without addressing its legality.³ Others cite general USF statutes to claim that the Commission has such authority, but fail to acknowledge or discuss the NTAP statute that specifically governs the program.⁴ The Commission may not

¹ See "Verizon's Initial Comments" (September 30, 2013) ("Verizon Comments") at 1-3.

² 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).

³ See "Comments of Center for People in Need" (September 30, 2013) ("CPN Comments"); "Comments of the City of Lincoln" (September 30, 2013) ("Lincoln Comments"); "Comments of the Satellite Broadcasting & Communications Association" (September 30, 2013) ("SBCA Comments").

⁴ See "Comments of Cox Nebraska Telecom, LLC" (September 30, 2013) ("Cox Comments") at 2; "Initial Comments on Behalf of Windstream Nebraska, Inc." (September 30, 2013) ("Windstream Comments") at 2-3.

ignore the express limitations of the NTAP statute. RIC correctly notes that “as a general rule of statutory construction, if a conflict exists between two statutes on the same subject matter, the special provisions of a statute prevail over the general provisions in other statutes.”⁵ As such, references to the Commission’s decision to initiate the Nebraska Broadband Pilot Program under other, general NUSF statutes are inapposite, as there was no separate and specific statute governing the subject matter, as there is here for the NTAP.

Of the five parties (besides Verizon) that actually addressed the NTAP statute, four agreed that it prohibits the Commission from expanding the NTAP to broadband, or, at best, creates serious legal doubt whether the Commission has such authority.⁶ Only one – Viaero Wireless – argues that Neb. Rev. Stat. § 86-329 affirmatively permits the Commission to add a broadband component to the program.⁷ However, Viaero relies solely on a reference to “universal service” in the first sentence of Neb. Rev. Stat. § 86-329(1) and selectively ignores the language that follows. That language makes clear that the NTAP program was established to support “universal service to low-income households *by local exchange carriers*”(emphasis added) – not *by broadband providers* – and mandates that NTAP support “shall be specifically targeted to maintain affordable rates *for residential basic local exchange services* supported by federal and state universal service mechanisms” (emphasis added) – not *for broadband services*.

⁵ RIC Comments at 5 (citing *State v. County of Lancaster*, 272 Neb. 376, 721 N.W.2d 644 (2006) and *Mogensen v. Board of Supervisors*, 268 Neb. 26, 679 N.W.2d 413 (2004)).

⁶ See “Comments of Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska” (September 30, 2013) (“Frontier Comments”) at 3-4; “Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink” (September 30, 2013) (“CenturyLink Comments”) at 4-5; “Comments of the Rural Telecommunications Coalition of Nebraska” (September 30, 2013) (“RTCN Comments”) at 5; “Comments of the Rural Independent Companies” (September 30, 2013) (“RIC Comments”) at 4-7.

⁷ See “Comments of N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless” (September 30, 2013) (“Viaero Comments”) at 1-2.

The Commission should reject Viaero's interpretation, which would impermissibly read these explicit restrictions out of Neb. Rev. Stat. § 86-329(1).

Instead, the Commission should recognize that state law does not permit it to add a broadband component to the NTAP, particularly given the Commission's statutory obligation to limit the financial burden that the already-high NUSF surcharge imposes on the Nebraska consumers of telecommunications services who must pay it. Verizon Comments at 2-4 (citing, *inter alia*, Neb. Rev. Stat. § 86-102(1) and (3)).

1. Should the Commission consider implementing a Nebraska-specific broadband lifeline program by adding a broadband component to its existing NTAP program to increase adoption among low-income consumers in Nebraska? Please explain.

Even if the Commission had the statutory authority to implement a Nebraska-specific broadband lifeline program by adding a broadband component to the NTAP (and it does not), the filed comments underscore why the Commission should not do so.

Some commenters urge the Commission to forge ahead with expanding the NTAP to broadband despite the lack of tangible evidence that this would increase broadband adoption among low-income consumers in Nebraska.⁸ Verizon's initial comments outlined several reasons why such an effort may not have the intended effect (including the Internet's lack of relevance to potential users, lack of digital literacy, and lack of computing equipment), and could even have a detrimental impact. Verizon Comments at 4-5. Commenters urging the Commission to move forward now did not address these issues.

Other commenters appropriately recommend that the Commission not leapfrog the ongoing efforts of the FCC, which has already launched a Low-Income Broadband Pilot Program in order to collect much-needed data to evaluate whether such programs actually achieve their

⁸ See, e.g., Cox Comments at 1-2 (recommending expanding NTAP program despite fact that Nebraskans "may not have the knowledge and training to use broadband effectively"); CPN Comments at 3-5; Lincoln Comments at 1; SBCA Comments at 4; Windstream Comments at 1-2; Viaero Comments at 1.

intended goals. As Verizon, CenturyLink, Frontier, RIC and RTCN all recognized, taking any action before the FCC's pilot program is complete is inadvisable, as there is no present basis to determine that the degree of broadband adoption in low-income Nebraska households is related to the unavailability of discounted rates, as opposed to other factors cited by commenters.⁹ In fact, several commenters indicated that low-cost (\$10/month) broadband service subscriptions are already available to qualifying low-income customers in Nebraska today.¹⁰

Thus, while the Commission's August 13, 2013 "Order Opening Docket and Seeking Comment" ("Order") opines that "it may be appropriate [for the Commission] to establish its own statewide initiative rather than wait for the FCC to act," this suggestion ignores the unmet need for data essential to evaluating whether such a program would be a worthwhile expenditure (even if the Commission had statutory authority to implement one, which it lacks). The Commission should not put the cart before the horse by rushing to launch a program before first ascertaining that it will successfully meet an identified need – something it cannot do without hard data. For example, Frontier indicated that a similar ongoing program in Ohio has "not lived up to Frontier's initial expectations," leaving Frontier without confidence that this Commission's proposal would have the desired result. Frontier Comments at 3. Moreover, as RIC noted, "getting too far in front" of any federal initiative could wind up costing Nebraska down the road, as modeling any eventual federal program's criteria and structure would be a likely requirement for obtaining matching funds. RIC Comments at 15. Similarly, restructuring a prematurely-implemented state program to comply with subsequent federal guidance would result in

⁹ See, e.g., Verizon Comments at 4-5; CenturyLink Comments at 2-4; Frontier Comments at 1-3, RIC Comments at 13-15; RTCN Comments at 1-4.

¹⁰ See, e.g., Verizon Comments at 5; CenturyLink Comments at 12; Cox Comments at 7;

unnecessary costs and consumption of limited NUSF funding, to the detriment of Nebraska ratepayers.

The fact that no other state has embarked on such a course only underscores the prematurity of the Commission's proposal.¹¹ The Commission should allow the FCC to complete its Low-Income Broadband Pilot Program and reach informed conclusions about its success, not outpace ongoing federal initiatives by implementing a state program now (particularly without statutory authorization), before the success or failure of such programs has been adequately measured and evaluated.

4. Are there other programs which are currently being used to increase broadband adoption for low-income consumers? If so, please provide a description of these programs? Are these programs successful? Why or why not?

Numerous commenters discussed the programs already in place to increase broadband adoption by low-income consumers, including low-cost broadband service offerings already available to qualifying Nebraskans,¹² thereby confirming there is no need for the Commission to rush forward with an untested proposal. Since the filing of initial comments, Connected Nation (a non-profit organization that helps communities accelerate local broadband access, adoption and use through public-private partnerships) announced a new campaign – “Beyond the Divide” – to help communities connect to technology and innovative solutions that improve living standards and grow economies.¹³ A Connected Nation report released on October 10, 2013 cites “cost” as the barrier to broadband adoption only 23% of the time (with other factors making up

¹¹ No commenter identified a state that has adopted such a proposal.

¹² See CenturyLink Comments at 12; Frontier Comments at 5; Cox Comments at 7; RIC Comments at 14-15; RTCN Comments at 3; Verizon Comments at 5; Windstream Comments at 7.

¹³ See “Connected Nation Releases Report on Model Program to Connect Communities to Technology” (October 10, 2013), available on-line at <http://www.prweb.com/releases/2013/10/prweb11220380.htm>.

the remaining 77%), and identifies local community engagement as a key factor for success, not one-size-fits-all state programs.¹⁴

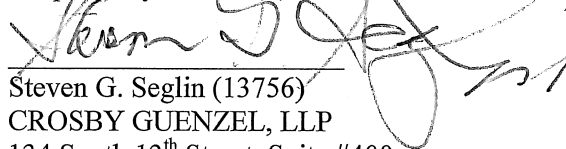
6. Are there any other states that have implemented a broadband component to their low-income program? If so, please provide details as to how these programs have been implemented.

No party identified a state that has implemented a low-income broadband program, underscoring the inadvisability of this Commission doing so.

Dated: October 25, 2013

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Respectfully submitted,



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¹⁴ The other cited factors are “relevance” (32%), “digital literacy” (15%), “access” (7%), “other” (12%) and “don’t know” (11%). See Connected Nation, “Beyond the Divide: Progress Report Fall 2013” at 3 (available on-line at http://www.connectednation.org/sites/default/files/connected-nation/files/cnctd_fall_final.pdf).