

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.)

Application No. NUSE-91



VERIZON'S INITIAL 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 comments in response to the Commission’s August 13, 2013 “Order Opening Docket and Seeking Comment” (“Order”).

At this time, Verizon comments briefly on Issues 1, 2, 4 and 6. Verizon reserves its right to respond to comments on all issues should it file reply comments (as authorized by the Order).

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.**
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?**

The Commission has no statutory authority to implement a Nebraska-specific broadband Lifeline program by adding a broadband component to the Nebraska Telephone Assistance Program (“NTAP”). Moreover, even if the Commission had such authority (and it does not), it should not do so.

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 universal service to low-income households by local exchange carriers” 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 broadband 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” and does not encompass interstate information services such as broadband. Neb. Rev. Stat. § 86-105.

As a creature of statute, the Commission cannot 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 the 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.

As such, the Commission must fulfill the legislative mandates of Neb. Rev. Stat. § 86-329, but 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, as the Order proposes, 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,¹ on top of a hefty federal USF surcharge set at 15.6% for the fourth quarter of 2013 (up from the third quarter's 15.1%) applicable to their interstate telecommunications bills.²

Given the Federal Communications Commission's ("FCC") efforts to reform the federal USF and to combat waste, fraud and abuse in the federal Lifeline program,³ 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.*"⁴ The Commission should strive to avoid this result by keeping the

¹ *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, 1999*, Application No. NUSF-4, Order Setting Surcharge from July 1, 2013 through June 30, 2014 (May 29, 2013).

² See Public Notice, "Proposed Fourth Quarter 2013 Universal Service Contribution Factor," DA 13-1880 (rel. September 11, 2013), available on-line at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0911/DA-13-1880A1.pdf.

³ 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").

⁴ See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2001).

NUSF in check, not seeking to expand the NTAP to broadband services without statutory authority.

Even if the Commission had statutory authority to expand the NTAP to subsidize broadband services (and as discussed above, it does not), it should not do so. The Commission's proposal depends upon an unsupported assumption that price is the main reason that broadband adoption rates in Nebraska are not higher, ignoring the two other key factors: lack of relevance to potential users, and lack of digital literacy. The April 2012 Pew Research Center study discussed in the Order ("Pew Study") indicates that these two factors together eclipse price as the main reason for respondents not going on-line: indeed, 48% of respondents cited lack of relevance, 21% cited price, "a similar number" cited inability to use the Internet, and 6% cited lack of access or availability. Pew Study at 6-7. In addition, while 21% of respondents indicated that "they know enough about technology to start using the internet on their own," only 1/10th of them indicated an interest in using the Internet or e-mail in the future. *Id.* at 7. If consumers do not have a computer, are not interested in using the Internet, or do not know how to do so, subsidizing broadband service may not result in the desired increase in broadband adoption or the beneficial sorts of Internet usage contemplated by the Order (job-searching, educational pursuits, etc.). The Commission's proposal also does not address the fact that some Internet users may not have broadband service subscriptions, but are still connected to and able to use the Internet via their smartphone, tablet, or other similar device.

The Commission should also be mindful that piecemeal efforts to increase broadband adoption (such as proposed here) may not only lack real benefit, but could even have a detrimental impact.⁵ The FCC has undertaken a data collection process in conjunction with its

⁵ See TechNet (John B. Horrigan, Ph.D., Vice President, Policy & Research), "Broadband Adoption in 2012: Little Movement Since '09 & Stakeholders Can Do More to Spur Adoption" (March 20, 2012) (available on-line

Low-Income Broadband Pilot Program and will use that data to assess the results of that pilot program. The Commission should allow the FCC to complete this effort and reach informed conclusions about whether subsidizing broadband for low-income households actually had the desired effect, rather than leapfrogging ongoing federal activities by implementing a state program now (particularly without statutory authorization), before the success or failure of such programs has been measured.

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?

The Order indicates that some providers are already promoting low-income broadband initiatives. Order at 2. Verizon cannot speak to the details of such programs in Nebraska, but notes that Connect2Compete (“C2C”) is a national non-profit organization that works with the nation’s leading Internet providers, hardware and software manufacturers, digital content creators, and more than 10,000 libraries and non-profits to deliver free and affordable technology and training throughout the country, including low-cost Internet services.⁶ C2C has several partners offering low-cost broadband subscriptions (generally priced at approximately \$10/month), including Comcast,⁷ which operates in Nebraska.⁸ CenturyLink’s Internet Basics program appears to offer similar benefits to qualifying low-income customers in Nebraska.⁹

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.

at <http://www.technet.org/wp-content/uploads/2012/03/TechNet-NBP-Broadband-Report-3-20-2012-FINAL1.pdf>) at “Summary.”

⁶ See <http://connect2compete.org/about/index.php>.

⁷ See <http://www.internetessentials.com/> for details of Comcast’s “Internet Essentials” program.

⁸ See <http://connect2compete.org/faq/eligibility-requirements.php>.

⁹ See <http://www.centurylink.com/home/internetbasics/?rid=internetbasics>.

Verizon is unaware of any state that has implemented a broadband component to its low-income program. The Missouri Commission recently solicited comments on the issue,¹⁰ but has taken no action.

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Respectfully submitted,



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¹⁰ See “Notice of Opportunity to Comment,” *In the Matter of a Repository Case in Which to Gather Information About the Lifeline Program and Evaluate the Purposes and Goals of the Missouri Universal Service Fund*, Missouri PSC File No. TW-2014-0012 (July 26, 2013). Like this Commission, the Missouri Commission lacks statutory authorization to expand the state’s Lifeline program to subsidize broadband service.