

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Application No. NUSF-117
Public Service Commission, on	)	Progression Order No. 1
its own motion, to consider	)	
implementing a program to	)	FINDINGS AND CONCLUSIONS
incentivize new fiber	)	
construction for E-Rate	)	
eligible entities.	)	Entered: October 11, 2023

BY THE COMMISSION:

Background

The Nebraska Public Service Commission ("Commission") originally initiated this proceeding on December 10, 2019, to consider implementing a program within the Nebraska Universal Service Fund ("NUSF") to incentivize new fiber construction for E-Rate eligible entities.¹ The Commission sought comments on the federal E-Rate Special Construction matching fund program, and a hearing in this matter was held on April 1, 2020. Based upon the comments received and hearing testimony, the Commission entered an Order on May 19, 2020 ("May 19 Order") which established an E-Rate Special Construction Matching program for the purpose of providing matching support to Nebraska Eligible Telecommunications Carriers ("NETCs") for connecting E-Rate eligible entities with fiber where there was no existing fiber connection.²

Pursuant to the May 19 Order, Nebraska's E-Rate Special Construction Matching program (the "E-rate program") serves as a supplemental support mechanism to enable entities to maximize federal E-Rate special construction program support.³ One million dollars was allocated to the E-Rate Special Construction Matching Program for years 2021 through 2024 for eligible libraries, schools, or eligible consortia.⁴ The Commission further issued grant application forms and guidance for entities interested in participating in the program in its May 19 Order.⁵

¹ See *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider implementing a program to incentivize new fiber construction for E-rate eligible entities*, NUSF-117, Order Opening Docket and Seeking Comment (December 10, 2019).

² See *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider implementing a program to incentivize new fiber construction for E-rate eligible entities*, NUSF-117, ORDER (May 19, 2020) ("May 19 Order").

³ See *id.* at 24.

⁴ See *id.*

⁵ See *id.*, Appendix "A."

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The federal E-Rate program provides support for broadband connections in schools and libraries under two categories of service: Category 1 services to a school or library (telecommunications, telecommunications services, and internet access), Category 2 services that deliver internet access within schools and libraries (internal connections, basic maintenance of internal connections, and managed internal broadband services).⁶ The federal E-Rate program includes a matching program for special construction charges for high-speed broadband. The federal E-Rate program allows for an increase to an applicant's discount rate for special construction charges on a dollar-for-dollar basis up to an additional ten percent⁷ if a state provides eligible carriers with funding for special construction charges for high-speed broadband, not to exceed 100 percent of costs. E-Rate matching funds will only be approved if 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 Gbps for libraries at or above 50,000 LSA & 1 Mbps per user (students and staff) in public schools) adopted in the E-Rate Modernization Order, and may not be applied to any other cost.⁸

For the purposes of the federal E-Rate program, special construction charges are the upfront, non-recurring costs of deploying new fiber or upgrading facilities to E-Rate eligible entities.⁹ 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.¹⁰

Federal E-Rate program rules permit applicants to request E-Rate discounts for special construction charges incurred up to six months prior to the July 1st start of the funding year (i.e. on or

⁶ See *In the Matter of Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, ORDER (December 14, 2022), Appendix B (Eligible Services List for Funding Year 2023 Schools and Libraries Universal Service Support Mechanism).

⁷ 47 CFR § 54.505(f)(1).

⁸ See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, 29 FCC Rcd 15538, 15547, para. 137(2014).

⁹ See *E-Rate Program Amortization Requirement*, WC Docket No. 19-2; *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, REPORT AND ORDER, 35 FCC Rcd 672, 676-678, paras. 12-18 (2020).

¹⁰ See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, ORDER, 31 FCC Rcd 9767, 9775 (2016); *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, ORDER, 25 FCC Rcd 18762, 18773 & n.54 (2010).

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after January 1), provided that: (1) Construction begins after selection of a service provider pursuant to a valid competitive bidding process; (2) A Category One recurring service depends on the installation of the infrastructure; and (3) The service start date is on or after the start of the funding year.¹¹

On April 11, 2023, the Commission entered an order seeking comment on a number of issues. Specifically, the Commission sought comment on whether to continue the E-Rate Special Construction Matching program, on ways to increase participation in the E-Rate program, other reimbursable expenses, certificated carrier requirements, and any other topics relevant to the future of the E-Rate Special Construction Matching program.¹²

Comments and Reply Comments

Comments were filed by the following entities: the Ainsworth Public Library, the Albion Public Library, the Atkinson Public Library, the Bancroft Public Library, the Bayard Public Library, the Blue Hill Public Library, the Broadwater Public Library, the Bruun Library, the City of McCook Library, the City of Norfolk Library, the Clay Center Library, the Exeter Library, the Fairmont Public Library, the Fullerton Public Library, the Geneva Public Library, the Grand Island Public Library, the Hemingford Public Library, the Hildreth Public Library, the Hruska Public Library (David City), the Keen Memorial Library (Fremont), the Lied Randolph Public Library, the Logan County Library, the Madison Public Library, the Maltman Memorial Library (Wood River), the Morrill Public Library, the Nancy Fawcett Memorial Library, the Ogallala Public Library, the Ord Township Library, the Palmyra Memorial Library, the Potter Public Library, the Ravenna Public Library, the Rising City Library, the Rock County Library, the Seward Memorial Library, the Shelby Community Library, the Shelton Public Library, the Sioux County Public Library, the South Sioux City Public Library, the Springfield Memorial Library, the Syracuse Public Library, the Taylor Public Library, the Tecumseh Public Library, the Valentine Public Library, the Verdigre Public Library, the Wahoo Public Library, the Walt Hill Public Library, the Waverly Library, the West Point Library, the Nebraska Library

¹¹ See 47 CFR § 54.507(2).

¹² See *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider implementing a program to incentivize new fiber construction for E-Rate eligible entities*, NUSF-117, Progression Order No. 1, ORDER SEEKING COMMENT (April 11, 2023) ("Order Seeking Comment").

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Commission, Educational Service Unit 9, the Southeast Library System, the Western Library System, and the Rural Independent Companies ("RIC").

Reply comments were filed by the following entities: the Brenizer Public Library, the Clarkson Public Library, the Clay Center Public Library, the Emerson Public Library, the Faith Memorial Library-Wallace, the Fullerton Public Library, the Gothenburg Public Library, the Kilgore Memorial Library-York, the Lexington Public Library, the North Loup Public Library, the O'Neill Library, the Stella Community Library, the Valparaiso Public Library and Charter FiberLink-Nebraska LLC/Time Warner Cable Information Services (Nebraska), LLC ("Charter").

Hearing

A public hearing was held on August 21, 2023, in Lincoln, Nebraska and via videoconference equipment.¹³ The hearing was held in legislative format. Mr. Paul Schudel entered an appearance on behalf of the Nebraska Rural Independent Companies ("RIC"). Shana Knutson entered an appearance on behalf of the Commission. All comments and reply comments filed in response to the Commission's April 11, 2023 Order were entered into the record.¹⁴ The comments and reply comments filed by RIC on January 17, 2020, and April 14, 2020 respectively, were also received into the record.¹⁵

Ms. Carrie Gans, Assistant Director of the Telecommunications Department, testified and provided an overview of the Commission's E-Rate Special Construction Matching program.¹⁶ She stated this program was designed to provide supplemental support to the FCC's E-Rate Special Construction program.¹⁷ The federal program provides a discount ranging between 20% to 90% on eligible equipment and services.¹⁸ The discount calculation is set by the FCC and includes inputs such as the number of students eligible for the National School Lunch Program (NSLP), the total number of students, and an urban or rural status.¹⁹

¹³ Citations to the Hearing Transcript ("TR") refer to the volume for the August 21, 2023 public hearing.

¹⁴ See Exhibit Nos. 4-11.

¹⁵ See Exhibit Nos. 12-14.

¹⁶ See TR at 10-20.

¹⁷ *Id.* at 10:22-11:3.

¹⁸ *Id.* at 11:4-6.

¹⁹ *Id.* at 11:6-11.

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Ms. Gans testified that the first three years of program participation has been relatively low. In year one, the Commission had seven entities participate in the E-Rate Special Construction Matching program.²⁰ In year two, the Commission had three libraries participate.²¹ In year three of the program, the Commission had four entities participate.²² Of the \$1 million budgeted, a small amount of that has been committed to funding the applications received in the first three years of the program.²³

Ms. Gans stated that the Commission received comments from 58 Nebraska libraries along with other stakeholders.²⁴ Of the 58 libraries, 32 were not yet fiber connected.²⁵ A recent survey of the Nebraska Library Commission reflected an estimated 133 Nebraska libraries that reported they were not connected to fiber.²⁶ She believed there was a continued need for the program to connect the remaining libraries with fiber.²⁷

Ms. Gans recommended the E-Rate Special Construction matching program be continued and that the Commission consider increasing the matching funds available to the E-Rate eligible entities to incentivize additional participation in the program.²⁸ She also recommended the Commission continue to rely on the federal E-Rate Special Construction program structure to take advantage of available federal funding.²⁹

Ms. Christa Porter, the Library Development Director at the Nebraska Library Commission, testified in support of continuing the program, increasing funding, and broadening the scope of the Commission's E-Rate program.³⁰ Ms. Porter has served as State E-rate Coordinator for Nebraska's public libraries.³¹ Ms. Porter provides the training and consultation that libraries need to ensure that they successfully apply for and receive their E-Rate funding. She holds annual E-Rate training workshops and provides

²⁰ *Id.* at 14:5-8.

²¹ *Id.* at 14:12-13.

²² *Id.* at 14:17-19.

²³ *Id.* at 14:23-25.

²⁴ *Id.* at 15:4-7.

²⁵ *Id.*

²⁶ *Id.* at 16:1-3.

²⁷ *Id.* at 16:4-7.

²⁸ *Id.* at 16:8-15.

²⁹ *Id.* at 16:15-25.

³⁰ *See id.* at 21-26.

³¹ *Id.* at 21:19-20.

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one-on-one personal assistance to libraries when they are submitting their E-Rate forms.³²

Ms. Porter stated that since the E-Rate Special Construction State Matching Fund Program was implemented in 2020, the Nebraska Library Commission has reached out to the libraries, providing awareness and encouraging participation.³³ The Library Commission targeted libraries in rural locations serving communities of less than 2,500 that are classified as unserved and underserved, meaning they have internet speeds under 25 Mbps. The Library Commission has provided annual workshops specifically on the E-Rate Special Construction program in addition to its regular general E-Rate workshops.³⁴ Library staff and board members from over 40 libraries have attended their workshops over the last three years.³⁵

Ms. Porter further indicated that over the last three years, twelve libraries have applied for and received new fiber using the E-Rate Special Construction State Matching Fund Program. The cost of the fiber construction for the libraries who applied is over \$159,780. In many cases, the E-Rate discounts were 80 or 90%, so this construction was at no cost at all to the libraries. Because of the Commission's Special Construction Matching Fund program, all costs were covered entirely.³⁶ She stated that due to the COVID-19 pandemic, libraries were closed or had reduced hours, which limited their ability to evaluate and participate in the program.³⁷ Moreover, other funding became available due to the COVID-19 pandemic at the same time that the Commission's Special Construction Matching Fund program started, such as funding through the CARES Act, ARPA, and other state and federal sources.³⁸ Due to those funding sources, some libraries have had other opportunities to upgrade to fiber.³⁹ However, on the most recent 2022 Public Library Survey of statistical data that the Nebraska Library Commission collects for the IMLS (Institute of Museum and Library Services), of the 227 libraries who submitted the survey, 133 reported that they still do not have a fiber internet connection - that is 59% of those libraries.⁴⁰

³² *Id.* at 21:20-22:1.

³³ *Id.* at 22:5-9.

³⁴ *Id.* at 22:9-14.

³⁵ *Id.* at 22:15-22.

³⁶ *See id.* at 23:4-13.

³⁷ *Id.* at 23:15-18.

³⁸ *See id.* at 23:18-22.

³⁹ *See id.* at 24:1-4.

⁴⁰ *Id.* at 24:5-12.

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Ms. Porter recommended the E-Rate Special Construction Matching program be continued for at least another four years or longer if needed.⁴¹ She also encouraged the Commission to expand the program to include E-rate Category One monthly charges; the Category Two equipment necessary to make the Category One service functional; and the repair, upkeep, and maintenance of all of these services and equipment.⁴²

Ms. Holly Woldt, Technology Support Specialist, with the Nebraska Library Commission, also testified in support of continuing the E-Rate Special Construction Matching program and increasing the funding.⁴³ Ms. Woldt stated she works directly with library directors and staff to assess and evaluate libraries' internet and network infrastructure.⁴⁴ She testified that of the 273 public libraries in Nebraska 60 percent serve fewer than 1,000 people.⁴⁵ The Nebraska Library Commission has also created an additional Library Support Specialist position.⁴⁶ That position is focused entirely on library technology infrastructure, cyber security, device privacy, filtering and network maintenance. The Library Commission just announced that it is offering centralized E-Rate compliant filtering at no cost to the library.⁴⁷ These initiatives seek to remove identified barriers to libraries participating in E-Rate.⁴⁸

Mr. Paul Schudel, counsel for RIC, indicated that the RIC members concur with Ms. Porter's recommendation that the Commission expand the E-rate program and continue it for a period of time the Commission deems appropriate.⁴⁹ RIC also filed comments and reply comments in the earlier phase of this proceeding. Those comments were offered and admitted into the record as Exhibits 12 and 13.⁵⁰

⁴¹ *Id.* at 25:12-17.

⁴² *Id.* at 25:4-11.

⁴³ *Id.* at 26-37

⁴⁴ *Id.* at 27:14-21.

⁴⁵ *Id.* at 26:22-24.

⁴⁶ *Id.* at 27:20-24

⁴⁷ *Id.* at 28:2-8.

⁴⁸ *Id.* at 28:8-10.

⁴⁹ *See id.* at 38:19-39:2.

⁵⁰ *See id.* at 39:3-9.

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O P I N I O N A N D F I N D I N G S

Continuation of the Special Construction Matching Program

In our May 19 Order establishing this program, we set an initial budget of \$1 million allocated to use over a four-year period for eligible entities to complete fiber construction.⁵¹ For a number of reasons, to and including the COVID-19 pandemic, we did not see the utilization of the program as expected. Based on the record in this proceeding demonstrating a continued need for connectivity,⁵² the overwhelming comments in support of continuing the program,⁵³ and the fact that we have a significant portion of the initial funding allocation remaining, we find the E-Rate Special Construction Matching Program should be extended. However, rather than placing an additional sunset on the use of this funding, we find that the program should be extended for an indefinite period of time and until we determine that all eligible entities seeking fiber connectivity with the assistance of this program have had an opportunity to do so. Accordingly, we find the E-Rate Special Construction Matching Program shall be extended until further order of the Commission.

Increasing the Match for Special Construction Projects

Based on the record, we also find that cost continues to be a barrier to connectivity for eligible entities notwithstanding the Special Construction funds made available by the FCC and the match made available by the Commission.⁵⁴ Accordingly, the Commission removes the ten (10) percent state portion cap to the state allocation that is matched by the FCC dollar for dollar and will fund the remaining fiber construction costs not funded by the FCC through the E-Rate Special Construction program. However, the

⁵¹ See May 19 Order at 24.

⁵² See, e.g., Comments of the Exeter Library, the Fullerton Public Library, the Hildreth Public Library, the Springfield Memorial Library, the Tecumseh Public Library, the Walt Hill Public Library, and the Reply Comments of the Lexington Public Library.

⁵³ See, e.g., Comments of the Grand Island Public Library, the Hemingford Public Library, the Rock County Library, the Maltman Memorial Library, Educational Service Unit 9, the Southeast Library System, the RIC Comments, the Reply Comments of the Valparaiso Public Library, and the Reply Comments of Charter FiberLink-Nebraska LLC/Time Warner Cable Information Services (Nebraska).

⁵⁴ See e.g., Comments of the Bancroft Public Library, the Lied Randolph Public Library, the Maltman Memorial Library, the Ord Township Library and the Rock County Library.

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total support from the FCC's E-Rate Special Construction program combined with the support provided through Nebraska's NUSF-117 program may not exceed 100 percent of eligible special construction costs.

Technical Support

A number of the library commenters discussed the challenges of the time-consuming nature with filing the required forms to participate in the federal E-Rate program, particularly in light of other core responsibilities of library staff. Based on the testimony provided by Ms. Porter and Ms. Woldt, the Commission understands that the Nebraska Library Commission is providing E-Rate assistance to libraries to navigate the E-Rate application process and has added a technical support position.⁵⁵ Network Nebraska may also be a resource to libraries and schools interested in participating through the consortium process.⁵⁶ Because of the fact-specific nature of the E-Rate application process the Commission finds it appropriate to continue to work with the Nebraska Library Commission and other state partners to reduce the existing barriers to E-Rate participation. The Commission will continue to work with the Library Commission to determine how to provide assistance without duplicating existing efforts.

Invoicing and Credits

The Commission sought comment on whether to require the carrier bidding on and providing services to participating entities to place the amount authorized for state support as a credit on the account.⁵⁷ The Commission further proposed that in cases where the state support amount created a credit balance on a participating entity's account, the service provider would be required to agree to allow the participating entity to either utilize the credit for future service or issue a refund check.⁵⁸ The Commission notes that this process mirrors the one adopted by the Commission in its Telehealth Program.⁵⁹ No commenter opposed the Commission's proposal. Accordingly, the Commission finds it should be adopted.

⁵⁵ See TR at 21-22.

⁵⁶ See *id.* at 30:16-19.

⁵⁷ See *Order Seeking Comment* at 4.

⁵⁸ See *id.*

⁵⁹ See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to administer the Nebraska Telehealth Program*, NUSF-57, Progression Order No. 6, ORDER (January 5, 2021) at 8.

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Ongoing E-Rate Support

Some of the commenters indicated that the monthly recurring cost for fiber-based service is prohibitive even with ongoing E-Rate support.⁶⁰ Other commenters indicated that their carrier provides them with low-cost or free access to broadband service.⁶¹ The Commission finds further study is warranted prior to making a determination relative to providing supplemental support for recurring E-Rate program costs. This proceeding was initiated and noticed with the limited purpose of establishing a matching program for the fiber construction for libraries and schools lacking connectivity, and that continues to be the Commission's priority.⁶² However, after additional evaluation in coordination with the Library Commission, the Commission may initiate a proceeding to consider whether supplemental E-Rate program support should be allocated for the purpose of reducing recurring costs for eligible entities.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the findings and conclusions set forth herein be and they are hereby, adopted.

⁶⁰ See, e.g., Comments of the Blue Hill Public Library, the Geneva Public Library, and Lied Randolph Public Library.

⁶¹ See, e.g., Comments of the Ainsworth Public Library, the Morrill Public Library, and the Ravenna Public Library.

⁶² See May 19 Order at 23.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 11th day
of October, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Eric M. Hamler

Tim Schram

Karen Stocker

Don Watson

Chair

ATTEST:

Thomas W. Golden

Executive Director