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May 24, 2023

**Via Email (board.secretary@bpu.nj.gov) and the BPU Public Document Search Webpage**

Sherri Golden
Secretary of the Board
New Jersey Board of Public Utilities
44 South Clinton Ave.
PO Box 350
Trenton, New Jersey 08625-0350

**RE: In the Matter of the New Jersey Board of Public Utilities' Response to the Covid-19 Pandemic, Docket No. AO20060471**
**Universal Service Fund & Fresh Start Programs: Proposed Changes**

Dear Secretary Golden:

On behalf of Legal Services of New Jersey's low-income clients, please accept this letter setting forth LSNJ's comments in response to the Board's Notice dated May 3, 2023, requesting input on the Board's Straw Proposal regarding proposed changes to the Universal Service Fund and Fresh Start programs.[1]

For nearly two decades, the Board's Universal Service Fund percentage-of-income based energy bill credit program and Fresh Start arrearage forgiveness program have allowed many of New Jersey's lowest-income households to maintain vital gas and electric service. In recent years, the Board's termination protections and two-year USF/Fresh Start program expansions have been tremendously successful in helping low-income New Jerseyans meet the challenges arising from the economic effects of

[1] LSNJ coordinates New Jersey's Legal Services system, 6 non-profit corporations throughout the state providing free legal services to low-income people in civil legal matters. When appropriate, LSNJ makes available information and perspectives on matters of broad public importance in the lives of people in poverty based on its experience in representing tens of thousands of low-income people each year.

the COVID pandemic without losing vital utility services. Although additional data is needed, the Board's January 23, 2023 Stakeholder Meeting Notice preceding the current proposal demonstrated that the COVID expansions have been a success: USF enrollment increased 97% during the first year of COVID expansions, while Fresh Start benefits alone reduced total gas and electric arrearages by more than $50 million. Arrearage data as of February 2023 recently posted on the Board's website shows that arrearages – especially for residential accounts more than 60 days overdue – are continuing to decrease, and are down about 40% from February 2022 levels.[2]

LSNJ commends the Board and Staff for proposing to make many of the Board's USF program enhancements that have proven successful during the pandemic response period permanent when the initial two-year expansion period comes to an end this fall.

The data necessary to fully address these important questions, however, are only just beginning to become available. LSNJ previously recommended, along with other stakeholders, that the Board maintain the current USF and Fresh Start program expansions after September 30, 2023, in order to allow for the availability of crucial data on the extent of the continuing effects of the COVID pandemic, and analysis of robust data about the outcomes of program operation under the expanded program parameters. While this remains the case, LSNJ respectfully offers the following comments on the Board's proposed permanent changes:

**The USF/Fresh Start Income Ceiling**

The Board's proposal to adopt a permanent income ceiling for the USF program at 60% of State Median Income represents a substantial improvement from the pre-pandemic income ceiling (185% of the Federal Poverty Level), and in that regard would substantially strengthen the USF program. At the same time, the experience and (albeit limited) data available about the successful operation of the program under the Board's COVID expansions, using a substantially higher income ceiling of 400% of the Federal Poverty Level, strongly suggest that the permanent ceiling should remain at a higher level. LSNJ's recent *True Poverty* study found that the overall average true poverty level for households in New Jersey – the income that nonelderly families without members with disabilities need in order to meet basic needs – is 300% of the Federal Poverty Level. *True Poverty: What it Takes to Avoid Poverty and Deprivation in the Garden State* (July 2021) (https://proxy.lsnj.org/rcenter/GetPublicDocument/00b5ccde-9b51-48de-abe3-55dd767a685a). Accordingly, the permanent USF/Fresh Start income ceiling should not be any less than 300% of the Federal Poverty Level. For now, the economic effects of the pandemic have not fully dissipated, and the income limit should remain at the COVID expansion level of 400% of the Federal Poverty Level until more current and complete data on arrearage levels and expanded USF/Fresh Start program usage by geographic location and income levels are available.

Concerns have understandably been raised about modest increases to electric and gas rates that can result from enhanced USF and Fresh Start benefits – concerns that are most salient for customers with incomes just above the income ceiling for the program. These concerns should be addressed in part by the Board taking steps to ensure that both utility shareholders and ratepayers share the burdens of increased costs resulting from the COVID pandemic, through a mechanism like the one

[2] *See* https://www.nj.gov/bpu/newsroom/reports/covid19/February%202023-%20Arrearage%20Data-%20Energy%20(2).pdf.

recently adopted by the New York Public Service Commission.[3] Looking forward, once further data are available and can be thoroughly reviewed – including but not limited to data reported under L.2022, c. 107, regarding the effects of the pandemic on utility service and, on an ongoing basis, using the reporting template approved by the Board on May 10, 2023 – consideration of a new permanent income ceiling for the program would be appropriate. LSNJ respectfully suggests that the efficiency benefits of setting the USF income ceiling at 60% of State Median Income in order to correspond with the current LIHEAP income ceiling are relatively small. In light of the *True Poverty* report findings, the appropriate USF program income ceiling levels to consider are between 300% of the Federal Poverty Level (the average amount necessary to meet basic needs in New Jersey) and 400% of the Federal Poverty Level (for which rich data should be available based on program operation while the Board's COVID expansions are in place).

**Affordability Threshold**

The adoption of a 2%/2%/4% affordability threshold (2% of income for electric and 2% of income for gas, or 4% of income for electric heat) has been integral to the success of the Board's enhanced USF/Fresh Start program, and LSNJ strongly supports the Board's proposal to maintain the 2%/2%/4% threshold. As noted above, additional data are crucial to making long-term decisions about program parameters. At the same time, it is clear that the 2%/2%/4% affordability threshold has proven workable and effective.

In the context of the affordability threshold, it is particularly important to consider data on USF credit amounts and utility service sustainability for households in different income ranges and in different regions of the state, in order to determine the extent to which the needs of households at different income levels are being met, and in order to consider whether modified benefits or other program modifications are appropriate to ensure that households with incomes in ranges that are just over the income ceiling are not facing undue burdens from increased energy costs (a small portion of which may be attributable to benefits for households with incomes under the ceiling).

**USF Monthly Benefit Cap**

Any cap on USF monthly benefits means that the needs of some of the most vulnerable households, including those with the most substandard housing, are not being met. LSNJ supports the Board's proposal to maintain the increased monthly benefit cap of $180 rather than reverting to the pre-pandemic cap of $150. At the same time, LSNJ urges the Board to carefully review data on the effects of the cap (and to make that data available to stakeholders), in order to consider whether it would be appropriate to eliminate the cap entirely. The Board may also wish to consider additional steps to encourage access to weatherization, especially for tenants who would like to improve energy efficiency but need their landlord's approval. Households with the greatest energy needs should not be precluded from receiving assistance that is necessary to maintaining affordable access to crucial utility service as a result of a cap on monthly USF credits.

[3] *See, e.g.*, Order Authorizing Phase 2 Arrears Reduction Program dated Jan. 19. 2023, https://dps.ny.gov/system/files/documents/2023/02/phase-2-arrears-reduction-program-1-19-23-order.pdf, at 23-24 (noting shareholder contributions of over $101 million to mitigate COVID-related costs).

**Fresh Start Monthly Benefit Cap**

LSNJ supports the Board's proposal to permanently eliminate the $100 cap on monthly Fresh Start forgiveness. This cap was not part of the original Fresh Start Board Order, and is inconsistent with the Board's statement in that Order that the Fresh Start program should provide "full forgiveness of any . . . pre-USF arrearages."

**$5 Minimum USF Monthly Credit**

LSNJ supports the Board's proposal to maintain the minimum $5 USF monthly credit. The minimum credit allows all households who meet program income limits to access applicable Fresh Start benefits, avoids unintentional loss of program benefits as a result of improvements in energy efficiency, and ensures protection under the Board's Winter Termination Program.

**Fresh Start Re-Enrollment**

LSNJ supports the Board's proposal to make participation in Fresh Start available once every 5 years beginning October 1, 2023. Fresh Start ensures that USF credits can fulfill their purpose of allowing households to keep vital utility services in place while making affordable monthly payments. Reopening Fresh Start access as part of the Board's COVID expansions has made a huge difference in addressing the consequences of COVID-related income shocks during the expansion period.

Income shocks are a fact of life for low-income households even during the best to times, though, and can cause arrearages to recur even for the most prudent of households. This can happen, for example, when annually determined USF credit levels are no longer sufficient because of an intervening loss of income. Making re-enrollment into Fresh Start available will help to prevent income shocks from effectively excluding affected customers from having utilities in their name, and being able to access USF benefits, in the future.

Concomitantly, LSNJ also urges the Board to eliminate the $60 arrearage threshold for participation in Fresh Start, at least for lower-income households, who are most likely to be unable to pay $60 toward arrears without foregoing other basic necessities, and thus face termination of service under N.J.A.C. 14:3-3A.2(a) after being in arrears for 3 months even if they maintain a perfect payment record once they are approved for USF credits.

**Application of LIHEAP Benefits**

LSNJ supports the Board's proposal to resume the practice of applying LIHEAP benefits to current balances rather than arrears, for the reasons set forth in the Board's proposal.

Thank you for your consideration of the foregoing comments.

Sincerely,
LEGAL SERVICES OF NEW JERSEY, INC.

By: *David McMillin*___________________________
David McMillin