

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of the Nebraska
Telecommunications Association for Investigation and
Review of Processes and Procedures Regarding the Nebraska
Universal Service Fund:
Application to the Nebraska Broadband Pilot Program from
Pierce Telephone Company.

Application Number: NUSF-77.15

PREFILED TESTIMONY of

Tom Schommer

on behalf of Telebeep, Inc., dba: Telebeep Wireless
opposing the Application of Pierce Telephone Company (NUSF-77.15)

September 27, 2013

Introduction and Testimony of Tom Schommer

My name is Tom Schommer. I am the owner of Telebeep Wireless. My business address is 2404 Taylor Avenue, Norfolk, NE 68701. This testimony is on behalf of Telebeep Wireless.

My company has been involved in the wireless industry for over 30 years. In addition to providing Wireless High-Speed Broadband Services to Northeast and North Central Nebraska, we are also a provider of Paging Services, 2-Way Radio Services as well as an Exclusive Agent for US Cellular throughout the region. I serve on the Board of Directors of the Norfolk Area Chamber of Commerce and the Norfolk Area Economic Development Council. I am also involved in Legislative matters relating to spectrum and Universal Service for our National Association of Wireless Internet Service Providers.

- In 2002, with the use of private funds only, we began to deploy the region's most extensive Fixed Wireless Broadband Network, which today consists of over 300 points of presence, extending into 35+ rural communities throughout 10 counties, covering over 5,000 square miles. A network delivering reliable Broadband services to people in the harder to reach areas in Northeast and North Central Nebraska.
- As many of you already know, we transmit from existing small towers, water towers, tall building roof-tops, grain silos, elevator legs, telephone poles, sometimes trees, whatever it takes to deliver broadband through the air, often times to the un-served or underserved areas in rural Nebraska.
- We work against many obstacles to build broadband into areas where the population is so small that a business case would not normally work. But, by being frugal and doing most all of the work ourselves with cost-efficient technology, we have found a way to make this a thriving business by solving the "digital divide" for our neighbors while earning a good living and hiring others in the area to help us.
- We fund our operations using all we have. We borrow against all assets we own, mortgage our homes, spend our savings, and in rough times, forego a salary in order to pay staff.

Application Number NUSF-77.15 is filed:

On or about February 8, 2013, Pierce Telephone Company filed an application (NUSF-77.15). In their application, Pierce Telephone Company is seeking support from the Nebraska Universal Service Fund (NUSF) dedicated wireless program through the Nebraska Broadband Pilot Program.

Petition for Formal Intervention:

On April 4, 2013 Telebeep Wireless filed a Petition for Formal Intervention requesting that the Commission grant it status as a Formal Intervener in matters relating to NUSF-77.15. A copy of the request was also provided to Pierce Telephone Company, as required.

According to the application, Pierce Telephone Company proposes to use the subsidies to support a new wireless service in the rural areas around Norfolk. We believe that these subsidies are unnecessary as those services already exist for consumers in the area.

My company, Telebeep Wireless, already provides Broadband Services as defined by the FCC in the areas mentioned in NUSF 77.15, utilizing multiple bands in the unlicensed and "lightly licensed" spectrum, including the 3.65 GHz band being proposed by Pierce Telephone Company. Telebeep has accomplished this with private funding and without subsidies. While we certainly do not object to a competitive presence in our marketplace as it already exists and has for many years, the basis of our objection is the use of Universal Service Funds to subsidize the project.

Over the past several years, at the request of the Nebraska Public Service Commission, and in good faith, my company has voluntarily participated in the Nebraska Broadband Mapping Project. This map was to be used in part to determine where broadband service was and was not available in Nebraska. Data from this map could then be used to determine areas that were either “un-served” or “greatly underserved”. Those targeted areas could then be potentially eligible for Federal and State funding programs and/or projects such as Nebraska Universal Service Funding and the Broadband Pilot Program.

Please refer to the official Nebraska Broadband Mapping Site which clearly indicates that there are already several providers, including my company, providing broadband service as defined by the FCC in the area targeted by Pierce Telephone Company in NUSF 77.15. Therefore, any claim by Pierce Telephone Company that such areas are un-served by existing broadband providers and thus deserving of subsidies is incorrect.

Any subsidies to Pierce Telephone Company to build out new wireless facilities in these areas would be unnecessary and unfair to existing providers such as Telebeep Wireless, which have expended private capital to build facilities and services that Pierce Telephone Company would only duplicate.

Limited resources available under the Broadband Pilot Program and NUSF in general would be better directed towards other areas of the state that are truly un-served. The use of Nebraska Universal Service Funding to subsidize this project would not be a proper use of the funds and would work in opposition to the mission of the National Telecommunications and Information Administration, (NTIA) as well as that of the Nebraska Information Technology Commission (NITC).

Reduction in the scope of Project:

On May 2, 2013, I received a copy of a letter from Mr. Paul Shudel with the law firm of Woods & Aitken, representing Pierce Telephone Company in connection with the NUSF-77.15 application. The letter was addressed to Ms. Shana Knutson, General Counsel for the Commission.

In the letter, Mr. Schudel states that Pierce Telephone Company has offered to reduce the scope of its initial 2013 NEBP Application. This reduction does not satisfy our concerns with respect to the existence of multiple Broadband Providers in the area included in the NUSF-77.15 application for funding. The reduction in scope only addressed the concerns of facilities based providers and not that of Fixed Wireless Providers such as Telebeep Wireless. Mr. Schudel also stressed a few points that I wish to respond to.

I will respond to these on a point by point basis.

Point 1: “..... Pierce does not intend to “overbuild” any area that currently is receiving fixed point Broadband Service”

Response to Point 1:

While it may not be the intent of Pierce Telephone Company to “overbuild”, there is no question that it is in their proposed plan. In the above mentioned letter dated May 2, 2013, Mr. Schudel included a map indicating the location of at least two towers that are proposed to be constructed by Pierce Telephone Company with respect to the build out proposed in NUSF-77.15. Both towers are clearly right in the heart of my company’s existing Fixed Wireless Broadband Network. A network that is already providing unsubsidized and reliable broadband service as defined by the FCC, to satisfied customers in the proposed area.

The National Broadband Map as well as the Nebraska State Broadband Map, both federally funded and trusted resources, clearly displays the broadband coverage and service currently available in the proposed area. The map clearly shows that Broadband service is already available in the area.

Point 2: “..... *Pierce’s Application remains focused on rural areas outside of Norfolk for which fixed point broadband service is not currently available. Absent such availability, these areas do not have “comparable accessibility” to broadband services*”

Response to Point 2:

This statement is completely incorrect. Please refer to my “Response to Point 1” for information regarding the focus of Pierce Telephone Company’s Application. To state that “comparable accessibility is not currently available” is a complete misrepresentation of the truth. My company not only offers Fixed Wireless Broadband service in the area, we have a large number of satisfied customers currently utilizing the service.

Point 3: “..... *Pierce has requested factual substantiation from the protestants/interveners that any census blocks in the remaining areas included in the reduced scope Pierce Application are receiving fixed point broadband service. No such information has been provided, and the absence of such information should confirm the eligibility of the revised Pierce Application for funding*”

Response to Point 3:

The National Broadband Map and the Nebraska State Broadband Map are both trusted sources for information regarding areas currently receiving fixed wireless broadband service. Pierce Telephone Company participated in the National Broadband Mapping Project as well as the Nebraska State Broadband Mapping Project and therefore is aware of the requested information being readily available for viewing.

Telebeep Wireless also participated in both Mapping Projects and provided the requested information during the process of developing the maps. That process is ongoing and updated periodically by data provided by broadband providers, including Pierce Telephone Company and Telebeep Wireless. Any claim that such information has not been provided is incorrect.

One of the most important goals in the creation of the National Broadband Map which is part of NTIA’s State Broadband Initiative was to ensure that the communications sector which lies at the center of the digital economy continues to spur economic growth, private investment and job creation.

The use of NBPP funds as proposed in NUSF-77.15 would work in opposition to the goals of the NTIA’s State Broadband Initiative by burdening existing broadband providers such as Telebeep Wireless to have to compete with a public funded competitor.

Staff Recommendation:

In an email dated August 28, 2013, I received the Staff Recommendation relating to the disbursement of the 2013 NEBP program support in the NUSF-77 docket. In the recommendation, Commission staff recommends fully funding Application NUSF-77.15.

The Staff Recommendation states:

*“the Commission previously expressed the belief that the NEBP program support amounts should be specific **and targeted broadband support to un-served and underserved areas.** To that end, the Commission defined un-served and underserved and broadband as they pertain to the NEBP program”.*

Un-served: *“any area where no facilities-based provider offers broadband and where Internet connectivity can only be made through dial-up service”*

Under-served: *“any area where a facilities –based provider offers internet access at speeds greater than 56K down but not greater or equal to those speeds defined as broadband.”*

In the staff recommendation, it also states that the Applications will be “.... scored based on various characteristics of the area to be served, with broadband mapping data collected through the State Broadband Initiative (SBI) grant program, for which the Commission is the designated state entity, used as a starting point for application review.”

Although the above scoring statement regarding the use of the broadband mapping data being collected through the State Broadband Initiative program was included in the staff recommendation, not all data was considered. Only data referring to Facilities Based providers was used in the scoring for recommendation. This was discovered during the Technical Conference on September 10, 2013.

Technical Conference

On September 10, 2013, a technical conference was held with Commission staff at 1:30 p.m. in the Commission Niobrara Conference Room and via telephone bridge. I attended the conference via telephone bridge.

The presenter for the technical conference was Mr. Tyler Frost. Mr. Frost is the Commission’s economist and cost model expert. Mr. Frost provided a review of the Commission’s analysis for determining whether the proposed projects relating to NUSF-77 (including NUSF-77.15) should be eligible for universal service support and if so, at what levels. Mr. Frost indicated that the staff employed a methodology similar to that adopted by the Commission in its previous findings in dedicated wireless fund orders.

In the presentation, Mr. Frost presented a definition of terms used in the analysis. Specifically, Mr. Frost defined Broadband, Un-served, Under-served, and Comparable access. They were defined as follows:

Broadband: Service that provides consumers with a minimum actual download speed of 4 Mbps and upload speed of 1 Mbps.

Un-served: Any area where no facilities-based provider offers access at speeds greater than 56K.

Under-served: Any area where a facilities-based provider offers access speeds greater than 56K down but less than broadband.

Comparable Access: Universal broadband service access to one fixed and one mobile broadband provider.

NOTE:

It should be noted that there is a discrepancy in the definition used in the Scoring Model presented during the Technical Conference and that which is used in the footnotes of the staff recommendation. In the footnotes of the staff recommendation, the definition of “un-served” references Application Number NUSF-77 Progression Order No. 4 which includes “....and where Internet connectivity can only be made through dial-up service”. The Scoring Model description had omitted this from the definition. This is significant because “dial-up” service is not the only method of Internet connectivity available in the area.

Mr. Frost stated that at the top of the list of the Goals and Objectives and high in the Scoring Model Requirements of the NEBP program is to target broadband support to Un-served and Under-served areas. Mr. Frost also stated that a requirement of the NEBP program was to utilize the State Broadband Initiative Map as a “starting point” in the scoring requirements among other things, coverage.

During the technical conference an attendee asked Mr. Frost if served and un-served areas were simply based on the State Broadband Map. Mr. Frost answered Yes to the question.

We learned during the Technical Conference that Staff only considered “Wireline” or “Facilities Based” providers shown on the SBI map and ignored the Wireless providers completely, including Fixed Wireless providers. The Facilities Based providers may also have included cable providers.

During the call, I specifically asked Mr. Frost if “Fixed Wireless” providers were dismissed or discounted in the determination of served and/or un-served/under-served areas. Mr. Frost responded by stating that “Wireless providers were not considered in the recommendation as a “served” area because it was difficult to verify the indicated coverage to be accurate.

I followed up the question by asking Mr. Frost if he was saying that the staff found it appropriate to NOT include the existing “Fixed Wireless” service providers in the category of “Served” while at the same time, in the case of NUSF-77.15 recommend funding the build-out of a “Fixed Wireless” project. Mr. Frost’s answer was understandably vague as he could not talk about a specific application during the conference.

Unintended Consequences:

The unintended consequences and precedence set of not including a Fixed Wireless provider and only considering Facilities Based Providers in determining “Served” areas on the map and then approving funding of a Facilities Based Provider to build-out the area with a Fixed Wireless solution could be significant.

Using the above logic, the following could easily occur:

1. In 2013, Staff recommends funding of NUSF-77.15
2. In 2013, Commissioners approve the funding of NUSF-77.15
3. In 2013, Pierce Telephone Company uses the funding to build-out the Fixed Wireless project as proposed in NUSF-77.15.
4. In 2014, a different facilities-based provider submits an application for funding to build out broadband in the identical service area as the 2013 applicant (Pierce Telephone Company) requested and was awarded funding for in 2013.
5. Using the same logic as used in 2013, Staff would need to again NOT include a Fixed Wireless solution in determining the “Served” areas on the SBI map and then again recommend funding the 2014 project to build-out the same exact area funded in 2013.
6. Using the model in this year’s staff recommendation, this could go on indefinitely.

Although it may seem a bit far-fetched, but all things equal, what I’ve described above may quite likely become a reality.

It would be in the consumers’ best interest for companies such as Pierce Telephone Company to seek NUSF support for areas that truly need broadband, rather than try to gain subsidies for areas that are already served. Fixed wireless providers across Nebraska, such as Telebeep have met the needs of un-served and underserved communities on the National Broadband Map by delivering much-needed broadband services—most often at lower prices and higher speeds than that of surrounding providers.

In summary, we feel that it would be unfair to my company as well as other Fixed Wireless Broadband providers across the State of Nebraska, for the Commission to not consider the presence of an existing Fixed Wireless Broadband Provider and then go ahead and approve subsidies to support the construction of a Fixed Wireless Broadband solution.

If existing Fixed Wireless Broadband providers were not considered by the commission staff as Broadband Service, then it is difficult to understand the fairness behind the Commission approving funding for a Fixed Wireless Broadband solution. It is even more difficult to understand the reasoning behind the approval for funding a project that will provide service identical to that which already exists in the immediate area included in NUSF-77.15

As mentioned earlier in this testimony, limited resources available under the Broadband Pilot Program and NUSF in general would be better directed towards other areas of the state that are truly un-served. The use of Nebraska Universal Service Funding to subsidize this project would not be a proper use of the funds and would work in opposition to the mission of the National Telecommunications and Information Administration, (NTIA) as well as that of the Nebraska Information Technology Commission (NITC).

I respectfully ask the commission to ensure that programs like the Nebraska Universal Service Fund and the Nebraska Broadband Pilot Program do not use public money to subsidize areas that are already being served by fixed broadband providers. Allowing the use of public funds in such a manner would allow government funded competitors in the telephone sector to unfairly compete against established small businesses.

This concludes my testimony and, on behalf of Telebeep Wireless, I respectfully request that the Commission does not approve funding of Application Number: NUSF-77.15.