

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. C-5272  
Public Service Commission, on )  
its own motion, to implement ) ORDER OPENING DOCKET, SEEKING  
the Nebraska Broadband Bridge ) COMMENT AND SETTING HEARING  
Act. )  
) Entered: June 8, 2021

BY THE COMMISSION:

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

The Nebraska Public Service Commission (Commission) initiates this proceeding on its own motion to implement the Nebraska Broadband Bridge Act.

On May 26, 2021 the Governor signed the Nebraska Broadband Bridge Act (the Act), LB 388, which created the Nebraska Broadband Bridge Program to facilitate and fund the deployment of broadband networks in unserved and underserved areas in addition to other programs set forth in state and federal law. Grant funds shall only be used for development costs for a qualifying project.<sup>1</sup> In order to qualify, the project is required to provide broadband Internet service scalable to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater (100Mbps/100Mbps). Further, each applicant shall provide matching funds equal to fifty percent of the total development costs of the project.

The time frame for grant applications was also specifically set forth in LB 388. The Act requires the Commission to administer a grant program with applications submitted on or before October 1, 2021 for fiscal year 2021-22 and on or before July 1 for each fiscal year thereafter. Within three business days after the application deadline, the Commission will publish on its website the proposed projects, project areas, and broadband speeds for each application submitted.

The Act requires the Commission to distribute grants based on specific priorities, which are as follows:

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<sup>1</sup>The application shall indicate the project area. A sample application form is appended to this Order as Attachment A and discussed further below.

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First Priority: A project in a project area that is an unserved area which the Commission has determined pursuant to section 75-160 or 86-166 needs further support but has not received public assistance for development of a broadband network.

Second Priority: A project in a project area that is an unserved area, that has received federal support for development of a broadband network, and that will not be completed within 24 months after the grant application deadline if the Commission determines that a grant under the program will accelerate the deployment of the network; and

Third Priority: A project in a project area that is an underserved area and that the Commission determines has a broadband and digital inclusion plan.

The Commission must also establish a weighted scoring system to evaluate and rank the applications received each fiscal year. The Commission is required to publish the specific criteria and the quantitative weighted scoring system that the Commission will use to evaluate and rank applications and award grants pursuant to the program. Such weighted scoring system shall consider, at a minimum:

- The financial, technical, and legal capability of the applicant to deploy and operate broadband Internet service;
- Whether the provider is designated as an eligible telecommunications carrier or will be so designated prior to the project completion date;
- The ability of an applicant to offer rates in the project area that are comparable to the rates offered by the applicant outside the project area;
- The available minimum broadband speeds, with higher scores for faster speeds, except that no grant shall be awarded based on speeds less than those scalable to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater;
- The ability of the broadband infrastructure to be scalable to higher broadband Internet speeds in the future; and
- Whether the applicant has committed to fund more than fifty percent of the total development costs of the project from sources other than grants under the program, with higher scores for higher amounts of matching funds.

As a condition of accepting a grant under the program, an applicant shall agree to provide broadband Internet service in the project area until released from the applicant's commitment by the

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Commission. The maximum grant amount awarded under the program with respect to any single project shall be five million dollars.

Challenges are also to be considered by the Commission. A challenging provider may, within thirty days after the publication notice on the Commission's website, submit to the Commission, on forms provided by the Commission, a challenge to an application. Such challenge shall contain information demonstrating that at the time of submitting the challenge, (a) the provider provides or has begun construction to provide a broadband network in the proposed project area with access to the Internet at speeds equal to or greater than 100/20 Mbps or (b) the provider provides broadband service through a broadband network in or proximate to the proposed project area and the provider commits to complete construction of broadband infrastructure and provide a broadband network to the proposed project area with access to Internet at speeds equal to or greater than 100/20 Mbps no later than 18 months after the date grant awards are made under the program.

While LB 388 provides significant guidance to the Commission and structure to the program, there are components to the grant process and criteria the Commission must consider prior to releasing a grant application and scoring criteria. Accordingly, we open this proceeding to seek comment on these issues so that we may have the structure in place prior to the submission of applications for grants under this program.

Because of the abbreviated timeframe by which the Commission must develop the application criteria and scoring mechanism, we hereby set forth an expedited process for receiving comments as set forth below. We will also set this matter for hearing.

## Commission Proposal and Issues for Comment

The Commission seeks comment on the following proposal and issues to be resolved before the application deadline:

### *Grant Priorities*

The Commission is required to distribute grants based on the priorities as outlined in LB 388. As such, the Commission intends to rank, evaluate, and fund all applications that fall into the highest priority category, starting with the highest scoring application and moving through each application in descending score until either applications or grant funds are exhausted. If available grant funding is still available, applications that fall into the second priority category would

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then be ranked, evaluated, and funded according to score. Finally, if grant funding is available after evaluation of the two highest priority categories, applications that fall under the third priority category would then be ranked, evaluated, and funded based on score.

### *Project Areas*

Geographic Area Identification The Commission proposes that applicants include, at a minimum, a polygon shapefile (.shp) of the proposed project area in the application. Applicants should include a polygon shapefile for each project area that is subject to consideration, and for which the Commission will post on its website. The Commission expects that all locations within the polygon shapefile will be capable of receiving broadband service at the speeds identified upon completion of the project. Additionally, the Commission proposes that the applicant identify the serviceable locations of households that could be served through the project either via a point shapefile (.shp) or in an alternative format which will enable the Commission to determine the number of locations being served. Should the Commission require identification of the serviceable locations in a point shapefile submitted to the Commission? Why or why not? In the absence of specific identification of each serviceable location, is it appropriate for the Commission to assume that all locations within the polygon will be served? Why or why not?

The Commission believes only allowing the shapefile format for defining project areas and serviceable locations will allow for timely publishing of applications. However, if commenters believe strongly that other formats should be allowed, please provide a description and justification.

Speed Data. In addition, the Commission proposes to require applicants to identify the current broadband speeds provided in the project area as well as how the applicant intends to deliver the proposed speeds after the grant. To the extent that an applicant has provided service at the proposed speeds offered, we would suggest the applicant file documentation that those speeds are delivered in other areas served by the applicant and that those speeds are advertised. Should the Commission require such information to be filed? If not, what other type of information should the Commission require to ensure that the applicant can deliver the proposed speeds through the technology deployed?

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Non-Contiguous Geographical Areas. The Commission proposes to allow applicants to file grant applications for project areas that are not contiguous. The Commission believes that to file a project application that maximizes the priority areas, applicants may need to work around areas that may currently have some level of broadband service. Is this a reasonable assumption? The Commission seeks comment on that proposal or whether to require that applicants explain why project areas may not be contiguous. Should the Commission be concerned about cherry picking the lowest cost areas and leaving the higher cost areas out of an application? Should separate applications be required for areas that are not contiguous?

Unserved and Underserved Areas. The Commission proposes to require separate applications for unserved and underserved areas. This would allow the Commission to screen and prioritize applications in a more streamlined fashion. The Commission seeks comment on whether interested parties believe we should accept applications which include project areas with a mixture of both unserved and underserved areas. If a project area includes both unserved and underserved areas, the Commission proposes to consider the application under the lower priority tier. We seek comment on this approach.

Overlapping Areas. The Commission proposes to only fund the higher ranked project if multiple applications have areas that significantly overlap. In the event that overlap between two applications is minimal, the lower ranked carrier would be allowed an opportunity to remove the overlapped areas from their application and adjust the relevant portions of their application accordingly. The revised applications would not be allowed to otherwise modify their application to include areas not in the original application or seek more grant support than was originally requested. We seek comment on this approach.

Digital Inclusion Plan. In accordance with LB 388, the Commission requires applications that serve "underserved" areas to include a digital inclusion plan. For the purposes of the application, the Commission proposes to require that a digital inclusion plan provides information about how information and communication technologies provided as a result of the grant will be made available to all individuals and communities within the coverage area, and specifically how the project will include methods for access by those that are disadvantaged within the community. Specifically, the Commission proposes to look at how carriers are going to make broadband service plans affordable to consumers and advertise those services regularly in a way to reach low income

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consumers.<sup>2</sup> The Commission also seeks to disqualify any digital inclusion plans where the carrier would impose data caps on consumer usage.

### *Matching Funds*

We also seek comment on what should constitute matching funds in this program. The Commission has generally considered matches in other grant funded programs such as in NUSF-77 and NUSF-92. In considering the match, the Commission reimburses applicants based on a percentage of the match identified in the application. If the actual costs are under budget, the match percentage is adjusted accordingly. Should the Commission continue this approach and apply it to this program? If not, why not?

Should the Commission consider federal or state universal service support as a match? What about funding from other government programs? Is there a limit on the amount of universal service support amounts that could be used as a match? The Commission has proposed that the sources of matching funds are weighted differently, to give preference for funds that are not otherwise already committed to broadband deployment, as is the case for state and federal universal service funds, or through other federal grant programs. Also, upon implementation of certain provisions of LB 338,<sup>3</sup> which requires that NUSF support for construction of new broadband infrastructure supports service at 100/100 Mbps up/down, we would propose that NUSF support would not be available as a matching source beyond the first year of the grant program. Since most NUSF support already goes to fiber builds, should NUSF be allowed as a match component at all? Are there certain situations where NUSF is not sufficient to cover the full costs of deployment? How should the match component be identified? What about grant funds from other sources?

Should the Commission consider an in-kind contribution as a match? The Commission notes that any in-kind contribution must be used for the same purposes as that of the grant - i.e. for the

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<sup>2</sup>Sample indicators could include but are not limited to the following: the cost of a standard broadband connection; the cost of a standard broadband connection as a proportion of income; the cost of a standard mobile broadband connection; the cost of equipment such as computers, tablets and mobile phones.

<sup>3</sup>See LB 338, Slip Law (2021).

development costs of the qualifying project. If in-kind contributions are allowed, what types or sources of in-kind contributions should be acceptable? For example, should the Commission consider access to rights-of-way to count towards a match? If so, how should that be valued? If matching funds consist of existing inventory, the Commission proposes to ask applicants to identify costs that were originally paid. Is that a fair approach? Should the Commission consider other tangible items such as equipment, and if so, how should the Commission determine the fair market value for items offered as in-kind matches? What sort of documentation should be required for a claimed value of an in-kind match?

### *Eligibility and Priority Determination*

The Commission proposes to use information collected through past grant programs and FCC Form 477 data as default information relative to the service and speeds provided in proposed project areas. However, we invite applicants to enhance this process by including any data they may have to indicate the lack of service or level of service being provided in the proposed project areas. If speed test data is provided by an applicant, how should the Commission utilize speed testing to determine priority areas? What methodology should the Commission use? How recent should the data collected be? How many speed tests or data points should be required? Should there be a certain percentage of speed tests that are considered determinative for a project area? For example, if 50 percent of the speed tests in a given census block indicated that there is service with speeds of 100/20 Mbps is that sufficient for determining that the census block is served? If not 50 percent, what is the appropriate percentage?

### *Scoring and Criteria*

The Commission also seeks comment on the weighting and scoring criteria for the program. The law requires the Commission to review the financial, technical, and legal capability of the applicant to deploy and operate a broadband service. The Commission seeks comment on what minimum qualifications to include in each of these elements.

First, the Commission seeks comment on the proposed scoring and weighting formula attached to this Order identified as Attachment B ("Attachment B"). The Commission has assigned weights to the criteria listed in LB 388 to be scored. The Commission believes the

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scoring/weighting process it adopts should be based upon objective criteria that can be assigned certain values and is transparent to the public. Do you agree with this approach? Do you believe the weights assigned in Attachment B to be appropriate? Are there criteria the Commission should score that are missing from Attachment B? Do you believe that any of the criteria should be scored differently? If so, please explain.

In addition, we seek comment on the following requirements identified below to be considered in scoring process.

1. Financial Capability. With respect to the financial capability of the applicant, the Commission believes it would need detailed financial information from the applicant and a business plan for the project over a specified timeframe.

- a. *Financial Viability of the Applicant*- The Commission proposes to require audited financial statements to demonstrate the overall financial viability of the applicant. Specifically, the Commission proposes to require the submission of audited financial statements, other independent audit results, and the most recent copy of the applicant's federal tax return. With respect to ETCs and carriers certificated in Nebraska and in good standing, should that be sufficient to determine that they are financially capable by default? Why or why not? Should there be a minimum positive capitalization requirement? Should the Commission consider any past bankruptcy proceedings of the applicant/carrier partner? The Commission also proposes to require applicants to include a financial plan for the project, which includes at a minimum, a description of the budget costs and the expected revenue from the project. We expect that all budgeted expenses are considered eligible per the guidelines established in the NUSF high cost program.<sup>4</sup> The Commission seeks comment on whether the description of the budget costs should be set up similar to other grant programs the

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<sup>4</sup> These guidelines can be found on the Commission website at <https://psc.nebraska.gov/telecommunications/high-cost-information>.



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Commission already administers or whether to set up a more specific template for applicants to complete. How many years should the financial analysis cover?

- b. *Financial Viability Over Time*- The Commission further proposes that applicants provide an explanation of how costs and revenue will result in financial viability of the project over time. What information should the Commission require to document that the project will be financially sustainable in the long-term? Should the Commission require periodic filings of financial documents throughout the project period? All carriers receiving state universal service support are required to undergo a third-party independent review. Should we require this for the grant recipients? Why or why not? What kind of information should the Commission require carriers to file to demonstrate that they will be able to provide ongoing maintenance of the project after it is complete?

2. Technical Capability. With regard to technical capability, the Commission seeks input on how to ensure that grant funds are utilized by carriers capable of deploying resilient, future proof networks that will be scalable to meet the growing demands of consumers. This would include but not be limited to ensuring that grant recipients are able to staff projects using highly-trained expert technicians that will be there not only to install the projects but work on any repairs or maintenance to the project over time.

To that end, the Commission proposes to require information from each applicant detailing the applicant's prior experience in providing broadband services in Nebraska, and/or in other states if applicable. This would include the number of technicians working on the project, the number of years they have been employed, any potential contractors, as well as the technical experience of the contractors working on each segment of the project. We seek comment on this proposal.

As part of the scoring process, the Commission proposes to utilize both prior FCC Form 477 submissions and information publicly available on the applicant/carrier partner's website to demonstrate the capability to provide the services outlined in the application. The Commission believes that an applicant/carrier partner that already provides the service

in other areas is a good indication of their ability to deliver those same services in the project area.

We also seek comment on requiring, as part of the technical capability criteria, a description of how the project will be resilient and sustainable in the long-term. Such information would include a description of the materials to be used in the project such as the type of fiber, electronics, a description of installation methods (including whether it would be installed using conduit/innerduct or otherwise indicating how it would be protected) and an explanation as to why such materials and installation method was chosen.

We also seek comment on whether the Commission should consider other factors as relevant to the technical capability component. If so, what factors should the Commission consider?

Should the Commission consider the number of years the provider has been providing service in Nebraska and/or other states? Should the Commission give heavier weighting to the number of years a provider has been offering broadband service? The Commission proposes to give weight to whether an applicant already provides the service at the proposed speeds elsewhere in Nebraska or other states and is advertising those speeds. If the Commission considers historic service quality issues, how should the number of years in service compare to the service quality related factor?

Finally, the Commission proposes to require applicants to provide an attestation that the equipment used is compliant with the FCC's equipment and authorization rules to promote national security and keep insecure equipment out of the market. The FCC plans to consider a proposed rulemaking at its June 17<sup>th</sup> meeting to crack down on insecure equipment by extending its rules to its equipment authorization and competitive bidding rules. We seek comment on whether such an attestation is appropriate and whether the Commission should disqualify projects that incorporate equipment which may pose an unacceptable risk.

3. Legal Capability. The Commission must also give weight to an applicant's legal capability. What factors should be considered relevant? Should the Commission consider the applicant's knowledge and ability to comply with the

Commission's rules and regulations? The Commission proposes to factor past regulatory compliance and the applicant's ability to quickly navigate the local zoning and permitting processes. Are there other factors that should be considered, such as any pending litigation, judgements or fines? What type of documentation should be filed to demonstrate an applicant's legal capability?

4. Eligible Telecommunications Carrier Status. The Commission's weighting and scoring mechanism must also take into account whether the provider is designated as an eligible telecommunications carrier (ETC) or will be so designated prior to the project completion date. The Commission proposes to give more weight to a provider who was an ETC prior to the application deadline. Should the Commission give greater weight to a provider for the number of years a carrier has been an ETC? Should the Commission consider past ETC reporting compliance as a relevant factor?

What should the Commission do in the event that a carrier who commits to becoming designated as an ETC prior to the project completion date ultimately does not become an ETC?

5. Rates. The Commission must also consider the ability of an applicant to offer rates in the project area that are comparable to the rates offered by the applicant outside the project area. The Commission has proposed a rate comparability scoring metric where there must be a showing that the rates offered will be equivalent to what is offered elsewhere. Other than including the proposed rate structure in the application, what other information should the Commission collect from an applicant? Should the Commission require the applicant to offer any type of commitment as it relates to the rate structure? Should the Commission require the applicant to offer the service without a contract? Why or why not? The Commission proposes to disqualify plans that have usage caps or early termination fees. Should the Commission prohibit contracts which lock consumers into a particular plan or term?? Why or why not? Should there be any type of affordability benchmark? If so, what should that benchmark or range be?
6. Minimum Broadband Speeds. The Commission must also give weight to the available minimum broadband speeds, with higher scores for faster speeds. No grant may be awarded based on

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speeds less than those scalable to 100/100 Mbps.<sup>5</sup> The Commission interprets this section to mean that upon completion of the project, a customer within the given project area can order and be connected to a service capable of 100/100 Mbps within the normal timeframe of a service request. Should the Commission require that to be demonstrated? Should the Commission give certain weights to specific technologies? If so, what weights should the Commission assign? If not, please explain.

What documentation should applicants be required to produce in order to demonstrate that the service is scalable to reach speeds of 100/100 Mbps? Should the Commission require speed test information from the carrier for similar projects or deployment using the proposed technology? Is an attestation sufficient? Should the Commission consider a fiber to the premises project automatically eligible? Are there any technologies or types of projects the Commission must vet more carefully than others? If so, please describe?

7. Project Match. Finally, the Commission must give weight to whether an applicant has committed to fund more than fifty percent of the total development costs of the project from sources other than grants under this program with higher scores for higher amounts of matching funds.

We propose that both the percent of the match, and the nature of the match, are scored, and that additional points are available for matches that both exceed the 50% requirement and come from sources that are outside of existing broadband funds, as outlined below:

Matching fund source(s):

- a. Applicant match - 10 points
- b. Federal Broadband Funds match - 5 points
- c. NUSF High Cost - 0 points (for 2021 applications only)

If a project includes matching funds from multiple source(s), the Commission proposes to consider the application under the lower point assignment. We seek comment on this approach.

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<sup>5</sup>LB 388, Sec 4.

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We further propose that the following weights be assigned:

| Percent of eligible project costs requested | Points |
|---|--------|
| 30% or less                                 | 20     |
| 31 to 35%                                   | 16     |
| 36 to 40%                                   | 10     |
| 41 to 45%                                   | 6      |
| 46 to 49%                                   | 3      |
| 50%   | 0      |

If interested parties do not agree with this approach, we seek comment on how the match weighting should be implemented. For example, should the Commission give greater weight to an applicant that has committed to fund 90 percent of the total project costs versus 80 percent? If so, how should the weights be modified?

Given the number of criteria the Commission must score, the Commission seeks comment on what weights the Commission should apply to each factor. Should any criteria be weighted much higher than the others? If so, which ones? Please explain.

The Commission has proposed that demonstration of financial and legal capability are minimum requirements to participate in the program. Should the applicant be required to meet each and every requirement listed and weighted above in order to be eligible? Are there any particular criteria listed above, which if not met should disqualify an entire application? If so, which ones? Should the Commission give an applicant any chance to cure a defect? If so, acknowledging the limited time available in the application/approval process, how much time should be given?

In order to maximize the benefits of this program, the Commission also proposes that projects covering the most households are given additional points, with scoring as follows:

- a. 0-49 - 1 point

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- b. 50-200 - 2 points
- c. 201-500 - 4 points
- d. 501+ - 6 points

Should we adopt this proposal? Why or why not? Please explain.

## *Challenge Process*

Challenges to a submitted application are permitted pursuant to section 7 of LB 388. We seek comment on the following proposal to administer this process.

We propose to require any filed challenges to include, at a minimum, the following information:

1. If the challenging carrier is already providing service,
  - a. a customer list of individuals subscribing to service located within the project area;
  - b. Evidence that the required service levels are being met at the customer premise;
  - c. Evidence demonstrating that the speed thresholds (100/20 Mbps Down/Up) can be met, and are being advertised to customers;
  - d. Evidence demonstrating that the requisite information is part of their most recent FCC Form 477 filing, or attest that it will be part of the earliest subsequent filing;
  - e. A disclosure of any locations in the proposed project area that are not capable of receiving service at 100/20 Mbps and, if less than 100/20 Mbps, what speeds are available; and
  - f. A plant map showing existing facilities in relation to the proposed project area, including type of facilities (Copper, fiber, etc.)
2. If the challenging provider is currently constructing broadband infrastructure in the project area, or is proximate to the project area and anticipates completion of broadband infrastructure within the project area within eighteen months,
  - a. A description of the project underway, including timeline for what has been completed to date, and timeline for completion;

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- b. A description which includes the identification of any 3<sup>rd</sup> party contractors, and evidence of costs incurred and/or work being initiated, including invoices or copies of purchase orders, local permits applied for and received, and locate request tickets;
- c. A construction map showing facilities to be deployed in the project area; and
- d. A construction timeline that indicates completion within the 18-month timetable.

We further propose that the documentation must be attested to under penalty of perjury by an officer or agent of the provider with first-hand knowledge of broadband service available or under construction in the project area. With respect to challenges based on anticipated completion of broadband infrastructure within the project area within eighteen months, the Commission proposes to require the challenger to provide progress reports every three months demonstrating progress towards construction.<sup>6</sup>

The Commission seeks comment on the requirements set forth above. Are there any other requirements the Commission should include? If so, what are they? Are there any requirements that cannot practically be met by a challenging provider? If so, please explain.

We also seek comment on the challenge responses which may be filed by the applicants. We believe that challenge responses could include speed test data captured from consumers in the project area as well as information from local/community members about the level and quality of the broadband service available. We seek comment on whether this should be formalized in this way or whether the responses should be tailored more specifically to the individual circumstance raised by each challenge. In addition, we propose that challenged applications have the ability to withdraw portions of their application (and re-file the narrowed budget) in response to a challenged portion of the application. We propose that this be limited to narrowing a project and not expanding the scope of a project once a challenge has been submitted. If this proposal is adopted, are there limitations to how the narrowed project areas can be withdrawn? Please explain.

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<sup>6</sup>This would help the Commission identify any projects challenged on that basis and determine whether the applicant can re-apply in a subsequent grant period.

*Distribution of Support*

Because of the language in LB 388 which specifies instances of repayment, the Commission interprets LB 388 to require support be distributed prior to the project being completed. To that end, the Commission proposes to distribute support by releasing thirty percent of the net grant award (netted against the match component) once the grant award is determined. Thereafter, the Commission proposes to distribute the remainder of the net grant award in monthly installments amortized over the 18-month buildout period. Projects completed prior to the full 18-month buildout period would also be eligible to be paid out in full. The Commission proposes that the match be deducted on a percentage basis as support is distributed. The Commission seeks comment on this proposal. In the alternative, the Commission seeks comment on alternative distribution schedules. For example, should the distribution of support be given in equal installments such as  $1/3^{\text{rd}}$  of the grant at the beginning, middle and end of the grant period? Does this comply with the statute? In the alternative, should the Commission provide more of the awarded support at the beginning of the grant? Should the Commission release support upon a showing that certain milestones have been completed? If so, which milestones should the Commission use? The Commission proposes to require grant recipients to provide documentation of actual costs to the Commission upon project completion in order to receive final payment of the grant. We also propose that final grant payments may be adjusted based upon the actual eligible project costs.

*Post-Award Testing*

The Commission is required to collect from applicants speed test information on the completed network. The application will include language that requires the applicant to attest that it will submit speed tests as determined by the Commission. The Commission proposes that tests collected should reflect what customers should experience in the subscribing household. The Commission also proposes that speed tests are collected during times of peak usage, defined as weekday evenings between 5 pm and 11 pm local time. At least one test per hour should be conducted during the test window, and we propose one week of testing for each project approved. We propose that the number of locations that must be tested is dependent on the number of households covered by the proposed project, according to the following:



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| # of Households in App | Number of Test Locations  |
|------------------------|---------------------------|
| 50 or fewer            | 5                         |
| 51-500                 | 10% of Total Number of HH |
| Over 500               | 50                        |

The Commission seeks comment on what mechanisms exist to test speeds that reflect what the customer would experience at their premises if they were subscribed to a speed tier that provides 100/100 or greater service? Is this something that carriers do on a regular basis today? Are there certain testing methodologies that are already in use that can be appropriated for this purpose? Should the Commission require that a certain percentage of the tests are above the 100/100 threshold?

### *Post Award Repayment*

LB 388 requires a grant recipient to repay the grant in certain situations. First, if a grant recipient fails to complete the project by the agreed upon or extended deadline (if requested and granted), the recipient shall repay the grant as provided in Section 4(2)(b). If no extension is permitted, ten percent of the grant shall be repaid for each month that the project is not complete after the eighteen-month period, up to 100 percent of the grant. If an extension is permitted, 20 percent of the grant shall be repaid for each month that the project is not complete after the 24-month period up to 100 percent of the grant. Additionally, pursuant to Section 4(3)(b), if the broadband network does not provider services at the speeds required, the grant recipient shall be allowed a reasonable time to address the speed deficiencies and conduct a second set of speed tests. If the network does not provide service at the speeds required pursuant to the second set of speed tests, the grant recipient shall repay the grant.

In those instances, the Commission proposes to issue a Notice and Demand for Payment to the grant recipient. The grant recipient shall be given a certain timeframe to contest the Notice and Demand for Payment. If the grant recipient agrees with the Notice as issued, the grant amount identified in the Notice must be paid. If the grant

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recipient contests the Notice and Demand for Payment, the Commission will hold a hearing subject to the Commission's Rules of Procedure for contested case proceedings and issue an order.

The Commission seeks comment on the foregoing procedure triggering notice and hearing for repayment under those circumstances. We note this procedure is similar to that used by the Nebraska Department of Revenue in Tax Deficiency proceedings. We seek comment on whether there are alternative processes commenters believe the Commission should consider. If so, please describe the process and where it is used.

## *Timeline*

Once the hearing has been completed and decisions are made relative to the issues above, the Commission proposes the following timeline be established for the processing of the first round of grant applications:

| <u>Date</u>                    | <u>Event</u>   |
|--------------------------------|--|
| August 17, 2021                | Scoring Guidance Published on the Commission's Website                                 |
| September 16, 2021             | Application Window Open  |
| October 1, 2021                | Application Deadline   |
| October 6, 2021                | Publication of Applications on the Commission's Website                                |
| November 5, 2021               | Deadline for Challenges to be submitted  |
| November 10, 2021 <sup>7</sup> | Deadline for the Commission to notify Applicants of Challenges                         |
| November 24, 2021              | Deadline for Supplemental information to be filed regarding the Challenged Application |

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<sup>7</sup> This deadline will vary depending on when the challenge was received; however, if challenges are filed on the last day, this will be the last day for Commission notification.

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## *Proposed Commission Forms*

The Commission is required to make forms available for the application and challenge process. Appended to this order are draft sample forms. The proposed application form is attached to this Order and incorporated herein as Attachment A. The scoring and weighting formula is attached to this Order and incorporated herein as Attachment B. The sample application form is based in part on a similar grant program in Minnesota with modifications tailored to the provisions in LB 388. We seek comment on the draft forms. To the extent that a commenter believes information should be added or deleted from the form, please give specific reasons to justify the suggested modifications. Interested parties are invited to provide their own draft forms for the Commission's consideration.

A challenge form will be developed by the Commission and released at a later date prior to the application window opening. The form will capture the information discussed above as modified by Commission findings in response to comments and testimony.

## *Comment Deadline and Procedure*

The Commission requests that interested parties provide comments responsive to the issues described above on or before **June 29, 2021 at 5:00 p.m. Central Time**. Commenters should file one (1) electronic copy of their Comments with the Commission. We direct Commenters to file the electronic copies of the Comments at [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov).

## *Public Hearing*

A Hearing will be held on **July 13, 2021**, at 1:00 p.m. Central Time in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508, and via WebEx.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven (7) days is needed when requesting an interpreter.

O R D E R

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. C-5272

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IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be, and it is hereby, opened.

IT IS FURTHER ORDERED that Comments responsive to the foregoing proposal and questions may be filed on or before **June 29, 2021** in the manner prescribed herein.

IT IS FURTHER ORDERED that a hearing will be held in this matter on **July 13, 2021**, at 1:00 p.m. in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508 and by videoconference as indicated above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 8th day of June, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Rod Johnson*  
*Crystal Broadie*  
*Mary Kidden*  
*Tim Schram*

*David W. ...*

Chair

ATTEST:

*Michael S. Hyl*

Executive Director

## Nebraska Broadband Bridge Program Grant Application



### Section I: Applicant Details

|  |                      |   |                 |
|--|----------------------|---|-----------------|
| 1. Applicant name:   | Click to enter text. |   |                 |
| 2. Applicant type*:  | Choose an item.      |   |                 |
| 3. Applicant address:  | Click to enter text. |   |                 |
| 4. Applicant contact (first and last name):  | Click to enter text. |   |                 |
| 5. Applicant e-mail:   | Click to enter text. |   |                 |
| 6. Applicant phone number:   | Click to enter text. |   |                 |
| 7. Provider name:  | Click to enter text. |   |                 |
| 8. Provider contact (first and last name):   | Click to enter text. |   |                 |
| 9. Provider phone number:  | Click to enter text. |   |                 |
| 10. Provider e-mail:   | Click to enter text. |   |                 |
| 11. Legal representative name (if applicable):   | Click to enter text. |   |                 |
| 12. Legal representative e-mail:   | Click to enter text. |   |                 |
| 13. Legal representative phone number:   | Click to enter text. |   |                 |
| 14. Applicant's Nebraska ETC status:   | Choose an item.      |   |                 |
| 15. Does the applicant currently report through FCC Form 477 speeds of at least 100/100 Mbps provided to customers within the State of Nebraska? | Choose an item.      | 15a. If yes, does the applicant clearly offer the minimum speeds required on their public-facing website: | Choose an item. |
| 15b. Provide the service provider's public-facing website URL that reflects the currently available speeds:                                      | Click to enter text. |   |                 |

\* An application from a political subdivision or an Indian tribe must be made as part of a public-private partnership with a provider.

### Section II: Project Details

|   |  |  |                                    |
|---|--|--|------------------------------------|
| 1. Project name:  | Click to enter text.   |  |                                    |
| 2. Project type:  | Choose an item.  |  |                                    |
| 3. Project location description (the cities/communities where the project(s) will take place):  | Click to enter text.<br><br>NOTE: A shapefile polygon must also be included reflecting the project area. A point shapefile or an alternative format which identifies serviceable locations in the project area is also required to be included. If a grant is awarded, all locations in the polygon area are expected to be served at the minimum required speeds. |  |                                    |
| 4. Estimated number served in project area:   | 4a. Unserved (>25/3 Mbps):<br>Click to enter text.   | 4b. Underserved (>100/100 Mbps):<br>Click to enter text.     | 4c. Total:<br>Click to enter text. |
| 5. Current network technology (i.e. fixed base wireless, DSL, cable, satellite, etc.):  | Click to enter text.   | 6. Technology type(s) to be deployed in project area:        | Click to enter text.               |
| 7. Current maximum connection speed bandwidth in project area (Mbps):   | Click to enter text.   | 8. Projected minimum connection speeds at completion (Mbps): | Click to enter text.               |
| 9. Monthly customer rate for 100/100 Mbps service:  | Click to enter text.   |  |                                    |
| 10. Monthly customer rate for 100/100 Mbps speed where that speed tier is currently offered:  | Click to enter text.   |  |                                    |
| 11. To qualify, the project must provide broadband Internet service that is scalable to 100/100 Mbps, or greater. Please indicate the maximum speeds this project is scalable to. | Click to enter text.   |  |                                    |

### Section III: Funding breakdown

|   |                      |
|---|----------------------|
| 1. Total estimated cost of the project based on eligible costs (refer to eligible and noneligible costs): | Click to enter text. |
| 2. Match commitment amount:   | Click to enter text. |
| 3. Detailed match source(s) (list by dollar and source):  | Click to enter text. |
| 4. Grant Amount Requested (up to 50% of estimated eligible costs, not greater than \$5,000,000):          | Click to enter text. |
| 5. Expected Project Completion Date:  | Click to enter text. |

#### Attach/Include:

- A shapefile polygon of the area included in the project.
- A business plan for the proposed network that includes details of the project and demonstrates capability to maintain the network over the long run. The plan should include at a minimum: a financial analysis for the project over a five year period, including a description of how project costs and expected revenue will result in financial viability of the project over time.
- Non-ETC applicants should attach audited financial statements, the most recent year's federal tax return, and other independent audit results.
- A statement detailing the technical capability of the applicant, such as: the applicant's prior experience in providing broadband services in Nebraska, and other relevant technical expertise of the applicant.
- If the project includes underserved customers, a digital inclusion plan should be attached for consideration. The plan should specify how the project will impact access to and use of information and communication technologies within the communities it serves, including individuals and communities that are the most disadvantaged.
- Other supporting documentation (if applicable), such as letters of support from members of the community, signed verification of contribution for community match, etc.

**APPLICANT CERTIFICATION:** By signing this statement, the applicant certifies that the information submitted on the application and all supporting documents are true and correct. The applicant agrees to perform and adhere to all grant requirements, and to comply with all state and federal regulations and requirements pertaining to this program. In addition, the applicant agrees not to use equipment prohibited by the FCC within the network, to offer rates in the project area that are comparable to the rates offered by the applicant outside the project area, to submit network speed testing information as prescribed by the Commission, and to complete the project build within eighteen months following the grant award unless granted an extension.

Click or tap to enter a date.

Signature of Authorized Person

Date

Click to enter text.

Click to enter text.

Printed Name of Authorized Person

Title of Authorized Person



## Nebraska Broadband Bridge Program Application Form Field Descriptions

| Field #                               | Field Description   |
|---------------------------------------|---|
| <b>Section I: Applicant Details</b>   |   |
| 1.                                    | The name of the applicant entity applying for funding.  |
| 2.                                    | Applicant type is either a service provider, cooperative, political subdivision, or Indian tribe. If application is from a political subdivision or Indian tribe, it must be submitted as part of a public-private partnership with a service provider. |
| 3.                                    | Address of the applicant applying for funding.  |
| 4.                                    | The name of the contact person for questions related to the application and the overall project.  |
| 5.                                    | E-mail address of contact person identified in field #4.  |
| 6.                                    | Phone number of contact person identified in field #4.  |
| 7.                                    | The name of the service provider for the project. This field is required if answer to field #2 is "Political Subdivision" or "Indian Tribe."  |
| 8.                                    | The name of the contact person for the service provider that can answer questions related to the project.   |
| 9.                                    | E-mail address of contact person identified in field #8.  |
| 10.                                   | Phone number of contact person identified in field #8.  |
| 11.                                   | The name of the legal representative for the applicant.   |
| 12.                                   | E-mail address of contact person identified in field #11.   |
| 13.                                   | Phone number of contact person identified in field #11.   |
| 14.                                   | Indicate the applicant's current NETC status: NETC in good standing, NETC application has been filed, or applicant/provider intends to file for NETC status at least six months prior to project completion.  |
| 15.                                   | Indicate whether the applicant/service provider partner currently reports through FCC Form 477 speeds of at least 100/100 Mbps service is being provided to customers in Nebraska located outside of the project area.                                  |
| 15a.                                  | If the answer to 15 is "yes," does the public-facing website clearly reflect available speeds? Yes/No/NA  |
| 15b.                                  | If the answer to 15a is "yes," provide the service provider's public-facing URL that reflects the currently available speeds.   |
| <b>Section II: Project Details</b>    |   |
| 1.                                    | Descriptive name given to the project.  |
| 2.                                    | The type of project (middle mile; last mile; middle and last mile).   |
| 3.                                    | Description of the project location, including the cities, communities, etc. where the project will take place.   |
| 4a.                                   | Enter the estimated number of those who reside in the project area who meet the definition of unserved (i.e. lacking broadband internet service at speeds of at least 25 Mbps downloading and 3 Mbps uploading).  |
| 4b.                                   | Enter the estimated number of those who reside in the project area who meet the definition of underserved (i.e. lacking broadband internet service at speeds of at least 100 Mbps downloading and 20 Mbps uploading).                                   |
| 4c.                                   | Enter the total of 4a and 4b in the total field.  |
| 5.                                    | Describe the current network technology in place within the project location.   |
| 6.                                    | Describe the technology type(s) to be deployed within the project area.   |
| 7.                                    | Indicate the current maximum download and upload speeds available within the project area.  |
| 8.                                    | Indicate the minimum connection speeds for download and upload upon completion of the project.  |
| 9.                                    | Include the monthly customer rate to be billed for 100/100 Mbps service provided within the project area.   |
| 10.                                   | Include the monthly rate currently charged to Nebraska customers receiving 100/100 Mbps service.  |
| 11.                                   | Provide the maximum speeds this project will be scalable to upon completion.  |
| <b>Section III: Funding breakdown</b> |   |
| 1.                                    | Total estimated cost of the project (based on eligible costs, which can be found <a href="#">here</a> ).  |
| 2.                                    | Include the total amount committed for matching funds. This should be equal to at least 50% of eligible costs.  |
| 3.                                    | Provide a detailed description of the dollar amount of each match as well as the source of the match.   |
| 4.                                    | Indicate the grant amount requested.  |

|    |  |
|----|--|
| 5. | Indicate the expected date that the project will be completed and service will begin within the project area at the required speeds. |
|----|--|



ATTACHMENT B – Scoring and Weighting Sheet

| Criteria                      | Points Available | Y/N | Points   | Reference Sheet Lookup |
|-------------------------------|------------------|-----|----------|------------------------|
| Financial Capability          | N/A              |     | N/A      | A                      |
| Financial Capability - Points | 5                |     |          |                        |
| Legal Capability              | N/A              |     | N/A      | B                      |
| Legal Capability - Points     | 5                |     |          |                        |
| Technical Capability          |                  |     |          | C                      |
| FCC Form 477                  | 0-10             |     |          |                        |
| Website Offerings             | 0-10             |     |          |                        |
| Rate Comparability            | 0-10             |     |          | D                      |
| Speed Additive                | 0-10             |     |          | E                      |
| Match Source                  | 0-10             |     |          | F                      |
| Match Percentage              | 0-20             |     |          | G                      |
| Households Covered            | 0-6              |     |          | H                      |
| ETC Certification             | 0-5              |     |          | I                      |
| <b>TOTAL</b>                  | <b>91</b>        |     | <b>0</b> |                        |

## Reference Sheet – Scoring Criteria

### A – Financial Capability – (Yes/No), and up to 5 points

- In order to be considered for grant support, applicant must submit audited financial statements and federal tax return information that demonstrate overall financial viability. ETC and carriers certificated in Nebraska already do this on an annual basis. This item will be scored as a Yes/No, where the lack of information (No) would disqualify the applicant from receiving a grant.
- Long-term viability of the project is a priority, and up to 5 points will be available if a business plan is included that provides details about how the proposed network will be maintained.

### B – Legal Capability – (Yes/No), and up to 5 points

- Applicants are required to include contact information for their legal representation. Omission of this information will disqualify the applicant from grant consideration
- If this information is included, applicant will be awarded 5 points, but deductions will be made if: applicant/carrier partner has late filed annual reports (1 point), applicant/carrier partner has late-filed NUSF remittances (1 point), applicant fails to identify legal challenges that are anticipated, such as permitting, access to rights-of-way, etc. (1 point)

### C – Technical Capability – 2 categories, 10 points each

- FCC Form 477 – Does the most recent publicly-available FCC Form 477 data demonstrate that the applicant offers 100/100 Mbps (or greater) service in Nebraska? If Yes, 10 points will be awarded. If no, 0 points will be awarded.
- Website Offerings – Does the applicant’s (or carrier partner’s) public-facing website clearly state that they offer services that meet the 100/100 Mbps or greater speed minimum? If yes, 10 points will be awarded. If no, 0 points will be awarded.

### D – Rate Comparability – 10 points available

- Are the rates planned to be offered by the applicant/carrier partner comparable (i.e. equivalent) to what they offer elsewhere in Nebraska? If yes, 10 points will be awarded. If no, 0 points will be awarded.

### E – Speed Additive – Up to 10 points available

- Additional points will be awarded if applicant/carrier partner includes evidence that they plan to offer speeds in excess of the 100/100 Mbps minimum. These additional speed tiers must be available to customers at the time of application, and offerings have to meet both the upload and download speed minimums to be awarded points. Points will be awarded as follows:
  - o 100/100 Mbps only – 0 points
  - o 500/500 Mbps – 5 points
  - o 1 Gbps/1Gbps – 10 points

### F – Match Source – Up to 10 points available

- Sources of match that are outside of existing federal or state broadband programs will be given additional points, as outlined here:
  - o NUSF High Cost – 0 points
  - o Federal Broadband Funds match – 5 points
  - o Applicant and/or carrier outside funds – 10 points

### G – Match Percentage – Up to 20 points available

- Additional weight will be given to applications that make up more than the 50% requirement for matching funds. Projects will be evaluated as follows:

| <b>Percent of eligible project costs requested</b> | <b>Points</b> |
|--|---------------|
| 30% or less  | 20            |
| 31 to 35%  | 16            |
| 36 to 40%  | 10            |
| 41 to 45%  | 6             |
| 46 to 49%  | 3             |
| 50%  | 0             |

**H – Households Covered – Up to 6 points available**

- Additional points will be awarded for projects that cover more households as outlined here:

| <b>Households Covered</b> | <b>Points</b> |
|---------------------------|---------------|
| <b>1-49</b>               | <b>1</b>      |
| <b>50-200</b>             | <b>2</b>      |
| <b>201-500</b>            | <b>4</b>      |
| <b>501+</b>               | <b>6</b>      |

**I – ETC Certification – Up to 5 points available**

- If the applicant/carrier partner is an ETC at the time of application, 5 points will be awarded. If an application is pending, 3 points will be awarded. If the applicant/carrier partner plans to file for ETC Certification within 30 days of the application deadline, 1 point will be awarded.