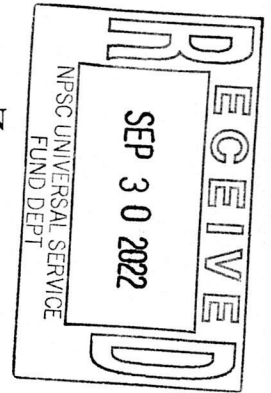


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public ) Application No. BEAD-1  
Service Commission, on its own Motion, to )  
implement the Precision Agriculture )  
Infrastructure Grant Act. )



COMMENTS OF THE  
NEBRASKA RURAL BROADBAND ALLIANCE

The Nebraska Rural Broadband Alliance (“NRBA”),<sup>1</sup> through its attorneys of record, submits these *Comments* (“Comments”) in response to the *Order Opening Docket and Seeking Comments* (“Order”) entered by the Public Service Commission (“Commission”) on September 30, 2022, in the above proceeding.

**Background**

In April 2022, the Legislature passed and Governor Ricketts signed LB1144, which established the Precision Agriculture Infrastructure Grant Act (the “Act” or the “Precision Ag Act”). The Act is now codified at Neb. Rev. Stat. §§ 86-1401 – 86-1406. The Act directs the Public Service Commission to establish a two-prong program to help Nebraska agricultural producers lead the nation in precision agriculture; and to provide high-speed Internet service to farm sites in unserved areas of the state. To accomplish the purposes of the Act, the Legislature gave the Commission authority to award up to \$2 million annually in funds provided to Nebraska under the federal Broadband Equity, Access and Development (BEAD) program. The funding is to be equally divided between what are essentially two separate purposes:

1. Connectivity; and
2. Solutions and products to improve agricultural production.

---

<sup>1</sup> For purposes of this proceeding, the NRBA consists of the following carriers: Cambridge Telephone Company; Diller Telephone Company; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC; Stanton Telecom, Inc.; and WesTel Systems.

These purposes are specified with more detail in the discussion under Issue No. 2 below.

On August 16, 2022, the Commission opened this investigation into how the Act should be administered and asked interested parties to comment on a number of issues. The NRBA applauds the Commission for inviting comments, and especially for taking the initiative to reach out to a number of agricultural groups, making sure they are aware of the opportunity to help shape the Commission's approach to administering the Precision Ag Act.

### **Issues raised by Commission**

#### **1. Entities Eligible to Receive Grants**

**Issue Summary:** Under the Act, the Commission may award grants to wireless network providers, agricultural cooperatives, agronomists, or agricultural producers. The Commission requested comments on what types of entities should be eligible to apply for grants and whether different categories of applicants should be considered differently.

**NRBA Comments:** All entities identified under the law should be eligible to apply. Further distinctions between types of entities should not be drawn for eligibility purposes. Most of the members of the NRBA are incumbent local exchange carriers ("ILECs"). The law is clear that funding under the Precision Ag Act may not be used by ILECs for fiber connectivity. That said, in comments below, the NRBA will explain why Precision Ag Act projects would wisely be leveraged with other fiber projects.

Additionally, connectivity project must be used to connect "farm sites" in "underserved areas."<sup>2</sup> This provision of the Act refers to another section of Nebraska statute that defines "farm site":

"Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are

---

<sup>2</sup> Neb. Rev. Stat. § 86-1403(1)(b).

agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.”<sup>3</sup>

Notably, farm sites, as defined by law, do not include farm homes. The above definition includes uninhabitable or unimproved farm home sites. Farm home sites are defined under the same section of statute:

“Farm home site means land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision.”<sup>4</sup>

These two subsections of Nebraska statute, together with the Act, do not permit use of Precision Ag Act funds for connecting farmhouses – regardless of technology. Other BEAD funding will be available for such “last-mile” infrastructure. Funding for connectivity under Precision Ag Act must be used to wirelessly connect other non-residential sites on agricultural land.

## **2. Funding Source**

**Issue Summary:** The Commission asked whether all allowed uses of funding under the Precision Ag Act were also allowed under the federal BEAD program. The Act allows funding for the following purposes:

### Connectivity

- a. Precision agriculture connectivity to on-farm structures and devices, such as tractors, combines, irrigation systems, livestock facilities, and farm offices. (“Connectivity”)

### Solutions & Products

- b. On-farm traceability solutions that satisfy food supply stakeholder demand, such as blockchain.
- c. Products to improve soil quality, manage water resources, and reduce carbon and nitrate use.
- d. Products that use autonomous solutions in ag machinery, including drones and robotics.

---

<sup>3</sup> Neb. Rev. Stat. § 77-1359(4).

<sup>4</sup> Neb. Rev. Stat. § 77-1359(3).

(collectively, “*Solutions & Products*”)

As mentioned above, under the Act, the \$2 million in available funding must be divided equally between the *Connectivity* program (a) and the combined *Solutions & Products* program (b-d). The Commission asked what steps might be taken to ensure that both purposes are fully funded.

The Commission also inquired as to whether “alternative sources of funding” might be available for eligible purposes.

**NRBA Comments:** Without question, precision agriculture Connectivity is not merely an eligible use of funds under the BEAD program, but rather a priority use. Connectivity – that is, deployment in unserved and underserved areas – is the primary focus of the BEAD program.

The Notice of Funding Opportunity (“NOFO”) for the BEAD program identifies various “non-deployment uses,” such as digital literacy, education, and telehealth.<sup>5</sup> While not specifically mentioning precision agriculture, the NOFO makes clear that the non-deployment uses “include, but are not limited to” those listed.<sup>6</sup> Certainly, in a state like Nebraska where agriculture is the largest industry, precision agriculture should be considered an eligible use. Without question, it is not among the uses identified under “Ineligible Costs” in the NOFO.<sup>7</sup> Nor is it akin to any prohibited uses. If the Commission has any lingering questions about the eligibility of precision agriculture under BEAD, it would be well-advised to consult with local representatives of the National Telecommunications and Infrastructure Administration (“NTIA”).

---

<sup>5</sup> NOFO, pp. 39-40.

<sup>6</sup> *Id.*

<sup>7</sup> NOFO, pp. 82-83.

To ensure full funding in compliance with the Act, the NRBA believes the Commission should separate the *Connectivity* and *Solutions & Products* programs and allocate \$1 million to each for its distinct purposes.

The Commission should give preference to Connectivity applications that leverage alternative sources of funding, as well as other resources, such as:

- BEAD, Bridge or Capital Projects funding for fiber deployment to the wireless provider's network;<sup>8</sup>
- Recently announced funding for robotics clusters;<sup>9</sup>
- Private fiber;
- Public infrastructure, easements, permits and rights-of-way;
- Other public funding; and
- Private capital.

### 3. Priority for Grant Distribution

**Issue Summary:** The Commission first inquired about how it should evaluate and prioritize grant awards under the Connectivity program, asking whether it should utilize criteria it has established under Nebraska Broadband Bridge program.

The Commission requested comments on whether it should prioritize among the three categories within the Products & Solutions program, how it should fairly and objectively evaluate the applications, and whether long-term sustainability should be considered.

**NRBA Comments:** The objectives and requirements of the Bridge program are markedly different from those of the Precision Ag Act. While speeds of at least 100/20 are required for infrastructure under the Connectivity program, the Commission should not be overly prescriptive in establishing criteria for either the Connectivity or the Solutions & Products programs. Flexibility will foster the experimentation envisioned and encouraged by the Act.

---

<sup>8</sup> To the greatest extent possible, the Commission should strive to ensure it smartly coordinates all broadband funding programs it administers.

<sup>9</sup> See *Nebraska 'robotics cluster' to receive \$25 million from Biden challenge to train more workers in high-tech ag jobs*, *Nebraska Examiner*, Sept. 2, 2022.



The Commission should not prioritize among the Solutions & Products categories. It can fairly and objectively consider applications by ensuring that the projects include solutions and products that clearly fall within one of the three well defined categories.

#### **4. Match Percentage and Grant Amounts**

**Issue Summary:** The Commission asks whether matching funds should be required and, if so, what the percentage match should be and whether in-kind contributions should be considered as part of the match.

**NRBA Comments:** Leveraging matching funds and other resources will help expand the scope and benefits of projects. The wireless Connectivity projects eligible for funding under the Act are much less capital-intensive than fiber infrastructure. Match funding is most justifiable, if not critical to ensure the integrity, of lower-cost projects. Requiring matching funds also ensures commitment by the Applicant. Given that Connectivity projects will be in unserved areas, at least a 25% matching requirement seems appropriate. A similar matching requirement for Solutions & Project, likewise, seems prudent.

Applicants providing a higher match should be scored higher, like they are under the Bridge program. Further, as stated above, applications that leverage other funding and resources should be given preference.

#### **5. Speed Testing and Broadband Availability**

**Issue Summary:** The Commission posits several questions related to speed testing for Connectivity projects.

**NRBA Comments:** Since Connectivity projects will be of smaller scope and more experimental in nature, speed testing should be tailored for the particular pilot project. The Commission should reserve its discretion to determine and require the proper level of testing on a project-by-project basis.

## **6. Completion of other Grant Projects**

**Issue Summary:** The Commission seeks comments on whether it should establish deadlines for completion of Solutions & Products projects.

**NRBA Comments:** For at least the first year of the program, the Commission should consider establishing deadlines based on the unique characteristics of each project. After it has considered the projects approved during the first year of the program, and gained experience and gathered information, the Commission should then further consider the question of deadlines.

## **7. Program Schedule**

**Issue Summary:** The Commission inquires as to when the first grant cycle should be initiated. The Commission also asks how many years it should administer the Precision Ag Act.

**NRBA Comments:** Since at least the primary funding for projects under the Act will come from BEAD funding, the Commission should initiate the first grant cycle to coincide with the initial grant cycle it ultimately established for BEAD deployment projects.

The question of how many years the pilot program should be administered is one for the Legislature and Governor.

## **8. Other Issues**

**NRBA Comments:** As it does with other programs, the Commission should review and consider adjustments to the two Precision Ag Act programs annually for so long as the programs are funded.

DATED: September 30, 2022

NEBRASKA RURAL BROADBAND  
ALLIANCE,

Cambridge Telephone Company; Diller  
Telephone Company; Glenwood  
Telecommunications, Inc.; Hemingford  
Cooperative Telephone Co.; Mainstay  
Communications; Midstates Data  
Transport, LLC, Stanton Telecom, Inc.,  
and WesTel Systems

By: REMBOLT LUDTKE LLP  
3 Landmark Centre  
1128 Lincoln Mall, Suite 300  
Lincoln, NE 68508  
(402) 475-5100

By: /s/ Andrew S. Pollock  
Andrew S. Pollock (#19872)  
[apollock@remboltlawfirm.com](mailto:apollock@remboltlawfirm.com)  
Sarah A. Meier (#27364)  
[smeier@remboltlawfirm.com](mailto:smeier@remboltlawfirm.com)

### CERTIFICATE OF SERVICE

The undersigned certifies that an original of the above *Comments* of the Nebraska Rural Broadband Association were filed with the Public Service Commission on September 30, 2022, and a copy was served via electronic mail, on the following:

Susan Horn  
Public Service Commission  
[susan.horn@nebraska.gov](mailto:susan.horn@nebraska.gov)  
Public Service Commission  
[psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov)

/s/ Andrew S. Pollock  
Andrew S. Pollock