

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-133
Public Service Commission, on)
its own motion, to implement) ORDER SETTING SPEED TEST
standards for the verification) REQUIREMENTS
of broadband service provider)
coverage and speed data.)
) Entered: November 8, 2022

BY THE COMMISSION:

On March 15, 2022, the Nebraska Public Service Commission ("Commission") opened this proceeding on its own motion to implement standards for the verification of broadband service provider coverage and speed data in accordance with Neb. Rev. Stat. § 86-324.02. Notice of the application was published in The Daily Record, Omaha, Nebraska, on March 22, 2022.

The Commission invited comments from interested parties on the standards and methodology for collecting speed test data as well as the number of tests sufficient to meet the criteria set forth in Neb. Rev. Stat. § 86-324.02. Comments were received from Cox Nebraska Telcom, LLC ("Cox"); Charter Fiberlink-Nebraska, LLC, jointly with Time Warner Cable Information Services (Nebraska), LLC ("Charter" and "Time Warner", respectively); Nebraska Public Power District ("NPPD"), Nebraska Rural Broadband Association ("NRBA"); Rural Independent Companies ("RIC"); Rural Telecommunications Coalition of Nebraska ("RTCN"); Windstream Nebraska, Inc. ("Windstream"); and Qwest Corporation d/b/a CenturyLink QC and United Telephone Co of the West (collectively "CenturyLink").

H E A R I N G

A hearing in this matter was held on July 26, 2022. Sallie Dietrich appeared on behalf of the Telecommunications and NUSF Department of the Commission. Paul Schudel appeared on behalf of RIC. Andy Pollock appeared on behalf of NRBA. Exhibits 1 through 6 were offered and accepted, including each of the above-described comments submitted in this matter.

Testimony was offered by Cullen Robbins, Director of the Communications and NUSF Department of the Commission ("Department"), on behalf of the Department; Dan Davis, Director of Policy and Analysis at Consortia Consulting, on behalf of RIC;

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Andy Pollock, on behalf of NRBA; and Tim Goodwin, Vice President of State Regulatory Affairs for Charter.

Following the close of witness testimony, no further evidence was offered. The hearing was adjourned.

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

The Commission appreciates the thoughtful discussion and input offered by the participants in this docket. After consideration of submitted comments and testimony, the Commission finds that the following framework for speed testing in Nebraska should be adopted. Generally, the Commission finds that the existing performance measures testing framework put in place by the Federal Communications Commission ("FCC") should be used as a model for speed testing in Nebraska.¹ Detailed requirements are set forth below.

Applicability. The speed testing requirements set forth in this Order will apply prospectively to all entities receiving ongoing high-cost support from the Nebraska Telecommunications Universal Service Fund ("NUSF"). The Commission further finds that other Commission programs in which grant funded deployment requires certain speed thresholds be met should also be subject to speed testing. These programs include, but are not limited to, NUSF High Cost programs, the Nebraska Broadband Bridge Program ("NBBP"), and the Commission's precision agriculture grant program ("PRO-AG"). Speed testing requirements will not apply to the NUSF-92 wireless infrastructure grant program.

Testing Intervals. Carriers will be required to conduct speed and latency tests on a random sample of active subscribers. Testing must be performed for one calendar week. At least eighty percent of the locations tested must meet or exceed eighty percent of the speed and latency thresholds required by the relevant program. Testing must be performed on an hourly basis between the hours of 6:00 p.m. and 12:00 a.m. local time each day. A minimum of one download test and one upload test per hour will be required. Each speed test must measure a connection between a specific consumer location and specific remote server location for a duration of at least 10 seconds. To test latency, a carrier must conduct one latency test per minute at each selected test location for the duration of the testing period.

¹ See In the Matter of Connect America Fund, WC Docket No. 10-90, *Order* (July 6, 2018) ("2018 Testing Order").

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Required Speeds and Latency; Submission Deadlines. All NUSF broadband deployment support ("BDS") projects approved by the Commission on or after January 1, 2022 must demonstrate speeds of at least 100 Mbps upload and 100 Mbps download. NBBP broadband deployment projects approved on or after December 1, 2022 must also demonstrate speeds of at least 100 Mbps upload and 100 Mbps download.² Performance testing for NUSF BDS projects approved on or after January 1, 2022 and NBBP projects approved on or after January 1, 2023 should demonstrate latency measurements of 100 milliseconds or less. Projects approved prior to this date will be required to meet the speed and latency measurements required by the Commission at the time funding was awarded.

Beginning on February 1, 2023, NUSF BDS recipients must notify the Commission that a project has been completed. The BDS recipient will then be required, also beginning on February 1, 2023, to submit to the Commission all invoices justifying project expenses within ninety (90) days of project completion. Final reimbursement will not be issued until the carrier has demonstrated that it has met the speed thresholds as described above.

Ongoing high-cost recipients receiving a capital expenditure ("CapEx") portion of modeled support for broadband-capable wireline networks will be required to submit speed testing information on an annual basis, on or before July 31 of each year, beginning in calendar year 2023.³ Carriers will be notified of the areas where speed tests must be collected. Ongoing high-cost recipients must demonstrate speeds of at least 25 Mbps download and 3 Mbps upload. In the event the ongoing high-cost recipient received BDS funding for all or a portion of the network, the speed and latency measurements as required by the Commission at the time funding was awarded must be met.

² The speed testing requirements set forth in this order do not modify the requirements in place for NBBP participants in Commission Docket No. C-5272. NBBP broadband deployment projects in future NBBP cycles may be funded through federal sources, and as a result may include different or additional speed testing requirements. Federal funding sources include, but not limited to, Capital Projects Fund ("CPF") and Broadband Equity, Access, and Deployment Program ("BEAD") funding.

³ The Commission will not collect speed testing data in December of 2022 in order to give carriers adequate notice and time to prepare for these added requirements.

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The Commission reserves the right to request additional testing from carriers in its discretion.⁴

Locations Tested. The Commission finds that in order to ensure that the locations to be tested are randomly selected, the Commission will need to determine the random sample of locations to be tested. Therefore, carriers required to participate in speed testing must submit to the Commission an XLS or CSV file containing a list of active subscriber locations. The Commission will provide on its website a Subscriber Location Data Form which carriers must use in providing active subscriber data. The Department may modify this form as needed on a prospective basis. For grant-funded projects, a list of all active subscriber locations within the project area must be submitted as part of each request for final grant reimbursement.⁵ Ongoing high-cost recipients must submit a broadband customer list to the Commission by April 30 of each year.

Following submission of subscriber location data, the Telecommunications/NUSF Department will provide to the carrier within thirty days a list of locations from which the carrier can select in order to meet the minimum number of locations required to be tested. The number of locations a carrier is required to test will be as follows:

Number of locations in funded area	Number of test locations
50 or fewer	10
51-500	10, or 10% of the total number of locations, whichever is greater
Over 500	50

⁴ For instance, there may be instances in which consumers dispute speed performance in a given area. The Commission reserves the right to seek confirmation of available speeds from carriers through the mechanisms of this Order at any time.

⁵ If a carrier does not have at least ten subscriber locations in the grant-funded project area at the time a reimbursement request is submitted, the carrier should include with their request additional nearby subscriber locations sufficient for the Commission to randomly select additional locations to be tested according to the table included with this order.

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A Protective Order in this matter will be entered separately to ensure confidential treatment of subscriber information submitted to the Commission.

If a carrier is unable to test the minimum number of required locations due to subscriber discontinued service, natural disaster, or other extenuating circumstances, a carrier may contact the Telecommunications/NUSF Department at least 30 days prior to the testing deadline to request replacement subscriber locations. The request must include the specific locations unable to be tested and the reason for the replacement request. The Department will review replacement requests and provide a decision.

Testing End Points. In accordance with the FCC's requirements in its 2018 Testing Order, testing must be performed from the customer premises of an active subscriber to a remote service located at or reached by passing through an FCC-designated internet exchange point. Speed and latency should be measured on each ETC's access network from the end-user interface to the nearest Internet access point, which is the closest peering point between the broadband provider and the public Internet for a given consumer connection.

Exceptions to this requirement may be granted by the Department on a case-by-case basis but should comply with the acceptable test paths for end-to-end testing and remote test server placement as designated by the FCC's Performance Measures Testing compliance framework. A carrier requesting an exception should provide a diagram depicting their proposed testing path, along with a detailed explanation of the testing methodology.

Performance Data Upload Forms. The Commission will provide on its website a Speed Data Upload Form and a Latency Data Upload Form which carriers must use in providing performance test data. The Department may modify these forms as needed on a prospective basis. Carriers are advised to confirm each time a request for funding is submitted that they are using the most recent form available. Forms submitted that are in an incorrect format or are missing required information may be rejected at the discretion of the Department.

Deficiencies. If an ongoing high-cost recipient is unable to demonstrate speed tests meeting the required performance thresholds, the Commission may request additional testing. If the additional testing does not meet the required performance

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thresholds, the Commission may in its discretion withhold and redirect support pursuant to Title 291, Chapter 16 of the Commission's regulations. Any carrier failing to submit speed test data as required by the Commission may also be subject to withholding of NUSF support in future years.

If an NUSF, NBBP, or PRO-AG grant recipient is unable to demonstrate through speed testing that the broadband network provides the speeds required, the grant recipient will be allowed a reasonable time to address the deficiencies and conduct a second set of speed tests.⁶ If the second set of speed tests does not meet the required speed thresholds, the grant recipient will be required to repay the grant in full.

FCC Form 477 Filings/Broadband Data Collection. It is the expectation of the Commission that the broadband availability submitted by carriers to the Federal Communications Commission through Form 477 and any subsequent broadband data collection ("BDC") efforts will align with the results of speed testing conducted pursuant to this Order. Should the Commission determine that a carrier's Form 477 or BDC data does not match broadband speed availability data submitted to the Commission, the Commission reserves the right to request further testing or take other action.

O R D E R

IT IS THEREFORE ORDERED that the speed testing requirements set forth above are hereby adopted.

IT IS FURTHER ORDERED that all ongoing high-cost recipients must submit a broadband customer list including all areas where testing is required to the Commission by April 30 of each year.

IT IS FURTHER ORDERED that all entities receiving ongoing high-cost support from the Nebraska Telecommunications Universal Service Fund, as well as certain entities receiving funds from other Commission grant programs, shall submit speed testing data to the Commission as described above by July 31 of each calendar year, beginning on July 31, 2023.

⁶ See Neb. Rev. Stat. § 86-324(2)(c); Neb. Rev. Stat. § 86-1304.

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IT IS FINALLY ORDERED that beginning on February 1, 2023, NUSF broadband deployment support recipients must immediately notify the Commission upon completion of a project, and must submit all invoices justifying project expenses to the Commission within ninety (90) days of project completion.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 8th day of November, 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
Mary Keddin
Tim Schram

Dee Woodruff

Chair

ATTEST:

Thomas W. Golden
Executive Director