

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

<b>In the Matter of the Nebraska</b>	)	<b>Application No. C-5484</b>
<b>Public Service Commission, on</b>	)	
<b>its own motion, to administer</b>	)	<b>ORDER OPENING DOCKET AND</b>
<b>the Nebraska Broadband Bridge</b>	)	<b>SEEKING COMMENT AND NOTICE</b>
<b>Program in the 2023 Program</b>	)	<b>OF HEARING</b>
<b>year.</b>	)	
	)	<b>Entered: March 7, 2023</b>

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**INITIAL COMMENTS OF WINDSTREAM**

Windstream Nebraska, Inc. and its affiliates (collectively “Windstream”) hereby respectfully file these comments as permitted by the Order Opening Docket and Seeking Comment and Notice of Hearing (the “Order”) issued by the Nebraska Public Service Commission (“Commission”) on March 7, 2023, and state as follows:

**I. Introduction**

Windstream appreciates the opportunity to provide comments in this docket as the Commission works to improve the Nebraska Broadband Bridge Program (“NBBP”) in its third year. Windstream is grateful for the support of the Nebraska Legislature and the Commission for broadband expansion provided through the program.

**II. Response to the Commission’s Questions**

**A. Procedural Schedule**

Windstream would propose two recommended changes to the procedure schedule provided in the Order. First, should the provisions of LB359 (2023) be passed into law and give the Commission flexibility regarding the application deadline for NBBP, Windstream would encourage the Commission to modify the procedural schedule so as to avoid the 4<sup>th</sup> of July holiday. Carrier and Commission personnel often – and understandably – choose to take additional personal time around state and federal holidays. Providing a cushion around holidays will help ensure

carriers can take full advantage of the time afforded in the procedural schedule to complete the various requirements of the application and challenge forms.

Second, Windstream would encourage the Commission to extend the time between the Notice of Intent to Challenge (“NOIC”) (July 17, 2023) and the Challenge deadline (September 1, 2023) to a full 60 days (September 15, 2023). Windstream believes it is in the interest of carriers and the Commission to avoid the administrative burdens of the challenge process where possible. More importantly, the Legislature, Commission, and industry members have consistently expressed a desire to avoid subsidizing overbuild with state and federal dollars. Accordingly, extending the time between the NOIC and Challenge deadlines would afford a better opportunity for carriers to review the materials provided with the NOIC, set meetings with would-be challengers in the hopes of resolving the basis for challenges, and perform speed testing in the event a Type 1 challenge must be filed. For those with several applications and sometimes more than one potential challenger, the review and revision process can be quite extensive. An additional two weeks would afford carriers a more reasonable opportunity to submit revised applications or challenge materials, as well as avoid close proximity to the Labor Day holiday.

#### **B. Adjustments to Scoring System**

Windstream supports Commission requirements related to community outreach and has been very pleased to receive strong community support for its Capital Project Fund (“CPF”) applications. Given the high caliber of services provided by eligible projects under both the CPF and NBBP, Windstream would encourage the Commission to update the Community Feedback Form and place the “support” block ahead of the “do not support” block so as not to unnecessarily prejudice communities against projects merely because of the way the form is composed.

Additionally, Fiber-to-the-Premise projects need to have a strong preference in scoring, such as a multiplier either in reducing the match penalty or in strengthening (providing bonus points) in the technical field. The scoring calculation should reward fiber projects with enough points to offset to the points for matching funds. No technology other than fiber, including coax, copper, and fixed wireless, can truly meet the 100/100 Mbps standard. All NBBP funds should focus on driving fiber out into the rural areas as far out as possible.

In addition, Windstream would recommend preferential consideration or additional scoring opportunities be given to carriers based on the amount of fiber deployed adjacent to the proposed project area. Adjacent fiber facilities not only demonstrate the carrier's commitment to fiber deployment in Nebraska, but also reduce the total project costs which allows more fiber deployment with the limited funds in the NBBP.

Finally, locations and areas previously awarded Nebraska Universal Service Fund dollars requiring 100/20 Mbps minimum speeds and NBBP funds should be noted as ineligible. Carriers should not be required to certify their intent to build as the carrier has already made such a commitment to the state. However, given the defaults and other delays associated with some existing obligations with the Rural Digital Opportunities Fund ("RDOF") program, Windstream believes challenges and subsequent commitments to build projects in RDOF areas within the program timeframe are still appropriate.

### **C. Challenge Process**

The current challenge process requires significant resources to be dedicated to compiling challenge information and completing speed testing. As stated in its response regarding the proposed Procedural Schedule above, Windstream encourages the Commission to allow for additional time between the NOIC and Challenge submission deadlines. In addition, Windstream

would encourage the Commission to accept plant maps of served and eligible locations in lieu of speed testing for existing fiber plants for a Type 1 challenge. As Windstream is already experiencing, as other fiber project builds come online – sometimes very near the application and challenge deadlines – carriers will be faced with the challenge of speed testing in areas where construction is complete but testing and turnup is still in progress or the carrier is still converting consumers from alternative broadband technologies to fiber. This situation will become more common as Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), NBBP, CPF, NUSF, and soon Broadband Equity, Access, and Deployment (“BEAD”) projects are completed and activated.

**D. Digital Inclusion Plans**

Windstream actively participates in the federal Affordable Connectivity Program (“ACP”) and agrees with the Commission’s proposition that this should be a requirement of all recipients of state broadband funds. If the Commission adopts a digital inclusion plan requirement, Windstream would recommend that a portion of the plan’s implementation be eligible for reimbursement under the NBBP.

**E. Fixed Wireless Providers**

Given the NBBP minimum speed requirements of 100/100 Mbps, Windstream supports the adoption of evidentiary requirements similar to those in CPF-1 for fixed wireless providers.

**F. Rates**

Generally, Windstream supports the rate structure used in CPF-1. After setting a reasonable cap for a minimum 100/100 Mbps service, the Commission should allow carriers to set their remaining rates based on competition and other economic factors.

**G. Penalties**

Windstream has no objection to the proposed penalties, so long as carriers may still submit requests for extensions to be granted at the Commission's discretion.

### **III. Conclusion**

Windstream thanks the Commission for the opportunity to provide comments in this docket and looks forward to participating in the 2023 Nebraska Broadband Bridge Program.

Respectfully submitted this 28th day of March, 2023.

WINDSTREAM NEBRASKA, INC.,

*s/ Mary Vaggalis*

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### **Certificate of Service**

The undersigned hereby certifies that on this 28th day of March, 2023, one (1) electronic copy of the foregoing Initial Comments of Windstream was delivered to the Nebraska Public Service Commission at [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov).

*s/ Mary Vaggalis*

Mary Vaggalis