

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public) Application No. C-5484
Service Commission, on its own Motion,)
to Administer the Nebraska Broadband)
Bridge Program in the 2023 program)
year.)

COMMENTS OF THE NEBRASKA RURAL BROADBAND ALLIANCE

Introduction

The Nebraska Rural Broadband Alliance (“NRBA”),¹ by and through its attorneys of record, Rembolt Ludtke LLP, submits these *Comments* (“Comments”), as allowed in the *Order Opening Docket and Seeking Comment* (“Order”) entered by the Public Service Commission (“Commission”) on March 7, 2023, in the above proceeding. In the Comments below, the NRBA will reference and address the categories of issues outlined in the Commission’s Order.

Procedural Schedule

The NRBA has no comment on the proposed procedural schedule.

Adjustments to Scoring System

Since the inception of the Nebraska Broadband Bridge Program, the NRBA has advocated that the Commission consider an applicant’s past history and weigh it heavily in scoring technical ability. The Commission has declined to do so.

¹ For purposes of this proceeding, the NRBA is made up of the following carriers: Cambridge Telephone Company; Diller Telephone Company; Diode Communications; Glenwood Network Services; Glenwood Tel. Membership Corp.; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC; Mobius Communications; Pinpoint Communications; Stanton Telecom, Inc; Stealth Broadband; and Town & Country Technologies.

In light of the Commission's decision to allow HunTel CableVision, Inc. to renege on a Bridge Award without penalty or interest,² the NRBA again strongly recommends the Commission consider past track records in making Bridge grants. Had the Commission considered HunTel's past track record, it might not have made the award of \$776,000 in taxpayer funds.

Last year, together with Nebraska Public Power District, and the Nebraska Rural Electric Association, the NRBA recommended that the Commission assign a possible total of 20 points for the technical capability. In support of this recommendation, the public-private coalition said:

Doing so would allow the Commission to consider the past performance of carriers, particularly in rural areas, as the measure of technical capability needed to serve subscribers in rural Nebraska. Before considering possible deductions, the Commission should award possible points based on the following:

- Up to 10 points for an Applicant's record of providing reliable 100/100 service in rural areas; and
- Up to an additional 10 points for expected useful life of the facilities and long-term commitment to the project.

The NRBA respectfully and strongly urges the Commission to adopt the proposed adjustment to its scoring of technical ability.

Challenge Process

No comment.

Digital Inclusion Plans

No comment.

² In the Matter of the Nebraska Public Service Commission, on its own motion, to implement the Nebraska Broadband Bridge Act, *Order Granting Motion to Return Grant Funding*, App. No. C-5272 (Jan. 18, 2023) ("HunTel Order").

Fixed Wireless Providers

Fixed wireless providers should be required to provide third-party-engineered mapping of coverage with actual associated topographical information. Such providers should be required to provide real world mapping with speed testing from past projects data that ties similar topography, demonstrating that speeds in other similar scenarios within their network.

Rates

No Comment.

Penalties

The unfortunate result documented in the HunTel Order calls for a strong response. In the HunTel Order, the Commission said:

HunTel has described the circumstances leading to its request to return the Leshara Project grant funding received to date. The Commission understands that material and labor costs have increased over the course of the past year. The Commission therefore finds that in this instance, it will accept the return of grant funding received to date, and it will not impose additional monetary penalties against HunTel for its failure to complete the Leshara Project.

The Commission's finding "that material and labor costs have increased over the course of the past year" has been true for every recipient of Bridge funding. All recipients, except one, found a way to manage or absorb those costs and move forward with their deployment projects. The abandonment by HunTel of its Bridge project was nothing more or less than a business decision. It should have drawn real consequences.

The Commission could not find clear authority to impose a civil penalty on HunTel. There was no discussion in the Commission's Order about whether interest should be required. The Commission said that HunTel would not be allowed to resubmit the Leshara project but made clear that HunTel will be allowed to apply for other projects. The Commission did warn that it "reserves the right to adjust its review of HunTel's financial, legal, and technical capability to complete future NBBP projects based on its failure to complete the Leshara Project."

The NRBA sternly recommends a more certain set of consequences for any NBBP recipient that fails to complete a Bridge project. The following should be considered by the Commission:

- Civil penalties commensurate with the specific facts and circumstances surrounding the failure.
- Interest at the highest rate permitted by law.
- Disqualification from all further grant programs administered by the PSC.
- For incumbent local exchange carriers, investigation of past use of NUSF support.
- Report of the failure and adjudication to the Broadband Office.

DATED: March 28, 2022

**NEBRASKA RURAL BROADBAND
ASSOCIATION**

Cambridge Telephone Company; Diller Telephone Company; Diode Communications; Glenwood Network Services; Glenwood Tel. Membership Corp.; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC; Mobius Communications; Pinpoint Communications; Stanton Telecom, Inc; Stealth Broadband; and Town & Country Technologies.

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

By: /s/ Andrew S. Pollock
Andrew S. Pollock (#19872)

CERTIFICATE OF SERVICE

The undersigned certifies that an original of the above *Comments* of the Nebraska Rural Broadband Association were electronically filed with the Public Service Commission on March 28, 2023, and a copy was served via electronic mail on the following:

Public Service Commission
psc.broadband@nebraska.gov

/s/ Andrew S. Pollock
Andrew S. Pollock