

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the matter of the Nebraska public ) Application No.C-5561  
service commission, on its own motion, to )  
administer the Nebraska broadband )  
bridge program in the 2024 program year. )  
)  
)

**COMMENTS OF THE  
NEBRASKA RURAL BROADBAND ALLIANCE**

The Nebraska Rural Broadband Association (“NRBA”),<sup>1</sup> through its attorneys of record Rembolt Ludtke LLP, submits these *Comments* (“Comments”) in response to the *Order Opening Docket and Seeking Comments* (“Order”) entered by the Public Service Commission (“Commission”) on February 6, 2024, in the above proceeding. The NRBA’s comments below address the issues identified in the Order.

**1) Procedural Schedule**

The NRBA supports the procedural schedule proposed in Attachment A to the Order. Importantly, the applications deadline for 2024 Nebraska Broadband Bridge Program (“Bridge” or “Bridge Program”) should be later than the Commission’s release of grant awards under the Capital Projects Fund Program (“CPF”) for 2024. The Commission’s deadline for releasing 2024 CPF grants is June 4.<sup>2</sup> In the Commission’s proposed schedule in the 2024 Bridge Program, the proposed application deadline is July 8, 2024, more than a month after the deadline for release of CPF grants. This timing will allow providers to attempt to leverage Bridge and CPF grants, which will assist in reaching more rural locations. For these reasons,

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<sup>1</sup> For purposes of this proceeding, the NRBA consists of the following carriers: Cambridge Telephone Company; Glenwood Telephone Membership Corporation; Glenwood Network Services; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC dba Stealth Communications; Mobius Communications; Pinpoint Communications; Plainview Telephone Company; Stanton Telecom, Inc.; Town & Country Technologies; WesTel Systems, dba Hooper Telephone Company.

<sup>2</sup> In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the second round of federal Capital Projects Funds for broadband development in Nebraska, Application No. CPF-2, *Findings and Conclusions Order and Order Adopting Procedural Schedule for Next Grant Cycle*, Attachment A (Nov. 7, 2023).

the NRBA supports the Commission's proposed procedural schedule for the 2024 Bridge Program.

## **2) Scoring**

The NRBA will address scoring issues as they are brought up by the Commission under more specific categories below.

## **3) Challenge Process**

The NRBA recommends no changes to the challenge process utilized during the 2023 Bridge program.

## **4) Benchmark Rates**

The NRBA recommends the Commission retain the methodology utilized during the 2023 Bridge program for establishing benchmark rates.

## **5) Project Budget & Reimbursement**

The Commission has asked whether it should utilize a standardized budget template and a standardized reimbursement form template. While no template will apply perfectly to all projects, utilization of templates helps establish fairness and a streamlined process. For these reasons, the NRBA supports the Commission's proposal to utilize standardized budget and reimbursement form templates.

## **6) Approval from Local Authorities**

While the NRBA does not object to the Commission's proposal *not* to *require* that approval from local authorities be part of Bridge applications, the NRBA would support favorable scoring for the submission of such approvals with Bridge applications.

Further, the NRBA strongly supports the Commission suggestion that applications "demonstrating significant (project) readiness, such as secured permits and approval" be given additional points in scoring. Recent evidence, especially in the NUSF-99 program, has revealed the perils of providers not properly or timely preparing for deployment projects. This

has unnecessarily led to requests for extensions of project deadlines, which harms the public. The Commission should do everything within its broad statutory authority to ensure proper and timely preparation for projects that are publicly funded.

#### **7) Maximum Cost per Location**

The Commission is right to consider the per location cost of projects. Some projects have been awarded funding at levels that appear excessive when compared to other projects. Providers should not be allowed to effectively circumvent the match requirement by inflating project costs.

The NRBA, however, does not believe a fixed cap is the best approach to addressing the issue of inflated or excessive costs. Such a prescriptive approach is too simplistic, given all of the variables for real-world projects, such as terrain and distance between locations. The NRBA has recommended in the past that the Commission retain an engineer to review project applications to verify that cost projections are not unreasonably high. The review need not be in depth, but it should be conducted by an engineer with the education and experience needed to ensure fair competition for grant funds.

#### **8) Past Performance**

As it has since the inception of the Bridge Program, the NRBA strongly encourages the Commission to score past performance. Past performance may not necessarily guarantee future success, but it is a strong indicator.

The NRBA, together with Nebraska Public Power District, and the Nebraska Rural Electric Association, has 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 adjustments to its scoring of technical ability.

The members of the NRBA – all broadband providers – wish the administrative burden of other programs, like BEAD, were as *insignificant* as those of the Bridge and Capital Project programs. Public interest demands accountability for all programs that provide public funds to private providers. All members of the NRBA are willing to demonstrate the extent of broadband infrastructure deployment in any area they are serving, especially (but not exclusively) where they have received public funding to construct and operate their networks. It would not be an undue burden to do so. In fact, it would be a prudent exercise of regulatory authority for the Commission to require such information.

Participation in both the Bridge and Capital Projects programs has been strong, to put it mildly. Competition has been feverish for nearly all broadband funding programs since the pandemic. Allowing applicants for public funding to demonstrate (and be scored favorably for) past success, especially long-term success in high-cost, rural areas, will not discourage participation. Rather, it would encourage providers most capable of serving rural Nebraskans to apply.

## **9) Submission of Serviceable Locations**

The Commission seeks comment on whether it should require Bridge applicants “to identify all serviceable locations in the project area, using Broadband Data Collection location ID.” The Commission made similar inquiries during the second round of the CPF. After careful deliberation, the Commission decided to allow flexibility in identifying so-called project areas. When the Commission asks whether applicants should identify “all serviceable locations in the project area,” it begs the question of what is a “project area.” Because the Commission has declined to prescribe particular boundaries to “project areas,” it would be impossible for an applicant to know, let alone assert, what serviceable locations might exist in undefined “project areas.”

The Commission now has a duty, when determining any project area to collaborate with the Nebraska Broadband Office to ensure compliance with the Rural Communications Sustainability Act.<sup>3</sup> The policy basis of the Rural Communications Sustainability Act was clearly enunciated by the Legislature in statute:

It is hereby declared to be the policy of this state to ensure that all Nebraskans have access to affordable and reliable communications services in rural high-cost areas, and to ensure the long-term sustainability of infrastructure necessary to preserve such access.<sup>4</sup>

Thus, in funding broadband infrastructure deployment projects under programs like the Bridge, the State must have an eye toward the long-term sustainability of the network. The Commission should continue to allow Bridge applicants the flexibility needed to serve as many unserved and underserved locations as possible, especially in high-cost areas, without arbitrarily or bureaucratically attempting to prescribe fixed project areas. The Commission’s commendable work in reforming ongoing support in NUSF-139 will go much farther in

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<sup>3</sup> Neb. Rev. Stat. § 86-1504.

<sup>4</sup> Neb. Rev. Stat. § 86-1502.

encouraging sensible deployment of sustainable infrastructure in rural areas than prescriptiveness in deployment programs.

## **10) Cybersecurity**

The Commission proposes to require Bridge applicants to submit cybersecurity plans. Cybersecurity is critical to the reliable operation of broadband infrastructure. The NRBA takes cybersecurity seriously. Members of the NRBA are working with consultants to finalize company-specific plans in compliance with substantial federal regulatory requirements. The Commission should be notified of federal compliance, but should impose no additional rules, regulations, or burdens related to cybersecurity.

## **11) Program Structure**

The NRBA reiterates what it said above in terms of the need for the Commission to collaborate with the Nebraska Broadband Office with the common objective with deploying a broadband network that is sustainable over the long-term, as is now required under Nebraska law.<sup>5</sup>

DATED: March 1, 2024

### **NEBRASKA RURAL BROADBAND ASSOCIATION**

Cambridge Telephone Company;  
Glenwood Telephone Membership  
Corporation; Glenwood Network Services;  
Glenwood Telecommunications, Inc.;  
Hemingford Cooperative Telephone Co.;  
Mainstay Communications; Midstates  
Data Transport, LLC dba Stealth  
Communications; Mobius  
Communications; Pinpoint  
Communications; Plainview Telephone  
Company; Stanton Telecom, Inc.; Town &

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<sup>5</sup> Neb. Rev. Stat. § 86-1504.

Country Technologies; WesTel Systems,  
dba Hooper Telephone Company.

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)

**CERTIFICATE OF SERVICE**

The undersigned certifies that an original of the above *Comments of the Nebraska Rural Broadband Alliance* were filed with the Public Service Commission on March 1, 2024, and a copy was served via electronic mail, on the following:

Public Service Commission  
[psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov)

CTIA  
[lbrooks@brookspanlaw.com](mailto:lbrooks@brookspanlaw.com)

Cox Nebraska Telcom, LLC  
[deonnebruning@neb.rr.com](mailto:deonnebruning@neb.rr.com)

Qwest Corporation d/b/a CenturyLink  
[kmcnamara@fraserstryker.com](mailto:kmcnamara@fraserstryker.com)

Charter Fiberlink  
[kevin.saltzman@kutakrock.com](mailto:kevin.saltzman@kutakrock.com)

Nebraska Rural Independent  
Companies  
[pschudel@woodsaitken.com](mailto:pschudel@woodsaitken.com)

Windstream  
[mary@bruninglawgroup.com](mailto:mary@bruninglawgroup.com)

Rural Telecommunications Coalition  
of Nebraska  
[rwesterhold@nowkaedwards.com](mailto:rwesterhold@nowkaedwards.com)

/s/ Andrew S. Pollock  
Andrew S. Pollock