

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

<b>In the Matter of the Nebraska Public</b>	)	<b>Application No. C-5561</b>
<b>Service Commission, on its own Motion,</b>	)	
<b>to administer the Nebraska Broadband</b>	)	<b>ORDER OPENING DOCKET</b>
<b>Bridge Program in the 2024 Program</b>	)	<b>SEEKING COMMENT AND</b>
<b>year.</b>	)	<b>NOTICE OF HEARING</b>

**Entered: February 6, 2024**

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**COMMENTS OF WINDSTREAM**

Windstream Nebraska, Inc. (“Windstream”) hereby respectfully submit these comments as permitted by the Order Opening Docket and Seeking Comment and Notice of Hearing (“Order”) issued by the Nebraska Public Service Commission (“Commission”) on February 6, 2024, and state as follows:

**I. Introduction**

Windstream’s recommendations stem from its previous participation in the Nebraska Broadband Bridge Program (NBBP) as an economic partner providing broadband service to Nebraskans. Windstream appreciates the Commission opening this proceeding and Windstream looks forward to collaborating with the Commission and the industry to further enhance the current rules. Windstream submits the following comments related to the Issues for Comment contained in the Order.

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

**1. Procedural Schedule**

Windstream appreciates the Commission’s transparency concerning its proposed procedural schedule. The Commission intends to open the application period this June and Windstream notes this timing will overlap with the challenge and application process for Nebraska’s upcoming Broadband Equity, Access, and Deployment (BEAD) Program. The BEAD

challenge process is slated to open on March 1, 2024, and will run for 120 days, which may lead to duplicative funding.

The Commission also intends a July 8, 2024, deadline for application submission which falls on the Monday following the Fourth of July holiday. Windstream requests that the Commission move this deadline out to July 15, 2024, in consideration of holiday office closures, including the State's own holiday office closure schedule.

Further, Windstream requests that any templates promulgated or required by the Commission be available to prospective applicants as soon as possible to ensure timely submission.

Windstream also recommends that the Commission work directly with applicants to cure or clarify any technical errors or ambiguity as applications are received. The ability to address and correct applications will benefit both the applicants and the Commission as it will ensure accuracy and prevent any arbitrary disqualifications.

## **2. Adjustments to Scoring System**

The Commission states it will generally utilize the scoring system set forth in the C-5484 Order issued on May 16, 2023, alongside modifications adopted by the Commission for the 2024 program. Windstream notes that the rubric contained in the C-5484 Order did not contain "Approval from Local Authorities/Project Readiness" or "Useful Life" scoring categories and understands that the Commission is considering including such categories in the 2024 program. Windstream seeks clarity as to how the Commission intends to incorporate these categories and its plans for ensuring objective scoring. Windstream reserves its recommendations concerning the advisability of these categories for Sections 6 and 8 of these comments.

### **3. Challenge Process**

Windstream supports the Commission in its intent to continue the challenge process utilized in the immediately preceding program year.

### **4. Benchmark Rates**

Windstream recommends that the Commission's methodology for scoring rate comparability be adjusted to align with the Federal Communications Commission ("FCC") pricing methodology set forth in its Urban Rate Survey for Broadband. This approach provides a clear and objective metric to determine the appropriate costs to provide services across multiple markets. In addition, this is a methodology already familiar to many providers as it is the pricing benchmark used in Connect America Fund Phase II (CAF II), Rural Digital Opportunity Fund (RDOF), and other federal Universal Service Fund (USF) programs. Furthermore, the Urban Rate Survey accounts for flexibility for providers as it adjusts with changing economies.

### **5. Project Budget and Reimbursement**

Windstream supports the use of a Commission-provided budget template and reimbursement form and agrees that the promotion of consistency will benefit both the Commission and providers. The Commission states that "[f]ailure to align the revised budget with the reduced overall costs and a reduction in the corresponding grant amount requested may impact the consideration of the application." Windstream requests that providers be granted flexibility within the approved budget or any approved revised budget to reallocate expenses amongst cost categories as reasonably needed. In other words, a provider's demonstration that costs decreased in one category and thus carried over to another category while remaining within the overall approved budget should not be prohibited by the Commission. Likewise, in the event the Commission contemplates a budget revision for a revised application, Windstream requests that

the Commission seek input from the respective provider as to the overall impact on the proposed project rather than making a unilateral decision that risks program participation and ultimately harms citizens in eligible project areas that are most in need of service upgrades. This dialogue between the Commission and a provider promotes transparency and efficiency while avoiding project disqualification due to lack of clarity.

## **6. Approval from Local Authorities**

The Commission proposes that a letter of support from a relevant local authority “could result in an increase in the application’s score.” Windstream interprets this to mean an additional scoring rubric category. In terms of project readiness, Windstream is supportive of the incorporation of a local engagement category in the Commission’s scoring rubric, but Windstream does not support a local approval category. In other words, a provider’s documented efforts to notify local relevant authorities of its plans for broadband deployment is relevant to the NBBP and measurable by the Commission, but a provider’s obtainment of a supportive letter from an “elected official” risks subjectivity.

Windstream agrees that local coordination is vital to successful broadband deployment. However, the Commission’s proposal is very ambiguous. It is unclear as to what entities would qualify as a “pertinent local authority”. For instance, how would the Commission weigh a supportive letter from an elected school board official alongside a supportive letter from a local permitting authority? More importantly, local authorities should not have the burden of selecting which project proposal should be successful, especially since only the Commission will have insight as to the rest of an applicant’s qualifications required by the NBBP. The Commission’s proposal, as written, opens the door to conflict-of-interest claims and incentivizes an arbitrary game of playing favorites.

Windstream recommends that the Commission consider developing a standardized template wherein providers may certify engagement and notification efforts with local authorities relevant to the specific project proposal. Windstream suggests that the Commission designate the local authorities it deems pertinent.

Moreover, the Commission states that “projects demonstrating significant readiness, such as secured permits and approvals, may be eligible for additional points during the evaluation process.” Windstream interprets this to mean an additional scoring category and finds this proposal problematic. A project proposal submitted to the Commission during the application process will be based upon engineering plans incorporating map estimations and data variables. The Commission’s expectation for an applicant to secure, rather than just identify, required permitting on the front end will result in not only a waste of the applicant’s and locality’s limited resources but also an extremely costly application process, ultimately materially decreasing program participation. The Commission should consider the feasibility of a permitting authority granting a permit for a tentative project. Likewise, the Commission should consider the effect of multiple applicants seeking the same permits from the same permitting authority for similar tentative projects. If the Commission feels strongly about incorporating a Project Readiness category, Windstream recommends that applicants be expected to simply identify permits and approvals needed for project completion as a means to demonstrate efficient project design.

#### **7. Maximum Per Location Cost**

Windstream is not supportive of a set per location funding cap for NBBP projects and agrees with the Commission’s suggestion that such a cap could prevent NBBP grant funds from reaching the hardest to reach areas. Windstream notes that NBBP’s competitive bidding process

will be reflective of market rates and a cap is especially unnecessary in light of the NBBP statutory match requirement.

### **8. Past Performance and Useful Life of Facilities**

Windstream does not recommend that the Commission consider additional metrics to quantify an applicant's past performance in fulfilling grant obligations. In response to the Commission's specific inquiry, an applicant's request for an extension for a prior project does not reflect the applicant's ability to fulfill grant obligations. The ability to request such an extension exists in statute. Timeline transparency should be encouraged by the Commission and reasonable extension requests were foreseeable when the NBBP was developed. An applicant's past performance should be evaluated by the Commission only in terms of obligation defaults.

Additionally, Windstream does not support a new scoring category to demonstrate the useful life of the facilities when the project utilizes fiber technology. Fiber is future-proof, and it is unnecessary to require an applicant to demonstrate its useful life. The Commission should limit the consideration of this proposed category to projects proposing the use of alternative technologies.

### **9. Submission of Serviceable Locations**

Windstream has no comment regarding Section 9 of the Commission's Order.

### **10. Cybersecurity and Prohibited Equipment**

Windstream recommends that in lieu of a requirement that an applicant submit cybersecurity plans, the Commission should simply require carriers to provide an annual certification that these programs are in place. Such certification could include the Commission's proposed attestation that an applicant does not use any prohibited equipment. The certification route is preferable because any meaningful cybersecurity plan contains highly sensitive and

confidential information that should not be widely shared as it creates unnecessary critical infrastructure security risks. Moreover, if the Commission decides to require such a certification, it should be a gating requirement rather than a scored category. Otherwise, as written, the Commission's proposal places the Commission in the position of comparing the details of providers cybersecurity plans and potentially risks the very data breach a cybersecurity plan seeks to prevent.

### **11. Program Structure**

In light of the 2024 NBBP and anticipated BEAD Program, Windstream recommends the Commission conduct an interim study to evaluate the feasibility and necessity of a 2025 NBBP. In addition, the Commission should also conduct an interim study to evaluate whether any statutory changes are needed to ensure a successful program and wide provider participation.

### **III. Conclusion**

Windstream appreciates the Commission considering these comments. The Commission's receptiveness to providers comments will only ensure that the 2024 NBBP will continue to be a successful program helping to close the digital divide gap in Nebraska.

Respectfully submitted this 1st day of March, 2024.

WINDSTREAM NEBRASKA, INC.,

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**Certificate of Service**

The undersigned hereby certifies that on this 1sts day of March, 2024, one (1) electronic copy of the foregoing Comments of Windstream was delivered to the Nebraska Public Service Commission at psc.broadband@nebraska.gov.

/s/ Mary E. Vaggalis