

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to implement standards for the verification of broadband service provider coverage and speed data.)) Application No. NUSF-133 Progression Order No. 1))

COMMENTS OF COX NEBRASKA TELCOM, LLC

Cox Nebraska Telcom, LLC (“Cox”) hereby submits the following Comments in response to the Commission’s June 25, 2024 Order reviewing standards for the verification of speed data. While Cox is not a high-cost NUSF recipient, it has won grants in the Nebraska Broadband Bridge Program (“NBBP”), the Capital Projects Fund and Rural Digital Opportunity Fund (“RDOF”).¹ As such, Cox files these Comments for the Commission’s consideration, and greatly appreciates the opportunity to present feedback of what Cox has experienced in its efforts to conduct the 2022 NBBP speed tests.

Cox wishes to emphasize it has no objection to the statutory requirement requiring providers to verify the performance of their publicly funded projects with speed test data. As providers are benefitting from public funds, it is reasonable for grant recipients to verify the capabilities of their network as a means of transparency and accountability, and Cox supports the Commission’s obligation to accurately ensure requisite speeds are being delivered through proof of performance.

¹ See Nebraska Broadband Bridge Program, Application C-5368 Order entered Dec. 6, 2022; Nebraska Broadband Bridge Program, Application C-5484 Order entered Jan. 9, 2024 and Capital Projects Fund, Application CPF-1 Order entered June 27, 2023. On Dec. 7, 2020, the FCC announced Cox as a winning bidder for RDOF support in Nebraska.

Cox's foregoing Comments focus on responding to Question 6, that is Department Discretion. Cox fully supports providing the Department with flexibility and/or discretion to review test results and associated compliance. Cox, a long-standing, proven broadband provider has been delivering internet service for more than 20 years and offers Gigabit speeds throughout its footprint. Indeed, Cox recently was named the nation's fastest internet provider ([*HighSpeedInternet.com rates Cox the fastest U.S. broadband provider \(8newsnow.com\)*](#)).

Despite having a proven network, Cox has been challenged to complete the amount of consumer speeds tests required by the NBBP. While Cox can meet and exceed the testing speed requirement, it has been unable to complete the number of tests required by the due date. In fact, all tests that Cox has been able to complete have exceeded the test requirements. Thus, the issue is more about the process, and not the substance of the test. An efficient, immediate resolution to the problem Cox is experiencing would be to give the Department flexibility to address obstacles faced by companies so that reasonable options could be explored to ensure requisite speeds are in fact being delivered.

Cox's projects funded by the 2022 NBBP grant in Application C-5368 enables the offering of 100Mbps/100Mbps and up to 1Gbps/1Gbps speed tiers. However, providing the Commission with NBBP-mandated proof has been difficult. First, the timing of the speed test certification (due 30 days post-completion) has been challenging. Cox is advertising and marketing its new services in the area, but customer acquisition takes time. The NBBP mandated speed tests are vastly different from speed tests that consumers conduct from their homes. They must be performed for 7 consecutive days, between the hours of 6 p.m. and 12 a.m., for each hour of the 6 hour window.

To meet these requirements, Cox must utilize a third party device, which requires installation. Cox presently must enter homes and install equipment inside premises to conduct speed tests. While remote testing may be a core element of the HUBB protocol², as a RDOF recipient, Cox does not have to meet speed test requirements until 2026 (although it will be performing pre-tests in 2025). It is presently developing an automated, remote test platform, scheduled to launch Q125. Thus, in the interim, Cox must utilize a separate test device. As a result, Cox is performing outreach to its newly installed customers³ and offering a \$100 credit as an incentive to secure in-home testing opportunities. It is doing what it can, yet meeting the Commission's speed test thresholds with such few customers in a short period of time has proven challenging. Cox is hopeful the need for entry into homes will be resolved in 2025 with remote testing being possible for future Commission grants and the RDOF service that becomes operational next year. To reiterate, Cox's network is not failing at delivering the requisite NBBP speeds. The difficulty has been acquiring the requisite number of customers who agree to allow the testing under the Commission's timeline.

Cox suggests a simple, efficient resolution that would aid all providers is to provide the Department with flexibility and discretion to achieve compliance with carriers on a case-by-case basis should difficulties arise. Rather than identify an exhaustive list of items the Department can discuss that would undoubtedly omit some unforeseen as-of-now circumstance, Cox suggests the Commission allow the Department to make modifications, as needed, on a case-by-case basis.

² *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement standards for the verification of broadband service provider coverage and speed data*; App. NUSF-133, Comments filed by the Nebraska Rural Broadband Association ("NRBA"), pg. 3, dated May 4, 2022.

³ Part of the challenge is the need for Commission Staff to randomly select customers to be tested. This means that ISPs must gather a list of all recently subscribed customers and then submit it to Staff. After a few days, staff returns a list of those customers who should be tested. Cox then must call each one to try to get their agreement to the test. If the customer agrees, then Cox must schedule a time for our technician to return to the customers home to install the testing equipment and then again return after the 7 day test period completes.

By way of example, this could include allowing a reasonable extension to gather the requisite amount of speed tests, accepting alternative forms of network speed testing, and the like. Indeed, the Commission must have anticipated the need for alternatives when it allowed ISPs to test nearby communities if the grant-enabled area did not produce sufficient results.⁴

Cox thanks the Commission for the opportunity to file these Comments and appreciates its willingness to consider modifications to the speed test requirements. Providing flexibility and discretion to the Department will not lessen oversight, rather it will improve and enhance the process to ensure speed testing can be authenticated through collaborative approaches when necessary.

Dated: July 23, 2024

Cox Nebraska Telcom, LLC

BY: /s/ Deonne Bruning
Deonne Bruning #20127
Deonne Bruning, PC LLO
2901 Bonacum Drive
Lincoln, NE 68502
(402) 440-1487
deonnebruning@neb.rr.com

⁴ *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement standards for the verification of broadband service provider coverage and speed data; NUSF-133, FN 5, Order entered Nov, 8, 2022.*

Certificate of Service

The undersigned hereby certifies that an original of the above Comments of Cox Nebraska Telcom, LLC were emailed to the Nebraska Public Service Commission on July 23, 2024, and a copy of the same was served via e-mail on the following:

Rural Independent Companies

Paul Schudel: pschudel@woodaitken.com

Rural Telecommunications Coalition of Nebraska

Russ Westerhold: rwesterhold@nowkaedwards.com

Nebraska Rural Broadband Association

Andrew Pollock: apollock@remboltlawfirm.com

Qwest Corporation d/b/a Century Link QC

Katherine McNamara: kmcnamara@fraserstryker.com

Windstream Communications

Mary Vaggalis: mary@bruninglawgroup.com

Charter Fiberlink – Nebraska, LLC

Kevin Saltzman: kevin.saltzman@kutakrock.com

/s/ Deonne Bruning

Deonne Bruning