

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-133
Public Service Commission, on its)	
own motion, to implement standards)	COMMENTS OF THE RURAL
for the verification of broadband service)	TELECOMMUNICATIONS
provider coverage and speed data)	COALITION OF NEBRASKA

INTRODUCTION

The Rural Telecommunications Coalition of Nebraska (“RTCN”)¹, by and through its undersigned counsel of record, submits these Comments (“Comments”) in response to the Order Seeking Comment and Notice of Hearing (the “Order”) entered by the Nebraska Public Service Commission (the “Commission”) on June 25, 2024 in the above-captioned matter.

The Order invites interested parties to suggest program changes that will reduce administrative burdens on carriers while at the same time ensuring program requirements are met. We thank the Commission for the opportunity to provide such input, and offer two suggestions below: (1) the development of a safe harbor rule to avoid duplicative state and federal testing; and (2) enhancing the NUSF Department’s discretion with respect to the Commission’s speed testing program.

A. DEVELOPMENT OF SAFE HARBOR RULE TO AVOID DUPLICATIVE STATE AND FEDERAL TESTING

As the Order details, the Federal Communications Commission (the “FCC”) has adopted a speed testing protocol whereby recipients of various forms of federal high cost support must submit speed testing results as part of their annual compliance for certification. These requirements are implemented through the Performance Measures Model (“PMM”) framework,

¹ For purposes of this proceeding, the RTCN consists of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications; Benkelman Telephone Company, Inc., Cozad Telephone Company, Hartman Telephone Exchanges, Inc., Diller Telephone Company, Southeast Nebraska Communications, Inc., Pierce Telephone Company, and Wauneta Telephone Company.

and the Commission’s speed testing requirements follow the PMM “with some modification.” In other words, many Nebraska carriers subject to the Commission’s testing requirements in this docket are also concurrently performing similar testing for similar purposes as the result of FCC requirements. While we agree that transparency and accountability must accompany the public funding of private networks, we continue to question the utility of twice performing the same speed testing to demonstrate compliance with the same standards simply to satisfy two different regulators sharing the same policy goal.

We again suggest that the Commission consider creating a “safe harbor”-style system where carriers demonstrating compliance with FCC speed testing requirements over their served locations are deemed compliant with the requirements of Neb. Rev. Stat. § 86-324.02. We encourage the Commission to consider fashioning a provision which would permit carriers subject to Neb. Rev. Stat. § 86-324.02 to apply for an exemption provided the carrier can demonstrate the following items:

- The carrier is conducting speed testing as required by the FCC;
- All locations for which ongoing high cost support is received from the NUSF are subject to the carrier’s FCC-required speed testing;
- The speed tiers tested by the carrier are those required to be tested by the Commission;
- and
- The carrier agrees to submit to the Commission the results obtained through its federal speed testing program, and any other information requested by the Commission to ensure compliance with Neb. Rev. Stat. § 86-324.02

B. ENHANCE NUSF DEPARTMENT DISCRETION

Neb. Rev. Stat. § 86-324.02 requires high cost support recipients to “submit to speed tests as determined by the Commission.” In the Order, the Commission notes that its interpretation of this requirement is “to provide broad leeway” for the Commission in setting the exact parameters of the speed testing program for high cost support recipients. Statutory requirements for the Nebraska Broadband Bridge Program and the precision agriculture grant program contain similar language. The RTCN agrees with the Commission’s interpretation and supports permitting the NUSF Department wider latitude in waiving or modifying speed testing program requirements where appropriate. The Order sets out several hypothetical situations where such discretion could be utilized, and the RTCN believes that all such situations would be appropriate.

We also suggest that permitting the NUSF Department to adjust the required cadence of speed testing would be appropriate. For example, if a project or high-cost recipient consistently demonstrates that it is meeting speed standards over an initial period of three years – we believe it would be appropriate for the NUSF Department to move the project or high-cost recipient to a less frequent testing cycle of every three to five years. Indeterminate annual testing for a project or high cost recipient is not necessary to ensure program compliance if consistent initial performance is demonstrated.

DATED: July 23, 2024

**RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA**

**Arapahoe Telephone Company d/b/a
ATC Communications, Benkelman
Telephone Company, Inc., Cozad
Telephone Company, Diller Telephone
Company, Hartman Telephone
Exchanges, Inc., Southeast Nebraska
Communications, Inc., Pierce Telephone
Company, Wauneta Telephone Company**

/s/ Russell A. Westerhold
BY: Russell A. Westerhold #22498
EDWARDS WESTERHOLD MOORE
1233 Lincoln Mall, Suite 201
Lincoln NE 68508
(402) 476-1440
rwesterhold@ewmlobby.com