

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. C-5484
Public Service Commission, on)
its own motion, to administer) ORDER GRANTING MOTION TO
the Nebraska Broadband Bridge) RETURN GRANT FUNDING
Program in the 2023 program)
year.) Entered: October 8, 2024

BY THE COMMISSION:

On March 7, 2023, the Nebraska Public Service Commission ("Commission") opened the above-captioned docket to administer the 2023 program year of the Nebraska Broadband Bridge Program ("NBBP"). On May 16, 2023, the Commission entered an order adopting the 2023 grant application schedule and issuing program materials, including the 2023 NBBP Program Guide ("Program Guide"). The Commission then entered an order in this proceeding issuing grant awards and the results of challenges ("Jan. 9 Order"). Pursuant to this order, Cox Nebraska Telecom, LLC ("Cox") was awarded \$1,004,336 to provide broadband service in the Cass and Sarpy County, Nebraska area ("Cass-Sarpy Project").¹

On July 24, 2024, Cox filed a motion seeking to return the grant awarded to Cox to build the Cass-Sarpy Project. In support of its motion, Cox stated that it discovered after the award was granted that mapping data Cox relied on was incorrect and that 93 of the originally anticipated 145 locations would not be serviceable locations such as homes, businesses, or institutions. Cox states that completing the project would be "an illogical use of taxpayer dollars and would waste the NBBP's limited resources." Cox therefore requested leave to return NBBP funds awarded for the Cass-Sarpy Project. Pursuant to the Program Guide entered in this matter, the Hearing Officer entered an order on July 29, 2024 setting the motion for hearing.

E V I D E N C E

A hearing was held on this matter on June 7, 2023. Sallie Dietrich appeared on behalf of the Telecommunications & NUSF

¹ The Hearing Officer Order entered on July 29, 2024 in this matter incorrectly identified the amount awarded to Cox in the Cass-Sarpy project. The correct amount of the award, as stated above and as listed in the Jan. 9 Order, is \$1,004,336.

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Department of the Commission ("Department"). Deonne Bruning appeared on behalf of Cox. Exhibits 1-8 were offered and accepted.

James Saville, Senior Construction Manager for Cox, testified on behalf of Cox. Mr. Saville testified that he has been a Cox employee for twenty-five years, and manages a team of construction planners, construction crew members, fiber splicing technicians, and compliance technicians.² Mr. Saville stated that in March of 2023, Cox began deciding where to submit applications for the 2023 NBBP program year.³ He stated that Cox submitted an application for the Cass-Sarpy Project to be funded by the NBBP prior to July 11, 2023.⁴ Mr. Saville testified that in January 2024, Cox was awarded \$1,004,336 for construction of the Cass-Sarpy Project in the Nebraska Broadband Bridge Program.⁵ The project application, as approved, would serve 145 locations.⁶

Mr. Saville stated that Cox was also awarded \$1,381,744 to build 112 locations in the Douglas-Washington Project.⁷ Mr. Saville stated that the Douglas-Washington Project is under way and is not part of Cox's motion to return funding.⁸

Mr. Saville stated that the Cass-Sarpy Project was developed in the same manner that was used in its previous NBBP and Capital Projects fund applications.⁹ He stated that in preparing the project application, Cox relied on Federal Communications Commission ("FCC") Broadband Data Collection ("BDC") mapping data to identify unserved and underserved locations.¹⁰ Mr. Saville stated that after potential BDC locations were identified, Cox reviewed them against Nebraska's broadband map.¹¹ Mr. Saville further testified that Cox prepared a financial analysis to

² Transcript at 11.

³ *Id.* at 21.

⁴ *Id.* at 19.

⁵ *Id.* at 11.

⁶ *Id.* at 20; Ex. 6 at 2.

⁷ *Id.* at 11.

⁸ *Id.*

⁹ *Id.* at 12.

¹⁰ *Id.*

¹¹ *Id.*

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determine the project's cost and ongoing sustainability.¹² Mr. Saville stated that Cox did not perform an in-person visit to the project area before the application was approved.¹³

Mr. Saville then testified that construction for the Cass-Sarpy Project began in March.¹⁴ He testified that when construction began, the local Nebraska team performed a "walk-out" of the project and realized that a variance existed between the locations identified in the BDC and what the team saw in person.¹⁵ Mr. Saville stated that the BDC had identified a housing tract near LaPlatte as having 70 unserved homes, but that this site has been abandoned due to flooding in 2019.¹⁶ Mr. Saville stated that Cox contacted the property owner and confirmed that the site would not be entering into future residential leases.¹⁷ Mr. Saville further described twenty-three locations identified by the BDC which Cox determined were actually cabins at a venue called Falconwood Park.¹⁸ Mr. Saville stated that these are not residential homes or occupied on a full-time basis, and do not in fact have drinking water.¹⁹

Mr. Saville stated that in total, 93 locations out of the 145 locations intended to be served by the Cass-Sarpy project ultimately could not be served.²⁰ He stated that Cox considered ways to proceed with the project anyway, but determined that it would not be fiscally responsible, and may require the use of fixed wireless technology which was not contemplated in Cox's original project application.²¹ Mr. Saville stated that Cox believes it would be a misuse of NBBP funding to proceed with the project when two-thirds of the locations do not need broadband.²² He stated that it

¹² *Id.* at 13.

¹³ *Id.* at 22.

¹⁴ *Id.* at 13.

¹⁵ *Id.* at 14.

¹⁶ *Id.* at 14, 18.

¹⁷ *Id.* at 14.

¹⁸ *Id.*

¹⁹ *Id.* at 15.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 16.

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would not be financially feasible for Cox to serve only the remaining 52 locations in the project area.²³

Mr. Saville further testified that due to the errors encountered in the mapping of the Cass-Sarpy project, Cox has revised its application development process.²⁴ He stated that a local construction team will now review proposed locations to ensure mapping accuracy before project applications are submitted.²⁵ Mr. Saville stated that this process will include a site survey, where Cox will determine all of its footages with a roller in order to more accurately estimate materials needed.²⁶ Mr. Saville stated that this will likely result in cost savings.²⁷ Additionally, he stated that Cox submitted a bulk BDC fabric challenge to assist in correcting the existing map.²⁸

Following Mr. Saville's testimony, Julie Moran, Director of RFP and Strategic Mapping, also testified on behalf of Cox. Ms. Moran stated that she is part of a market expansion team for broadband grant funding, and was involved with the Cass-Sarpy project application.²⁹ Ms. Moran stated that when notice of the NBBP program was published in the spring of 2023, Cox began reviewing potential project areas.³⁰ Ms. Moran stated that Cox tries to find project areas that fit into Nebraska's scoring criteria based on the latest available FCC data.³¹ She further stated that Cox uses in-house tools to perform a fiber mile analysis, as well as working with finance and business partners to determine what would be a feasible business case.³²

Ms. Moran stated that the original application for the Cass-Sarpy Project was revised due to the NBBP challenge process, and

²³ *Id.* at 27-28.

²⁴ *Id.* at 16.

²⁵ *Id.*

²⁶ *Id.* at 29-30.

²⁷ *Id.* at 30.

²⁸ *Id.* at 16.

²⁹ *Id.* at 39-40.

³⁰ *Id.* at 40-41, 44.

³¹ *Id.* at 41.

³² *Id.*

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14 or 15 locations were removed from the project area.³³ Ms. Moran stated that there may therefore be another provider who could potentially provide service to some of these locations.³⁴ Ms. Moran stated that after the grant was awarded, Cox notified its local Nebraska construction team to move forward with the grant.³⁵ Ms. Moran confirmed that returning the grant would mean the entire project would not be completed.³⁶

Following Ms. Moran's testimony, Carrie Gans, Assistant Telecommunications, Director, testified on behalf of the Commission's Telecommunications and NUSF Department ("Department"). Ms. Gans testified that over the course of the NBBP, grants have been returned two times.³⁷ She stated that both motions have been granted.³⁸ Ms. Gans testified that if money is returned to the NBBP, it may go back to the state's General Fund, depending on the timing of the return of funding in the state's budget biennium.³⁹ Ms. Gans stated that if possible, the department would use returned NBBP funds for the next year's grant awards.⁴⁰

Following Ms. Gans' testimony, public comment was received from Mr. David Tooker of Fort Calhoun. Mr. Tooker described difficulties in obtaining fiber-optic service in his neighborhood.⁴¹ Mr. Tooker stated that he can see a fiber cable vault from his driveway, but that he has not yet received service.⁴² Mr. Tooker stated that he has waited two years for service.⁴³ He further stated that he lives a mile and a half from Fort Calhoun, and that downtown Fort Calhoun has internet access, but that he does not.⁴⁴

³³ *Id.* at 42.

³⁴ *Id.* at 45.

³⁵ *Id.* at 42-43.

³⁶ *Id.* at 45.

³⁷ *Id.* at 47, 52.

³⁸ *Id.* at 52.

³⁹ *Id.* at 48-49.

⁴⁰ *Id.* at 52-53.

⁴¹ *Id.* at 54.

⁴² *Id.*

⁴³ *Id.* at 55.

⁴⁴ *Id.* at 56.

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Following Mr. Tooker's comments, no further evidence was received, and the hearing was adjourned.

O P I N I O N A N D F I N D I N G S

Under the terms of the Jan. 9 Order, Cox was required to complete the Cass-Sarpy Project by July 9, 2025. In its Motion, Cox states that a total of 93 of the 145 locations listed in the Cass-Sarpy Project were not in fact serviceable locations. As a result, Cox seeks to return the grant funds it has received for the Cass-Sarpy Project to the Commission. Cox has described and provided evidence at hearing of the circumstances leading to its determination that building the remainder of the project would be economically infeasible. Cox has also provided evidence that its application process for future NBBP grants will be revised such that it will conduct an in-person review of potential locations before applying for funding to serve those locations.

The Nebraska Broadband Bridge Act, in Neb. Rev. Stat. § 86-1304(2)(b), provides that an NBBP grant recipient who fails to complete an awarded project by the deadline shall repay the grant. The Commission finds that it has the authority to order repayment of grant money issued to an NBBP awardee in the event that the awardee is unable to complete the project in question.

Based upon the evidence adduced at hearing, the Commission finds that the majority of locations initially identified in Cox's application for the Cass-Sarpy Project are indeed not serviceable locations. The Commission finds that requiring Cox to complete the Cass-Sarpy Project would not be a wise use of available broadband funding and would therefore run counter to the goals set forth in the Nebraska Broadband Bridge Act. The Commission will accept the return of grant funding received to date by Cox for the Cass-Sarpy Project.

The grant funding received by Cox to date, in the amount of \$251,084, must be repaid to the Commission in full by **November 15, 2024**. If the funds are not received in full by this date, Cox may be subject to further penalties based upon the deadlines originally set forth in Docket No. C-5484 and Neb. Rev. Stat. § 86-1301 - 86-1312.

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Additionally, pursuant to the Program Guide issued by the Commission in the May 16 Order in this docket, a grant awardee that returns grant funds must be barred from submitting NBBP applications for a period of one calendar year after the funds are returned. Cox is therefore prohibited from applying for NBBP grant funding until **November 15, 2025**.

Cox will not be eligible to resubmit the Cass-Sarpy Project, or any geographic portion thereof, for consideration in future state or federally funded grant cycles unless it provides at least the same matching portion it committed to in its application for the Cass-Sarpy Project of 25% of the funds required to complete the project. The Commission further reserves the right to adjust its review of Cox's financial, legal, and technical capability to complete future NBBP projects based on its failure to complete the Cass-Sarpy Project.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Cox Nebraska Telecom, LLC must return to the Commission by **November 15, 2024** all grant funding received to date for its Cass-Sarpy Project grant awarded in the 2023 Nebraska Broadband Bridge Program. If the funds are not received in full by November 15, 2024, Cox Nebraska Telecom, LLC may be subject to additional penalties pursuant to the requirements set forth in Docket No. C-5484 and Neb. Rev. Stat. § 86-1301 - 86-1310 (2021).

IT IS FURTHER ORDERED that Cox Nebraska Telecom, LLC may not resubmit the Cass-Sarpy Project, or any geographic portion thereof, in future state or federally funded Nebraska Broadband Bridge Program cycles unless it provides at least 25% of the funding required to complete the project.

IT IS FURTHER ORDERED that Cox Nebraska Telecom, LLC may not submit any applications for funding through the Nebraska Broadband Bridge Program until November 15, 2025.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 8th day of October, 2024.

COMMISSIONERS CONCURRING:

Eric M. Hamer
Cliff
Tim Schram
Kevin Stocker

NEBRASKA PUBLIC SERVICE COMMISSION


Chair

ATTEST:


Thomas W. Golden
Executive Director