

SECRETARY’S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public)	Application No. NUSF-133
Service Commission, on its own motion,)	Progression Order No. 3
to implement standards for the)	
verification of broadband service)	ORDER FURTHER REVISING
provider coverage and speed data.)	SPEED TEST REQUIREMENTS
)	
)	Entered: February 18, 2026

BY THE COMMISSION:

On March 15, 2022, the Nebraska Public Service Commission (“Commission”) opened this proceeding on its own motion to implement standards for the verification of broadband service provider coverage and speed data in accordance with Neb. Rev. Stat. § 86-324.02. Notice of the application was published in The Daily Record, Omaha, Nebraska, on March 22, 2022. Following comments and a hearing in this matter, the Commission entered an order on November 8, 2022 setting speed test requirements for Nebraska Telecommunications Universal Service Fund (“NUSF”) high-cost recipients and entities receiving funding from other Commission grant programs.¹ These speed testing requirements were then revised in Commission Docket No. NUSF-133, Progression Order No. 1, on October 8, 2024.² The Commission also revised the speed testing requirements with regard to certain reverse auction participants on August 19, 2025.³

The Commission opened this Progression Order No. 3 on October 7, 2025 (“Oct. 7 Order”) in order to further review the existing speed testing requirements. Pursuant to the Oct. 7 Order, comments were sought from interested parties. Comments were received from Charter Fiberlink-Nebraska, LLC and Time Warner

¹ *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*, Commission Docket No. NUSF-133, Order Setting Speed Test Requirements (Nov. 8, 2022) (“Nov. 8 Order”). For purposes of this docket, the phrases “speed testing” and “performance testing” are generally used interchangeably.

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*, Commission Docket No. NUSF-133, Progression Order No. 1, Order Revising Speed Testing Requirements (Oct. 8, 2024) (“Oct. 8 Order”).

³ *In the Matter of the Nebraska Public Service Commission, on its own motion, to establish reverse auction procedures and requirements*, Commission Docket No. NUSF-131, Progression Order No. 4, Order Adjusting Reverse Auction Speed Testing Requirements (Aug. 19, 2025).

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Cable Information Services (Nebraska) (collectively “Charter”); Lumen Technologies, Inc. (“Lumen”); Nebraska Rural Independent Companies (“RIC”); and Windstream Nebraska, Inc.

H E A R I N G

A hearing on this matter was held on December 8, 2025. Sallie Dietrich appeared on behalf of the Telecommunications and NUSF Department of the Commission (“Department”). Paul Schudel appeared on behalf of the RIC. Katherine McNamara appeared on behalf of Lumen. Exhibits numbered 1 through 8 were offered and accepted.

Cullen Robbins, Director, offered testimony on behalf of the Department. Mr. Robbins emphasized that speed testing is a means of ensuring that network construction was completed, and of ensuring that consumers receive high speed and high quality service from networks built with public funds.⁴ Mr. Robbins noted that Nebraska statutes require all recipients of ongoing high cost support to conduct speed testing as determined by the Commission, including testing performed over a period of one week utilizing a random sample of locations.⁵ He also noted that other broadband buildout projects are subject to speed testing requirements, including NUSF, Nebraska Broadband Bridge Program (“NBBP”), Capital Projects Fund (“CPF”), and the Precision Agriculture (“PRO-AG”) programs.⁶

Mr. Robbins testified that the Department frequently receives questions from providers who do not understand the existing speed testing requirements.⁷ He stated that in order to reduce confusion, the Department issued two guidance documents.⁸ In October 2024, the Department issued a speed testing overview document setting

⁴ Transcript at 11.

⁵ *Id.*; Neb. Rev. Stat. § 86-324.02(1) (“Any recipient of ongoing high-cost support from the Nebraska Telecommunications Universal Service Fund shall agree to submit to speed tests as determined by the commission . . . The speed tests shall be conducted for one week using a random sample of locations of consumers who subscribe to services provided over infrastructure for which ongoing high-cost support is received.”).

⁶ Transcript at 11-12; Neb. Rev. Stat. §§ 86-1304(3), 86-1405(2).

⁷ Transcript at 12.

⁸ *Id.*

out the speed testing requirements in a bullet point form.⁹ The Department also issued a memorandum on January 10, 2025, which answered some frequently asked questions and described the existing frameworks in more detail.¹⁰ Mr. Robbins stated that these guidance documents were provided to all recipients of high cost and grant support, and are publicly available on the Commission website.¹¹ He noted that if any changes are made to the speed testing framework, the Department will update both documents.¹²

Mr. Robbins stated that the Department has to date relied largely on the Federal Communication Commission's ("FCC") testing framework.¹³ He stated that while the FCC framework is helpful as a reference for speed testing, and is familiar to many carriers, he sees potential for modification.¹⁴ Mr. Robbins noted that these modifications would solely be for state program oversight, and would not be a substitute for federal oversight.¹⁵ However, the modifications would be compatible with FCC testing so that providers can continue to use the same testing tools and reporting processes already in use for federal programs.¹⁶ Mr. Robbins stated that his recommendations would not change how tests were run, but would provide reasonable flexibility, simplify how the state interprets results, and reduce unnecessary administrative complexity for providers and Commission staff.¹⁷

Mr. Robbins testified that one issue which causes problems in analyzing testing data is due to crosstalk.¹⁸ He noted that under the FCC framework, all tests

⁹ *Id.*; Ex. 7.

¹⁰ Transcript at 12; Ex. 8.

¹¹ Transcript at 13.

¹² *Id.*

¹³ *Id.* See In the Matter of Connect America Fund, WC Docket No. 10-90, Order (July 6, 2018) ("2018 Testing Order"); In the Matter of Connect America Fund, WC Docket No. 10-90, Order on Reconsideration (Oct. 31, 2019) ("2019 Order on Reconsideration").

¹⁴ Transcript at 13.

¹⁵ *Id.* at 13-14.

¹⁶ *Id.* at 14.

¹⁷ *Id.*

¹⁸ *Id.* "Crosstalk" generally refers to interference on the network caused by other network usage at the time of testing.

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must be reported, but only Status Code 1 tests are used to determine compliance.¹⁹ However, crosstalk often produces incomplete or failed tests recorded as Status Code 2.²⁰ Mr. Robbins stated that crosstalk could be minimized by removing any limitation on the hours when testing can be performed.²¹ Doing so would allow for uninterrupted testing of the capability of the network.²² Mr. Robbins also recommended excluding Status Code 2, or incomplete, tests from the test results.²³ The Status Code 2 test results would still need to be reported, but would not count for against meeting speed test requirements. Mr. Robbins stated that the Department would prefer to retain the authority to follow up with providers in the case that the volume of Status Code 2 test results indicated potential network issues, in order to ensure oversight of intermittent performance problems.²⁴

Mr. Robbins then discussed latency testing. He noted that these tests can be particularly challenging to analyze, as FCC guidelines require the testing to be attempted every minute rather than once an hour.²⁵ Mr. Robbins proposed that latency testing requirements should be relaxed such that a minimum number of tests, such as fifteen, would be required each hour within the testing window.²⁶ He also recommended that the Commission lower the required latency threshold to eighty percent instead of ninety percent, to create consistency between latency and speed testing thresholds.²⁷

¹⁹ The Universal Service Administrative Company ("USAC") sets forth descriptions of the various status codes. Test Status 1 refers to tests which were successfully completed, and includes tests that both Pass and Fail the speed test performance requirements. Test Status 2 refers to tests which were unsuccessful due to crosstalk. Test Status 3 refers to tests which could not be completed for other reasons. Both Test Status 2 and Test Status 3 are used by USAC to determine if the carrier submitted all required test data. See High Cost Performance Measures System Compliance Calculations, UNIVERSAL SERVICE ADMINISTRATIVE COMPANY, available at <https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/PMM-Compliance-Calculations.pdf>, at 3-4.

²⁰ Transcript at 14.

²¹ *Id.*

²² *Id.* at 14-15.

²³ *Id.* at 15.

²⁴ *Id.*

²⁵ *Id.* See also 2019 Order on Reconsideration, ¶¶ 27 – 38 (describing latency testing requirements).

²⁶ Transcript at 16.

²⁷ *Id.*

With regard to alternative testing, Mr. Robbins recommended that the current alternative testing framework be continued.²⁸ He recommended allowing additional flexibility for late-filed requests for alternative testing, particularly when unforeseen circumstances arise.²⁹ He further recommended that alternative testing should be available for both new deployments and for ongoing speed testing, as those areas are often sparsely populated or otherwise challenging.³⁰ Mr. Robbins noted that allowing for alternative speed testing does not remove the obligation for a carrier to eventually successfully complete regular speed testing.³¹

Mr. Robbins then discussed issues where customers decline to allow testing equipment to be installed, or where inability to test certain customers causes challenges.³² Mr. Robbins noted that anecdotally, he understands that there can be considerable resistance from customers to a company installing additional equipment.³³ He recommended allowing for departmental flexibility in those cases, so that Commission staff can determine whether substitute test locations are available.³⁴

On questioning, Mr. Robbins noted that for fiber-only projects, continual ongoing speed testing may not be necessary.³⁵ However, he noted that to the extent carriers are required to perform speed testing for federal programs, and those tests meet Commission requirements, it makes sense to require those results to be submitted to the Commission.³⁶ Additionally, Mr. Robbins testified that under the current testing framework, a provider who successfully completes speed testing one year may waive speed testing for two subsequent years before being required to

²⁸ *Id.* at 17.

²⁹ *Id.* Mr. Robbins noted that some projects, such as Capital Projects Fund projects, may not be eligible for late-filed requests due to funding constraints. *Id.* at 25-26.

³⁰ *Id.* at 17.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 24.

³⁴ *Id.* at 17-18.

³⁵ *Id.* at 21-22.

³⁶ *Id.* at 23.

conduct speed testing again.³⁷ Mr. Robbins noted that a network and network equipment, once installed, will age over time and possibly require more speed testing.³⁸

Following Mr. Robbins' testimony, Benjamin Dennis, an attorney for Nedelco, Inc., testified on behalf of the RIC. Mr. Dennis recommended that the Commission follow the FCC's performance measures testing framework as much as possible.³⁹ He stated that differences between state and federal requirements would add administrative confusion and additional expense for providers required to submit test results to both jurisdictions.⁴⁰ He stated that he believed the adoption of an additional test framework was unwarranted.⁴¹ Mr. Dennis noted that new broadband grant funding was unlikely to be issued in Nebraska in the near future.⁴²

Mr. Dennis recommended that the Commission continue to utilize the FCC framework with some modifications.⁴³ He recommended that the Commission retain a requirement to test for six consecutive hours over a seven day testing window.⁴⁴ He suggested the Commission adopt a six hour testing window outside of peak hours in order to minimize crosstalk.⁴⁵

With regard to latency, Mr. Dennis recommended that there be no latency testing requirements for locations served with one hundred percent fiber.⁴⁶ He further recommended that alternative testing only be utilized for new broadband deployment projects, and should not be applied to ongoing NUSF high-cost support

³⁷ *Id.* at 29.

³⁸ *Id.* at 32-33.

³⁹ *Id.* at 36.

⁴⁰ *Id.*

⁴¹ *Id.* at 36-37.

⁴² *Id.* at 37.

⁴³ *Id.*

⁴⁴ *Id.* at 38-39.

⁴⁵ *Id.* at 39.

⁴⁶ *Id.*

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locations.⁴⁷ Mr. Dennis recommended that rather than providing a deadline by which carriers must file requests for alternative testing, carriers should be granted three months' flexibility of the speed testing deadline.⁴⁸ He noted that providers are incentivized to complete speed testing promptly as payments for projects subject to testing are not made until the project is complete.⁴⁹

Mr. Dennis stated that the purpose of speed testing should be to verify that networks supported by public funds are constructed and operated in compliance with the requirements specific to the applicable program.⁵⁰ He recommended that the Commission create a process with which every provider would be able to comply, regardless of project size, technology, or other factors.⁵¹ Mr. Dennis stated that he does not support the Commission adopting a wholesale change to its speed testing processes as suggested by Lumen in comments.⁵² Mr. Dennis noted that in his experience, providers may try to avoid utilizing alternative testing as it is subject to retesting in subsequent years.⁵³ He suggested that for projects where there is no statutory requirement for speed testing, it may be possible for a provider to come to an agreement with the Commission that the alternative testing performed was sufficient, and retesting would not be necessary.⁵⁴

Mr. Dennis also expressed concern about enacting new requirements that may not be logistically sound for any future grant programs.⁵⁵ He stated that he would be comfortable with more departmental flexibility.⁵⁶ However, he noted that slower reimbursement for projects would not be desirable.⁵⁷ Mr. Dennis also stated that

⁴⁷ *Id.* at 39-40.

⁴⁸ *Id.* at 40.

⁴⁹ *Id.*

⁵⁰ *Id.* at 40-41.

⁵¹ *Id.* at 41.

⁵² *Id.* at 41-42; Ex. 4.

⁵³ Transcript at 45.

⁵⁴ *Id.* at 45-46.

⁵⁵ *Id.* at 46-48.

⁵⁶ *Id.* at 48.

⁵⁷ *Id.* at 48-49.

companies do incur time and expense to conduct speed testing, although the amount of expense varies depending on the size of the company.⁵⁸

Following Mr. Dennis's testimony, Melissa Brocato testified on behalf of Lumen. Mrs. Brocato stated that she serves as the lead policy analyst at Lumen.⁵⁹ She stated that Lumen believes the FCC imposes unnecessary administrative burdens, and recommended that Nebraska consider alternative approaches.⁶⁰ She noted that the Minnesota broadband office uses a third party to conduct targeted on-site speed verification post project completion in order to streamline the process.⁶¹ She described a grant project completed in Minnesota where Lumen built 162 project locations, and performed three on-site visits to conduct speed testing in order to close out the speed test.⁶² On questioning, Ms. Brocato was unsure how the third party vendor testing was funded, but stated that Lumen did not pay for the testing.⁶³ She also noted that the testing is performed at a node rather than at a customer premise location.⁶⁴

Ms. Brocato recommended reducing the frequency and duration of required testing, stating that the current six-hour, seven-day cycle is overly burdensome.⁶⁵ She stated that a single on-site test by a qualified third party is often sufficient.⁶⁶ She further stated that timing requirements to test during peak congestion may not accurately reflect network capabilities.⁶⁷ Ms. Brocato recommended flexibility in testing protocols. She further stated that latency testing is unnecessary for fiber networks, stating that these networks naturally deliver low and stable latency.⁶⁸ She

⁵⁸ *Id.* at 56-57.

⁵⁹ *Id.* at 62.

⁶⁰ *Id.*

⁶¹ *Id.* at 62-63.

⁶² *Id.* at 65.

⁶³ *Id.* at 66-67.

⁶⁴ *Id.* at 68-69.

⁶⁵ *Id.* at 63.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

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proposed testing ten percent of active subscribers, with a maximum number of thirty subscribers.⁶⁹ Ms. Brocato further recommended that providers be allowed to submit evidence of infrastructure challenges in instances where customers decline equipment installation.⁷⁰

Ms. Brocato recommended that the purpose of Commission speed testing should be to determine whether a company has built the network to the project locations indicated in the grant contracts, and whether the company is providing the service it indicated it would build to.⁷¹

Following Ms. Brocato's testimony, no further evidence was adduced, and the hearing was adjourned.

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

The Commission appreciates the continued interest and input offered by the participants in this docket. After consideration of submitted comments and testimony, the Commission finds that the established NUSF-133 speed testing framework should continue with minor modification. Generally, the Commission finds that minimal changes to the existing Unified and Alternative speed testing frameworks should be made. However, to the extent that the Department and carriers submitting speed testing results may benefit from administrative flexibility, the Commission finds that reasonable flexibility should be granted. Specific adjustments are set forth below.

1. Purpose of Speed Testing

Nebraska's statutes underscore the importance of speed testing for publicly funded projects. Speed testing is statutorily required for recipients of ongoing high-cost NUSF support,⁷² Nebraska Broadband Bridge Program ("NBBP") grant awardees,⁷³ and Precision Agriculture Infrastructure Grant Program ("PRO-AG")

⁶⁹ *Id.*

⁷⁰ *Id.* at 63-64.

⁷¹ *Id.* at 67.

⁷² Neb. Rev. Stat. § 86-324.02.

⁷³ Neb. Rev. Stat. § 86-1304(3).

connectivity grant awardees.⁷⁴ In these statutes, the Commission is tasked with ensuring that publicly supported projects deliver service at the speeds required by statute or by program rules. Based upon the evidence presented in this Progression Order, and the speed testing performed since the opening of this docket in March 2022, the Commission hereby finds that the purpose of speed testing is to ensure that publicly funded broadband projects are built according to the specifications of the funding program, and maintained over time to ensure they continue to meet those specifications.

2. Departmental Flexibility; Requests to Modify Testing

As the Commission's and the industry's understanding of speed testing has developed, it has become apparent that rigorous adherence to arbitrary rules does not always produce an accurate measure of broadband network performance. Individual projects may face unique challenges that make standardized testing difficult, even within the Alternative Testing framework. Based upon the evidence presented in this proceeding, the Commission finds that granting additional administrative flexibility is necessary to reduce the workload to the Department, as well as to reduce the administrative burden and cost of speed testing upon carriers.

The Department is therefore granted administrative flexibility to review and grant reasonable and appropriate requests by carriers to modify their approach to speed testing projects, whether within the Unified or Alternative testing frameworks. The Commission further finds that requests to modify speed testing or to perform alternative speed testing may be accepted after the deadline to perform speed testing.⁷⁵ A request to modify speed testing for a project should be limited in scope and seek to follow the existing speed testing framework as much as is feasible. A request must also be narrowly tailored to meet the unique requirements of a project which may not otherwise be able to successfully meet the speed testing requirements. All requests must be made in a timely manner, and must seek to demonstrate that the publicly funded network has been adequately constructed.

⁷⁴ Neb. Rev. Stat. § 86-1405(2). Additionally, recipients of Capital Projects Fund ("CPF") broadband grants are subject to testing requirements established by the Commission, and are administered pursuant to Neb. Rev. Stat. §§ 81-12,245 and 86-1312.

⁷⁵ This finding modifies the previous issued requirement that alternative testing requests be submitted before the speed testing deadline has passed. See Oct. 8 Order at 10-11.

The Department may deny requests which are unreasonable, are noncompliant with statute,⁷⁶ would not adequately demonstrate the capabilities of the network, or which would result in unreasonable amounts of additional labor by the Department. If a request to modify the speed testing framework is denied, the carrier may request that the matter be presented to the Commission for review. If a request to modify the speed testing framework is granted, the Department may require the carrier to perform additional testing at a later date, or impose other requirements for the purpose of ensuring a network is adequately built and maintained.⁷⁷

3. Latency Testing

At hearing, the Department recommended that latency testing requirements be modified. The Commission finds that the Department's recommendations should be adopted. When performing latency testing, carriers will no longer be required to attempt a latency test every minute. Instead, testing must include at least fifteen attempts to perform latency testing each hour. Additionally, only 80% of latency tests must meet the required thresholds.

As previously ordered, latency testing will not be required for fiber-to-the-premises ("FTTP") projects, unless requested by the Department.⁷⁸ Projects which are not FTTP will still be required to submit latency testing data. These modifications set forth here do not exempt projects subject to other federal or state statutory requirements or program rules, including CPF projects, from performing latency testing.

⁷⁶ For example, NBBP grants must be tested for a period of one week using a random sample of locations pursuant to Neb. Rev. Stat. § 86-1304(3)(a). Because this requirement is statutory, it may not be waived by the Department (or the Commission). Similarly, Neb. Rev. Stat. § 86-324.02 requires that testing for ongoing high-cost support be conducted for one week using a random sample of consumer locations.

⁷⁷ The Department retains its previously granted authority to use discretion in determining if some carriers, portions of networks, or project areas may require additional speed testing. See Oct. 8 Order at 9.

⁷⁸ Oct. 8 Order at 12.

4. Crosstalk in Test Results; Testing Window

The Department also recommended modifying speed test requirements to account for issues caused by crosstalk. Upon review of the evidence presented, the Commission finds that the Department's recommendations should be adopted. All test results must be submitted without deletions, edits, or exclusions. Test results from providers marked as incomplete or failed⁷⁹ are still required to be reported by providers, but are not counted in the calculation of pass/fail compliance when reviewing test results. These tests will be reviewed for testing interval compliance. The Department will retain authority to inquire into a high volume of incomplete or failed tests, or to require additional testing, in order to ensure a network is not suffering from intermittent performance problems. The Department may use its discretion to determine what constitutes a high volume or unusual testing pattern during their review. In these cases, the Department may request additional documentation or explanations from providers as needed to ensure the network meets program standards.

Additionally, the Commission finds that in order to reduce issues caused by crosstalk, it is appropriate to remove restrictions on the timeframe within which speed testing may be performed. Providers will no longer be restricted to performing tests during a certain time of day.⁸⁰ Instead, testing may be performed during any consecutive six-hour period of the provider's choosing. All other requirements relating to testing intervals shall remain in place.

5. Inability to Test Certain Customers

In comments and at hearing, the parties to this proceeding agreed that it can be challenging to perform speed testing for some customer locations. The Commission recognizes this difficulty. In order to alleviate this difficulty, providers may request the testing of nearby alternate locations as part of the Alternative testing framework.⁸¹ Alternate locations tested must demonstrate that the publicly

⁷⁹ These test results would include test results marked as Status Code 2 or Status Code 3. See note 19, *supra*.

⁸⁰ Previously, testing was restricted to being conducted between 7:00 a.m. and 12:00 a.m. local time. See Oct. 8 Order at 12.

⁸¹ See Oct. 8 Order at 9-11 (describing the Alternative testing framework). Note that pursuant to Neb. Rev. Stat. § 86-324.02, testing for ongoing high cost support must be performed on randomly

funded project is serving the entire project area at the required speeds. Additional data may also be considered, such as plant maps showing network infrastructure in the area, customer invoices demonstrating subscriptions at the required speeds, documentation of network performance testing conducted during the construction phase within the project area, network monitoring logs, or other documentation showing that the network has been built and is capable of serving the entire project area.

Providers utilizing the Alternative testing framework must demonstrate that the project has been completed and is serving the entire project area at the required speeds. Any carrier granted Alternative testing will be subject to annual testing of the project in question until the carrier is able to meet the standard speed testing guidelines. The Department may use its discretion to determine what evidence is sufficient, but any Alternative testing plan or other waiver granted must comply with all statutory requirements.

6. Guidance Documents

As previously noted in this proceeding, the Department issued a Speed Testing Overview guidance document to providers subject to speed testing in October 2024,⁸² and a Memorandum guidance document regarding speed test requirements on January 10, 2025.⁸³ The Commission finds that these guidance documents should be updated and reissued to incorporate the changes to the speed testing framework set forth in this Progression Order. Following the issuance of this order, the Department is directed to issue updated guidance documents reflecting the changes made to speed testing requirements. Copies of these updated guidance documents shall be distributed to providers and made available on the Commission website. The Department may update these documents periodically as needed to clarify speed testing requirements.

selected locations. Preselecting alternative locations for Alternative testing may therefore be denied when speed testing is performed for the receipt of ongoing high cost support.

⁸² Speed Testing Overview (Oct. 2024), available at <https://psc.nebraska.gov/sites/default/files/doc/Speed%20Testing%20Overview.pdf>.

⁸³ Application of speed testing requirements and alternative speed testing (Jan. 10, 2025), available at https://psc.nebraska.gov/sites/default/files/doc/2025-01-10%20Speed%20testing%20memo_FINAL_0.pdf.

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O R D E R

IT IS THEREFORE ORDERED that that the modifications to the NUSF-133 speed testing requirements set forth above shall be, and are hereby, adopted.

IT IS FURTHER ORDERED that all other speed testing requirements previously set forth in this docket shall continue without modification.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 18th day of February, 2026.

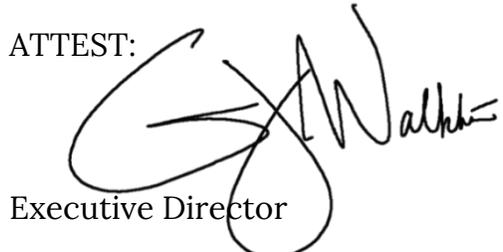
NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:






Chair

ATTEST:

Executive Director