

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public ) Application No. CPF-2  
Service Commission, on its own Motion, to )  
administer the second round of federal )  
Capital Projects Funds for broadband )  
development in Nebraska. )  
)

**COMMENTS OF THE  
NEBRASKA RURAL BROADBAND ALLIANCE**

The Nebraska Rural Broadband Association (“NRBA”),<sup>1</sup> through its attorneys of record, submits these *Comments* (“Comments”) in response to the *Order Opening Docket and Seeking Comments* (“Order”) entered by the Public Service Commission (“Commission”) on August 15, 2023, in the above proceeding. The Commission seeks comments on a number of issues related to the Capital Projects program. The NRBA appreciates the opportunity to comment.

**Per Project Location Funding Cap**

The Commission is right to consider the per location cost of projects. Some projects have been awarded funding at levels that appear excessive when compared to other projects. Providers should not be allowed to effectively circumvent the Match requirement by inflating project costs.

The NRBA, however, does not believe a fixed cap is the best approach to addressing the issue of inflated costs. Such a prescriptive approach is too simplistic, given all of the variables for real-world projects, such as terrain and distance between locations. The NRBA has recommended in the past that the Commission retain an engineer to review project

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<sup>1</sup> For purposes of this proceeding, the NRBA consists of the following carriers: Cambridge Telephone Company; Glenwood Telephone Membership Corporation; Glenwood Network Services; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC; Mobius Communications; Pinpoint Communications; Plainview Telephone Company; Stanton Telecom, Inc.; Stealth Communications; Town & Country Technologies; WesTel Systems, dba Hooper Telephone Company.

applications to verify that cost projections are not unreasonably high. The review need not be in depth, but it should be conducted by an engineer with the education and experience needed to ensure fair competition for grant funds.

### **Past Performance**

The NRBA applauds the Commission for its serious consideration of past performance in scoring Capital Project applications. The NRBA has advocated for scoring past performance under the Bridge program since its inception. Had the Commission considered past track records of Bridge applicants in previous program cycles, it might not have needed to order the return of funds for projects that were not completed. Past performance may not necessarily guarantee future success, but it is a strong indicator.

Two years ago, together with Nebraska Public Power District, and the Nebraska Rural Electric Association, the NRBA recommended that the Commission assign a possible total of 20 points for the technical capability. In support of this recommendation, the public-private coalition said:

Doing so would allow the Commission to consider the past performance of carriers, particularly in rural areas, as the measure of technical capability needed to serve subscribers in rural Nebraska. Before considering possible deductions, the Commission should award possible points based on the following:

- Up to 10 points for an Applicant's record of providing reliable 100/100 service in rural areas; and
- Up to an additional 10 points for expected useful life of the facilities and long-term commitment to the project.

The NRBA respectfully and strongly urges the Commission to adopt the proposed adjustments to its scoring of technical ability. In its Order establishing the 2023 Bridge

program (NBBP), the Commission declined to score past performance of applicants.<sup>2</sup> The Commission said:

We recognize that the administrative burden to submit NBBP applications is already significant and imposing more requirements upon carriers may discourage participation in the NBBP.<sup>3</sup>

The members of the NRBA – all broadband providers – wish the administrative burden of other programs, like BEAD, were as *insignificant* as those of the Bridge and Capital Project programs. That said, the public interest demands accountability for all programs that provide public funds to private providers. All members of the NRBA are willing to demonstrate the extent of broadband infrastructure deployment in any area they are serving, especially (but not exclusively) where they have received public funding to construct and operate their networks. It would not be an undue burden to do so. In fact, it would be a reasonable exercise of regulatory authority to require such information. Any such information, of course, should remain subject to confidentiality protections and non-disclosure requirements necessary to avoid unfair competition and risk of network insecurity.

Participation in both the Bridge and Capital Projects programs has been strong, to put it mildly. Competition has been feverish for nearly all broadband funding programs since the pandemic. Allowing applicants for public funding to demonstrate (and be scored favorably for) past success, especially long-term success in high-cost, rural areas, will not discourage participation. Rather, it would encourage providers most capable of serving rural Nebraskans to apply.

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<sup>2</sup> In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the Nebraska Broadband Bridge Program in the 2023 program year, *Order Issuing 2023 Grant Application Schedule and Application Materials* (May 16, 2023), pp. 5-6.

<sup>3</sup> *Id.*, p. 6

## **Copper-Based Broadband**

The NRBA also applauds the Commission for seriously considering the legitimacy of challenges. The Commission should not do anything to encourage and should do as much as reasonably possible to discourage challenges by providers utilizing obsolete technologies.

That said, the NRBA believes that consideration of both applications for funding and challenges to such application should remain technology neutral. The Commission and other granting agencies will most effectively hold providers accountable by rigorous speed-testing.

## **Project Areas**

The Commission posits a battery of questions related to the definition of project areas. Practices first implemented by the Commission under the Bridge program have led to a location-by-location approach in considering both applications and challenges. It started with the Commission's approach to challenges during the 2021 program. This approach, for example, led to the divvying up of government support between two broadband providers serving Shickley (pop. 343) and the surrounding rural area. A business case cannot be made for one carrier in the Shickley area. It is no exaggeration to say that small towns and rural areas in Nebraska are now being divided between carriers on a house-by-house basis. This approach is neither sensible nor sustainable.

The Commission and all granting agencies would be well-advised to avoid such unsustainable practices in the future. This was a central objective of the Rural Communications Sustainability Act.<sup>4</sup> In funding broadband infrastructure deployment projects, the State must have an eye toward the long-term sustainability of the network. Until the Commission reforms its approach to applications and challenges, it should allow applicants to take steps necessary to serve as many customers as possible in project areas.

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<sup>4</sup> NEB. REV. STAT. §§ 86-1501 - 86-1507 (LB683 (2023), §§ 12-18)

## Cybersecurity

The Commission seeks comment on whether to require applicants to provide assurances that cybersecurity measures have been implemented. Cybersecurity is critical to the reliable operation of broadband infrastructure. The NRBA takes cybersecurity seriously. Members of the NRBA are working with consultants to develop company-specific plans to comply with substantial federal regulatory requirements. The State of Nebraska should be notified of federal compliance, but should impose no additional rules, regulations, or burdens.

## Other Modifications to Scoring

The Commission inquires about other modifications to its scoring system. Among other things, it asks whether its requirements for **community outreach** are “sufficient.” The NRBA respectfully asserts they are not. In order to be meaningful, community input should be solicited and received independently from the applicant. The Commission should give serious attention and weight to community feedback.

The Commission asks whether “NBBP” (and presumably Capital Projects) grants should be required to cover **drop costs**. The NRBA recommends regulatory flexibility on the issue of drop costs. Consistent with our current best practices, we acknowledge that broadband providers should be encouraged to include drop costs for residential customers in their projects during the deployment timeframe. This will ensure that individual residential customers are not faced with additional connection costs beyond their means. Digital equity is imperative. Access should be universal.

That said, there are business customers for which last-mile or last-acre may be a necessary cost of doing business. Such customers may have reason to pay the cost of last-mile or last-acre drops on their own (depreciating infrastructure as a business expense). Or they may choose to work with other vendors, such as cellular and other wireless providers. The

Commission would be wise to allow experimental partnerships. Avoiding fixed rules with regard to drop costs is critical to such innovation.

**Mapping Accuracy: Fair Competition**

To ensure fair competition for public funding, the Commission should disqualify applications by any incumbent local exchange carrier (“ILEC”) for locations the ILEC reported as served in the most recent iteration of the National Broadband Availability Map.

DATED: September 15, 2023

NEBRASKA RURAL BROADBAND  
ASSOCIATION

Cambridge Telephone Company;  
Glenwood Telephone Membership  
Corporation; Glenwood Network Services;  
Glenwood Telecommunications, Inc.;  
Hemingford Cooperative Telephone Co.;  
Mainstay Communications; Midstates  
Data Transport, LLC; Mobius  
Communications; Pinpoint  
Communications; Plainview Telephone  
Company; Stanton Telecom, Inc.; Stealth  
Communications; Town & Country  
Technologies; WesTel Systems, dba  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that an original of the above *Comments* of the Nebraska Rural Broadband Association were filed with the Public Service Commission on September 15, 2023, and a copy was served via electronic mail, on the following:

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