

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Application No. CPF-2
Public Service Commission, on its	)	
own motion, to administer the	)	<b>COMMENTS OF THE RURAL</b>
second round of federal Capital	)	<b>TELECOMMUNICATIONS</b>
Projects Funds for broadband	)	<b>COALITION OF NEBRASKA</b>
development in Nebraska.	)	
	)	

**INTRODUCTION**

The Rural Telecommunications Coalition of Nebraska (“RTCN”)<sup>1</sup>, by and through its undersigned counsel of record, submits these Comments in response to the *Order Opening Docket and Seeking Comment* (the “Order”) entered by the Nebraska Public Service Commission (the “Commission”) on August 15, 2023 in the above-captioned matter. RTCN appreciates the opportunity to provide input on the administration of the Capital Projects Fund.

The Order addresses a variety of items concerning Capital Projects Fund administration and poses several inquiries. For both brevity and clarity, these Comments do not contain responses to each question posed by the Commission. Rather, RTCN has chosen to address its main concerns in these Comments. We reserve the right to add further comments or testimony to issues unaddressed in these Comments, as such opportunity may arise.

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<sup>1</sup> 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.

## COMMENTS

### Per Project Location Funding Cap

The Order seeks input on whether the Commission “should set a per location funding cap” for projects in the second round of the Commission’s Capital Project Fund broadband infrastructure grant project (“CPF-2”). The Order further seeks input on the appropriate amount for such cap and other ancillary issues related to the primary question stated above.

Presently, the RTCN opposes the development of a per location funding cap in CPF-2 and other broadband grant programs administered by the Commission. As the development of Nebraska’s broadband infrastructure reaches farther away from densely populated areas and into more sparsely populated rural areas, the per location cost increases (in some situations dramatically). A per location funding cap may have the effect of negating the viability of many projects that would reach rural consumers. As the Order states, the purpose of the CPF grant program is to “achieve last mile connections.” In a sense, the Commission must decide whether the purpose of the CPF grant program is to achieve *as many* last mile connections as possible, or to achieve as many of *the most difficult* last mile connections as possible.

At the same time, we appreciate and acknowledge the Commission’s attention to this complicated issue. Developing an appropriate per location cap requires extensive discussion. Owing to the vast differences in population density across various parts of the state, we question whether a “one size fits all” funding cap would serve the best interests of all Nebraskans. This is particularly true with respect to CPF-2, which targets Nebraska’s Third Congressional District. Should projects serving more densely populated Hall County be subject to the same funding cap as projects serving Cherry County or Sheridan County? Or should per location funding caps be developed with a recognition of differing challenges in different areas of the state?

We suggest that if the development of a per location funding cap is desired, the Commission open a separate proceeding to discuss the issue. The Order permits interested parties only one opportunity to submit comments, with no reply comments and no public hearing. A more robust opportunity for comment and input would be preferred.

### **Past Performance**

The *Order* broadly asks whether applicants should be penalized (either through scoring deductions or outright exclusion) based upon “past performance” and poses the question of whether the Commission should require applicants to obtain the affirmative approval of local governing entities at or before the submission of an application.

The RTCN agrees that performance issues related to NBBP projects should carry a penalty. We note that the Nebraska Broadband Bridge Act provides two major “performance” criteria for grantees: completing the project within the statutory timeframes and achieving the statutorily required speeds. Neb. Rev. Stat. § 86-1304. The penalty for failure is repayment of the grant funds to the Commission. Id. The strength of the Legislature’s vision in the Broadband Bridge Act is in its simplicity: if providers fail to achieve timely completion at qualifying speeds, any grant funds received are required to be repaid.

Developing more requirements for applicants (such as local jurisdiction approvals) or imposing scoring penalties for “past performance” issues may serve to “weed out” an occasional problematic application. However, in a broader context, the RTCN observes that each additional administrative requirement placed on applicants also has the consequence of diminishing the pool of likely applicants. NBBP grants are targeted for broadband deployment to low margin or no margin areas where ordinary market economics make deployment unlikely. Each successive requirement or administrative responsibility imposed upon applicants adds cost to participating

in the program and completing projects. For that reason, we ask that the Commission strive to maintain as much simplicity and predictability as possible for applicants.

Rather than imposing new requirements or penalties to punish past performance failures, the RTCN believes the Commission should focus on rewarding applicants with a history of good performance. To that end, the Nebraska Rural Broadband Alliance (NRBA) has suggested that the Commission consider awarding, under the technical capability category, additional points based on: (1) an applicant's history of providing reliable service in rural areas; and (2) the expected useful life of facility and long-term commitment to the project. We concur with the NRBA's suggestion and ask the Commission to adopt it.

### **Copper-Based Broadband Service**

The Order notes the Commission's concerns regarding proposed fiber-based project areas that were successfully challenged by providers utilizing DSL broadband technology. As the Order explains, the likely consequence for consumers in the challenged project area is to "preclude future upgrades to fiber-based technology." The Commission asks whether the challenging DSL provider in such situations should be required to make "a commitment to upgrade its network to fiber." In general, the RTCN believes such a requirement would be appropriate and that a three (3) year timeframe for the challenging provider to complete the upgrade would be reasonable.

The RTCN appreciates the Commission's willingness to broach this important issue. While the Commission's inquiry focuses on successful challenges to fiber-based projects by DSL providers, we note that the same or similar issues exist with respect to successful challenges to fiber-based projects from wireless providers. In the same manner as DSL-based challenges, a

successful challenge to a fiber-based project by an existing wireless provider carries the potential of precluding future upgrades to fiber-based technology.

### **Project Areas**

No comments at this time.

### **Cybersecurity Practices**

The Order seeks input on whether CPF-2 applicants should be required to “provide assurances that they have taken steps to safeguard and strengthen their networks against cybersecurity attacks.” As an initial matter, the RTCN believes that all providers should be taking reasonable steps to protect their networks and the consumers using those networks from cybersecurity issues. The more difficult question posed by the Commission is *which* steps or protective measures should be required to meet any standard developed by the Commission for providers participating in the CPF-2 grant program or other broadband deployment programs administered by the Commission.

We suggest that the Commission refer to the cybersecurity and supply chain management requirements set forth in FCC’s Report and Order dated July 24, 2023 establishing the Enhanced Alternative Connect America Cost Model (Enhanced A-CAM). In that Order, the FCC requires providers electing Enhanced A-CAM to implement operational cybersecurity plans by January 1, 2024. Compliant plans are required to reflect an established set of cybersecurity best practices.

Providers electing the Enhanced A-CAM offer must do so no later than October 1, 2023. If a significant portions of Nebraska’s broadband providers make such an election, the Commission’s adoption of or reliance upon the FCC requirements would have the added benefit of avoiding conflicting federal and state cybersecurity requirements.

**Other Modifications to the Scoring Criteria**

In its closing section, the Order asks whether the Commission should require that grantees certify that projects funded through the NBBP cover “all costs to reach the customer premise, including drops to the residence or business for all serviceable locations.” The RTCN believes that the Commission should impose such a requirement. Broadband consumers should expect that publicly funded deployment projects will cover such costs and not leave the consumer in a position of paying out of pocket for a drop before receiving service.

DATED: September 15, 2023.

**RURAL TELECOMMUNICATIONS  
COALITION OF NEBRASKA**

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ATC Communications, Benkelman  
Telephone Company, Inc., Cozad  
Telephone Company, Diller Telephone  
Company, Hartman Telephone  
Exchanges, Inc., Southeast Nebraska  
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