



## Attachment M\_7 – Priority Designation 1 Classification

### Basis for Tier 1 Classification

This application should be classified as a Priority Designation (“Tier”) 1 application because the proposed project area polygon, as revised, does not include any underserved locations and the fiber routes that connect the polygon use road easements that pass underserved locations to the minimum extent necessary to bring fiber to the unserved locations in the project area. The application thus complies with the Commission’s decision in its November 7 Order,<sup>1</sup> which concluded that applicants should have flexibility of defining their own project areas.

In its letter to Vistabeam dated March 13, 2024, the Commission proposed to reclassify the application as Tier 3 because the “[p]roject passes many underserved locations [and it is] unlikely that these won’t be served by the project.” Though the proposed project area includes fiber routes along roadways that pass underserved locations, those routes are the minimum necessary to bring fiber to the project area’s unserved locations. It is not possible for Vistabeam or any other company to bring fiber to the unserved locations in this project area without fiber routes that pass underserved homes.

Most unserved locations in Nebraska are in heterogeneously served communities—communities that contain a mix of served, underserved, and unserved locations that are in close proximity. Because fiber requires a continuous connection from a provider’s nearest access point to unserved locations, it is typically necessary for fiber routes to pass underserved locations to reach unserved locations.

If this necessity were to result in reclassification of an application from Tier 1 to Tier 3, it is unlikely that these unserved locations will be served by fiber in any grant cycle that uses a Tier-based award process.<sup>2</sup> First, serving small pockets of unserved homes with fiber would be economically infeasible if the middle mile fiber necessary to reach these pockets were ineligible for subsidy. Second, given that the aggregate award amount sought by Tier 1 applications in this grant cycle (and historical grant cycles) vastly exceeds the available funding, the funding will almost certainly run out before any Tier 3 applications are funded. Reclassification of an application from Tier 1 to Tier 3 is a de facto denial of that application.

Given the stakes of reclassification—that it effectively denies an application—the standards for reclassification based on passing underserved locations should be clearly expressed and uniformly applied to all applicants. The Commission’s statement in its November 7 Order “encouraging” proposed project areas that reflect all locations intended to be served<sup>3</sup> is hortatory and too vague to support reclassification

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<sup>1</sup> In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the second round of federal Capital Projects Funds for broadband development in Nebraska, Application No. CPF-2, FINDINGS AND CONCLUSIONS ORDER AND ORDER ADOPTING PROCEDURAL SCHEDULE FOR NEXT GRANT CYCLE (November 7, 2023), page 11 (“November 7 Order”).

<sup>2</sup> As a matter of substance, such a policy decision would result in different classifications of unserved locations, not different classifications of applications.

<sup>3</sup> November 7 Order, page 11.

of this application from Tier 1 to Tier 3.