

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public ) Application No. NUSF-133  
Service Commission, on its own )  
Motion, to implement standards for the )  
verification of broadband service )  
provider coverage and speed data. )  
)

**COMMENTS OF THE NEBRASKA RURAL BROADBAND ALLIANCE**

**INTRODUCTION**

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 March 15, 2021, in the above proceeding. The Commission is to be commended for proactively considering issues related to the enactment of LB338 (2021). The Commission’s investigation focuses on Section 5 of LB338, which provides:

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. Upon the commission's request, such recipient shall conduct the speed tests and submit the results to 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.<sup>2</sup>

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<sup>1</sup> For purposes of this proceeding, the NRBA consists of the following carriers: Cambridge Telephone Company; Diller Telephone Company; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC; Stanton Telecom, Inc.; and WesTel Systems.

<sup>2</sup> NEB. REV. STAT. § 86-324.02.

The Commission seeks comments on four general categories of issues:

1. How to select testing locations and the proper sampling size;
2. The portions of the network to be tested;
3. What the daily test period and testing intervals should be; and
4. How to treat consumer-based testing.

As a matter of resource management, the NRBA Comments will concentrate on policy issues raised by the Commission's Order and not the more technical questions. In its reply comments, the NRBA will more specifically address the latter.

## COMMENTS

### **Selection of Locations**

The Commission seeks comments on a number of questions related to selecting locations for testing purposes and how it should establish a meaningful sampling. Beginning with key public policy questions, the Commission says it interprets Section 5 of LB338 "to mean that providers that have completed capital improvement projects and are now eligible for ongoing support" must verify they are providing broadband at compliant speeds.

The statutory provision, set forth in its entirety above, applies to "[a]ny recipient of ongoing high-cost support from the Nebraska Telecommunications Universal Service Fund ("NUSF")." The NRBA is unsure why the Commission would limit the statutory testing requirement to a subset of carriers that have "completed capital improvement projects." The language quoted from the Order does not appear in or derive from the law. The law is clear: ***any carrier receiving ongoing NUSF support must verify it is providing speeds that comply with state standards.***

The Commission's interpretation is premised on the following statement it makes in the Order: "ongoing high-cost support is not earmarked to one location or even determined on an exchange basis." The NRBA acknowledges that the practice of the Commission has not been to allocate ongoing NUSF support on a localized basis for any type of federally supported carrier. But we have also made clear we believe the Commission needs to be more active in considering such allocations.<sup>3</sup>

Today's broadband marketplace in Nebraska is more competitive than it has been. This is true for several reasons. First, LB994 (2018) allows the Commission to force out carriers that are not providing broadband services. Second, Sen. Bostelman's LB338, allows consumer choice in election of carriers. Third, Bridge program funding is effectively forcing carriers of last resort out of some areas. These three programs allow for the opening of local and regional marketplaces to competitive entry. They augment an older statutory program that allows competition through boundary change proceedings, which typically have benefited one or two customers at a time.

The Commission at some point, under at least one of the competitive programs just mentioned, will address complicated issues related to how NUSF support must be allocated on a localized basis. Current Bridge program funding has involved relatively small appropriations of state general funds. In the near future, Bridge funding will include much larger infusions of federal funds. Increased funding will

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<sup>3</sup> NRBA, Andy Pollock hearing testimony, C-5368 (March 22, 2022).

mean transition in larger areas. The larger the area, the more important the matter of allocating ongoing support.

The NRBA is not suggesting the Commission undertake in this proceeding to allocate ongoing support on a localized basis. Rather, the NRBA would respectfully request the Commission simply require speed test verification for all carriers receiving ongoing support on a random basis, as state statute requires.

A related (and arguably antecedent) policy question the Commission should consider is what speeds must be verified.<sup>4</sup> It is within the Commission's authority to establish the speeds necessary to qualify for ongoing NUSF support.<sup>5</sup> Consistent with other standards recently established by the Legislature for state broadband programs including the NUSF and Bridge, *the Commission should require that carriers sufficiently verify 100 by 100 Mbps speeds to qualify for ongoing NUSF support.*<sup>6</sup>

Finally, the NRBA respectfully reserves comment on the details of how the Commission should determine sample sizes, what information should be required of carriers, and the establishment of speed tier bases for sampling.

### **Acceptable End Points for Testing**

The Commission seeks comments on technical requirements for testing speeds and latency. The NRBA respectfully reserves its comments on these questions. In general terms, the NRBA espouses the following principles:

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<sup>4</sup> NRBA *Comments*, NUSF-108, PO-6, pp. 8-9 (May 28, 2021)

<sup>5</sup> NEB. REV. STAT. § 86-316, *et. seq.*; NEB. CONST. art. IV, § 20. *See also* NEB. REV. STAT. § 86-324.01.

<sup>6</sup> *See, e.g.*, NEB. REV. STAT. § 86-324.01.

1. ***Consistency with federal HUBB reporting requirements*** to ensure accurate and representative data while avoiding duplication and unnecessary administrative burdens;
2. ***Consistency with other programs administered by PSC***, such as the Bridge program, NUSF-92, etc.
3. ***Adaptability***. The Commission should reconsider technical requirements for testing at least annually, as it does for other programs. Given the near-constant improvements in testing capabilities and federal data and mapping, the Commission would be prudent to maintain regulatory flexibility.

### **Daily Testing Period and Testing Intervals**

On the issues raised by the Commission relating to daily testing periods and testing intervals, the NRBA respectfully reserves comment and reiterates the principles set forth above.

### **Consumer Input and Validation**

With submission of data consistent with HUBB reporting standards, as discussed above, the need for consumer-initiated testing and customer-premises-based testing data will become less critical. Data generated through Ookla and similar credible platforms will essentially be built into the Federal Communications Commission's Broadband Data Collection program. The Nebraska Commission will have access to such data, which the Commission may give due consideration in deciding competitive actions.

### **CONCLUSION**

The NRBA appreciates the opportunity to comment on these important issues and present further comments by the reply comment deadline. We plan to participate in the public hearing the Commission has scheduled.

DATED: April 15, 2022

NEBRASKA RURAL BROADBAND  
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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 April 15, 2022, and a copy was served via electronic mail, on the following:

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