

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the Nebraska Broadband Bridge Program in the 2022 program year. ) ) ) ) ) ) ) ) ) ) ) ) Application No. C-5368

COMMENTS OF ALLO COMMUNICATIONS LLC

ALLO Communications LLC (“ALLO”) submits these comments in response to the Order Opening Docket, Seeking Comments, and Notice of Hearing entered by the Nebraska Public Service Commission (the “Commission”) in this docket on February 1, 2022 (the “C-5368 Order”). ALLO appreciates the opportunity to provide these Comments to the Commission and looks forward to continuing to participate in the Nebraska Broadband Bridge Program (the” Program”) in the upcoming grant cycle.

INTRODUCTION

ALLO is the largest Nebraska based and majority-Nebraska owned telecommunications company, providing competitive local telephone, long distance, broadband, internet, and television services to 80,000 homes and businesses within the state.

First, ALLO thanks Senator Friesen, Governor Ricketts, Speaker Hilgers, and members of the Nebraska Legislature for prioritizing and passing the Nebraska Broadband Bridge Act (“the Act”)¹. Furthermore, ALLO applauds the Commission and its staff for quickly and efficiently implementing the Act under a constrained timeframe. ALLO believes the Program could provide a good framework for the distribution of both state and federal broadband grant funds in the coming years. However, for the Commission to effectively and equitably distribute the incoming influx of federal funds, adjustments must be made.

During the 2021 Program grant cycle, the Commission was unable to distribute the full \$20 million Program appropriation, due in large part to successful challenges to a substantial number of grant

¹ Nebraska Legislature, LB 388 (2021). Codified at *Neb. Rev. Stat.* § 86-1301 to 1310.

service at the minimum 100/20 Mbps speed threshold to all serviceable locations within the challenged portion of the project area (“Type 1 challenges), or 2) is either currently constructing broadband infrastructure in the project area, or provides service proximate to the project area and anticipates completion of broadband infrastructure providing a minimum 100/20 Mbps speed threshold to all serviceable locations within the challenged portion of the project area within 18 months (“Type 2 challenges”).<sup>2</sup> In the case of all Type 1 challenges, a provider was prepared to deploy a fiber network with a limited amount of grant support, but was prevented from doing so by the incumbent provider.

ALLO doubts that all project application areas blocked by Type 1 challenges are currently being served with broadband at speeds of 100/20 Mbps or greater. ALLO is concerned that unreliable information, such as speeds providers claimed to be available in FCC Form 477 filings, and network plant maps reflecting little fiber investment, were considered as credible evidence by the Commission. Incumbents have not historically invested in these areas, and will continue not to invest if they know they will be protected from grant applications. If this trend continues, many households and businesses will continue to suffer from the effects of poor broadband service, and the Commission may struggle to distribute the full amount of Program funding each year. As such, ALLO suggests the following changes to the Program (see below for more detailed comments):

1. Increase the burden of proof for challenging providers by requiring them to submit independent, third-party speed tests of existing networks in challenged areas;
2. Offer less protection to challenging providers that have failed to make significant fiber investments in project areas they are challenging;
3. Increase accountability and transparency, both through speed testing, and by requiring applicants to disclose other sources from which they have received state or federal funds and which areas of the state are meant to be served by this funding.

## COMMENTS

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<sup>2</sup> see Commission Docket No. C-5272, *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement the Nebraska Broadband Bridge Act*, Order Issuing Grant Awards and Results of Challenges (January 4, 2022), Pg. 2.

## **1) Program Overview**

ALLO agrees with the procedural schedule proposed by the Commission.

## **2) Adjustments to Scoring System**

### *a) Financial Capability*

ALLO agrees with the Commission's Financial Capability proposals.

### *b) Technical Capability*

ALLO agrees with the Commission's Technical Capability proposals, and strongly supports scoring deductions based on past performance of Commission-funded projects. Providers that have poor track records in their use of public money should be penalized in the Program's scoring criteria.

### *c) Legal Capability*

ALLO supports both requiring a Nebraska attorney as legal contact on a Program application, and for applicants that have been listed as respondent in a Commission complaint to be penalized.

## **3) Tiebreaker**

If two applications receive the same score and only one of the projects can be funded, the Commission should fund the project that will serve the most locations per dollar of grant funding. This will ensure that the Commission is maximizing the impact Program grants, and that the Program is providing access to broadband to as many homes and businesses as possible. Additionally, the Commission should consider other relevant factors, including but not limited to, the applicant providers' historical results for using public and private investments, speeds offered by the providers' networks, and the providers' quality of service (latency, jitter, and price), with effort being made to fund the project whose network will provide highest quality, most affordable, and most dependable services that customers purchase.

## **4) Challenge Process**

### *a) Geographic Area Identification and Speed Testing*

ALLO strongly encourages the Commission to increase the burden of proof on providers submitting Type 1 challenges in the following ways:

1. By requiring providers to submit speed test data on the date of filing the challenge, as outlined in the Commission's C-5368 Order. Speed test results are currently required at project completion for grant funded projects and for successful Tier 2 challenges after 18 months. The same should be required for Tier 1 challenges;
2. By requiring any speed test data collected and submitted pursuant to this subsection to be collected by, or in partnership with, an approved, nationally available third-party platform with sufficient bandwidth;
3. By continuing to consider other relevant information including, but not limited to, speed test data submitted by applicants or other entities, letters of support from stakeholder groups within the project area, and evidence of community engagement within the project area by the applicant and challenger;
4. By disregarding unsubstantiated, challenger-submitted speed data, especially data taken from FCC Form 477 filings;
5. By considering publicly available broadband speed data, including the National Telecommunications and Information Administration Indicator of Broadband Needs Map.<sup>3</sup> ALLO contends that this and other publicly available datasets are much more credible than naked, unsupported assertions made by incumbent providers.

b) *Challenges to Portions of Applications and Modifications of Applications*

ALLO agrees with the Commission's proposal in this subsection. Additionally, ALLO encourages the Commission to look critically at any portion of a challenged project that has not received significant fiber investment.

## **5) Speed Testing**

ALLO contends that the Commission can ensure the validity of speed tests performed by successful applicants and by challenging providers by requiring these speed tests to be completed using an approved, nationally available third-party platform with sufficient bandwidth. Most information can be obtained with publicly available information at little or no cost.

## **6) Remaining Grant Funding; Additional Federal Funds**

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<sup>3</sup> see

<https://broadbandusa.maps.arcgis.com/apps/webappviewer/index.html?id=e2b4907376b548f892672ef6afbc0da5>

ALLO contends that the Commission should use any federal funds it receives to advance broadband deployment in all unserved and underserved areas in Nebraska

### **7) Revisions to Applications**

ALLO contends that the Commission should evaluate proposed projects that would serve more unserved locations than underserved locations (*i.e.*, more than 50% of locations in the proposed project are unserved) as Priority Tier 1 projects. Current Commission rules penalize an otherwise worthy project application by moving it from Priority Tier 1 to Priority Tier 3 if it includes even one underserved location.<sup>4</sup> Penalizing an applicant that includes many unserved and a few underserved locations in a project is contrary to public policy. Many underserved locations that are directly adjacent to unserved areas are in desperate need of improved broadband service, even if speeds of at least 25/3 Mbps are available. Many of these households are served by outdated and unreliable technology. Incentivizing providers to limit a project to unserved locations may prevent providers from including these underserved locations in Program-supported fiber builds, which will further widen the digital divide in these areas. By giving Tier 1 priority to project applications that will provide service to more unserved locations than underserved locations, providers will be able to cast a wider net and include more remote, underserved locations in projects.

### **8) Overbuilding of Existing Networks**

In the C-5368 Order, the Commission defines overbuilding as “the construction of a new network which would provide *the same services* as a network currently existing in the same location” (*emphasis added*).<sup>5</sup> ALLO contends that fiber to the premises (“FTTP”) networks provide a far superior service to any other widely available technology, including networks utilizing copper plant. Fiber is scalable to

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<sup>4</sup> see Commission Docket No. C-5272, *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement the Nebraska Broadband Bridge Act*, Order Issuing 2021-2022 Grant Application Schedule and Application Materials (August 10, 2021), Pg. 4.

<sup>5</sup> C-5368 Order, Pg. 7, Footnote 6.

much higher speeds than any other widely available technology, provides more reliable and higher-quality service as measured by delivered speeds, latency, and jitter, and create a futureproof network that will not need major upgrades for decades. While copper or hybrid copper/fiber networks may purport to provide competitive speeds, FTTP is far superior in real-world applications. As such, applications that propose to build FTTP in areas currently served by other technologies should not be considered “overbuilds” as the services are clearly not the same.

To ensure Nebraskans are receiving access to the best possible service, the Commission should require providers that wish to challenge an application to make a showing of FTTP plus proof of actual service offered. Proof of service could be demonstrated through submission of speed tests. This will prevent providers from deploying fiber to protect an area from Program applications, but not investing in the electronics and to-the-premises connections required to operate a FTTP network that offers service to customers. Price and quality of service should also be considered by examining a provider’s take rates over time. Bandwidth availability without market share is an indication of a provider offering either high pricing, low quality, or both.

Alternatively, if the Commission rejects this definition of overbuilding and chooses not to require challenging providers to demonstrate FTTP and proof of service offered in challenged areas, it should at least be flexible in allowing partial overbuilding on a case-by-case basis, and be critical of challenging providers that have not made significant fiber investments in challenged areas.

#### **9) Data Plans and Usage Caps**

ALLO agrees with the Commission’s proposals made in this subsection.

#### **10) Digital Inclusion Plans; Additional Points Available**

ALLO agrees with the Commission's proposal requiring applicants to participate in the FCC’s Affordable Connectivity Program, which should be applied to all levels of service.

#### **11) Rates**

ALLO agrees with the Commission's proposal that an applicant's initial rates must be no higher than fifteen percent greater than the median rate offered by other Program providers for equivalent on-going service.

## **12) Match Source**

### *a) In-Kind Labor Costs*

In-kind labor costs should be considered matching funds for internally performed construction supported by appropriate documentation at cost.

### *b) State and Federal Support*

ALLO strongly supports all Commission proposals in this subsection. Requiring applicants to identify other sources from which it has received public money will increase transparency and accountability.

## **13) Public Private Partnerships**

ALLO strongly supports the use of public-private partnerships. However, ALLO does not believe applications utilizing public private partnerships should be given additional points. An effective public-private partnership should allow a provider to make a strong business case to serve a proposed project area and should therefore not require or receive bonus points. These applications should be evaluated in the same manner as other applications.

## **14) Invoices and Reimbursements**

ALLO agrees with the Commission proposals in this section.

## **CONCLUSION**

For the reasons stated in this Comment, ALLO recommends certain modifications to the administration of the Program. ALLO appreciates the opportunity to provide these Comments in response to the C-5368 Order and looks forward to continuing participation in this docket.

#### 14) Invoices and Reimbursements

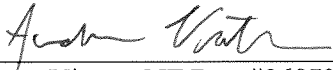
ALLO agrees with the Commission proposals in this section.

#### CONCLUSION

For the reasons stated in this Comment, ALLO recommends certain modifications to the administration of the Program. ALLO appreciates the opportunity to provide these Comments in response to the C-5368 Order and looks forward to continuing participation in this docket.

Dated: March 1, 2022

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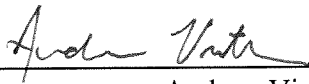
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 1<sup>st</sup> day of March, 2022, one (1) electronic copy of the foregoing comment was delivered to the Nebraska Public Service Commission at [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov). Electronic copies were also delivered to:

**Nebraska Public Service Commission**

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