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By Susan Horn at 7:35 pm, Jan 27, 2023

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public) Application No. C-5461/PI-244
Service Commission, on its own motion, to)
adopt safe harbor market rates for the) NRBA Reply Comments
leasing of dark fiber by agencies or)
political subdivisions of the state.)

**REPLY COMMENTS OF THE
NEBRASKA RURAL BROADBAND ALLIANCE**

The Nebraska Rural Broadband Alliance (“NRBA”),¹ through its attorneys of record, submits these *Comments* (“Comments”) in response to Initial Comments filed on January 6, 2023, in the *Order Opening Docket and Seeking Comments* (“Order”) entered by the Public Service Commission (“Commission”) on December 6, 2022 in the above proceeding.

Background

The NRBA submits these comments as a response to certain issues raised in those Initial Comments filed on January 6, 2023 by the Nebraska Public Power District (“NPPD”) and the Nebraska Rural Independent Companies (“RIC”). The issues below include those for which the NRBA wishes to provide additional context.

Issues

1. Basis for Competitive Pricing/Current Market Rates

The Commission requested comment on information related to appropriate documentation for determining competitive pricing and also related to current market rates for fiber leasing. RIC and NPPD provided evidence of current market rates and available documentation for determining such rates. The NRBA respectfully requests that the

¹ For purposes of this proceeding, the NRBA consists of the following carriers: Cambridge Telephone Company; Glenwood Network Services, Inc.; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Midstates Data Transport, LLC; Mobius Communications Company; Pinpoint Communications, Inc.; Plainview Telephone Company; Stanton Telecom, Inc.; Town and Country Technologies; and WesTel Systems.

Commission study this matter expeditiously and robustly, seeking to gather necessary and relevant market data within the next thirty (30) days and establish a safe harbor rate as quickly as possible. Given the large influx of federal funding that is pending, Nebraska needs to take an “all hands on deck” approach. Public fiber will be essential for the work ahead. Should current public fiber leasing restrictions survive this legislative session, the Commission needs to be prepared to consider leases efficiently. There will be no patience for delays.

2. Served and Unserved Areas

The Commission requested comment on the appropriate basis for determining served and unserved areas according to the speed requirements set forth in Neb. Rev. Stat. § 86-577(1). That statute provides that served locations must be able to receive minimum speeds of 25/3 Mbps and unserved locations are those not receiving and not able to receive at least 25/3 Mbps at the time a lease is filed with the Commission.² Notably, RIC and NPPD had differing responses. NPPD pointed out that 25/3 Mbps is an outdated threshold for determining adequate minimum speed requirements for served locations and requested the Commission to consider determining served locations based on a 100/100 Mbps speed threshold.³ RIC requested that the Commission apply speed test requirements set forth in its *Order Setting Speed Test Requirements* entered November 8, 2022 in Application No. NUSF-133 to determine whether locations are served in compliance with the statutory speed requirements of 25/3 Mbps. RIC did not comment on the adequacy of 25/3 Mbps speeds for “served” locations.

The NRBA believes that as policy matter, it is desirable for the definition of served and unserved locations to be consistent throughout all state programming. To that end, the

² Neb. Rev. Stat. § 86-577(1)

³ See NPPD’s Initial Comments, filed January 6, 2023, at p. 1.

NRBA agrees with the NPPD that 100/100 Mbps is an ideal standard, and importantly is consistent with that required by the Nebraska Broadband Bridge Program.⁴ However, as speed requirements for fiber leasing are set by statute, the NRBA acknowledges that any change for such requirements with respect to fiber leasing remains a decision for the Legislature.

As a final matter, NPPD suggested creating an additional requirement for determining served and unserved locations, to include the number of providers servicing a location. NPPD supported the distinction that a served location should include those which also have a minimum of at least two providers.⁵ The NRBA respectfully disagrees with this position for two reasons. First, the statutory definition of served and unserved locations does not provide for any distinction between locations based on the number of providers available.⁶ The NRBA again acknowledges that any change to the statutory definition of served and unserved locations is a decision for the legislature. Second, as a policy matter, this distinction based on number of providers is completely untenable and impractical. For many locations in rural Nebraska, it is entirely cost-prohibitive to service with more than one provider. A business case cannot even be made for one provider in most rural areas outside of cities and villages. This is why the Universal Service Fund is so critical in these locations. The number of providers in rural locations is less important than the speeds available. Should the legislature make any changes to the definition of served and unserved, the NRBA would instead support changes to the required minimum speeds as previously mentioned.

DATED: January 27, 2023

⁴ Neb. Rev. Stat. § 86-1304(1)

⁵ See NPPD's Initial Comments, filed January 6, 2023, at pg. 2.

⁶ Neb. Rev. Stat. § 86-1304(1)

NEBRASKA RURAL BROADBAND
ALLIANCE,

Cambridge Telephone Company;
Glenwood Network Services, Inc.;
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Mainstay Communications; Midstates
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CERTIFICATE OF SERVICE

The undersigned certifies that an original of the above ***Reply Comments*** of the Nebraska Rural Broadband Association were filed with the Public Service Commission on January 27, 2023, and a copy was served via electronic mail, on the following:

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