

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. C-5484
Public Service Commission, on its)	
Own Motion, to administer the)	
Nebraska Broadband Bridge Program)	COMMENTS OF THE RURAL
in the 2023 program year.)	TELECOMMUNICATIONS
)	COALITION OF NEBRASKA
)	

INTRODUCTION

The Rural Telecommunications Coalition of Nebraska (“RTCN”)¹ submits these Comments in response to the *Order Opening Docket and Seeking Comment* entered by the Nebraska Public Service Commission (the “Commission”) on March 7, 2023 in the above-referenced proceeding.

COMMENTS

The Commission seeks to establish penalties for Nebraska Broadband Bridge Program (“NBBP”) grant recipients who fail to complete an awarded NBBP project. The Commission proposes “that awardees requesting to or required to return NBBP grant funds to the Commission after an award is made will be disqualified from receiving future grant awards from the Commission.”

While permanent disqualification from Commission grant eligibility may be an appropriate sanction in rare circumstances, we suggest that such a severe penalty not operate as the “general rule.” The NBBP and the Commission would be well served to refrain from adopting any generally applicable penalty. Instead, the Commission should reserve a broad

¹ For purposes of this proceeding, the RTCN consists of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications; Benkelmen Telephone Company, Inc., Cozad Telephone Company, Hartman Telephone Exchanges, Inc., Southeast Nebraska Communications, Inc., Pierce Telephone Company and Wauneta Telephone Company.

range of options to itself and - on the facts and circumstances of each particular case - determine the appropriate sanction, if any.

There are numerous scenarios where a NBBP grant recipient, acting in good faith, may find itself in circumstances that justify “backing out of” a NBBP awarded project. For example, when a NBBP grant is awarded for an unserved or underserved area that, through the intervening actions of other carriers, becomes a served area *before* the commencement of the NBBP project. It makes little sense for the NBBP to fund a competing network to a now served area. Supply chain issues, labor delays, delays in obtaining approvals and agreements from other authorities – all are outside the direct control of a grant recipient and may contribute to or result in the inability to complete an awarded project. Grant recipients may face numerous impediments, unforeseeable at the time of their grant application, that necessitate a decision to not move forward with an awarded project. In those circumstances, imposing a “lifetime ban” on qualified, able, and willing broadband providers does not serve the public or the purpose of the NBBP.

For those reasons, we alternatively suggest that when an awarded project is not completed the Commission determine the appropriate penalty on a case by case basis. This may be accomplished by the issuance of a typical show cause order that permits each grant recipient an opportunity to demonstrate to the Commission the underlying circumstances of the failed project. Based on the record developed during the show cause hearing, the Commission may then fashion an appropriate sanction, if one is deemed necessary. Appropriate sanctions may include an administrative fine, an order that a provider is ineligible from Commission grants for a determinate amount of time, or the permanent ineligibility suggested by the Commission.

DATED: March 28, 2023.

**RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA**

**Arapahoe Telephone Company d/b/a
ATC Communications, Benkelman
Telephone Company, Inc., Cozad
Telephone Company, Hartman
Telephone Exchanges, Inc., Southeast
Nebraska Communications, Inc., Pierce
Telephone Company, Wauneta Telephone
Company**

/s/ Russell A. Westerhold
BY: Russell A. Westerhold #22498
NOWKA & EDWARDS
1233 Lincoln Mall, Suite 201
Lincoln NE 68508
(402) 476-1440
rwesterhold@nowkaedwards.com