

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 ORDER OPENING DOCKET AND SEEKING COMMENT AND NOTICE OF HEARING Entered: February 1, 2022
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COMMENTS OF WINDSTREAM

Windstream Nebraska, Inc., (“Windstream”) provides the following comments in response to the Nebraska Public Service Commission’s (“Commission”) above captioned Order seeking comment regarding the application and challenge process for the 2022 Nebraska Broadband Bridge Program (“Program”) year:

A. BACKGROUND AND INTRODUCTION

Windstream, along with its affiliates and subsidiaries, provides voice and broadband service for commercial and residential customers across 18 states. When Windstream was formed in 2006, it acquired voice and other facilities previously owned and operated by Alltel. Windstream has made significant investments to maintain and improve the services offered to its customers since that time. In Nebraska alone, Windstream has invested over \$270 million in capital expenditures between 2014 and 2020. In addition to expanded and improved service offerings, Windstream is committed to the customer experience. Windstream continually evaluates its marketing, customer support, and repair services to meet and exceed customer expectations.

B. RESPONSE TO COMMISSION INQUIRIES

1. Program Overview. Windstream has no objection to the proposed procedure schedule.

2. Adjustments to Scoring System. As a general matter, Windstream encourages the Commission to consider whether additional scoring criteria might be beneficial to achieving the Program's goals. Specifically, Windstream recommends the Commission consider and give weight to the average cost per household based solely on the amount of funding requested from the state whereby applications with a lower average cost per household shall receive a higher quantitative score. This standard will incentivize participants to reduce the total cost of household by increasing their own match or securing additional matching funds through.

Windstream also recommends the Commission allocate points based on the post-build speed of the proposed project. Proposals with higher proposed post-build speeds shall receive a higher quantitative score. For example, a project proposing to build symmetrical 1 gigabit/1 gigabit service would receive a higher score than a project proposing to build 100/100 Mbps service.

a. Financial Capability. Windstream has no objection to the proposed financial capability requirement.

b. Technical Capability. Windstream has no objection to the required reporting on the expected useful life of the facilities proposed to be built with Program funding. As to deductions for past performance of Commission-funded projects, Windstream encourages the Commission to establish objective criteria if a deduction is to be adopted. A standard that can be quantitated by the applications will not only provided consistency, but also predictability, for Program participants. The Order leaves open many questions about what criteria will result in a deduction. For example, what constitutes "frequent" outages or consumer complaints? Do outages include planned maintenance outages or outages where equipment was damaged at no fault of the facility owner? Are complaints measured statewide or within a given territory? Will the Commission only consider service-related complaints, or also billing and other complaints?

Windstream further recommends that past performance be limited to Program-like projects (i.e., fiber projects). This restriction ensures criteria truly go towards technical capability to complete and meet the Program obligations.

c. Legal Capability. Windstream has no objection to including a state-licensed attorney contact with Program applications. Windstream also does not object to deductions for applicants who have been listed as respondents in Commission complaints, so long as the scope of such complaints is limited to those relating to compliance with Commission rules and procedures. Again, Windstream encourages the Commission to establish objective criteria to ensure consistency and predictability for applicants.

3. Tiebreaker. Windstream agrees that total Program funding requested is a factor that should be considered when two applications receive an equal score. Windstream also recommends the Commission consider the total number of locations proposed to be served by each application with preference to providing broadband to more applications. Another consideration should be the proportion of unserved locations included in the application as a percentage of the total number of locations included in the application (both unserved and underserved locations) in instances where tied applications serve both unserved and underserved locations. We join the Commission with a desire to use Program funding as efficiently as possible and believe these additional factors advance that goal.

4. Challenge Process.

As a preliminary matter, Windstream encourages the Commission to require speed testing information from applicants if an applicant's assertions regarding the speeds available within the project area – whether unserved or underserved – conflict with Form 477 data. Speed test data provided in the application should be thoroughly vetted by the Commission prior to the opening

of the challenge process to ensure all applications meet the eligibility requirements of the Program and reduce the need for challenges.

a. Geographic Area Identification and Speed Testing. Windstream does not object to the Commission's proposal to require challengers to provide a polygon shapefile (.shp) to demonstrate areas where the challenger is providing 100/20 Mbps service.

Windstream understands the Commission's desire to curtail frivolous or disingenuous challenges by requiring challengers to provide speed test data in support of its challenge. However, there are a number of factors that can interfere with a challenger's ability to provide testing data, particularly within the timeframe in the proposed procedural schedule. First, determining locations eligible to be tested for a challenge to a Program application is itself time consuming, even assuming there are a sufficient number of locations to meet the proposed percentage of speed tests. Both remote testing and in-person testing require a consumer to subscribe to a service at or above 100/20 Mbps. Testing can demonstrate whether a consumer is receiving their subscribed speeds, but cannot prove speed capabilities.

Second, remote testing (i.e., without a consumer-initiated test) is complicated. Even if a consumer's actual subscription is above the minimum Program speed requirements, the consumer also needs to be using the right modems and equipment to allow remote testing.

If a carrier has to involve the consumer, speed testing compliance for a challenge becomes even more onerous. Many devices cannot utilize the top speeds offered by Windstream. In addition, consumer testing can be vastly misleading and inconsistent because it is not a true test of what speeds are delivered to the premises, only what speeds a device is receiving. Even with fiber, once the signal goes wireless and more devices connected to the network at the same time, the slower the speeds show. Speed tests show the speed a specific device is getting at a specific time

and not the speed a carrier is delivering to the modem.

For these reasons, Windstream opposes the Commission's proposed speed testing requirements for challengers. Windstream is concerned that speed testing requirements early in the challenge process are overly burdensome and could have the unintended consequence of funding overbuilds of served broadband areas by impeding challenges. The burden should be on the applicant to prove a location is unserved or underserved. Challenges should only be needed if the Commission deems the support provided to refute federal data or maps are credible. Furthermore, challengers should be able to show qualified speeds, or other technical data to support its speed offerings in an application area.

b. Challenges to Portions of Applications and Modifications of Applications. Windstream supports the Commission's proposal to require submission of a modified application in the event a portion of an application is challenged. Submission of a modified proposal ensures all parties – including the Commission – have a clear understanding ongoing variables when considering both applications and challenges. Windstream further supports the Commission's proposal that modified applications may not extend beyond the borders of the original application or increase the amount of Program funding requested. Expansion of an application – particularly its geographic bounds – could risk additional challenges and delay timely award of Program grant.

Windstream renews its concerns regarding speed testing requirements as part of the challenge process expressed above.

5. Speed Testing.

As previously stated, Windstream is concerned that the necessary combination of adequate subscription speeds, technical capabilities, and carrier labor required to conduct speed testing

within the short challenge timeframe may hinder carriers' ability to provide the supports proposed by the Commission. Additional requirements setting a specific time of day and day of the week on which speed testing must be performed adds an additional layer of complexity. Again, Windstream is certainly mindful of carriers' overstating services provided and seeks to carefully balance this concern with the risk of funding overbuilds with Program funds.

For any required speed testing, Windstream encourages the Commission to use of the existing Connect America Fund ("CAF") performance testing framework. The CAF performance testing framework is well known by the industry. Testing mandates apply to carriers participating in the following funds: CAF Phase II Model, CAF Phase II Auction, Alternative Connect America Cost Model ("ACAM"), Revised ACAM and ACAM II, CAF-Broadband Loop Support ("CAF BLS"), Rural Broadband Experiments ("RBE"), the Alaska Plan, and the Rural Digital Opportunity Fund ("RDOF"). The CAF performance metrics address critical, known issues with network performance and, as established by Federal Communications Commission ("FCC") orders in 2018 and 2019, CAF performance testing aims to maximize the impact of CAF investments to close the digital divide. In terms of post-buildout testing by successful applicants, CAF performance metrics require that at least 80% of network speed measurements be at 80% of required speeds and that 95% of latency measurements be at or below 100 milliseconds round-trip time.

6. Remaining Grant Funding; Additional Federal Funds. Windstream has no objection to additional grant cycles if the 2021 and 2022 funds are not fully distributed at the conclusion of the 2022 Program year. It may be prudent for the Commission to seek feedback from carriers in the event there are funds remaining to determine why Program funding has not been fully allocated. It is possible that the number and scope of applications have been limited by the

physical and human resources necessary to install broadband networks. Economic considerations could also limit applications, which may warrant excess funds being used to subsidize carrier matching requirements. Visibility into these factors, as well as a clearer understanding of how Nebraska will distribute funds from the Infrastructure Investment and Jobs Act (“IIJA”), may make this question easier to evaluate later in 2022.

7. Revisions to Applications. Windstream supports formalizing process to the extent possible, including the ability of applicants to supplement or modify applications. Until more extensive broadband mapping is available, carriers and the Commission must work together to make the most accurate determination possible regarding served, underserved, and unserved locations.

The Commission also proposes to issue a Notice of Intent to Reclassify Application in the event that an application modification results in a change in the application’s Tier. Windstream proposes that Tier classifications be published along with the applications on the Commission’s website. In addition, Windstream asks that an additional challenge opportunity be afforded in the event that an application’s Tier changes as a result of modification. These policies ensure further transparency and accuracy of information.

8. Overbuilding of Existing Networks. Windstream opposes modifications to the Program that would permit overbuild of existing networks. First, the Program’s primary goal is to provide broadband to unserved locations. Allowing overbuild is likely to encourage more applications seeking funds for underserved locations. Second, allowing overbuild undermines the speed thresholds established by law. The Commission and the Nebraska Legislature have been progressive in seeking to serve households receiving speeds under 100/20 Mbps; in the past, many of those locations would have been considered “overbuild.” Given the existing need to provide

unserved and underserved locations with 100/20 Mbps, Windstream believes overbuild should not be supported by state and federal funds until all Nebraskans have access to reasonable broadband. Finally, permitting overbuild decreases the certainty in the application and scoring process. Windstream again encourages the Commission to implement rules and metrics that ensure consistency and predictability for applicants.

9. Data Plans and Usage Caps. Windstream supports the Commission’s proposal to prohibit usage caps and those plans that use a per-usage or “pay as you go” model.

10. Digital Inclusion Plans; Additional Points Available. Windstream opposes awarding additional points for applicants who provide discounts or assistance programs for low-income or historically disadvantaged community members if federal or state assistance already available to consumers is excluded. Such a deduction scheme could have the unintended consequence of discouraging federal and state program participation by carriers in favor of carrier-specific programs which may be less accessible, and therefore underutilized. Alternatively, Windstream would support a requirement that participation in the Lifeline and Emergency Broadband Benefit/Affordable Connectivity Program be a prerequisite for receipt of Program funding. Participation can be verified through the FCC website and should be advertised on each carriers’ website.

Windstream also opposes awarding additional points for building of free public Wi-fi access points. During floor debate of LB388, Senator Curt Friesen said the Program “will put households in areas that are in the most need of help at the front of the line.”¹ Likewise, Senator Joni Albrecht stated during the bill’s public hearing before the Transportation and Telecommunications Committee that her goal was to provide home broadband so children didn’t

¹ Floor Debate on LB338, 107th Leg., 1st Sess., (April 27, 2021) (Statement of Sen. Joni Albrecht).

have to go to McDonalds, the library, or parking lots to complete their homework.² The legislative record shows a strong preference for using Program funds to connect locations with broadband to reduce the reliance on public Wi-fi access points. Awarding additional points for these types of investments undermines the Program's directives. It also risks disadvantaging otherwise worthy applications if public Wi-fi access points are already readily available or challenging to secure in a given area.

11. Rates. Windstream supports using the median rate from other Program providers as a datapoint for determining comparable rates and the proposal that rates up to 15% greater than the medium rate being deemed comparable. We would note that the comparable rate should be required to only apply to the minimum speed requirement, and not to plans that offer higher services (e.g., 1 Gig). If the Commission requires carriers to maintain Program rates for a certain period of time, Windstream suggests three years is a reasonable timeframe for maintaining rack rates, so long as promotional offerings can remain flexible.

12. Match Source.

a. In-Kind Labor Costs. Windstream believes in-kind labor should not be considered as part of the match. It is often difficult to quantify the value of in-kind contributions fairly and consistently. It could also lead to co-mingling of funds and diminish carriers' choices between internal and external labor.

b. State and Federal Support. Windstream supports the Commission's proposal to require applicants to proactively identify all sources of state and federal funding the applicant is currently receiving in Nebraska. Guidance on calculations used by the Commission is always welcome to ensure accuracy and transparency. In the event federal or state support has

² LB388 Before the Neb. Comm. On Transportation and Telecommunications, 2022 Leg., 107th Leg., 1st Sess. (February 8, 2021) (Statement of Sen. Curt Friesen).

been received under an obligation to provide service, Windstream continues to encourage the Commission to exclude such support as an eligible match. Conversely, Windstream supports allowing other public funds as part of a match in connection with a public-private partnership.

13. Public-Private Partnership. Windstream opposes the award of additional points for public-private partnerships, particularly if a letter of support is sufficient to establish a public-private partnership. A letter of support risks artificial boost of an application without any real value added for likelihood of project completion or satisfactory service. Windstream believes a financial contribution by the public entity should be required to determine there is a public-private partnership and such contributions are already accounted for in the scoring of Match Source and Match Percentage categories.

14. Invoices and Reimbursement. Windstream supports a 90-day extension timeframe for providing project expense invoices so long as an extension may be requested any time within the 90 days. If the Commission requires an extension request be filed within a specific window, Windstream requests the window be relatively close to the expiration of the 90-day timeframe.

III. CONCLUSION

Windstream is committed to providing its customers with a quality service experience. Windstream continues to improve and expand its infrastructure capabilities, as well as evaluating how best to respond to customer needs. Windstream thanks the Commission for its dedication ensuring quality service for Nebraska's citizens and looks forward to being a continued partner in meeting Nebraska's broadband needs.

Respectfully submitted on this the 1st day of March, 2022.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 1, 2022, an electronic copy of the foregoing
Comments on behalf of Windstream Nebraska, Inc. in C-5365 was delivered to:

psc.broadband@nebraska.gov

/s/ Mary Jacobson
Mary Jacobson