

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public) Application No. BEAD-1
Service Commission, on its own Motion, to)
implement the Precision Agriculture)
Infrastructure Grant Act.)

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

The Nebraska Rural Broadband Alliance (“NRBA”),¹ through its attorneys of record, submits these *Reply Comments* (“Comments”) in response to Initial Comments filed on September 30, 2022, in the *Order Opening Docket and Seeking Comments* (“Order”) entered by the Public Service Commission (“Commission”) on August 16, 2022, in the above proceeding.

Background

The NRBA submits these Comments as a response to certain issues raised in those Initial Comments filed on September 30, 2022, by The Wireless Association (“CTIA”); Nebraska Cattlemen, Corngrowers, et. al (the “Nebraska Ag Leaders”); Paige Wireless; and Nebraska Central-Hamilton-Reinke. The issues addressed below include those which the NRBA either disagrees with the other commenters or wishes to provide additional context not submitted in the original comments.

Issues

1. Funding Source/Eligible Use of Funds

The Commission asked whether all allowed uses of funding under the Precision Ag Act (“PRO-AG”) were also allowed under the federal BEAD program. NRBA and the other

¹ 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.; WesTel Systems; and NYECOM/Plainview Telephone Co. Inc.

commenters, in varying degrees, responded by saying generally that the Precision Ag Act allowable uses fall within the federal BEAD program allowable uses, but that the Commission should work with the National Telecommunications and Information Administration (NTIA) to determine specific eligibility issues.

Building upon the comments submitted previously, the NRBA wishes to bring the Commission's attention to the November 10, 2021, report of the Federal Communications Commission (FCC) Precision Ag Connectivity Task Force ("Task Force").² The Task Force was created by the Agriculture Improvement Act of 2018 (Farm Bill 2018)³, and was charged with providing advice and recommendations to the FCC related to advancing the deployment of broadband Internet access service to unserved agricultural land. In this report, the Task Force recommended that the FCC, in concert with the United States Department of Agriculture (USDA), should increase incentives to build out broadband infrastructure, and specifically, that it should "clarify that precision agriculture, including edge compute infrastructure and private 5G wireless systems, are eligible expenses for federal broadband programs."⁴ The Task Force noted that some barriers to adoption of precision agriculture technology result from some federal government programs and regulations not specifically recognizing precision agriculture technology as an allowable expense or requiring it as a best management practice of farmers.⁵

Specifically related to broadband, the Task Force noted that reliable broadband connectivity is essential for the adoption of precision agriculture and so should be extended to all farms across the United States.⁶ To achieve this, the Task Force recommended that

² FCC Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States, Approved Report, November 10, 2021, <https://www.fcc.gov/sites/default/files/precision-ag-report-11102021.pdf>.

³ Agriculture Improvement Act of 2018, PL 115-334, December 20, 2018, 132 Stat 4490.

⁴ FCC Task Force Report, at 5.

⁵ *Id.* at 78-80.

⁶ *Id.* at 37.

precision agriculture be an eligible use for all federal broadband programs.⁷ This should include the broadband deployment programs under the Infrastructure Investment and Jobs Act of 2021, which created the BEAD program.

While the BEAD program is administered by the NTIA and not the FCC, the NRBA believes this FCC Task Force report to be helpful context for determining eligible uses of BEAD funds. Without broadband connectivity, Nebraska's agriculture industry will be unable to experiment with and adopt precision agricultural solutions that will make production more profitable and sustainable.

2. Match Percentage and Grant Amounts

The Commission asked whether matching funds should be required and, if so, what the percentage match should be and whether in-kind contributions should be considered as part of the match. The NRBA and the Nebraska Ag Leaders both support a match requirement. CTIA and Nebraska Central-Hamilton-Reinke oppose a match requirement, based on the premise that the enabling legislation of the PRO-AG program does not require a match. The enabling act, however, also does not prohibit such activity by the Commission and directs the Commission to promulgate rules and regulations to carry out the program without further restriction.⁸ The Commission has broad power under the Nebraska Constitution to carry out its duties in the absence of specific legislation to the contrary.⁹ The Nebraska Broadband Bridge Program ("NBBP") statutorily requires a match,¹⁰ and this is likely the basis of the other Commenters' position. The Commission clearly has the authority to implement a match requirement here.

⁷ *Id.* at 37 and 70.

⁸ Neb. Rev. Stat. § 86-1406.

⁹ Neb. Const. art. IV, § 20.; *State ex rel. State Ry. Com'n v. Ramsey*, 1949, 151 Neb. 333, 37 N.W.2d 502.

¹⁰ Neb. Rev. Stat. § 86-1304.

The NRBA reiterates its comments that where lower cost wireless projects are contemplated, as is the case here, in contrast to capital-intensive fiber connectivity projects, as is the case in the NBBP, a match requirement is appropriate to ensure the integrity of the PRO-AG program. Further, the Commission has regularly implemented match requirements for other telecommunications programs.¹¹ There is no reason the PRO-AG program should be administered any differently because a match is not prescribed in statute.

3. Other Issues

The Nebraska Ag Leaders in their Initial Comments recommended that the Commission include a post-award repayment provision similar to what is utilized in the NBBP. The NRBA agrees with this recommendation and urges the Commission to institute a repayment provision for the PRO-AG program to help ensure the integrity and accountability of funds spent under this program. The NRBA also agrees that the Commission should consider the repayment structure required for the NBBP as a guide. The NBBP award recipient must repay the grant if the project is not completed within the allotted timeframe, at various percentages depending on whether any extensions were granted.¹² Additionally, an NBBP award recipient must repay the grant if the broadband network does not provide service at the speeds required under the program, after a reasonable period of time given for the provider to address any deficiencies and resubmit speed tests.¹³ In developing such a repayment structure, the Commission should consider a format that will line up with the appropriate performance metrics of each project, or each category of eligible projects under the program.

¹¹ For example, see the Nebraska E-Rate Special Construction Matching Fund Program (Neb. Rev. Stat. § 86-332); Nebraska Internet Enhancement Fund (N.A.C. Tit. 291 Ch. 5 § 6); and the Nebraska Telehealth Program (NUSF-57 Progression Order No. 6).

¹² See Neb. Rev. Stat. § 86-1304.

¹³ *Id.*

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NEBRASKA RURAL BROADBAND
ALLIANCE,

Cambridge Telephone Company; Diller
Telephone Company; Glenwood
Telecommunications, Inc.; Hemingford
Cooperative Telephone Co.; Mainstay
Communications; Midstates Data
Transport, LLC, Stanton Telecom, Inc.;
WesTel Systems; and
NYECOM/Plainview Telecom Co. Inc.

By: REMBOLT LUDTKE LLP
3 Landmark Centre
1128 Lincoln Mall, Suite 300
Lincoln, NE 68508
(402) 475-5100

By: /s/ Andrew S. Pollock
Andrew S. Pollock (#19872)
apollock@remboltlawfirm.com
Sarah A. Meier (#27364)
smeier@remboltlawfirm.com

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 October 28, 2022, and a copy was served via electronic mail, on the following:

Susan Horn
Public Service Commission
susan.horn@nebraska.gov
Public Service Commission
psc.broadband@nebraska.gov

/s/ Andrew S. Pollock _____
Andrew S. Pollock