

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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

COMMENTS OF THE NEBRASKA RURAL BROADBAND ALLIANCE

Introduction

The Nebraska Rural Broadband Alliance (“NRBA”),¹ by and through its attorneys of record, submits these *Comments* (“Comments”), as allowed by the *Order Opening Docket and Seeking Comments* (“Order”) entered by the Public Service Commission (“Commission”) on February 1, 2022.

The NRBA appreciates the work the Commission did during the first round of grants under the Nebraska Broadband Bridge Act (“Act”) and congratulates the Commission for the general success of the program. The Commission is to be commended for being open to modifying the program and for the thoughtful changes it has proposed.

In the Comments below, the NRBA will reference and address the categories of issues outlined in the Commission’s Order.

1) Program Overview

The NRBA below addresses specific proposals the Commission has made to modify existing scoring categories. In addition to the criteria considered during the first-round of the program, the NRBA encourages the Commission to consider the applicant’s commitment to

¹ For purposes of this proceeding, the NRBA is made up of the following carriers: Cambridge Telephone Company; Diller Telephone Company; Glenwood Telecommunications, Inc.; Hemingford Cooperative Telephone Co.; Mainstay Communications; Stanton Telecom, Inc.; and Stealth Broadband, LLC.

serve high-cost areas outside of cities and villages. A total of ten points should be assigned to this criterion. The Commission should consider the applicant's inclusion of high-cost areas in its project area, plans for expanding into high-cost areas that extend from the project area, plans for ongoing maintenance and operation, and similar facts in assigning weight for the applicant's rural commitment.

2) Scoring System

a) Financial Capability

The NRBA recommends in lieu of requiring cash flow projections, the Commission should require a Bridge applicant to submit an audited or reviewed balance sheet to demonstrate the applicant has the financial strength to ensure the long-term viability of the project.

b) Technical Capability

The NRBA supports the Commission's proposal to require applicants to identify the expected useful life of the facilities to be supported by the grant. The Commission should require delineation between long-term assets, such as fiber, and shorter-term assets, such as electronics.

The proposed scoring sheet still shows this criterion as a "yes or no" question. The NRBA last year advocated for scoring to be applied under the technical capability criterion. The Commission in its proposal appears to be moving in that direction by proposing deductions for poor past performance.

The NRBA would recommend that the Commission assign a possible total of 50 points for the technical capability. Before considering possible deductions, the Commission should award possible points based on the following:

- Up to 15 points for an applicant’s record of providing reliable and affordable 100/20 service in rural or non-rural areas;
- Up to 30 points for an applicant’s record of providing reliable and affordable 100/100 service in non-rural areas
- Up to 40 points for an applicant’s record of providing reliable and affordable 100/100 service in rural areas

In addition to the foregoing, which would not be cumulative, the Commission should award:

- Up to an additional 10 points for expected useful life of the facilities and long-term commitment to the project

Deductions for poor past performance, as identified by the Commission in the Order, could then be subtracted from the total points scored.

c) Legal Capability

The NRBA supports the Commission’s proposal to allow deductions for applicants with poor past regulatory records, as set forth in the Commission’s Order.

3) Scoring Tiebreaker

The NRBA recommends that any necessary tiebreaker be based on factors such as the life of the project, the applicant’s prior demonstrated commitment to serve rural areas, and technical capability scoring.

4) Challenge Process

The NRBA applauds the Commission for recognizing the need to make adjustments to the Challenge Process. The NRBA supports the Commission’s movement toward more reliance on location-specific speed data, and recommends the following variation of that process be established by the Commission:

Filing Matters (Application Deadline; Posting of Applications)

No comment.

Notice of Challenge

Deadline: Change from July 14 to July 28

Process: The NRBA recommends that the Commission require each challenger to submit verified plant records with its Notice of Challenge. If challenger is a telecommunications carrier and submits verified plant records that demonstrate the challenger has fiber to 80% or more of serviceable locations (i.e., premises) in the challenged area, then the challenger should be required to test 10% of those locations (consistent with the PSC proposal). The locations tested should fairly represent all geographic parts of the challenged area. Speed data would be due on the date set forth below.

Something similar should probably be put in place for broadband-capable cable infrastructure.

Submission of Speed Data

The NRBA recommends that the Commission allow both the applicant and the challenger to submit speed data to the Commission by August 23, which would be a week earlier than the challenger's deadline under the Commission's proposal. The NRBA recommends the Commission adopt the following standards for making determinations on whether broadband services are currently being provided:

Burden of Proof: The burden of proof would be as follows:

- If challenging party, which meets the above fiber-to-the-premises requirement, submits data demonstrating that 100/20 speeds were being provided to all tested locations, then the challenge would be deemed credible. The applicant

would have the burden of proving the area is underserved and therefore eligible for funding.

- If a challenging telecommunications carrier does not submit verified plant records demonstrating that it has fiber to 80% or more of serviceable locations in challenged area, then challenging carrier would have the burden of proving the area is served and not eligible for funding.

Qualifying Speed Data: At a minimum, to qualify for consideration, data should include:

- Location: provide latitudinal and longitudinal information together with the physical address.
- Date and time.
- Identify the platform upon which the speed test was conducted.

Weight: The Commission should give more weight for data that includes subscription rates, details about the facilities subject to test, customer signatures, etc.

Public Record: All information submitted by both parties should be a matter of record. Plant records and location information should not be made public records, but should be available subject to the Commission's standard protective order.

Argument (about Speed data, other disputes)

Deadline August 30 (one week after speed data submitted)

Argument: same as 2021 (allowed; timing unchanged by NRBA proposal).

PSC Determination on Challenge

Deadline: October 18 (no change from PSC proposal)

Findings: Factual findings on speed data.

Other Determinations: If application approved, any determinations on remaining disputes, such as:

- Public interest factors that should be declared by the PSC in this proceeding;
- Transition of customers; and
- Future consideration of any undepreciated investment in the challenger's existing infrastructure that is capable of providing broadband services at 100/20 speeds in the challenged area.

Continued PSC Oversight

If customers or infrastructure transfer, then the Commission should exercise continued oversight to ensure a seamless and fair transition.

5) Speed Testing

See No. 4 above.

6) Remaining Grant Funding

The Commission should continue to improve the Bridge program and maintain a template progression schedule that might be applied as soon as feasible after federal funding become available.

7) Revisions to Applications

The NRBA recommends that the Commission retain the process it used effectively last year for revisions to applications

8) Overbuilding

The Commission boldly raises questions about an important issue by asking whether it should allow a certain level of overbuilding to be completed as a result of Bridge funding.

In asking the question the way it did, the Commission has essentially recognized that some degree of overbuilding might be unavoidable. The NRBA strongly recommends the

Commission look to the laws applicable to boundary-change proceedings for guidance on this question.

Overbuilding should be avoided to the greatest extent possible. In certain instances, overbuilding may be necessary to establish proper redundancy, but as a general principle, it should be avoided. In boundary-change cases before the Commission, overbuilding has been avoided by transitioning broadband-capable infrastructure from the incumbent to the approved competitor for its undepreciated value. The Challenge Process the NRBA has recommended above (No. 4) would allow the parties to discuss and resolve such issues in advance of a final commission determination. Lack of agreement, however, should not prevent the Commission from making determinations on these issues.

9) Data Plans and Usage Caps

No comment

10) Digital Inclusion Plans

No comment.

11) Rates

The NRBA recommends continued reliance on urban benchmarks established annually by the FCC. More time should be given to the administration of the Bridge program before Nebraska rates might be properly analyzed for benchmark purposes.

12) Match Source

a) In-Kind Labor Costs

The NRBA recommends that the Commission continue to disallow in-kind labor costs as a source of match funding.

b) State & Federal

No comment.

13) Public-Private Partnerships

The NRBA supports adding public-private partnerships to the criteria considered in scoring.

14) Invoices & Reimbursement

No comment.

DATED: March 1, 2022

**NEBRASKA RURAL BROADBAND
ASSOCIATION**

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CERTIFICATE OF SERVICE

The undersigned certifies that an original of the above *Comments* of the Nebraska Rural Broadband Association were electronically filed with the Public Service Commission on March 1, 2022, and a copy was served via electronic mail on the following:

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