



## **II. Response to the Commission’s Questions**

### **A. Per Project Location Funding Cap**

Based on Windstream’s experience, it does not recommend the Commission set a per project location funding cap. A per project location cap was not included in the first round of the program, and doing so now may discourage providers from submitting bids in this second round. A funding limit introduces the possibility that match amounts will be prioritized over program objectives. Furthermore, the United States Treasury’s (“Treasury”) CPF guidance does not require or address the need for a per project location funding cap. However, Treasury’s guidance does state that “a Capital Project is designed to address a critical need of the community to be served by it,”<sup>1</sup> and Windstream stresses that every community’s need is not the same. Creating funding caps could overly exclude extremely rural communities with higher costs to build. Ultimately, such a cap negatively affects bidding economics by reducing the amount of potential bids and thereby reducing the number of communities served.

If the Commission wants to consider the cost per household, Windstream instead recommends that the Commission take into consideration the cost per location in its project scoring criteria. In doing so, the Commission would further the goals of the CPF program in a meaningful way rather than imposing an arbitrary threshold that does not consider the realities of the communities in need of qualifying broadband service.

### **B. Past Performance**

An applicant’s past performance should be considered and reflected in the Commission’s scoring rubric. Windstream recommends that the Commission require applicants to be able to show a 5-year track record of providing broadband service to a substantial number of customers. In

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<sup>1</sup> See *Guidance for the Coronavirus Capital Projects Fund for States, Territories & Freely Associated States*, U.S. Department of Treasury at 3.

addition, an eligible entity must have previously deployed 100/20 Mbps broadband service that remains in active service at the time of the entity's application. These baseline requirements will give certainty that companies applying for funds will be able to complete and continue to operate their projects when they are awarded funds. These requirements also eliminate the need to further require that an applicant obtain approval from a city or county governing entity.

Additionally, applicants unable to provide a 5-year track record should be required to provide a letter of credit in the funding amount they are requesting. Vetting and awarding project funds to an applicant with a sufficient and trusted track record are safeguards that reflect commonsense considerations of broadband infrastructure construction realities. Equally important, these safeguards ensure the provider has sufficient capital to complete the project before grant funds are awarded.

### **C. Copper-Based Broadband Service**

Instead of considering the technology used to provide the service, the Commission should look at the speeds being provided, deeming service adequate when 100/20 Mbps broadband service is achieved, no matter the technology. Requiring existing service providers to upgrade technology to fiber in areas that are already considered served not only amounts to overbuild, but it is also in sharp contrast to the goal of the CPF program prioritizing deployment of qualifying broadband service to unserved areas. It also undercuts the efforts of previous government-backed broadband programs designed to serve communities in need of qualifying broadband service. The policy proposed by the Commission creates a right of first refusal-type program which risks the possibility that communities intended to be enriched by CPF are ultimately left unserved. As both a challenger and challengee, Windstream does not recommend the Commission make any changes to its current process.

#### **D. Project Areas**

Flexibility for providers to define project areas ensures greater benefit to a larger community.

Firstly, providers should be permitted to build out to an entire exchange rather than be confined to a geographic district. The Commission should be mindful of location density versus rurality considerations, and more points should be allocated to high-cost rural areas.

Furthermore, the Commission should not require applicants to provide an exhaustive list of every potential household passed within a proposed project as part of the applicant's application. The CPF program intends to optimize qualifying broadband service to the most unserved and underserved locations. Requiring the inclusion of locations other than those considered unserved or underserved during the application process is inefficient. This amount of information is unnecessary in the context of the application period and outside the scope of the program. This proposal by the Commission could make sense in the scenario of a final report, and Windstream would not object to this request post-award. Windstream does not recommend this proposal be integrated into a scoring prioritization process, which risks penalizing applicants based on extraneous data.

Finally, the Commission should not consider a potential propagation area in the case of fixed wireless service. This could create an unmerited advantage for fixed wireless providers in very rural project areas and, again, risks overbuild. The qualifying broadband service threshold should remain unchanged regardless of the technology used to achieve it.

## **E. Cybersecurity Practices**

As a critical infrastructure service provider, Windstream ensures robust cybersecurity practices; however, each applicant's approach to a cybersecurity policy may differ. If the Commission were to require anything, it should simply require either a statement as part of the larger application addressing the applicant's approach to cybersecurity or a simple certification attesting that the applicant has cybersecurity practices and policies in place that generally align with the National Institute of Standards and Technology ("NIST") framework.

## **F. Other Modifications to the Scoring Criteria**

*Community Outreach.* Windstream believes it would be helpful for the Commission to offer additional guidance for what constitutes sufficient community engagement. Is the template letter for community outreach that was developed by the Commission sufficient to satisfy compliance? Should an applicant appear before a city council or village board to review the proposed project? Is a meeting solely with a board president demonstration of engagement efforts with the proper parties? Applicants need ample time and flexibility to ensure effective community outreach unless written notification of intent to pursue a project is satisfactory. Additionally, scoring preference should be given to applicants who invest the time to appear at city council or village board meetings to review the proposed project. This form of engagement allows for both parties to engage in a discussion and ensure the proposed project is meeting the greatest needs of the community. The scoring criteria for the CPF-1 application program allowed deductions of up to 10 points for negative community support but provided no additional points for demonstration of community engagement.

*Scoring Transparency.* Windstream requests that the Commission provide greater transparency in its scoring allocation. Windstream seeks insight from the Commission on the front

end of the application process as to the Commission's expectations and criteria in scoring categories in addition to tier breakdowns, as well as post-award in reviewing awarded points.

### **III. Conclusion**

Windstream appreciates the Commission considering these comments. Nebraska's CPF-2 Program will be more successful as a result of the Commission's receptiveness to applicant comments, particularly if modified to incorporate the suggestions offered by Windstream.

Respectfully submitted this 15th day of September, 2023.

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### **Certificate of Service**

The undersigned hereby certifies that on this 15th day of September, 2023, one (1) electronic copy of the foregoing Comments of Windstream was delivered to the Nebraska Public Service Commission at [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov).

*s/ Mary Vaggalis*

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