



BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public) Application C-5272
Service Commission, on its own motion,)
to implement the Nebraska Broadband)
Bridge Act.)

**COMMENTS OF THE NEBRASKA INTERNET
TELEVISION ASSOCIATION**

I. INTRODUCTION

The Nebraska Internet and Television Association (“NITA”)¹ thanks the Public Service Commission (“Commission”) for the opportunity to comment on the implementation of the Nebraska Broadband Bridge Act (“the Act”) and offers the following comments in response to the Commission’s Order entered June 8, 2021 in C-5272 (“the Order”).

The NITA has no modifications to many of the proposals suggested by the Commission, and it commends the Commission for its efforts to establish an open and transparent framework and scoring system for this new program. For the most part, the NITA is supportive of the Commission’s proposed application and scoring system.

Specifically, the NITA supports the Commission’s recommendation to allow application defects to be remedied within a short period of time. Additionally, the NITA is in favor of allowing successfully challenged applications to proceed with non-challenged areas remaining

¹ The Nebraska Internet Television Association promotes and represents the cable telecommunications industry in the Nebraska through regulatory, legislative and public relations advocacy.

eligible for consideration. Furthermore, the NITA supports the Commission's proposal to weigh sources of matching funds differently.

The NITA is concerned however about a few items, including an important provision in the scoring system. Specifically, the NITA urges the Commission to mirror the statutory language by adding the term 'scalable' as it relates to broadband speeds in scoring. In addition, as is explained in more detail below, the NITA encourages the Commission to keep the program technologically neutral, and not to favor or reward certain carriers or technologies over others. The NITA also points out the Commission has indicated 'underserved' is 100/100 in its application, while LB 388 defines underserved as less than 100/20. The NITA also asks the Commission to modify the required financial information to be filed by non-ETCs. And as it relates to the challenge process, the NITA suggests alternative information be submitted in lieu of subscriber names and plant maps. Finally, with respect to speed testing detailed in Section 4 of LB 388, we refer the commission to the collective comments filed on June 29, 2021 for NITA, the Nebraska Telecommunications Association and Wireless Internet service providers.

II. TO CONFORM TO LB 388, THE COMMISSION SHOULD ADD THE TERM 'SCALABLE' AS IT RELATES TO THE FUNDED NETWORK'S SPEED REQUIREMENTS

The Commission is obligated to implement the Act as it was constructed by the Legislature. LB 388 states:

Sec. 4. (1)(a) A provider, a cooperative, a political subdivision, or an Indian tribe may apply to the commission for a grant on forms provided by the commission. The grant shall only be used for development costs for a qualifying project. The application shall indicate the project area. The applicant shall provide matching funds equal to fifty percent of the total development costs of the project. In order to qualify, the project is required to provide broadband Internet service *scalable* to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater. Applications shall be submitted on or before October 1, 2021, for fiscal year 2021-22, and on or before July 1 for each fiscal year thereafter. (Emphasis added.)

The statute clearly provides funded networks are to be 'scalable' over time to 100/100 Mbps, but the reference sheet scoring criteria does not contain this term. Accordingly, the NITA asks the

Commission to mirror in the scoring sheet, LB 388 to include the term ‘scalable’ wherever appropriate.

III. THE ACT IS TECHNOLOGICALLY NEUTRAL; THUS, THE COMMISSION SHOULD NOT GIVE ANY TECHNOLOGY PREFERENTIAL TREATMENT

LB 388 states the purpose of the program “is to facilitate and fund the development of broadband networks in unserved and underserved areas...” Additionally, the legislative statement of intent provides the Act is to increase access to high-speed broadband across the state.

LB 388 is deliberately technology-neutral, and any technology provider, whether it be fiber, cable, or a WISP are allowed to apply under the Act if they can meet the required speed standards. And if a network falls short of meeting the requisite speed, LB 388 requires the grant to be repaid in full.

It certainly is not inappropriate for the Commission to ask applicants to generally describe the network that will be built in the application under Section II, 5 and 6; however, the information provided should be focused on broadband speed performance for consumers, not particular technologies as no provider’s technology choice should be used to discriminate in favor of, or against any applicant.

In addition, it is not technologically or competitively neutral to reward applicants that are ETCs with a higher score. By and large, ETCs in Nebraska are the incumbent local exchange carriers and have obtained that designation to receive NUSF and/or federal support to offset higher costs, and not for some type of technological or financial superiority. While a few cable and wireless providers have ETC status, most do not. As such, while Section 6(2)(b) of LB 388 directs the Commission to consider whether a provider is an ETC, the NITA urges the Commission to minimize the weighted advantage given to ETCs under Section I, as reflected in the attached Exhibit 2.

Finally, the NITA asks the Commission to modify the reference sheet scoring criteria related to technical competency under Section C. The criteria set forth both pertain to the current delivery of 100/100 speeds and thus, discriminates against new entrants that hope to take advantage of the Act to bring scalable 100/100 speeds to unserved and underserved consumers.

Understanding the Commission is required to ensure applicants are technically capable of deploying a broadband network under LB 388, the NITA encourages the Commission to instead use a framework similar to the Commission's rules regarding technical competency for the issuance of certificates of public convenience and necessity. Additionally, the federal RDOF program has a standard of treating carriers that have been operational for two years with general favorability. As such, the proposal the NITA offers in Exhibit 2 includes a two-year operational window as part of the technical evaluation.

IV. THE ACT DEFINES UNDERSERVED AS LESS THAN 100/20, NOT 100/100 AS INDICATED IN THE APPLICATION

LB 388 defines underserved as:

Sec. 2(11) Underserved area means a geographical area of the state which lacks broadband Internet service providing access to the Internet at speeds of at least one hundred megabits per second for downloading and *twenty megabits per second* for uploading. (Emphasis added.)

As such, to be consistent with LB 388 the NITA asks the Commission to amend the application under Section II, 4(b) to read 100/20, rather than 100/100 as has been indicated in the attached Exhibit 1. This correction also will help ensure areas in need will receive assistance by avoiding using the limited funds for areas where 100 Mbps download speeds already is available.

V. THE NITA ASKS THE COMMISSION TO SLIGHTLY MODIFY THE FINANCIAL INFORMATION REQUIRED FROM NON-ETCS

The proposed guidelines would require providers to submit both audited financial statements and federal income tax returns to support applications. While the NITA supports the goal, as stated in the draft scoring reference sheet, for providers to “demonstrate overall financial

viability,” it should be sufficient to provide audited financial statements (such as a Form 10-K), along with any financial data provided to the Commission to support ETC certification or carriers’ annual reports. Providing federal income tax returns may not provide a clear picture of financial viability, they are not typically provided for either ETC certification or carriers’ annual reports, and tax returns typically include a significant amount of non-public data that is competitively sensitive. The NITA therefore requests the Commission change the third bullet of the “Attach/Include” section of the application to read “Applicants that are not ETCs or certificated by the Commission should attach audited financial statements (such as a Form 10-K), or the applicant’s federal tax return for the most recent calendar year.” For consistency, the NITA also asks that the first sentence of Section A of the scoring reference sheet be changed to read “In order to be considered for grant support, applicant must submit audited financial statements or federal tax return information that demonstrate overall financial viability.” Both changes have been marked in the attached Exhibits 1 and 2.

VI. THE NITA IS CONCERNED WITH THE INFORMATION REQUIRED TO CHALLENGE AN APPLICATION AS SUGGESTED IN THE ORDER

The Commission has understandably drafted a rigorous challenge process in the Order, and the NITA is grateful for the specificity of information that has been presented by the Commission to identify what would be required to prevent subsidized overbuilds. The NITA has concerns however with two items suggested in the Order on page 14; specifically, 1(a) A customer list of individuals subscribing to service located within the project area and 1(f) A plant map showing existing facilities in relation to the proposed project area, including type of facilities (copper, fiber, etc.).

First, with respect to 1(a), individual customer identifying information is highly sensitive and protected information for both consumers (privacy concerns) and providers (competitive concerns). In addition, a challenger may be able to serve an area, but individual(s) residing in the area may have chosen for a myriad of reasons to not subscribe to service or have ‘cut the

cord.’ Therefore, 1(a) potentially presents the Commission with information showing no subscribers in an area, when in fact a broadband network exists capable of providing sufficient speeds in order to make the area ineligible for broadband grant funding.

Accordingly, the NITA recommends instead of 1(a), the Commission accept shape files of the challenged area to show the existence of broadband service. This would provide the Commission with detailed information showing the specificity of service in the area without disclosing personal customer information. Furthermore, it would remedy the disconnect that an area may be served, but customers have not subscribed to the service. Additionally, shape files would be consistent with the information applicants are required to file for funding; thus, providing an apples-to-apples comparison of overlapping territory that could be easily reviewed and analyzed.

Second, 1(f) contains highly confidential information showing critical infrastructure. Plant maps comprise sensitive data relating to internal business operations that are not made available for public review. The level of confidentiality needed regarding this material could not be safeguarded even with the issuance of protective orders which allows others, including competitors, to access material upon signature. Access to this information could be used for significant commercial advantage by competitors or by bad actors to sabotage or damage networks.

Instead of 1(f), the NITA proposes the Commission follow the FCC’s lead to demonstrate how an area is served. The FCC accepts an area is served provided a carrier can demonstrate subscribers are capable of being served without a line extension at no additional cost within ten (10) days. This alternative provides the Commission with useful information of the level of service that is readily available without divulging proprietary internal information that is kept strictly confidential and not available publicly.

VII. THE COMMISSION IS CORRECT TO PROPOSE MATCHING FUNDS BE WEIGHTED DIFFERENTLY IN THE SCORING CRITERIA

The Commission properly suggested in the scoring reference sheet under Section F to score matching funds differently, depending on the funding source. The NITA concurs that subsidy monies already dedicated towards broadband deployment should receive a lesser score than matching funds contributed by an applicant from other sources, such as private capital. In addition, it will be difficult, if not impossible to value in-kind contributions fairly and objectively. Furthermore, in-kind donations may spur anti-competitive, discriminatory treatment, for example if one applicant is able to secure in-kind contributions via free or reduced pole attachments or ROW access, while others are not afforded the same opportunity.

Accordingly, the NITA encourages the Commission to adopt the reference sheet scoring criteria as proposed under Section F, but with one modification. That is, the Commission should score all sources of broadband subsidy, state and federal, and in-kind contributions equally and assign zero (0) points for each. The Commission should reward applicants that come forward with outside, private funding to meet the matching requirement, as such will achieve a far greater degree of broadband deployment in Nebraska. This recommendation has been reflected in the attached Exhibit 2.

VIII. THE COMMISSION SHOULD ALLOW APPLICANTS THE OPPORTUNITY TO MODIFY APPLICATION DEFECTS, AND TO PROCEED WITH CHALLENGED APPLICATIONS IN PART AS SUGGESTED IN THE ORDER

As the Act is in its first year, this is a new program for all participants. Accordingly, it is reasonable to provide applicants a short window of time to modify grant applications that contain a flaw or defect, rather than rejecting the application in its entirety. Similarly, if an application is successfully challenged and a portion of the application is deemed ineligible for funding, an applicant should be offered a short period of time to remove the challenged territory and resubmit the application for review of the remaining eligible area.

The rationale behind both positions is simple. That is, the Commission should have as many applications presented to it for consideration as possible. Finding an entire application

deficient for a curable flaw prevents broadband from being deployed to Nebraskans in a potentially fundable area. Further, because a household, neighborhood or subset of an overall application is served, and proof of such is demonstrated through a challenge, it should not prevent the remaining unserved or underserved consumers in the application from being considered for funding. This is similar to the Commission's historical treatment of NUSF-99 applications, where successfully challenged applications were permitted to proceed in-part.

IX. CONCLUSION

LB 388 was passed by the Legislature and signed into law by Governor Ricketts so that more Nebraskans could work, study, seek health care and be entertained from home. To that end, the legislation rewarded consumers with the hope of receiving broadband at an accelerated pace. To ensure consumers win through this significant legislation, the Commission should implement a program that is competitively and technologically neutral and prevents subsidized overbuilding. The application and scoring criteria must reflect legislative intent; that is without giving a preference or advantage to legacy providers who have participated in the NUSF program over applicants who are non-ETCs, such as many cable operators. The infusion of private capital investment as match funding should be highly favored over the use of status quo state and federal subsidies that have already been earmarked for projects and undefined in-kind contributions. It's only then will the goals of LB 388 be truly realized and consumers reap the full benefits of the Act.

The NITA thanks the Commission for the opportunity to provide comments. Its members hope to take advantage of the Act by submitting applications for the Commission's consideration in the future.

Dated: June 29, 2021

By:  _____

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NITA EXHIBIT 1

Attachment A – Application

Nebraska Broadband Bridge Program Grant Application

Section I: Applicant Details

1. Applicant name:	Click to enter text.		
2. Applicant type*:	Choose an item.		
3. Applicant address:	Click to enter text.		
4. Applicant contact (first and last name):	Click to enter text.		
5. Applicant e-mail:	Click to enter text.		
6. Applicant phone number:	Click to enter text.		
7. Provider name:	Click to enter text.		
8. Provider contact (first and last name):	Click to enter text.		
9. Provider phone number:	Click to enter text.		
10. Provider e-mail:	Click to enter text.		
11. Legal representative name (if applicable):	Click to enter text.		
12. Legal representative e-mail:	Click to enter text.		
13. Legal representative phone number:	Click to enter text.		
14. Applicant's Nebraska ETC status:	Choose an item.		
15. Does the applicant currently report through FCC Form 477 speeds of at least 100/100 Mbps provided to customers within the State of Nebraska?	Choose an item.	15a. If yes, does the applicant clearly offer the minimum speeds required on their public-facing website:	Choose an item.
15b. Provide the service provider's public-facing website URL that reflects the currently available speeds:	Click to enter text.		

* An application from a political subdivision or an Indian tribe must be made as part of a public-private partnership with a provider.

Section II: Project Details

1. Project name:	Click to enter text.		
2. Project type:	Choose an item.		
3. Project location description (the cities/communities where the project(s) will take place):	Click to enter text. NOTE: A shapefile polygon must also be included reflecting the project area. A point shapefile or an alternative format which identifies serviceable locations in the project area is also required to be included. If a grant is awarded, all locations in the polygon area are expected to be served at the minimum required speeds.		
4. Estimated number served in project area:	4a. Unserved (><25/3 Mbps): Click to enter text.	4b. Underserved (><100/1020 Mbps): <i>See Comments Section IV</i>	4c. Total: Click to enter text.
5. Current network technology (i.e. fixed base wireless, DSL, cable, satellite, etc) <i>See Comments Section III</i>	Click to enter text.	6. Technology type(s) to be deployed in project area: <i>See Comments III</i>	Click to enter text.
7. Current maximum connection speed bandwidth in project area (Mbps):	Click to enter text.	8. Projected minimum connection speeds at completion (Mbps):	Click to enter text.
9. Monthly customer rate for 100/100 Mbps service:	Click to enter text.		
10. Monthly customer rate for 100/100 Mbps speed where that speed tier is currently offered: See of comments.	Click to enter text.		

11. To qualify, the project must provide broadband Internet service that is scalable to 100/100 Mbps, or greater. Please indicate the maximum speeds this project is scalable to.	Click to enter text.
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Section III: Funding breakdown

1. Total estimated cost of the project based on eligible costs (refer to eligible and noneligible costs):	Click to enter text.
2. Match commitment amount:	Click to enter text.
3. Detailed match source(s) (list by dollar and source):	Click to enter text.
4. Grant Amount Requested (up to 50% of estimated eligible costs, not greater than \$5,000,000):	Click to enter text.
5. Expected Project Completion Date:	Click to enter text.

Attach/Include:

- A shapefile polygon of the area included in the project.
- A business plan for the proposed network that includes details of the project and demonstrates capability to maintain the network over the long run. The plan should include at a minimum: a financial analysis for the project over a five year period, including a description of how project costs and expected revenue will result in financial viability of the project over time.
- Non-ETC applicants should attach audited financial statements, **or** the most recent year's federal tax return, ~~and other independent audit results.~~ *See Comments Section V*
- A statement detailing the technical capability of the applicant, such as: the applicant's prior experience in providing broadband services in Nebraska, and other relevant technical expertise of the applicant.
- If the project includes underserved customers, a digital inclusion plan should be attached for consideration. The plan should specify how the project will impact access to and use of information and communication technologies within the communities it serves, including individuals and communities that are the most disadvantaged.
- Other supporting documentation (if applicable), such as letters of support from members of the community, signed verification of contribution for community match, etc.

APPLICANT CERTIFICATION: By signing this statement, the applicant certifies that the information submitted on the application and all supporting documents are true and correct. The applicant agrees to perform and adhere to all grant requirements, and to comply with all state and federal regulations and requirements pertaining to this program. In addition, the applicant agrees not to use equipment prohibited by the FCC within the network, to offer rates in the project area that are comparable to the rates offered by the applicant outside the project area, to submit network speed testing information as prescribed by the Commission, and to complete the project build within eighteen months following the grant award unless granted an extension.

	Click or tap to enter a date.
Signature of Authorized Person	Date
<u>Click to enter text.</u>	<u>Click to enter text.</u>
Printed Name of Authorized Person	Title of Authorized Person



Nebraska Broadband Bridge Program Application Form Field Descriptions

Field #	Field Description
Section I: Applicant Details	
1.	The name of the applicant entity applying for funding.
2.	Applicant type is either a service provider, cooperative, political subdivision, or Indian tribe. If application is from a political subdivision or Indian tribe, it must be submitted as part of a public-private partnership with a service provider.
3.	Address of the applicant applying for funding.
4.	The name of the contact person for questions related to the application and the overall project.
5.	E-mail address of contact person identified in field #4.
6.	Phone number of contact person identified in field #4.
7.	The name of the service provider for the project. This field is required if answer to field #2 is "Political Subdivision" or "Indian Tribe."
8.	The name of the contact person for the service provider that can answer questions related to the project.
9.	E-mail address of contact person identified in field #8.
10.	Phone number of contact person identified in field #8.
11.	The name of the legal representative for the applicant.
12.	E-mail address of contact person identified in field #11.
13.	Phone number of contact person identified in field #11.
14.	Indicate the applicant's current NETC status: NETC in good standing, NETC application has been filed, or applicant/provider intends to file for NETC status at least six months prior to project completion.
15.	Indicate whether the applicant/service provider partner currently reports through FCC Form 477 speeds of at least 100/100 Mbps service is being provided to customers in Nebraska located outside of the project area.
15a.	If the answer to 15 is "yes," does the public-facing website clearly reflect available speeds? Yes/No/NA
15b.	If the answer to 15a is "yes," provide the service provider's public-facing URL that reflects the currently available speeds.
Section II: Project Details	
1.	Descriptive name given to the project.
2.	The type of project (middle mile; last mile; middle and last mile).
3.	Description of the project location, including the cities, communities, etc. where the project will take place.
4a.	Enter the estimated number of those who reside in the project area who meet the definition of unserved (i.e. lacking broadband internet service at speeds of at least 25 Mbps downloading and 3 Mbps uploading).
4b.	Enter the estimated number of those who reside in the project area who meet the definition of underserved (i.e. lacking broadband internet service at speeds of at least 100 Mbps downloading and 20 Mbps uploading).
4c.	Enter the total of 4a and 4b in the total field.
5.	Describe the current network technology in place within the project location.
6.	Describe the technology type(s) to be deployed within the project area.
7.	Indicate the current maximum download and upload speeds available within the project area.
8.	Indicate the minimum connection speeds for download and upload upon completion of the project.
9.	Include the monthly customer rate to be billed for 100/100 Mbps service provided within the project area.
10.	Include the monthly rate currently charged to Nebraska customers receiving 100/100 Mbps service.
11.	Provide the maximum speeds this project will be scalable to upon completion.
Section III: Funding breakdown	
1.	Total estimated cost of the project (based on eligible costs, which can be found here).
2.	Include the total amount committed for matching funds. This should be equal to at least 50% of eligible costs.
3.	Provide a detailed description of the dollar amount of each match as well as the source of the match.

4.	Indicate the grant amount requested.
5.	Indicate the expected date that the project will be completed and service will begin within the project area at the required speeds.

NITA EXHIBIT TWO

(ATTACHMENT B – Reference Sheet Scoring Criteria)

A – Financial Capability – (Yes/No), and up to 5 points (See Comments Section V)

- In order to be considered for grant support, applicant must submit audited financial statements or federal tax return information that demonstrate overall financial viability. ETCs and carriers certificated in Nebraska already do this on an annual basis. This item will be scored as a Yes/No, where the lack of information (No) would disqualify the applicant from receiving a grant.
- Long-term viability of the project is a priority, and up to 5 points will be available if a business plan is included that provides details about how the proposed network will be maintained.

B – Legal Capability – (Yes/No), and up to 5 points

- Applicants are required to include contact information for their legal representation. Omission of this information will disqualify the applicant from grant consideration
- If this information is included, applicant will be awarded 5 points, but deductions will be made if: applicant/carrier partner has late filed annual reports (1 point), applicant/carrier partner has late-filed NUSF remittances (1 point), applicant fails to identify legal challenges that are anticipated, such as permitting, access to rights-of-way, etc. (1 point)

C – Technical Capability – 2 categories, 10 points each (See Comments Section III)

- Applicants must provide a general description of the history, nature, and extent of their business in Nebraska. Applicants that have not transacted business in Nebraska for at least two years are required to file a listing of each state in which applicant has transacted business for at least two (2) years and a brief description of the nature and extent of the business transacted in each state
- A description of applicant’s technical support staff, training, and/or experience of personnel pertinent to its Nebraska operations together with such information as applicant deems appropriate to allow the Commission to make an assessment of technical competency.
- FCC Form 477 — Does the most recent publicly available FCC Form 477 data demonstrate that the applicant offers 100/100 Mbps (or greater) service in Nebraska? If Yes, 10 points will be awarded. If no, 0 points will be awarded.
- Website Offerings — Does the applicant’s (or carrier partner’s) public-facing website clearly state that they offer services that meet the 100/100 Mbps or greater speed minimum? If yes, 10 points will be awarded. If no, 0 points will be awarded.

D – Rate Comparability – 10 points available

- Are the rates planned to be offered by the applicant/carrier partner comparable (i.e. equivalent) to what they offer elsewhere in Nebraska? If yes, 10 points will be awarded. If no, 0 points will be awarded.

E – Speed Additive – Up to 10 points available (*See Comments Section II)

- Additional points will be awarded if applicant/carrier partner includes evidence that they plan to offer speeds in excess of the scalable 100/100 Mbps minimum. These additional speed tiers must be available to customers at the time of application, and offerings have to meet both the upload and download speed minimums to be awarded points. Points will be awarded as follows:
 - o Scalable to 100/100 Mbps only – 0 points
 - o Scalable to 500/500 Mbps – 5 points
 - o Scalable to 1 Gbps/1Gbps – 10 points

F – Match Source – Up to 10 points available (*See Comments Section VII)

- Sources of match that are outside of existing federal or state broadband programs, and in-kind contributions will be given additional points, as outlined here:
 - o NUSF High Cost, Federal Broadband Funds, In-Kind Contributions – 0 points
 - o Federal Broadband Funds match – 5 points
 - o Applicant and/or carrier outside funds – 10 points

G – Match Percentage – Up to 20 points available

- Additional weight will be given to applications that make up more than the 50% requirement for matching funds. Projects will be evaluated as follows:

Percent of eligible project costs requested	Points
30% or less	20
31 to 35%	16
36 to 40%	10
41 to 45%	6
46 to 49%	3
50%	0

H – Households Covered – Up to 6 points available

- Additional points will be awarded for projects that cover more households as outlined here:

Households Covered	Points
1-49	1
50-200	2
201-500	4
501+	6

I – ETC Certification – Up to 5 2 points available (*See Comments Section III)

- If the applicant/carrier partner is an ETC at the time of application, 52 points will be awarded. If an application is pending, 3 points will be awarded. If the applicant/carrier partner plans to file for ETC Certification within 30 days of the application deadline, 1 point will be awarded.