

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 2022 program year.)	
)	

COMMENTS OF NPPD ON ORDER OPENING DOCKET AND SEEKING COMMENT AND NOTICE OF HEARING

Nebraska Public Power District (“NPPD”)¹ respectfully submits these Comments in response to the Nebraska Public Service Commission’s (the “Commission”) Order Opening Docket and Seeking comment and Notice of Hearing (the “Order”) in the above captioned proceeding entered February 1,2022.²

I. INTRODUCTION AND SUMMARY

In the Order, the Commission seeks comment on various proposed changes to the Nebraska Broadband Bridge Program (“NBBP”) authorized under the Nebraska Broadband Bridge Act (the “Act”)³. While the Commission proposes to generally maintain the overall structure of the NBBP, the Commission has determined that a review of the application and challenge process is appropriate, including among other matters, adjustments to the scoring system, identifying the geographic area for proposed projects, speed testing and scope of testing, and the importance of public-private partnerships as applicants under the NBBP.

NPPD unequivocally supports the Commission’s willingness to consider improvements in the NBBP so that vital funding can be targeted to best support the expansion of broadband networks in unserved and underserved areas. Consumers in these areas are in critical need of

¹ Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska
² *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 (Feb 1, 2022).*
³ Neb. Rev. Stat. §§ 86-1301-1310.

robust broadband services and the legislative purpose of the Act is to facilitate and fund broadband networks which can and will provide such services to **all** Nebraskans.

NPPD proudly participated as an applicant in the initial NBBP as part of the first ever Public-Private Partnership between a political subdivision and a private provider, as authorized under § 86-1304 of the Act. In the course of the Commission's administration of the application process established for the NBBP, NPPD learned that the Commission lacked any established technical standards to accurately identify what in fact constituted an "unserved area" or "underserved area", and thus what constituted a "qualifying project", a "project area" or a "project", as those terms are defined under that Act. While the Act contemplated the use of a "speed test" to verify that projects constructed and completed as a result of NBBP grant funding in fact provide service at speeds required under the Act (§86-1304(3)), neither the Act nor the NBBP required speed tests to initially determine the speeds actually being provided by existing providers in proposed Project areas. Therefore, there was no established speed test required to either determine or verify what areas were in fact "unserved" or "underserved". Instead, the Commission relied on historically unreliable and unverifiable data and/or network plant maps to determine the identity of "qualifying projects" (§ 86-1304(1)).

The entire structure and implementation of the Act and the NBBP is driven by first identifying areas in the state which are "unserved" or "underserved"⁴ These definitions use specific service speed metrics that must be provided to consumers. The Act is designed to increase broadband speeds provided and available to consumers throughout the state. The Legislature has determined that robust broadband service speeds are essential to the economic growth and prosperity of our communities and state, especially rural areas.

⁴ Neb Rev. Stat, § 86-1302(11) and (12).

Therefore, service **speed** is the key criteria for determining (i) what areas are eligible for funding (“project areas” where current providers are not actually providing or do not have available to consumers specific minimum service speeds), and (ii) whether proposed grant recipients will in fact actually deliver the new higher minimum speeds required under the Act through their new grant funded networks. However, neither the State nor the Commission has neither adopted a standard speed measurement tool or mechanism nor required that standardized speed tests be required to prove the actual delivery of services in a provider’s Project Area. Without the use of standard speed measurement tools the Commission cannot accurately or reasonably verify information or representations provided by providers in NBBP Applications concerning speeds actually provided to consumers in proposed project areas. Therefore, the Commission must establish a uniform speed testing standard and platform in order to reasonably and fairly administer the NBBP and make rational and informed decisions regarding the allocation of precious NBBP Grant funds.

NPPD also feels that Applications from Public-Private Partnerships should be assigned extra weight in the Commission’s proposed Scoring System for several reasons, as set forth below

II. DISCUSSION

Speed Verification Matters

The Commission deserves significant recognition and congratulations for its herculean efforts to develop guidelines for the NBBP in such a short timeframe. NPPD is committed to furthering the objectives of the Act by providing recommendations to the Commission through this Docket which are designed to improve the Commission’s ability administer the NBBP and to direct NBBP Grant funds to areas targeted under the Act using the best available data and standardized speed test technology.

Through either additional legislation or through the Commission’s existing direction under the Act, the Commission must exercise authority to review, evaluate and verify speed data submitted by challengers as part of the Challenge Process. The Commission has access to the latest data tools and technology approved by the Department of Commerce, National Telecommunications and Information Administration (“NTIA”) and the Federal Communications Commission (“FCC”), which represent the best available data on broadband speed tests. Regardless of the permutations and iterations of these data sources, the Commission’s commitment to utilize only the “best available data” when conducting its Application and Challenge review will assure that the data provided to the Commission can and will be verified. The Commission can only carry out the objectives of the Act and the NBBP by using the best and most reliable data available.

There must also be accountability when a Provider challenges a proposed Project Application. The challenging provider must be required to submit data which proves that it provides required minimum service speeds during peak hours (6:00 p.m. – midnight) pursuant to current FCC guidelines. Further, the challenging provider must demonstrate that the provider has an existing network which currently provides or could provide, within ten (10) business days of a request, the minimum broadband service speeds established under the Act for the Project Area in question, in accordance with current FCC Broadband Availability Standards.⁵ Many Providers already have the capability and responsibility of running speeds tests over their facilities independent of customer premise issues or downstream backbone congestion to ensure service

⁵ *In the Matter of Establishing the Digital Opportunity Data Collection* (WC Docket No. 19-195), *Modernizing the FCC Form 477 Data Program* (WC Docket No 11-10), Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460 (July 17, 2020).

quality or comply with FCC HUBB program requirements. The Commission should take advantage of this capability to the maximum extent possible.⁶

Demonstration by the Provider of fiber infrastructure in a Project Area alone cannot be sufficient to sustain a challenge because the actual delivery of service over that infrastructure cannot be verified without the evaluation of speed tests demonstrating the actual delivery of services at required minimal speeds.

Adjustments to Scoring System

Recent proposed state legislation suggested providing more weight to NBBP Applications that were committed to serving areas outside of the city limits of towns and villages. This provision should be adopted by the Commission in its Scoring System. The first round of NBBP grants were allocated largely to towns and cities without a plan or commitment to extend services further into rural areas. A business case can be made to serve the customers of small cities, towns and villages without federal or state subsidies, but the goal of truly reaching out-of-town areas will require additional planning, resources, collaboration and innovation, and should receive extra consideration and weight in the Scoring System.

Extra weight should also be given to Applications from Public-Private Partnerships (“PPPs”) between political subdivisions and private providers, as authorized under § 86-1304(1)(b) of the Act. PPPs offer a collaboration of financial resources, shared infrastructure, and technical capability which provides the best opportunity to extend robust and affordable broadband services, as well as service provider accountability, to rural areas of the state. The Public-Private Partnership Subcommittee of the Nebraska Rural Broadband Task Force, established under LB994 (the “Task Force”) issued findings in August, 2019 encouraging NPPD and Nebraska Rural

⁶ [Submit Data in the HUBB - Universal Service Administrative Company \(usac.org\)](https://www.usac.org)

Electric Association (“NFEA”) to work with the Legislature to identify funding options for PPPs for the development of broadband networks into rural areas, including state broadband grant programs like NBBP. The Task Force’s findings have been incorporated into the NBBP and the time is now to use this unique tool to address and eliminate the Digital Divide that still exists in Nebraska rural areas.

III. CONCLUSION

The Commission stands in a unique and unprecedented position to direct millions of dollars in state and federal funds for the deployment of new broadband infrastructure and networks that can, if properly utilized, effectively eliminate the digital divide in Nebraska. The key in accomplishing this amazing objective is to carefully utilize the best available data to (i) identify the areas in this state that are not receiving the minimum broadband service speeds established under the Act, and (ii) to allocate the precious state and federal funding directed by the Commission to Applicants, especially Public-Private Partnerships, which will best deliver robust broadband service to consumers in those areas. It is essential that the Commission utilize the most current technological tools and mechanisms to evaluate speed tests that measure service speeds actually delivered and available to current consumers by providers who may challenge proposed projects under the NBBP. Current providers **must** prove-up to the Commission that they are in fact delivering the service speeds they claim to be providing before the Commission determines if the area in question is in fact served.

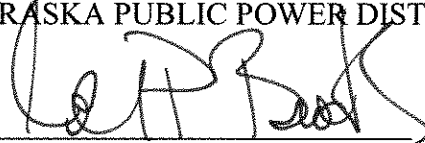
All broadband providers must be held accountable to actually provide the service speeds required under the Act. In order to fairly and competently exercise its administrative duties under the Act, the Commission must use the best available data and service measurement tools to evaluate applications under the NBBP. The Commission now has access to the tools and data to

carry out its responsibilities under the Act and its effort in this Docket to embrace and utilize those resources is commendable and fully supported by NPPD.

Respectfully submitted,

NEBRASKA PUBLIC POWER DISTRICT ("NPPD")

By: _____

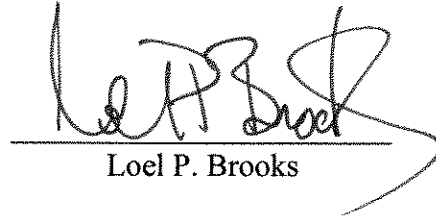
A handwritten signature in black ink, appearing to read "Loel P. Brooks", written over a horizontal line. The signature is stylized and cursive.

Loel P. Brooks, #15352
Brooks, Pansing Brooks, PC, LLO
1314 O Street, Suite 104
Lincoln, NE 68508
(402) 476-3300
lbrooks@brookspanlaw.com

CERTIFICATE OF SERVICE

I certify that on the 1st day of March, 2022, one electronic copy of the Comments of NPPD in Application No. C-5368 was filed with the Nebraska Public Service Commission via email to the following:

Psc.broadband@nebraska.gov



Loel P. Brooks