

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Implement the Nebraska Broadband Bridge Act (LB 388)

Application No. C-5272

ORDER OPENING DOCKET, SEEKING COMMENT AND SETTING HEARING

Entered: June 8, 2021

COMMENTS OF QWEST CORPORATION d/b/a/ CENTURYLINK QC AND UNITED TELEPHONE COMPANY OF THE WEST d/b/a CENTURYLINK

Pursuant to Commission Order dated June 8, 2021 (“Opening Order”) in the above-referenced docket, Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (collectively, “CenturyLink”) hereby respectfully provide the following comments on the Commission’s proposal to implement the Nebraska Broadband Bridge Act.

1. On May 26, 2021, Governor Ricketts signed into law LB 388, thereby creating the Nebraska Broadband Bridge Act (“the Act”). Policymakers and communications companies alike recognize the fact that there are areas of the state that enjoy world-class broadband offerings by multiple providers while at the same time there are areas throughout Nebraska that lack sufficient broadband capabilities. The Nebraska Broadband Bridge program is a substantial \$20 million annual allocation for broadband infrastructure grants to be administered by the Nebraska Public Service Commission. This grant initiative is designed to balance the inflow of private capital and competitive dynamics in areas of the state that can sustain such infrastructure deployment while also extending a bridge to areas throughout the state that, due to population density and other factors, face significant economic challenges when it comes to robust broadband deployment.

Executive Overview

2. In its Opening Order, the Commission outlines a proposed framework to implement the Nebraska Broadband Bridge Act and puts forward more than one hundred issues for which the Commission invites industry and public comment. In developing its proposed framework, the Commission recognizes the dual objective of (1) safeguarding taxpayer dollars and (2) encouraging maximum participation by companies. Finding a reasonable balance between protections and participation will directly impact the ultimate success of the Nebraska Broadband Bridge program by maximizing broadband deployment. Lumen commends the Commission and its Staff for presenting a proposed framework that is (1) consistent with the Act, (2) encourages continued broadband investment by companies using private capital (3) enhances the highly competitive broadband environment in areas of the state that can sustain robust private investment and competition and (4) addressing the needs of citizens in areas of the state that lack sufficient broadband as a result of population density and/or other factors that result in uneconomical deployment of advanced broadband infrastructure.

3. Lumen suggests that Nebraska is in a unique position to learn from both the successes and failures of other states and strongly encourages the Commission to synergize its final policies wherever reasonably possible. Although certain regulatory oversight is absolutely warranted, unnecessary or burdensome reporting requirements and other onerous oversight measures may have the undesired effect of discouraging viable investment partners. The appropriate regulatory balance must be achieved to not only safeguard Nebraska citizens but to also encourage the public-private partnership the Act envisioned with the ultimate goal of maximizing the further deployment of broadband infrastructure. Some early examples of government broadband funding initiatives had little, or no, regulatory oversight or

accountabilities. Sadly, outcomes were somewhat predictable with countless failed projects that wasted hundreds of millions of dollars in public funding. On the other end of the pendulum, certain government broadband initiatives were launched with such stringent regulatory measures that the cost of regulatory compliance exceeded the grant funding and thereby failed to attract sufficient partners.

4. The Commission is considering a framework which covers a broad listing of categories including: (a) project areas, (b) matching funds, (c) eligibility and priority determination, (d) scoring and criteria, (e) challenge process, (f) distribution of support, (g) post award testing, (h), post award repayment, (i) timeline, and (j) proposed forms. The proposed framework indeed is a comprehensive proposal for which the industry and interested parties can offer suggested improvements. It also represents a significant amount of work and dedication by the Commission Staff. Lumen offers the following comments on certain areas of the Commission's proposed framework; however, not every element will be addressed.

Scoring and Criteria

5. Lumen notes that the scoring criteria and the requirement that the Commission vet applicants' financial, technical, legal capabilities as well as proposed technologies and other factors are already established in Commission Rules for Reverse Auctions (Chapter 16 001.04(C)). The Commission should synergize and streamline the company vetting process to ensure reasonable taxpayer protections while simultaneously encouraging broad participation. Following the same procedures for the Nebraska Broadband Bridge program that are already in place for the Reverse Auction rules would simplify the overall application process while providing the same level of taxpayer protections.

6. For financial, technical, and legal capabilities, companies that are currently certificated by the FCC and/or NPSC, currently designated as an ETC in Nebraska, or previously approved by RUS or similar government agencies should be deemed to possess sufficient capabilities and, therefore, eligible for participation in the Nebraska Broadband Bridge program. Further, publicly traded companies with substantial, readily available financial information should be allowed to provide the Commission with a link to it or its parent company's audited financial statements. Finally, while all companies should have tax records, those records are nearly always at the parent or holding company level and often do not provide the data necessary to gauge the financial health of a company or to assess the overall risk exposure.

7. Regarding rates, the Act states that the Commission shall consider "(c) The ability of an applicant to offer rates in the project area that are comparable to the rates offered by the applicant outside the project area;". The Commission's proposal to disqualify plans that have usage caps, contracts and early termination fees exceeds the language of the Act as does any type of affordability benchmark or rate freezes. Lumen encourages the Commission to focus on parity. If an applicant proposes usage caps, higher rates or contracts in the project area but does not have these terms and conditions in other parts of the state where service is offered, the Commission should take these factors into consideration. However, if the rates, terms, and conditions -- including data caps, contracts and termination fees -- are similar to such terms offered by the applicant in other parts of the state, the statutory criteria have been met. The Commission can ascertain this in the application by simply asking the applicant if the rates, terms and conditions for broadband services in the project area will be the same as offered elsewhere. If the applicant attests affirmatively, no other information should be warranted.

8. The Commission also invited comments on minimum broadband speeds and, specifically, what documentation should be included in the application to demonstrate that the service is scalable to reach speeds of 100/100 Mbps. Lumen suggests that a company attestation is sufficient for the application process given that the Act and the Commission proposal has stringent post-award testing and repayment provisions.

Challenge Process

9. The Challenge Process plays an integral component of the overall Nebraska Broadband Bridge initiative. No public policy rationale is served by providing taxpayer funded assistance to locations that currently have broadband. Further, while a \$20 million annual broadband grant fund is significant and certainly a step in the right direction, the need for rural broadband support far outweighs the available resources. Prudent steps must be taken to ensure the State is not duplicating infrastructure and funding competition rather deploying broadband where it is truly needed. To ensure limited funds are used to the maximum benefit without wasteful or duplicative spending, the Act contains both (a) a challenge process for current providers and (b) a rebuttal opportunity for applicants. These challenge and rebuttal provisions are designed to work in tangent to ensure no taxpayer funded assistance is used to fund broadband networks in areas of the state that currently have broadband services while at the same time addressing the needs of citizens in areas of the state that lack sufficient broadband.

10. The Commission's proposed challenge framework is consistent with the Act and incorporates a reasonable balance between the required challenge demonstration and overly burdening or penalizing companies who have made broadband infrastructure investments using private capital proposed. One suggestion Lumen makes to improve the overall transparency and data gathering requirements of the challenge process is for the Commission to consider a new

provision within its challenge rules encouraging, or requiring if feasible, challengers to submit a non-binding *Notice of Intent to Challenge* to the Commission within 15 days. The purpose of such Notice is to allow the applicant and challenger time to address the areas of concern informally and reduce the workload on the Commission Staff as well as the parties.

11. Regarding the specific proposed challenge provisions and the ancillary questions posed by the Commission, Lumen offers the following comment:

- a. *Required Service Levels*: Challenge Requirement 1(b) states “If the challenging carrier is already providing service, the challenger must provide evidence that the required service levels are being met at the customer premise (page 14). Lumen notes that there are no required service levels within the Act beyond the speed threshold which is addressed in 1(c). As such this requirement should be eliminated.
- b. *Ongoing Construction Reporting*: The Commission proposes to require a challenger who has construction plans anticipated to be completed within the next eighteen months to provide progress reports every three months demonstrating progress towards construction ((Page 15). Lumen suggests that this requirement should be changed to providing progress reports midway through the eighteen months and at the end of the eighteen months. Construction is very limited during the winter, so on a three-month cycle, the late winter filing may not demonstrate meaningful progress. Two reports during the eighteen-month window should be sufficient to determine progress and completion of any project.
- c. *Application Modifications*: The Commission proposes to allow challenged applications to have the ability to withdraw portions of their application and re-file the project area and narrowed budget in response to a challenged portion of the application (Page 15). Lumen

suggests that this is a reasonable provision which will not automatically disqualify an application for a slight overlap in broadband coverage and further the overall intent of the Act. Regarding the Commission's request to provide comment on how the narrowed project areas can be withdrawn, Lumen suggests the Commission address this on a case-by-case basis and not develop defined rules at this time.

- d. *Challenge Rebuttal Process*: The Commission invited comment on how the challenge rebuttal process should work when an applicant intends to rebut the challenger (Page 15). It is in the best interest of the challenger to provide as much relevant information to the Commission as possible to win the challenge. Consequently, a company's self-interest is much more effective than detailed Commission rules requiring exact rebuttal information. To the extent the challenger has additional information, the challenger would be best served by submission of available information to corroborate its claims. As such, Lumen agrees that the Commission's plan to not formalize the rebuttal process is likely the best approach. However, one caution the Commission should take into consideration is allowing community-based information about the level and quality of the broadband service. As stated above, there are no required service levels within the Act beyond the speed threshold.

12. Lumen notes that the ultimate goal of the challenge/rebuttal process is to ensure proper investment of limited taxpayer funds without overbuilding an existing broadband network. As such, the Commission should remain flexible and not automatically disqualify a challenge or rebuttal if all the documentation cannot be provided. Providers may not be able to produce certain information in the short 30-day challenge window while, on the other hand, those same providers may have additional information that could be highly relevant in proving its case.

Other than a proper attestation, all other information should be highly encouraged rather than an absolute requirement that would disqualify a challenge if such information is not included.

Distribution of Support

13. The Commission interprets the Act to require financial support to be distributed to the winning applicant prior to the project being completed. Lumen agrees. The Commission further proposes to distribute support by releasing 30 percent of the net grant award (netted against the match component) once the grant award is determined and, thereafter, in monthly installments amortized over the buildout period, not to exceed 18-months. While this approach seems valid from a textbook or theoretical perspective, the Commission may be adding unneeded complexity and additional workload to distribute grant funding over 19 payments. Lumen strongly recommends a more streamlined approach with few payments. Furthermore, even though the project timeline may be 18 months, the cost timeline is usually front loaded with more expenses towards the beginning of the project for engineering, permits, equipment acquisition, etc. As such, this may warrant more funding upfront before the first shovel.

Post-Award Testing

14. The Commission proposes that speed tests: (a) reflect what customers should experience in the subscribing household; (b) be collected during times of peak usage; (c) be conducted at least one test per hour during the test window for one week; and (d) encompass an increased number of tested locations as the number of households covered by the proposed project increases. Lumen suggests that these are all sound testing principles. The Commission asked (1) if there are certain testing methodologies already in use that can be adopted in Nebraska and (2)

whether the Commission should require a certain percentage of the tests be above the 100/100 threshold. For both of these questions, Lumen again suggests the Commission not reinvent the wheel but turn toward the requirements adopted by the FCC for CAF projects. Every CAF award has a testing component. Carriers are required to demonstrate at least 95% of the locations are at or above the speed threshold. Requiring 100 percent success is not realistic and fails to take into consideration minor interruptions resulting from fiber cuts and other outages, hence the FCC's 95% requirement. One final testing consideration for the Commission is that the more complicated the test, the higher the project costs. Since testing costs are part of the overall development costs, expansive testing will limit the available funding for actual broadband deployment.

Conclusion

15. Lumen again commends the Commission and its Staff for their comprehensive proposal, which is consistent with the Act and advances the overall objective of companies and policymakers alike which is to further broadband deployment. Lumen also thanks the Commission for the opportunity to provide comments in this docket and looks forward to a continuing a productive dialog on implementation of the Nebraska Broadband Bridge initiative.

DATED this 29th day of June, 2021.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of June, 2021, a true and correct copy of the foregoing was served by U.S. mail and via electronic mail to:

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