

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. C-5272
Public Service Commission, on its)
own Motion, to implement the)
Nebraska Broadband Bridge Act)

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Order Opening Docket, Seeking Comment, and Setting Hearing entered by the Nebraska Public Service Commission (the “Commission”) in this docket on June 8, 2021 (the “C-5272 Order”). RIC appreciates the opportunity to provide these Comments and looks forward to continuing its participation in this docket regarding the implementation of the Nebraska Broadband Bridge Act (the “Act”) and the Nebraska Broadband Bridge Program (the “Program”).

I. The Commission Should Administer and Implement the Program in Order to Achieve the Additional Broadband Deployment that the Act Envisions.

The Act assigns administration of the Program to the Commission to facilitate and fund the development of broadband networks in unserved and underserved areas of Nebraska.² RIC believes

¹ Arlington Telephone Company, Blair Telephone Company, Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, LLC, Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Sodtown Communications, Inc. and Three River Telco. Each of the companies has been designated by the Commission as both an Eligible Telecommunications Carrier (“ETC”) pursuant to the requirements of 47 U.S.C. § 214(e) and a Nebraska ETC (“NETC”), and thus the RIC member companies are eligible for disbursements from the federal Universal Service Fund (“USF”) and the Nebraska Universal Service Fund High Cost Program (the “NUSF HCP”).

² See LB 388, section 3.

that adoption by the Commission of the principles set forth below will assist in the accomplishment of the objectives of the Act and would do so in an administratively efficient manner:

1. Operating terms utilized in administration of the Program should be defined in accordance with the definitions in the Act so that the obligations, responsibilities and other requirements of the Act and the Program are consistent.
2. Commission administration of the Program should be consistent with the overall Legislative directive that all Nebraskans, irrespective of their location, should be provided with access to broadband service with minimum speeds consistent with Legislative policies.
3. Any disbursement from the Program should be made only to an ETC that is subject to the Commission's jurisdiction, and to maximize administrative efficiencies of the application and review process, the Commission should allow an ETC to rely on information already provided to the Commission for purposes of meeting requirements of the Act or the Program.
4. An applicant's Nebraska operational experience and regulatory compliance with the Commission's requirements and those of the Federal Communications Commission ("FCC") should be considered in the scoring of any application with additional weighting assigned on the basis of the number of years that an applicant has held ETC certification.
5. The Commission's scoring criteria for Program applications should be revised to reflect and implement the underlying policy that all Nebraskans should have access to broadband-capable networks at a minimum of 25/3 Mbps,³ and therefore, RIC recommends assignment of points consistent with the population density associated with a proposed service area. RIC proposes herein a 100-point scoring system to implement this directive.

II. RIC's Responses to Questions and Issues Presented by the C-5272 Order.

Consistent with the principles provided above and for the reasons stated herein, RIC respectfully submits the following responses to various questions presented in the *C-5272 Order*.

³ See *Neb. Rev. Stat.* § 86-1101.

In RIC's view, the following subjects are significant to the successful administration of the Program by the Commission.

A. Project Areas: Geographic Area Identification

- 1. Should the Commission require identification of the serviceable locations in a point shapefile submitted to the Commission? Why or why not?**

RESPONSE: As a general matter, RIC endorses the Commission's proposal that an applicant should include a polygon shapefile of the proposed project area in its application that illustrates identifiable serviceable locations of households in the project area. However, what is or is not a "serviceable" location may need to be determined on a case-by-case basis (such as where service has never been provided to a location and is likely not to be provided to such location). In RIC's experience, such situations are more common in rural areas, *i.e.*, abandoned farmhouses, temporary living units such as bunk houses, and the like. Thus, RIC requests that the Commission utilize a good faith standard in assessing an applicant's identification of "serviceable locations."

- 2. In the absence of specific identification of each serviceable location, is it appropriate for the Commission to assume that all locations within the polygon will be served? Why or why not?**

RESPONSE: Yes.

B. Speed Data.

- 1. To the extent that an applicant has provided service at the proposed speeds offered, the Commission would suggest the applicant file documentation that those speeds are delivered in other areas served by the applicant and that those speeds are advertised. Should the Commission require such information to be filed?**

RESPONSE: RIC believes that an applicant's prior and existing broadband service experience is highly relevant to the Commission's evaluation of Program applications. Please also Section II.I below.

RIC submits that it is reasonable to require an applicant to prove that the speeds included in its application are capable of being delivered in other areas that the applicant serves and that such speeds are advertised. RIC also submits that the burden to demonstrate such speeds is upon the applicant and that the Commission should be flexible in receiving evidence that an applicant provides to sustain this burden of proof.

By way of example, copies of advertisements regarding the availability of the applicant's proposed broadband speeds may be one source of documentation to meet the applicant's burden of proof. In all events, however, the information that is being provided by an applicant should be subject to attestation as to its accuracy.

C. Non-Contiguous Geographical Areas.

- 1. The Commission proposes to allow applicants to file grant applications for project areas that are not contiguous. Is this a reasonable assumption?**

RESPONSE: RIC respectfully submits that the Program structure should avoid potential gamesmanship in submission of geographically non-contiguous areas within a single application. The Commission should be skeptical of applications that primarily serve non-contiguous lower cost areas.

Thus, RIC proposes a readily identifiable test that would expedite consideration of the "non-contiguous areas" applications:

Any application including non-contiguous areas must be within a single exchange/rate center and must be efficient from an engineering standpoint.

In this way, the Commission would be advancing the availability of broadband in underserved and unserved areas typically referred to as the "donut" rather than solely serving the "donut hole." Such test, in RIC's view, provides a rational foundation for receiving non-contiguous area applications.

In addition to this single exchange requirement, and to further address the concept of "cherry picking" lower cost areas as stated in Section II.C.2 below, RIC suggests that any such application should also demonstrate that serving such non-contiguous areas would be efficient from an engineering standpoint, with added weighting if an applicant demonstrates its utilization of existing scalable broadband functionalities already in place in an area adjoining the non-contiguous areas.

- 2. Should the Commission be concerned about cherry picking the lowest cost areas and leaving the higher cost areas out of an application? Should separate applications be required for areas that are not contiguous?**

RESPONSE: Cherry picking lower cost and/or higher household count non-contiguous areas for inclusion in an application is a reasonable concern. RIC suggests that, to the extent that an applicant proposes a project to serve non-contiguous areas, the applicant should be required, in addition to the demonstration outlined in Section II.C.1 above, to include an explanation of the rationale for the

proposed project configuration, including engineering and financial reasons that support the applicant's proposal. Separate applications should not be a requirement, but the Commission should reserve the prerogative to request separate applications as a condition to including a proposal in its evaluative process. Please also see Section II.I below.

D. Unserved and Underserved Areas.

- 1. The Commission seeks comment on whether interested parties believe it should accept applications which include project areas with a mixture of both unserved and underserved areas.**

RESPONSE: In the Commission's prioritization of Program grant applications, the terms "unserved" and "underserved" should be defined as provided in the Act. Section 5 of LB 388 sets forth the criteria on which the priority of Program grant distributions are to be based. Those criteria do not contemplate project applications that include both unserved and underserved areas. Therefore, the Commission's proposal to require separate applications for unserved and underserved areas is the most straight forward solution to comply with Section 5 of LB 388. However, this solution may be in conflict with efficient engineering and design of a broadband network project proposed to be deployed to provide broadband access in a specific contiguous geographical area that includes both unserved and underserved locations, a concern RIC respectfully suggests can be addressed using the "test" outlined in Section II.C.1 above.

Logically, RIC notes that the Commission could address a Program grant application for an area that includes both unserved and underserved locations by (a) requiring bifurcation of the application into two separate applications that isolate unserved and underserved locations or (b) assigning priority to the application based upon a proportional evaluation of the number of unserved versus underserved locations included in the application, *i.e.*, an application that includes 50 locations, 25 of which are unserved and 25 of which are underserved would receive a 2.5 priority ranking within the second priority of Section 5 of LB 388 rather than being defaulted to the third priority under Section 5. No provision of Section 5 of LB 388 prohibits the Commission from assigning a weighted priority to an application that includes both unserved and underserved locations. Following this priority assignment and subject to the test outlined in Section II.C.1 above, the Commission would proceed to apply its scoring criteria to the application as discussed in RIC's Responses to Section II.I below.

E. Overlapping Areas.

- 1. The Commission presents a proposal on page 5 of the C-5272 Order relating to the processing of applications for areas that "significantly overlap" and seek comment on the proposal.**

RESPONSE: RIC endorses the Commission's proposal.

F. Digital Inclusion Plan.

- 1. The Commission expects applications that propose to serve underserved areas will include a digital inclusion plan that provides information concerning the applicant's plans to publicize the service to be provided, access to the service by disadvantaged persons, affordability and the absence of data caps. Comments on the digital inclusion plan are encouraged.**

RESPONSE: RIC notes that the Act defines "digital inclusion plan" as "access to and use of information and communication technologies by all individuals and communities, including the most disadvantaged individuals and communities."⁴ RIC respectfully suggests that the Legislature's plain wording of this definition focuses on advertising the availability of broadband and some level of assistance in such advertising to assist with consumers' "digital literacy".

RIC is concerned, however, that the Commission's proposal on page 5 of the *C-5272 Order* adds to the Act's definition of digital inclusion plan by including pricing and affordability considerations.⁵ These additional considerations should be eliminated. If pricing and affordability were intended to be considered, the Legislature would have included those specific concepts within the definition, but it did not. Thus, RIC respectfully submits that the concepts of pricing and affordability should not be part of any digital inclusion plan.

At the same time, since the definition within the Act uses the term "all individuals and communities," RIC believes that any application should make clear that the applicant will provide broadband service to all locations that are within the area that is the subject of the application.

In light of the above, RIC respectfully submits that digital inclusion plan for purposes of the Program should mean:

A written plan including the rates, terms and conditions and proposed speeds advertised annually by a recipient of a grant within the area covered by the grant as to how such broadband service shall be made available to all individuals and communities within such area, including the most disadvantaged individuals and communities within such area.

⁴ See LB 388, sections 2 and 3.

⁵ See *C-5272 Order* at 5-6.

G. Matching Funds.

- 1. Should the Commission consider federal or state universal service support as a match? What about funding from other government programs?**

RESPONSE: Yes. However, RIC respectfully requests the Commission to provide additional detail regarding how such matching would occur in an effort to avoid attempts to “game” the system (such as, for example, using Program funds to overbuild existing infrastructure in areas where such USF and NUSF HCP funds were allocated).

Thus, as part of any explanation and detail regarding operationalizing this matching option by the Commission, RIC respectfully submits that the following principles be required to be demonstrated by an applicant:

1. Any proposed USF and/or NUSF HCP matching must be for locations where such funds were originally allocated (no portability of support).
2. No duplicative support.

- 2. Is there a limit on the amount of universal service support that could be used as a match?**

RESPONSE: At page 13 of the *C-5272 Order*, the Commission has proposed limiting weighting of matching fund applications to those up to a maximum seventy percent (70%) match. RIC believes this proposal is reasonable.

- 3. Are there certain situations where NUSF is not sufficient to cover the full costs of deployment?**

RESPONSE: Yes. Please see the record developed in response to the Commission’s Progression Order 6 in Application No. NUSF 108.⁶

- 4. Should the Commission consider an in-kind contribution as a match? If in-kind contributions are allowed, what types or sources of in-kind contributions should be acceptable?**

RESPONSE: Yes. RIC respectfully submits that in-kind contributions should be permitted for matches under the Program. Rather than limiting the types of in-kind

⁶ See RIC PO 6 Order Comments at 5-6; see also RIC PO 6 Order Reply Comments at 3.

contributions that could be proposed in applications, RIC submits that each applicant be provided the flexibility to propose any type of in-kind contribution available, subject to the requirement that the applicant bears the burden of demonstrating the value the applicant assigns to such in-kind contribution. By way of example only, if an applicant seeks to have construction costs associated with the deployment of plant as an in-kind contribution, that applicant could rely on prior construction invoices as a reasonable proxy of the value of the in-kind contribution being proposed. Likewise, if an applicant seeks to have previously purchased and uncommitted fiber inventory as an in-kind contribution, the invoice price of that fiber could be used to value the in-kind contribution.

Provided that the demonstration requirement is rigorously applied in the review process, allowance of in-kind contributions should result in the proper leveraging of existing capabilities of the applicant and thus advance the Act's objective of deploying additional broadband.

- 5. If matching funds consist of existing inventory, the Commission proposes to ask applicants to identify costs that were originally paid. Is that a fair approach?**

RESPONSE: Yes. *See* Response to Section II.G.4 above.

- 6. Should the Commission consider other tangible items such as equipment, and if so, how should the Commission determine the fair market value for items offered as in-kind matches?**

RESPONSE: Yes. *See* Response to Section II.G.4 above.

H. Eligibility and Priority Determination.

Use of 477 Data as Default Information to Identify Services and Speeds in a Project Area.

On page 7 of the *C-5272 Order*, the Commission indicates a preference for using FCC Form 477 data "as default information relative to the services and speeds provided in proposed project areas." RIC conditionally supports this concept *only* if the use of FCC Form 477 data as a default does not preclude an entity, such as in the challenge process, to utilize an alternative source of data that is more current and reliable regarding service availability and service speeds. The Commission's use of the term "default" appears to acknowledge this possibility; however, RIC seeks Commission acknowledgment that other data sources for service availability and speeds are permissible.

- 1. If speed test data is provided by an applicant, how should the Commission utilize speed testing to determine priority areas? What methodology should the Commission use?**

RESPONSE: RIC supports the concept of speed tests and believes the Commission should use the Act's requirement:

Speed test means a measurement of download and upload speeds for access to broadband Internet service between a specific customer location and a specific remote service location that meets the specifications of the commission.

The Commission should allow an applicant to rely on existing methods/vendors it is using to meet federal speed requirements in order that the applicant may avoid the additional administrative burden and costs of utilizing a new form of speed measurement. Likewise, RIC respectfully suggests that to provide for a consistent speed test methodology, speed tests should not be required for more than ten percent (10%) of all locations subject to an application. *See* Section II.R below.

- 2. How many speed tests or data points should be required? Should there be a certain percentage of speed tests that are considered determinative for a project area? If not 50 percent, what is the appropriate percentage?**

RESPONSE: *See* Response to Section II.H.1 above. If in the post-grant phase, an applicant's operations do not meet the speed requirements associated with the service that the consumer purchased, the Commission can properly rely on consumer inquiries or complaints to establish the degree to which previously committed defined speeds are not being met. In this way, the administrative resources of both the Commission and providers can be used to address issues when and if they arise.

I. Scoring and Criteria.

- 1. The Commission seeks comment on the proposed scoring and weighting formula attached to this Order identified as Attachment B ("Attachment B").**

RESPONSE: As a general matter, RIC respectfully submits that the Commission should endeavor to create an easily administered scoring and weighting framework that rewards applicants with proven service commitments to the rural areas of Nebraska. While RIC appreciates the Commission's proposed comprehensive scoring criteria for applications, the proposal does not provide adequate weighting for the most important components of applications, namely, providers that have a proven service record and a demonstrated commitment to service. Furthermore, the proposed scoring discounts the very areas where broadband services are most needed – the more sparsely populated rural areas – in favor of weighting those areas in

which more customers are served. Based on the proposals contained in the *C-5272 Order*, this proposed household weighting effectively discounts rural areas such that significant questions exist as to whether truly rural consumers will experience the benefits of the support available under the Program.

Accordingly, RIC recommends the following principles that should govern the Commission's efforts regarding the scoring and weighting formula that provides a less complex process, better serves the public interest, and recognizes proven service commitments:

- The combination of an applicant's long-term demonstration of financial, technical and operational capabilities based on the applicant's specific service history in this State. These capabilities should be reviewed in their entirety, with applicants that have in the past demonstrated this expertise to this Commission receiving more points in the application scoring process.
- Emphasis on deploying fiber to provide service to all customer locations included in an application. While this may be captured to a degree in minimum speed requirements, any carrier can claim to be capable of providing speeds scalable to 100/100 Mbps. In RIC's experience, however, the reality is that only fiber technology can reliably accomplish such performance levels, particularly with scalability to meet future increased speed demands by consumers. Thus, fiber-based applications should receive higher weighting, consistent with this Commission's universal service policies of incentivizing fiber deployment.⁷
- Emphasis on applications from an applicant that: (1) already serves an area; (2) demonstrates its commitment to providing broadband service; and (3) proposes to upgrade service to those customers already served. In this way, the Commission can avoid using scarce Program dollars to fund new market entrants that lack a history of successful deployment and operation of broadband networks except when the new entrant demonstrates through its technical and financial capability showings that it can successfully deploy and operate broadband networks.
- Include weighting criteria that recognizes not only the number of customers proposed to be served, but also gives weight to applications proposing to serve very rural areas. This could include weighting based on the customer

⁷ See, e.g., *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, Application No. NUSF-100, PI-193, *Order Seeking Further Comments, Order and Order Seeking Further Comments and Setting Hearing Date*, entered February 22, 2017 at 19.

density of a proposed area, with low density, high cost areas receiving additional points. Absent this approach, if a higher number of households covered (and thus lower costs per household) leads to application preference for such areas by the Commission, then the existing dichotomy between broadband “haves” and “have nots” among Nebraska consumers will not only continue but may be exacerbated. Thus, RIC questions the advisability of including Households Covered among the weighting criteria, and minimally recommends that this weighting factor be de-emphasized.

In light of the above, RIC proposes the following revisions to the Commission’s proposed scoring/weighting described in Attachment B to the *C-5272 Order*:

Rather than scoring financial, legal and technical capability as separate items, these elements are integral to the overall success of what is being proposed in an application as well as an applicant’s ability and commitment to complete a proposed project. Therefore, consistent with Section 6(2)(a) of LB 388, RIC recommends that these three criteria be collectively evaluated with a total weighting of 30 points (eliminating the separate scoring of “website offerings”), subject to reduction of points awarded if the Commission determines, in the exercise of its reasonable discretion, that an applicant does not meet these criteria:

Proposed Household Coverage and Population Density

- Households covered revised such that 501+ equals 5 points.
- Up to 10 points to be awarded based on an application proposing to serve less densely populated rural areas of Nebraska with the following weighting:

Population Per Square Mile	Additional Points:
Less than 5	2 points
Less than 2	6 points
1 or less	10 points

Other Weighting Factors

- RIC supports the Commission’s weighting/scoring as provided in Attachment B to *C-5272 Order* for the following:

Rate comparability – 0-10 points
Speed additive – 0-10 points
Match source – 0-10 points
Matching funds – 0-20 points
ETC certification – 0-5 points

The foregoing modifications will provide for a scoring system based upon a maximum possible 100 points. RIC recommends that the Commission adopt the foregoing modifications to the scoring and criteria for Program applications.

- 2. The Commission believes the scoring/weighting process it adopts should be based upon objective criteria that can be assigned certain values and is transparent to the public. Do you agree with this approach? Do you believe the weights assigned in Attachment B to be appropriate?**

RESPONSE: RIC agrees that the process for scoring applications should be based upon objective criteria, that values should be assigned to the criteria, and that the process should be transparent to all participants and to the public. Please see Section II.I.1 Response above.

- 3. Are there criteria the Commission should score that are missing from Attachment B? Do you believe that any of the criteria should be scored differently? If so, please explain.**

RESPONSE: Please see Section II.I.1 Response above.

J. Financial Capability.

- 1. The Commission proposes to require the submission of audited financial statements, other independent audit results, and the most recent copy of the applicant's federal tax return. With respect to ETCs and carriers certificated in Nebraska and in good standing, should that be sufficient to determine that they are financially capable by default? Why or why not?**

RESPONSE: RIC believes the Commission should not create disincentives for the submission of applications under the Program through requirements to establish financial capability. Accordingly, RIC respectfully submits that it would be reasonable for the Commission to adopt the position that if a Program applicant is currently an ETC and a NETC and in good standing with the Commission, that applicant should be deemed to have satisfied the financial capability requirements of the Act.

In addition to avoiding the expense of meeting some other form of open-ended financial capability test,⁸ for regulated carriers that annually filed Form M, coupled with the Commission's familiarity with the financial capabilities of ETCs and

⁸ See LB 388, section 6(2)(a).

NETCs, provide sufficient information to satisfy the Act's requirements regarding financial capability of an applicant.

At the same time, RIC understands the fact that non-ETCs/NETCs may request grant disbursements under the Program. In these situations, reasonable reviews of attested or certified financial statements should be sufficient; subject to further review based on any factual issues that may arise based on such statements.

Two final points deserve mention: (1) If a carrier is not currently required to prepare audited financial statements, then RIC respectfully submits that the Commission should *not* require that carrier to incur the additional expense of obtaining an audit; (2) submission of a carrier's tax returns should *not* be required under any circumstances. RIC is not aware of any need for a tax return to confirm the accuracy of any attested/certified financial demonstration.

2. **The Commission also proposes to require applicants to include a financial plan for the project, which includes at a minimum, a description of the budget costs and the expected revenue from the project. The Commission seeks comment on whether the description of the budget costs should be set up similar to other grant programs the Commission already administers or whether to set up a more specific template for applicants to complete. How many years should the financial analysis cover?**

RESPONSE: As with other aspects of the Commission's implementation of the Act, uncertainty regarding the application submission and review process should be avoided. The Act does not require a "financial plan" as one of the minimum criteria to be considered by the Commission in the weighted scoring system.⁹ Further, the *C-5272 Order* does not provide any detail regarding what constitutes a "financial plan" or what Commission expectations may be concerning the contents of such a plan. In RIC's view, an applicant should be provided a reasonably detailed explanation of the expectations as to the contents of its Program application.

Moreover, the submission of any "expected revenue" from a project in the application process (*see C-5272 Order* at 8) should not be required. It appears that the Commission is seeking "take rate" information that is, by its nature based on assumptions, and thus, at best is subject to proof only when those assumed facts are known. The Act references "financial capability" not financial viability based upon a pro forma financial plan. The Commission should abandon its proposed requirement of submission of a financial plan with a Program application.

⁹ See LB 388, section 6.

3. **The Commission further proposes that applicants provide an explanation of how costs and revenue will result in financial viability of the project over time. What information should the Commission require to document that the project will be financially sustainable in the long-term?**

RESPONSE: If an area is unserved or underserved, that area already likely presents service challenges that require public funding via support mechanisms such as the Program rather than relying solely on private resources. Thus, the submission of "financial viability" information goes beyond the Act's requirements, is necessarily based upon assumptions and does not appear to be based upon objective criteria (*see C-5272 Order at 7-8*), and thus, would be of uncertain value during the application process. See Response to Section II.J.2 above.

K. Technical Capability.

1. **The Commission proposes to require information from each applicant detailing the applicant's prior experience in providing broadband services in Nebraska, and/or in other states if applicable. This would include the number of technicians working on the project, the number of years they have been employed, any potential contractors, as well as the technical experience of the contractors working on each segment of the project. The Commission seeks comment on this proposal.**

RESPONSE: RIC respectfully submits that consistent with RIC's responses to the items discussed under Section II.J above, if an applicant participating in the Program is currently an ETC and a NETC certificated by the Commission and in good standing with the Commission, the full weighting for technical capability should be awarded. Please also see Section II.I Responses above.

2. **Should the Commission consider the number of years the provider has been providing service in Nebraska and/or other states? Should the Commission give heavier weighting to the number of years a provider has been offering broadband service?**

RESPONSE: Yes. It is entirely reasonable for the Commission to look to the number of years that a Program applicant has been providing telecommunications service as well as broadband service in this State subject to the Commission's oversight as a measure of that applicant's ability to fulfill the commitments made in any application. An applicant's longevity within the marketplace reflects its commitments to its customers and service area and should be highly valued by the Commission in its processing of Program applications. Please also see Section II.I Responses above.

3. **The Commission proposes to require applicants to provide an attestation that the equipment used is compliant with the FCC's equipment and authorization rules to promote national security and keep insecure equipment out of the market. The Commission seeks comment on whether such an attestation is appropriate and whether the Commission should disqualify projects that incorporate equipment which may pose an unacceptable risk.**

RESPONSE: RIC regards the foregoing proposed requirement as reasonable and supports this requirement.

L. Legal Capability.

1. **What factors should be considered relevant to an applicant's legal capacity?**

RESPONSE: Please see Section II.I Responses above.

2. **What type of documentation should be filed to demonstrate an applicant's legal capability?**

RESPONSE: Please see Section II.I Responses above.

M. Eligible Telecommunications Carrier Status.

1. **Should the Commission give greater weight to a provider for the number of years a carrier has been an ETC?**

RESPONSE: Yes. Please see Section II.I Responses above.

2. **What should the Commission do if a carrier who commits to becoming designated as an ETC prior to the project completion date ultimately does not become an ETC?**

RESPONSE: An entity that fails to obtain ETC designation in accordance with applicable laws should be disqualified from participation in the Program, and no application submitted by such entity should be given consideration. Likewise, an applicant that fails to meet its commitments should be subject to a "claw back" of grant monies received. See Response to Section II.T below.

N. Rates.

1. **Other than including the proposed rate structure in the application, what other information should the Commission collect from an applicant?**

RESPONSE: In order for the Commission to monitor this area, RIC suggests that a Program applicant should be required to submit evidence that it will offer a rate structure and terms of services to prospective customers located in the proposed project area(s) that are reasonably comparable to the service rates provided in other areas served by the applicant. This requirement would be consistent with the FCC's framework.¹⁰

Because broadband is a market-based service, RIC sees no reason to limit, as the *C-5272 Order* suggests at 11, the ability of a provider to secure long-term service contracts from any given customer. Unattractive pricing options will not be selected by consumers. RIC believes that consumers should drive whether long-term contracts for broadband services meet their needs.

O. Minimum Broadband Speeds.

- 1. Should the Commission give certain weights to specific technologies? If so, what weights should the Commission assign? If not, please explain.**

RESPONSE: Please see Section II.I Responses above. If factual questions arise with respect to a chosen technology's capability of meeting LB 388's speed and scalability standards, then no grant award should be considered regarding an application that proposes the use of such technology.

- 2. What documentation should applicants be required to produce to demonstrate that the service is scalable to reach speeds of 100/100 Mbps?**

RESPONSE: The Commission should require an applicant to provide a complete demonstration of its ability to meet the Act's scalability standard.¹¹ To date, RIC respectfully submits that the most reliable scalable network is one utilizing fiber. Please see Section II.I Responses above. Other technologies may have scalable capabilities. Thus, unless fiber is being proposed, RIC respectfully submits that an engineer's attestation regarding the scalability to the LB 388 speed standards should be required.

¹⁰ See *Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2021 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers, Public Notice*, WC Docket No. 10-90, DA No. 20-1409, released November 30, 2020).

¹¹ In this regard, RIC also suggests that the Commission keep informed and monitor the FCC Rural Digital Opportunity Fund ("RDOF") proceedings regarding Nebraska entities to determine if the FCC agrees with the speed proposals and commitments made in such RDOF applications.

3. **Should the Commission consider a fiber to the premises project automatically eligible?**

RESPONSE: Yes.

P. Project Match.

1. **If a project includes matching funds from multiple source(s), the Commission proposes to consider the application under the lower point assignment. The Commission seeks comment on this approach.**

RESPONSE: Provided that the factual basis for the match includes a sufficient demonstration that each aspect of the multi-source match is committed for the project, reduced point assignment for multiple funding sources is inadvisable. Sufficient details should be included in a Program application in order that the Commission has the necessary confidence that such application, if granted, will see each of those multi-source commitments realized. If that confidence is lacking a reduction in the match weighting is reasonable.

2. **If interested parties do not agree with the Commission's proposed assignment of points based upon an applicant's percentage match of costs of a project, the Commission seeks comment on how the match weighting should be implemented.**

RESPONSE: Any match source weighting must be premised on the applicant's commitment to carry out its proposed match. Please see Responses to Section II.G above.

3. **Given the number of criteria the Commission must score, the Commission seeks comment on what weights the Commission should apply to each factor. Should any criteria be weighted much higher than the others? If so, which ones? Please explain.**

RESPONSE: Please see Responses to Section II.I above.

4. **Should the applicant be required to meet each and every requirement listed and weighted in the C-5272 Order in order to be eligible? Are there any particular criteria which if not met should disqualify an entire application? If so, which ones?**

RESPONSE: As stated in previous responses, a Program applicant must satisfy financial, technical and legal capability requirements and must meet the ETC requirement as pre-requisites for Program participation. Satisfaction of each of these requirements is at least as critical as meeting the financial match for a project. Consequently, RIC proposes that comparative weighting should be provided based

on how long the applicant has been operating in Nebraska and the service that such applicant has demonstrated it provides. Please see Responses to Section II.I above.

- 5. Should the Commission give an applicant any chance to cure a defect? If so, acknowledging the limited time available in the application/approval process, how much time should be given?**

RESPONSE: It would seem reasonable that an applicant is provided an opportunity to cure defects reasonably characterized as “inadvertent defects.” Therefore, ten (10) days seems a reasonable time for amendments correcting all defects with such time beginning the day after the Commission notifies an applicant in writing of any defects in that applicant’s application.

- 6. How, if at all, should the number of households covered by a particular application be granted additional points in the project scoring?**

RESPONSE: Households covered should be weighted in a manner proposed in RIC’s Response to Sections II.I.1 and II.P.4 above.

Q. Challenge Process.

- 1. Are there any other requirements in addition to the Commission’s stated requirements that should be included? If so, what are they?**

RESPONSE: RIC supports the elements of the Commission’s proposal to administer the challenge process set forth on pages 14-15 of the *C-5272 Order* as being consistent with the requirements of Section 7(2) of the Act. RIC suggests addition of the following section 3 to the existing elements of the challenge process:

3. In addition to the foregoing, a challenging provider may submit to the Commission such written additional information that the challenging provider reasonably believes will assist the Commission with its evaluation of the challenge to a submitted application.

- 2. Should challenge responses be required to include speed test data for consumers in a project area as well as information from community members regarding the level and quality of existing broadband service or should challenge responses be tailored to individual circumstances?**

RESPONSE: RIC recommends that challenge responses should be tailored more specifically to the individual circumstances raised by such challenge. Thus, a challenge response might include speed test data, community input on the level and quality of existing broadband service, or other relevant evidence.

3. **Should a challenged application be permitted to be withdrawn and refiled to narrow the scope of the project?**

RESPONSE: RIC supports the Commission's proposal to permit an applicant to withdraw portions of an application in response to a challenge, but only for the purpose of reducing the scope of a proposed project.

R. Distribution of Support.

1. **The Commission seeks comment on its proposal to distribute support by releasing thirty percent of the net grant award (netted against the match component) once the grant award is determined. Thereafter, the Commission proposes to distribute the remainder of the net grant award in monthly installments amortized over the 18-month buildout period. Projects completed prior to the full 18-month buildout period would also be eligible to be paid out in full. The Commission proposes that the match be deducted on a percentage basis as support is distributed.**

RESPONSE: In lieu of the distribution proposal set forth on page 16 of the *C-5272 Order*, RIC suggests that the Commission should adopt the administratively less burdensome and more readily established distribution of support via two equal installments over the project's life – 50% at the beginning and 50% upon certification by the applicant that the project is 100% complete. The Commission should be able to obtain documentation of actual costs or other information as reasonably needed to confirm the 100% completion milestone.

2. **In the alternative, the Commission seeks comment on alternative distribution schedules.**

RESPONSE: Please see the Response to Section II.R.1 above.

S. Post-Award Testing.

1. **The Commission seeks comment on what mechanisms exist to test speeds that reflect what the customer would experience at their premises if they were subscribed to a speed tier that provides 100/100 or greater service?**

RESPONSE: To avoid increased administrative and implementation costs, applicants should be able to utilize the same testing platforms required of them by the FCC.

2. **Is this something that carriers do on a regular basis today?**

RESPONSE: Please Response to Section II.S.1 above.

3. **Are there certain testing methodologies that are already in use that can be appropriated for this purpose??**

RESPONSE: Please Response to Section II.S.1 above

4. **Should the Commission require that a certain percentage of the tests be above the 100/100 threshold?**

RESPONSE: Provided that the Commission has made the appropriate finding on scalability of the network (*see* Section II.O above) no testing beyond the 100/100 Mbps threshold should be required.

T. Post Award Repayment.

1. **The Commission seeks comment on its proposed post award repayment procedure.**

RESPONSE: RIC finds the Commission's proposed post award repayment procedure to be reasonable.

2. **The Commission seeks comment on whether there are alternative processes commenters believe the Commission should consider. If so, please describe the process and where it is used.**

RESPONSE: Please see Response to Section II.T.1 above.

U. Proposed Commission Forms.

1. **The Commission is required to make forms available for the application and challenge process. The proposed application form is Attachment A. The scoring and weighting formula is Attachment B. The Commission seeks comment on the draft forms. To the extent that a commenter believes information should be added or deleted from the form, please give specific reasons to justify the suggested modifications.**

RESPONSE: RIC does not have suggested changes regarding the application form labeled as Attachment A. Regarding the scoring and weighting formula form labeled as Attachment B, RIC suggests that this form be modified consistent with RIC's foregoing comments. Please particularly refer to Responses to Section II.I above

III. CONCLUSION

As stated above, the Rural Independent Companies appreciate the opportunity to provide these Comments in response to the *C-5272 Order* and look forward to continuing participation in this docket.

Dated: June 29, 2021

Arlington Telephone Company, Blair Telephone Company, Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, LLC., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Sodtown Communications, Inc. and Three River Telco (the "Rural Independent Companies")

By: Paul M. Schudel

Paul M. Schudel, NE Bar No. 13723

pschudel@woodsaitken.com

WOODS & AITKEN LLP

301 South 13th Street, Suite 500

Lincoln, Nebraska 68508

Telephone (402) 437-8500

Facsimile (402) 437-8558

Thomas J. Moorman

tmoorman@woodsaitken.com

WOODS & AITKEN LLP

5335 Wisconsin Ave., N.W., Suite 950

Washington, D.C. 20015

Telephone (202) 944-9502

Facsimile (202) 944-9501

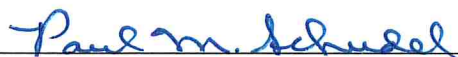
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of June 2021, an electronic copy and one paper copy of the foregoing pleading were delivered to:

Nebraska Public Service Commission

Cullen.Robbins@nebraska.gov

Brandy.Zierott@nebraska.gov



Paul M. Schudel