

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. C-5368
Public Service Commission, on its)	
Own Motion, to administer the)	COMMENTS OF THE RURAL
Nebraska Broadband Bridge Program)	TELECOMMUNICATIONS
in the 2022 program year.)	COALITION OF NEBRASKA
)	
)	

INTRODUCTION

The Rural Telecommunications Coalition of Nebraska (“RTCN”)¹, by and through its undersigned counsel of record, submits these Comments (“Comments”) in response to the *Order Opening Docket and Seeking Comment Notice of Hearing* (the “Order”) entered by the Nebraska Public Service Commission (the “Commission”) on February 1, 2022 in the above-captioned matter. RTCN appreciates the opportunity to provide input on the administration of potential changes to the Nebraska Broadband Bridge Program (“NBBP”).

The *Order* addresses a variety of items concerning the NBBP, and poses a number of inquiries. For both brevity and clarity, these Comments do not contain responses to each question posed by the Commission. Rather, RTCN has chosen to address its main concerns in these Comments. We reserve the right to add further comments or testimony to issues unaddressed in these Comments, as such opportunity may arise.

¹ For purposes of this proceeding, the RTCN consists of the following carriers: Arapahoe Telephone Company d/b/a ATC Communications; Benkelman Telephone Company, Inc., Cozad Telephone Company, Hartman Telephone Exchanges, Inc., Plainview Telephone Company, Southeast Nebraska Communications, Inc., Pierce Telephone Company, and Wauneta Telephone Company.

COMMENTS

Adjustments to Scoring System

A. Financial Capability

For an applicant to demonstrate their financial capability, the Commission's *Order* proposes that they be required to show projections of cash flow "for a minimum of 5 years" with positive cash flow for the last 3 years of the timeframe projected. Considering the NBBP's absolute requirement that grant recipients "provide broadband Internet service in the project area until released" by the Commission,² the RTCN questions the necessity or purpose of this addition.

We suggest that the financial capability of the applicant be judged on the basis of the applicant's financial statements, not the profit generating prospects of any particular project.

B. Technical Capability

The RTCN supports the Commission's proposal to deduct points under the Technical Capability criteria for past performance issues on Commission-funded projects. As a further measure to ensure technical capability, the RTCN supports an addition to the scoring mechanism which would award additional points for fiber-based projects. Fiber-based projects are the only type that would be reliably capable of achieving the NBBP's 100/100 speed requirements.

C. Legal Capability

The RTCN supports the Commission's proposal to deduct points under the Legal Capability criteria for applicants named in Commission complaints arising from late-filed remittances, late-filed annual reports, or late-filed NUSF-25/66 filings.

² LB 388, Sec. 8(2).

Challenge Process

The RTCN supports the Commission's proposed modifications to the challenge process, with one minor exception. While we agree in concept with the Commission's proposal for linking the number of required test locations to the total number of locations challenged, we suggest that the Commission add language clarifying that if *less than* 10 locations are challenged, then all challenged locations should be tested.

Speed Testing

The RTCN agrees with the Commission's suggestion that acceptable speed tests should, at a minimum, include information identifying "the location where the speed test was run, the date and time of the test(s), and the speed tier to which the customer at the location is subscribed."

Overbuilding of Existing Networks

The *Order* invites comments on the use of public funds to overbuild existing networks, and poses the question of whether the Commission should, to any extent, permit overbuilding funded by NBBP grants. In the context of the NBBP, this would mean the public funding of a network capable of providing 100/100 speeds where a network capable of providing those speeds *already exists*. The *Order* notes the Commission's traditional opposition to this concept. The RTCN agrees with this position. If existing market conditions support the construction of a competitive network in an area that is already served, then the competitive network should not be publicly funded.

The Legislature's purpose in enacting the NBBP was to "facilitate and fund the development of broadband networks in unserved and underserved areas." In other words, the Legislature's aim was to fund broadband construction to locations where the existing market

conditions, in the absence of NBBP funding, have not otherwise supported the construction of such networks. Utilizing NBBP funds to construct networks in areas that are *neither* unserved nor underserved is a vast departure from the Legislature’s directives. The RTCN questions whether the use of NBBP funds to overbuild existing networks would be permissible under the plain language and legislative intent of the NBBP.

We recognize the possibility of circumstances where the overbuilding of an existing network is viewed as a necessity for providing service to nearby unserved or underserved areas. If the Commission wishes to intervene in such situations, the development of a process whereby the Commission could facilitate the negotiated (but not mandated) purchase and transition of such facilities may be appropriate. Existing statutes related to boundary change proceedings would appear to be a relevant starting point, as issues related to the incorporation of purchased assets into the purchaser’s certificated area (if the purchaser is an ETC) would likely need to be addressed as part of such discussions.

Digital Inclusion Plans

The Commission’s *Order* proposes the addition of new scoring criteria for digital inclusion plans. Applicants in the 2021 program year were required to submit digital inclusion plans, but such plans were not scored by the Commission. The Commission now proposes to award up to 10 points for “carrier-driven plans for increasing access to low-income customers and historically disadvantaged community members” other than existing state or federal assistance programs. Additionally, applicants can earn 6 more points for building free public Wi-Fi access points. It may be prudent for the Commission to consider awarding a lesser amount of points for these criteria.

In its earlier Comments on the NBBP, the RTCN encouraged the Commission to heavily weight the match percentage requested by an applicant – that is, the higher match requested, the lower the score. By heavily weighting the match percentage criteria, the Commission incentivizes applicants to request the *least* possible amount of NBBP funds to complete a proposed project. In turn, this emphasis allows the Commission to fund more projects with the finite resources provided by the Legislature.

The RTCN supports the Commission’s efforts to increase access to low-income customers and historically disadvantaged communities. We remind the Commission, however, that adding criteria and scoring opportunities to the NBBP scoring matrix will dilute the impact of the original criteria. Adding 16 possible points for digital inclusion efforts could decrease the overall efficiency with which NBBP funds are utilized. To balance the desire for increasing access with the need to achieve efficiency with NBBP funds, the RTCN suggests that this scoring criteria be modified such that up to 5 additional points may be earned for “carrier-driven plans” and up to 3 additional points be earned for free public Wi-Fi access points.

Match Source

The Commission’s *Order* proposes that NBBP applicants be required to “identify all sources of state and federal funding” the applicant is currently receiving in Nebraska and further proposes that the applicant identify “what, if any, portions of Nebraska are meant to be served by that funding.” The Commission invites comments on whether this proposal is “appropriate.” The RTCN takes no issue with providing such information to the Commission (to the extent the Commission does not already possess it). However, we find it difficult to respond to the appropriateness of the proposal without some indication of how, in the context of the NBBP, the Commission proposes to use this information.

With regard to A-CAM funding, the Commission asks how it can “ensure that an applicant is calculating A-CAM in the same way as calculated by the Commission.” The RTCN acknowledges that several methods exist to perform this calculation; however, we do not believe that the differences in the ultimate results are material. Therefore, we suggest that the Commission identify its preferred method for the A-CAM calculation and require applicants to follow it.

Public Private Partnerships

The *Order* raises the issue of public-private partnerships (“PPPs”), and inquires as to whether additional points should be awarded for applications presented by a PPP. The RTCN recognizes that PPPs may be valuable, and in some instances necessary, enterprises for providing broadband in unserved areas. But without further context, the RTCN asks the following in response: All other things being equal, why should a PPP be preferred over a purely private provider or partnership formed by private enterprises? Does the existence of the PPP (or the terms of the partnership) require less Broadband Bridge Program funds to accomplish that which would otherwise be accomplished by private enterprises? Can the PPP demonstrate that in its absence no private provider would serve the same area on similar terms? What are the unique attributes of the PPP that would justify such a preference? We pose these questions in response to illustrate that circumstances *may* exist where preferring PPPs is sound policy – but also to illustrate that there is no policy rationale to prefer PPPs simply as a result of their existence.

The Commission further inquires as to “what would and would not constitute a partnership” in this context – and asks directly whether “a letter of support” from a public entity constitutes a partnership. In the RTCN’s view, a partnership springs from the material contribution of resources by all parties toward a common goal. A letter of support – and nothing

more – from a community, school district, county, township, etc. – evidences no contribution of resources. To demonstrate an actual partnership, we suggest that the public partner should detail its contributions as a firm, binding commitment to the proposed project as part of the application and that such contributions should materially contribute to the completion of the project.

Financial contributions, the use of existing public infrastructure for no cost or reduced cost, or other in-kind types of contributions may suffice.

DATED: March 1, 2022.

**RURAL TELECOMMUNICATIONS
COALITION OF NEBRASKA**

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Telephone Company, Inc., Cozad
Telephone Company, Hartman
Telephone Exchanges, Inc., Plainview
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