

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of) Application No. NUSF-77.11
the Nebraska Telecommunications)
Association for Investigation)
and Review of Processes and)
Procedures Regarding the) GRANTED, IN PART
Nebraska Universal Service Fund:)
Application to the Nebraska)
Broadband Pilot Program (NEBP))
received from Diode Cable)
Company.) Entered: November 25, 2013

APPEARANCES:

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BY THE COMMISSION:

Background

By Application filed March 1, 2013, Diode Cable Company (Applicant or Diode) seeks Nebraska Broadband Pilot (NEBP) Program support. Notice of the Application appeared in the Daily Record, Omaha, Nebraska on March 8, 2013.

On April 5, 2013, N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (Viaero) filed a Formal Petition of Intervention in the above-captioned proceeding. This Petition was granted on May 17, 2013.

A procedural conference was held on June 19, 2013. With the consent of the applicant, a procedural schedule was adopted. Pursuant to the Procedural Order, the staff's recommendation was filed on August 28, 2013. Pre-filed testimony was filed on September 27, 2013 and reply testimony was filed on October 11, 2013.

On November 5, 2013 the Commission held a public hearing on the application in Lincoln, Nebraska. For administrative efficiency, and with the consent of all parties, the hearing was consolidated with the hearings in NUSF-77.08 through NUSF-77.10 and NUSF-77.12 through NUSF-77.23. Mr. Andy Pollock entered an appearance on behalf of the applicant.

Project Overview

Diode is a cable company and is a wholly owned subsidiary of Diller Telephone Company. Its principal office located in Diller, Nebraska. Diode originally proposed one broadband project in the Virginia exchange.

Diode provided a project timeline, a proposed budget showing project costs, a 25 percent match, and a detailed breakdown of the cost elements. Diode provided a depreciation schedule showing the life of the investment. Diode provided a copy of its latest financial report to demonstrate financial qualifications to complete its portion of the proposed project. In addition, Diode provided detailed map information showing the proposed project coverage in census blocks.

Staff Analysis

The Commission staff analyzed each project including the projects filed by Diode. The staff first reviewed the application to determine whether the eligibility requirements

had been met. Next, the staff reviewed the application to determine whether all application requirements listed in Progression Order No. 5 were fulfilled. Each project was then scored.

To score this application, the Commission staff took various pieces of information directly from the applications submitted for each project and utilized in factor development. This data included; retail monthly recurring and nonrecurring end-user rates for the provisioning of broadband service; the speed (Mbps) of the respective service being offered; and the total grant request amount for each project.

Additionally, the staff obtained various other data, from publicly available sources, also used in factor development. This data included: residential monthly recurring rates for voice service and subscriber line charges, if applicable;¹ population and household by census block;² area by census block;³ and broadband availability.⁴

The Commission staff then utilized a group assignment to prioritize areas determined as unserved,⁵ using the broadband mapping data as a starting point for its review. Staff triaged the projects into categories, or groups, based on the nature of each area being served and the total cost of each project. Any project comprised completely of unserved areas received a group assignment value of one (1). All remaining projects, containing some hybrid of various levels of unserved and underserved areas, received a group assignment of two (2) through (4), based on the total cost of the project.⁶

The Commission staff noted the dramatic increase in the number of projects submitted resulting in demand which significantly outpaced supply. As such, the Commission staff

¹ Company specific publicly filed tariffs.

² United States Census Bureau, Census 2010 Summary File 1.

³ United States Census Bureau, 2010 Tiger/Line Shapefiles.

⁴ State Broadband Initiative Broadband Mapping Data, April 2013 submission.

⁵ See *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Docket No. NUSF-77, Progression Order No. 5, ORDER at 7 (November 21, 2011).

⁶ All projects filed for the NEBP in 2013 are independent of all other projects filed by the same applicant.

utilized total cost in the determination of the group assignment in an effort to advance the objectives of the NEBP; expanding broadband service availability to the greatest number of Nebraskans.⁷ The staff's group assignment created a priority hierarchy. Within each hierarchy, the project was then scored based on the criteria described in the staff's recommendation.

As a result, the staff recommended approving Diode's application, in part, to the amount of **\$107,598.**

Hearing

Ms. Sue Vanicek, Director of the Department presented testimony at the hearing relative to the recommended adjustments to funding amounts. She testified that the Department reviewed each application and identified certain costs which should be excluded. Ms. Vanicek's testimony was offered and received into the record as Exhibit No. 19.

Mr. Tyler Frost, the staff Economist presented testimony related to the staff's methodology for recommending NEBP support. Mr. Frost provided further details about how the staff reviewed and scored each application. Mr. Frost's testimony was offered and received into the record as Exhibit No. 20.

Mr. Loren Duerksen, General Manager for Diode presented testimony on behalf of the applicant. Mr. Duerksen's pre-filed testimony was offered and received into evidence as Exhibit No. 23. Diode proposes to provide broadband capability to the current local telephone exchange area of Virginia, Nebraska. Diode considers the area currently as underserved. With approval of the application, Diode's system will be capable of delivering broadband speeds of up to 10 Mbps in the downstream and 5 Mbps upstream.

No party testified in opposition to the Diode request for NEBP support as recommended by the Commission staff.

⁷ See *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Docket No. NUSF-77, Progression Order No. 7, ORDER at 5 (January 15, 2013)(describing the NUSF Act's goal to ensure all Nebraskans have comparable access to advanced services).

O P I N I O N A N D F I N D I N G S

On June 14, 2011, the Commission issued Progression Order No. 3 in NUSF-77, finding that making explicit NUSF support available for broadband deployment would complement the Commission's existing goal to support networks that provide voice service as well as advanced services. In addition, the Commission found promoting ubiquitous broadband availability was a state and federal responsibility which would require both state and federal financial support. Through further progression orders the Commission adopted criteria for the NEBP program eligibility, application requirements, and provided a timeline for the consideration of NEBP projects.

Based on the application and the evidence in the record, the Commission finds Diode's Virginia project should be approved for NEBP program support. The Commission approves support up to an amount of **\$107,598** or actual cost of construction for the project(s) whichever amount is lower.

Reimbursement Process:

Diode must first make the investment and then may file a request for reimbursement with the NTIPS Department. Diode does not need to complete the construction process prior to seeking reimbursement; rather, it may work with the NTIPS Department to develop intervals at which reimbursement can be sought. The NEBP program will reimburse Diode for reasonable expenditures made related to project specifications detailed in the application and approved in this Order. Once the investment is made, Diode shall file a request for support, provide the NTIPS Department with copies of the invoices or other acceptable documentation⁸ and shall certify to the Department that it had made the described investment for the provision, maintenance and upgrading of facilities and services in the area defined in the application.

As a NEBP program recipient, the Commission finds Diode must meet the following conditions:

1. The supported broadband service upon completion of the deployment must be available as a service offering to all households within the area defined by the application for a minimum period of five (5) years;

⁸ The Commission will provide the Department with the discretion to determine the type of documentation needed to verify the expenditures made when not provided through a third-party invoice.

2. The project must be completed within 24 months from the date of this Order unless otherwise extended by the Commission;
3. Voice grade service must be available to customers within the service area of the broadband deployment;
4. Access to emergency services must be available to customers within the service area of broadband deployment;
5. Broadband support must only be used for the purposes intended and which have been approved by the Commission;
6. Voice and broadband service in the area described in its application must be offered at reasonably comparable rates for comparable services it offers in urban areas;
7. Reporting, verification, and audit requirements adopted by the Commission for oversight of the NEBP program must be met; and
8. Adherence to all applicable Commission rules, regulations and orders.

Continuing Nature of Requirements:

The Commission will enforce these requirements throughout the period of the grant and the 5 year period following the completion of the project to ensure the Commission's objectives for this program are being met. Diode shall notify the Commission in writing once the project(s) have been completed and the proposed broadband service is being offered. The Commission may take any action it deems necessary and appropriate to enforce the requirements and conditions in this Order.

To encourage public awareness about the deployment of broadband service in Nebraska, we find Diode should be required to report broadband availability to the Commission and its broadband mapping vendor for the duration of the State Broadband Data and Development (SBDD) Program.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria the Commission applied in this application for NEBP program support. The Commission may modify the minimum requirements and conditions for future petitions for support from the NEBP program.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Application filed by Diode Cable Company shall be and it is hereby granted in part as provided herein.

IT IS FURTHER ORDERED that Applicant shall comply with requirements set forth herein.

IT IS FURTHER ORDERED that Applicant shall submit detailed and accurate invoices and other documentation required by the Department prior to reimbursement for the supported project.

IT IS FURTHER ORDERED that Applicant shall use Nebraska Broadband Pilot Program support only for the purposes described in its application and authorized by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 25th day of November, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director