BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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: Application to the Nebraska Broadband Pilot Program (NEBP) received from Pierce Telephone Company.	)	Application No. NUSF-77.15 DENIED Entered: November 25, 2013

APPEARANCES:

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BY THE COMMISSION:

Background

By Application filed March 1, 2013 Pierce Telephone Company (Pierce) seeks Nebraska Broadband Pilot (NEBP) Program support. Notice of the Application appeared in the Daily Record, Omaha, Nebraska on March 8, 2013. Pierce amended its application on May 2, 2013 reducing the proposed project area. The Pierce application as amended was received into evidence as Exhibit No. 10.

Petitions of Formal Intervention were filed by N.E. Colorado Cellular d/b/a Viaero Wireless (Viaero), and Telebeep, Inc. (Telebeep). A Protest was filed by Cable One, Inc. (Cable One). Viaero subsequently withdrew its Intervention.

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 NUSF-77.08 through NUSF-77.14 and NUSF-77.16 through NUSF-77.23. Mr. Paul Schudel entered an appearance on behalf of the applicant. Mr. Loel Brooks entered an appearance on behalf of the Protestant, Cable One.

Project Overview

Pierce is a common carrier subject to the jurisdiction of the Commission. Pierce holds a certificate of public convenience and necessity and operates general telecommunications businesses in Nebraska. Its principal office located in Pierce, Nebraska. Pierce applied for NEBP support for one broadband project.

Pierce provided a project timeline, a proposed budget showing project costs, a 25 percent match, and a detailed breakdown of the cost elements. Pierce provided a depreciation schedule showing the life of the investment. Pierce provided a copy of it latest financial report to demonstrate financial qualifications to complete its portion of the proposed project. In addition, Pierce 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 Pierce. 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]

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[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.

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 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.

The staff recommended approving the Pierce project in the amount of **$264,856.**

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. Donn Swedenburg, a designer at RVW, Inc., testified in support of the application. Mr. Swedenburg's pre-filed direct and reply testimony was offered and received into evidence as Exhibit Nos. 36 and 37 respectively. Pierce proposed to build a WiMax standard, 3.65 GHz wireless broadband distribution system primarily in the Pierce service area as shown on the maps submitted with the Application. Pierce believed the area to be served by the Application to be underserved. The project would be designed to provide service to rural areas. The rural area addressed by the Application contained 2,563 households in Nebraska. Mr. Swedenburg testified in support of the Commission staff's recommendation.

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[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).

Mr. Swedenburg further testified the Amended Application filed by Pierce removes the census blocks served by Cable One. Accordingly, he did not believe Pierce's application overlapped the areas served by Cable One. In addition, Mr. Swedenburg testified that Telebeep does not advertise the availability of broadband service as defined by the Commission in the rural areas covered by Pierce's application. Mr. Swedenburg testified he contacted Telebeep by phone to inquire as to the availability of 4 Mbps/1Mbps broadband service. He testified he was told Telebeep did not offer 4Mbps/1Mbps service in the census blocks covered by Pierce's application. In addition, Mr. Swedenburg testified Connecting Point advertises a high-speed Internet offering of 1.5 Mbps upload which does not meet the Commission's definition for broadband service.

Mr. Mike Drahota, General Manager for the 12 systems served throughout northeast Nebraska, testified in opposition to the application. Cable One provides fixed wireline high speed Internet access within the counties of Madison, Pierce, Stanton and Wayne. The communities of Norfolk, Hadar, Hoskins, and Battle Creek fall within those areas. In those areas, Cable One provides residential broadband speeds of 15 to 70 Mbps download and 1 to 6 upload. Mr. Drahota testified that in his capacity as General Manager of Cable One he was familiar with other providers in the area. He believed other providers in the area already provided broadband at speeds of 4 Mbps download and 1 Mbps 1 upload.

Under cross-examination, Mr. Drahota was asked about Exhibit 38 which was a map depicting the coverage area of Pierce. Mr. Drahota testified he had no specific knowledge of whether Cable One provided service in the census blocks depicted in the gray areas shown on Exhibit 38. He testified he had general knowledge of providers in the area.

Mr. Schommer, President of Telebeep Wireless, also testified in opposition to the Pierce application. Telebeep Wireless has been involved in the wireless industry for over 30 years. In addition to providing wireless high speed broadband services to northeast and north central Nebraska. Mr. Schommer serves on the Norfolk Area Chamber of Commerce as well as the Economic Development Council and had knowledge of broadband service in the rural areas. In 2002, Telebeep began to deploy fixed wireless broadband service which now consists of over 300 points of presence extending into 35 rural communities across northeast and north central Nebraska.

Mr. Schommer further testified that any support to Pierce to build out new wireless facilities in these areas would be unnecessary and unfair to existing providers such as Telebeep which has expended private capital to build these facilities. Mr. Schommer stated at least two towers that are proposed to be constructed by Pierce would be right in the heart of Telebeep's existing fixed wireless broadband network. Mr. Schommer described Telebeep's coverage are on its map. Mr. Schommer stated his average speed in the green area of the map was between 10 and 15 Mbps download. Mr. Schommer stated Telebeep has far more customers in the rural areas than in the Norfolk area. Telebeep does not advertise broadband speed on its website because he doesn't find it necessary.

Upon questioning, Mr. Schommer stated any customer that Pierce could serve off the proposed project referred to as Telco 1 could be served by Telebeep. Telebeep could serve more than 85 percent of the customers in the area described as Telco 2.

Under cross-examination, Mr. Schommer testified that Telebeep's residential rates range from $29.95 to $79.95. Mr. Schommer testified he could not speak for what the staff might or might not have said when called about broadband speeds.

Mr. Dan Spray gave a statement on the record. He also opposed a grant of the Pierce application. His business, Connecting Point, also provides fixed wireless service in the Pierce project area. Mr. Spray stated he covers 95 percent of the area in question with speeds greater than 4 Mbps download and 1 Mbps upload. Finally, Mr. Spray stated he welcomed competition but asks that it be fair competition.

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 Pierce's application for NEBP program

support should be denied. The Commission does not take issue with the staff's methodology which prompted its recommendation to provide support of Pierce's project. The Commission understands that most broadband projects are "hybrid" projects which are not delineated completely in unserved and underserved areas. As previously stated by the Commission, the use of the Commission's state broadband map data is a starting point, but we rely on interested parties to provide the Commission with evidence to support or rebut the claim that an area is unserved or underserved.

Based upon the testimony presented in this particular case, we believe the area Pierce proposes to serve with a fixed wireless application is already being served by other fixed wireless providers. The Commission is concerned with providing its limited broadband support for a project which, based on the record evidence, would result in an extensive overbuild in an area where competing companies already provide broadband service. Accordingly, we deny Pierce's request for support of the broadband project described in the above-captioned application.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Application filed by Pierce Telephone Company shall be, and it is hereby, denied.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director