

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-92.25
Public Service Commission, on)	
its own motion, seeking to)	
administer the Nebraska)	
Universal Service Fund's)	MOTION FOR RECONSIDERATION
Broadband Program; application)	DENIED
to the Nebraska Broadband)	
Program Received from Glenwood)	
Telecommunications, Inc.)	Entered: October 6, 2015

APPEARANCES:

For Glenwood Telecommunications, Inc.:

Andrew S. Pollock
Rembolt Ludtke LLP
1201 Lincoln Mall Suite #102
Lincoln, Nebraska 68508

For Windstream Nebraska, Inc.:

Russell Westerhold
Fraser Stryker Law Offices
409 South 17th Street #500
Omaha, Nebraska 68102

and

Matthew Feil
1201 West Peachtree Street
Suite #610
Atlanta, Georgia 30309

BY THE COMMISSION:

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

On August 12, 2015, Windstream Nebraska Inc. ("Windstream"), filed a Motion for Reconsideration of the Commission's July 21, 2015, Order entered in the above-captioned proceeding. On August 25, 2015, Glenwood Telecommunications, Inc. ("Glenwood") filed an Objection to the Motion for Reconsideration. Oral Arguments were heard on September 1, 2015, in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown above.

In 2011, after several rounds of comments and hearings, the Commission established this program to provide explicit universal service support to carriers wishing to extend advanced telecommunications networks in rural areas of the state. Many carriers including Glenwood and Windstream have applied for and received universal service support through this program. Applicants filed their proposed projects at a census block level, committing to serve all customers in the census block with advanced telecommunications and voice services for a minimum of five (5) years.

In November of 2014, 20 carriers filed applications seeking support from this program for the 2015 calendar year. The Commission's budget for the 2015 calendar year totaled \$7,992,000. After reviewing the applications filed, on May 12, 2015, the Commission staff filed a recommendation for the Commission's consideration. The staff recommendation suggested the Commission approve 31 of the projects filed which included support to 16 of the carriers including Glenwood and Windstream. The staff recommendation which was not challenged during the hearing, was based upon several factors including the cost to serve the area, the value to the end user, the speed of the service, the number of households in the area, the number of households per square mile, and the percentage of unserved and underserved households in the area as determined by the Nebraska Broadband Map. The projects are ranked and scored among other projects filed.

Thereafter the Commission scheduled a hearing which was held in Lincoln, on July 6, 2015. On July 21, 2015, the Commission entered a decision approving the staff's recommendation to fund Glenwood's application, in part, to provide broadband services in the rural Sutton area. The Commission approved broadband support, in part, in the amount of \$179,360 for a fixed wireless service application.

At the hearing, Windstream presented opposition testimony. Windstream's focus was placed on the service overlap. According to Windstream, it offers broadband service in the proposed service area. Windstream considered the overlap to be extensive. Glenwood argued on the other hand that the rural customers outside of Sutton were not being served with broadband which prompted the filing of its application. Glenwood was aware of Windstream's broadband service in the community of Sutton, but argued there were a number of rural customers outside of Sutton that were not being served. Glenwood further testified that the nature of the proposed service, characterized as a fixed wireless technology, could not be limited in scope to serve only the certain rural end users that did not have service. Both

Windstream and Glenwood presented maps of Windstream's broadband service footprint. Windstream further argued it was eligible for federal Connect America Support ("CAF")¹ in the area, but had not decided at the time of the hearing whether it was going to accept the federal support or whether it was going to be applied to cover providing broadband to the subscribers Glenwood was seeking to serve.

The Commission staff testified that since the formation of the program, very few proposed projects were filed in purely unserved or underserved areas. The 2015 calendar year was the first time the Commission received two applications for projects in areas that were completely unserved. Most of the projects filed by the carriers and reviewed by the staff are hybrid projects, meaning the applicant or another carrier has some degree of existing broadband service in the census blocks listed in the applications. The Commission staff further testified the Commission has not adopted a bright-line rule indicating what degree of overlap is considered unacceptable. Rather, the Commission has chosen to review applications on a case-by-case basis.

Windstream's arguments in support of its Motion for Reconsideration, restated and summarized, are as follows: (1) the Commission relied on the misleading evidence submitted by Glenwood; (2) the overlap analysis was not transparent to the providers; and (3) the Commission should now consider its CAF support election made on August 5, 2015, subsequent to the Commission's decision.

The Commission addresses these three arguments in turn. First, contrary to Windstream's argument in this case, the Commission did not rest its approval of the application based upon the evidence submitted by Glenwood to the exclusion of that provided by Windstream. Windstream shared its broadband data with Glenwood, who in turn, presented it to the Commission. Windstream had the opportunity to correct the record to ensure that what the Commission reviewed was accurate. If there were concerns with the way in which it was presented, it was Windstream's responsibility to object. The Commission can only rely on the evidence in the record and how it was presented. That issue notwithstanding, neither party disputed there were rural customers outside of Sutton that lacked broadband service. Neither party challenged the staff's estimation that there were

¹ Connect America Fund support is federal universal service support made available to carriers to build out broadband networks in rural areas of the country.

approximately 70-100 customers in the project footprint that were unserved.

In addition, the Commission is limited to consider the information presented relative to Glenwood's proposed service area. The Commission does not have the ability to limit Glenwood's wireless signal to only the rural areas Glenwood proposed to serve. The Commission anticipates that there will be other cases where the in-town communities are served by a broadband provider but in order to reach the rural population, additional NUSF support will need to be provided. To avoid these types of arguments going forward, the Commission plans to clarify the manner in which NUSF broadband support is to be distributed to rural areas surrounding a served community.

Next, Windstream argued the standard used by the Commission staff to determine overlap was not transparent to the providers. In its reply testimony, Windstream stated that its concern is not so much with the scoring methodology in the abstract as it was with the product of the methodology.² The Commission finds this argument is without merit. The staff's determination of overlap was based in large part on the data submitted by providers and then displayed on the Nebraska broadband map.³ On September 10, 2013 the staff held a public technical conference describing its scoring process.⁴ All interested parties were invited to discuss the staff's methodology and ask questions. Moreover, Windstream, as the incumbent provider in the area, was the source of much of the data representing broadband availability in the proposed service area.⁵ If there were portions of the staff methodology that Windstream felt were not transparent, a request to the Commission could have been made.

² Windstream is the beneficiary of broadband support in the staff's methodology as well although it does not challenge how it was used as applied to its own broadband project. In this same round Windstream received broadband support in the amount of \$316,861.

³ The Nebraska Broadband Map can be found at http://www.psc.nebraska.gov/telecom/telecom_broadband_mapping.html. This map has been updated and released for public display twice per year since 2010.

⁴ While some of portions of the staff methodology have been refined since 2013, those changes were not the subject of Windstream's challenge. The service criteria at issue and the methodology used for determining served and unserved households has not changed.

⁵ We note the Commission staff has been unable to publicly release the raw data submitted by the providers used to generate the coverage in the Nebraska broadband map because of the protective agreements the Commission was requested to execute with providers, like Windstream, who wanted to make sure consumer proprietary network information and other commercially sensitive information was not released.

Finally, Windstream argued the Commission should consider its recent CAF support election which may bring broadband service to some of the rural customers in this area. This argument is not persuasive. First, as Glenwood argues, the Commission finds it should not consider new evidence that was not provided in the record. Second, at the hearing, upon direct questioning by the Commissioners, Windstream would not commit to use CAF support to build broadband to the rural customers in this area. Windstream had not decided whether to accept the federal universal service support in Nebraska. The lack of commitment by Windstream to serve these particular unserved customers was unequivocal.

Generally, the Commission would not have provided NUSF support to a competing carrier where CAF funding was being used by the incumbent. However, consumers should not be denied service because an incumbent carrier has not made a decision or has declined CAF support. The Commission agrees that careful consideration of NUSF support should be given; however, in the case where a carrier has not committed to take CAF funding or otherwise committed to serve unserved consumers, other carriers should be able to seek funding to meet the needs of that community. The Commission's past concerns relative to overbuilding have been based on the presumption that it should not be subsidizing cannibalization of service territories. In this case, funding Glenwood's project is appropriate because the incumbent has failed to develop a plan to provide service to the unserved portion of the community surrounding Sutton.

In sum, presented with the facts and arguments in this particular instance, the Commission finds providing support in this area was consistent with the goals of the broadband program. Accordingly, the Commission is of the opinion and finds the Motion for Reconsideration filed by Windstream should be, and it is hereby, denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Motion for Reconsideration filed by Windstream in the above-captioned matter be, and it is hereby, denied.

Application No. NUSF-92.25

Page 6

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 6th day
of October, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

Crystal Knader

Frank E. Landis

//s//Frank E. Landis

//s//Gerald L. Vap

Chairman

Gerald L. Vap

ATTEST:

Jeffery L. Pate

Executive Director