

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-99.01
Public Service Commission, on)	
its own Motion to Administer the)	
Universal Service Fund High-Cost)	DENIED
Program; CenturyLink Broadband)	
Grant Requests 2016.)	Entered: August 15, 2017

APPEARANCES:

For CenturyLink:

Norman G. Curtright
20 East Thomas Road
Phoenix, Arizona 85012

Jill Vinjamuri Gettman
Gettman & Mills, LLP
10250 Regency Circle Suite 350
Omaha, Nebraska 68114

For Inventive Wireless of Nebraska, LLC d/b/a Vistabeam:

Loel P. Brooks
BROOKS, PANSING BROOKS, PC, LLO
1248 O Street, Suite 984
Lincoln, Nebraska 68508-1424

For the Commission:

Shana Knutson
1200 N Street, Suite 300
Lincoln, Nebraska 68509

BY THE COMMISSION:

Background

On September 22, 2016, United Telephone Company of the West d/b/a CenturyLink ("CenturyLink") filed a request for support of several broadband projects. Notice of the Application was published in the North Platte Telegraph on October 11, 2016, The Daily Record, Omaha, on October 12, 2016 and in the Business Farmer on October 14, 2016. A Protest was filed by Inventive Wireless of Nebraska LLC d/b/a Vistabeam on November 14, 2016. On November 3 and November 14, 2016 CenturyLink filed motions to amend and withdraw certain projects from its application. On January 10, 2017, those motions were granted.

Project Overview

Applicant proposes to leverage fiber placed for a Connect America Fund Phase II¹ project to expand broadband service in the area of Highway 71 and Lake Minatare Road in Scottsbluff. According to the application on file, applicant states approximately 1/8th of mile of fiber will be laid and the electronics will be upgraded to bring broadband service at speeds up to 10/1 to subscribers in the area. At the hearing Applicant testified the speeds delivered would be up to 100 Mbps downstream. Applicant filed a list of the census blocks where broadband facilities would be deployed for the proposed project. The application further provided that approximately 141 households would be enabled by this project. Applicant committed to offering broadband service to all households in the project area for a minimum of five years.

Hearing

By agreement of the parties, Mr. Matt Larsen, the Protestant, testified first in opposition to the Application. Mr. Larsen is the CEO and majority owner of Vistabeam. Mr. Larsen has owned and operated multiple Internet Service Provider businesses since 1997. In 2004, Mr. Larsen started Vistabeam. Vistabeam is based in Gering, Nebraska. He is one of the founding members of the Wireless Internet Service Providers Association and serves on the Broadband Infrastructure Technology Advisory Group. Vistabeam operates over 100 tower locations covering 4500 square miles in Colorado, Nebraska and Wyoming.

Vistabeam opposed the CenturyLink project due to the overlap of areas of Scottsbluff, Nebraska for which comparable broadband service is already provided by Vistabeam on an unsubsidized basis. Upon comparison of the census blocks sought to be covered by the CenturyLink project with the census blocks where Vistabeam currently provides comparable broadband services, Mr. Larsen found that all 28 census blocks in the CenturyLink project application are already served by Vistabeam. Of the 127 households listed in those census blocks, Vistabeam actively services 51 households located in the proposed CenturyLink project area. Further, according to Mr. Larsen, Vistabeam is offering comparable broadband services to over 91 percent of all the households located in the proposed CenturyLink project. Vistabeam's

¹ The Connect America Fund (CAF) is the federal high-cost universal service fund mechanism adopted by the FCC. See *In the Matter of Connect America Fund et al.*, WC Docket No. 10-92, et al., Report and Order and Further Notice of Proposed Rulemaking (November 18, 2011) ("Transformation Order").

infrastructure in this area has been built and installed with private capital from Vistabeam.

On cross-examination, Mr. Larsen testified Vistabeam uses a TDMA based microwave technology. It has a time division multiplexing component to it, which ensures that each customer gets a sufficient time slice in order to be able to level out the service offered across the entire system. Mr. Larsen testified that the spectrum he uses is unlicensed. He further stated there is no legal protection in the event of interference. However, he further stated he has good luck in overcoming interference issues.

Under further questioning, Mr. Larsen testified there are two other wireless internet service providers in the area, Action Communications and Telecom West. He also believed Viaero may have deployed some wireless internet equipment in the area.

Mr. Larsen was not familiar with what his contracts looked like; however, he typically provides service credits to people that have outages. It is negotiated on a case-by-case basis. He doesn't believe the speeds are represented in the contracts. It is always advertised in terms of up to a certain level. He believes his contracts have two year terms.

Mr. Larsen testified there was no legal obligation to continue to serve the area. Vistabeam could exit the business at any time.

Mr. Larsen testified the Voice over Internet Protocol (VoIP) service Vistabeam offers is very basic and they don't really promote it. The VoIP service offered is branded as Vistabeam. Mr. Larsen did not know if he had any voice customers in the proposed project area.

Ms. Ann Prockish testified on behalf of CenturyLink. Ms. Prockish testified that one or two census blocks in the proposed project area were eligible for CAF II funding but the majority of census blocks were not. For those census blocks that were eligible for CAF II funding, CenturyLink will not be using federal funds to deploy broadband service to those areas. There is a CAF II project that deployed fiber service to an area adjacent to the project area. CenturyLink would propose to leverage state support off the fiber that has been built out already using CAF II funding to deploy fiber into the network to get broadband service to these 127 spots.

The application stated broadband service would be provided at speeds of 10 down and 1 up to subscribers in the area. However, Ms. Prockish clarified at the hearing, those speeds would be the

minimum service speed that would be available to the subscribers. The maximum speed that would be available to customers in this area is 100 Mbps downstream. CenturyLink would commit to offering service for a minimum of five years if the Commission approves the grant funding. It would also continue to provide regulated voice service in the application area.

Ms. Prockish further testified that the proposed project would use fiber feeder technology so congestion is not going to be an issue. Further, because it is buried cable, it will not be subject to degradation due to snow, ice, or wind.

In her opinion, a comparable competitor to a fiber network should be able to provide speeds that are comparable to what a fiber network could offer. It should be able to provide the same reliability as a fiber network with the same throughput.

Ms. Prockish then testified about the Nebraska Broadband Mapping Project. She presented a map with the fixed wireless coverage areas as it came from the FCC's Form 477 report in 2015. She overlaid CenturyLink's wire center exchange boundaries on that map. She also described a map depicting fixed wireless coverage, prepared under her direction. It demonstrated data using the most recent version of the FCC's Form 477 data available as of June 30, 2016. Looking at the two maps, she testified, one can see the fixed wireless coverage has expanded very rapidly in that time frame.

Upon questioning, Ms. Prockish testified that CenturyLink's procedure for customers out of service is that if the out of service time exceeds 24 hours, customers will receive a credit on their bill for the time they were out of service. Ms. Prockish did not know what percentage of facilities in the Scottsbluff area was currently copper. As it relates to the project area, Ms. Prockish testified an eighth of a mile of fiber would be deployed if the application is granted. The remainder of the service area would be serviced through copper.

Under further questioning by Mr. Brooks, Ms. Prockish testified she didn't know how many households in the Scottsbluff area currently utilize CenturyLink service, however, she said the competition is pretty fierce in the Scottsbluff area. For this particular project area, she did not know how many of the 141 households had CenturyLink service. But for the Scottsbluff area in total, the exchange is probably somewhere around 20 or 25 percent of the households have CenturyLink service. Ms. Prockish further testified because of the continued competitive environment in the area, the number of customers that CenturyLink serves in the area continues to decrease. She testified that Allo is in the

area and they are providing service using fiber. Charter Communications is in the area and is providing service using fiber.

Ms. Prockish further testified that her Exhibit, Exhibit No. 9, contained updated Form 477 data to show where there was fixed wireless coverage available. The data could represent a variety of speeds. However, the map was compiled to illustrate that if the Commission were to exclude any area that purports to have fixed wireless coverage available, there would not be too many areas that would be eligible for NUSF support.

In response to further questioning, Ms. Prockish testified she is aware of the Commission's findings where it stated it would disallow broadband support in areas that already have an unsubsidized carrier providing comparable broadband service. However, she would go back to her earlier testimony related to what comparable broadband service ought to be.

Upon questioning by Commissioners, Ms. Prockish testified she agreed that CenturyLink should be engineering for higher speeds than 10/1 Mbps. They are trying to be flexible in the way they are engineering the network now so that as demand increases in the future for higher speeds, it may be a matter of upgrading the electronics on either end.

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

Upon review of the application and the testimony received at the hearing, the Commission finds CenturyLink's application for support of this particular project in this instance should be denied.

In our September 2015 Order, we determined specific broadband grant support would be disallowed in areas that already have an unsubsidized carrier providing comparable broadband service.² This determination was based upon the desire of the Commission to target support to high-cost areas where consumers lacked reasonably comparable broadband and voice service.

Vistabeam argued it was an unsubsidized carrier which provided a comparable broadband service. For the purposes of this proceeding, we determined that a competitor may challenge an application providing evidence that funding should not be granted

² See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program*, Application No. NUSF-99, PROGRESSION ORDER NO. 1 (September 1, 2015) ("September 2015 Order").

due to the existence of comparable broadband service in the proposed area.³

The Federal Communications Commission (FCC) has found that fixed wireless coverage should be used in its analysis in determining areas eligible for federal CAF II support.⁴ In the USF/ICC Transformation Order, the FCC adopted a general requirement that all broadband build out obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already served by an unsubsidized competitor.⁵ With respect to census blocks that are served by a facilities-based terrestrial competitor, the FCC has found "every dollar that is spent in such areas is a dollar not available to extend broadband to areas that lack it."⁶ The FCC's methodology for determining comparable broadband service may be useful in some cases for the determination of support; however, this Commission

³ See *id.*

⁴ The FCC appeared to require the competitive broadband service provider to report voice subscriptions in the area using the FCC Form 477 reporting process. As we note below, we do not have any specific evidence in the record as to whether Vistabeam reported any voice subscriptions in the proposed project area. See Model Methodology at 33-35, http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0417/DOC-326628A1.pdf; CAM v. 4.1.1 which incorporated minor corrections to the broadband coverage data. See also CAM 4.1.1 Release Notes (Apr. 17, 2014), via system updates link, at <https://cacm.usac.org>; and *In the Matter of Connect America Fund, High-Cost Universal Service Support*, 29 FCC Rcd 3964 REPORT AND ORDER Para 62. (Stating this version uses June 2013 National Broadband Map data, which modifies the cable and fixed wireless broadband coverage to reflect only providers that have reported voice subscriptions on FCC Form 477 June 2013, and removes subsidized providers from the model's source data used to identify which census blocks presumptively will receive funding.)

⁵ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform--Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING, 26 FCC Rcd 17663 (2011).

⁶ *In the Matter of Connect America Fund, Universal Service Reform - Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime*, WC Docket No. 10-90; WT Docket No. 10-208; WC Docket No. 14-58; WC Docket No. 07-135; CC Docket No. 01-90, 29 FCC Rcd 7051, REPORT AND ORDER, DECLARATORY RULING, ORDER, MEMORANDUM OPINION AND ORDER, SEVENTH ORDER ON RECONSIDERATION, AND FURTHER NOTICE OF PROPOSED RULEMAKING (June 10, 2014) para. 174.

is not bound by their decision with respect to the use of state universal service support.

CenturyLink, on the other hand, argued the Commission has emphasized its desire to utilize NUSF wireline support for fiber-based broadband technology and separately provide support for wireless technology.⁷ CenturyLink claimed the Commission has expressed a clear preference to supporting fiber-based technology. CenturyLink is correct that with the limited support available, the Commission would like to support networks that are scalable and efficient as opposed to networks that will need to be replaced as technology advances.⁸ However, we feel this is a separate issue from the determination of comparable broadband service being provided by an unsubsidized competitor.

We are not unsympathetic to Vistabeam's testimony that it has built up its business model in this area without subsidies. Nevertheless, we would have liked to have had evidence in the record as to whether the customers in the area considered the services provided by Vistabeam to be comparable. Vistabeam did not know whether any customers were taking a voice product, whether it in fact provided voice service to any customers in that area, or whether it was remitting NUSF surcharges to the Commission based on voice services offered.

However, in our September 1, 2015, Order, we also found,

"The Commission will utilize broadband mapping data and Form 477 data where appropriate to determine these areas."⁹

Both parties relied on the FCC's Form 477 and broadband mapping data to support their testimony either for or against funding the proposed project. We agree this data is relevant in the consideration of support. Additional coverage information was provided by Vistabeam with their testimony in the form of a map. The record indicates that Vistabeam serves most of the census blocks in the area. According to the 2010 United States Census, the areas shown as not covered by Vistabeam in the CenturyLink

⁷ See *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Consider Revisions to the Universal Service Fund Contribution Methodology*, NUSF-100/PI-193 ORDER AND ORDER SEEKING FURTHER COMMENTS AND SETTING HEARING (February 22, 2017) at 5-6.

⁸ We note the project CenturyLink proposes here, places only an eighth of a mile of fiber with electronic upgrades making the bulk of the budget.

⁹ See September 2015 Order at 7.

project area would include at most 15 households.¹⁰ We are unable to declare conclusively that the service provided by Vistabeam should be considered a comparable broadband service. Even if we used the FCC's analysis, we do not know whether Vistabeam reported any voice subscriptions for the proposed project area. However, as CenturyLink admitted, there are also other providers in the area serving subscribers through fiber and cable alternatives.¹¹ This admission is troubling. The application process requires an affidavit from the company attesting among other things that the company has done its due diligence to verify that comparable broadband does not already exist in the area of the proposed project. Upon review of the record as a whole, we are not convinced that the proposed project would target support to areas not currently served with broadband service. Accordingly, we deny the request to provide support to this project. CenturyLink may modify its project to remove any contaminated census blocks and renew its request for support at a later date.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Application filed by United Telephone Company of the West d/b/a CenturyLink shall be, and it is hereby, denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 15th day of August, 2017.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Mary Zedler

Cynthia Guadalupe

[Signature]

//s//Tim Schram

COMMISSIONER DISSENTING:

//s//Frank E. Landis

[Signature]

Chairman

ATTEST:

[Signature]

Executive Director

¹⁰ See Late-Filed Exhibit No. 4.

¹¹ See Transcript at 79.