

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. C-5272  
Public Service Commission, on )  
its own motion, to implement ) ORDER ISSUING 2021-2022  
the Nebraska Broadband Bridge ) GRANT APPLICATION SCHEDULE  
Act. ) AND APPLICATION MATERIALS  
)  
) Entered: August 10, 2021

### BY THE COMMISSION:

On June 8, 2021, the Nebraska Public Service Commission ("Commission") initiated this proceeding on its own motion to implement the Nebraska Broadband Bridge Act ("NBBA" or "the Act"). In the order opening this docket,<sup>1</sup> the Commission set forth a draft application package. The Commission also sought comment on a number of topics.

Comments were due to the Commission by June 29, 2021. The Commission received comments from the Nebraska Rural Broadband Alliance ("NRBA"), Windstream Nebraska, Inc. ("Windstream"), the Nebraska Internet and Television Association ("NITA"), the Nebraska Public Power District ("NPPD"), NE Colorado Cellular, Inc., dba Viaero Wireless ("Viaero"), the Central Nebraska Economic Development District ("CNEDD"), Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (collectively "CenturyLink"), the Nebraska Rural Independent Companies ("RIC"), the Rural Telecommunications Coalition of Nebraska ("RTCN"), and representatives of the Nebraska Telecommunications Association ("NTA"), NITA, and Wireless Internet service providers (collectively "NTA/NITA").

### H E A R I N G

A hearing in this matter was held on July 13, 2021. Paul Schudel appeared on behalf of RIC. Andrew Pollock appeared on behalf of NRBA. Julia Plucker appeared on behalf of NITA. Russell Westerhold appeared on behalf of RTCN. Sallie Dietrich appeared on behalf of the Communications Department ("Department") of the Commission.

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<sup>1</sup> Commission Docket No. C-5272, *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement the Nebraska Broadband Bridge Act, Order Opening Docket, Seeking Comment, and Setting Hearing* (June 8, 2021) ("Order Opening Docket").

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Exhibits 1 through 15 were offered and accepted, including each of the above-described comments submitted in this matter, as well as two late-filed exhibits consisting of a letter submitted to the Commission by the Nebraska Department of Economic Development ("NDED") and a summary provided by the Communications Department describing the number and locations of households unserved and underserved with regard to broadband access in Nebraska. Exhibit 16, consisting of a revised weighting system proposed by RIC, was marked but not offered.

Testimony was offered by the following parties:

- 1) Cullen Robbins, Director of the Communications and NUSF Department of the Commission ("Department"), on behalf of the Department
- 2) Ken Pfister, Vice President of Strategic Policy at Great Plains Communication, LLC, on behalf of RIC
- 3) Stacey Brigham, Regulatory Director for TCA, Inc., testifying on behalf of NRBA
- 4) Julia Plucker, Co-Executive Director of NITA, testifying on behalf of NITA
- 5) Russell Westerhold, appearing on behalf of RTCN
- 6) William King, testifying on behalf of Media King Communication ("MKC")

Following Mr. King's testimony, no further evidence was offered and no witnesses were called. The hearing was adjourned.

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

### **1) Project Areas**

At hearing, Mr. Robbins described the priority tiers set forth by the Nebraska Broadband Bridge Act. Mr. Robbins stated that the priority tiers would work to direct grants towards rural areas but do not preclude the grants from being awarded to non-rural areas.<sup>2</sup>

#### *a) Geographic Area Identification*

The Commission proposed a requirement for applicants to include, at a minimum, a polygon shapefile (.shp) of the proposed

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<sup>2</sup> Transcript at 13-14.

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project area in the application. Comments submitted on this issue were generally supportive.<sup>3</sup> The Commission further proposed to require that in the absence of specific identification of each serviceable location, all locations in the polygon would be capable of being served upon project completion. Based upon comments received and testimony at hearing, the Commission finds that this proposal is agreeable to interested parties and should be adopted.

### *b) Speed Data*

The Commission proposed to require applicants to identify the current broadband speeds provided in the project area as well as how the applicant intends to deliver the proposed speeds after the grant. Applicants would be required to file documentation that those speeds are delivered in other areas served by the applicant and that those speeds are advertised. Based upon comments received and testimony at hearing, the Commission finds that this proposal is agreeable to interested parties and should be adopted.<sup>4</sup>

### *c) Non-Contiguous Geographical Areas*

The Commission proposed to allow applicants to file grant applications for project areas that are not contiguous. At hearing, Mr. Robbins described the proposal to allow non-contiguous areas to be included in an application, stating that such an application would need to explain the reasoning for including non-contiguous areas, and that only areas from the same or adjacent exchanges to the rest of the project could be considered. Mr. Robbins stated that this restriction would ensure the Commission does not receive applications containing non-contiguous geographical areas with no natural connection to each other.<sup>5</sup>

In comments, some parties expressed disagreement with the Commission's proposal, including NPPD and NDED.<sup>6</sup> Other parties expressed support for this proposal.<sup>7</sup> Viaero expressed that allowing noncontiguous geographical areas may be necessary in order to serve difficult to reach households, but suggested that

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<sup>3</sup> See, e.g., Exhibit 5, Comments of NPPD; Exhibit 11, Comments of Viaero; Ex. 12, Comments of Windstream.

<sup>4</sup> The Commission agrees with comments submitted by RIC on this matter stating that the burden is upon the applicant to demonstrate their capability to deliver the required speeds. Exhibit 9, Comments of RIC, at 3.

<sup>5</sup> Transcript at 15.

<sup>6</sup> Ex. 5; Exhibit 14, Letter from NDED.

<sup>7</sup> Ex. 12.

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the project areas must be clearly defined in each application.<sup>8</sup> RIC suggested that applications containing non-contiguous geographical areas should be within a single exchange and should be efficient from an engineering standpoint.<sup>9</sup>

The Commission finds that the proposal set forth in the Order should be adopted. Non-contiguous geographical areas may be included in an application provided they are within the same exchange or adjacent exchanges. Such an application must include an explanation for why the noncontiguous areas are included. Applications will be closely reviewed to prevent "cherry-picking" of preferable service locations.

### *d) Unserved and Underserved Areas*

The Commission proposed to require separate applications for unserved and underserved areas. This proposal received some disagreement.<sup>10</sup> In comments, RIC noted that the text of the Act does not contemplate applications containing a mixture of unserved and underserved areas, recommending that the Commission adopt a weighting system to review such applications.<sup>11</sup> NPPD recommended accepting single applications containing a mixture of unserved and underserved areas.<sup>12</sup> Commenters also disputed the Commission's proposal to consider such an application under the lower priority tier,<sup>13</sup> and some parties suggested the Commission determine the ratio of underserved to unserved customers in a project area instead.<sup>14</sup>

The Commission finds that while the concerns of commenters are noted, the text of the Act does not clearly allow the Commission to consider applications containing a mixture of unserved and underserved project areas. The Commission will consider applications that contain both unserved and underserved areas under the lower priority tier. However, the Commission emphasizes that applicants are in no way discouraged from submitting multiple applications so that unserved and underserved areas can be considered separately.

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<sup>8</sup> Ex. 11.

<sup>9</sup> Exhibit 9, Comments of RIC, at 4.

<sup>10</sup> See, e.g., Exhibit 6, Comments of NRBA, at 3.

<sup>11</sup> Ex. 9 at 5.

<sup>12</sup> Ex. 5 at 1.

<sup>13</sup> Ex. 12.

<sup>14</sup> Ex. 5 at 1-2; Ex. 11 (Viaero expressing concern that "an economic business case may not exist to improve or build out to higher speeds absent NBBP grants").

*e) Overlapping Areas*

In the order opening this docket, the Commission proposed to only fund the higher ranked project if multiple applications have areas that significantly overlap. In the event where the overlap between applications is minimal, the lower-ranked applicants will be provided notification of overlapping areas and will be provided an opportunity to revise their applications accordingly. Several commenters submitted comments supporting this proposal.<sup>15</sup>

The Commission finds this proposal is appropriate and should be adopted.

*f) Digital Inclusion Plan*

The Act requires that applications submitted for the third priority tier, underserved areas, include a digital inclusion plan. In the order opening this docket, the Commission proposed to require information as to how information and communication technologies provided as a result of the grant will be made available to all individuals and communities within the coverage area, including disadvantaged community members. The Commission proposed to review how applicants would make their services affordable, and to disqualify any digital inclusion plans where the carrier would impose data caps on consumer usage.

At hearing, William King of MKC testified with regard to the necessity of a digital inclusion plan, emphasizing that broadband internet is the foundation of education.<sup>16</sup> Mr. King suggested that the Commission work to encourage partnerships between smaller and larger companies to allow new providers to provide service.<sup>17</sup> Mr. King further suggested that the Commission's review of digital inclusion plans focus on education, as well as affordability of services available.<sup>18</sup> In comments, Windstream sought clarification as to how affordability would be evaluated, and advocated for carriers having the ability to require a contract or pre-payment rates.<sup>19</sup> RIC submitted comments suggesting that such a plan should include advertising of available services as well as a focus on education.<sup>20</sup>

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<sup>15</sup> See, e.g., Ex. 9; Ex. 11; Ex. 12.

<sup>16</sup> Transcript at 156

<sup>17</sup> *Id.* at 161.

<sup>18</sup> *Id.* at 163-164, 170.

<sup>19</sup> Ex. 12.

<sup>20</sup> Ex. 9 at 6.

The Commission finds that its proposal should be adopted. Applications for underserved areas must include a digital inclusion plan as described above. Digital inclusion plans must describe the carrier's efforts to ensure members of the community to be served will be able to afford the services offered and, must also describe any additional discounts and/or support programs to be offered for low-income individuals. The Commission affirms its proposal that digital inclusion plans that seek to impose data caps on consumer usage will not be considered. The Commission reserves the right to revisit this issue in future program years.

## **2) Matching Funds**

### *a) Funding Sources*

The Commission requested input as to what types of contributions should be considered as matching funds. At hearing, Mr. Robbins testified that NBBP grants would not be available to applicants for areas receiving support to deploy fiber if construction would be completed within two years of the grant award date. This determination would ensure that grant money would be used in an efficient, non-duplicative manner.<sup>21</sup> Mr. Robbins noted that areas that were awarded bids in the Rural Digital Opportunity Fund auction ("RDOF") could be eligible if the applicant could show that the RDOF awardee would not provide services within the two years and/or if the application was not successfully challenged.<sup>22</sup>

Comments on the Commission's proposal were varied. Stacey Brigham, testifying on behalf of the NRBA, stated that NUSF and federal USF support should not be allowed as a match for NBBP grants, due to concerns with allocation of funds and ensuring no duplication of support.<sup>23</sup> The NITA also testified that NUSF funds should not be allowed as matching funds.<sup>24</sup> In comments, NPPD argued that NUSF should not be allowed as matching funds, stating that "[m]atching funds should demonstrate an applicant's real commitment to building infrastructure required to serve an area."<sup>25</sup> Viaero and NRBA suggested in comments that federal and state funding should not be allowed as a match.<sup>26</sup> Windstream and RIC, by

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<sup>21</sup> Transcript at 16-17.

<sup>22</sup> Transcript at 18.

<sup>23</sup> *Id.* at 103-105; see also Ex. 9 at 7.

<sup>24</sup> Transcript at 126.

<sup>25</sup> Ex. 5 at 2.

<sup>26</sup> Ex. 11; Ex. 6 at 3-4.

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contrast, submitted comments stating that federal USF and NUSF should be allowed as matching funds in certain circumstances.<sup>27</sup>

The Commission finds that its proposal should be adopted, with modification. The review and scoring of applications will be conducted in a manner to maximize all available funding and prevent duplication of funding in a given area. The proposed scoring sheet has been revised and the weighting of various factors adjusted.

## *b) In-Kind Match*

With regard to in-kind support, Mr. Robbins recommended at hearing restricting in-kind contributions to items for which the value could be identified, such as equipment and inventory on hand, and that the value of the items would need to be identified.<sup>28</sup> Mr. Pfister, testifying for RIC, indicated support for allowing in-kind contributions of both inventory and labor, noting that fiber can be a "scarce commodity."<sup>29</sup> RTCN also submitted comments expressing concern about the current availability of fiber on the market and noting that orders for new fiber may encounter substantial delays.<sup>30</sup> Windstream submitted comments indicating that the value of certain in-kind contributions, such as right of way access, may be difficult to determine.<sup>31</sup>

The Commission finds that it is appropriate to allow in-kind contributions strictly for tangible items with a readily identifiable value, such as equipment and inventory on hand. Labor-related expenses, including contracts for labor, will be disallowed in order to prevent cost shifting or inflating of expenses. Intangible assets such as right of way access or savings as a result of partnerships will also be disallowed due to the difficulty of ascertaining their value. Applicants proposing to use in-kind contributions as matching funds must provide justification for the cost of the asset. This can be in the form of receipts or invoices that clearly show the cost of the asset at the time of acquisition.

### **3) Eligibility and Priority Determination**

In the order opening the docket in this matter, the Commission proposed to use information collected through past grant programs

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<sup>27</sup> Ex. 12 at 5; Ex. 9 at 7.

<sup>28</sup> Transcript at 18.

<sup>29</sup> Transcript at 54-55.

<sup>30</sup> Exhibit 10, Comments of RTCN, at 2.

<sup>31</sup> Ex. 12 at 5-6.

and FCC Form 477 data as default information relative to the service and speeds provided in proposed project areas. Some commenters objected to this proposal, noting the unreliable nature of Form 477 data.<sup>32</sup> At hearing, RIC testified that applicants should be encouraged to provide on-the-ground information to determine actual broadband speeds available in a given area.<sup>33</sup> In comments, RIC and Viaero suggested requiring that applicants test 10% and 30% of locations to be covered, respectively.<sup>34</sup> The NRBA recommended that the Commission give greater deference to speed data that is locally generated than to Form 477 data.<sup>35</sup>

The Commission recognizes the concerns outlined by participants in this proceeding. However, the position of the Commission is that applications should be reviewed using the best available data. The Commission also does not wish to discourage applicants who may not have the means to conduct extensive speed testing from submitting an application for funding. Therefore, the Commission will initially review applications based upon Form 477 data, but will also consider any speed test data submitted by the applicant to supplement that information.

#### **4) Scoring and Criteria**

In the order opening this docket, the Commission set out proposed weighting and scoring criteria. This proposal received a great deal of feedback, set out in detail below. Some general comments included NPPD, requesting the Commission give public-private partnerships a higher weight than private only projects,<sup>36</sup> as well as comments from RIC, requesting that providers with proven service commitments to rural areas of Nebraska receive additional weighting.<sup>37</sup>

##### *a) Financial Capability*

Numerous commenters expressed hesitation with the Commission's proposal to require audited financial statements and tax returns from carriers not holding ETC certification.<sup>38</sup> At

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<sup>32</sup> See, e.g., Ex. 11 (Viaero noting that Form 477 data is "historically a poor indicator of actual service in rural areas"); Ex. 14 (Neb. Dept. of Economic Development recommending the Commission harness additional data sources beyond Form 477 in the future).

<sup>33</sup> Transcript at 55-56.

<sup>34</sup> Ex. 9; Ex. 11.

<sup>35</sup> Ex. 6 at 6.

<sup>36</sup> Ex. 5 at 2-3.

<sup>37</sup> Ex. 9 at 9-10.

<sup>38</sup> See, e.g., Exhibit 10, Comments of RTCN, at 5-7; Transcript at 62-63.



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hearing, Mr. Robbins recognized this concern and testified that audited financial statements would be sufficient to show that an applicant is financially viable.<sup>39</sup>

With regard to carriers holding ETC status, the Commission emphasizes that ETC status is not a guarantee that the Commission will find that the carrier is financially viable. Instead, ETC status allows the Commission to review recently submitted financial statements without requiring that carrier to submit additional or duplicative documentation as part of their NBBP application. The Commission will review previous financial documentation submitted by an ETC as part of that ETC's application; however, these statements will not be scored differently than statements submitted as part of a non-ETC carrier's application.

Some comments also expressed concern with the Commission's proposal to require that carriers demonstrate financial viability of the project over time.<sup>40</sup> However, it is the expectation of the Commission that winning carriers will maintain the network beyond the life of the grant program.<sup>41</sup> Therefore, the Commission will require applicants to describe how it intends to fund the proposed network over the expected useful life of the facilities.

### *b) Technical Capability*

The Commission sought input on how to ensure that grant funds are utilized by carriers capable of deploying resilient, future proof networks that will be scalable to meet the growing demands of consumers. The Commission proposed requiring information from the applicants relating to their experience providing broadband, as well as whether they currently provide broadband at 100-by-100 speeds. The Commission also proposed requiring information as to how the project will be resilient and sustainable in the long-term.

In comments, Windstream and RIC supported the Commission's proposal to review an applicant's prior experience providing

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<sup>39</sup> Transcript at 19.

<sup>40</sup> See, e.g., Ex. 9 at 13-14; Ex. 10 at 6.

<sup>41</sup> See LB 388, Sec. 8(2): "As a condition of accepting a grant under the program, the applicant shall agree to provide broadband Internet service in the project area until released from the applicant's commitment by the commission." Successful applicants will need to apply to the Commission to be released from their commitments under the NBBP.

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broadband.<sup>42</sup> Viaero suggested that the Commission should consider the quality of service provided in Nebraska rather than the length of time a carrier has served.<sup>43</sup> At hearing and in comments, the NRBA presented testimony that the Commission should not adopt an all-or-nothing approach to reviewing technical capability. The NRBA recommends assigning fifty points to this factor, and that the focus should be upon whether an applicant is "capable of addressing the unique characteristics and needs of the project area."<sup>44</sup>

The Commission finds that the original proposal set forth in the June 8th order is reasonable and should be adopted. Additionally, the Commission finds that applicants should be required to submit a description of how the service area will be maintained throughout the useful life of the facilities, including a statement as to the number of technical staff that will be dedicated to serving the project area once the project is complete.

### *c) Legal Capability*

In the order opening this docket, the Commission proposed to consider under this factor an applicant's past regulatory compliance and the applicant's ability to navigate the local zoning and permitting processes. In comments, Windstream opposed this proposal, recommending that the Commission limit its review of past late filings and not consider pending litigation or complaints.<sup>45</sup>

The Commission finds that its original proposal should be adopted, with the additional consideration of familiarity with right of way access. Applicants must demonstrate their familiarity with obtaining the necessary permits, zoning, and right of way access. Additionally, points will be deducted if an applicant has a history of late-filed annual reports or NUSF remittances. The Commission reserves the right to consider other factors as appropriate.

### *d) Eligible Telecommunications Carrier Status*

At hearing, Mr. Robbins testified that while ETC designation must be considered as a factor under the Act, he did not believe it was intended as a requirement for applicants to hold ETC status

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<sup>42</sup> Ex. 12, Ex. 9 at 14.

<sup>43</sup> Ex. 11.

<sup>44</sup> Transcript at 108-109; Ex. 6 at 7.

<sup>45</sup> Ex. 12 at 8.

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in order to receive a grant.<sup>46</sup> Mr. Ken Pfister testified on behalf of RIC that RIC recommends limiting the awarding of grants to only ETCs.<sup>47</sup> By contrast, the NRBA presented testimony that ETC status is not necessarily an indicator of capability,<sup>48</sup> and NITA suggested that the Commission reduce the number of points available based on ETC status.<sup>49</sup>

The Act does require that ETC certification be considered as part of the Commission's weighted scoring system.<sup>50</sup> However, this criterion will be scored separately from any review of the ETC's financial capability. While the Commission will award more points to a current ETC than a carrier whose ETC application is pending, or who is not an ETC, the overall point total available for ETC status is a small percentage of the total points available.

### e) Rates

The Commission requested input as to what should be required to ensure that applicants' rates are comparable within a project area to rates offered outside the project area. At hearing, Mr. Robbins indicated that a comparison of pricing should be determined by reviewing 100-by-100 megabits per second ("Mbps") pricing, or the next closest speed offering that provides at least that level of service.<sup>51</sup> In comments, some parties sought the ability to include customer contracts as part of their pricing.<sup>52</sup>

The Commission finds that applicants must submit information demonstrating that their proposed rates are comparable. Plans with usage caps, early termination fees, or that otherwise lock customers into a particular plan or term will be disallowed. For carriers currently providing 100-by-100 Mbps service in Nebraska, documentation of that carrier's rate for that service speed in Nebraska must be submitted. If the carrier offers that speed at more than one rate in different areas of Nebraska, the carrier must submit documentation for each rate at which it offers that speed of service, and the rate offered in the project area must be no higher than ten percent greater than the lowest rate offered by

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<sup>46</sup> *Id.* at 14.

<sup>47</sup> Transcript at 52-53.

<sup>48</sup> Transcript at 109.

<sup>49</sup> Transcript at 122-123.

<sup>50</sup> LBB 388, Sec. 6(2)(b).

<sup>51</sup> Transcript at 19.

<sup>52</sup> *See, e.g.,* Ex. 9 at 15-16.

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that carrier elsewhere in Nebraska.<sup>53</sup> If the provider does not offer that speed tier in Nebraska, the Commission will require the applicant to provide documentation showing the rates offered by three other providers in Nebraska for service at speeds of at least 100-by-100 Mbps. The rate offered in the project area must be no higher than ten percent greater than the average rate of the three submitted providers.

*f) Minimum Broadband Speeds*

Mr. Robbins testified at hearing that all projects supported through the Nebraska Broadband Bridge Program ("NBBP") should be able to deliver at least 100-by-100 Mbps service to any household within the project area that subscribes to that service once the project is complete.<sup>54</sup> Mr. Robbins noted that many of the submitted comments indicate support for a requirement that all locations within the identified project area must be capable of being served upon project completion.<sup>55</sup>

The Commission's proposed application package also included the possibility of additional points awarded for an applicant who would be capable of serving customers at speeds greater than 100-by-100 Mbps. Upon review, the Commission finds that this proposal is appropriate and should be adopted. Projects which are capable of being scaled to meet future needs should be prioritized.

In comments and at hearing, some parties expressed doubt that technologies other than fiber optic cable would be capable of meeting the 100-by-100 Mbps speed requirement.<sup>56</sup> One party stated that the only technology capable of meeting these speeds is fiber.<sup>57</sup> However, the text of the Act is technology-neutral.<sup>58</sup> The Commission therefore will not exclude at the outset applications which propose to use technology other than fiber. However, applications proposing to use any technology other than fiber will

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<sup>53</sup> Documentation may include, but is not limited to, advertisements and other public communications which show both the speed offered and the monthly price for service.

<sup>54</sup> Transcript at 19.

<sup>55</sup> *Id.*

<sup>56</sup> Transcript at 66; *but see* Transcript at 138 (RTCN testifying that clawback provisions of the Act would be sufficient disincentive for applicants who cannot technical requirements of the Act).

<sup>57</sup> Ex. 11 (Viaero commenting).

<sup>58</sup> Notably absent in LB 388 is any discussion of what technologies may be allowed or disallowed. *See also* Exhibit 4, Comments of NITA, at 2; Transcript at 122 (NITA encouraging the Commission to implement the program in a technologically neutral manner).

receive strict scrutiny. These applications must include an attestation from an engineer describing the speed capabilities of the technology, including but not limited to the maximum speeds possible through use of that technology. The attestation should also include an explanation as to whether the technology will be affected by outside factors such as inclement weather, and the results of speed tests performed at customer premises using the same technology during peak usage hours. These results must state the number of customers subscribed to the network tested at the time of testing.

*g) Project Match*

The Commission proposed a scoring system as to whether an applicant commits to fund more than fifty percent of the total development costs. Some commenters objected to the metric and suggested it be given lower weight.<sup>59</sup> RTCN submitted a proposal in comments that the scoring should be modified to incentivize applicants to request the lowest possible amount from the program, suggesting that the Commission assign a total of 30 possible points to the Matching Fund Amount, awarding 0 points for a 50% match request, 1 point for a 49% match request, and so forth through a full 30 points for a 20% or less match request.<sup>60</sup> At hearing, RIC stated that it agreed with RTCN's proposal.<sup>61</sup>

Upon review, the Commission finds that the revised scoring system proposed by RTCN and RIC should be adopted. An application listing sources of funds that make up more than the 50% requirement will be awarded one point for each additional percentage point above 50%, up to a maximum of 30 points (80% match).

*h) Households Covered*

Numerous commenters indicated opposition to the Commission's proposal to award additional points to projects covering a greater number of locations.<sup>62</sup> In comments and at hearing, RIC indicated that if this metric were to be included, the Commission should also consider the relative population density of the areas to be covered, giving high-cost, rural areas greater weight.<sup>63</sup> These

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<sup>59</sup> See, e.g., Ex. 6; Ex. 11; Ex. 12.

<sup>60</sup> Ex. 10 at 9-10.

<sup>61</sup> Exhibit 16, consisting of RIC's proposed revised application criteria and scoring and expressing agreement with RTCN's suggestion, was marked but not offered at hearing.

<sup>62</sup> See, e.g., Ex. 3; Ex. 11; Transcript at 62, 127.

<sup>63</sup> Ex. 9 at 11; Transcript at 61.

comments and concerns are well taken. While the Commission notes that the Act does not limit grant awards to rural areas, the Commission does not wish to disfavor applicants seeking to serve rural areas. The Commission has therefore removed the "Households Covered" metric from the weighted scoring system. The inclusion of a household density metric will therefore not be necessary.

### **5) Challenge Process**

The Commission set forth a proposal for the information to be required by providers challenging an application for funding under the NBBP. In comments, NPPD recommended the Commission work to ensure good faith proposals are not derailed unnecessarily.<sup>64</sup> Windstream and CenturyLink sought clarification of the meaning of the phrase "required service levels."<sup>65</sup> NITA indicated hesitation with the Commission's proposal to require the submission of plant maps and customer information as part of a challenge. NITA specifically expressed concern with the submission of information which could be obtained by other competitors or bad actors.<sup>66</sup> In comments, the NRBA also emphasized the importance of protecting the confidentiality of information such as propriety financial information, specific development, and construction plans.<sup>67</sup> RTCN sought specificity as to the date upon which grants would be awarded.<sup>68</sup>

Upon review, the Commission finds that the proposal set forth should be adopted, including the listed required information. This includes maps of facilities and customer information, which are necessary for the Commission to adequately consider a challenge. The provisions of the Act allow challenges in limited circumstances relating to the geographical proximity of the challenging provider's existing or planned facilities to an applicant's proposed project.<sup>69</sup> Therefore, it is necessary for the Commission to review the challenging provider's existing or planned facilities to consider a challenge, as well as customer address information. However, the Commission finds that this information may be submitted pursuant to a Protective Order to be issued in this docket.

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<sup>64</sup> Ex. 5 at 4.

<sup>65</sup> Ex. 12 at 11, Ex. 8 at 6.

<sup>66</sup> Ex. 4 at 6; Transcript at 129-131.

<sup>67</sup> Ex. 6 at 9.

<sup>68</sup> Ex. 10 at 4-5.

<sup>69</sup> LB 388, Sec. 7(2).

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With regard to the meaning of the phrase "required service levels" on page 14 of the Order, this phrase refers to the language set out in section 7(2) of the Act. Challengers will be expected to meet the minimum speeds for a successful challenge as set forth in the Act, and to provide sufficient documentation to demonstrate that those speeds are being met and advertised.

In comments, CenturyLink recommended modifying the challenge process to allow for challengers to submit a "Notice of Intent to Challenge" to the Commission in advance of the challenge deadline.<sup>70</sup> This proposal is well taken. The Commission finds that because some applications may overlap, and in the interest of encouraging parties to resolve differences informally, the submission of a Notice of Intent to Challenge will be required.

CenturyLink also suggested a modification of the proposed requirement for successful challengers to submit progress reports on construction every three months.<sup>71</sup> The Commission recognizes that it is possible some progress reports, especially during the winter season, may reflect minimal progress. However, accountability within the challenge process is paramount. The Commission must ensure that any challenges which result in an application being denied are made in good faith. Therefore, the reporting requirement will remain as proposed. Successful challengers must submit quarterly reports documenting what steps were taken towards providing broadband service in the challenged area.

The procedural schedule set forth below does not allow for hearings on challenged applications. We find that the process outlined below is sufficient to allow both the applicant and the challenging party to provide information and argument to support their respective positions.<sup>72</sup> Holding hearings on challenged applications would result in significant administrative burden and would delay the issuance of grant awards. The Commission finds that a streamlined procedural schedule is necessary for the speedy deployment of broadband across Nebraska.

The Act requires that the Commission distribute forms on which a challenge will be submitted.<sup>73</sup> The Commission also intends to

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<sup>70</sup> Exhibit 8, Comments of Qwest/CenturyLink, at 5-6.

<sup>71</sup> Ex. 8 at 6. *But see* Ex. 10 at 3 (RTCN supporting 3-month progress reports).

<sup>72</sup> RIC noted in comments that an applicant's response to a challenge should be tailored to the individual circumstances raised by the challenge. Ex. 9 at 18. The Commission agrees with this suggestion.

<sup>73</sup> LB 388, Sec. 7(2).

prepare a form for the Notice of Intent to Challenge. These forms will be released on September 9, 2021, in conjunction with the opening of applications.

**6) Distribution of Support**

In the order opening this docket, the Commission suggested that grant awards should be distributed prior to project completion, with 30% distributed upon the award of the grant and the remainder of the net grant award distributed in monthly installments amortized over the 18-month buildout period.<sup>74</sup> Several commenters suggested modifications to this proposal, citing potential administrative burden to monthly payments.<sup>75</sup>

Upon review of this proposal the Commission finds that its proposal should be modified, and a larger percentage of awarded funds should be reserved for distribution following successful completion of the project. This adjustment is made for the dual purposes of lowering disbursement of funds to a project before its completion is guaranteed, and for encouraging applications from parties who can provide a larger percentage match from their own funds. Funds awarded will be distributed as follows: 1/4 of the funds awarded will be distributed upon award of the grant, 1/4 of the funds will be distributed in the ninth month following the grant award, and the final 1/2 distributed upon completion of the project, the required speed testing, and invoice submittals to justify expenses. Successful applicants will need to verify required documentation for receipt of ACH payments from the State of Nebraska is on file immediately upon the award of a grant in order to ensure that the first payment is not delayed.

**7) Post-Award Testing**

The Commission proposed to collect tests which reflect actual download and upload speeds experienced by household users, using a random sample of locations of consumers who subscribe to the network, including testing performed during times of peak usage, that being between 5 pm and 11 pm local time. At least one test per hour would be conducted during the test window, with one week of testing for each project approved.

At hearing, Mr. Robbins testified in favor of requiring grant recipients to provide a service capable of 100-by-100 Mbps to all

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<sup>74</sup> Order Opening Docket at 16.

<sup>75</sup> See, e.g., Ex. 9 at 19; Transcript at 112-113 (NRBA testifying).



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locations where testing will occur in the project area.<sup>76</sup> CNEDD and NPPD submitted comments encouraging the Commission to require an independent testing method, rather than relying on the provider to conduct tests themselves.<sup>77</sup> RIC suggested that carriers should be allowed to utilize the same testing platforms required of them by the FCC.<sup>78</sup>

The Commission finds that its proposal should be adopted. The number of locations to be tested will remain as proposed:

Number of Locations in Application	Number of Test Locations
50 or fewer	5
51-500	10% of Total Number of Locations
Over 500	50

To the extent possible, grant recipients serving more than 500 locations in a project area should attempt to test at least 10% of served locations. Locations to be tested must be selected at random, and tests must be performed during times of peak usage.

## **8) Post-Award Repayment**

In instances where a grant recipient is required to repay grant award funds as required by the Act, the Commission proposed to issue a Notice and Demand for Payment to the grant recipient. The recipient would then be provided an opportunity to respond to the Notice, and, if contested, would be afforded a hearing on the matter subject to the Commission's Rules of Procedure for contested case proceedings.

Upon review of the proposed procedure, the Commission finds that it is reasonable and should be adopted.

## **9) Timeline and Issuance of Application Package**

In the order opening this docket, the Commission set forth a proposed timeline for the 2021-2022 grant application cycle. In

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<sup>76</sup> Transcript at 22.

<sup>77</sup> Ex. 3 at 2; Ex. 5 at 4-5.

<sup>78</sup> Ex. 9 at 19.

response to this proposal, many commenters expressed a desire for the Commission to release awards in the spring of 2022, in conjunction with the beginning of construction season.<sup>79</sup> RTCN also expressed concern that supply chain issues may delay applicants' ability to begin construction following a grant award.<sup>80</sup>

The Commission finds that delaying the grant award date is not feasible for multiple reasons. First and foremost, the Commission is working to deploy broadband to unserved and underserved areas as quickly as possible. Delaying the awarding of grants as proposed would run counter to this purpose. Additionally, the text of the Act does not allow the Commission to issue any type of "pre-award" as suggested by some commenters. Such a delay would defy the plain language of the Act.<sup>81</sup> Finally, the Commission anticipates that staff and potential program applicants will need to be preparing for the 2022 NBBP grant cycle in the spring of 2022, given the earlier application deadline of July 2022 for the second year of the NBBP.<sup>82</sup>

Given these factors, the Commission hereby sets forth the procedural schedule for the 2021-2022 Nebraska Broadband Bridge Program, attached hereto as Attachment A.

#### **10) Filing Requirements**

The Commission hereby releases the 2021-2022 Nebraska Broadband Bridge Program application package, consisting of the following documents:

- I. Application Form
- II. Program Guide
- III. Scoring Reference Sheet

The application package is hereby attached to and incorporated into this Order as Attachment B and, is separately published upon the Commission's website. The Commission will release on its website the Notice of Intent to Challenge form and the Challenge form on or before September 9, 2021.

Applications must comply with all aspects set forth in the application package. Applications missing required elements will

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<sup>79</sup> See Ex. 6 at 9-10 (NRBA requesting grant award to be released on April 1).

<sup>80</sup> Ex. 9 at 2.

<sup>81</sup> See LB 388, Sec. 4(2)(a) ("As part of the application, the applicant shall agree to complete the project within eighteen months after the date the grant is awarded.").

<sup>82</sup> *Id.* at Sec. 4(1)(a).

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be rejected if these defects are not cured within the procedural schedule outlined above. All filings in this docket, including application and challenge materials, must be submitted electronically by email to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov).

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above findings be adopted and the 2021-2022 Nebraska Broadband Bridge Program be conducted in accordance with said findings.

IT IS FURTHER ORDERED that the procedural schedule and filing deadlines for the 2021-2022 Nebraska Broadband Bridge Program attached hereto as Attachment A be adopted.




IT IS FURTHER ORDERED by the Nebraska Public Service Commission that the application package attached hereto as Attachment B be released.

IT IS FINALLY ORDERED by the Nebraska Public Service Commission that applications for grants awarded during the 2021-2022 Nebraska Broadband Bridge Program shall be filed with the Commission by email to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov) no later than 5:00 p.m. Central Time on October 1, 2021.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 10th day of August, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Executive Director

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## D I S S E N T

By Commissioner Rhoades:

The 2021-2022 Nebraska Broadband Bridge Program application materials as proposed in this order are fundamentally flawed and I cannot support their approval. The application and scoring have been designed in a manner that will not result in funding broadband where it is most needed in our state. I have several areas of concern, as outlined below.

**Unserved and Underserved Areas.** Blended applications of unserved and underserved areas should be prohibited. Carriers must collect the same information regardless of whether an application contains both unserved and underserved areas it does not create an undue burden to required them to file each area separately since it does not require any additional work. Permitting blended applications unnecessarily complicates the scoring process and leaves the Commission vulnerable to scoring errors and creates an incentive to use the funding for underserved areas rather than emphasizing and prioritizing unserved areas per legislative directive.

**Matching Funds.** I disagree with the Communications Department's proposal that areas awarded bids in Rural Digital Opportunity Fund auction (RDOF) could be eligible if the applicant could show that the RDOF awardee would not provide services within the two years. There are thousands of rural high-cost households in Nebraska who are not eligible for any support to assist in deploying broadband. Absent federal or state support, these households will not receive broadband because there is no business case to build to those locations. The Commission has a duty to restrict these funds to areas where no other source of funding is available, in order to make the best use of limited resources, and to provide digital equity to rural communities who will remain unserved, absent access to this funding.

**Noncontiguous Geographical Areas.** I believe the majority's decision to allow applications containing noncontiguous geographical areas is in error. It is highly likely that as a result of this decision, carriers will "cherry-pick" the easiest and cheapest locations to serve, and pockets of unserved customers

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will persist in the harder to reach parts of our state.<sup>83</sup> In order to receive a grant under the NBBP, a carrier should be required to serve any customer falling within a single, easily identifiable, contiguous area.

**ETC Designation.** It is my view that the approach to ETC designation outlined in this order is not appropriate. Designation as an ETC is not a guarantee that a carrier is financially viable. Even if the Commission only uses the ETC designation as a shortcut for carriers to avoid submitting additional financial information, that is still inappropriate. A carrier who wishes to be awarded up to a five million dollar grant should be required to submit all documentation necessary to prove their financial viability, even if it is duplicative of information previously previously filed to demonstrate fitness under other funding mechanisms. Carriers with Nebraska ETC designations have filed bankruptcy and defaulted on financial obligations, and since an ETC designation is not automatically revoked when financial distress occurs, the ETC designation is functionally meaningless in assessing the carrier's current financial fitness.<sup>84</sup> The Commission should require carriers to provide current up to date information on the financial health of each company. Any company who cannot prove ongoing financial health should be excluded from awards.

**Priority Designation.** I am deeply concerned that the way in which the application and scoring have been structured will result in the Commission funding mainly underserved areas. This was not the intent of the Nebraska Broadband Bridge Act. We currently have approximately 8,463 households in Nebraska which are completely unserved and ineligible for any other sources of high-cost support via federal and state programs - and the cost to build service to these locations is estimated to be \$147,400,297 for rural areas and \$10,518,291 for urban areas, or \$157,918,589 in total. Those locations should receive priority over locations with some level of broadband service or funding.

I cannot condone the Commission funding any projects to underserved areas when we still have so many Nebraskans not receiving any service at all. Demands for broadband are changing

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<sup>83</sup> This was pointed out in comments received from NDED (Ex. 14), and NPPD (Ex. 5).

<sup>84</sup> For example, Frontier and Windstream, both ETCs, have filed bankruptcy in recent years. Roger Conrad, FORBES MAGAZINE, *Frontier Communications: Chapter 11 Is No Protection*, <https://www.forbes.com/sites/greatspeculations/2020/05/29/frontier-communications-chapter-11-is-no-protection/> (last visited Aug 9, 2021).

rapidly and the FCC, NPSC, and the legislature have adjusted the threshold for high-speed internet twice in the last five years. While this approach is reasonable given the demand for data capacity by consumers, it has the unintended consequence of perpetually moving the completely unserved high-cost areas to the end of the bread line, while allowing those who've already been served to line up for second helpings. The carriers realize it is easier and more cost effective to go back to areas with 25/3 Mbps service and upgrade to 100/100 Mbps service than it is to go to someone with no service and begin providing service. For this reason, it is critical that the Commission act in the best interest of those rural households, who through no fault of their own have been waiting the longest and have no other hope of ever having broadband built to their homes. The action being taken by the majority allows potential duplication of funding in some areas and allows the prioritization of upgrades to underserved areas rather than emphasizing the needs of unserved areas.

Alternatively, if the Commission wanted to ensure that all of the priority areas received some funding, the Commission should have segregated the funding by priority area and created tailored applications for each priority tier in accordance with legislative directives. That could be achieved with modest modifications to the applications. This approach would have ensured that we distributed funding to all three priority groups and evaluated those projects based on criteria consistent with the directive. For example, unserved areas with lower population density could score higher points, while underserved areas with higher population density and a plan for digital inclusion could score higher points. This type of modification would allow for a more equitable distribution of the existing funding.

**Technical Capability.** I do not agree that carriers can meet this criterion by demonstrating they already provide 100-by-100 Mbps service. Carriers need to demonstrate that they are currently providing higher speeds through fiber to the premises. Companies should be providing speed tests conducted by a third party to demonstrate they can and do provide this level of service in Nebraska. The FCC, NPSC, carriers, and customer advocacy groups acknowledge the severe limitations of the reliability of the self-reported 477 data.<sup>85</sup> Simply claiming that they serve a speed does

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<sup>85</sup> See, e.g., Ex. 11 (Viaero noting that Form 477 data is "historically a poor indicator of actual service in rural areas"); Ex. 14 (Neb. Dept. of Economic Development recommending the Commission harness additional data sources beyond Form 477 in the future); Ex. 6 at 6 (NRBA recommending the Commission

not necessarily make it factual, and there is copious evidence that companies frequently over state service in that data.<sup>86</sup> Technologies other than fiber have not proven the ability to provide adequate service speeds and should not be funded by the Commission. The application should also reduce scores for any carrier who have failed to meet state or federal obligations related to build requirements.

**Legal Capability.** The majority's order does not appropriately consider this factor. Applicants who have a history of noncompliance or who are embroiled in pending litigation or complaints at the Commission or the FCC should receive a lower score.

**Rates.** Carriers should be required to provide service to customers at the lowest publicized rate being offered for a given speed tier. They should not be permitted a 10% mark up. This is a heavily subsidized and largely deregulated industry, and adding language that permits carriers to mark up their rates will create an incentive for the carriers to increase the cost of service. That is particularly egregious given that the majority of the network past and present including money distributed from this grant are public dollars. There is no value in making consumers pay more than market rate prices especially when they already contributed so much to the building and maintenance of the network. It should also be noted that according to census data, 9.9% of people living in Nebraska are living below the federal poverty level, and 16.6% of the population do not have an internet subscription.<sup>87</sup> Therefore, it is reasonable to conclude that affordability and access are both significant barriers to ubiquitous access to broadband. As such, the Commission has a duty to shield consumers from unnecessary mark ups in monthly service fees, after all the consumer has already paid for the network.

**Project Match.** The legislation requires a 50% match to access this funding for any area. I disagree with the majority's decision

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place a lower weight on Form 477 data); Transcript at 55-56 (RIC stating that on-the-ground data is preferable to Form 477 data).

<sup>86</sup> See, e.g., 36 FCC Rcd. 836 (2) (2021), GN Docket No. 20-269, *Fourteenth Broadband Deployment Report*, at 13 (acknowledging that Form 477 data allows carriers to overstate the coverage available to consumers, especially in large or irregularly-shaped census blocks); Tyler Cooper, BROADBAND NOW, *Massive Gigabit "Coverage" Increase Highlights How Unreliable Government Broadband Data Can Be*, <https://broadbandnow.com/report/gigabit-coverage/> (last visited Aug. 6, 2021).

<sup>87</sup> *QuickFacts - Nebraska*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/NE> (last visited Aug 6, 2021).

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to award 1 point for applications providing a match between 50%-80%. If a company can afford to underwrite between 50% - 80% of the cost to build or upgrade the network in an exchange, then they don't need grant funding to complete the upgrades because a business case already exists to complete the build. Permitting such a disproportional weighting creates an incentive to submit project that are already at 25/3 speed and abandons areas that are completely unserved. The Commission should have given points for meeting the minimum match and an additional 5 points up to 60% match. Alternatively, had the Commission decided to divide the funding between the three priority areas evenly, the layering of points up to 80% for the "underserved priority area" could incorporate a 1 point per percentage match as a modification for that priority area only. My concern with how this is currently structured is we will divert funding from unserved areas to underserved areas. In my view, if a carrier can afford to upgrade an area with a match exceeding 60%, then the area does not need subsidization.

**Minimum Broadband Speeds.** Attestation from an engineer describing the speed capabilities of the technology is prudent. The Commission should also require the company to provide documentation from the manufacturer of the equipment detailing speeds under the conditions proposed in the application. The documentation should account for line of sight, weather, geography, and demand including the number of households to be served on the equipment and the lifespan of such equipment. This is necessary for the Commission to determine the likelihood of success of serving all households in the project area and the longevity of the project if approved, as compared to fiber to the premises applications.

**Households Covered.** I disagree with the majority's approach in removing this metric from consideration entirely. Instead, I believe population density should be included as a consideration. Applications proposing to serve unserved areas should receive more points for serving lower population density areas, whereas applications proposing to serve underserved areas should receive more points for serving higher population density areas (and providing an appropriately tailored digital inclusion plan). It is my hope that this proposal can be adopted in a future NBBP grant cycle.

**Testing.** The majority did not set a requirement for grant recipients to perform speed tests during inclement weather or to test for variability during different seasons. It is well



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established that providers using line of sight technologies frequently experience degraded service and increased outages related to inclement weather and variation in tree foliage from season to season. I view this as an error which will allow applicants using technology other than fiber to disguise the actual speeds customers will receive using the service. I disagree with the determination not to include this as a requirement at least as it would apply to technologies other than fiber to the premises.

Additionally, the number of households tested should be based on finding a statistically significant sample size. Using that method would ensure the Commission collected the correct amount of testing data to ensure with a 95% confidence interval that the customers are being served and that Nebraska ratepayers are getting what they are paying for while ensuring we are not over or under estimating the necessary sample size. This is mathematically valid approach to testing a network and far more reliable than setting an arbitrary range that may or may not convey usable and reliable network data.

The locations to be tested should be randomly selected and tested by the Commission staff or a Commission approved third party. That will reduce the likelihood of overstating the success of the project or over reporting access for some census blocks which is a known problem with 477 data reporting.<sup>88</sup> The Commission must be more thoughtful about how to collect meaningful data about who is and is not being served in our communities and at what level. The self-reporting method currently used has proven itself to be unreliable and detrimental to the goal of robust, ubiquitous, affordable broadband deployment. The table set forth in the majority opinion will not provide sufficient data for the Commission to assess whether a project was successfully built.

For the above-described reasons, I believe that the application materials are poorly constructed, and I therefore cannot vote in support of their release. Accordingly, I dissent.

  
Commissioner Crystal Rhoades

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<sup>88</sup> 36 FCC Rcd. 836 (2) at 13.

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### Attachment A: Procedural Schedule

<u>Event</u>	<u>Date</u>
Commission enters order setting out application and scoring criteria	Tuesday, August 10, 2021
Application period begins Challenge forms released	Thursday, September 9, 2021
Deadline to submit applications	Friday, October 1, 2021
Applications posted to Commission website	3 business days after filing. Last postings to be made on Wednesday, October 6, 2021
Notices of intent to challenge due to Commission and to Applicant	5 days following publication of application to Commission website. Last notices due Wednesday, October 13, 2021
Challenges due	30 days following publication of application to Commission website. Last challenges due Friday, November 5, 2021
Commission to notify applicants of defects that must be cured and of areas of overlap with other applications	Wednesday, November 10, 2021
Commission to notify applicants of challenges received	3 business days after challenge filed. Last notification to be sent Wednesday, November 10, 2021
Deadline for applicants to supplement or modify challenged applications	Wednesday, November 24, 2021
Deadline for applicants to cure defects in applications	10 business days after notification of challenge. Last submission due Wednesday, November 24, 2021
Grant awards released Results of challenges released	Tuesday, January 4, 2022
State of Nebraska W-9 and ACH enrollment form due from successful applicants	Monday, January 10, 2022

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**Attachment B: Application Materials**



Attachment B - Application  
**Nebraska Broadband Bridge Program  
 Grant Application**

**Section I: Applicant Details**

1. Applicant name:	Click to enter text.		
2. Applicant type:	Choose an item.		
3. Applicant street address:	Click to enter text.		
3a. Applicant city:	Click to enter text.		
3b. Applicant state:	Click to enter text.		
3c. Applicant zip code:	Click to enter text.		
4. Applicant contact (first and last name):	Click to enter text.		
5. Applicant e-mail:	Click to enter text.		
6. Applicant phone number:	Click to enter text.		
7. Provider name:	Click to enter text.		
8. Provider contact (first and last name):	Click to enter text.		
9. Provider e-mail:	Click to enter text.		
10. Provider phone number:	Click to enter text.		
11. Legal representative name:	Click to enter text.		
12. Legal representative e-mail:	Click to enter text.		
13. Legal representative phone number:	Click to enter text.		
14. Applicant's Nebraska ETC status:	Choose an item.		
15. Does the applicant currently report through FCC Form 477 speeds of at least 100/100 Mbps provided to customers within the State of Nebraska?	Choose an item.	15a. If yes, does the applicant clearly offer the minimum speeds required on their public-facing website:	Choose an item.
15b. Provide the service provider's public-facing website URL that reflects the currently available speeds:	Click to enter text.		

## Section II: Project Details

1. Project name:	Click to enter text.		
2. Project location description (the cities/ communities where the project(s) will take place):	Click to enter text.		
3. Estimated number of locations served in project area:	3a. Unserved (<25/3 Mbps): Click to enter text.	3b. Underserved (<100/20 Mbps): Click to enter text.	3c. Total: Click to enter text.
4. Technology type(s) to be deployed in project area:	Click to enter text.		
5. Current maximum connection speed bandwidth in project area (Mbps):	Click to enter text.	6. Projected minimum connection speeds at completion (Mbps):	Click to enter text.
7. Monthly customer rate for proposed 100/100 Mbps service:	Click to enter text.	7a. Does the rate plan for the proposed project area impose usage caps, early termination fees, or otherwise lock customers into a particular plan or term?	Choose an item.
8. Lowest monthly customer rate for 100/100 Mbps speed where applicant/provider currently offers that speed tier in Nebraska:	Click to enter text.	8a. If applicant does not currently provide 100/100 Mbps speed in Nebraska, has the applicant provided documentation of other carriers' rates as required?	Choose an item.
9. Maximum speeds all serviceable locations in project area will be capable to be scalable to upon completion:	Click to enter text.	10. Expected project completion date:	Click to enter text.
11. Project geographic contiguity type:	Choose an item.	11a. If noncontiguous, are the areas included from the same exchange or adjacent exchanges?	Choose an item.
12. Total project costs (based on allowed costs):	Click to enter text.	13. NBBP grant amount requested:	Click to enter text.

### Attach/Include:

Please label attachments as follows: “[Applicant Name]\_[Project]\_[Attachment Letter].” If it is necessary to submit multiple attachments under one attachment letter category, label the attachments to identify the separate attachments. Ex. “[Applicant Name]\_[Project]\_[Attachment Letter]\_1”, “[Applicant Name]\_[Project]\_[Attachment Letter]\_2”, etc.

- A shapefile polygon (.shp) reflecting the project area **must** be included. (Attachment Letter: A)
- A point shapefile or an alternative format which identifies serviceable locations in the project area should also be included. (Attachment Letter: B)
- Applicants that answered “Yes” to section I; field 15 should attach documentation that 100/100 Mbps speeds are currently delivered to customers in other areas served by the applicant and that those speeds are advertised. (Attachment Letter: C)
- Applicants that answered “Noncontiguous” in section II; field 11, should provide a statement explaining the reasoning for including noncontiguous areas. This should include an explanation regarding what natural connection the noncontiguous project areas have to each other. (Attachment Letter: D)
- Technical capability statement: Applicants must include a statement relating to their experience providing broadband, whether they currently provide broadband at the minimum 100/100 Mbps speeds, and how the project will be resilient and sustainable in the long-term. This statement should also include the number of technical staff that will be dedicated to serving the project area once the project is complete, a description of how the service area will be maintained throughout the useful life of the facilities, and any other relevant technical expertise of the applicant. (Attachment Letter: E)

- Rate comparability details: Attach information demonstrating that the retail rates for the proposed service area are comparable. Plans with usage caps, early termination fees, or that otherwise lock customers into a particular plan or term will be disallowed. For carriers currently providing 100/100 Mbps service in Nebraska, documentation of that carrier's rate for that service speed in Nebraska must be submitted. If the carrier offers that speed at more than one rate in different areas of Nebraska, the carrier must submit documentation for each rate at which it offers that speed of service, and the rate offered in the project area must be no higher than ten percent greater than the lowest rate offered by that carrier elsewhere in Nebraska. Applicants that do not currently offer 100/100 Mbps speed tier in Nebraska should provide documentation showing the rates offered by three other providers in Nebraska for service speeds of at least 100/100 Mbps; the retail rate offered in the proposed service area must be no higher than ten percent greater than the average rate of the three submitted providers. (Attachment Letter: F)
- A business plan for the proposed network that includes details of the project including a description of any legal challenges that must be addressed prior to or during the project in question, such as local zoning, right of way, and permitting processes, and demonstrates capability to maintain the network over the long run. The plan should also include a financial analysis for the project, including a description of how project costs and expected revenue will result in financial viability of the project over the expected useful life of the facilities. (Attachment Letter: G)
- A funding breakdown for the grant must be attached in Excel format. This should include a proposed budget reflecting a clear and detailed breakdown of cost elements based on total allowable project costs. This should also include the total grant amount requested (up to 50% of estimated eligible costs, but not greater than \$5,000,000). (Attachment Letter: H)
- Non-ETC applicants should attach the most current year's audited financial statements. (Attachment Letter: I)
- If the project includes underserved customers, a digital inclusion plan must be attached for consideration. The plan should not impose data caps on consumer usage and should specify how the project will impact access to and use of information and communication technologies within the communities it serves, including individuals and communities that are the most disadvantaged. (Attachment Letter: J)
- Applications proposing to use technology other than fiber or proposing to use a combination of fiber and other technologies, must include an attestation from a qualified engineer describing the speed capabilities of the proposed technology, including but not limited to the maximum speeds possible through use of that technology. The attestation should also include an explanation as to whether the technology will be affected by outside factors such as inclement weather, and the results of speed tests performed at customer premises using the same technology during peak usage hours. (Attachment Letter: K)
- Match source documentation: A table detailing the confirmed matching fund commitments by source must be included. Documentation of the match source(s) should also be provided. This could include but is not limited to a signed contribution certification for community partner match, NUSF census block information (in Excel format), documentation regarding timeline for RDOF deployment, justification for the value of any in-kind contributions such as equipment and inventory on hand. (Attachment Letter: L)
- Other supporting documentation (if applicable), such as supplemental speed test data, letters of support from members of the community, supplemental financial information such as the most recent year's federal tax return, etc. (Attachment Letter: M)

**APPLICANT CERTIFICATION:** By signing this statement, the applicant certifies that the information submitted on the application and all supporting documents are true and correct. The applicant agrees to perform and adhere to all grant requirements, and to comply with all state and federal regulations and requirements pertaining to this program. In addition, the applicant agrees not to use equipment prohibited by the FCC within the network, to offer rates in the project area that are comparable to the rates offered by the applicant outside the project area, to submit network speed testing information as prescribed by the Commission, and to complete the project build within eighteen months following the grant award unless granted an extension.

[Click to enter text.](#)

Printed Name of Authorized Person

[Click or tap to enter a date.](#)

Date

[Click to enter text.](#)

Title of Authorized Person

Signature of Authorized Person



# Nebraska Broadband Bridge Program (NBBP) Guide

## Fiscal Year 2021-2022

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# 1 Nebraska Broadband Bridge Program: General Information

## 1.1 Program Overview

On May 26, 2021, the Governor signed the Nebraska Broadband Bridge Act (the Act), LB 388, which created the Nebraska Broadband Bridge Program (NBBP) to facilitate and fund the deployment of broadband networks in unserved and underserved areas of Nebraska. The NBBP is designed to assist with costly deployment projects that might not otherwise occur without public assistance. The Nebraska Public Service Commission has the authority to grant awards to assist applicants with eligible infrastructure installation costs for qualifying projects. Qualifying projects must provide broadband Internet service scalable to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater (100Mbps/100Mbps). Applicants are required to provide matching funds equal to at least fifty percent of the total development costs of the project.

## 1.2 2021 Funding Availability

In the 2021 legislative session, \$20 million was appropriated to this program annually beginning in fiscal year 2021-2022. The maximum grant funding award cannot exceed 50% of the eligible total project costs. The maximum grant amount awarded cannot exceed \$5 million for a single project.

## 1.3 Eligible Applicants

Eligible applicants for this program could include: (1) a broadband Internet service provider including any telecommunications company, cable television company, or wireless network provider that provides broadband Internet service; (2) a cooperative; (3) a political subdivision; (4) an Indian tribe. Applications from a political subdivision or an Indian tribe shall be made as part of a public-private partnership with a broadband Internet service provider.

## 1.4 Eligible Project Areas

A project involving development of a broadband network in an unserved area or an underserved area may be considered. An unserved area is an area of Nebraska in which locations lack access to broadband Internet service at speeds of at least twenty-five megabits per second for downloading and three megabits per second for uploading (25Mbps/3Mbps). An underserved area is an area of Nebraska in which locations lack access to broadband Internet service at speeds of at least one-hundred megabits per second for downloading and twenty megabits per second for uploading (100Mbps/20Mbps). Applications involving underserved areas must also include a digital inclusion plan that demonstrates access to and use of information and communication technologies by all individuals and communities in the project area, including the most disadvantaged individuals and communities. The plan must describe the carrier's efforts to ensure members of the community to be served will be able to afford the services offered, and must describe any discounts and/or support programs to be offered for low-income individuals. Acceptable digital inclusion plans must not impose data caps on consumer usage.

See [section 4.1](#) for additional detail related to grant prioritization tiers.

## 1.5 Eligible Program Costs

The Nebraska Broadband Bridge Program (NBBP) can pay up to 50 percent of the eligible development costs for a qualifying project, with a maximum grant amount of \$5 million for a single project. Development costs means the amount paid for acquisition and deployment of infrastructure that provides broadband internet service scalable to at least 100/100 Mbps, such as costs for project planning, obtaining construction permits, construction of facilities including both middle-mile and last-mile infrastructure, equipment, and installation and testing of the broadband Internet service. Examples of allowed and disallowed costs can be found on our website at [www.psc.nebraska.gov](http://www.psc.nebraska.gov).

The NBBP grant funding period begins after the grant application is received, reviewed, and officially approved with an award notification. Eligible program costs are those that are incurred after the 2021-2022 fiscal year grant award notice and end at the conclusion of deployment, or at the established deadline for deployment for the NBBP grant project (whichever is earlier).



## 1.6 Matching Fund Requirement

In order to be approved for a NBBP grant, the applicant must provide for funding not provided by the grant with matching funds, with a minimum of fifty percent of matching funds. Applications that leverage greater matching funds over the fifty percent requirement will be awarded additional points.

Applicants should attach a table detailing the confirmed matching fund commitments by source. The table should include the total amount committed for matching funds, a detailed description of the dollar amount of each match as well as the source of the match. The table should first list the amount committed by the applicant, and then list each funding partner. Below is an example:

Match Source:	Funding Commitment:	Percentage of Total Matching Funds
<i>Applicant</i>	<i>\$80,000</i>	<i>80%</i>
<i>Funding source A</i>	<i>\$10,000</i>	<i>10%</i>
<i>Funding source B</i>	<i>\$10,000</i>	<i>10%</i>
<i>(continue as needed)</i>		
<b>Total Matching Funds:</b>	<b>\$100,000</b>	<b>100%</b>

Documentation of the match source(s) should also be provided. This could include but is not limited to a signed contribution certification for community partner match, NUSF census block information (in Excel format), documentation regarding timeline for RDOF deployment, or justification for the value of any in-kind contributions such as equipment and inventory on hand.

See [section 4.2](#), subsections 6 and 7 of this guide for additional information including examples of potential match sources and the scoring process.

## 2 Application Process

### 2.1 Filing Window – September 9, 2021 to October 1, 2021

The Nebraska Broadband Bridge Program (NBBP) is expected to be a competitive grant award cycle for the fiscal year 2021-2022 funding. The grant application window for fiscal year 2021-2022 will open on September 9, 2021 and close on October 1, 2021. **All applications must be received by the Nebraska Public Service Commission (Commission) on or before the application deadline of October 1, 2021, no later than 5:00 p.m. Central Time. Late filed or incomplete applications will not be considered.**

### 2.2 Preparing an Application

The application form is located on our website at [www.psc.nebraska.gov](http://www.psc.nebraska.gov) in the Telecom/NUSF section > Telecommunications > Nebraska Broadband Bridge Program. For the best experience, we recommend that you open the file in Acrobat Reader or Professional, rather than a browser. You may submit additional pages to expand on application form fields, if additional room is needed. The completed application and supporting documentation should be emailed to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov) no later than October 1, 2021 at 5:00 p.m. Central Time. The items that make up an application are further outlined below:

#### 2.2.1 Application Section I - Applicant Details

- Field 1. Applicant name: This field should include the name of the applicant entity applying for funding.
- Field 2. Applicant type: This field should identify the applicant type. Options include:
  1. Service provider
  2. Cooperative
  3. Political subdivision
  4. Indian tribe

NOTE: An application from a political subdivision or an Indian tribe must be made as part of a public-private partnership with a service provider.

- Field 3. Applicant street address: This field should include the street address of the applicant.
- Field 3a. Applicant city: This field should include the city for the address of the applicant.
- Field 3b. Applicant state: This field should include the state for the address of the applicant.
- Field 3c. Applicant zip code: This field should include the zip code of the applicant.
- Field 4. Applicant contact (first and last name): This field should include the name of the contact person for questions related to the application and the overall project.
- Field 5. Applicant e-mail: This field should include the e-mail address of contact person identified in field 4.
- Field 6. Applicant phone number: This field should include the phone number of contact person identified in field 4.
- Field 7. Provider name: This field should include the name of the service provider for the project. This field is required if answer to field #2 is "Political Subdivision" or "Indian Tribe." The input for this field may be identical to field 1 if the service provider is also the applicant.
- Field 8. Provider contact (first and last name): This field should include the name of the contact person for the service provider that can answer questions related to the project. The input for this field may be identical to field 4 if the service provider is also the applicant.
- Field 9. Provider e-mail: This field should include the e-mail address of the contact person identified in field 8. The input for this field may be identical to field 5 if the service provider is also the applicant.
- Field 10. Provider phone number: This field should include the phone number of contact person identified in field 8. The input for this field may be identical to field 6 if the service provider is also the applicant.
- Field 11. Legal representative name: This field should include the name of the legal representative for the applicant.
- Field 12. Legal representative e-mail: This field should include the e-mail address of contact person identified in field 11.
- Field 13. Legal representative phone number: This field should include the phone number of contact person identified in field 11.
- Field 14. Applicant's Nebraska ETC status: This field should include the applicant's Nebraska ETC status. Options include:
1. Not applicable;
  2. Currently certified as Nebraska Eligible Telecommunications Carrier (NETC), in good standing;
  3. Application for Nebraska Eligible Telecommunications Carrier (NETC) certification has been filed with the Commission;
  4. Applicant attests they will submit application to the Commission for NETC certification at least six months prior to project completion.
- Field 15. Does the applicant currently report through FCC Form 477 speeds of at least 100/100 Mbps provided to customers within the State of Nebraska? This field should indicate whether the applicant/service provider partner currently reports through FCC Form 477 speeds of at least 100/100 Mbps service is being provided to customers in Nebraska located outside of the project area. Response options include: Yes or No.
- Field 15a. If the answer to 15 is "Yes," does the public-facing website clearly reflect available speeds? Response options include: "Yes," "No," or "NA."

- Field 15b. Provide the service provider’s public facing website URL that reflects the currently available speeds: If the answer to 15a is “Yes,” this field should include the service provider’s public-facing URL that reflects the currently available speeds.

### 2.2.2 Application Section II – Project Details

- Field 1. Project name: This field should include the descriptive name given to the project.
- Field 2. Project location description (the cities/communities where the project(s) will take place): This field should include a brief description of the project location, including the cities, communities, etc. where the project will take place.
- Field 3. Estimated number of locations served in project area: The inputs for this field are captured in fields 3a, 3b, and 3c, which are explained below.
- Field 3a. Unserved (<25/3 Mbps): This field should include the estimated number of locations within the project area which meet the definition of unserved (i.e. lacking broadband internet service at speeds of at least 25 Mbps downloading and 3 Mbps uploading).
- Field 3b. Underserved (<100/20 Mbps): Enter the estimated number of locations within the project area which meet the definition of underserved (i.e. lacking broadband internet service at speeds of at least 100 Mbps downloading and 20 Mbps uploading).
- Field 3c. Total: This field should include the sum of fields 3a and 3b.
- Field 4. Technology type(s) to be deployed in project area: The input in this field should describe the technology type(s) to be deployed within the project area.
- Field 5. Current maximum connection speed bandwidth in project area (Mbps): This field should include the current maximum download and upload speeds available within the project area.
- Field 6. Projected maximum connection speeds at completion (Mbps): This field should include the minimum connection speeds for download and upload upon completion of the project.
- Field 7. Monthly customer rate for proposed 100/100 Mbps service: This field should include the monthly customer rate to be billed for 100/100 Mbps service provided within the project area.
- Field 7a. Does the rate plan for the proposed project area impose usage caps, early termination fees, or otherwise lock customers into a particular plan or term? Plans with usage caps, early termination fees, or that otherwise lock customers into a particular plan or term will be disallowed. For projects in priority tier three, digital inclusion plans that seek to impose data caps on consumer usage will not be considered.
- Field 8. Lowest monthly customer rate for 100/100 Mbps speed where applicant/provider currently offers that speed tier in Nebraska: This field should include the monthly rate currently charged to Nebraska customers receiving 100/100 Mbps service.
- Field 8a. If applicant does not currently provide 100/100 Mbps speed in Nebraska, has the applicant provided documentation of other carriers’ rates as required? If the applicant does not offer 100/100 Mbps service to customers in Nebraska, the applicant must provide documentation showing the rates offered by three other providers in Nebraska for service at speeds of at least 100/100 Mbps. The rate offered in the proposed project area must be no higher than ten percent greater than the average rate of the three submitted providers.
- Field 9. Maximum speeds all serviceable locations in project area will be capable to be scalable to upon completion: To qualify, the project must provide broadband Internet service that is

- scalable to 100/100 Mbps, or greater. This field should indicate the maximum speeds that all serviceable locations within the project area will be scalable to upon project completion.
- Field 10. Expected Project Completion Date: This field should indicate the expected completion date for the project, and when service is expected to begin within the project area at the required speeds.
- Field 11. Project geographic contiguity type: This field should indicate whether the project area is contiguous, or whether the project includes noncontiguous geographical areas.
- Field 11a. If the answer to field 11 is “Noncontiguous,” are the areas included from the same exchange or adjacent exchanges? Response options include: “Yes” or “No.”
- Field 12. Total project cost (based on allowed costs): This field should indicate the total estimated cost of the project based on costs deemed eligible within the NBBP. See our website at [www.psc.nebraska.gov](http://www.psc.nebraska.gov) in the Telecom/NUSF section > Telecommunications > Nebraska Broadband Bridge Program for a list of examples of allowed and disallowed costs.
- Field 13. NBBP grant amount requested: This field should indicate how much grant money from the NBBP is being requested for this application. This amount cannot exceed 50% of the total project cost reported in field 12 and cannot exceed \$5,000,000.

### 2.2.3 Attachments

Please label attachments as follows: “[Applicant Name]\_[Project]\_[Attachment Letter]” If it is necessary to submit multiple attachments under one attachment letter category, label the attachments to identify the separate attachments. Ex. “[Applicant Name]\_[Project]\_[Attachment Letter]\_1”, “[Applicant Name]\_[Project]\_[Attachment Letter]\_2”, etc.

1. A shapefile polygon (.shp) reflecting the project area must be included. (Attachment Letter: A).
2. A point shapefile or an alternative format which identifies serviceable locations in the project area should also be included. (Attachment Letter: B).
3. Applicants that answered “Yes” to section I; field 15 should attach documentation that 100/100 Mbps speeds are currently delivered to customers in other areas served by the applicant and that those speeds are advertised. (Attachment Letter: C).
4. Applicants that answered “Noncontiguous” in section II; field 11, should provide a statement explaining the reasoning for including noncontiguous areas. This should include an explanation regarding what natural connection the noncontiguous project areas have to each other. (Attachment Letter: D).
5. Technical capability statement: Applicants/Service Providers must include a statement relating to their experience providing broadband, whether they currently provide broadband at the minimum 100/100 Mbps speeds, and how the project will be resilient and sustainable in the long-term. This statement should also include the number of technical staff that will be dedicated to serving the project area once the project is complete, a description of how the service area will be maintained throughout the useful life of the facilities, and any other relevant technical expertise of the applicant. (Attachment Letter: E).
6. Rate comparability details: Attach information demonstrating that the retail rates for the proposed service area are comparable. Plans with usage caps, early termination fees, or that otherwise lock customers into a particular plan or term will be disallowed. For carriers currently providing 100/100 Mbps service in Nebraska, documentation of that carrier’s rate for that service speed in Nebraska must be submitted. If the carrier offers that speed at more than one rate in different areas of Nebraska, the carrier must submit documentation for each rate at

which it offers that speed of service, and the rate offered in the project area must be no higher than ten percent greater than the lowest rate offered by that carrier elsewhere in Nebraska. Applicants that do not currently offer 100/100 Mbps speed tier in Nebraska should provide documentation showing the rates offered by three other providers in Nebraska for service speeds of at least 100/100 Mbps; the retail rate offered in the proposed service area must be no higher than ten percent greater than the average rate of the three submitted providers.

(Attachment Letter: F).

7. A business plan for the proposed network that includes details of the project including a description of any legal challenges that must be addressed prior to or during the project in question, such as local zoning, right of way, and permitting processes, and demonstrates capability to maintain the network over the long run. The plan should also include a financial analysis for the project, including a description of how project costs and expected revenue will result in financial viability of the project over the expected useful life of the facilities. (Attachment Letter: G).
8. A funding breakdown for the grant must be attached. This should include a proposed budget reflecting a clear and detailed breakdown of cost elements based on total allowable project costs. This should also include the total grant amount requested (up to 50% of estimated eligible costs, but not greater than \$5,000,000). (Attachment Letter: H).
9. Non-ETC applicants must attach the most current year's audited financial statements. (Attachment Letter: I).
10. If the project includes underserved customers, a digital inclusion plan must be attached for consideration. The plan must describe the carrier's efforts to ensure members of the community to be served will be able to afford the services offered, and must describe any discounts and/or support programs to be offered for low-income individuals. The plan should not impose data caps on consumer usage and should specify how the project will impact access to and use of information and communication technologies within the communities it serves, including individuals and communities that are the most disadvantaged. (Attachment Letter: J).
11. Applications proposing to use technology other than fiber, or proposing to use a combination of fiber and other technologies, must include an attestation from a qualified engineer describing the speed capabilities of the proposed technology, including but not limited to the maximum speeds possible through use of that technology. The attestation should also include an explanation as to whether the technology will be affected by outside factors such as inclement weather, and the results of speed tests performed at customer premises using the same technology during peak usage hours. (Attachment Letter: K).
12. Match source documentation: A table detailing the confirmed matching fund commitments by source must be included. Documentation of the match source(s) should also be provided. This could include but is not limited to a signed contribution certification for community partner match, NUSF census block information (in Excel format), documentation regarding timeline for RDOF deployment, justification for the value of any in-kind contributions such as equipment and inventory on hand. (Attachment Letter: L).
13. Other supporting documentation (if applicable), such as supplemental speed test data, letters of support from members of the community, supplemental financial information such as the most recent year's federal tax return, etc. (Attachment Letter: M).

### 2.3 Submitting an Application:

Completed applications and all required supporting documentation must be received electronically via e-mail to the Commission at [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov) by the end of business on October 1, 2021. The application form should be submitted in .pdf format using the provided application form, the polygon shapefile should be submitted in .shp format

and the funding breakdown should be submitted in Excel format. If all documents can NOT be attached within a single e-mail due to size limitations, the submission may be sent in more than one e-mail. If it is necessary to submit in separate transmissions, the subject of the e-mails should clearly indicate the applicant and project name, and how many e-mails are being sent (e.g. Email 1 of 4, etc.). Files should be attached to the e-mails; links to websites are not acceptable. Alternatively, you may utilize programs such as zip files, Dropbox, Sharefile, provided that they contain individual files. Each attachment should be clearly labeled to indicate the contents (Refer to [2.2.3 Attachments](#) for details). Late filed or incomplete applications will not be considered.

### 3 Challenge Process

#### 3.1 Notice of Intent to Challenge – Due October 13, 2021

The intent of the “Notice of Intent to Challenge” process is to encourage parties to resolve differences, such as overlapping project areas, informally prior to the formal Challenge process. Challengers are required to submit a notice of intent to challenge no later than five days following publication of the application(s) to the Commission website. The Notice of Intent to Challenge must be provided both to the NBBP applicant against which the challenge shall be brought and to the Nebraska Public Service Commission. For fiscal year 2021-2022, the last allowable date to provide the notice of intent to challenge will be October 13, 2021. Please refer to the template “Notice of Intent to Challenge” on our website.

#### 3.2 Detailed Challenges - Due November 5, 2021.

A challenging provider may, within thirty days after the publication notice on the Commission’s website, submit to the Commission, on forms provided by the Commission, a challenge to an application containing information demonstrating that at the time of submitting the challenge:

- (a) the provider provides or has begun construction to provide a broadband network in the proposed project area with access to the Internet at speeds equal to or greater than 100/20 Mbps, or
- (b) the provider provides broadband service through a broadband network in or proximate to the proposed project area and the provider commits to complete construction of broadband infrastructure and provide a broadband network to the proposed project area with access to Internet at speeds equal to or greater than 100/20 Mbps within 18 months after the date grant awards are made.

**Required information for Challenge:** The following must be submitted as part of a challenge:

- If the challenging provider is currently providing service,
  - o A customer list of individuals subscribing to service located within the project area;
  - o Evidence that the required service levels are being met at the customer premise;
  - o Evidence demonstrating that the speed thresholds (100/20 Mbps) can be met, and are being advertised to customers;
  - o Evidence demonstrating that the requisite information is part of their most recent FCC Form 477 filing, or attest that it will be part of the earliest subsequent filing;
  - o A disclosure of any locations in the proposed project area that are not capable of receiving service at 100/20 Mbps and, if less than 100/20 Mbps, what speeds are available; and
  - o A plant map showing existing facilities in relation to the proposed project area, including a description of the type of facilities (Copper, fiber, etc.)
- If the challenging provider is currently constructing broadband infrastructure in the project area, or is proximate to the project area and anticipates completion of broadband infrastructure within the project area within eighteen months,

- A description of the project underway, including a timeline for what has been completed to date, and the timeline for completion;
- A description which includes the identification of any 3<sup>rd</sup> party contractors, and evidence of costs incurred and/or work being initiated, including invoices or copies of purchase orders, local permits applied for and received, and locate request tickets;
- A construction map showing facilities to be deployed in the project area; and
- A construction timeline that indicates completion within the 18-month timetable.

**Applicant notification of challenge:** The Commission must notify applicant of a filed challenge within three days of filing.

**Applicant response to challenge:** The applicant has 10 business days following the notification of the challenge to provide any supplemental information and/or response to the challenge.

**Challenge Consideration:** The Commission will evaluate all available information and shall not award a grant if the information submitted in support of the challenge is found to be credible and if the provider submitting the challenge agrees to provide documentation within 18 months that they have fulfilled the commitment.

**Post Challenge Requirements:** With respect to challenges based on anticipated completion of broadband infrastructure within the project area within eighteen months, successful challengers must submit quarterly reports documenting what steps were taken towards providing broadband service in the challenged area.

### 3.3 [Deadline for applicants to supplement or modify challenged applications.](#)

The deadline to supplement or modify challenged applications and/or cure application defects is November 24, 2021.

### 3.4 [Publishing of Challenge Results:](#)

The final challenge results will be released on January 4, 2022. The results will be posted on the Commission website.

## 4 [Selection Criteria](#)

The Act specifies certain priorities that the Commission must consider when selecting grant recipients. The Commission intends to evaluate applications to ensure statutory requirements are met and to award grants to the projects that provide the highest return in public benefit for the public costs incurred. The NBBP applications will be reviewed by a team composed of Commission staff who will use the following criteria to prioritize, score, and award grants:

### 4.1 [Grant Prioritization Tiers](#)

Grant applications will first be sorted into prioritization tiers. Those tiers are defined as follows:

**Priority Tier 1** - An unserved area is an area of Nebraska in which locations lack access to broadband Internet service at speeds of at least twenty-five megabits per second for downloading and three megabits per second for uploading (25Mbps/3Mbps), and has not received public assistance for development of a broadband network;

**Priority Tier 2** - An unserved area is an area of Nebraska in which locations lack access to broadband Internet service at speeds of at least twenty-five megabits per second for downloading and three megabits per second for uploading (25Mbps/3Mbps), and has received federal support for development of a broadband network but construction will not be completed within twenty-four months after the grant application deadline if its determined that NBBP grant funding will accelerate deployment of the broadband network; and

**Priority Tier 3** - An underserved area is an area of Nebraska in which locations lack access to broadband Internet service at speeds of at least one-hundred megabits per second for downloading and twenty megabits per second for uploading (100Mbps/20Mbps). Projects involving underserved areas must also have a digital inclusion plan that demonstrates access to and use of information and communication technologies by all individuals and communities in the project area, including the most disadvantaged individuals and communities.

NOTE: Projects that include a mix of both unserved and underserved project areas will be considered in priority tier 3. For projects in priority tier 3, a digital inclusion plan reflecting no data caps is required to be included for any underserved areas.

## 4.2 Application Scoring/Weighing Criteria

Once applications are sorted into the three prioritization tiers, applications will be further reviewed and scored. Applications are eligible for a maximum 105 scoring points. The following criteria and associated point values will be used to score and award grants.

1. **Financial Capability Demonstrated** – Yes or No, and up to 10 points:
  - a. If the answer to either of the following questions is “Yes,” the application passes to the next scoring criteria. If the answer to both of the following questions is “No,” the application will not be considered.
    - i. Is applicant/carrier partner a certificated carrier or ETC that has demonstrated overall financial viability based on financial statements recently submitted to the Commission?
    - ii. Is the applicant/carrier partner a non-ETC that has submitted audited financial statements that demonstrate overall financial viability?
  - b. **Financial Capability Points:** Has the applicant included a business plan that provides details for the long-term maintenance of the network built through the grant as required? Long-term viability of the project is a priority, and 10 scoring points will be available if a business plan is included that provides details about how the proposed network will be maintained over the expected useful life of the facilities.
2. **Legal Capability Demonstrated** – Yes or No, and up to 10 points:

Has the applicant included contact information for their legal representation? Applicants are required to include contact information for their legal representation. Omission of this information will disqualify the applicant from grant consideration. If legal contact information is included, the application passes to the next scoring criteria. If not, the application will not be considered.

  - a. **Legal Capability Points:** 10 points will be awarded as a default for applicants that provide contact information for their legal representation. Point deductions will be applied as follows (remove 2 points for each as applicable):
    - i. Applicant had late-filed annual reports,
    - ii. Applicant has late-filed NUSF remittances,
    - iii. Applicant fails to identify legal challenges that must be addressed prior to or during the project in question, such as local zoning, right of way, and permitting processes.
3. **Technical Capability Demonstrated** – Yes or No, and up to 20 points  

Has the applicant included information with their application demonstrating technical capability to deploy and operate broadband Internet service at speeds of at least 100/100 Mbps? If “Yes,” the application passes to the next scoring criteria. If “No,” the application will not be considered.

  - a. **Technical Capability Points:** Up to 20 points will be awarded as follows:
    - i. FCC Form 477: Does the most recently available FCC Form 477 data show that the applicant/carrier partner offers 100/100 Mbps service anywhere else in Nebraska. If yes, 10 points will be awarded. If no, 0 points will be awarded.
    - ii. Website Offerings: Does the applicant/carrier partner's public-facing website clearly state that they offer services that are at least 100/100 Mbps? If yes, 10 points will be awarded. If no, 0 points will be awarded.
4. **Rate Comparability** – Up to 10 points will be awarded as follows:
  - a. Are the rates included in the application comparable to what they offer elsewhere in Nebraska? If yes, 10 points will be awarded. If no, 0 points will be awarded.



b. Plans with usage caps, early termination fees, or that otherwise lock customers into a particular plan or term will be disallowed.

5. **Speed Additive** – Up to 10 points will be awarded as follows:

Does the application detail additional service offerings that will be available to customers that exceed the 100/100 Mbps minimum? Additional points will be awarded if the applicant/carrier includes evidence that they plan to offer speeds in excess of the 100/100 Mbps minimum. These additional speed tiers must be available to customers at the time of application, and offerings must meet both the upload and download speed minimums to be awarded points. Points will be awarded as follows:

Speeds (Mbps)	Points
100/100	0 Points
500/500	5 Points
1,000/1,000	10 points

6. **Match Source** – Up to 10 points will be awarded as follows:

Sources of match that are outside of existing federal or state broadband programs will be given additional points, as outlined here:

a. NUSF High Cost – 0 points

- i. NUSF ongoing support is not an eligible match source.
- ii. NUSF-99 BDS funds cannot be used as a match source for areas receiving support for fiber builds supported through use of NUSF-99 BDS.
- iii. NUSF-108 BDS funds cannot be used as a match source for projects that have already been noticed and/or are underway through use of NUSF-108 BDS.
- iv. NUSF-108 BDS funds can only be used as a match source for new NUSF project areas if the applicant attests that funds available through NUSF-108 BDS are not enough to build out the entire area.
- v. When NUSF is used as a match source, the combined match sources (NUSF BDS, NBBP grant support, and other match sources) should not exceed the sum of NUSF BDS-MARA for the census blocks in the project area.
- vi. If using NUSF as a match source, a list of census blocks for the NUSF project area must be included with the application in addition to the polygon shapefile and location information required by the NBBP.
- vii. Subsequent reimbursement requests for NUSF and/or NBBP support will be required to provide an explanation regarding the cost allocation methodology. Reimbursement requests for NUSF and NBBP will be reviewed for reasonable cost allocation. If support is received through NBBP, the census blocks in which NUSF BDS support was used as a match would be removed from modeled support in subsequent funding years.

b. Federal Broadband Funds match – 5 points

- i. Certain federal broadband funds may be allowed as a match source for NBBP grants. Exceptions to the allowable match source for this category include:
  1. Areas that were awarded bids in the Rural Digital Opportunity Fund (RDOF) may be considered a valid match source if the applicant can demonstrate that the RDOF awardee will not provide service within 2 years and/or if the application was not challenged.
  2. Areas supported through the USDA ReConnect program would not be considered a match.
  3. Census blocks with locations fully funded through A-CAM would not be considered a match since the funding model is based on a fiber to the home architecture.

- c. Applicant and/or carrier outside funds – 10 points
    - i. A demonstrated financial commitment from the applicant and/or carrier partner are permissible for consideration of points under this category.
    - ii. Tangible in-kind contributions, such as equipment and inventory on hand can be allowed as a match if justification is provided such as receipts or invoices showing the value of the asset at the time of acquisition. Other in-kind contributions including but not limited to labor, right of way access, savings as a result of partnerships, are not considered an acceptable match source.
    - iii. A verified match commitment from a community partner would be scored as part of an applicant and/or carrier match. However, a Contribution Certification Form **must** be attached to the application for the community partner match amount to be considered.
  - d. NOTE: If the application involves a combination of match sources, the project would be considered under the lower point category.
7. **Match Percentage** – Up to 30 points will be awarded as follows:
- a. If the applicant has sources of funds that make up more than the 50% requirement, one point will be awarded for each additional percentage point above 50%, up to a maximum of 30 points (80%).
8. **ETC Certification** – Up to 5 points will be awarded as follows:
- a. If the applicant is currently certified as a Nebraska Eligible Telecommunication Carrier (NETC) and in good standing at the time of application, 5 points will be awarded.
  - b. If the applicant has filed an application for NETC certification with the Commission prior to or at the time of application, 3 points will be awarded.
  - c. If the applicant plans to file for NETC Certification within 30 days of the application deadline, 1 point will be awarded.
  - d. If the applicant does not fall under an NETC certification category as listed above, 0 points will be awarded.

#### 4.3 Grant Award Notification

For fiscal year 2021-2022, the final notification of grant awards will be sent in early January 2022.

## 5 Distribution of Support Details

The NBBP grant funds awarded will be distributed to individual grantees as follows:

- 1/4 of the funds awarded will be distributed upon award of the grant,
- 1/4 of the funds awarded will be distributed in the ninth month following the grant award,
- 1/2 of the funds awarded will be distributed upon completion of the project, successful speed testing results, and receipt of invoice submittals to justify eligible expenses.

NOTE: Successful applicants will need to submit required documentation for receipt of ACH payments from the State of Nebraska immediately upon the award of a grant in order to ensure that the first payment is not delayed. Additional instructions will be provided when grant award notices are sent.

## 6 Post-Deployment Speed Testing

Following deployment of the completed network as outlined in the application, applicants will be required to submit speed test information to the Commission.

The speed tests should reflect actual download and upload speeds that are experienced by users, using a random sample of locations of subscribing consumers. The tests should occur during peak times of usage. A minimum of one test per hour should be conducted during the test window, with one week of testing for each project. The number of locations required to be tested will depend upon the number of locations within the project area, as outlined below:

Number of locations in application	Number of test locations
50 or fewer	5
51-500	10% of the total number of locations
Over 500	50

To the extent possible, grant recipients serving more than 500 locations in a project area should attempt to test at least 10% of served locations. Locations to be tested must be selected at random, and tests must be performed during times of peak usage.

## 7 Post-Award Repayment

LB 388 requires a grant recipient to repay the grant in certain situations. First, if a grant recipient fails to complete the project by the agreed upon or extended deadline (if requested and granted), the recipient shall repay the grant as provided in Section 4(2)(b). If no extension is permitted, ten percent of the grant shall be repaid for each month that the project is not complete after the eighteen-month period, up to 100 percent of the grant. If an extension is permitted, 20 percent of the grant shall be repaid for each month that the project is not complete after the 24-month period up to 100 percent of the grant. Additionally, pursuant to Section 4(3)(b), if the broadband network does not provider services at the speeds required, the grant recipient shall be allowed a reasonable time to address the speed deficiencies and conduct a second set of speed tests. If the network does not provide service at the speeds required pursuant to the second set of speed tests, the grant recipient shall repay the grant.

In instances where a grant recipient is required to repay grant award funds as required by the Act, the Commission will issue a Notice and Demand for Payment to the grant recipient. The grant recipient would then be provided an opportunity to respond to the Notice, and, if contested, would be afforded a hearing on the matter subject to the Commission’s Rules of Procedure for contested case proceedings.

## 8 Contact Information

For more information including the application and template forms, consult our website at [www.psc.nebraska.gov](http://www.psc.nebraska.gov), under Telecom/NUSF > Telecommunications > Nebraska Broadband Bridge Program. Or, contact the Commission staff via e-mail at [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov).

ATTACHMENT B – Scoring and Weighting Sheet

<b>Criteria</b>	<b>Points Available</b>	<b>Y/N</b>	<b>Points</b>	<b>Reference Sheet Lookup</b>
Financial Capability	N/A		N/A	A
Financial Capability - Points	10			
Legal Capability	N/A		N/A	B
Legal Capability - Points	10			
Technical Capability	N/A		N/A	C
FCC Form 477	0-10			
Website Offerings	0-10			
Rate Comparability	0-10			D
Speed Additive	0-10			E
Match Source	0-10			F
Match Percentage	0-30			G
ETC Certification	0-5			H
<b>TOTAL</b>	<b>105</b>		0	

## Reference Sheet – Scoring Criteria

### **A – Financial Capability – (Yes/No), and up to 10 points**

- In order to be considered for grant support, non-ETC applicants must submit audited financial statements that demonstrate overall financial viability. ETC and carriers certificated in Nebraska already do this on an annual basis. This item will be scored as a Yes/No, where the lack of required financial information demonstrating financial capability (No) would disqualify the applicant from receiving a grant.
- Long-term viability of the project is a priority, and up to 10 scoring points will be available if a business plan is included that provides details about how the proposed network will be maintained over the expected useful life of the facilities.

### **B – Legal Capability – (Yes/No), and up to 10 points**

- Applicants are required to include contact information for their legal representation. Omission of this information will disqualify the applicant from grant consideration.
- If this information is included, applicant will be awarded up to 10 points, but deductions will be made if: applicant/carrier partner has late filed annual reports (2 points), applicant/carrier partner has late-filed NUSF remittances (2 points), applicant fails to identify legal challenges that are anticipated, such as local zoning, permitting, access to rights-of-way, etc. (2 points).

### **C – Technical Capability – (Yes/No), and up to 20 points**

- Applicants are required to include information with their application that demonstrates their technical ability to deploy and operate broadband Internet service at speeds of at least 100/100 Mbps. This item will be scored as a Yes/No, where the lack of required information demonstrating technical capability (No) would disqualify the applicant from receiving a grant.
- FCC Form 477 – Does the most recent publicly-available FCC Form 477 data demonstrate that the applicant offers 100/100 Mbps (or greater) service in Nebraska? If Yes, 10 points will be awarded. If no, 0 points will be awarded.
- Website Offerings – Does the applicant’s (or carrier partner’s) public-facing website clearly state that they offer services that meet the 100/100 Mbps or greater speed minimum? If yes, 10 points will be awarded. If no, 0 points will be awarded.

### **D – Rate Comparability – 10 points available**

- Are the rates planned to be offered by the applicant/carrier partner comparable (i.e. equivalent) to what they offer elsewhere in Nebraska? If yes, 10 points will be awarded. If no, 0 points will be awarded.
- Plans with usage caps, early termination fees, or that otherwise lock customers into a particular plan or term will be disallowed.

**E – Speed Additive – Up to 10 points available**

- Additional points will be awarded if applicant/carrier partner includes evidence that they plan to offer speeds in excess of the 100/100 Mbps minimum. These additional speed tiers must be available to customers at the time of application, and offerings have to meet both the upload and download speed minimums to be awarded points. Points will be awarded as follows:
  - o 100/100 Mbps only – 0 points
  - o 500/500 Mbps – 5 points
  - o 1 Gbps/1Gbps – 10 points

**F – Match Source – Up to 10 points available**

- Sources of match that are outside of existing federal or state broadband programs will be given additional points, as outlined here:
  - o NUSF High Cost – 0 points
  - o Federal Broadband Funds match – 5 points
  - o Applicant and/or carrier outside funds – 10 points

**G – Match Percentage – Up to 30 points available**

- a. Additional weight will be given to applications that make up more than the 50% requirement for matching funds. If the applicant has sources of funds that make up more than the 50% requirement, one point will be awarded for each additional percentage point above 50%, up to a maximum of 30 points (80%).

**H – ETC Certification – Up to 5 points available**

- If the applicant/carrier partner is an ETC at the time of application, 5 points will be awarded.
- If an ETC application is pending, 3 points will be awarded.
- If the applicant/carrier partner plans to file for ETC Certification within 30 days of the application deadline, 1 point will be awarded.
- If the applicant does not fall under an ETC certification category as listed above, 0 points will be awarded.