

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. C-5368
Public Service Commission, on)	
its own motion, to administer)	ORDER ISSUING 2022 GRANT
the Nebraska Broadband Bridge)	APPLICATION SCHEDULE AND
Program in the 2022 program)	APPLICATION MATERIALS
year.)	
)	Entered: May 10, 2022

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") initiated this proceeding on February 1, 2022 in order to administer the 2022 program year of the Nebraska Broadband Bridge Program ("NBBP"). In the order opening this docket,¹ 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 March 1, 2022. The Commission received comments from ALLO Communications LLC ("Allo"); Cox Nebraska Telcom, LLC ("Cox"); the Nebraska Public Power District ("NPPD"); the Nebraska Rural Broadband Alliance ("NRBA"); the Nebraska Rural Independent Companies ("RIC"); the Rural Telecommunications Coalition of Nebraska ("RTCN"); NE Colorado Cellular, Inc., dba Viaero Wireless ("Viaero"); and Windstream Nebraska, Inc. ("Windstream").

H E A R I N G

A hearing in this matter was held on March 22, 2022. Sallie Dietrich appeared on behalf of the Telecommunications and NUSF Department of the Commission. Paul Schudel appeared on behalf of the Rural Independent Companies ("RIC"). Andy Pollock appeared on behalf of the Nebraska Rural Broadband Association ("NRBA"). Russ Westerhold appeared on behalf of the Rural Telecommunications Coalition of Nebraska ("RTCN"), the Nebraska Pork Producers Association, and the Nebraska Soybean Association. Deonne Bruning appeared on behalf of Cox Telecom.

Exhibits 1 through 17 were offered and accepted, including each of the above-described comments submitted in this matter.

¹ Commission Docket No. C-5368, *In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the Nebraska Broadband Bridge Program in the 2022 program year, Order Opening Docket and Seeking Comment, and Setting Hearing (Feb. 1, 2022) ("Feb. 1 Order")*.

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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) Tim Goodwin, Vice President of Regulatory Affairs, on behalf of Charter Communications
- 3) John Idoux, Director on Public Policy and Governmental Affairs, on behalf of CenturyLink
- 4) Patrick Pope, Special Assistant to the Vice President of Strategy and Innovation, on behalf of Nebraska Public Power District
- 5) David Young, Partner, Universal Broadband Consulting, on behalf of Nebraska Public Power District
- 6) Brent Comstock, on behalf of BCom Solutions, LLC
- 7) Kyle Arganbright, member of the public
- 8) Tom Shoemaker, President, on behalf of Pinpoint Communications
- 9) Carol Lemke, Controller, on behalf of Glenwood Telecommunications, Inc.
- 10) Andrew Pollock, on behalf of the Nebraska Rural Broadband Alliance
- 11) William King, on behalf of Media King Communications
- 12) Dan Davis, Consortia Consulting, on behalf of the Rural Independent Companies
- 13) Lash Chaffin, on behalf of the League of Nebraska Municipalities ("League")

Following the close of witness testimony, no further evidence was offered. The hearing was adjourned.

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

The Commission appreciates the robust discussion and input offered by the participants in this docket to date. After consideration of submitted comments and testimony, the Commission finds that the following adjustments to the Nebraska Broadband Bridge Program for the 2022 calendar year should be made.

1) Program Overview

At hearing, Mr. Robbins stated that the Department recommends that applicants be required to submit both a point shapefile and a polygon shapefile with their application.² Some commenters suggested certain changes to the program structure. RIC suggested that waivers of NBBP deadlines should be available for good cause.³

Upon review, the Commission finds that strict adherence to the procedural schedule in this docket should be required. The procedural schedule is attached to this Order as Attachment A. In order to ensure that grants are issued in a timely fashion, and to promote fairness between applicants, applicants and challengers will be required to adhere to the deadlines listed in Attachment A. To the extent that parties may supplement or clarify submitted information after the relevant deadline, such materials may be considered, at the discretion of the Commission, but will not receive points in the application scoring system. The Commission reiterates that it is the responsibility of the participant to correct any errors prior to the deadline listed. The Commission encourages participants to file all information as early as possible in case of any defects or missing information.

Pursuant to LB 1144 (2022), the Commission may allow extensions of project completion deadlines upon request and for good cause shown.⁴ The Commission emphasizes that a request for extension must be filed prior to the deadline.

2) Adjustments to Scoring System

The Commission received several new suggestions regarding the scoring system. NPPD suggested that additional weight should be given to projects outside city limits.⁵ The NRBA recommended the Commission award additional points to applicants demonstrating a commitment to serve high-cost areas outside of cities and villages.⁶ Windstream suggested that the average cost per household should be considered and scored, as well as the post-build speeds of the proposed project.⁷ Additionally, some discussion was held

² Transcript at 15.

³ Ex. 10 at 2.

⁴ LB 1144 (2022), at 9.

⁵ Ex. 8 at 5.

⁶ Ex. 9 at 1-2.

⁷ Ex. 13 at 2.

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at hearing as to whether the scoring of applications should be made public.⁸

Upon review, the Commission finds that certain modifications to the scoring system should be adopted. Changes are set forth in Attachment C, the 2022 NBBP scoring sheet, and Attachment D, the 2022 NBBP Program Guide. The scores received by applications will be released on the Commission website within two (2) business days of the release of awards and the results of challenges.

a) Financial Capability

At hearing, Mr. Robbins testified that while the Department originally recommended that applicants be required to submit documentation showing that a project would result in positive cash flow, some projects may be difficult to build a business case to serve.⁹ Mr. Robbins suggested that for projects not reflecting a positive cash flow, a written explanation as to how a project will be maintained for the long term would be required.¹⁰ Mr. Robbins also emphasized that the financial viability of a project would not be the sole consideration in this category, but an additional consideration along with a company's financial health.¹¹

Several participants objected to the proposal to require a positive cash flow. RIC recommended that scoring of financial capability should focus on the applicant's ongoing financial capability rather than on positive cash flow from the proposed project.¹² The RTCN questioned the necessity of this showing given the statutory requirement for grant recipients to provide broadband in the project area until released by the Commission.¹³ Viaero suggested that companies that have filed bankruptcy within the past ten years should receive a deduction.¹⁴ The NRBA suggested that an audited or reviewed balance sheet would be sufficient to

⁸ CITE

⁹ Transcript at 17.

¹⁰ *Id.*

¹¹ *Id.* at 24.

¹² *Id.* at 259.

¹³ Ex. 11 at 2.

¹⁴ Ex. 12 at 1-2. The Commission finds that this approach is not viable. See *In the Matter of Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126, et al., Report and Order, 35 FCC Rcd 686, 721, para. 77, n. 212 (February 7, 2020) ("RDOF Order") (citing 11 U.S.C. § 525 (a), which prohibits government actions that discriminate against a party on the basis that (a) the party filed for bankruptcy protection or (b) such party failed to pay a debt that is dischargeable in bankruptcy).

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demonstrate the applicant has the financial strength to ensure the long-term viability of the project.¹⁵

Upon review, the Commission finds that the audited financial statements required to be filed by applicants are the primary component to be reviewed in this category. A showing of positive cash flow should not be a requirement for a project to be approved. However, the Commission does wish to ensure that applicants have considered the long-term viability and ability to maintain a project throughout the life of the network. NBBP funds should not be disseminated to projects that will not be maintained in the long term. Therefore, applicants will be required to submit cash flow projections for a period of five years following completion of the project. Applicants whose projects do not reflect a positive cash flow at the end of five years must also submit a written explanation as to how the project will be maintained over the life of the facilities.

b) Technical Capability

In its Feb. 1 Order, the Commission proposed that for the 2022 program year, applicants must identify the expected useful life of the facilities proposed to be built with NBBP funding.

Several commenters supported the Commission proposal.¹⁶ Some suggested other considerations, including a delineation between long-term assets, such as fiber, and shorter-term assets, such as electronics.¹⁷ The NRBA also suggested that the points available for technical capability be increased, a proposal which RIC opposed.¹⁸

Upon review, the Commission finds that the Department's proposal should be adopted, in part. The Commission finds that it is appropriate to require applicants to identify the expected useful life of the facilities to be built. Such description should include a statement as to the technological components used, and, if applicable, which components may require more frequent repair or replacement. Finally, the Commission finds that the weighting of an applicant's website offerings should be reduced from 10 points to 5 points.

¹⁵ Ex. 9 at 2.

¹⁶ Transcript at 173-174 (Pinpoint supporting deductions); Ex. 6 at 3.

¹⁷ Ex. 9 at 2; see also Ex. 11 at 2 (RTCN supporting additional points for fiber-based projects).

¹⁸ Ex. 9 at 2-3; Transcript at 260 (RIC noting that the NRBA proposal would significantly increase the weight given to technical capability).

c) Legal Capability

In its Feb. 1 Order, the Commission proposed requiring that the listed legal contact for an applicant be an attorney licensed to practice in Nebraska. The Commission also proposed to allow for deductions in this section for applicants who have been the listed respondent in complaints filed by any department of the Commission within the five years preceding the filing date of the application. Comments of this proposal were generally supportive.¹⁹ Some commenters requested that the Commission issue objective guidelines or criteria for deductions.²⁰ Windstream suggested that deductions for past performance be limited to projects of the same type.²¹ CenturyLink noted that these deductions may disfavor companies already providing service in Nebraska.²²

At hearing, Mr. Robbins testified that deductions in this category would include late-filed annual reports or remittances for the five years preceding an application.²³ Mr. Robbins clarified that cable cuts or outages caused by natural disasters would not be cause for deductions in this category.²⁴

Upon review of this proposal, the Commission finds that it is reasonable, with modification. Companies must list on their applications an attorney licensed to practice in Nebraska and in good standing, or, in the alternative, an attorney admitted to practice pro hac vice for purposes of this docket. Deductions will be issued to applicants with a history of late compliance or remittance filings within the five years preceding the filing date of the application.

3) Tiebreaker

At hearing, Mr. Robbins testified that the Department recommends a multi-factor approach to a tiebreaker, in the event that two applications score the same and both cannot be funded. Mr. Robbins recommended that the first consideration for a tiebreaker should be the amount of funding requested, where the lower amount would be given preference, and the second

¹⁹ See, e.g., Ex. 9; Ex. 11; Ex. 13.

²⁰ Ex. 10 at 4-5; Ex. 13 at 3.

²¹ Ex. 13 at 3.

²² Transcript at 98-99.

²³ Transcript at 18.

²⁴ *Id.* at 24-25.

consideration should be the match percentage provided by the applicants.²⁵

Other commenters suggested different approaches. Allo proposed that the project serving the most locations per dollar of grant funding should be given preference.²⁶ RIC suggested that if a tiebreaker is needed, the Commission should approve the application that is based upon the highest matching funds percentage.²⁷ Windstream suggested that consideration should be given to the total number of unserved and underserved locations to be served by each application.²⁸

Upon review, the Commission finds that if a tiebreaker is needed between applications, preference should be given to the application demonstrating the lower cost to build per location, based upon NBBP grant dollars requested.

4) Challenge Process

a) Geographic Area Identification and Speed Testing Requirements

At hearing, Mr. Robbins testified that the Department's recommendation is that challengers who are already serving customers in their area (also referred to as "Type 1" challengers) should be required to submit detailed location data, speed test data, and polygon shapefiles showing the exact area of the challenge.²⁹ Additionally, LB 1144 requires the submission of speed test data from challengers.³⁰

Comments regarding geographic area identification were generally supportive. However, the speed testing portion of the proposal generated substantial discussion. Commenters were generally in agreement that additional speed testing is needed in the NBBP.³¹ Several commenters proposed changes to the Commission's approach to speed test data. Cox and CenturyLink expressed concern that the proposed number of locations required to be speed tested

²⁵ Transcript at 18.

²⁶ Ex. 6 at 3.

²⁷ Transcript at 260-261; Ex. 10 at 5.

²⁸ Ex. 13 at 3.

²⁹ Transcript at 16.

³⁰ LB 1144 at 12-13.

³¹ See, e.g., Ex. 6 at 2 (Allo suggesting that not all Type 1 challenges upheld are serving project areas at 100/20 speeds); Ex. 8 at 2-3 (NPPD advocating for standardized speed tests to be required in order to determine if areas are unserved or underserved).

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would be too high and burdensome to providers.³² Additionally, CenturyLink opposed the Commission's proposal to require speed test data to be submitted with a challenge, stating that the 30-day timeframe set forth in statute would be too short.³³ RIC recommended that the Commission allow providers to rely on the existing testing platforms and vendors used to comply with the FCC's Performance Measurements Requirement.³⁴ Viaero proposed that evidence of network equipment could supplant on site speed testing.³⁵ Pinpoint suggested that both the applicant and the challenger should be required to provide the same information, and that that speed tests should be measured at the subscribed level as well as the capability level.³⁶ Glenwood strongly supported a requirement that the challenge process include viable and credible data, including plant records and/or speed tests as deemed necessary.³⁷ Media King Communications requested that the Commission consider input from customers as to actual speeds received.³⁸

The Commission finds that its proposal regarding geographic area identification is appropriate and should be adopted. Specific requirements will be listed in the 2022 Program Guide, attached hereto as Attachment D. Additionally, the Commission finds that challengers who claim that they are serving locations in the proposed project area (also known as "Type 1" challengers) should be required to submit speed test data supporting the challenge. The Commission hereby finds that to the fullest extent possible, speed test data submitted in the 2022 NBBP program year should follow the Performance Measures Testing standards set by the FCC with regard to its High Cost Universal Broadband ("HUBB") portal.³⁹

In submitting a Type 1 challenge, challengers should submit at least one week of speed and latency testing data, performed on active subscribers' locations. The active subscribers must be located within the challenged area. Testing should be performed

³² Ex. 7 at 7; Transcript at 94.

³³ Transcript at 88-89. Windstream also opposed the imposition of a speed testing requirement, citing concerns that it could be burdensome. Ex. 13 at 5.

³⁴ Transcript at 262; Ex. 10 at 7.

³⁵ Ex. 12 at 3.

³⁶ Transcript at 176-177.

³⁷ Transcript at 193. Glenwood further spoke in favor of requiring providers to provide customer speed tests in the event the provider is not able to perform speed tests from the central office. *Id.* at 197.

³⁸ Transcript at 237-239.

³⁹ A description of the HUBB Performance Measures Testing can be found at <https://www.usac.org/high-cost/annual-requirements/performance-measures-testing/>.

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daily on an hourly basis between the hours of 9:00 a.m. - 9:00 p.m., on a number of locations as follows:

<u>Number of Subscribers in Area</u>	<u>Number of Test Locations</u>
50 or fewer	5
51-500	10% of total subscribers
Over 500	50

The testing must have been completed within six months of its submission to the Commission and must reflect that at least 80% of the speed measurements reflect speeds at 80% or more of the 100/20 Mbps standard. Challengers must demonstrate that the locations chosen to be tested were randomly selected.

b) Challenges to Portions of Applications and Modification of Applications

In its Feb. 1 Order, the Commission proposed that in the case of a challenge to part of an application ("partial challenge"), an applicant should be required to submit a modified application to the Commission that covers the same application area, with the challenged portions of the application removed. Reception to this proposal was generally negative. Several commenters objected to requiring an applicant to modify the application prior to a determination as to the credibility of a challenge being made.⁴⁰ This feedback is well taken.

The Commission hereby finds that an initial determination as to the credibility of a challenge will be made after a challenge is submitted. Applicants will be given an opportunity to respond to a challenge submitted, and may submit documentation supporting a position that a challenge is not credible to supplement the original application. Such documentation may include speed testing, which should show the location/address where the speed test was completed, as well as the speed tier to which the customer is subscribed.

In the instances where a partial challenge is found to be credible, applicants will be allowed an opportunity to resubmit their application with the successfully challenged portions

⁴⁰ See, e.g., Ex. 10 at 6 (RIC stating that this approach "seems to create a presumption of accuracy of the challenge that may be unwarranted").

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removed.⁴¹ If a modified application is not submitted, the application will not be funded. A modified application should reflect changes in buildout cost, locations served, and documentation as to any other items that would differ once the successfully challenged portion is excluded from the grant award. The modified application should use the same technologies as originally proposed, and should not extend beyond the original geographic boundaries of the application. Applicants may increase the amount they wish to contribute towards a proposed match percentage, but cannot increase the amount of grant support being requested.

c) Challenge Deadlines

LB 1144 allows the Commission to grant a provider up to ninety days to submit a challenge to an application, upon good cause shown. In comments and at hearing, some commenters indicated that the standard thirty-day timeframe for challenge submissions would not allow sufficient time to submit speed test data.⁴² However, if one challenger were granted an extension to ninety days, all applicants and challengers would be bound to that timeframe in order for the Commission to score all applications and issue available funding fairly.

In order to issue grant awards as quickly as possible, but also to allow all challengers time to perform necessary speed testing, the Commission hereby finds that a consistent procedural schedule should be maintained among all applications and challenges. The deadline for challenge submissions for all applicants shall therefore be 60 days following the application deadline. The procedural schedule has been modified accordingly and is attached to this order as Attachment A.

d) Post-Challenge Requirements

Pursuant to LB 1144 (2022), challengers who do not provide required service within eighteen months of a successful challenge will be subject to civil penalties. The Commission therefore finds that the post-challenge requirements for successful challengers set forth in the 2021-2022 NBBP program year will continue in the 2022 NBBP program year, with modification. Challengers who do not currently provide service in the project area will still be

⁴¹ The Commission emphasizes that applicants are in no way barred from seeking other funding sources to construct networks in portions of a project area that were successfully challenged.

⁴² Transcript at 94.

required to submit quarterly progress reports regarding their construction of service in the project area by the fifteenth day of the first month following each quarter, and will be required to submit documentation within eighteen months of the successful challenge demonstrating that the challenger has fulfilled its commitment to deploy broadband Internet service with access to the Internet at the stated speeds in the entire project area.

Challengers who do currently provide service in the project area, and whose challenge is upheld, will be required to submit an attestation that they will continue to provide 100/20 Mbps service in the entire challenged area. These challengers will also be required to notify Commission should the challenger's service offerings in the area change.

Additional information and challenge forms will be released on June 13, 2022, in conjunction with the opening of the 2022 NBBP application period.

5) Remaining Grant Funding; Additional Federal Funds

In its Feb. 1 Order, the Commission requested input as to how it should administer any funds remaining following the 2022 NBBP program year, as well as how to administer any federal funding allocated towards the NBBP. Upon further review, the Commission finds that a determination as to how to approach these circumstances is premature, and will address them if and when such funding becomes available.

6) Revisions to Applications

At hearing, Mr. Robbins noted that in the 2021 NBBP grant cycle, several applications submitted under priority tier 1 were reclassified to priority tier 3.⁴³ Mr. Robbins recommended that this process be formalized, with applications posted to the Commission website with their identified priority tier.⁴⁴ Mr. Robbins stated that if an application is reclassified, that information should be made publicly available.⁴⁵

In comments, Allo proposed that the Commission consider projects that serve more unserved locations than underserved locations as Priority Tier 1 projects, noting that many underserved locations are directly adjacent to unserved locations and would

⁴³ Transcript at 19.

⁴⁴ *Id.*

⁴⁵ *Id.*

benefit from updated technology.⁴⁶ Viaero commented that the revision process favored incumbents.⁴⁷ Windstream recommended the process be formalized.⁴⁸

Upon review, the Commission finds that the reclassification process should continue, and should be formalized. Applications may be reclassified if it is determined that speeds of 25/3 are available to any locations in the project area. Reclassification determinations will be made based upon the best available data, including, but not limited to, speed test information available to the Commission through public and non-public sources. Applicants will be given an opportunity to respond to the formal Notice of Intent to Reclassify and may supplement their applications with speed test data or other information. The results of reclassification will be made publicly available on the Commission website.

7) Overbuilding of Existing Networks

In its Feb. 1 Order, the Commission requested input as to whether overbuilding existing networks should be permitted in the NBBP, and if so, to what extent. Comments regarding this proposal were varied. Allo suggested that a project constructing fiber to the premises ("FTTP") in areas currently served by other technologies should not be considered overbuilding.⁴⁹ Cox suggested that any overbuilding supported by public funds should be limited to transit facilities only, rather than as last-mile facilities.⁵⁰

RIC noted that there may be circumstances where overbuilding may be appropriate, including in the situation in which a project to provide broadband service in unserved locations would include a small number of underserved locations.⁵¹ Mr. Arganbright stated that efficiencies can be found by negotiating one provider's exit at the same time as a new provider begins to serve an area.⁵² However, the NRBA testified in opposition to overbuilding, suggesting that incumbents should discuss the value of undepreciated assets with incoming providers.⁵³

⁴⁶ Ex. 6 at 5.

⁴⁷ Ex. 12 at 4.

⁴⁸ Ex. 13 at 7.

⁴⁹ Ex. 6 at 6.

⁵⁰ Ex. 7 at 4-5.

⁵¹ Transcript at 263.

⁵² Transcript at 163.

⁵³ Transcript at 212. The RTCN also commented in favor of a process by which carriers may purchase and transition assets. Ex. 11 at 4.

The Commission finds that no specific processes need to be implemented with regard to overbuilding at this time. Overbuilding will be effectively prevented through the speed testing and challenge process outlined in this order. The Commission reserves the right to revisit this topic at a future date.

8) Data Plans and Usage Caps

In the 2021 NBBP program year, data plans with usage caps or "throttling" mechanisms were disallowed. At hearing, Mr. Robbins testified that LB 1144 would require the Commission to consider such applications, and that these plans would be scored accordingly.⁵⁴

Comments on this proposal were mixed. Cox submitted comments suggesting that data plans with usage caps should not be disallowed, but plans without usage caps could receive additional points in scoring.⁵⁵ Tim Goodwin, testifying on behalf of Charter, suggested that data caps may actually benefit low usage customers, and opposed scoring that disfavors data caps.⁵⁶ RIC spoke against disallowing such plans, also stating that a consumer with modest data needs might see a lower monthly cost on such a plan.⁵⁷ Other commenters supported the Commission's proposal.⁵⁸

For the 2022 NBBP program year, the Commission will allow applications reflecting data plans with usage caps or "throttling" mechanisms to be scored. Data plans with "pay as you go" models will also be allowed. However, these plans will receive a score deduction of 2 points per listed category in the "Rate Comparability" section. A detailed description of this scoring adjustment may be found in Attachment C.

9) Digital Inclusion

In the February 1 Order in this docket, the Commission proposed making additional points available for certain digital inclusion efforts. At hearing, Mr. Robbins discussed this proposal, and suggested that the points available be reduced to 5 points for carriers offering a discount plan for Lifeline or

⁵⁴ Transcript at 22.

⁵⁵ Ex. 7.

⁵⁶ Transcript at 66-68.

⁵⁷ *Id.* at 263-264. RIC specifically noted that one of its members who offers such plans found that 81% of its customer bills for January of 2022 were for amounts less than \$80.50 per month. *Id.*

⁵⁸ Ex. 6 at 6; Ex. 13 at 8.

Affordable Connectivity Plan ("ACP") subscribers, and 2 points per free public wi-fi access points.⁵⁹ Mr. Robbins also suggested that participating in Lifeline and the ACP should be a baseline eligibility requirement for digital inclusion points.⁶⁰

RIC suggested that applicants who are in compliance with federal and state low-income assistance programs should be awarded points, and opposed the award of points for public wi-fi hot spots.⁶¹ The RTCN noted that the original proposal of 16 points available could dilute the impact of the statutory criteria in project scoring.⁶² Windstream opposed the Commission's proposal, citing concerns that this could lead to discouraging carriers from participating in federal or state discount programs.⁶³

Upon review, the Commission finds that the Department's proposal should be adopted, with modification. Five (5) additional points may be awarded to applications who offer a discounted plan for low-income subscribers.⁶⁴ Such plans must be eligible for additional discounts through Lifeline and ACP. These plans must also either cost less than \$50 per month prior to Lifeline and ACP discounts, or cost 25% less on a monthly basis than the carrier's next lowest-priced plan offering, whichever is lower.

The Commission will not offer additional digital inclusion points for free public Wi-fi access points in the 2022 NBBP program year.

10) Rates

The Commission's proposal regarding rate comparability generated substantial discussion. At hearing, Mr. Robbins testified that overall affordability of service offerings should remain a consideration in scoring.⁶⁵ Mr. Robbins also noted that LB 1144 would require the Commission to weigh the ability of the applicant to offer comparable rates in the project area for the same speed tiers that they provide elsewhere in the state.⁶⁶

⁵⁹ Transcript at 21-22.

⁶⁰ Transcript at 22.

⁶¹ Transcript at 264-265.

⁶² Ex. 11 at 5.

⁶³ Ex. 13 at 8.

⁶⁴ For purposes of the 2022 NBBP program year, eligibility for low-income discount plans must include all persons eligible for Affordable Connectivity Plan discounts, as outlined here: <https://www.fcc.gov/acp>.

⁶⁵ Transcript at 20.

⁶⁶ *Id.* at 21.

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Some commenters supported the Commission's proposal.⁶⁷ The NRBA recommended that the Commission rely upon FCC benchmarks.⁶⁸ RIC requested clarification that the Commission's proposal would apply only if a provider is not currently offering 100/100 Mbps service in Nebraska.⁶⁹ Media King Communications testified that it provides 100/10 Mbps service at a rate of \$44 per month, and that this rate is affordable for customers.⁷⁰ Windstream suggested that carriers could be required to maintain NBBP rates for a certain period of time, and suggested that requirement apply for three years.⁷¹

Upon review, the Commission finds that the Department's recommendation should be adopted. Neb. Rev. Stat. § 86-1306(2)(c), as modified by LB 1144, requires the Commission to consider an applicant's ability to offer rates in the project area that are comparable to its rates outside the project area. Therefore, applicants will be required to submit information to the Commission reflecting the applicant's speed tier offerings elsewhere in Nebraska. The Commission will review the comparability of rates proposed in the NBBP project application to the applicant's offering of 100/100 Mbps service elsewhere in Nebraska. If an applicant does not currently offer 100/100 Mbps service in Nebraska, the Commission will consider the comparability of rates offered by the applicant for service speeds greater than 100/100 Mbps.⁷²

The Commission is not precluded by LB 1144 from also considering whether an applicant's rates are comparable to other rates offered statewide, nor whether the service is affordable to Nebraska customers.⁷³ Therefore, in the 2022 NBBP program year, projects that will not offer 100/100 Mbps service at rates at or below \$80.50 per month will not receive points for Rate Comparability.⁷⁴ Carriers will be required to maintain the rates

⁶⁷ Ex. 6 at 6-7; Ex. 13 at 9.

⁶⁸ Ex. 9 at 7.

⁶⁹ Ex. 10 at 11.

⁷⁰ Transcript at 243.

⁷¹ Ex. 13 at 9.

⁷² The offered upload speed and download speed must each be at or greater than 100 Mbps for an existing service offering to be considered under this category.

⁷³ LB 1144 (2022), Sec. 7 (2) ("Such weighted scoring system shall consider, *at a minimum...*") (emphasis added).

⁷⁴ The median monthly cost was \$70 per month in the 2021 program year. Note that scoring deductions under Rate Comparability may still apply as outlined in "Data Plans and Usage Caps," above.

reflected in their applications within the project area for a minimum of five (5) years following completion of the project.

11) Match Source and Match Percentage

a) In-Kind Labor Costs

Mr. Robbins recommended that in-kind direct labor costs be allowed as a valid match source, with the condition that the applicant should bear the burden of demonstrating the value of the labor.⁷⁵ Some commenters supported the Commission's proposal.⁷⁶ RIC supported the use of in-kind direct labor as a source of matching funds, but suggested that applicants be required to provide prior invoices for similar projects to prevent excessive costs.⁷⁷ Windstream opposed in-kind labor as a match source.⁷⁸

The Commission finds that in-kind direct labor will be an allowable match source in the 2022 NBBP program year. Applicants seeking to use in-kind labor as a match source must demonstrate the value of the labor through prior invoices or other documentation.

b) State and Federal Support

In its Feb. 1 Order, the Commission proposed that applicants should be required to proactively identify all sources of state and federal funding the applicant is currently receiving in Nebraska, and to identify what, if any, portions of Nebraska are meant to be served by that funding.

Allo supported the Commission's proposal, stating that this requirement would increase transparency and accountability.⁷⁹ However, RIC opposed this proposal, noting that carriers may not be earmarking dollars received in the manner contemplated by the Commission's proposal.⁸⁰ The RTCN suggested that the Commission identify its preferred method for A-CAM calculation and require applicants to follow it.⁸¹

⁷⁵ Transcript at 19-20.

⁷⁶ See, e.g., Ex. 6 at 7; Ex. 12 at 5.

⁷⁷ Transcript at 265-266.

⁷⁸ Ex. 13 at 9.

⁷⁹ Ex. 6 at 7.

⁸⁰ Transcript at 266-267.

⁸¹ Ex. 11 at 6.

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The Commission finds that the Department's proposal should be adopted. Further, the Commission agrees with the RTCN that a required method for calculation of A-CAM as a match source should be put forth for use by applicants. The details of the match source calculation can be found in the Program Guide.

c) Match Percentage

As discussed at hearing, the Commission has been monitoring the progress of the Nebraska Legislature's LB 1144, which would allow for a lower match percentage for rural, high-cost areas.⁸² Several commenters also emphasized the need for broadband access in rural areas of the state.⁸³ LB 1144 was signed into law on April 19, 2022, and therefore the Commission hereby adopts the 25% match percentage for eligible projects.

In order to implement the requirements of LB 1144, the Commission must determine what qualifies as a "high-cost area." For purposes of the 2022 NBBP grant cycle, the Commission finds that "high-cost" includes those areas outside of cities, villages, or unincorporated areas as defined by the 2010 US Census, and census blocks with less than 20 households and densities lower than 42 households per square mile. Projects seeking an award with the lower match percentage cannot include areas that would not qualify as high-cost.⁸⁴ The Commission will continue to award points for projects that provide an additional match above what is required. For those projects that qualify for the lower match percentage, they would be able to receive up to 55 additional points if they provide additional match dollars. For those projects that still require a 50% match, up to 30 points will be available if additional match dollars are provided.

For the purpose of determining which census blocks qualify as "high-cost" and which ones do not, the Commission will publish a spreadsheet with designations for all Nebraska blocks. It is the responsibility of the applicant to review the information to determine whether their project would qualify as eligible for the lower match percentage. The Commission will review projects that have identified themselves as subject to the lower "high cost"

⁸² LB 1144 (2022), at 9; Transcript at 20.

⁸³ See, e.g., Transcript at 160 (Kyle Arganbright testifying); *Id.* at 174-175, 179-180 (Pinpoint describing a need for increased match percentage in rural areas).

⁸⁴ If a project area would serve both high-cost areas and non-high-cost areas, the match percentage must be 50% or greater. Alternatively, applicants are welcome to divide the project area into two separate applications.

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threshold, and reserves the right to modify that designation if it is determined that non high-cost blocks are included in the project. Similar to projects that are able to receive additional points for matches above the 50% threshold, projects eligible for the lower match percentage are able to receive additional points for higher match percentage above the 25% requirement. Additional details are included in the program guide.

The Commission further finds that there is an immediate need for broadband in areas of the state with low population density. In order to encourage applications in these areas, the Commission will award up to 20 points for applications serving low-density portions of the state, using the following criteria:

<u>Density</u>	<u>Points</u>
Less than or equal to 10 Locations/Sq. Mile	20
Between 10 and 20 Locations/Sq. Mile	12
20-42 Locations/Sq. Mile	5

The Commission will review applications to determine the reasonableness of the project area relative to the locations to be served. Should it appear that an applicant has included non-serviceable locations in the project area to artificially lower the population density, the applicant may be required to revise the project area, and/or the application may be disqualified.

12) Public-Private Partnerships

At hearing, Mr. Robbins testified that public-private partnerships ("PPP"s) should not receive extra weight in scoring. However, Mr. Robbins also noted that should PPPs receive additional weight, the partners should be required to make a significant financial contribution.⁸⁵

⁸⁵ Transcript at 23.

Input regarding PPPs was mixed. The NRBA supported the award of additional points for PPPs,⁸⁶ whereas Allo, RIC, RTCN, Viaero, and Windstream opposed the award of additional points in scoring of PPPs.⁸⁷ NPPD spoke in favor of PPPs, noting that public bodies may not wish to take on the responsibilities a private partner would.⁸⁸ The League suggested that the value of PPPs may be difficult to quantify, but noted that cities have experience running utilities and work with rights of way on a regular basis.⁸⁹ Several commenters supported a requirement that each entity must have "skin in the game" to be considered a PPP.⁹⁰ Mr. Arganbright described value a public entity might be able to offer, including loans at better than market rates, and the ability to offer non-financial, in-kind support.⁹¹

The Commission finds that PPPs should be eligible for an additional five (5) points in scoring. To be considered a PPP, the public partner must contribute at least 50% of the matching funds offered in an application.⁹² Documentation identifying the amount of the match funding provided by the public partner and assuring the commitment of the public partner should be submitted with the application. The non-public partner must be an ETC in the portions of Nebraska to be served by the project.

13) Invoices & Reimbursement

In the February 1 Order, the Commission proposed that successful applicants should be required to submit all invoices justifying project expenses within ninety (90) days of project completion. At hearing, Mr. Robbins acknowledged that there was some disagreement in comments on this topic, and suggested that one ninety-day extension should be allowed if submitted prior to the invoice deadline and with a showing of good cause.⁹³

CenturyLink opposed the 90-day timeframe, noting that companies are already self-motivated to submit invoices and seek

⁸⁶ Ex. 9 at 8.

⁸⁷ Transcript at 267-268; Ex. 6 at 7; Ex. 11 at 6; Ex. 12 at 5; Ex. 13 at 10.

⁸⁸ Transcript at 116-117; Ex. 8 at 5-6.

⁸⁹ Transcript at 271-272, 274.

⁹⁰ See, e.g., Transcript at 120 (Patrick Pope testifying for NPPD); Ex. 11 at 6-7.

⁹¹ Transcript at 167.

⁹² Non-financial contributions by the public partner, such as access to rights-of-way, expedited permits, or pole attachments can be considered towards this match percentage, but must include documentation as to the value of the asset.

⁹³ Transcript at 22-23.

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reimbursement as soon as possible, and that the deadline could potentially prevent carriers from reimbursement for costs associated with customer drops to the premise.⁹⁴ RIC suggested that the timeframe should be extended to 180 days.⁹⁵ Windstream supported a 90-day extension should be available if timely requested.⁹⁶

The Commission finds that the original 90-day due date for invoices should remain in place. However, one 90-day extension will be available upon a showing of good cause, if a request is filed in writing prior to the original deadline. The Commission also recognizes CenturyLink's concerns regarding costs to customers. To that end, the Commission emphasizes that it is important for carriers to advertise the services to be built in the project area as soon as a grant is awarded.⁹⁷ These advertisements should be disseminated in the languages spoken and through means reasonably calculated to reach the populations served.

14) Public Comment

At hearing, Mr. Idoux testified on behalf of CenturyLink that the Commission should develop a mechanism to allow public comment on applications.⁹⁸ Mr. Idoux suggested that letters of support could be submitted that do not constitute a PPP, and that other participants may wish to offer comment on applications who are not able to submit a challenge.⁹⁹

While the Commission appreciates this input, the Commission will not create a mechanism for additional public input on applications. Applicants may already submit letters of support as Attachment M. With regard to other comments about the validity of applications, the Commission finds that this suggestion would impede the requirement of Neb. Rev. Stat. § 86-1306 to evaluate applications using a weighted scoring system. Moreover, should the Commission accept such comments, applicants should be given an opportunity for response, a process that would impede the Commission's ability to award grants quickly.

⁹⁴ Transcript at 89-90.

⁹⁵ Ex. 10 at 14.

⁹⁶ Ex. 13 at 10.

⁹⁷ See Transcript at 248-249 (William King advocating for advertisements in multiple languages).

⁹⁸ Transcript at 86.

⁹⁹ *Id.* at 87.

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O R D E R

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

IT IS FURTHER ORDERED the procedural schedule and filing deadlines for the 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 form attached hereto as Attachment B be released.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that the 2022 NBBP scoring reference sheet attached hereto as Attachment C be released.

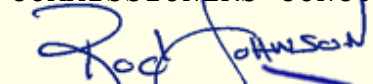


IT IS FURTHER ORDERED by the Nebraska Public Service Commission that the 2022 NBBP Program Guide attached hereto as Attachment D be released.

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

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 10th day of May, 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Chair

ATTEST:


Executive Director

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Attachment A: Procedural Schedule

<u>Event</u>	<u>Date</u>
Application period begins	Monday, June 13, 2022
Deadline to submit applications	Friday, July 1, 2022
Applications posted to Commission website	Wednesday, July 6, 2022
Notices of intent to challenge due to Commission and to Applicant	Friday, July 15, 2022
Challenges due	Friday, September 2, 2022
Commission to notify applicants of: <ol style="list-style-type: none"> 1. defects that must be cured and of areas of overlap with other applications; 2. challenges received. Notices of Intent to Reclassify released	Thursday, September 8, 2022
Deadline for applicants to: <ol style="list-style-type: none"> 1. supplement challenged applications and/or submit responses to challenges; 2. supplement or modify application defects and/or revise areas of overlap with other applications. 	Thursday, September 22, 2022
Commission releases determinations as to credibility of partial challenges and as to reclassification of applications	Tuesday, October 25, 2022
Deadline for applicants to submit modified applications in response to successful partial challenges	Friday, November 11, 2022
Grant awards released; results of remaining challenges released	Tuesday, December 6, 2022
State of Nebraska W-9 and ACH enrollment form due from successful applicants	Monday, December 12, 2022



Nebraska Broadband Bridge Program Grant Application

Section I: Applicant Details

Original Revised

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 (must be an attorney licensed to practice law in Nebraska or an attorney admitted to practice pro hac vice for purposes of this program):	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 data or usage caps?	Choose an item.
7b. Does the rate plan for the proposed project area involve throttling speeds after usage limits are reached?	Choose an item.	7c. Does the rate plan for the proposed project area involve metered or "pay as you go" service model?	Choose an item.
7d. Does the rate plan for the proposed project area impose early termination fees?	Choose an item.	7e. Does the rate plan for the proposed project area lock customers into a particular plan or term with a long term contract?	Choose an item.
8. Maximum speeds all serviceable locations in project area will be capable to be scalable to upon completion:	Click to enter text.	9. Expected project completion date:	Click to enter text.
10. Project geographic contiguity type:	Choose an item.	11. 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.
14. High-Cost Designation (Select <u>one</u> of the following):	<input type="checkbox"/> High-Cost – Select this box if the entire project area is made up of rural, high-cost areas, such as areas outside of cities, villages, or unincorporated areas as defined in the 2010 US Census, and census blocks with less than 20 households and densities lower than 42 households per square mile. -OR- <input type="checkbox"/> Not High-Cost – Select this box if any portion of the project area is not considered high-cost.		

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 polygon shapefile polygon (.shp) reflecting the project area **must** be included. Any supporting files necessary to open the shapefile must also be attached. (Attachment Letter: A)
- A point shapefile which identifies serviceable locations in the project area **must** also be included. Any supporting files necessary to open the shapefile must also be attached. (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 to the applicant’s rates outside the project area for the same speed tiers. Additionally, information regarding the terms and conditions offered, and the terms of service must be provided. Specifically, a statement must be provided with the application detailing whether the plan involves data caps, throttling speeds after usage limits are reached, long-term contracts, Early Termination Fees, or metered “pay-as-you-go” service. (Attachment Letter: F)
- A business plan for the proposed network: The business plan should include (1) details of the proposed project, (2) the expected useful life of the facilities to be built including a statement as to the technological components used, and, if applicable, which components may require more frequent repair or replacement, (3) a description of any risk factors or 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 how the applicant intends to mitigate these risk factors or legal challenges, (4) a financial analysis for the project including cash flow projections for the project for a minimum of 5 years. Projections that do not reflect positive capitalization should include a written explanation as to how a project will be maintained over the 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. (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 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. The plan must describe the specific needs of the community intended to be served by the project, and how the project will be tailored to meet those needs, including 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. Additionally, the plan should include the pricing structure of the plan being offered to low-income subscribers in addition to the availability of Lifeline or Affordable Connectivity Program (ACP) discounts and any terms and conditions of service. (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 labor, 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 offer broadband internet in the project area for fifteen years after receipt of grant funding and commits to maintaining minimum speed capability of 100Mbps/100Mbps in all locations for which the applicant will receive support for the fifteen years after receipt of grant funding. 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 maintain the rates reflected in their application within the project area for a minimum of five years following completion of the project, 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

SAMPLE

ATTACHMENT C – Scoring and Weighting Sheet

Criteria	Points Available	Y/N	Points	Reference Sheet Lookup
Financial Capability	N/A		N/A	A
Financial Capability - Points	10			
Legal Capability	N/A		N/A	B
Legal Capability - Points	10			
Technical Capability				C
FCC Form 477	0-10			
Website Offerings	0-5			
Dig. Inclusion Plan/Low-Income Offering	0-5			D
Rate Comparability				E
100/100+ Mbps Comparability	0-5			
Median Rate Comparison	0-5			
Rate Deductions	(-10)			
Speed Additive	0-10			F
Match Source	0-10			G
Match Percentage (50%) (If applicable)	0-30			H
Match Percentage (25%) (If applicable)	0-55			
Location Density	0-20			I
ETC Certification	0-5			J
PPP Participation	0-5			K
TOTAL	155		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 financial statements that demonstrate overall financial viability. 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. Legal representative must be licensed and in good standing to practice law in Nebraska, or, an attorney admitted to practice pro hac vice in Nebraska for the purposes of Commission Docket C-5368
- 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 15 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.
- 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, 5 points will be awarded. If no, 0 points will be awarded.

D – Digital Inclusion Plan – 5 points available

- Does the digital inclusion plan offer a discounted service plan to low-income subscribers that is below their standard rate and eligible to be discounted further with Lifeline or Affordable Connectivity Program (ACP) discounts?
 - o Plan must be below \$50 per month prior to discounts being applied, or cost 25% less on a monthly basis than the carrier’s next lowest price plan, whichever is lower.

E – Rate Comparability – 10 points available

- Are the rates included in the application comparable to what they offer in other areas they serve in Nebraska? If yes, 5 points will be awarded.
- Are the rates included in the application for 100Mbps/100Mbps service at or below \$80.50 per month? If yes, 10 points will be awarded. If no, 0 points will be awarded.
- Applications will receive score deductions for rate comparability as follows: Plans requiring long-term contracts (-2), plans throttling speeds after usage limits are reached (-2), plans with data caps (-2), plans with Early Termination Fees (-2), metered service or pay-as-you-go models (-2).

F – 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

G – 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
- See Program Guide for additional details

H – Match Percentage – Up to 30 points available for projects that include non high-cost areas, up to 55 points available for projects that cover high cost areas

- Non “high cost” project: 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%).
- “High-cost” project: If the applicant has sources of funds that make up more than the 25% requirement, one point will be awarded for each additional percentage point above 25%, up to a maximum of 55 points (80%).

I – Location Density – Up to 20 points available

- Does the application serve low density areas of the state? If yes, up to 20 points will be awarded as follows:
 - o Less than or equal to 10 locations per square mile – 20 points
 - o More than 10 locations per square mile, but less than or equal to 20 locations per square mile – 12 points

- More than 20 locations per square mile, but less than or equal to 42 locations per square mile – 5 points

J – 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.

K – Public Private Partnership – 5 points available

- Does the applicant identify an eligible public/private partnership as part of the application? Eligibility is determined based on a documented contribution of a public partner equaling at least 50% of the matching funds offered in an application. Documentation of the contribution commitment must be submitted with the application. The non-public partner in the PPP must be an ETC in the portions of Nebraska to be served by the project.



Nebraska Broadband Bridge Program (NBBP) Guide

Program Year 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 (2021), Neb. Rev. Stat. §§ 86-1301 - 86-1310, which created the Nebraska Broadband Bridge Program (NBBP) to facilitate and fund the deployment of broadband networks in unserved and underserved areas of Nebraska. On April 19, 2022, the Governor approved LB 1144 (2022), amending sections of the Nebraska Broadband Bridge Act. The Nebraska Public Service Commission (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). For program year 2022, applicants are required to provide matching funds equal to at least 50% of the total development costs of the project if located outside a high-cost area, or at least 25% of the total development costs of the project if located inside a high-cost area.

1.2 2022 Funding Availability

In the 2021 legislative session, \$20 million was appropriated to this program annually beginning in fiscal year 2021-2022 to be distributed as grants through the program and to pay for administrative costs. Additionally, in the 2022 program year, funds that remain uncommitted from the prior grant cycle will be added to the amount available for grant awards. The maximum grant funding award cannot exceed 50% of the eligible total project costs if located outside a high-cost area, or 25% of the eligible total project costs of the project if located inside a high-cost area and 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). See [section 4.1](#) for additional detail related to grant prioritization tiers.

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.

1.5 Eligible Program Costs

The Nebraska Broadband Bridge Program (NBBP) can pay up to 50% of the eligible development costs for a qualifying project if located outside a high-cost area, or 75% of the eligible development costs of the project if located inside a high-cost area, 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 100Mbps/100Mbps, 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.

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 program 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

To be approved for a NBBP grant, the applicant must provide matching funds, with a minimum of 50% of matching funds if located outside a high-cost area, or 25% of the total development costs of the project if located inside a high-cost area. Applications that leverage additional matching funds beyond the required match percentage will be awarded additional points.

For the purpose of determining what is considered a “high-cost” project area, the Commission will publish a spreadsheet with designations for all Nebraska census blocks. Projects eligible for the lower match percentage must consist only of blocks designated as “high cost.” Applicants must review the information to determine whether their project would qualify as “high cost” and therefore eligible for the lower match percentage. The Commission will review projects that have identified themselves as “high cost” and may modify the designation if it is determined that non-high-cost census blocks are included in the project. If a project is reclassified by the Commission from high cost to non-high-cost, that determination could result in an applicant being required to submit revised documentation reflecting the minimum 50% match requirement.

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>		
Total Matching Funds:	\$100,000	100%

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 direct labor, 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 – June 13, 2022 to July 1, 2022

The grant application window for program year 2022 will open on June 13, 2022 and close at 5:00 p.m. Central Time on July 1, 2022. While the Commission will consider any applications received before the end of the filing window, applicants are strongly encouraged to submit their applications as soon as they are ready.

Applicants must submit their applications to the Nebraska Public Service Commission (Commission) on or before the application deadline of July 1, 2022, no later than 5:00 p.m. Central Time. Late filed applications will not be considered.

2.2 Preparing an Application

The application form is located on our website at 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 no later than July 1, 2022 at 5:00 p.m. Central Time.

The application form is a fillable PDF and applications must be received in PDF format. Printed applications will not be accepted. Upon request, the Commission can return a date-stamped, printed PDF of the application to the applicant as confirmation of the data submitted. 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, which must be an attorney licensed and in good standing to practice law in Nebraska, or, in the alternative, an attorney admitted to practice pro hac vice in Nebraska for purposes of Commission Docket No. C-5368.
- 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 100Mbps/100Mbps 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 100Mbps/100Mbps 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. 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 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 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 100Mbps/100Mbps service: This field should include the monthly customer rate to be billed for 100Mbps/100Mbps service provided within the project area.
- Field 7a. Does the rate plan for the proposed project area impose data or usage caps?
- Field 7b. Does the rate plan for the proposed project area involve throttling speeds after usage limits are reached?
- Field 7c. Does the rate plan for the proposed project area involve metered or “pay as you go” service model?
- Field 7d. Does the rate plan for the proposed project area impose early termination fees?
- Field 7e. Does the rate plan for the proposed project area lock customers into a particular plan or term with a long term contract?
- Field 8. 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 100Mbps/100Mbps, 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 9. 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 10. Project geographic contiguity type: This field should indicate whether the project area is contiguous, or whether the project includes noncontiguous geographical areas.
- Field 11. If the answer to field 10 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 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, or 75% if the project would serve a high-cost area, and cannot exceed \$5,000,000.
- Field 14. Indicate whether the proposed project area is made up of entirely rural, high-cost areas as defined in docket C-5368, such as areas outside of cities, villages, or unincorporated areas as defined in the 2010 US Census, and census blocks with less than 20 households and densities lower than 42 households per square mile. If there are any portions of the project area that would not meet the high-cost definition, this should be marked as not high cost.

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. Polygon shapefiles reflecting the project area must be included. (Attachment Letter: A).
2. A point shapefile that indicates the locations the project intends to serve must be included. (Attachment Letter: B).
3. Applicants that answered “Yes” to section I; field 15 should attach documentation that 100Mbps/100Mbps 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 100Mbps/100Mbps 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 to the applicant’s rates outside the project area for the same speed tiers. Additionally, information regarding the terms and conditions of service must be provided. Specifically, a statement must be provided with the application detailing whether the plan involves data caps, throttling speeds after usage limits are reached, long-term contracts, early termination fees, or metered “pay-as-you-go” service. (Attachment Letter: F).

7. A business plan for the proposed network: The business plan should include (1) details of the proposed project, (2) the expected useful life of the facilities to be built including a statement as to the technological components used, and, if applicable, which components may require more frequent repair or replacement, (3) a description of any risk factors or 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 how the applicant intends to mitigate these risk factors or legal challenges, (4) a financial analysis for the project including cash flow projections for the project for a minimum of 5 years. Projections that do not reflect positive capitalization should include a written explanation as to how a project will be maintained over the 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. Any disallowed expenses must be adjusted from the total project costs to determine total allowable costs for calculating the grant amount requested and required match percentage. This should also include the total grant amount requested (up to 50% of estimated allowable costs if located outside a high-cost area, or 75% of the estimated allowable costs if located inside a high-cost area, but not greater than \$5,000,000). The funding breakdown should be submitted in Excel format. (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 areas, a digital inclusion plan must be attached for consideration. The plan must describe the specific needs of the community intended to be served by the project, and how the project will be tailored to meet those needs, including 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 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. Additionally, the plan should include the pricing structure of the plan being offered to low-income subscribers in addition to the availability of Lifeline or Affordable Connectivity Program (ACP) discounts and any additional terms and conditions of service.

NOTE: To be eligible for scoring points, the digital inclusion plan must offer a discounted service offering that is lower than their standard service shown in the rate information submitted with their application and less than \$50 per month prior to Lifeline or Affordable Connectivity Program (ACP) discounts, or cost 25% less on a monthly basis than the carrier's next lowest-price plan offering, whichever is lower. The plan must also be eligible to be discounted further with Lifeline or Affordable Connectivity Program (ACP) discounts. (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 direct labor, 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 by the end of business on July 1, 2022. The application form should be submitted in .pdf format using the provided application form, the polygon shapefile and point shapefile should be submitted along with other application materials and must include all supporting files necessary to open the shapefiles. 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 applications will not be considered.

2.4 Protecting Confidential Information in an Application:

A Protective Order governing the 2022 grant application cycle will include specific information that can be submitted confidentially. A copy of the Protective Order will be available on the Commission website once entered. Applicants and Challengers are encouraged to closely follow the terms of the Protective Order. All confidential materials must be clearly marked as such both in the filename and as a stamp or watermark on each page of the document itself. Commission Staff will contact applicants who submit information incorrectly marked as Confidential to provide an opportunity to remove the marking. The Commission does not guarantee that information submitted that is not marked in accordance with the terms of the Protective Order will be protected.

Applicants in the 2022 grant application cycle whose applications are challenged may review challenge materials that would otherwise be considered confidential by completing and filing with the Commission a Non-Disclosure Agreement. A blank Non-Disclosure Agreement will be made available in conjunction with the Protective Order. All participants must comply with the terms of the Protective Order and may not disclose Confidential Materials to persons who have not signed a Non-Disclosure Agreement on behalf of the applicant or challenger receiving the Confidential Materials.

2.5 Applications Posted to Commission Website:

Applications received for program year 2022 will be posted to the Commission website on July 6, 2022, for review by interested parties.

3 Challenge Process

3.1 Notice of Intent to Challenge – Due July 15, 2022

The intent of the “Notice of Intent to Challenge” process is to encourage parties to resolve differences, such as overlapping project areas, prior to the beginning of the 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 by July 15, 2022. The submission of a Notice of Intent to Challenge does not require a party to submit a challenge. Please refer to the template “Notice of Intent to Challenge” on our website.

3.2 Detailed Challenges Due September 2, 2022

A challenging provider may, within 60 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 100Mbps/20Mbps, 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:

- **Type 1 Challenger:** If the challenging provider is currently providing service at the minimum 100Mbps/20Mbps speed threshold to all serviceable locations within the challenged portion of the project area, they must include with their challenge the following:
 - o A polygon shapefile identifying the portion(s) of an application that the challenger currently serves with 100Mbps/20Mbps speeds along with all supporting files required to open the shapefile;
 - o A point shapefile identifying locations served in the project area along with all supporting files required to open the shapefile
 - o At least one week of speed and latency testing data performed on active subscriber locations within the challenged area must be submitted. Speed test data should follow the Performance Measures Testing standards set by the FCC with regard to the HUBB portal. Testing should be performed daily on an hourly basis between 9:00 am to 9:00 pm. The speed test data must support the availability and access to 100Mbps/20Mbps speed service the active subscriber locations in the challenged portion of the proposed project area. The data provided must include the location where the speed test was run, the date and time of the test(s). The testing must have been completed within six months of its submission to the Commission and must reflect that at least 80% of the speed measurements reflect speeds at 80% or more of the 100/20 Mbps standard. Challengers must demonstrate that the locations chosen to be tested were randomly selected. The number of speed test locations required is based on the number of subscribers in the challenged area, as follows:

<u>Number of Subscribers in Area</u>	<u>Number of Test Locations</u>
50 or fewer	5
51-500	10% of Total Subscribers
Over 500	50

- Evidence demonstrating that the speed thresholds (100Mbps/20Mbps) are being advertised to customers within the challenged portion of the project area.
 - 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.
 - A plant map showing existing facilities in relation to the proposed project area, including a description of the type of facilities (Copper, fiber, etc.).
- **Type 2 Challenger:** 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, the challenging party must provide at a minimum:
- A polygon shapefile identifying the portion(s) of an application that the challenger is currently constructing broadband infrastructure and/or the area they intend to build to at 100Mbps/20Mbps speeds within eighteen months.
 - A description of the project underway, including a timeline for what has been completed to date, and a construction timeline that indicates completion within the 18-month timetable.
 - A description which includes the identification of any 3rd 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 statement agreeing that if the challenge is deemed credible that the provider submitting the challenge agrees to provide documentation within 18 months demonstrating that they have fulfilled the commitment to provide broadband Internet service with access to the Internet at the stated speeds in the proposed project area. The statement should acknowledge understanding that if the challenger does not provide broadband Internet service to the proposed project area within eighteen months, the Commission shall impose a civil penalty for each day such provider fails to provide service after the expiration of such eighteen-month period, and such provider shall not challenge any grant application or make any application for a grant under the Nebraska Broadband Bridge Act for the provider shall not challenge any grant for the following two fiscal years unless the challenger can demonstrate that the failure to provide such service is due to factors beyond the provider's control.

3.3 Applicant notification of challenge:

The Commission will notify applicants of challenges filed for the respective project areas within three days of the filing.

3.4 Applicant response to challenge:

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. For program year 2022, the due date for the supplemental information and/or response is September 21, 2022.

Partial challenge response details: In the event of a partial challenge for a portion of the project area, applicants will be given an opportunity to respond to a challenge submitted and may submit documentation supporting a position that a challenge is not credible to supplement the original application. Such documentation may include speed testing, which should show the location/address where the speed test was completed, as well as the speed tier to which the customer is subscribed.

The Commission will make an initial determination as to the credibility of a challenge will be made after a challenge is submitted. For program year 2022, the Commission will release the determinations as to credibility of partial challenges on Tuesday, October 25, 2022.

- If a partial challenge is deemed not credible, the original application will be considered within the scoring process.
- If a partial challenge is found to be credible, applicants will be allowed an opportunity to resubmit their application with the successfully challenged portions removed. A modified application should contain all attachments and forms originally required in this grant cycle, modified to reflect revised project costs and other necessary changes and documentation as to any other items that would differ once the successfully challenged portion is excluded from the grant award. The modified application should use the same technologies as originally proposed and should not extend beyond the original geographic boundaries of the application. Applicants may increase the amount they wish to contribute towards a proposed match percentage but cannot increase the amount of grant support being requested. For program year 2022, the due date for the modified application is November 11, 2022. The Commission will consider the modified application in which the credible challenged portion was removed within the scoring process. If the applicant does not submit a modified application prior to the deadline for modification, the application will be considered withdrawn and not considered for funding.

3.5 Publishing of Challenge Results:

The Commission will evaluate all available information and make a determination as to the credibility of the remaining challenges received. The remaining final challenge results will be released on December 6, 2022, in conjunction with the notification of grant awards. The results will be posted on the Commission website.

3.6 Post Challenge Requirements:

Type 1 challengers: Successful type 1 challengers must submit an attestation that they will continue to provide 100/20 Mbps service in the entire challenged area. These challengers will also be required to notify Commission should the challenger's service offerings in the area change.

Type 2 challengers: Successful type 2 challengers must submit to the Commission:

- Quarterly progress reports regarding the construction of service in the project area must be submitted to the Commission by the fifteenth day of the first month following each quarter. An NBBP Challenge Progress Report form can be found on the NBBP website.
- Documentation demonstrating that the challenger has fulfilled its commitment to deploy broadband Internet service with access to the Internet at the stated speeds in the entire project area. This must be submitted to the Commission on or before the due date stated in the C-5368 order issuing grant awards and results of challenges.

PENALTY ASSESSMENT: If a successful challenger does not successfully provide broadband Internet service to the entire project area within eighteen months, the Commission shall impose a civil penalty for each day such provider fails to provide service after the expiration of such eighteen-month period, and such provider shall not challenge any grant application or make any application for a grant under the Nebraska Broadband Bridge Act for the following two fiscal years unless they can demonstrate that the failure to provide such service is due to factors beyond the provider's control.

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 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 155 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, which must be an attorney licensed to practice law and in good standing in Nebraska, or, in the alternative, an attorney admitted to practice in Nebraska pro hac vice for purposes of Commission Docket No. C-5368. Omission of this information will disqualify the applicant from grant consideration. If the necessary 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 reflecting appropriate legal representation. Point deductions will be applied as follows (remove 2 points for each as applicable):

- i. Applicant had late-filed annual reports within the five (5) years preceding the application filing date,
 - ii. Applicant has late-filed NUSF remittances within the five (5) years preceding the application filing date,
 - 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** - Up to 15 points will be awarded as follows:
 - a. FCC Form 477: Does the most recently available FCC Form 477 data show that the applicant/carrier partner offers 100Mbps/100Mbps service anywhere else in Nebraska. If yes, 10 points will be awarded. If no, 0 points will be awarded.
 - b. Website Offerings: Does the applicant/carrier partner's public-facing website clearly state that they offer services that are at least 100Mbps/100Mbps? If yes, 5 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 in other areas they serve in Nebraska? If yes, 5 points will be awarded.
 - b. Are the rates included in the application for 100Mbps/100Mbps service at or below \$80.50 per month? If yes, 5 points will be awarded.
 - c. Applications will receive score deductions for rate comparability as follows: Plans requiring long-term contracts (-2), plans throttling speeds after usage limits are reached (-2), plans with data caps (-2), plans with Early Termination Fees (-2), metered service or pay-as-you-go models (-2).
- 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 Mbps/100Mbps minimum? Additional points will be awarded if the applicant/carrier includes evidence that they plan to offer speeds in excess of the 100Mbps/100Mbps minimum. These additional speed tiers must be available to existing 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 point shapefile 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 program 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. Alternative Cost Model (A-CAM):
 - a. 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.
 - b. Support and match calculations for A-CAM blocks with capped locations should be done in accordance with the calculation outlined below, where the amount of A-CAM support received is accounted for over the 10 years of the A-CAM program. As an example, for a block with 1 location, and a modeled total investment cost of \$20,000, with a monthly modeled CapEx per location of \$217 and an OpEx of \$161, the calculation of support received for buildout through A-CAM is:
 - i. $\$217/(\$217+\$161) = 57.4\%$
 - ii. Monthly A-CAM CapEx support received per location = $\$200 * .574 * 1$ location = \$114.80
 - iii. Note – applicants should use the actual per location A-CAM support received if less than \$200
 - iv. Payments received over the life of A-CAM = $\$114.80*12$ (months/year) * 10 (program years) = \$13,776
 - v. \$13,776 can be considered the federal portion of the match of the total cost of the project
- 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. In-kind direct labor can be considered as a valid match source if the applicant can demonstrate that the stated value of the in-kind direct labor is fair and reasonable. An example of acceptable proof is prior invoices for similar non-grant projects or other documentation. If including in-kind direct labor as a match source, a further breakdown by category should be provided as confirmation that disallowable costs have been excluded. Other

in-kind contributions including but not limited to 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. Non-financial contributions by the public partner, such as access to rights-of-way, expedited permits, or pole attachments can be considered towards this match percentage, but must include documentation as to the value of the asset.
 - 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 55 points will be awarded as follows:
- a. Non “high cost” project: 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%).
 - b. “High-cost” project: If the applicant has sources of funds that make up more than the 25% requirement, one point will be awarded for each additional percentage point above 25%, up to a maximum of 55 points (80%).
8. **Digital Inclusion Plans** – Up to 5 points will be awarded as follows:
- a. Does the digital inclusion plan offer a discounted service plan to low-income subscribers that is below their standard rate and eligible to be discounted further with Lifeline or Affordable Connectivity Program (ACP) discounts?
 - i. The plan would be required to reflect the initial price of the offering is lower than their standard service shown in the rate information submitted with their application and less than \$50 per month prior to Lifeline or Affordable Connectivity Program (ACP) discounts, or cost 25% less on a monthly basis than the carrier’s next lowest-price plan offering, whichever is lower.
9. **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 attests that they will 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.
10. **Location Density** – Up to 20 points will be awarded for applications serving low-density areas of the state, using the following criteria:

Density	Points
Less than or equal to 10 Locations/Sq. Mile	20
Between 10 and 20 Locations/Sq. Mile	12
20-42 Locations/Sq. Mile	5

11. **Public Private Partnership (PPP)** – Up to 5 points will be awarded as follows:

Does the applicant identify an eligible public/private partnership as part of the application? Eligibility is determined based on a documented contribution of a public partner equaling at least 50% of the matching funds offered in an application. Documentation of the contribution commitment must be submitted with the application. The non-public partner in the PPP must be an ETC in the portions of Nebraska to be served by the project.

Tiebreaker - If applications receive the same score requiring a tiebreaker, the application demonstrating the lower cost to build per location, based upon NBBP grant dollars requested, would be given preference.

4.3 Grant Award Notification

For program year 2022, grant awards will be released on December 6, 2022. ACH documentation requirement: 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 awards are released.

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 allowable expenses.*

Upon project completion, grant recipients must submit a certification that the broadband network described in the application has been completed. The NBBP Certification of Project Completion form can be accessed on the NBBP website.

Within 90 days of project completion, grant recipients must submit a reimbursement request to the Commission for consideration of the final grant payment. The NBBP Reimbursement Request form can be accessed on the NBBP website. Invoices and supporting documentation justifying allowable expenses must be submitted along with the NBBP Reimbursement Request form for review and consideration. A 90-day extension may be considered if the request is submitted prior to the close of the first 90-day window and good cause is shown.

6 Post-Deployment Requirements

6.1 Speed Testing

Following deployment of the completed network as outlined in the application, grant recipients will be required to submit speed test information to the Commission. In the 2022 program year, speed test data submitted to the Commission should follow the Performance Measures Testing standards set by the FCC with regard to its High Cost Universal Broadband (“HUBB”) portal to the fullest extent possible. This requirement will apply both during the application and challenge process, and for purposes of post-deployment speed testing. The NBBP Speed Test Certification form should be used when reporting speed test information to the Commission. The form can be accessed on the NBBP website and includes additional detail pertaining to this requirement.

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. Should an applicant’s testing fail to reflect that the entire project area is capable of being served at the required speeds, the applicant must submit along with speed test results a written proposal to remedy the deficiencies. This proposal must include the date upon which speed testing will be conducted a second time, which must be no later than sixty (60) days following the initial speed testing.

6.2 Other Requirements

In accordance with Nebraska Revised Statute § 86-1308:

As conditions for accepting a grant under the program, the applicant and its successors and affiliates shall agree to:

- (i) Offer broadband Internet service in the project area for fifteen years after receipt of grant funding; and
- (ii) Commit to maintaining minimum speed capability of one hundred megabits per second for downloading and one hundred megabits per second for uploading in all locations for which the applicant will receive support for the fifteen years after receipt of grant funding. Any applicant that declines to accept these conditions shall not be eligible to receive a grant.

Failure to comply with the agreed-upon conditions may result in the Commission imposing civil penalties pursuant to Neb. Rev. Stat. § 75-156 on non-compliant grant recipients.

7 Post-Award Repayment

Neb. Rev. Stat. § 86-1304 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 Neb. Rev. Stat. § 86-1304 (2)(b). If no extension is permitted, 10% of the grant shall be repaid for each month that the project is not complete after the eighteen-month period, up to 100% of the grant. If an extension is permitted, 20% of the grant shall be repaid for each month that the project is not complete after the 24-month period up to 100% of the grant. Additionally, pursuant to Neb. Rev. Stat. § 86-1304(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, under Telecom/NUSF > Telecommunications > Nebraska Broadband Bridge Program. The Commission staff can be contacted via e-mail at psc.broadband@nebraska.gov.