

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. C-5484
Public Service Commission, on)	
its own motion, to administer)	ORDER OPENING DOCKET AND
the Nebraska Broadband Bridge)	SEEKING COMMENT
Program in the 2023 program)	AND
year.)	NOTICE OF HEARING
)	
)	Entered: March 7, 2023

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") hereby initiates this proceeding on its own motion to administer the 2023 program year of the Nebraska Broadband Bridge Program ("NBBP"). Pursuant to the Nebraska Broadband Bridge Act, Neb. Rev. Stat. §§ 86-1301 - 1312 ("the Act"), the Commission is tasked with the distribution of \$20 million in grants annually for the purpose of facilitating and funding the development of broadband networks in unserved and underserved areas in Nebraska.¹ Pursuant to the Act, the Commission has administered the program in 2021 and 2022.² Additionally, the Commission opened a federally funded Capital Projects Fund NBBP grant cycle on December 13, 2022.³

The Commission hereby finds that a review of the application and challenge process relative to state funded NBBP grant cycles is appropriate prior to beginning the 2023 NBBP program year. The Commission therefore sets forth below several issues for discussion relative to state funded NBBP beginning in the 2023 program year. The Commission requests that interested parties provide comments responsive to the issues described below on or before **Tuesday, March 28, 2023 at 5:00 p.m. Central Time**. Comments should be submitted via email to psc.broadband@nebraska.gov. Comments submitted before this deadline will be posted to the Commission website for public review.

¹ Neb. Rev. Stat. § 86-1303.

² See generally Commission Dockets Nos. C-5272 and C-5368.

³ Commission Docket No. CPF-1, *In the Matter of the Nebraska Public Service Commission, on its own motion, to administer federal Capital Projects Funds for broadband development in Nebraska*, Order Opening Docket and Releasing Procedural Schedule (Dec. 13, 2022) ("Dec. 13 CPF-1 Order"). This docket will be referred to generally hereafter as "CPF-1."

Issues for Comment

The Commission proposes to generally maintain the overall structure of the NBBP as in the 2022 program year, with some limited exceptions. The Commission welcomes recommendations from interested parties on any improvements to the 2022 NBBP program structure for the upcoming program year.⁴

Additionally, the Commission seeks comment on some proposed changes to the NBBP materials and requirements, set forth below.

1) Procedural Schedule

Applications for the 2023 program year will be due to the Commission via email on or before Monday, July 3, 2023.⁵ Challenges will be due on Friday, September 1, 2023. Applicants will be given an opportunity to supplement and/or modify applications until Thursday, September 21, 2023. Grant awards and the results of challenges will be released on Tuesday, December 5, 2023.

A full proposed procedural schedule is attached to this Order as Attachment A. The Commission proposes that the procedural schedule in this docket shall be strictly enforced. Applicants who do not provide complete information prior to the dates listed in the procedural schedule will receive a score deduction in the relevant categories. Applicants who fail to provide required information may be subject to disqualification. Challengers who do not meet required deadlines may be disqualified.

The Commission welcomes comments and suggestions regarding this proposal and the dates set out in this proposed schedule.

⁴ See Application No. C-5368, *In the Matter of the Commission, on its own motion, to administer the Nebraska Broadband Bridge Program in the 2022 program year*, Order Issuing 2022 Grant Application Schedule and Application Materials (May 10, 2022) ("C-5368 May 10 Order").

⁵ While the statutory deadline for NBBP applications is July 1, that date falls on a Saturday in 2023. Applications will therefore be due on the next business day, Monday, July 3, 2023.

2) Adjustments to Scoring System

The Commission proposes that the scoring system utilized in the 2023 program year generally follow the scoring criteria set forth in the May 10 C-5368 Order, with one adjustment. The CPF-1 program requires that applicants engage in community outreach, with the results of the outreach considered as a component of the applicant's score on technical capability. Applicants who propose broadband development on tribal lands are also required to obtain documented approval of the project by the relevant tribal government. Negative feedback received in response to a proposed project may result in a score deduction of up to 10 points, depending on the nature of the feedback received. The Commission proposes to incorporate this approach into the 2023 NBBP program year as well.

With regard to scoring of matching funds, the Commission intends to score matching funds proposed in applications in the same manner as applications in the 2022 NBBP cycle were scored.⁶ Projects that are eligible for a 25% match percentage due to being in a high-cost area will be able to receive up to 55 additional points if they provide additional match dollars.⁷ For those projects that require a 50% match, up to 30 points will be available if additional match dollars are provided. For the 2022 NBBP cycle, the Commission made available on its NBBP mapping website layers that showed high-cost areas eligible for the lower match percentage. The Commission proposes to make this information available again, and in addition, make the shapefiles that were used in creating the layer available on the Commission's website.

The Commission welcomes comment on this proposal.

3) Challenge Process

The Commission proposes to continue the challenge process as outlined in the Dec. 13 CPF-1 Order. A single entity may not submit a combined challenge showing both Type 1 and Type 2 challenges to a single project. Challengers submitting both Type 1 and Type 2 challenges for the same project will be required to submit two separate challenges identifying the basis for the challenge in each filing. The Commission will no longer accept challenges

⁶ See C-5368 May 10 Order, Attachment C: Scoring and Weighting Sheet.

⁷ See Neb. Rev. Stat. § 86-1304(1)(a).

containing both Type 1 and Type 2 challenges in the same challenge filing. The Commission seeks comment on this approach.

4) Digital Inclusion Plans

The Commission currently requires that all applicants for CPF-1 grant funding provide a digital inclusion plan. Additionally, CPF-1 grant recipients must participate in the federal Affordable Connectivity Program ("ACP"). The Commission seeks comment on whether these requirements should be adopted for applicants in the 2023 NBBP program year as well, and if so, whether any adjustments to the requirements should be made.

5) Fixed Wireless Providers

The Commission currently requires that CPF-1 applicants and challengers proposing to utilize fixed wireless technology must file additional documentation demonstrating the capabilities of the technology to be used in the project. This information includes an attestation from a qualified engineer describing the design of the proposed technology and its speed capabilities, a description of whether applicant proposes to use licensed or unlicensed spectrum, tower location shapefiles for existing and planned towers, and a shapefile polygon demonstrating coverage for each planned tower which would provide service to the locations in the project area.

The Commission proposes to adopt the above requirements in the 2023 NBBP program year. The Commission would also require that fixed wireless providers provide with their tower coverage shapefiles the propagation maps and information necessary to reproduce the coverage area calculated in these maps, including descriptions of the software used as well as the methodology, inputs, and assumptions used.

Should this approach be adopted? Should the requirements for applicants and challengers using fixed wireless technology differ in any way, and if so, how? If this approach is adopted, should any adjustments be made for the 2023 program year?

6) Rates

For purposes of CPF-1, the Commission made some adjustments to its requirements on the length of time for which applicants

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5484

Page 5

must maintain their proposed rates. Generally, applicants are required to include the proposed rate list for the services to be offered within the project area over the five years following completion of the project. Applicants may include good faith estimates of rate increases during the five-year period, and actual pricing data must be filed with the Commission for the five years following completion of the project. This information is used to calculate the annual Rate Comparability average.

Should the Commission adopt this approach for the 2023 NBBP program year as well? If so, should any adjustments be made? If rate information is not required to be filed and rates maintained for a certain period of time following completion of the project, how else could the Commission fairly evaluate projects for rate comparability? Are there any other measures the Commission should adopt in order to ensure that grant-funded broadband projects in Nebraska are affordable for persons living in the project area?

7) Penalties

While it is the expectation of the Commission that all projects awarded NBBP grant funding will be completed as proposed, the Commission recognizes the need to set forth penalties which may apply in the event that an awardee chooses to return grant funds or otherwise fail to complete an NBBP project. Generally, the Commission proposes that awardees requesting to or required to return NBBP grant funds to the Commission after an award is made will be disqualified from receiving future grant awards from the Commission. Is this approach appropriate? Should other penalties be levied? Alternatively, should any exceptions to this penalty be made, and if so, under what circumstances?

Public Hearing

A hearing in this matter will be held on **Tuesday, April 4, 2023, at 1:00 p.m. Central Time** in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508, and via WebEx, available at <https://psc.nebraska.gov/stream>.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Nebraska Relay System at (800) 833-7352(TDD) or (800) 833-0920

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5484

Page 6

(Voice). Advance notice of at least seven (7) days is needed when requesting an interpreter.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be, and it is hereby, opened.

IT IS FURTHER ORDERED that comments responsive to the foregoing proposal and questions may be filed on or before **Tuesday, March 28, 2023 at 5:00 p.m. Central Time** by email service to psc.broadband@nebraska.gov.

IT IS FURTHER ORDERED that a hearing will be held in this matter on **Tuesday, April 4, 2023, at 1:00 p.m. Central Time** in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508 and by videoconference as indicated above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 7th day of March, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Chair

ATTEST:



Executive Director

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5484

Attachment A: Proposed Procedural Schedule

<u>Event</u>	<u>Date</u>
Commission enters order seeking comments	Tuesday, March 7, 2023
Comments due	Tuesday, March 28, 2023
Hearing	Tuesday, April 4, 2023
Commission enters order setting out application and scoring criteria	Tuesday, May 16, 2023
Application period begins Challenge forms released	Tuesday, June 20, 2023
Deadline to submit applications	Monday, July 3, 2023
Applications posted to Commission website	Friday, July 7, 2023
Notices of intent to challenge due to Commission and to Applicant	Monday, July 17, 2023
Challenges due	Friday, September 1, 2023
Commission to notify applicants of: 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 7, 2023
Deadline for applicants to: 1) supplement challenged applications; 2) supplement or modify application defects and/or areas of overlap with other applications	Thursday, September 21, 2023
Commission releases determinations as to the credibility of partial challenges and as to the reclassification of applications	Tuesday, October 24, 2023
Deadline for applicants to submit modified applications in response to successful partial challenges	Thursday, November 9, 2023
Grant awards released; results of challenges released	Tuesday, December 5, 2023
State of Nebraska W-9 and ACH enrollment form due from successful applicants	Monday, December 11, 2023