

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska )           Application No. C-5484  
Public Service Commission, on )  
its own motion, to administer )  
the Nebraska Broadband Bridge )           ORDER ISSUING 2023 GRANT  
Program in the 2023 program )           APPLICATION SCHEDULE AND  
year. )           APPLICATION MATERIALS  
)  
)  
)           Entered: May 16, 2023

BY THE COMMISSION:

On March 7, 2023, the Nebraska Public Service Commission ("Commission") initiated this proceeding on its own motion to administer the 2023 program year of the Nebraska Broadband Bridge Program ("NBBP"). In the order opening this docket ("March 7 Order"), the Commission set forth a draft procedural schedule, as well as several issues for comment relating to the administration of the program.

Comments were due to the Commission by March 28, 2023. Comments were received from Charter Fiberlink - Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (collectively "Charter"); the Nebraska Rural Broadband Alliance ("NRBA"); the Nebraska Rural Independent Companies ("RIC"); the Rural Telecommunications Coalition of Nebraska ("RTCN"); and Windstream Nebraska, Inc. ("Windstream").

### H E A R I N G

A hearing in this matter was held on April 4, 2023. Sallie Dietrich appeared on behalf of the Telecommunications and NUSF Department of the Commission. Paul Schudel appeared on behalf of RIC. Andy Pollock appeared on behalf of the NRBA.

Exhibits 1 through 7 were offered and accepted, including each of the above-described comments submitted in this matter.

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) Dan Davis, of Consortia Consulting, on behalf of RIC

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- 3) Andy Pollock, on behalf of NRBA
- 4) Tim Goodwin, on behalf of Charter
- 5) Clayton Spray, on behalf of AMG Technology Investment Group, LLC d/b/a NextLink Internet ("Nextlink") and the Wireless Internet Service Providers' Association ("WISPA")

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 continued discussion and input offered by the participants in the Nebraska Broadband Bridge Program. After consideration of submitted comments and testimony, the Commission finds that the following adjustments to the Nebraska Broadband Bridge Program for the 2023 calendar year should be made. The Commission further finds that requirements not specifically addressed below shall continue without adjustment. Participants in the 2023 NBBP program year should consult the Program Guide issued as Attachment D to this order, as well as previous Commission Dockets Nos. C-5272 and C-5368, for guidance on topics not addressed below.

### **1) Program Overview and Procedural Schedule**

In the March 7 Order opening this docket, the Commission sought comment as to whether the proposed procedural schedule should be adjusted. Several commenters noted that the submission of applications on or around the July 4 holiday could be problematic.<sup>1</sup> Additionally, Windstream and Charter suggested that the time allotted for parties to file a Notice of Intent to Challenge should be extended to allow for a more thorough review of applications prior to submitting a Notice of Intent to Challenge.<sup>2</sup> At hearing, the Department submitted testimony indicating that this adjustment would be feasible.<sup>3</sup> When asked, no

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<sup>1</sup> See Ex. 5 at 2 (RIC noting that § 86-1304 requires applications to be submitted "on or before July 1 for each fiscal year"); Ex. 7 at 1-2; Ex. 3 at 2.

<sup>2</sup> Ex. 3 at 2; Ex. 7 at 2.

<sup>3</sup> Transcript at 10.

parties objected to shortening the application window in order to avoid the July 4 holiday and to extend the time allotted for the submission of Notices of Intent to Challenge.<sup>4</sup>

The above-described feedback is well taken, and the Commission finds that the procedural schedule for the 2023 NBBP program year should be revised. The application window will be adjusted to avoid the July 4 holiday, and will be shortened to a one-week period. Additionally, the time allotted to submit a Notice of Intent to Challenge will be extended. The procedural schedule, as revised, is attached hereto as Attachment A.

As in previous program years, strict adherence to the procedural schedule will be required. All participants in the 2023 NBBP program year will be required to adhere to the deadlines listed in Attachment A. 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. 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 in submitted materials 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.

## **2) Scoring of Applications**

### *a) Community Feedback*

In its March 7 Order, the Commission proposed that scoring for applications in the 2023 program year generally follow the scoring criteria adopted in the 2022 NBBP program year. However, the Commission also proposed that the scoring criteria be adjusted to provide some point adjustments for community feedback, based on

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<sup>4</sup> Transcript at 23, 43, 80, 105.

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requirements currently in place for Capital Projects Fund grant applications.<sup>5</sup>

Comments regarding community outreach were mixed. Charter and RIC emphasized that any scoring adjustments for community feedback should be made on an objective basis.<sup>6</sup> However, little feedback was provided as to what might constitute objective scoring criteria.<sup>7</sup> At hearing, the Department recommended continuing the requirement for community outreach so as to ensure that providers are notifying communities that they are applying for a project in their area, and selecting projects that fit communities' needs.<sup>8</sup> The NRBA also supported approaching community feedback on a case by case basis.<sup>9</sup>

Upon review of comments submitted on this topic, the Commission hereby finds that it is not feasible at this time to include community feedback as a scored criterion in the 2023 NBBP program year. Neb. Rev. Stat. § 86-1306(2) requires that the Commission establish "the specific criteria and the quantitative weighted scoring system the commission will use to evaluate and rank applications and award grants pursuant to the program." The Commission interprets this requirement to mean that the scoring of NBBP applications must be as objective as possible. Community feedback, however, is inherently subjective. The Commission therefore finds that it will not apply quantitative measures to community feedback on NBBP applications for the 2023 program year.

In making this finding, the Commission also notes that NBBP applicants are already required to identify potential obstacles to a project, including zoning, rights of way, and permitting

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<sup>5</sup> See 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 Issuing 2023 Grant Application Schedule and Materials (Jan. 10, 2023), ("CPF-1 Jan. 10 Order"), at 7-8.

<sup>6</sup> Ex. 3 at 3; Ex. 5 at 3-4. *But see* Ex. 7 at 2 (Windstream supporting inclusion of community support as a scored metric).

<sup>7</sup> See, e.g., Transcript at 23-25 (RIC noting that quantitative scoring for this would be difficult); *Id.* at 43-46 (NRBA noting it did not have specific objective metrics to recommend).

<sup>8</sup> Transcript at 8-9.

<sup>9</sup> Transcript at 43-46 (NRBA recommending approaching feedback on a case-by-case basis).

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processes, and describe how these potential obstacles will be mitigated. Applicants therefore would be well served to proactively address these topics with the relevant local authorities and minimize these obstacles as much as possible ahead of submitting an application.

### *b) Matching Funds*

The Commission also proposed in its March 7 Order to continue the scoring system used in the 2022 NBBP program year with regard to matching funds. In comments, RIC supported this proposal, while Charter proposed that all unserved locations and areas be evaluated and scored the same.<sup>10</sup> At hearing, RIC and the NRBA opposed Charter's proposal.<sup>11</sup>

The Commission finds that the scoring of match percentage should continue as set forth in the 2022 NBBP program year. The scoring system for match percentage allows the Commission to evaluate applications as required by the Nebraska Broadband Bridge Act, and promotes the prioritization of applications which support more efficient use of state funding.<sup>12</sup> For the 2023 NBBP program year, 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.<sup>13</sup> Projects that require a 50% match may receive up to 30 points if additional match dollars are provided. The Commission will publish on the NBBP mapping website layers showing high-cost areas eligible for the lower match percentage, and the shapefiles that used in creating the layer will be available on the Commission's website.

### *c) Past History of Applicants*

Additionally, in comments, the NRBA recommended that the Commission adjust its scoring of applications to account for an applicant's past history.<sup>14</sup> The NRBA specifically recommended

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<sup>10</sup> Ex. 5 at 4; Ex. 3 at 3.

<sup>11</sup> Transcript at 17, 42.

<sup>12</sup> See Neb. Rev. Stat. § 86-1304(1)(a) (requiring a 50% match for projects outside a high-cost area, and a 25% match for projects inside a high-cost area).

<sup>13</sup> See Neb. Rev. Stat. § 86-1304(1)(a).

<sup>14</sup> Ex. 4.

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allotting "Up to 10 points for an Applicant's record of providing reliable 100/100 service in rural areas" and "Up to an additional 10 points for expected useful life of the facilities and long-term commitment to the project."<sup>15</sup> At hearing, RIC objected to the NRBA's proposal.<sup>16</sup> Upon questioning, the NRBA deferred to the judgment of the Commission as to what objective criteria might be evaluated to weigh an applicant's past history.<sup>17</sup>

Upon review of the application materials used in the 2022 program year, the Commission finds that the materials required to be provided and the current scoring of these materials are sufficient for the Commission to fairly weigh an applicant's financial, technical, and legal capability as is required by Neb. Rev. Stat. § 86-1306(2)(a). Applicants are required to provide substantial documentation, including a technical capability statement setting forth the number of technical staff dedicated to the project and a description of how the service area will be maintained throughout the useful life of the facilities, a business plan including a description of the facilities to be used and their maintenance requirements, as well as a cash flow projection for a minimum of five years. Additionally, applicants are deducted points if they have a history of failure to submit required information to the Commission, including annual reports or NUSF remittances, or fail to adequately address potential challenges to the construction and maintenance of the project.

The Commission declines to impose additional requirements to submit documentation upon NBBP applicants. We recognize that the administrative burden to submit NBBP applications is already significant and imposing more requirements upon carriers may discourage participation in the NBBP. The information required to be submitted at present is sufficient to weigh and compare applications under the requirements set by the Nebraska Broadband Bridge Act.

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<sup>15</sup> *Id.* at 2.

<sup>16</sup> Transcript at 17-18.

<sup>17</sup> Transcript at 53-54.

**3) Challenge Process**

*a) Type 1 and Type 2 Challenges*

In the March 7 Order in this docket, the Commission proposed to continue the challenge process as outlined in the Dec. 13 CPF-1 Order. The Commission sought comment on whether it would be appropriate to prohibit a single entity from submitting a combined challenge showing both Type 1 and Type 2 challenges to a single project. In comments, RIC supported this proposal.<sup>18</sup> At hearing, NextLink supported the proposal as well.<sup>19</sup>

The Commission finds that this proposal is reasonable and should be adopted. For the 2023 NBBP program year, 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 not accept challenges containing both Type 1 and Type 2 challenges within the same filing.

*b) Speed Testing*

In comments, some parties expressed concern with regard to the Commission's current speed testing requirements. Charter noted that the NUSF-133 speed testing requirements set by the Commission depart from the methodology used by the FCC.<sup>20</sup> Charter recommended in comments and at hearing that the number of locations required to be tested be reduced, and that the challenge period be extended to allow challengers to conduct required testing.<sup>21</sup> Similarly, Windstream stated in comments that "[t]he current challenge process requires significant resources to be dedicated to compiling challenge information and completing speed testing."<sup>22</sup>

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<sup>18</sup> Ex. 4 at 4.

<sup>19</sup> Transcript at 98.

<sup>20</sup> Ex. 3 at 4-6. See also Commission Docket No. NUSF-133, *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement standards for the verification of broadband service provider coverage and speed data, Order Setting Speed Test Requirements* (Nov. 8, 2022).

<sup>21</sup> Ex. 3 at 6; Transcript at 72-73.

<sup>22</sup> Ex. 7 at 3.

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Windstream encouraged the Commission to extend the challenge submission deadline to allow for speed testing, noting that speed testing may become a challenge with increased broadband construction due to federal and state grant funding.<sup>23</sup> However, at hearing, RIC opposed Charter's recommendations regarding speed testing, stating that this approach would shift the burden from the challenger to the applicant to demonstrate that the challenged locations are not meeting the required speed standard.<sup>24</sup>

In considering these comments, the Commission notes that the speed testing requirements set by the Commission in CPF-1 closely follow those adopted in a separate docket, NUSF-133, and have been reduced from the requirements set forth in the 2022 NBBP program year.<sup>25</sup> Additionally, the Commission finds that modifications to speed testing requirements across the Commission's funding programs are best made within the context of that docket. The NUSF-133 speed testing requirements were set in November of 2022, and the first year of required speed testing is underway. The Commission declines to significantly deviate from the NUSF-133 requirements in setting the 2023 NBBP program year requirements. However, the Commission welcomes continued feedback on this topic in the context of NUSF-133 and in future NBBP dockets.

With regard to the time allowed for challenges, the Commission's ability to extend the challenge submission deadline is limited by the Nebraska Broadband Bridge Act. Neb. Rev. Stat. § 86-1307 requires that challenges be submitted within thirty days after applications are published "except for good cause shown." The Commission found good cause in the 2022 NBBP program year to extend the challenge deadline until sixty days following the publication of applications.<sup>26</sup> For this year, in adjusting the procedural schedule as described above, the Commission is adopting

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<sup>23</sup> *Id.* at 4.

<sup>24</sup> Transcript at 18.

<sup>25</sup> In 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 Issuing 2022 Grant Application Schedule and Application Materials (May 10, 2022), ("C-5368 May 10 Order"), the Commission required Type 1 challengers to conduct speed testing daily on an hourly basis between 9:00 a.m. to 9:00 p.m. This requirement was reduced to hourly testing between the hours of 6:00 p.m. - 12:00 a.m. in CPF-1. See CPF-1 Jan. 10 Order at 9-10.

<sup>26</sup> C-5368 May 10 Order, at 10.



a slightly longer challenge period of sixty-seven days due to the earlier application deadline. However, the Commission remains committed to expediting the NBBP grant process as much as possible, and declines to extend the challenge deadline further at this time. The deadline for challenges will therefore remain as September 1, 2023. The Commission will evaluate the results of speed testing within the present docket and within NUSF-133 for 2023 and reserves the ability to adjust these requirements in future program years.

#### **4) Digital Inclusion Plans**

The Commission proposed to require that applicants for the 2023 NBBP program year provide a digital inclusion plan and participate in the Affordable Connectivity Program ("ACP"). In comments, Charter expressed support for this proposal.<sup>27</sup> Windstream requested that if applicants must include a digital inclusion plan, that a portion of the plan's implementation should be eligible for reimbursement under the NBBP.<sup>28</sup> RIC stated in comments that requiring applicants to create and administer their own low-income offering would be unduly burdensome, and proposed that an applicant that is in compliance with applicable federal and state low-income assistant plans that submitted a digital inclusion plan should automatically receive 5 points.<sup>29</sup>

At hearing, Mr. Robbins testified that the Department recommended continuing this requirement, with the caveat that should the ACP be replaced or modified in the future, that awardees would be expected to participate in said modified or replacement program. Mr. Robbins further testified that this requirement would ensure that Bridge funds are used for projects which are affordable and accessible to customers.<sup>30</sup>

Upon review, the Commission finds that as proposed, the requirements that applicants participate in the ACP and provide a digital inclusion plan should be adopted.<sup>31</sup> The Commission notes

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<sup>27</sup> Ex. 3 at 6.

<sup>28</sup> Ex. 7 at 4.

<sup>29</sup> Ex. 5 at 5.

<sup>30</sup> Transcript at 9.

<sup>31</sup> Should the ACP be replaced or modified in the future, awardees in the 2023 NBBP program year will be required to participate in the program as it exists at the time the project is completed.

that the requirement to submit a written digital inclusion plan, as set forth in CPF-1, does not demand that a provider create its own low-income program offering. Instead, an applicant is required to provide in writing a description as to how it will best serve the relevant community.<sup>32</sup> The Commission finds that this requirement is reasonable and should be continued in the 2023 NBBP program year, with modification. The required language set forth in CPF-1 was extensive in order to comply with federal grant requirements, and the Commission finds that these requirements can be streamlined for purposes of the 2023 NBBP program year. To the extent that applicants may incur costs in implementing their digital inclusion plans, the Commission encourages applicants to review the allowed and disallowed cost information available on the Commission's website and seek reimbursement for eligible expenses.<sup>33</sup>

With regard to the scoring of digital inclusion plans, the Commission finds that the scoring requirements in CPF-1 are appropriate and should be continued in the 2023 NBBP program year. All applicants must participate in the ACP and must provide a digital inclusion plan; these requirements will be the baseline for participation in the NBBP. Those providers who offer a separate low-income offering of at least 100/100 Mbps will be eligible for additional points, in recognition of the fact that such a plan is an additional step to ensure the publicly funded network is accessible to all community members. Applicants are not required to create such an offering, but may choose to do so in order to earn additional points.

#### **5) Fixed Wireless Providers**

In the March 7 Order, the Commission noted 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, and proposed that the same requirements be adopted in the 2023 NBBP program year. Comments on this proposal were generally favorable.<sup>34</sup>

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<sup>32</sup> See Commission Docket No. CPF-1: Program Guide (rev. Jan. 24, 2023), at 9-10.

<sup>33</sup> For example, material and direct labor costs incurred in the development of infrastructure are generally reimbursable.

<sup>34</sup> See Ex. 4 at 3; Ex. 5 at 5-6; Ex. 7 at 4.

At hearing, RIC testified in support of this proposal.<sup>35</sup> However, NextLink argued that these requirements are unnecessary, and recommended that if these requirements are adopted, that similar burdens be placed upon all carriers.<sup>36</sup>

Upon review of the comments submitted in this matter, the Commission finds that fixed wireless providers should be required to provide additional documentation to ensure all locations in the project area will be adequately served. Specifically, fixed wireless applicants must include 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. Additionally, fixed wireless applicants must 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, methodology, inputs, and assumptions used.

The Commission finds that this requirement does not create an undue burden on fixed wireless providers. The Commission is obligated to ensure that all locations in each NBBP project area receive a minimum of 100/100 Mbps service.<sup>37</sup> The requirements listed for fixed wireless providers are necessary to ensure that grants are only awarded to providers who can meet this minimum service level.

## 6) Rates

The Commission has received varied feedback with regard to its treatment of rates and rate comparability within the context of NBBP scoring. In its March 7 Order, the Commission proposed to adopt certain changes to the scoring of rates made in CPF-1. Specifically, CPF-1 allows applicants to submit good faith estimates of rates offered within the project area over the five

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<sup>35</sup> Transcript at 19. Charter also suggested that fixed wireless technology faces challenges with regard to topography. *Id.* at 91-92.

<sup>36</sup> *Id.* at 98-99.

<sup>37</sup> See Neb. Rev. Stat. § 86-1306(2)(d) ("...no grant shall be awarded based on speeds less than those scalable to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater.").

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years following completion of the project. This information is used to score applications on rate comparability. Successful applicants are required to submit actual pricing data for the five years following project completion. The Commission sought comment on whether this approach should be adopted in NBBP as well.

In comments, RIC opposed the continued use of benchmark rates in NBBP scoring, noting that a recent federal benchmark rate for urban service at 100/20 Mbps was \$105.03 per month.<sup>38</sup> Charter also submitted comments objecting to any kind of price regulation or long term price freezes.<sup>39</sup> At hearing, Mr. Robbins testified on behalf of the Department regarding the scoring of rate comparability, stating that once grant awards are issued, the Department compiles the average and median rates for projects awarded in each NBBP year.<sup>40</sup> The median rate is then used as a benchmark rate for the next year's scoring. Mr. Robbins noted that providers are not required to offer rates at that benchmark to be successful, and that the prices offered by successful applicants in the 2022 program year ranged between \$40 per month and \$150 per month.<sup>41</sup>

Upon review, the Commission finds that the requirements set forth in CPF-1 should be adopted in the 2023 NBBP program year. The Commission has an obligation to review whether an applicant is able to offer rates in the project area which are comparable to the rates offered by the applicant outside the project area for the same speed tiers.<sup>42</sup> Additionally, the Commission must ensure that awards are granted to financially capable providers, who are able to provide broadband internet service in the project area for at least fifteen years following project completion.<sup>43</sup> The Commission therefore finds that it is reasonable to require NBBP applicants to provide good faith estimates of the broadband prices to be offered in the project area for five years following

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<sup>38</sup> Ex. 5 at 7-9. See also FEDERAL COMMUNICATIONS COMMISSION, *Urban Rate Survey Data & Resources*, <https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources> (setting forth annual urban rate survey results and methodology).

<sup>39</sup> Ex. 3 at 7-9.

<sup>40</sup> Transcript at 11-12.

<sup>41</sup> *Id.*

<sup>42</sup> Neb. Rev. Stat. § 86-1306(2)(c).

<sup>43</sup> Neb. Rev. Stat. §§ 86-1306(2)(a), 86-1308(2)(a)(i).

completion of the project.<sup>44</sup> This information is necessary to ensure that an applicant complies with statutory requirements to offer rates comparable to those offered by the applicant outside the project area, and to ensure that the applicant has performed the necessary financial reviews to sustain its service offerings in the project area without additional public support.

In gathering rate information from NBBP applicants and awardees, the Commission would be remiss should it fail to consider in any way whether the rate offerings of a provider will be affordable to customers in the project area. While the Commission does not require that applications meet any particular price point or pricing structure, projects which are noteworthy in their affordability should receive additional or "bonus" points. The Commission finds that offering up to 5 points for those projects whose pricing is at or below the median rate offered by awardees in the previous NBBP program year is a reasonable measure to compare the affordability of applications against one another. The scoring structure used in CPF-1 will therefore be adopted for the 2023 NBBP program year.

## **7) Penalties**

The Commission sought comment on what penalties might apply in the event that an awardee chooses to return grant funds or otherwise fails to complete an NBBP project.<sup>45</sup> Commenters generally supported the issuance of penalties in these instances, and emphasized that penalties should be levied on a case-by-case basis.<sup>46</sup> The NRBA recommended in comments that consequences for these carriers should be more certain and severe, but at hearing, recommended looking at the "specific facts and circumstances in any particular failure."<sup>47</sup>

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<sup>44</sup> These estimated rates need not be the same over the five-year period, but should not include promotional rates such as new customer discounts, upgraded service discounts, or customer retention discounts. If a provider prefers to build in price changes or increases over the five-year period, the Commission will consider the weighted average of the rates offered during the five-year period.

<sup>45</sup> Ex. 1 at 5.

<sup>46</sup> See, e.g., Ex. 5 at 9, Ex. 6 at 1-2.

<sup>47</sup> Ex. 4 at 3-4; Transcript at 38.

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At hearing, Mr. Robbins testified on behalf of the Department that the Department recommended that penalties against providers be made on a case-by-case basis, and that a hearing on any request to return funds may be appropriate prior to levying any penalties or disqualifying providers from future participation.<sup>48</sup> RIC recommended that extensive penalties should not be levied for noncompletion of a grant project without consideration of the specific facts of each case.<sup>49</sup>

Upon review of the comments submitted and testimony presented at hearing, the Commission finds that providers who return NBBP grant funds should be penalized. For grants awarded in the 2023 NBBP program year and beyond, an awardee who returns NBBP grant funds will not be eligible to submit applications in NBBP grant cycle for a period of one calendar year after the funds are returned.

Additionally, the Commission finds that awardees who wish to return NBBP grant funds must make the request by motion, following which a hearing on the matter will be held. At hearing, an awardee and the Department may present evidence regarding the request to return grant funds. The Commission will make a determination based upon the evidence presented at hearing whether monetary penalties, or other penalties, should be levied against the awardee. Any money returned by an awardee will be included in an upcoming NBBP program year to be redistributed for other grants.

The Commission further finds that awardee accountability and project monitoring is crucial to successful project completion. This includes a reasonable awardee reporting requirement. Therefore, the Commission will require awardees to submit quarterly progress reports to the Commission documenting project milestones completed during the quarter, milestones expected to be completed during the next quarter, and any anticipated challenges that might delay progress in the next quarter. An awardee quarterly progress report form ("Progress Report") will be published on the Commission's website.

Each awardee will be required to submit a Progress Report no later than the fifteenth day of the first month following each calendar quarter. Awardees will be solely responsible for the

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<sup>48</sup> Transcript at 12-13.

<sup>49</sup> *Id.* at 22.

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accurate and timely submission of their Quarterly Report forms. Commission staff will review each Progress Report and will follow up with awardees as appropriate regarding the reported data. In the event of incomplete or inaccurate reporting, awardees may be required to revise and resubmit Progress Reports as necessary to correct any errors.

The information included in Progress Reports will help the Commission staff to monitor the progress and performance of each approved project. Progress Reports may also be used to help inform determinations regarding awardee extension requests or penalties, in the event an awardee returns grant funds or otherwise fails to timely complete an NBBP project.

### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above findings be adopted, and the 2023 Nebraska Broadband Bridge Program be conducted in accordance with said findings.

IT IS FURTHER ORDERED that the procedural schedule and filing deadlines for the 2023 Nebraska Broadband Bridge Program attached hereto as Attachment A be adopted. All deadlines shall be at 5:00 p.m. Central Time unless otherwise noted and will be strictly enforced.

IT IS FURTHER ORDERED that the application form attached hereto as Attachment B be released.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that the 2023 NBBP scoring reference sheet attached hereto as Attachment C be released.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that the 2023 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

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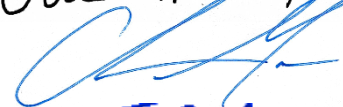


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Commission by email to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov) no later than 5:00 p.m. Central Time on June 26, 2022.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 16th day of May, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Chair

ATTEST:

  
Executive Director



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### Attachment A: Procedural Schedule

<u>Event</u>	<u>Date</u>
Commission enters order setting out application and scoring criteria	Tuesday, May 16, 2023
Application period begins Challenge forms released	Friday, June 16, 2023
Deadline to submit applications	Monday, June 26, 2023
Applications posted to Commission website	Thursday, June 29, 2023
Notices of intent to challenge due to Commission and to Applicant	Friday, July 21, 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



# Nebraska Broadband Bridge Program (NBBP) Grant Application

**Section I: Applicant Details**

Original

Revised

1. Applicant name:			
2. Applicant type:			
3. Applicant street address:			
3a. Applicant city:			
3b. Applicant state:			
3c. Applicant zip code:			
4. Applicant contact (first and last name):			
5. Applicant e-mail:			
6. Applicant phone number:			
7. Provider name:			
8. Provider contact (first and last name):			
9. Provider e-mail:			
10. Provider phone number:			
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):			
12. Legal representative e-mail:			
13. Legal representative phone number:			
14. Applicant's Nebraska ETC status:			
15. Does the applicant currently report through FCC BDC speeds of at least 100/100 Mbps provided to customers within the State of Nebraska?		15a. If yes, does the applicant clearly offer the minimum 100/100 Mbps speeds required on their public-facing website:	
15b. Provide the service provider's website URL that reflects the minimum 100/100 Mbps speeds currently available. Also, provide instructions on how to view available speeds, if not a direct link:			
16. Does the applicant currently participate in FCC's Affordable Connectivity Program (ACP)?			

17. Does the applicant commit to participating in FCC's ACP program, or subsequently identified subsidy program, for as long as the funded infrastructure is in use?	
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## Section II: Project Details

1. Project name:			
2. Project location description (the cities/communities where the project(s) will take place):			
3. Estimated number of locations served in project area:	3a. Unserved (<25/3 Mbps):	3b. Underserved (<100/20 Mbps):	3c. Total:
4. Technology type(s) to be deployed in project area:			
5. Current maximum connection speed bandwidth in project area (Mbps):		6. Projected minimum connection speeds at completion (Mbps):	
7. Monthly customer rate for proposed 100/100 Mbps service (this should not be a promotional rate):		7a. Does the rate plan for the proposed project area impose data or usage caps?	
7b. Does the rate plan for the proposed project area involve throttling speeds after usage limits are reached?		7c. Does the rate plan for the proposed project area involve metered or "pay as you go" service model?	
7d. Does the rate plan for the proposed project area impose early termination fees?		7e. Does the rate plan for the proposed project area lock customers into a particular plan or term with a long term contract?	
8. Maximum speeds all serviceable locations in project area will be capable to be scalable to upon completion:		9. Expected project completion date:	
10. Project geographic contiguity type:		11. If noncontiguous, are the areas included from the same exchange or adjacent exchanges?	
12. Total project costs (based on allowed costs):		13. NBBP grant amount requested:	
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 2020 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.		
15. Does the project involve any portion of deployment on tribal land?		NOTE: If the answer to 15 is "yes," proof of tribal consent must be provided to the Commission no later than September 21, 2023.	

**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 10, 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/Service Providers must include a statement including: (a) A description of the applicant’s experience providing broadband and whether they currently provide broadband at the minimum 100Mbps/100Mbps speeds. (b) The useful life of the facilities to be built and how the service area will be maintained throughout the useful life of the facilities. (c) How the project will be resilient and sustainable in the long-term. This statement should also include the number and skill level of technical staff that will be dedicated to serving the project area once the project is complete. (d) 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. (e) A detailed description of the proposed network architecture including homes passed, fiber miles, and the specific technology to be used to provide service to end users. (f) Describe their technical capability to meet the requirement to provide a minimum 100/100 Mbps in all locations that receive grant funding, and their plans to meet the minimum statutory technical and speed requirements in place for the NBBP throughout the 15-year period. (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 of a minimum 100/100 Mbps or next highest tier if 100/100 Mbps is not offered. 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 including the following: (a) Details of the proposed project, (b) 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, tribal approval, and permitting processes, and how the applicant intends to mitigate these risk factors or legal challenges, (c) A financial analysis for the project including cash flow projections for the project for a minimum of 5 years, including an explanation of revenue assumptions and take rate. 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. (d) A description of the plans for long-term maintenance of the network built through the grant. (e) Disclose any prior receipt of federally awarded grant funds for broadband deployment and provide copies of any past audits of federal awards. (f) A description of any community engagement efforts which have taken place. For projects that involve broadband development on tribal lands, permission from and approval by tribes is required and documentation of the approval must be provided to the Commission no later than September 21, 2023. (Attachment Letter: G)
- 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 and detail any matching funds committed. The funding breakdown should be submitted in Excel format. (Attachment Letter: H)
- Non-ETC applicants must attach the most current year’s audited financial statements. (Attachment Letter: I)
- A digital inclusion plan must be attached for consideration. The plan must describe: (a) The applicant’s process to consult with the community and consider affordability. (b) A description of how the project will meet the objective of providing broadband infrastructure deployment within the project area to directly enable work, education, and healthcare monitoring; (c) Identify any critical 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. (d) 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. (e) The plan should include the pricing structure of the 100/100 Mbps

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. (f) Include evidence of outreach efforts to relevant stakeholders (community leaders, community members, civic organizations, etc.) in the areas they are wishing to serve.

NOTE: To be eligible for scoring points, the digital inclusion plan must offer at least one low-income option for a discounted service offering at a minimum of 100/100 Mbps at a monthly cost of less than \$50 per month. The applicant must participate in federal broadband internet access subsidy programs such as Lifeline or Affordable Connectivity Program (ACP), and the low-income plan must be eligible to be discounted further with Lifeline and ACP discounts. (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, and should provide the following: (1) How the proposed spectrum can meet or exceed the relevant performance requirements at peak usage periods. Clearly identify the licensed and unlicensed spectrum that will be used; (2) Provide the calculations used for each frequency band, to design the last mile link budgets in both the upload and download directions at the cell edge using the technical specifications of the expected base station and customer premise equipment. Submit assumptions regarding fading statistics, cell edge probability of coverage, and cell loading for each relevant performance tier; (3) Provide detailed radio access network (RAN) infrastructure information used to generate the coverage maps for each unique cell including longitude, latitude, antenna height, antenna orientation, antenna down-tilt, antenna model, antenna system configuration, effective radiated power, operating spectrum amount, operating spectrum type, and operating radio technology; (4) Describe the underlying propagation model used to prepare the coverage maps and how the model incorporates the operating spectrum, antenna heights, distances, fading statistics, terrain resolution, and clutter resolution. Additionally, for applicants proposing to use fixed wireless technology, applicants must include: (1) tower location shapefiles for existing and planned towers; (2) shapefile polygon demonstrating coverage for the planned and/or existing networks that will be used to meet the BEAD public interest obligations, including where the upload and download speeds will meet or exceed the required speeds (100/100 Mbps), and showing that coverage encompasses the locations included in Attachment B. (Attachment Letter: K, K1 (tower locations), and K2 (propagation data)).

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. The applicant certifies that it is not currently using prohibited communications equipment and services developed by organizations on the Federal Communications Commission's Covered List and that it has filed the appropriate affidavit with the Nebraska Public Service Commission. The applicant agrees not to use equipment prohibited by the FCC within the network. The applicant agrees 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.

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Printed Name of Authorized Person

Date

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Title of Authorized Person

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Signature of Authorized Person

## 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			
<u>Technical Capability</u>				C
Broadband Data Collection (BDC) Filings	0-10			
Website Offerings	0-5			
Dig. Inclusion Plan/Low-Income Offering	0-5			D
<u>Rate Comparability</u>				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
<b>TOTAL</b>	<b>155</b>		<b>0</b>	

## 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. ETC applicants must have submitted financial statements to the Commission 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 the required details about the project, cash flow projections, including a description of revenue and take rate assumption calculation, for a period of five years following completion of the project, and a description of 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.
- 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. If this information is included, the application can be scored as follows:
- Broadband Data Collection (BDC) – 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 – (Yes/No), and up to 5 points available

- Digital Inclusion Plans (DIP) are required for all applications. Applications submitted without a DIP will be disqualified from further consideration.
- 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?
- 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 for 100Mbps/100Mbps or the next highest tier if applicant does not offer 100/100 Mbps 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 \$65 per month? If yes, 5 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:



- Less than or equal to 10 locations per square mile – 20 points
- 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. 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 2023

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# 1 Nebraska Broadband Bridge Program: General Information

## 1.1 Program Overview

The Nebraska Broadband Bridge Program is a State-funded program created pursuant to the Nebraska Broadband Bridge Act (the Act), Neb. Rev. Stat. §§ 86-1301 – 1312, to facilitate and fund the deployment of broadband networks in unserved and underserved areas of Nebraska. 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 (100Mbps/100Mbps), or greater. For program year 2023, 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 2023 Funding Availability

Pursuant to the Nebraska Broadband Bridge Act, \$20 million is appropriated to this program annually to be distributed as grants through the program and to pay for administrative costs. Additionally, in the 2023 program year, funds that remain uncommitted from any prior grant cycles 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 75% 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. Additional information and maps showing eligible high-cost areas in Nebraska are available on the Commission's website.

## 1.3 Eligible Applicants

Eligible applicants for this program 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) a tribal government. Applications from a political subdivision or a tribal government 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.

## 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](http://www.psc.nebraska.gov).

The NBBP grant funding period begins after the grant application is received, reviewed, and officially approved with an award notification. Eligible program costs are those that are incurred after the program year grant award notice and end at the conclusion of deployment, or at the established deadline for deployment for the NBBP grant project, based on 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>		
<b>Total Matching Funds:</b>	<b>\$100,000</b>	<b>100%</b>

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

See section 4.2, subsections 7 and 8 of this guide for additional information including examples of potential match sources and the scoring process.

## 2 Application Process

### 2.1 Filing Window – June 16, 2023 to June 26, 2023

The grant application window for program year 2023 will open on June 16, 2023 and close at 5:00 p.m. Central Time on June 26, 2023. 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 June 26, 2023, 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 the PSC website at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp>. For the best experience, we recommend that you open the file in Acrobat Reader or Professional, rather than a browser. You may submit additional pages to expand on application form fields if additional room is needed. The completed application and supporting documentation should be emailed to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov) no later than June 26, 2023 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. Tribal Government

NOTE: An application from a political subdivision or a tribal government 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 "Tribal Government." 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-5484.
- 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 Broadband Data Collection (BDC) system 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 BDC 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. Also, provide instructions on how to view available speeds, if not a direct link.
- Field 16. Indicate whether the applicant currently participates in FCC's Affordable Connectivity Program (ACP).
- Field 17. Indicate whether the applicant commits to participating in FCC's ACP program, or subsequently identified subsidy program, for as long as the funded infrastructure is in use.

## 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. This number should match the number of points representing locations that are submitted in the point shapefile.
- 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. Applicants proposing to use fixed wireless technologies must submit additional information.
- 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 minimum 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. This should not include promotional rates such as new customer discounts, upgraded service discounts, or customer retention discounts.
- 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 <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp> 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 \$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-5484, such as areas outside of cities, villages, or unincorporated areas as defined in the 2020 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.
- Field 15. Indicate whether the project involves any portion of deployment on tribal land. If so, proof of tribal consent must be provided to the Commission no later than September 21, 2023.

### 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. Any supporting files necessary to open the shapefile must also be attached. (Attachment Letter: A).
2. A point shapefile which identifies serviceable locations in the project area must be included. Any supporting files necessary to open the shapefile must also be attached. (Attachment Letter: B). The points in the shapefile should match the number of locations reported to be served on the application in Field 3c.
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 10 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 including:
  - a. A description of the applicant’s experience providing broadband and whether they currently provide broadband at the minimum 100Mbps/100Mbps speeds.
  - b. The useful life of the facilities to be built and how the service area will be maintained throughout the useful life of the facilities.
  - c. How the project will be resilient and sustainable in the long-term. This statement should also include the number and skill level of technical staff that will be dedicated to serving the project area once the project is complete.



- d. 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,
- e. A detailed description of the proposed network architecture including homes passed, fiber miles, and the specific technology to be used to provide service to end users.
- f. Describe their technical capability to meet the requirement to provide a minimum 100/100 Mbps in all locations that receive grant funding, and their plans to meet the minimum statutory technical and speed requirements in place for the NBBP throughout the fifteen-year period. (Attachment Letter: E).

NOTE: Applicants proposing to utilize fixed wireless technology are required to file additional information in Attachment K.

- 6. Rate comparability details: Attach information demonstrating that the retail rates for the proposed service area are comparable to, or lower than, the applicant's rates outside the project area for the same speed tiers of a minimum 100/100 Mbps or next highest tier if 100/100 Mbps is not offered. 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 including the following:
  - a. Details of the proposed project,
  - b. 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, tribal approval, and permitting processes, and how the applicant intends to mitigate these risk factors or legal challenges,
  - c. A financial analysis for the project including cash flow projections for the project for a minimum of 5 years, including an explanation of revenue assumptions and take rate. 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.
  - d. A description of the plans for long-term maintenance of the network built through the grant.
  - e. Disclose any prior receipt of federally awarded grant funds for broadband deployment and provide copies of any past audits of federal awards.

NOTE: For projects that involve broadband development on tribal lands, permission from and approval by tribes is required and documentation of the approval must be provided to the Commission no later than September 21, 2023. (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 and detail any matching funds committed. 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. A digital inclusion plan must be attached for consideration. The plan must describe:

1. The applicant's process to consult with the community and consider affordability.
2. A description of how the project will meet the objective of providing broadband infrastructure deployment within the project area to directly enable work, education, and healthcare monitoring;
3. Identify any critical 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.
4. 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.
5. The plan should include the pricing structure of the 100/100 Mbps 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.
6. Include evidence of outreach efforts to relevant stakeholders (community leaders, community members, civic organizations, etc.) in the areas they are wishing to serve.

NOTE: To be eligible for scoring points, the digital inclusion plan must offer at least one low-income option for a discounted service offering at a minimum of 100/100 Mbps at a monthly cost of less than \$50 per month. The applicant must participate in federal broadband internet access subsidy programs such as Lifeline or Affordable Connectivity Program (ACP), and the low-income plan must be eligible to be discounted further with Lifeline and 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, and should provide the following:
  1. How the proposed spectrum can meet or exceed the relevant performance requirements at peak usage periods. Clearly identify the licensed and unlicensed spectrum that will be used.
  2. Provide the calculations used for each frequency band, to design the last mile link budgets in both the upload and download directions at the cell edge using the technical specifications of the expected base station and customer premise equipment. Submit assumptions regarding fading statistics, cell edge probability of coverage, and cell loading for each relevant performance tier.
  3. Provide detailed radio access network (RAN) infrastructure information used to generate the coverage maps for each unique cell including longitude, latitude, antenna height, antenna orientation, antenna down-tilt, antenna model, antenna system configuration, effective radiated power, operating spectrum amount, operating spectrum type, and operating radio technology.
  4. Describe the underlying propagation model used to prepare the coverage maps and how the model incorporates the operating spectrum, antenna heights, distances, fading statistics, terrain resolution, and clutter resolution.

Applicants must include tower location shapefiles for existing and planned towers. They must also provide a shapefile polygon demonstrating coverage for the planned and/or existing networks that will be used to meet the BEAD public interest obligations, including where the upload and download speeds will meet or exceed the required speeds (100/100 Mbps), and showing that coverage encompasses the locations included in Attachment B. (Attachment Letter: K, K1 (tower locations), and K2 (propagation data)).

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](mailto:psc.broadband@nebraska.gov) by 5:00 p.m. Central Time on June 26, 2023. The application form should be submitted in .pdf format using the provided application form, all required polygon shapefiles and point shapefiles should be submitted along with other application materials and must include all supporting files necessary to open the shapefiles. If all documents CANNOT 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, etc., 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 2023 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 required 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 2023 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 2023 will be posted to the Commission website on June 29, 2023, for review by interested parties.

### 3 Challenge Process

#### 3.1 Notice of Intent to Challenge – Due July 21, 2023

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. 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 21, 2023, in order for a subsequent formal challenge to be considered. 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 1, 2023

A challenging provider may 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.

Please note, if a challenging party wishes to submit both a type 1 and type 2 challenge against a project, they must submit a separate challenge for each; i.e. if company A challenges project B on both type 1 and type 2 grounds, company A would submit two separate challenge forms rather than a combination of the two.

**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:
  - 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;
  - A point shapefile identifying locations served in the project area along with all supporting files required to open the shapefile
  - At least one week (7 days) 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. Testing should be performed daily on an hourly basis between 6:00 pm to 12:00 am. The speed test data must support the availability and access to 100Mbps/20Mbps speed service for 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 demonstrate that all locations are able to meet or exceed 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
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- 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 Broadband Data Collection (BDC) 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.).
- If utilizing fixed wireless technologies to serve the area, challengers must also include tower location shapefiles for existing and planned towers. They must also provide a shapefile polygon demonstrating coverage for the planned and/or existing networks, including where the upload and download speeds meet or exceed the required speeds (100/20 Mbps), and showing that coverage encompasses the locations included in the challenged area. Propagation shapefiles and a description of the spectrum utilized must also be provided.
- 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/20 Mbps 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 3<sup>rd</sup> party contractors, and evidence of costs incurred and/or work being initiated, including invoices or copies of purchase orders, local permits applied for and received, and locate request tickets.
  - A construction map showing facilities to be deployed in the project area; and
  - A 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.
  - If utilizing fixed wireless technologies to serve the area, challengers must also include tower location shapefiles for existing and planned towers. They must also provide a shapefile polygon demonstrating coverage for the planned and/or existing networks, including where the upload and download speeds meet or exceed the required speeds (100/20 Mbps), and showing that coverage encompasses the locations included in the challenged area. Propagation shapefiles and a description of the spectrum utilized must also be provided.

### 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 2023, the due date for the supplemental information and/or response is September 21, 2023.

**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 2023, the Commission will release the determinations as to credibility of partial challenges on Tuesday, October 24, 2023.

- 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 2023, the due date for the modified application in response to challenge is November 9, 2023. 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 5, 2023, 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).

NOTE: Projects that include a mix of both unserved and underserved project areas will be considered in priority tier 3.

### 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 up to 10 scoring points will be available if a business plan is included that provides the required details about the project, a description of how the proposed network will be maintained over the expected useful life of the facilities. Applicants must also provide cash flow projections for a period

of five years following completion of the project and a description of revenue and take rate assumption calculation must be included.

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,
  1. One-time waivers will be excluded from consideration when reviewing legal capability
- 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** – Yes or 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. If this information is included, the application can be scored as follows:

- a. FCC Broadband Data Collection (BDC): Does the most recently available FCC BDC 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. **Digital Inclusion Plan** – Yes/No, and up to 5 points available:

Digital Inclusion Plans (DIP) are required for all applications. Applications submitted without a DIP will be disqualified from further consideration. Applications meeting the following criteria will receive 5 points in this category:

- 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?
- b. Is the low-income plan 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.

5. **Rate Comparability** – Up to 10 points will be awarded as follows:

- a. Are the rates included in the application comparable to or lower than what they offer in other areas they serve in Nebraska for 100/100 Mbps or the next highest tier if applicant does not offer 100/100 Mbps? If yes, 5 points will be awarded.
- b. Are the rates included in the application for 100Mbps/100Mbps service at or below \$65.00 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).



6. **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

7. **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.
    - iv. NOTE: Existing deployments including but not limited to existing infrastructure or middle-mile fiber paths already in-place are not considered part of the total project costs nor an allowable match source for this program.
  - d. NOTE: If the application involves a combination of match sources, the project would be considered under the lower point category.
8. **Match Percentage** – Up to 60 points will be awarded as follows:
- a. Any match up to 60% will be awarded points on 1 point/percentage point basis.
9. **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

More than 10 but less than 20 locations/Sq. Mile	12
More than 20 but less than or equal to 42 locations/Sq. Mile	5

**10. 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.

**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 2023, grant awards will be released December 5, 2023. 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 grant recipients 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 at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp>.

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 at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp>. 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-Award Requirements

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 Awardee Progress Report form can be found on the NBBP website.

## 7 Post-Deployment Requirements

### 7.1 Speed and Latency 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 2023 program year, speed test data submitted to the Commission are required to follow the standards for the verification of broadband service provider coverage and speed data as set forth in Commission Order NUSF-133, which generally models the Performance Measures Testing standards set by the FCC. 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.

Testing must be performed on an hourly basis between the hours of 6:00 p.m. and 12:00 a.m. local time each day. The speed tests should reflect actual download and upload speeds that are experienced by users, using a random sample of locations of subscribing consumers as selected by the Commission. A minimum of one test per hour should be conducted during the test window, with one week (7 days) of testing for each project. To test latency, a carrier must conduct one latency test per minute at each selected test location for the duration of the testing period. 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. Should an applicant's testing fail to reflect that the entire project area is capable of being served at the required speeds as approved in the grant application, 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.

## 8 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.

## 9 Failure to Complete an Awarded Project

### 9.1 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 provide 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 based upon inadequate speed testing, 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 requested, would be afforded a hearing on the matter.

### 9.2 Penalties

In rare circumstances and for good cause, the Commission may allow grant recipients to return grant funds awarded prior to the project completion deadline. A request to return grant funds must be made by filing a motion with the Commission with service to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov). A hearing on the motion will be scheduled. Following hearing, the Commission will enter an order barring the grant recipient who returned NBBP grant funds from submitting NBBP applications for a period of one calendar year after the funds are returned. The Commission may also levy additional penalties in its discretion, including but not limited to monetary penalties pursuant to Neb. Rev. Stat. § 75-156 and/or a bar on participation in other related Commission grant programs. This determination will be made on a case-by-case basis.

## 10 Contact Information

For more information including the application and template forms, consult our website at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp>. The Commission staff can be contacted via e-mail at [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov).