

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. CPF-1
Public Service Commission, on)
its own motion, to administer) ORDER ISSUING CHALLENGE
federal Capital Projects Funds) DETERMINATIONS AND
for broadband development in) RECLASSIFICATION OF
Nebraska.) APPLICATIONS
)
) Entered: May 16, 2023

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") initiated this proceeding on December 13, 2022 to administer federal Coronavirus Capital Projects Fund ("CPF")¹ funding for broadband development in Nebraska pursuant to Neb. Rev. Stat. § 81-12,245 and in accordance with the Nebraska Broadband Bridge Act.² On January 10, 2023, the Commission released an Order Issuing 2023 Grant Application Schedule and Application Materials ("January 10, 2023, Order"). On January 18, 2023 the Commission entered an Order scheduling a public workshop. A public workshop was held on January 24, 2023, in the Commission Hearing Room and via WebEx.

Pursuant to the procedural schedule released in our January 10, 2023 Order, applicants were required to submit applications on or before February 24, 2023.³ Applicants were given an opportunity to modify applications, correct defects in applications, and provide responses to challenges submitted until April 24, 2023.⁴

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

Withdrawn and Incomplete Applications

Upon review of applications submitted, the Commission has determined that the following applications were either withdrawn or incomplete and are therefore not eligible for grant funding:

¹ U.S. Department of Treasury ("Treasury"), Notice of Award, Coronavirus Capital Projects Fund, Federal Award Identification Number (FAIN) CPFFN0183.

² Neb. Rev. Stat. §§ 86-1301 to 86-1312 (Cum. Supp. 2022).

³ See January 10, 2023 Order, "Attachment A: Procedural Schedule."

⁴ See *id.*

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| Applicant | Project Name |
|-----------------------------|------------------------|
| Cox Nebraska Telecom, LLC | Colfax 1 |
| Great Plains Communications | Center |
| | Verdigre |
| | Wausa |
| | Wisner Rural |
| | Wolbach |
| | Wynot |
| Windstream Nebraska, Inc. | Windstream CPF-23 Peru |

Upon review of applications submitted, the Commission has determined that the following applications should be reclassified as follows:

| Applicant | Project Name | Reclassified Priority Tier |
|---------------------|---|---|
| ALLO Communications | Seward County - Section 8 | Three |
| ALLO Communications | Seward County - Section 9 | Three |
| ALLO Communications | Village of Princeton | Three |
| ALLO Communications | Village of Hallam | Three |
| ALLO Communications | Village of Malcolm | Three |
| AMG Technology | AMG Technology Project Western NBBP 2023 | Three |
| AMG Technology | AMG Technology Project Cortland NBBP 2023 | Three |
| AMG Technology | AMG Technology Project Pickrell NBBP 2023 | Three |
| AMG Technology | AMG Technology Project Barneston NBBP 2023 | Three |
| AMG Technology | AMG Technology Project Clatonia NBBP 2023 | Three |
| Qwest Corporation | Creston | Three |

Partial Challenge Determinations

Upon review of the challenges to applications submitted, the Commission finds that the challenges listed in Attachment A to this Order are partial challenges.⁵ The Commission has reviewed the partial challenges listed in Attachment A and made determinations as to whether each listed challenge is credible pursuant to Neb. Rev. Stat. § 86-1307. Challenges listed in Attachment A will therefore be upheld or denied as set forth in the Attachment.⁶

The Commission reviewed all challenge information submitted in accordance with the program guidance released on January 10, 2023.⁷ In some cases where the Commission found specific attachments to be insufficient, the Commission found that it could rely on other information submitted by the challenger to determine credibility of the challenge. In other cases, a review of the submission in its entirety did not sufficiently establish credibility. For example, the Commission notes that some Type 1 challenges were denied due to a lack of complete information evidencing that the minimum speeds were available throughout the challenged service area. Consistent with the program guidance provided with its January 10, 2023 Order, Type 1 challengers must include data evidencing the availability and access to 100Mbps/20Mbps speed service to active subscriber locations in the proposed project area.⁸ The challenge data provided must include the location where the speed test was run and challengers must demonstrate that the locations chosen to be tested were randomly selected.⁹ Some challengers filed Type 1 challenges based upon the existence of fiber through a community and copper, Digital

⁵ The determination as to whether the challenges were partial challenges was based upon a review of the location and mapping data for each application and the challenges submitted. Challenges which did not cover all locations in the application project area were determined to be partial challenges.

⁶ Determinations relative to the credibility of "full" challenges, *i.e.*, those covering all locations in the application project area, will be released on or before June 27, 2023.

⁷ See January 10, 2023 Order at 9-11; see also the Nebraska Capital Projects Fund ("CPF") Guide, Program Year 2023, Section 3.2 at 12.

⁸ See the CPF Guide, Program Year 2023, Section 3.2 at 12.

⁹ See *id.* See also Neb. Rev. Stat. § 86-1307(4) (speed test results shall be provided in a manner prescribed by the commission).

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Subscriber Line (DSL), service to the customer premises. Without sufficient information relative to the address points tested and whether such locations were selected on a randomized basis, the Commission finds that some challenges lacked a credible demonstration that the challenged area was served.¹⁰ The Commission also notes that some challengers provided evidence of advertised speeds to certain locations which the Commission could not verify. The Commission found some locations have broadband speeds significantly lower than the "available" advertised speeds. Some challenges lacked the required documentation.¹¹ Attachment A to this Order provides an indication as to why certain challenges were deemed not credible and were therefore denied.

In instances where the Commission upheld a partial challenge, an applicant may still be eligible for funding if the applicant submits a revised application removing the successfully challenged portion of the application. Revised applications will be accepted until **Friday, June 2, 2023 at 5:00 p.m. Central Time**. Applications not revised before that date will be considered withdrawn.

Successful Type 1 challengers must submit to the Commission an attestation that they will continue to provide 100/20 Mbps service in the entire challenged area on or before **Tuesday, May 23, 2023, at 5:00 p.m. Central Time**. These challengers will also be required to notify Commission should the challenger's service offerings in the area change.

Successful Type 2 challengers must submit an attestation that they will proceed with the deployments identified in the respective challenge. This required attestation must be received on or before **Tuesday, May 23, 2023, at 5:00 p.m. Central Time**.

Challengers must submit the required attestation for any and all successful challenges submitted. If assistance is needed, challengers are encouraged to reach out to psc.broadband@nebraska.gov.¹²

¹⁰ See Neb. Rev. Stat. 86-1307(5). The Commission further observes that some challengers' advertised speed data contained incomplete information relative to the actual advertised speeds to consumers in the project area.

¹¹ See Capital Funds Project Challenge Form, page 2. Specifically, the required documentation for Attachment Letter K.

¹² Challengers submitting Type 2 challenges which result in an application, or portion of an application, not receiving funding will be required to submit quarterly progress reports demonstrating successful build-out to the service

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If a challenger does not submit the required attestation(s) by the deadline specified in this Order, the Commission will deem the challenge incomplete and will inform the impacted applications of the revised challenge determination. Should a challenge be determined incomplete, the application will be considered without modification.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above findings be adopted.

IT IS FURTHER ORDERED that successful Type 1 challengers must submit to the Commission an attestation that they will continue to provide 100/20 Mbps service in the entire challenged area on or before **May 23, 2023 at 5:00 p.m. Central Time.**

IT IS FURTHER ORDERED that successful Type 2 challengers must submit to the Commission an attestation that they will proceed with the deployments identified in their respective challenge on or before **May 23, 2023 at 5:00 p.m. Central Time,** and quarterly progress reports regarding the construction of service in the project area as described above.

IT IS FINALLY ORDERED that applicants who were successfully challenged in part may submit a modified application removing the challenged locations on or before **Friday, June 2, 2023 at 5:00 p.m. Central Time.**

area. Additional instructions will be included in the Commission's forthcoming Order issuing grant awards and the remaining challenge determinations.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Eric M. Hamler

[Signature]

Tim Schram

Kevin Stocker

[Signature]

Chair

ATTEST:

Thomas W. Golden
Executive Director

Commission Docket No. CPF-1
 Nebraska Broadband Bridge Program – 2023 Capital Projects Fund
Attachment A: Partial Challenge Results

| Applicant Name | Project Name | Name of Challenger(s) | Challenge Type | Challenge Disposition |
|--|----------------------------------|------------------------------|-----------------------|------------------------------|
| ALLO Communications LLC | Seward County-Section 7 | Windstream | 1 | Upheld |
| ALLO Communications LLC | Seward County-Section 8 | Windstream | 1 | Denied ¹ |
| ALLO Communications LLC | Seward County-Section 9 | Windstream | 1 | Denied ¹ |
| ALLO Communications LLC | Village of Hallam | Windstream | 1 | Denied ¹ |
| ALLO Communications LLC | Village of Princeton | Windstream | 1 | Upheld |
| ALLO Communications LLC | Village of Malcolm | Windstream | 1 | Denied ¹ |
| AMG Technology Investment Group, LLC dba Nextlink Internet | AMG Technology Project Adams | Windstream | 1 | Upheld |
| AMG Technology Investment Group, LLC dba Nextlink Internet | AMG Technology Project Barneston | Windstream | 1 | Denied ² |
| AMG Technology Investment Group, LLC dba Nextlink Internet | AMG Technology Project Clatonia | Windstream | 1 | Denied ¹ |
| AMG Technology Investment Group, LLC dba Nextlink Internet | AMG Technology Project Cortland | Windstream | 1 | Upheld |
| AMG Technology Investment Group, LLC dba Nextlink Internet | AMG Technology Project Dawson | Windstream | 1 | Denied ² |
| AMG Technology Investment Group, LLC dba Nextlink Internet | AMG Technology Project Filley | Windstream | 1 | Denied ¹ |

Commission Docket No. CPF-1
 Nebraska Broadband Bridge Program – 2023 Capital Projects Fund
Attachment A: Partial Challenge Results

| Applicant Name | Project Name | Name of Challenger(s) | Challenge Type | Challenge Disposition |
|--|---------------------------------------|------------------------------|-----------------------|------------------------------|
| AMG Technology Investment Group, LLC dba Nextlink Internet | AMG Technology Project Pickrell | Windstream | 1 | Denied ¹ |
| AMG Technology Investment Group, LLC dba Nextlink Internet | AMG Technology Project Western | Windstream | 1 | Denied ¹ |
| AMG Technology Investment Group, LLC dba Nextlink Internet | AMG Technology Wireless South Project | Zito Midwest | 1 | Upheld |
| | | Windstream | 1 | Denied ³ |
| | | Windstream | 2 | Upheld |
| Eagle Broadband Investments, LLC dba Vyve Broadband | Bellwood West Expansion | Windstream | 2 | Upheld |
| Midstates Data Transport, LLC dba Stealth Broadband | Platte County Central Unserved | AMG | 2 | Denied ⁴ |
| Pinpoint Communications, Inc. | Brock | Windstream | 1 | Denied ² |
| Pinpoint Communications, Inc. | Cook | AMG | 2 | Denied ⁴ |
| | | Windstream | 1 | Upheld |
| Pinpoint Communications, Inc. | Dunbar | Windstream | 1 | Upheld |
| Pinpoint Communications, Inc. | Johnson Town | Windstream | 1 | Upheld |
| Pinpoint Communications, Inc. | Otoe | Windstream | 1 | Denied ¹ |
| Quick Current-Nebraska, LLC | OTONetwork Build-PhaseNCPF | CenturyLink | 2 | N/A ⁷ |
| | | ALLO | 1 | N/A ⁷ |
| | | AMG | 2 | N/A ⁷ |

Commission Docket No. CPF-1
Nebraska Broadband Bridge Program – 2023 Capital Projects Fund
Attachment A: Partial Challenge Results

| Applicant Name | Project Name | Name of Challenger(s) | Challenge Type | Challenge Disposition |
|--------------------------------------|---|-----------------------|----------------|-----------------------|
| Qwest Corporation dba CenturyLink QC | Clarkson | Midstates Data | 1 | Denied ⁵ |
| Qwest Corporation dba CenturyLink QC | Creston | AMG | 2 | Denied ⁴ |
| Qwest Corporation dba CenturyLink QC | Fremont District 1 | AMG | 2 | Denied ⁴ |
| Qwest Corporation dba CenturyLink QC | McLean | AMG | 2 | Denied ⁴ |
| Spectrum Mid-America, LLC | Charter Communications-Cass County | Windstream | 2 | Upheld |
| | | Windstream | 1 | Denied ⁶ |
| Spectrum Mid-America, LLC | Charter Communications-Lancaster County | Windstream | 1 | Denied ¹ |
| Windstream Nebraska, Inc. | Windstream NE CPF 23-Hickman | ALLO | 2 | Upheld |
| Windstream Nebraska, Inc. | Windstream NE CPF 23-Martell | ALLO | 2 | Upheld |
| Windstream Nebraska, Inc. | Windstream NE CPF 23-Seward | ALLO | 2 | Upheld |

¹ Challenges are denied because, 1) offerings to some customers are not available at 100/20 Mbps per challengers’ website and, 2) unable to verify the veracity of the speed tests provided (no location data or demonstration of randomized selection). *See* Nebraska Capital Projects Fund (CPF) Guide, Program Year 2023, Section 3.2 at pg. 12.

² Speed tests do not contain the locations where the speed test was run or a demonstration of randomized selection, and the tests submitted fail to meet the requirement that tests “must reflect that at least 80% of the speed measurements reflect speeds at 80% or more of the 100/20 Mbps standard.” *See id*

³ Unable to determine which challenged areas have speed test information; not all addresses in advertised materials are within the challenged area. *See id*.

⁴ Attachment K material is insufficient and does not contain the required information. Unable to establish work is underway or will be completed within 18 months. *See* CPF Guide, Program Year 2023, Section 3.2 at pgs. 12-13.

⁵ Lack of credibility due to insufficient demonstration that all customers can be served at the required speeds. There was no demonstration of randomized selection of tested locations, and it seems speed tests provided were only for fiber customers, not for fixed wireless customers. The number of speed tests performed does not meet requirements (10% of challenged households). *See* CPF Guide, Program Year 2023, Section 3.2 at pg. 12.

⁶ Advertisements were provided for only one part of challenged area. Unable to determine location of speed tests and demonstration of randomized selection was not provided. *See id*.

⁷ Application has been revised to remove challenged area.