

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. C-5272  
Public Service Commission, on )  
its own motion, to implement ) ORDER GRANTING MOTION TO  
the Nebraska Broadband Bridge ) RETURN GRANT FUNDING  
Act. )  
) Entered: August 15, 2023

BY THE COMMISSION:

On June 8, 2021, the Nebraska Public Service Commission ("Commission") initiated this proceeding on its own motion to implement the Nebraska Broadband Bridge Act ("the Act") and administer the 2021 grant cycle of the Nebraska Broadband Bridge Program ("NBBP"). In this docket, on January 4, 2022, the Commission entered an order issuing grant awards and the results of challenges ("January 4 Order"). Pursuant to the January 4 Order, ATC Communications/ATCJet.net ("ATC") was awarded \$259,775 to construct a broadband network in Big Springs, Nebraska ("Big Springs project").

On March 26, 2023, ATC submitted a motion to the Commission for leave to return grant funding received in the above-captioned docket. In support of its motion, ATC stated that since the Commission awarded funds to ATC for the Big Springs project, a competing provider has completed a fiber project in Big Springs, making the project economically infeasible. ATC additionally stated that it has been unable to secure necessary pole attachments from NPPD for this project. ATC therefore requested leave to return NBBP funds awarded for the Big Springs project.

### E V I D E N C E

A hearing was held on this matter on June 7, 2023. Matt Effken appeared on behalf of the Telecommunications & NUSF Department of the Commission ("Department"). Russell Westerhold appeared on behalf of ATC. Exhibits 1-6 were offered and accepted.

Cullen Robbins, Director of the Telecommunications & NUSF Department, testified on behalf of the Department. Mr. Robbins testified that ATC had been awarded \$259,775 to build out and provide service within Big Springs, Nebraska.<sup>1</sup> Mr. Robbins noted that ATC's request to return funds states that broadband service that meets or exceeds 100/20 megabits per second ("Mbps") is

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<sup>1</sup> Transcript at 8.

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. C-5272

Page 2

already available in the Big Springs area, and that one of the goals of the NBBP is to ensure public funds are not being used to provide service where it already exists.<sup>2</sup>

Mr. Robbins stated that in most cases, a return of grant funds means that service won't be provided in the area of the original application, and that other potential applicants may be denied the opportunity to bring service to that area.<sup>3</sup> However, Mr. Robbins noted that in this instance, the area of the original application is being served, and that this appears to be an isolated incident.<sup>4</sup> Therefore, Mr. Robbins' recommendation to not levy additional penalties against ATC beyond the return of grant funds issued to date.<sup>5</sup>

Following Mr. Robbins' testimony, John Koller testified on behalf of ATC. Mr. Koller testified that ATC serves seven exchanges and approximately 1,400 customers in Nebraska.<sup>6</sup> Mr. Koller testified that at the time ATC applied for NBBP funding in this docket, ATC was able to serve a limited number customers in Big Springs with 25/3 Mbps service.<sup>7</sup> Mr. Koller noted that the only competing provider in the area at the time was CenturyLink, which was offering approximately 20/1 Mbps service.<sup>8</sup> Mr. Koller stated that ATC was not aware of any other provider in the area capable of providing 100/20 Mbps service at the time of ATC's application.<sup>9</sup>

Mr. Koller stated that ATC intended to build the Big Springs project by building a fiber backbone from ATC's Brule exchange into Big Springs and constructing an aerial fiber network using NPPD pole attachments.<sup>10</sup> Mr. Koller stated that aerial fiber is significantly less costly to install than underground fiber, at a rate of approximately one-third the cost of underground installation.<sup>11</sup> ATC had begun work on the Big Springs project prior to its award.<sup>12</sup> Mr. Koller testified that at the time of hearing, ATC had already spent approximately \$100,000 on inventory for the Big Springs project, and \$40,000 on engineering fees.<sup>13</sup> However,

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<sup>2</sup> *Id.* at 9.

<sup>3</sup> *Id.* at 10.

<sup>4</sup> *Id.* at 10-11.

<sup>5</sup> *Id.* at 11.

<sup>6</sup> *Id.* at 18.

<sup>7</sup> *Id.* at 20.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 23.

<sup>10</sup> *Id.* at 20-21.

<sup>11</sup> *Id.* at 22.

<sup>12</sup> *Id.* at 23-24.

<sup>13</sup> *Id.* at 28.

## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Application No. C-5272

Page 3

Mr. Koller stated that inventory purchased can typically be repurposed.<sup>14</sup> Mr. Koller also testified that ATC was awarded another NBBP project in the Arapahoe and Hobert exchange, and that ATC had been successful in completing that project.<sup>15</sup>

Following Mr. Koller's testimony, Rodney Whipple, Information Services Operations Manager, testified on behalf of ATC. Mr. Whipple testified that beginning in the early 2000s, ATC provided internet services to schools and grain elevators in Big Springs.<sup>16</sup> Mr. Whipple stated that prior to beginning the NBBP Big Springs project, he presented the project to the Village of Big Springs Board of Trustees.<sup>17</sup> Mr. Whipple stated that ATC did not learn of the transition of services in Big Springs to a competing provider until after the NBBP grant had been awarded.<sup>18</sup> Mr. Whipple stated that since Spectrum began offering services in Big Springs, he has independently conducted speed tests and believes that the village is being served with speeds of at least 100/20 Mbps.<sup>19</sup>

Corey Groves, Senior Network Tech Engineer, then testified on behalf of ATC. Mr. Groves described his work with an engineering group, Olssen Associates, to obtain NPPD pole attachments.<sup>20</sup> Mr. Groves stated that as the project progressed, communication with Olssen Associates slowed because they were not receiving responses from NPPD.<sup>21</sup> Mr. Groves stated that ATC was attempting to obtain 191 pole attachments, but were only authorized by NPPD to for between 85 and 90 attachments.<sup>22</sup> Mr. Groves noted that NPPD required attachments to be very high to accommodate combines regardless of location.<sup>23</sup>

Following Mr. Groves' testimony, no further evidence was adduced, and the hearing was adjourned.

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<sup>14</sup> *Id.* at 30.

<sup>15</sup> *Id.* at 21-22.

<sup>16</sup> *Id.* at 32.

<sup>17</sup> *Id.* at 33.

<sup>18</sup> *Id.* at 34-35.

<sup>19</sup> *Id.* at 35-36.

<sup>20</sup> *Id.* at 42. Discussions with Olssen Associates and NPPD are set forth in detail in Exhibit 6.

<sup>21</sup> Transcript at 43.

<sup>22</sup> *Id.* at 44.

<sup>23</sup> *Id.* at 45-46.

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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Application No. C-5272

Page 4

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

Under the terms of the January 4 Order, ATC was required to complete the Big Springs project by July 5, 2023. In its Motion, ATC states that it will not be able to meet this deadline, and seeks to return funds rather than seeking an extension of the project deadline. The Nebraska Broadband Bridge Act, in Neb. Rev. Stat. § 86-1304(2)(b), provides that an NBBP grant recipient who fails to complete an awarded project by the deadline shall repay the grant. The Commission finds that it has the authority to order repayment of grant money issued to an NBBP awardee in the event that the awardee is unable to complete the project in question.

At the time the Big Springs Project was approved, the Commission had not issued guidance for awardees as to the terms of such repayment. As an awardee, ATC was required by Neb. Rev. Stat. § 86-1308 to agree to provide broadband Internet service in the project area "until released from the applicant's commitment by the commission."<sup>24</sup> ATC has described and provided evidence at hearing of the unforeseen circumstances leading to its request to return the Big Springs Project grant funding received to date.

Based upon the evidence adduced at hearing, the Commission finds that the circumstances described by ATC were indeed unforeseen, and that a network capable of delivering 100/20 Mbps internet service now exists in the Big Springs project area. The Commission finds that requiring ATC to complete the Big Springs project would run counter to the goals set forth in the Nebraska Broadband Bridge Act. The Commission will therefore accept the return of grant funding received to date by ATC for the Big Springs project. The Commission will not impose additional monetary penalties against ATC for its failure to complete the Big Springs project, based upon the changed circumstances surrounding the project and the unforeseen nature of these events.

The grant funding received by ATC to date, in the amount of \$129,887.50, must be repaid to the Commission in full by **September 15, 2023**. If the funds are not received in full by this date, ATC may be subject to further penalties based upon the deadlines originally set forth in Docket No. C-5272 and Neb. Rev. Stat. § 86-1301 - 86-1310 (2021).

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<sup>24</sup> Neb. Rev. Stat. § 86-1308(2) (2021) (revised in 2022, after the award of the ATC Big Springs project grant, by LB 1144).

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5272

Page 5

ATC will not be eligible to resubmit the Big Springs project, or any geographic portion thereof, for consideration in future state or federally funded grant cycles unless it provides at least the same matching portion it committed to in its application for the Big Springs project of 75% of the funds required to complete the project. The Commission further reserves the right to adjust its review of ATC's financial, legal, and technical capability to complete future NBBP projects based on its failure to complete the Big Springs project.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that ATC Communications/ATCJet.net must return to the Commission by **September 15, 2023** all grant funding received to date for its Big Springs project grant awarded in the 2021 Nebraska Broadband Bridge Program. If the funds are not received in full by September 15, 2023, ATC Communications/ATCJet.net may be subject to additional penalties pursuant to the requirements set forth in Docket No. C-5272 and Neb. Rev. Stat. § 86-1301 - 86-1310 (2021).

IT IS FURTHER ORDERED that ATC Communications/ATCJet.net may not resubmit the Big Springs project, or any geographic portion thereof, in future state or federally funded Nebraska Broadband Bridge Program cycles unless it provides at least 75% of the funding required to complete the project.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 15th day of August, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Eric M. Hamler*

*Tim Schram*

*Kevin Stocker*

*David Waterman*

Chair

ATTEST:

*Thomas W. Golden*  
Executive Director