

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. CPF-2
Public Service Commission, on)	
its own motion, to administer)	
the second round of federal)	ORDER OPENING DOCKET
Capital Projects Funds for)	AND SEEKING COMMENT
broadband development in)	
Nebraska.)	
)	Entered: August 15, 2023

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") hereby initiates this proceeding on its own motion to administer the second round of federal Coronavirus Capital Projects Fund ("CPF") funding for broadband development in Nebraska pursuant to Neb. Rev. Stat. § 81-12,245 and in accordance with the Nebraska Broadband Bridge Act, Neb. Rev. Stat. §§ 86-1301 - 1312. Pursuant to statute, and in cooperation with the Nebraska Department of Economic Development, the Commission has been designated to administer the CPF broadband infrastructure grant program through the Nebraska Broadband Bridge Program ("NBBP").¹

On December 13, 2022, the Commission opened Docket No. CPF-1, which set forth a procedural schedule for the administration of the first round of CPF grants. In that Order, the Commission stated its intention of allocating time to conduct at least two CPF grant cycles. On June 27, 2023, the Commission entered an order issuing grant awards and resolving challenges. In Congressional District 1, the Commission issued at least \$40 million in grant awards. In Congressional District 3, the Commission issued approximately \$20 million in grant awards. The Commission found that a second CPF grant cycle would be held for projects located in Congressional District 3 to award and distribute the remaining CPF grant funds.

The Commission's first procedural schedule did not allow for a formal comment and hearing period. However, at this time, the Commission finds that a short comment cycle should be permitted so that the Commission can consider minor modifications to the CPF grant administration and scoring criteria. The Commission does not anticipate holding a hearing prior to entering an order initiating the second CPF grant cycle. Accordingly, although the comment cycle is compressed for time, the Commission asks that interested parties thoroughly describe any recommended changes in their comments for

¹ Neb. Rev. Stat. § 86-1303.

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the Commission's consideration prior to initiation of the second CPF grant cycle.

The Commission notes that one significant change to the eligible areas will be made due to a change in law. On May 26, 2023, LB 683 was approved by the Governor which, inter alia, removed the restriction that CPF grants awarded in Congressional District 3 be within cities of the second class and villages.² As such, this restriction will be removed from the Commission's Program Guide and other grant related materials for the next round of CPF grants.

ISSUES FOR PUBLIC COMMENT

A. Per Project Location Funding Cap

The Commission seeks comment on whether it should set a per location funding cap for projects in CPF-2.³ In its prior grant round there was no limit on the amount of funding which could be awarded per unserved or underserved location. The CPF grant program is intended to focus on projects that will achieve last-mile connections.⁴ Recipients considering funding middle-mile projects are encouraged to have commitments in place to support new and/or improved last mile service.⁵ The Commission indicated that middle mile costs may be considered eligible as long as they are needed to provide last mile service. In its initial grant cycle, there were some projects that included middle mile and transport costs and such costs were reflected in the cost per location calculation.⁶ If a cap is established, where should the Commission set the cap? Should this per location cap affect the total CPF

² This change is now codified in Neb. Rev. Stat. § 86-1312(2) which provides "the commission may allocate such funds received for eligible projects awarded grants under subdivision (1)(c) of section 81-12,245 to any portion of a local exchange area containing a city of the second class or village."

³ The Commission would intend for this cap to only limit the amount of CPF grant funds sought and not the amount which could be applied to a match.

⁴ See *Guidance for the Coronavirus Capital Projects Fund for States, Territories & Freely Associated States*, U.S. Department of Treasury at 3.

⁵ See *id.*

⁶ Although the Commission had inquired and received commitments from providers about their willingness to serve or improve last mile service, consistent with Treasury's guidance, such commitments were not included in the cost per location project summaries.

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grant funds sought for middle mile and transport costs? Should the Commission consider the cost per fiber route mile in addition to number of locations? If a hard cap is not established should the Commission consider cost per location in its scoring criteria? If so, how heavily should this factor be considered?

B. Past Performance

The Commission seeks comment in relation to scoring modifications or exclusions for past performance in either the technical capability or the legal capability scoring metric. Currently, the Commission considers the history of filing annual reports, remittance reports, and whether the applicant fails to identify anticipated obstacles such as local zoning, right of way access, and the permitting process. For technical ability, applicants are required to demonstrate their technical ability to deploy and operate broadband service at speeds of 100/100 Mbps. Should applicants be required to secure the approval of the appropriate city or county governing entity? Should the Commission modify its criteria related to past performance deductions? If so, please explain.

Are there any instances where the Commission should consider an applicant ineligible due to past performance issues? If so, what issues should the Commission consider as precluding a grantee from consideration? In certain instances, the Commission has determined it may preclude a carrier from applying for or receiving consideration for grant awards if such carrier returned grant funding. However, these determinations are made after notice and hearing. Outside of this situation, what sort of due process should be given by the Commission prior to any decision to exclude an entity from grant eligibility?

C. Copper-Based Broadband Service

In some instances, challenges were filed by providers claiming sufficient minimum speeds through copper-based Digital Subscriber Line ("DSL") broadband technology. While the speed test data satisfied the minimum speed requirements demonstrating that some locations in the challenged portion of the project area were served, the Commission has concerns about whether all locations in the challenged portion of the project area should be considered "served" and how a decision to uphold a challenge may preclude future upgrades to fiber-based technology. In such cases, should there be a commitment from the challenging provider to upgrade its network to fiber? If so, what timeline for completing

such a project should be applied? Should the Commission treat these areas as "underserved"? In the alternative, should the Commission require more robust speed testing at locations which are further away from the central office or an existing fiber line running through a community? Should the Commission require speed testing at particular points in the perimeter of a town or village? Should the Commission increase the number of speed tests required by the challenger? In the alternative, or in addition to, considering any modifications in the speed test requirements, should the Commission solicit more community feedback to hear from residents? If so, how can this exchange occur in the abbreviated timeframe for determining challenges/awards?

D. Project Areas

The Commission's process heretofore allows for applicants to define their project areas with very few restrictions. Applicants are required to identify whether the project includes contiguous or noncontiguous geographical areas. Applicants are also required to specifically identify the locations to be funded by the project with the expectation that all broadband serviceable locations within the project area be able to be served upon project completion. However, there are no restrictions on whether applicants can carve out certain areas, or that they contain "holes" where certain locations are removed specifically to increase their likelihood of being prioritized. Should the Commission impose restrictions to prohibit these activities? For contiguous projects should we require the submission of all serviceable locations within the project area whether unserved, underserved, or served? Why or why not? In the case of fixed wireless service, while the locations and service area may be defined in a linear manner, should the Commission consider the potential propagation area when considering broadband serviceable locations within the project area? Similarly, should the Commission consider adjacent locations along a fiber route which may not have been identified in the applicant's project as being potentially served by the project? Having this requirement may be useful to the Commission in determining which locations remain unserved even if specific grant funding has not been allocated to that location. Should the Commission take these locations into account when determining the appropriate categorization of the project tier or the level of overlap between projects? Finally, should applicants be required to include only locations that are captured in the FCC's broadband serviceable location fabric? Why or why not?

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E. Cybersecurity Practices

The Commission seeks comment on whether to require applicants to provide assurances that they have taken steps to safeguard and strengthen their networks against cybersecurity attacks. The Commission seeks comment on whether to require applicants to certify that they have adopted cybersecurity plans, software, firewalls, or taken other steps to improve cybersecurity practices. If so, how should the Commission assign points within its scoring metric for this area? Should the Commission require an attestation that cybersecurity practices are in place, and if so, what should be included in the attestation?

F. Other Modifications to the Scoring Criteria

The Commission seeks comment from interested parties on other modifications to the scoring criteria. Are there other factors the Commission should consider? Is the Commission's requirement for community outreach sufficient? Should the Commission require approval of the impacted governmental entities (county, city, town, or village, for example) of their proposed project? Should the Commission require that grantees certify that projects funded through NBBP cover all costs to reach the customer premise, including drops to the residence or business for all serviceable locations?

TIMEFRAME FOR PUBLIC COMMENT

The Commission hereby requests that interested parties submit comments on the issues described herein by Friday, **September 15, 2023**, at 5:00 p.m. Central Time. Parties may submit comments via email to psc.broadband@nebraska.gov.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be, and it is hereby, opened to administer the second round of federal Coronavirus Capital Projects Fund grants for broadband deployment in Nebraska.

IT IS FURTHER ORDERED that public comments may be filed with the Commission on or before **September 15, 2023** at 5:00 p.m., Central Time, in the manner prescribed above.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Eric M. Hamler

[Signature]

Tim Schram

Kevin Stocker

[Signature]

Chair

ATTEST:

Thomas W. Golden
Executive Director

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