

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 |) | FINDINGS AND CONCLUSIONS |
| the second round of federal |) | ORDER AND ORDER ADOPTING |
| Capital Projects Funds for |) | PROCEDURAL SCHEDULE FOR NEXT |
| broadband development in |) | GRANT CYCLE |
| Nebraska. |) | |
| |) | Entered: November 7, 2023 |

BY THE COMMISSION:

On August 15, 2023, the Nebraska Public Service Commission ("Commission") initiated 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 Department of Economic Development, the Commission has been designated to administer the CPF grant program through the Nebraska Broadband Bridge Program ("NBBP").¹

The Commission sought comments on the following topics: 1) whether to adopt a per location funding cap; 2) whether to further modify the Commission's scoring metrics for past performance and due process issues related thereto; 3) whether to require more rigorous review for challengers which provide broadband service using copper-based technology; 4) whether to provide additional requirements regarding how project areas can be defined; 5) whether to require cybersecurity plan certifications; and 6) whether the Commission should make other changes to the program guidelines such as changes to its community outreach requirements and restricting the imposition of line extension costs to end users.²

Comments were filed by Charter Fiberlink-Nebraska, LLC ("Charter"), Cox Nebraska Telcom, LLC ("Cox"), the Nebraska Rural Broadband Association ("NRBA"), the Rural Telecommunications

¹ Neb. Rev. Stat. § 86-1303.

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

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Coalition of Nebraska ("RTCN"), the Nebraska Rural Independent Companies ("RIC"), and Windstream Nebraska, Inc. ("Windstream").

A. Per Project Location Funding Cap

Background

The Commission sought 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. Charter opposed a per location funding cap stating that applicants should be given the flexibility to submit projects with any subsidy request.⁴ Rather than a cap, Charter stated the Commission should consider scoring lower cost projects more than higher cost projects.⁵ Cox asked the Commission to refrain from establishing a per location funding cap.⁶ Cox stated implementing a per location funding cap would hinder the Commission's flexibility to allocate funds according to the unique demands of each project.⁷ NRBA stated it is right to consider per location cost of projects, however, a fixed cap was too simplistic.⁸ NRBA has recommended in the past that the Commission retain an engineer to review project costs.⁹ RIC did not favor the use of a per location funding cap.¹⁰ However, RIC advocated it would be appropriate to consider the cost per location if two or more projects submitted by multiple applicants receive the same project scores.¹¹ RTCN opposed the adoption of a funding cap stating that a cap would negate the viability of many projects that would reach rural consumers.¹² Windstream also opposed the adoption of a per project location funding cap and

³ See August 15 Order at 2. The Commission's intention for this cap would be to only limit the amount of CPF grant funds sought and not the amount which could be applied to a match.

⁴ See Charter Comments at 1.

⁵ See *id.*

⁶ See Cox Comments at 1.

⁷ See *id.*

⁸ See NRBA Comments at 1.

⁹ See *id.* at 1-2.

¹⁰ See RIC Comments at 3.

¹¹ See *id.*

¹² See RTCN Comments at 2.

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instead suggested the Commission take cost per location into consideration in the overall scoring criteria.¹³

Discussion

The commenters overwhelmingly opposed the implementation of a per location funding cap. Because there are a number of high cost unserved locations which could be reached through this grant program, the Commission agrees that a bright line cap may hinder the flexibility to allocate funds in accordance with the unique demands of such areas. However, the Commission will review applications to determine whether the per location costs of a project exceeds what is reasonable based upon its past experience in administering grants and the universal service program. If costs appear to be excessive, the Commission will follow-up with the applicant to determine whether a project can be revised, whether it should continue to be considered for funding, or whether it should be rejected.¹⁴

B. Past Performance

Background

The Commission sought comment regarding scoring modifications or exclusions due to past performance issues 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. Charter opposed a bright line rule and suggested the Commission retain its flexibility to exclude or limit an applicant's participation based upon the particular performance issues or defaults in a given case, after notice and hearing.¹⁵ Cox stated the Commission could consider incorporating enhanced criteria to award more points to applicants which have a proven track record of financial and technical capability to build,

¹³ See Windstream Comments at 2.

¹⁴ The Commission did not have the cost of hiring a network engineer in its project plan and was not awarded grant funding for this purpose. As such, making a revision to the project plan at this stage would cause a delay in the Commission's award determination which may then have a negative impact on the carriers' ability to complete their infrastructure projects in time for the completion of projects and the close-out of all funding by December of 2026.

¹⁵ See Charter Comments at 2.

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manage, and operate sustainable broadband networks and a history of offering successful affordability and digital equity programs.¹⁶ Cox also indicated that requiring applicants to secure approval with city and county governments could help ensure projects align with community needs but may be difficult with the limited time and short window for applications.¹⁷ RTCN indicated it has in the past, and continues to recommend the Commission modify the technical capability scoring criteria to assign ten points for an applicant's record of providing reliable service of 100/100 Mbps in rural areas, and ten points for expected useful life of the facilities and long-term commitment to the project.¹⁸ RIC recommended the Commission consider past performance issues on a case-by-case basis.¹⁹ RIC stated an entity should not be declared ineligible without written notice and an opportunity for hearing at which relevant evidence may be presented.²⁰ RIC stated the Commission should not change its community outreach process and should continue to require notice to city and county authorities.²¹ NRBA suggested the Commission consider awarding additional points, under technical ability, based on an applicant's history of providing reliable broadband service in rural areas and the expected useful life of the facility and long-term commitment of the applicant.²² Windstream recommended the Commission require applicants to be able to show a five-year track record of providing broadband to a substantial number of customers.²³ In addition, Windstream recommended that an eligible entity demonstrate that it has deployed 100/20 Mbps service that remains active at the time of the application.²⁴

Discussion

We sought comment soliciting input on past and expected performance because it merited additional consideration.²⁵ The

¹⁶ See Cox Comments at 2.

¹⁷ See *id.*

¹⁸ See RTCN Comments at 2.

¹⁹ See RIC Comments at 4.

²⁰ See *id.*

²¹ See RIC Comments at 5.

²² See NRBA Comments at 4.

²³ See Windstream Comments at 2.

²⁴ See *id.* at 3.

²⁵ See August 15 Order at 3.

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comments regarding this issue were mixed. Some commenters requested the assignment of additional points for past performance²⁶, while others recommended the Commission determine past performance issues on a case-by-case basis leaving the Commission with more flexibility.²⁷ We note that because of Treasury guidance and federal rules we have augmented our review of past performance, but that review is measured in a different manner than that recommended by the commenters. For example, aside from requiring applicants to demonstrate they are in good standing with the Commission and successfully providing service to subscribers in other areas at the proposed service speeds, we adopted a community outreach component and a scoring metric to reduce an applicant's score when negative feedback about an applicant's service is provided by a community because the purpose of the CPF program is to address a critical need for internet access in communities.²⁸ Further, in compliance with 2 C.F.R. § 200.206, we created and implemented internal risk assessment guidelines to evaluate the risks posed by each applicant potentially receiving a federal award.²⁹ Quarterly reporting and increased risk monitoring also applies throughout the performance period.³⁰ The risk score associated with each applicant determines the amount of monitoring warranted for each grant, which per the Commission's guidelines would include more frequent compliance checks on the timeliness and the expenditures for each project. Where an applicant is assessed at a high level of risk due to past performance or financial stability, the Commission maintains it has the flexibility to reject an application.³¹ On the other hand,

²⁶ See, e.g., NRBA Comments at 2; and RTCN Comments at 4 (recommending the Commission not impose penalties to punish past performance but rewarding companies with a history of good performance).

²⁷ See, e.g., Charter Comments at 2; and RIC Comments at 4.

²⁸ See Program Guide Section 1.1 at p.2 and Section 2.2.3(7) at p.8; see also CPF-1 Order at 7.

²⁹ As a part of that risk assessment, the Commission reviews the financial stability and history of performance. Specially, this risk assessment includes an assessment of an applicant's past use of grant funds, the number of years the applicant has provided the proposed service(s), any defaults or concerns with the applicant's ability to comply with the grant requirements, and past financial audits.

³⁰ See CPF-1 Order (January 10, 2023) at 3.

³¹ We conclude this may be preferable to assigning ten additional points for past performance for three reasons. First, this proposed change would not be significant enough in the overall scoring mechanism which would keep applicants

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awarding additional points for past performance may not sufficiently weed out applicants that have a poor performance track record. Accordingly, in consideration of the comments and additional measures the Commission has already put in place with the CPF program, the Commission is not persuaded to change the scoring metric to add ten points for past performance. Consistent with Charter's and RIC's comments, the Commission finds it will retain its flexibility to exclude or limit an applicant's participation based upon particular past performance issues or defaults. In some cases, depending on the severity of the past performance issue resulting in a blanket exclusion or debarment from funding for this or other programs, the Commission believes notice and an opportunity for hearing should be afforded.³²

However, consistent with NRBA's and RTCN's comments, the Commission finds that additional consideration should be given for applicants demonstrating a long-term commitment and for the expected useful life of the facility. Having additional weight in the scoring criteria for this purpose will provide the Commission with additional confidence that projects with long-term sustainability and a provider's long-term commitment to serve consumers will be prioritized. Accordingly, applicants will have the option to provide an additional demonstration showing expected useful life of the facility and its long-term commitment to serve the area for an additional ten points. The Program Guide will be updated to reflect these findings.

Based on the comments in the record, the Commission declines to change its community outreach requirements to require local approval as a precondition to a grant award for the second grant cycle. However, the Commission clarifies that the community outreach and feedback should be addressed to and come from city or county officials in a position to know the current community assets

with a poor performance record from receiving awards. For example, applicants with projects in the unserved category receiving no points or low scores would continue to remain eligible and would even continue to take priority over applicants which may have a better past performance score in underserved areas due to the statutory requirement that the Commission prioritize unserved areas first. Second, the Commission's risk assessment monitoring will occur throughout the life of the award and is adaptable to account for performance issues that may become known after a grant award has been made. Third, the Commission's retention of flexibility in this regard will enable it to exact a more tailored response for each situation to and including denial of an award.

³² This approach is similar to that provided through federal guidance in the federal acquisition regulations (FAR) § 9.406 related to vendor suspensions or exclusions.

and needs relative to broadband service in the area. The Commission's Program Guide will be updated to reflect this clarification and for other minor changes with respect to the community outreach component. The Commission further clarifies that community input and outreach is a significant component of CPF. As such, the Commission's expectation is that providers engage with community leaders about their proposed service plans prior to, and where applicable throughout the performance period.

C. Copper-Based Broadband Service

Background

The Commission sought comment on whether it should require any upgrade commitments from challengers claiming sufficient minimum speeds through copper-based Digital Subscriber Line ("DSL") broadband technology.³³ The Commission further sought comment as to whether to require more robust speed testing at locations which are further away from the central office and whether to seek additional input from local government officials.³⁴ Charter stated that residents who are provided service through only DSL should be considered unserved."³⁵ NRBA stated the Commission should discourage challenges by providers using obsolete technology, however, consideration of both applications and challenges should be technology neutral.³⁶ NRBA stated the Commission will most effectively hold providers accountable through rigorous speed testing.³⁷ RIC recommended the Commission modify the required speed test information submitted with a challenge.³⁸ If the data collected does not meet the minimum speed test threshold, RIC suggested the Commission require a commitment from the challenger to upgrade its facilities within 18 months.³⁹ RTCN agreed that upgrade commitments may be appropriate and suggested that the Commission consider a three year timeframe for

³³ See August 15 Order at 3-4.

³⁴ See *id.*

³⁵ See Charter Comments at 2.

³⁶ See NRBA Comments at 4.

³⁷ See *id.* at 4.

³⁸ See RIC Comments at 6.

³⁹ See *id.*

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upgrade commitments.⁴⁰ RTCN further recommended that this be applicable in areas where a fixed wireless provider is the challenger.⁴¹ Windstream did not recommend any changes to the existing process.⁴²

Discussion

The Commission expressed concern regarding challenges from providers using copper-based DSL service because it did not wish to foreclose the opportunity for consumers to receive faster speeds based on newer technologies.⁴³ The Commission agrees with NRBA that it should discourage challenges based on obsolete technology.⁴⁴ In addition, knowing that DSL can vary widely depending on distance to the central office or DSLAM, basing challenge decisions on limited speed test data may not reflect the reality of speeds provided to consumers throughout the project area. In the last CPF round, and consistent with program guidance, the Commission denied some challenges due to a lack of complete information evidencing that minimum speeds were available throughout the challenged area.⁴⁵ We agree with the commenters suggesting the Commission continue to apply more rigorous speed testing in areas where a challenger's service speeds may vary based upon technology used or where communities have indicated internet service at the stated speeds is not available. In addition, we also sought comment on whether we should require a commitment from the challenging provider. RIC and RTCN supported this requirement in their comments.⁴⁶ While we believe this idea may still have some merit, we are not persuaded to make this a requirement of challengers in the next round of CPF due to the fact that we will neither be able to retroactively provide grant funding to an applicant with program funds nor be able to enforce buildout requirements of a challenging

⁴⁰ See RTCN Comments at 4.

⁴¹ See *id.* at 5.

⁴² See Windstream Comments at 3.

⁴³ See August 15 Order at 3-4.

⁴⁴ See *id.*

⁴⁵ CPF-1 Order at 3.

⁴⁶ See RIC Comments at 6; RTCN Comments at 4.

party under the timeline of this program if such commitments are not met.

D. Project Areas

Background

The Commission sought comment on whether to impose restrictions to prohibit applicants from carving out certain areas of projects to increase their likelihood of being prioritized.⁴⁷ For contiguous projects the Commission sought comment on whether to require the submission of all serviceable locations within the project area whether unserved, underserved, or served.⁴⁸ Further, the Commission asked whether applicants should be required to include only locations that are captured in the FCC's broadband serviceable location fabric.⁴⁹ Charter recommended the Commission maintain the flexible nature in how applicants define their project areas.⁵⁰ Cox asked the Commission to consider its current method of giving prioritization to projects that exclusively target unserved areas rather than allowing providers to more comprehensively target both unserved and underserved areas.⁵¹ RTCN recommended permitting applicants to take steps necessary to serve as many customers as possible in project areas.⁵² RIC recommended, where possible, project areas should be geographically contiguous.⁵³ Further, all serviceable locations within a service area should be required to be served and no carve-outs should be allowed.⁵⁴ For fixed wireless projects, RIC suggested the Commission expand its analysis of propagation data to establish the number of ineligible locations in a proposed project's

⁴⁷ See August 15 Order at 4.

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ See Charter Comments at 3.

⁵¹ See Cox Comments at 3.

⁵² See RTCN Comments at 4.

⁵³ See RIC Comments at 7

⁵⁴ *Id.*

propagation area.⁵⁵ RIC further recommended the Commission not consider adjacent locations along a fiber route to be potentially served.⁵⁶ Windstream recommended that providers retain the current flexibility.⁵⁷ Windstream stated that requiring providers to include extraneous data risks penalizing them in the application process.⁵⁸

Discussion

Some of the commenters opposed the Commission's suggestion of adding restrictions to project areas.⁵⁹ One commenter recommended the Commission require the project areas be contiguous and inclusive of all broadband serviceable locations to be served.⁶⁰ One commenter indicated that the Commission's approach to challenges has led to two providers serving small communities or areas where a business case cannot be made for long term sustainability.⁶¹ This discussion highlights the importance of carrier of last resort obligations, which help to ensure that reasonably comparable service is provided to consumers in both the

⁵⁵ See *id.* at 7-8.

⁵⁶ See *id.* at 8.

⁵⁷ See Windstream Comments at 4.

⁵⁸ See *id.*

⁵⁹ See, e.g., Charter Comments at 3; and Windstream Comments at 4.

⁶⁰ See RIC Comments at 7.

⁶¹ In this instance the carrier was permitted to revise its application for grant support to remove locations which were considered served via DSL at the minimum threshold speeds, did so, and now provides service throughout the community. Consumers in this area have the benefit of the new carrier's service through fiber versus the existing DSL service. This was one of the issues the Commission was focused on when it asked about restrictions in defining project areas and whether to require applicants to include all potential subscribers. This issue also underscores our earlier inquiry regarding the consideration of areas covered by a provider offering DSL as "served", "underserved" or "unserved." We disagree that support was allocated between two broadband providers because if referencing universal service support, with the exception of broadband deployment support, high-cost model support is only allocated for its intended use in high-cost areas and not for use in the in-town lower-cost areas. See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term funding universal service funding mechanism*, Application No. NUSF-26, FINDINGS AND CONCLUSIONS, para. 56 (November 3, 2004) ("Greater than 99 percent of support is allocated to rural, "out-of-town", support areas).

low-cost populated town centers and the high-cost, sparsely populated areas that surround town centers. The Commission is seeking comment on the defined eligible service areas for reallocation of support to competitors in its NUSF-139 proceeding and the reforms necessary to ensure the long-term sustainability of the network.⁶²

Upon consideration of the comments filed, we find that for the next round of CPF applications, the applicants should have flexibility of defining their own project areas. However, we encourage applicants to file applications with proposed project areas which will reflect all locations intended to be served. We also reserve the ability to follow-up with applicants to make requests for revisions to how project areas are defined to appropriately reflect the locations to be served by the infrastructure deployed using grant funds.

E. Cybersecurity Practices

Background

The Commission sought comment on a requirement that applicants provide assurance that they have taken steps to safeguard and strengthen their networks against cybersecurity attacks.⁶³ If adopted, the Commission asked how to assign points within its scoring metric for this area.⁶⁴ Charter stated the Commission should avoid regulating the cybersecurity policies of NBBP applicants.⁶⁵ Charter stated cybersecurity plans should be left up to the individual provider.⁶⁶ NRBA stated the State of Nebraska should be notified of federal compliance but should impose no additional rules, regulations or burdens on providers with respect to cybersecurity.⁶⁷ RIC stated that given the importance

⁶² See *In the Matter of the Nebraska Public Service Commission, on its own Motion, to consider appropriate modifications to the high-cost distribution and reporting mechanisms, in its Universal Service Fund program in light of federal and state infrastructure grants*, Application No. NUSF-139, ORDER OPENING DOCKET, SEEKING COMMENT AND SETTING HEARING (August 29, 2023).

⁶³ See *August 15 Order* at 5.

⁶⁴ See *id.*

⁶⁵ See *Charter Comments* at 4.

⁶⁶ See *id.*

⁶⁷ See *NRBA Comments* at 5.

of the reliability and security of broadband networks, completion of cybersecurity certification should be treated as a condition precedent to grant eligibility.⁶⁸ RTCN suggested the Commission should rely on the FCC requirements adopted in the Enhanced Alternative Connect America Cost Model ("Enhanced A-CAM") Order.⁶⁹ Windstream stated that if the Commission were to require anything it should simply require a statement as a part of the larger application process that the applicant has cybersecurity processes in place that generally align with the NIST framework.⁷⁰

Discussion

Upon consideration of the comments filed, the Commission is of the opinion and finds that given the importance of reliability and security of broadband networks, a cybersecurity certification should be required. We agree with the RIC's comments that this certification should be treated as a condition precedent to grant eligibility.⁷¹ Rather than assign this certification with a particular score, the Commission will add certification language to the application. Such language will require applicants to certify they have cybersecurity processes in place that generally align with the NIST framework. To the extent that cybersecurity processes do not align with the NIST framework, the Commission will require applicants to provide a description of their cybersecurity processes through a separate confidential attachment. Applicants will not be required to file their cybersecurity plans or provide any specific details which may place them at risk. The Application template will be updated to reflect these findings.

F. Other Modifications to the Scoring Criteria

Background

The Commission sought comment on other modifications to the scoring criteria.⁷² The Commission asked whether its requirement

⁶⁸ See RIC Comments at 9.

⁶⁹ See RTCN Comments at 5

⁷⁰ See Windstream Comments at 5.

⁷¹ See RIC Comments at 10.

⁷² See August 15 Order at 5.

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for community outreach was sufficient.⁷³ Further, the Commission asked whether to require grantees to 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.⁷⁴

The Commission concurs with commenters suggesting the costs of drops should not be borne by the customers within a project area.⁷⁵ While it is unreasonable to expect that all potential customers within a project area would immediately subscribe to service and require a drop to be completed within the period when project costs can be reimbursed, the Commission feels adequate publicity and outreach to the potential customers within a project area will lead to higher demand for service, and maximize the number of customers that can be served upon completion of the project. Any additional costs for drops after the completion and reimbursement of the project should be the responsibility of the company, and not passed on to customers.

Charter opposed a Commission requirement that applicants seek local approval for broadband projects.⁷⁶ Charter stated that local preferences should be given some weight but approval should not be required and municipalities should not be given veto power over broadband funding decisions.⁷⁷ NRBA stated community input should be solicited separately and received independently from the applicant.⁷⁸ Windstream stated that the Commission should provide additional guidance on what constitutes community engagement.⁷⁹ Scoring preference should be given to providers who invest time

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See RIC Comments at 11 (stating it is reasonable for the Commission to require that an application includes all costs to provide broadband service to serviceable locations within the project area, including the cost of drops to the residences and businesses in such area); and see RTCN Comments at 6 (stating that broadband consumers should expect that publicly funded deployment projects will cover such costs and not leave the consumer in a position of paying out of pocket for a drop before receiving service).

⁷⁶ See Charter Comments at 4.

⁷⁷ See *id.* at 5.

⁷⁸ See NRBA Comments at 5.

⁷⁹ See Windstream Comment at 5.

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appearing at city council or village board meetings.⁸⁰ RIC stated that the mature set of scoring criteria should be retained.⁸¹ RIC further stated the Commission should not adopt any new requirements relative to community outreach requirements indicating the Commission should continue to require outreach and deduct points, but not preclude eligibility, when negative feedback is received.⁸²

NRBA further stated that the Commission should utilize regulatory flexibility with respect to drop costs and allow experimental partnerships to occur.⁸³ NRBA further stated while the Commission should encourage applicants to include drop costs in deployment for residential customers or business customers, last-mile and last-acre coverage may be a necessary cost of doing business.⁸⁴ Finally, NRBA stated the Commission should utilize the most recent iteration of the FCC broadband mapping data to exclude any location a provider claims as served.⁸⁵ Finally, RIC supported the requirement that a project application include all costs to provide broadband service to the serviceable locations, including the cost of drops to residential and business customers.⁸⁶ RTCN recommended the Commission should impose a requirement that all grantees certify that projects funded through the NBBP cover all costs to reach the customer premise, as consumers should not have to pay out of pocket for those expenses.⁸⁷ Windstream also sought additional scoring transparency.⁸⁸

Charter suggested the Commission eliminate the scoring of the affordable retail pricing benchmarks and adoption of more flexible speed testing requirements.⁸⁹ Charter requested the Commission

⁸⁰ *Id.*

⁸¹ See RIC Comments at 10.

⁸² See *id.*

⁸³ See *id.*

⁸⁴ See *id.*

⁸⁵ See *id.* at 6.

⁸⁶ See *id.* at 11.

⁸⁷ See RTCN Comments at 6.

⁸⁸ See *id.* at 5-6.

⁸⁹ See Charter Comments at 5.

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clarify that when there are not enough active customers to be tested in a particular area, the Commission establish the existence of service through other means.⁹⁰

Cox requested the Commission consider an additional step when projects overlap to provide an applicant with a lower score the opportunity to remain in the applicant pool for consideration.⁹¹ Cox's proposal would allow an applicant to either remove the overlapping areas, withdraw its application, or leave it as is knowing it will not be approved in the as-filed form.⁹²

Discussion

The Commission declines to eliminate the scoring of retail pricing benchmarks at this time as requested by Charter. Affordability of broadband service for consumers is key element the Commission tracks for the purpose of reporting on whether grant funding is meeting the overall goals and objectives of the CPF program plan filed with Treasury. Without this data, the Commission believes it would fall short of the necessary tracking of information required to measure the efficacy of this federal program.

As it relates to speed testing, the Commission declines to adopt more lenient speed testing requirements as also requested by Charter.⁹³ Applicants in this program were required to identify areas where there was critical need for internet service that was made evident by the COVID-19 pandemic.⁹⁴ Performance testing substantiates the deployment and proper use of grant funding which in turn will be used to demonstrate the Commission's compliance with federal program requirements. Sufficient performance testing also ensures that the critical needs identified by the applicants are available to consumers throughout the project area. We expect that carriers will be conducting sufficient outreach to communities and consumers over the grant performance period so that consumers have the knowledge and capability to subscribe to

⁹⁰ See *id.* at 6.

⁹¹ See Cox Comments at 4.

⁹² See *id.*

⁹³ See Charter Comments at 6.

⁹⁴ See Program Guide Section 1.1 at p.2.

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the carrier's service once it is available. In instances where carriers lack the requisite number of subscribers to test at the minimum speeds, we note applicants can increase service speeds for the purpose of testing.

Finally, while we appreciate Cox's recommendation to add an additional step for overlapping project areas to remain for consideration,⁹⁵ we find that implementing this change at this point would most likely require an extension of the procedural timeline to accommodate the issuance of preliminary scores, another round of revised applications, and an additional staff review. Given the abbreviated timeline in this program and the need to have all aspects of this grant program closed out by December 31, 2026, the Commission finds the potential delay in implementing this suggestion is outweighed by the practical benefit in this instance. Applicants are currently afforded an opportunity to address overlap within the existing procedural schedule.

G. Opening of Window for Grant Cycle and Procedural Schedule

The Commission finds that the window for the second round of CPF grant applications shall be opened. Grant funding in the amount of \$24.3 million⁹⁶ is hereby allocated to project application areas falling entirely within the 3rd Congressional District. Application materials, including application forms and detailed instructions, will be made public on **Monday, November 20, 2023**. The application window will open on **Wednesday, December 20, 2023**. Applications will be due to the Commission on **Friday, January 19, 2024**. Grant awards will be issued on **Tuesday, June 4, 2024**. A complete procedural schedule is included with this order as Attachment A.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the findings and conclusions made herein be, and they are hereby, adopted.

⁹⁵ See Cox Comments at 4.

⁹⁶ This dollar amount may be adjusted by the Commission based upon updated financial information as the deadline for awards approaches to ensure the Commission awards the maximum amount possible for broadband deployment.

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IT IS FURTHER ORDERED that the procedural schedule and filing deadlines for the 2024 Capital Projects Fund cycle of the Nebraska Broadband Bridge Program attached hereto as Attachment A be adopted.

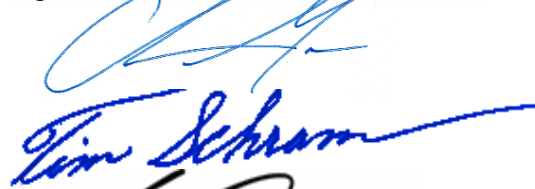
IT IS FINALLY ORDERED by the Nebraska Public Service Commission that applications for grants awarded during the 2024 Capital Projects Fund cycle of the Nebraska Broadband Bridge Program shall be filed with the Commission by electronic mail to psc.broadband@nebraska.gov no later than 5:00 p.m., Central Time, on **January 19, 2024**.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Eric M. Hamler


Tim Schram


Kevin Stocker



Chair

ATTEST:


Thomas W. Golden
Executive Director

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Attachment A

| <u>Event</u> | <u>Date</u> |
|---|------------------------------|
| Commission releases application materials | Monday, November 20, 2023 |
| Application period begins | Wednesday, December 20, 2023 |
| Deadline to submit applications | Friday, January 19, 2024 |
| Applications posted to Commission website | Wednesday, January 24, 2024 |
| Notices of intent to challenge due to Commission and to Applicant | Wednesday, February 7, 2024 |
| Challenges due | Friday, March 1, 2024 |
| Commission to notify applicants of: 1. defects that must be cured and of areas of overlap with other applications; and 2. challenges received Notice of Intent to Reclassify released | Wednesday, March 13, 2024 |
| Deadline for applicants to: 1. supplement challenged applications and/or submit responses to challenges; and 2. supplement or modify application defects and/or revise areas of overlap with other applications Community feedback responses due | Wednesday, March 27, 2024 |
| Commission releases determinations as to credibility of partial challenges and as to reclassification of applications | Tuesday, April 16, 2024 |
| Deadline for applicants to submit modified applications in response to successful partial challenges | Tuesday, May 7, 2024 |
| Grant awards released; results of remaining challenges released | Tuesday, June 4, 2024 |
| State of Nebraska W-9 and ACH enrollment form, Grant Attestation and Agreement, and Civil Rights Compliance form due from successful applicants | Tuesday, June 11, 2024 |