

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

|                               |   |                           |
|-------------------------------|---|---------------------------|
| In the Matter of the Nebraska | ) | Application No. C-5561    |
| Public Service Commission, on | ) |                           |
| its own motion, to administer | ) | ORDER OPENING DOCKET AND  |
| the Nebraska Broadband Bridge | ) | SEEKING COMMENT           |
| Program in the 2024 program   | ) | AND                       |
| year.                         | ) | NOTICE OF HEARING         |
|                               | ) |                           |
|                               | ) |                           |
|                               | ) | Entered: February 6, 2024 |

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") hereby initiates this proceeding on its own motion to administer the 2024 program year of the Nebraska Broadband Bridge Program ("NBBP"). Pursuant to the Nebraska Broadband Bridge Act, Neb. Rev. Stat. §§ 86-1301 - 1312 ("the Act"), the Commission is tasked with the distribution of \$20 million in grants annually for the purpose of facilitating and funding the development of broadband networks in unserved and underserved areas in Nebraska.<sup>1</sup> Pursuant to the Act, the Commission has administered the program in 2021, 2022, and 2023.<sup>2</sup> Additionally, the Commission administers the federally funded Capital Projects Fund based upon NBBP rules and procedures.<sup>3</sup>

The Commission hereby finds that a review of the application and challenge process relative to state-funded NBBP grant cycles is appropriate prior to beginning the 2024 NBBP program year. The Commission therefore sets forth below several issues for discussion relative to state-funded NBBP beginning in the 2024 program year. The Commission requests that interested parties provide comments responsive to the issues described below on or before **Friday, March 1, 2024 at 5:00 p.m. Central Time**. Comments should be submitted via email to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov). Comments submitted before this deadline will be posted to the Commission website for public review.

<sup>1</sup> Neb. Rev. Stat. § 86-1303.

<sup>2</sup> See generally Commission Dockets Nos. C-5272, C-5368, and C-5484.

<sup>3</sup> See generally Commission Docket Nos. CPF-1 and CPF-2.

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

---

Application No. C-5561

Page 2

## Issues for Comment

The Commission proposes to generally maintain the overall structure of the NBBP as in the 2023 program year, with some limited exceptions. The Commission welcomes recommendations from interested parties on any improvements to the 2023 NBBP program structure for the upcoming program year.<sup>4</sup>

Additionally, the Commission seeks comment on some proposed changes to the NBBP materials and requirements, set forth below.

### **1) Procedural Schedule**

The Commission proposes that applications for the 2024 program year will be due to the Commission via email on or before Monday, July 8, 2024.<sup>5</sup> Challenges will be due on September 10, 2024. Applicants will be given an opportunity to supplement and/or modify applications until Friday, September 27, 2024. Grant awards and the results of challenges will be released on January 14, 2025.

A full proposed procedural schedule is attached to this Order as Attachment A. Once adopted, the procedural schedule in this docket will be strictly enforced. 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. Additionally, challengers who fail to provide the necessary information or who provide inadequate documentation to support their challenge may face denial of their challenge.

The Commission welcomes comments and suggestions regarding this proposal and the dates set out in this proposed schedule.

---

<sup>4</sup> See Application No. C-5484, *In the Matter of the Commission, on its own motion, to administer the Nebraska Broadband Bridge Program in the 2023 program year*, Order Issuing 2023 Grant Application Schedule and Application Materials (May 16, 2023) ("May 16 C-5484 Order").

<sup>5</sup> Pursuant to the 2022 Nebraska Legislature's LB 683, the Commission is no longer required to set an application deadline of July 1 of each year. However, the Commission finds that the 2024 NBBP grant cycle should remain on approximately the same schedule as in previous years.

**2) Adjustments to Scoring System**

The Commission proposes that the scoring system utilized in the 2024 program year generally follow the scoring criteria set forth in the May 16 C-5484 Order, apart from any modifications adopted pursuant to other sections of this order. The Commission welcomes comment on this proposal.

**3) Challenge Process**

The Commission proposes to continue the challenge process utilized in the 2024 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 no longer accept challenges containing both Type 1 and Type 2 challenges in the same challenge filing. The Commission seeks comment on this approach.

**4) Benchmark Rates**

In the 2022 and 2023 NBBP program years, the Commission adopted a benchmark for providers' rates based upon the median rates offered by successful applicants in the year prior. This benchmark has been calculated using awardees' lowest speed tier offering which provides at least 100/100 Mbps service. For the 2022 NBBP program year, the benchmark was \$80.50 per month based on the rates offered by successful applicants in the 2021 NBBP program year. For the 2023 NBBP program year, this benchmark rate was \$65 per month. Applicants offering rates at or below the benchmark rate were allotted 5 additional points in scoring.<sup>6</sup>

The Commission has reviewed the rates offered by 2023 NBBP awardees, and has determined that the median rate offering for 2023 was \$49.99, and the average rate offering was \$55.31.<sup>7</sup> The Commission notes that these rate offerings are markedly lower than in previous program years. While several providers were able to

---

<sup>6</sup> Applicants are not required to offer rates at or below the benchmark rate. The rate comparability metric is used to encourage, but not mandate, more affordable service.

<sup>7</sup> This calculation excludes one awardee in the 2023 program year whose lowest speed tier of at least 100/100 Mbps service was 1/1 Gbps, priced at \$119.99 per month. Because this speed offering and price is an outlier among awardees, it has been excluded from the median and average calculations.

offer rates at or below these benchmarks, many others did not. The Commission therefore seeks comment on whether its methodology for scoring rate comparability should be adjusted. Should the benchmark rate continue to be set in the same manner, using the median rate from the previous year, and excluding notable outliers? Alternatively, should the Commission adopt an alternative benchmark rate, and if so, what should that benchmark be?

#### **5) Project Budget and Reimbursement**

In previous grant cycles, the Commission has required that applicants provide a funding breakdown for their grant proposals, including a proposed budget reflecting a clear and detailed breakdown of cost elements based on total allowable project costs, the total grant amount requested, and any matching funds committed. Historically, the Commission has required that this financial information be submitted in Excel format but has otherwise allowed applicants flexibility in terms of budget categories and formatting.

In an effort to streamline and standardize the application process, the Commission is proposing that applicants will be required to utilize a standardized budget template with predefined cost categories. This template aims to establish consistency and coherence in the way budget estimations are presented for consideration. The budget template is available for review on the Commission website.

The Commission proposes that a revised budget must be submitted with any revised application, detailing adjustments across all cost categories. The revised budget should explicitly demonstrate the decreased costs resulting from any reduction of the project area. Failure to align the revised budget with the reduced overall costs and a reduction in the corresponding grant amount requested may impact the consideration of the application.

In addition, as the Commission has begun to issue final payments to providers issued awards in the 2021 NBBP program year, Commission staff has prepared a reimbursement form to assist providers in submitting appropriately documented reimbursement requests. Specifically, this form allows Commission staff to efficiently review and aggregate data. Additionally, the form ensures that providers submit a line item for all costs claimed for reimbursement, and have assigned a cost category for each cost, which would align with the budget submitted with the application. The template reimbursement form is available for review on the Commission website.

The Commission proposes that beginning in the 2024 NBBP program year, awardees should be required to use a Commission-provided budget template and reimbursement form to assist in the review of requests and issuance of reimbursements. Awardees from prior NBBP program years will be encouraged, but not required, to use Commission-provided forms for reimbursement requests. The Commission welcomes comments on this proposal.

## **6) Approval from Local Authorities**

The Commission has received feedback that some grants approved in previous program years may not receive cooperation from local authorities. The Commission seeks ways to fairly and objectively score applications which might lack immediate support from local authorities. We invite comments on assessing readiness criteria for a broadband deployment project that contribute to project success, including factors such as secured permits, demonstrated community support, and any other relevant considerations.

The Commission proposes that applicants not be required to obtain a letter of support from the relevant local authority, but that submitting such a letter could result in an increase in the application's score. Recognizing the diversity of local authorities across Nebraska, the Commission encourages applicants to include letters of support from any pertinent local authority that would signal strong community endorsement, such as a city or county elected official, commissioner, or tribal authority. Applicants should provide an explanation of how these local authorities have been identified as possessing decision-making authority within the project area.

Moreover, projects demonstrating significant readiness, such as secured permits and approvals, may be eligible for additional points during the evaluation process.

The Commission seeks comment on this proposal. If this approach is adopted, how should it be weighted? Alternatively, should a letter of consent from local authorities be required to be submitted?

## **7) Maximum Per Location Cost**

To date, the Commission has not set a maximum amount which may be spent per location. However, in the interest of ensuring NBBP funding reaches as many locations as possible, the Commission

is considering whether it would be advisable to set a per location funding cap for NBBP projects. Would such a cap be beneficial to the program? Conversely, would a per location funding cap prevent NBBP grant funds from reaching the hardest to reach areas? The Commission seeks comments on this topic.

#### **8) Past Performance and Useful Life of Facilities**

In CPF-2, the Commission sought comment regarding scoring modifications or exclusions for past performance in either the technical capability or the legal capability scoring metric. The Commission also seeks comment on these topics for purposes of NBBP. 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. Should the Commission consider other metrics to quantify an applicant's past performance in fulfilling grant obligations? If so, what should those metrics be? Should the Commission take into consideration requests for extensions for prior projects filed by the applicant? If so, should such consideration extend to both NUSF and grant programs such as NBBP, CPF, and PRO-AG? Are there any circumstances in which an applicant should be considered ineligible for grant awards?

Additionally, pursuant to CPF-2, the Commission now allows applicants to provide an additional demonstration showing expected useful life of the facilities and its long-term commitment to serve the area for an additional ten points.<sup>8</sup> Should this scoring change be adopted in NBBP as well?

#### **9) Submission of Serviceable Locations**

For the second round of Capital Projects Fund grants, the Commission sought feedback on whether to require the submission of all serviceable locations within the project area with an application, regardless of whether the project area is unserved, underserved, or served.<sup>9</sup> After seeking comment on this topic, the Commission determined that applicants should have flexibility to define their own project areas, but encouraged applicants to file

---

<sup>8</sup> See Commission Docket No. CPF-2, *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*, Findings and Conclusions Order and Order Adopting Procedural Schedule for Next Grant Cycle (Nov. 7, 2023) ("CPF-2 Nov. 7 Order"), at 6.

<sup>9</sup> See CPF-2 Nov. 7 Order at 9.

applications with proposed project areas reflecting all locations intended to be served.<sup>10</sup> The Commission seeks to avoid situations where locations within a project area are not reported to be part of the project.

The Commission seeks comment on whether a similar requirement to submit all serviceable locations should be implemented in NBBP. Should applicants be required to identify all serviceable locations in the project area, using the Broadband Data Collection location ID? If not, why not? What other data could the Commission seek from applicants to ensure all locations within the project area receive service?

#### **10) Cybersecurity and Prohibited Equipment**

The Commission proposes to require that applicants in the 2024 NBBP program year should be required to provide a cybersecurity plan. The cybersecurity plan should a description of policies the applicant has in place to protect its physical assets and prevent cyber-attacks or threats. The cybersecurity plan must also include an attestation that the applicant does not use any equipment prohibited for use by the Federal Communications Commission pursuant to 47 U.S.C. § 1601.

Should the Commission adopt this requirement? If so, should it be a scored category? If this requirement is adopted, should any other information be included in the cybersecurity plans? Should the cybersecurity plans be kept confidential pursuant to a Protective Order?

#### **11) Program Structure**

As the first NBBP awards come to fruition, the Commission seeks general input on the structure of the grant program. How has the NBBP impacted broadband access in Nebraska to date? Are there other changes to the program structure the Commission should consider for the 2024 and future program years? Or, if the program structure is sufficiently developed, should the Commission open a rulemaking proceeding to formally adopt regulations governing the structure of NBBP applications, challenges, awards, and reimbursements?

---

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

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5561

Page 8

Public Hearing

A hearing in this matter will be held on **Tuesday, March 26, 2024 at 1:30 p.m. Central Time** in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508, and via WebEx, available at <https://psc.nebraska.gov/stream>.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven (7) days is needed when requesting an interpreter.

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.


IT IS FURTHER ORDERED that comments responsive to the foregoing proposal and questions may be filed on or before **Friday, March 1, 2024 at 5:00 p.m. Central Time** by email service to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov).

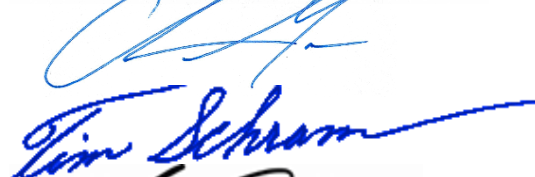
IT IS FINALLY ORDERED that a hearing will be held in this matter on **Tuesday, March 26, 2024 at 1:30 p.m. Central Time** in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska 68508 and by videoconference as indicated above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 6th day of February, 2024.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Eric M. Hamler

  
Tim Schram

  
Kevin Stocker



Chair

ATTEST:

  
Thomas W. Golden  
Executive Director



## SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5561

### Attachment A: Proposed Procedural Schedule

| Event   | Date                                    |
|---|---|
| Comments due  | Friday, March 1, 2024                   |
| Hearing   | Tuesday, March 26, 2024<br>at 1:30 p.m. |
| Commission enters order setting out application and scoring criteria  | Tuesday, May 14, 2024                   |
| Application period begins<br>Challenge forms released   | Monday, June 17, 2024                   |
| Deadline to submit applications   | Monday, July 8, 2024                    |
| Applications posted to Commission website   | Thursday, July 11, 2024                 |
| Notices of intent to challenge due to Commission and to Applicant   | Friday, August 2, 2024                  |
| Challenges due  | Tuesday, September 10, 2024             |
| Commission to notify applicants of:<br><br>1) defects that must be cured and of areas of overlap with other applications;<br><br>2) challenges received.<br><br>Notices of Intent to Reclassify released. | Friday, September 13, 2024              |
| Deadline for applicants to:<br><br>1) supplement challenged applications;<br><br>2) supplement or modify application defects and/or areas of overlap with other applications                              | Friday, September 27, 2024              |
| Commission releases determinations as to the credibility of partial challenges and as to the reclassification of applications   | Tuesday, December 3, 2024               |
| Deadline for applicants to submit modified applications in response to successful partial challenges  | Tuesday, December 17, 2024              |
| Grant awards released; results of challenges released   | Tuesday, January 14, 2025               |
| State of Nebraska W-9 and ACH enrollment form due from successful applicants  | Tuesday, January 28, 2025               |