

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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|-------------------------------|---|--------------------------|
| In the Matter of the Nebraska |) | Application No. C-5484 |
| Public Service Commission, on |) | |
| its own motion, to administer |) | |
| the Nebraska Broadband Bridge |) | ORDER DENYING MOTION FOR |
| Program in the 2023 program |) | PARTIAL RECONSIDERATION |
| year. |) | |
| |) | |
| |) | Entered: March 12, 2024 |

BY THE COMMISSION:

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

On March 7, 2023, the Nebraska Public Service Commission ("Commission") initiated this proceeding on its own motion to administer the 2023 program year of the Nebraska Broadband Bridge Program ("NBBP"). In this docket, on January 9, 2024, the Commission entered an order issuing grant awards and the results of challenges ("Jan. 9 Order").

On January 19, 2024, a motion for partial reconsideration (the "Motion") was filed by AMG Nebraska ISP, LLC ("AMG") seeking reconsideration of the Commission's award of an NBBP grant to Pinpoint Communications, Inc. ("Pinpoint") in Gage County ("Rural Beatrice 2 Project"). In support of its motion, AMG states that On April 6, 2022, AMG was granted \$4 million by Gage County to deploy broadband services covering 950 locations in Gage County ("AMG Project"). AMG states that the Rural Beatrice 2 Project would overlap 23 locations in the AMG Project area. AMG states that the grant award to Pinpoint would result in duplication of funding and resources for broadband infrastructure. AMG states that it "did not initially challenge the overlapping award," based upon an understanding that the Commission was made aware of the overlap by county leadership.

On March 4, 2024, Pinpoint filed a Response to the Motion for Reconsideration ("Response"). In its Response, Pinpoint states that it received a Notice of Intent to Challenge from AMG on August 8, 2023. Pinpoint states that AMG did not file a challenge to the Rural Beatrice 2 Project.

Upon review, the Commission finds that AMG's motion should be denied. The Nebraska Broadband Bridge Act, Neb. Rev. Stat. §§ 86-1301 - 86-1312 ("Act"), creates a framework wherein broadband development grants are awarded to providers who can bring internet service at speeds of 100/100 Mbps or more to unserved and underserved areas, and in which other providers can challenge an

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5484

Page 2

application. As described in AMG's motion, no such challenge was filed.¹

The procedure for the filing of NBBP challenges is set forth in statute, with specific requirements included in Commission orders and program materials. Applicants for NBBP grants must provide detailed information to the Commission in their application.² Once applications are published to the Commission website, other providers have the opportunity to submit to the Commission, on forms provided by the Commission, a challenge to the application.³ Challengers are required to demonstrate that, at the time of the challenge, the provider is either providing 100/20 Mbps broadband service, or has begun construction of 100/20 Mbps broadband infrastructure and will complete construction within eighteen months of the issuance of NBBP grants.⁴ The Commission must then evaluate the information submitted in a challenge and may not award the challenged application if the information submitted is credible and the challenger agrees to submit documentation within eighteen months demonstrating that the challenger has fulfilled its commitment to provide service at the stated speeds within the project area.⁵

In the 2023 NBBP program year, providers were required to submit a Notice of Intent to Challenge ("NOIC") to the Commission by August 7, 2023 as a prerequisite to filing a challenge.⁶ Challenges were due to the Commission by September 15, 2023.⁷ A sample NOIC letter was made available on the Commission website, and the required challenge forms were published on the Commission website on June 16, 2023.⁸ A NOIC was required to be filed, with

¹ See Jan. 9 Order, Attachment A (listing applications and challenges received. No challenges were filed against the Pinpoint Rural Beatrice 2 Project.).

² See Nebraska Broadband Bridge Program Guide, Program Year 2023, available at https://psc.nebraska.gov/sites/psc.nebraska.gov/files/doc/2023%20NBBP%20Program%20Guide_Revised.pdf ("2023 NBBP Program Guide").

³ Neb. Rev. Stat. § 86-1307(2).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 86-1307(5).

⁶ Commission Docket No. C-5484, *In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the Nebraska Broadband Bridge Program in the 2023 program year*, Order Modifying Procedural Schedule (June 13, 2023), Attachment A.

⁷ *Id.*

⁸ *Id.*

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5484

Page 3

service to the Commission, in order for a challenge to be considered.⁹

In this instance, it appears that while AMG may have attempted to file a Notice of Intent to Challenge against the Rural Beatrice 2 Project, it was sent to Pinpoint after the August 7 deadline had passed, and was not properly served upon the Commission. Additionally, no challenge was filed against the Rural Beatrice 2 Project. The Commission is unable to consider a challenge that was not filed.

While the Commission recognizes that the AMG Project to serve Gage County is understood to be in progress, the Commission was not provided with specific, detailed information regarding AMG's ability to serve the locations within Pinpoint's project area. Specifically, a properly filed challenge would include a description of the project underway, including a description of the facilities to be deployed, a timeline for what has been completed to date and how construction will be completed within eighteen months, as well as an agreement that the challenger will provide documentation within 18 months demonstrating that they have fulfilled the commitment to provide broadband Internet service with access to the Internet at the stated speeds in the proposed project area.¹⁰ The Commission therefore was unable to determine whether AMG could credibly serve all locations in the project area with service of at least 100/20 Mbps, or whether that would be accomplished within eighteen months. The Commission cannot make a determination on the credibility of a purported challenge that is lacking essential information required by statute.

Based upon the foregoing, the Commission finds that AMG's motion to reconsider the NBBP grant award for the Rural Beatrice 2 Project should be denied. The Commission encourages all parties interested in the NBBP grant process to actively participate in

⁹ "The intent of the 'Notice of Intent to Challenge' process is to encourage parties to resolve differences, such as overlapping project areas, prior to the beginning of the Challenge process. The Notice of Intent to Challenge must be provided both to the NBBP applicant against which the challenge shall be brought and to the Nebraska Public Service Commission by August 7, 2023, in order for a subsequent formal challenge to be considered. The submission of a Notice of Intent to Challenge does not require a party to submit a challenge." 2023 NBBP Program Guide at 10.

¹⁰ See 2023 Nebraska Broadband Bridge Challenge Form, available at <https://psc.nebraska.gov/sites/psc.nebraska.gov/files/doc/2023%20NBBP%20Challenge%20Form.pdf>.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5484

Page 4

the NBBP program cycles, including engaging in discussions with applicants, and filing challenges to projects where applicable.

O R D E R

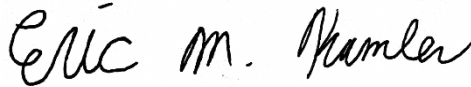
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the motion for partial reconsideration filed by AMG Nebraska ISP, LLC be, and is hereby, denied.

IT IS FURTHER ORDERED that the grant awards as listed in the Commission's January 9th Order in this docket shall proceed as previously set forth.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 12th day of March, 2024.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Eric M. Hamler

Chair

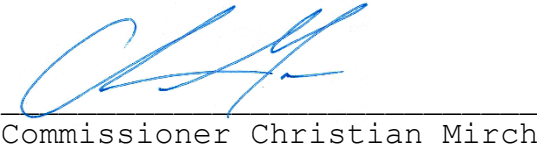

Tim Schram


Kevin Stocker

ATTEST:


Thomas W. Golden
Executive Director

COMMISSIONERS DISSENTING:


Commissioner Christian Mirch