

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 ) ORDER ISSUING CHALLENGE
federal Capital Projects Funds ) DETERMINATIONS AND
for broadband development in ) RECLASSIFICATION OF
Nebraska. ) APPLICATIONS
)
) Entered: April 16, 2024

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") initiated this proceeding on December 13, 2022 to administer federal Coronavirus Capital Projects Fund ("CPF")1 funding for broadband development in Nebraska pursuant to Neb. Rev. Stat. § 81-12,245 and in accordance with the Nebraska Broadband Bridge Act.2 After providing interested parties with the opportunity for comment on the program structure and scoring criteria, the Commission released an order on November 7, 2023 setting forth the procedural schedule for the second round of CPF applications, challenges, and awards ("November 7, 2023 Order").

Pursuant to the procedural schedule released in our November 7, 2023 Order, applicants were required to submit applications on or before January 19, 2024.3 Applicants were given an opportunity to modify applications, correct defects in applications, and provide responses to challenges submitted until March 27, 2024.4

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

Withdrawn and Incomplete Applications

Upon review of applications submitted, the Commission has determined that the following applications were either withdrawn or incomplete and are therefore not eligible for grant funding:

1 U.S. Department of Treasury ("Treasury"), Notice of Award, Coronavirus Capital Projects Fund, Federal Award Identification Number (FAIN) CPFFN0183.

2 Neb. Rev. Stat. §§ 86-1301 to 86-1312 (Cum. Supp. 2022).

3 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, FINDINGS AND CONCLUSIONS ORDER AND ORDER ADOPTING PROCEDURAL SCHEDULE FOR NEXT GRANT CYCLE, "Attachment A:Procedural Schedule" (November 7, 2023) ("CPF-2 Order").

4 See id.

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<b>Applicant</b>	<b>Project Name</b>
Cox Nebraska Telecom, LLC	Burt 4+5+6
Cox Nebraska Telecom, LLC	Washington 1+2+3+4
Great Plains Communications	Syracuse
United Telephone Company of the West	Rural Chappell
Inventive Wireless of Nebraska, LLC d/b/a Vistabeam	Cheyenne_NBBP_HWY30East
Inventive Wireless of Nebraska, LLC d/b/a Vistabeam	Cheyenne_NBBP_SidneyNorth

Upon review of applications submitted, the Commission has determined that the following applications should be reclassified as follows:

<b>Applicant</b>	<b>Project Name</b>	<b>Reclassified Priority Tier</b>
AMG Technology Investment Group, LLC d/b/a Nextlink Internet	AMG_Barneston	Three
AMG Technology Investment Group, LLC d/b/a Nextlink Internet	AMG_Bridgeport	Three
AMG Technology Investment Group, LLC d/b/a Nextlink Internet	AMG_Clatonia	Three
AMG Technology Investment Group, LLC d/b/a Nextlink Internet	AMG_Gilead	Three
AMG Technology Investment Group, LLC d/b/a Nextlink Internet	AMG_LoupCity	Three
AMG Technology Investment Group, LLC d/b/a Nextlink Internet	AMG_Oshkosh	Three

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AMG Technology Investment Group, LLC d/b/a Nextlink Internet	AMG_Pleasant Hill	Three
AMG Technology Investment Group, LLC d/b/a Nextlink Internet	AMG_Sidney	Three
Spectrum Mid-America, LLC d/b/a Charter Communications, Inc.	Lincoln County	Three
Spectrum Mid-America, LLC d/b/a Charter Communications, Inc.	Sherman County	Three
Inventive Wireless of Nebraska, LLC d/b/a Vistabeam	Garden-NBBP-HWY26	Three
Inventive Wireless of Nebraska, LLC d/b/a Vistabeam	Kimball-NBBP-Kimball	Three
Inventive Wireless of Nebraska, LLC d/b/a Vistabeam	Morrill-NBBP-HWY26	Three

Consistent with the procedural schedule released in this proceeding, the Commission staff notified providers of its intent to reclassify applications on March 13, 2024.<sup>5</sup> Applicants were given until March 27, 2024 to supplement or modify application defects or revise areas of overlap.<sup>6</sup> In response to the Commission staff's notice of intent to reclassify, Spectrum Mid-America, LLC d/b/a Charter Communications, Inc. ("Charter") submitted an email seeking to protest the reclassification. While there is no procedural mechanism for filing a protest in response to the staff's notice of intent to reclassify, we nevertheless reject Charter's claim that its projects should be classified as Tier One projects. Allowing providers to cut out specific locations that are underserved in that manner in order to create a Tier One project area is contrary to the Commission's intent that providers should include all locations they intend to serve in the project area.<sup>7</sup> It would likewise be unfair to all other applicants filing Tier Three projects following the Commission's guidance. The Commission specifically reserved the ability to make requests for

<sup>5</sup> See CPF-2 Order, Attachment A.

<sup>6</sup> See *id.*

<sup>7</sup> See CPF-2 Order at 11; see also Nebraska Capital Projects Fund (CPF) Guide Program Year 2024 ("CPF-2 Program Guide") Section 4.1 at 15.

revisions to how project areas are defined to appropriately reflect the locations to be served by the infrastructure deployed using grant funds.<sup>8</sup> The Commission afforded Charter the opportunity to modify its project area or remove any defects in order to have its projects considered in the Tier One classification, but it did not do so.

### **Partial Challenge Determinations**

The Commission reviewed all challenge information submitted.<sup>9</sup> All challenges subject to this Order and in Attachment A were labeled by the challenger as Type 1 partial challenges.<sup>10</sup> Pursuant to Neb. Rev. Stat. § 86-1307(5), which is made applicable to the CPF program through Neb. Rev. Stat. § 81-12,245, the Commission must evaluate the information submitted by the challenger to determine whether the challenge is credible.<sup>11</sup> Further, as it relates to Type 1 challenges, pursuant to Neb. Rev. Stat. § 86-1307(4), the Commission must require a provider submitting a challenge to provide speed test results in the challenged portion of the proposed project area in which the provider submitting the challenge states that broadband service is currently available at minimum speeds of 100/20 Mbps.<sup>12</sup> Such speed tests must be provided in the manner prescribed by the Commission.<sup>13</sup>

The Commission's CPF-2 Program Guide provides specific guidance regarding the application and challenge process and specifically describes the information which must be submitted by the challenger to the Commission when filing a Type 1 challenge.<sup>14</sup> Among other requirements, the Commission requires a challenger to include the location(s) where the speed tests were run, and the date and time of each test. The testing must have been completed within six months of its submission to the Commission and must

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<sup>8</sup> See CPF-2 Order at 11.

<sup>9</sup> All partial challenges filed herein were filed by AMG Technology Investment Group, LLC d/b/a Nextlink Internet ("Nextlink").

<sup>10</sup> Type 1 challenges are those where the challenger is claiming to provide service in the proposed project area at speeds equal or greater than 100 Mbps/20 Mbps.

<sup>11</sup> See Neb. Rev. Stat. § 86-1307(5).

<sup>12</sup> Neb. Rev. Stat. § 86-1307(4).

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

<sup>14</sup> See Nebraska Capital Projects Fund (CPF) Guide, Program Year 2024, Section 3.2 at 12-13.

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reflect that at least 80% of the speed measurements reflect speeds at 80% or more of the 100/20 Mbps standard. In applying this standard, the Commission has previously found that Type 1 challenges will be denied where there is a lack of data evidencing the locations where the speed tests were run, an insufficient number of speed tests conducted, or a failure to demonstrate that the locations were randomly chosen.<sup>15</sup>

Upon review of the challenge submissions filed in this proceeding, the Commission finds the challenger did not file sufficient information to establish credible challenges. With respect to the challenges filed, the speed test data did not include required location information relating to the speed tests conducted, such as the submission of addresses or latitude/longitude coordinates.<sup>16</sup> The data also did not include any demonstration that the locations chosen to be tested were randomly selected. Consistent with the prior CPF round, where evidence of advertised speeds to locations in the project cannot be verified, such documentation is insufficient. It should be noted that evidence provided as part of challenges to several applications showed service offerings where the maximum speed available is "Up to 100 Mbps," and as such is insufficient to meet the requirements of the program, where 100/20 Mbps are *minimum* speeds required to be provided. As indicated in Attachment A, and where applicable, the challenger failed to present evidence demonstrating that the speed thresholds of 100/20 Mbps were being advertised to customers within the challenged portion of the project area.

Attachment A to this Order provides an indication for each partial challenge as to why the challenge is deemed not credible. The Commission finds that the challenges listed in Attachment A

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<sup>15</sup> See *id.* Because no addresses or geolocation coordinates were provided the Commission could not determine whether the locations tested were within the project area. Also, in many cases there were not a sufficient number of speed tests run or passed to meet the minimum requirements as set forth in the Program Guide.

<sup>16</sup> The Commission's Program Guide states that speed test data should follow the Performance Testing standards set by the FCC with regard to the HUBB portal. Consistent with those standards, providers are required to report the addresses, and latitude and longitude coordinates to six decimal points of tested locations. The Commission cannot discern based upon the HUBB identification number which locations were tested, whether the location is located within the project area, or where the location(s) chosen were randomized. See *id.*

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are not credible, and should therefore be denied as set forth in the Attachment.<sup>17</sup>




O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above findings be adopted.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 16th day of April, 2024.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Executive Director

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<sup>17</sup> Determinations relative to the credibility of "full" challenges, i.e., those covering the entire proposed project area, will be released on or before June 4, 2024.

Commission Docket No. CPF-2  
 Nebraska Broadband Bridge Program – 2024 Capital Projects Fund  
**Attachment A: Partial Challenge Results**

<b>Applicant Name</b>	<b>Project Name</b>	<b>Name of Challenger(s)</b>	<b>Challenge Type</b>	<b>Challenge Disposition</b>
ALLO Communications LLC	Blue River Lodge/Saline County Rural	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>1</sup>
ALLO Communications LLC	Wayne Rural Wakefield	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>1</sup>
Qwest Corporation dba CenturyLink QC	Bennington	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>2</sup>
Qwest Corporation dba CenturyLink QC	Fontanelle	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>1</sup>
Qwest Corporation dba CenturyLink QC	O’Neill	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>1</sup>
Glenwood	Nora	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>1</sup>
Glenwood	Prosser	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>1</sup>
Great Plains Communications	Brunswick	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>1</sup>
Pinpoint Communications, Inc.	Johnson to Talmage	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>1</sup>

Commission Docket No. CPF-2  
 Nebraska Broadband Bridge Program – 2024 Capital Projects Fund  
**Attachment A: Partial Challenge Results**

<b>Applicant Name</b>	<b>Project Name</b>	<b>Name of Challenger(s)</b>	<b>Challenge Type</b>	<b>Challenge Disposition</b>
Pinpoint Communications, Inc.	Syracuse to Palmyra	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>2</sup>
Midstates Data Transport, LLC dba Stealth Broadband	Boone County West Unserved	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>1</sup>
Midstates Data Transport, LLC dba Stealth Broadband	Nance County Northeast Unserved	AMG Technology Investment Group, LLC dba Nextlink Internet	1	Denied <sup>1</sup>

<sup>1</sup>Challenges are denied because tests submitted are insufficient to establish that required speeds are provided to all serviceable locations within the challenged portion of the project area, locations where tests were conducted cannot be determined, and evidence of advertised speeds does not support minimum speed thresholds (100/20 Mbps) are being offered to customers within the challenged portion of the project area. See Nebraska Capital Projects Fund (CPF) Guide, Program Year 2024, Section 3.2 at pg. 12, 13.

<sup>2</sup>Challenges are denied because tests submitted are insufficient to establish that required speeds are provided to all serviceable locations within the challenged portion of the project area, and locations where tests were conducted cannot be determined. See Nebraska Capital Projects Fund (CPF) Guide, Program Year 2024, Section 3.2 at pg. 12, 13.