

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska)	Application No. NUSF-133
Public Service Commission, on)	Progression Order No. 1
its own motion, to implement)	
standards for the verification)	ORDER SEEKING COMMENT
of broadband service provider)	AND
coverage and speed data.)	NOTICE OF HEARING
)	
)	
)	Entered: June 25, 2024

BY THE COMMISSION:

On March 15, 2022, the Nebraska Public Service Commission ("Commission") opened this proceeding on its own motion to implement standards for the verification of broadband service provider coverage and speed data in accordance with Neb. Rev. Stat. § 86-324.02. Notice of the application was published in The Daily Record, Omaha, Nebraska, on March 22, 2022. Following comments and a hearing in this matter, the Commission entered an order on November 8, 2022 ("Nov. 8 Order") setting speed test requirements for Nebraska Telecommunications Universal Service Fund ("NUSF") high-cost recipients and entities receiving funding from other Commission grant programs. Pursuant to the Nov. 8 Order, these entities are required to submit to the Commission speed testing data on an annual basis, by July 31 of each calendar year.

The Commission now finds that, approximately eighteen months after initial adoption, the speed testing requirements set forth in the Nov. 8 Order should be reviewed to determine if any changes or improvements should be made. The Commission therefore sets forth several topics for discussion. Interested parties are invited to submit comments responsive to the issues set forth below on or before **Tuesday, July 23, 2024 at 5:00 p.m. Central Time**. Comments should be submitted via email to psc.nusf@nebraska.gov.

1. Overview of Requirements

Nebraska law requires that recipients of ongoing high-cost NUSF support, Nebraska Broadband Bridge Program ("NBBP") grants, and precision agriculture ("PRO-AG") connectivity grants submit to speed tests as determined by the Commission.¹ In the Nov. 8 Order, the Commission found that speed testing requirements will not apply to the NUSF-92 wireless infrastructure grant program.

¹ Neb. Rev. Stat. § 86-324.02; Neb. Rev. Stat. § 86-1304(3); Neb. Rev. Stat. § 86-1405(2).

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In the Nov. 8 Order, the Commission adopted a framework which generally follows the existing performance measures testing framework put in place by the Federal Communications Commission ("FCC"),² with some modifications. Carriers are required to submit a broadband customer list to the Commission by April 30 of each year. Commission staff then determines which locations will be tested, and carriers then conduct speed and latency tests on a random sample of active subscribers, with testing performed for one calendar week. At least eighty percent of the locations tested must meet or exceed eighty percent of the speed and latency thresholds required by the relevant program ("80/80 standard"). Testing must be performed on an hourly basis between the hours of 6:00 p.m. and 12:00 a.m. local time each day, for a minimum of ten seconds. A minimum of one download test and one upload test per hour is required.

The Commission seeks comment on the efficacy and practicality of these requirements. Is the framework adopted in the Nov. 8 Order sufficient to ensure that adequate connectivity is being provided to customers, without being overly burdensome to carriers? What impediments exist to carriers in meeting these requirements? The Commission seeks comment on any general program changes which should be adopted.

2. Minimum Number of Subscribers

In reviewing test results, the Commission has observed that some carriers have difficulty in obtaining a minimum number of subscribers required for testing. The required minimum number of test locations was outlined in the Nov. 8 Order.³ Pursuant to the Nov. 8 Order, the minimum number is determined as follows:

² See In the Matter of Connect America Fund, WC Docket No. 10-90, *Order* (July 6, 2018) ("2018 Testing Order").

³ In some instances, alternative speed test requirements for specific funding programs are determined within the context of the relevant docket.

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Number of locations in funded area	Number of test locations
50 or fewer	10
51-500	10, or 10% of the total number of locations, whichever is greater
Over 500	50

Since the networks subject to speed testing are built with the assistance of public funds, the Commission seeks to ensure that residents of the project area will in fact be able to obtain the new service. What factors might influence the take rate in a given area? What impact do providers' rates, customer service, and general reputation have on a provider's ability to ensure residents subscribe to service? Are these factors the Commission should weigh when reviewing project applications to ensure the take rate will be sufficient to conduct speed testing?

In general terms, the Commission also seeks comment as to whether the minimum numbers of locations are appropriate, or if they should they be adjusted. Should the Commission adopt advertising requirements or other measures to ensure funding recipients achieve a take rate sufficient to conduct speed testing? What other steps might carriers and/or the Commission take to ensure adequate speed testing can be conducted? Should exceptions be granted if competing providers are providing service in the area?

3. Minimum Adequate Threshold

As described above, the Commission has adopted an 80/80 standard in speed testing, based upon the FCC's performance measures testing framework. Under this 80/80 standard, 80% of the tests submitted are required to meet 80% of the required speeds. However, the speed requirements set forth in statute are generally set as minimums.⁴ For example, a provider might be able to submit speed tests reflecting 80/80 Mbps service under current rules,

⁴ See, e.g., Neb. Rev. Stat. § 86-1308(2)(a)(ii) (requiring NBBP recipients to commit to maintaining a minimum speed capability of 100/100 Mbps); Neb. Rev. Stat. § 86-330(4) (prohibiting the Commission from withholding funding from an ETC reliably providing a minimum speed of 100/20 Mbps).

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even though the statutory requirement for the project would be 100/100 Mbps. The Commission therefore proposes to adjust the requirement to an 80/100 adjusted framework, where at least 80% of the tests are required to meet the speeds required by statute or grant program.

The Commission also seeks to review latency requirements. Given that latency measurements improve the closer they are to zero, the 80/80 standard cannot be appropriately applied. Should the Commission revisit this requirement so that at least 95% of test results must demonstrate less than 100 milliseconds latency in alignment with the FCC's framework?

4. Speed Testing for Past Projects

The range of required speeds for projects subject to NUSF-133 speed testing is wide. Early NUSF-99 projects allowed carriers to select the speed tier for the project, with a minimum requirement of 4/1 Mbps; later projects required speeds of 25/3 Mbps to be met.⁵ However, it is the understanding of the Commission that many projects that are only required to meet lower speed tiers may in fact be capable of reaching much higher speeds. The Commission seeks comment on whether it is still valuable to seek speed testing information at speeds of 4/1 Mbps, 10/1 Mbps, or 25/3 Mbps. Should the Commission revise its testing requirements to reflect this difference?

The Commission also seeks comment as to how it can best ensure current, accurate information is being obtained with regard to older projects. What steps should the Commission take to revise its testing requirements for past projects? Should providers be required to submit speed testing reflecting the maximum capability

⁵ See Commission Docket Nos. NUSF-99, *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program*, NUSF-50, *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to make adjustments to the universal service fund mechanism established in NUSF-26*, Order on Reconsideration and Order Releasing Project Checklist (July 12, 2016) (listing required minimum speeds of 4/1 Mbps); Commission Docket No. NUSF-99, Progression Order No. 2, Order Adopting Findings and Conclusions and Initiating Challenge Process (Nov. 4, 2020), at 36 (setting a baseline standard of 25/3 Mbps but encouraging carriers to deploy higher-speed fiber infrastructure). Since 2022, NUSF funding is required by statute to be distributed to projects capable of serving customers with speeds of no less than 100/100 Mbps. Neb. Rev. Stat. § 86-324.01.

of the network, rather than the minimum speeds required to receive support?

5. Reimbursement Process and Ongoing Support

Currently, speed testing is required to be performed for grant-based funding at project completion, prior to final project reimbursement being distributed. Ongoing NUSF high-cost support is distributed on a monthly basis, based on annual determinations of support.⁶ Recent statutory changes will require the Commission to only provide ongoing NUSF high-cost support for broadband serviceable locations that are capable of at least 100/20 Mbps.⁷ The Commission seeks comment on whether the existing speed test approach should be adjusted in light of statutory changes. Should recipients of ongoing high-cost support be required to meet certain speed testing thresholds before support is distributed? If so, what should those thresholds be, and how frequently should testing be conducted?

6. Department Discretion

The Commission also seeks comment on whether speed test requirements should be revised to provide for additional flexibility and/or discretion for the NUSF Department in reviewing test results. For example, if a carrier is struggling to meet the minimum testing requirements due to project overbuild or a low take rate, should the department have the ability to provide exceptions to testing requirements? Similarly, should grant projects serving a low number of locations be subject to ongoing annual testing? Alternatively, if a carrier can demonstrate clearly adequate results for a subset of locations, should the department be allowed the discretion to waive the remainder of tests? In what scenarios might additional flexibility be appropriate, or inappropriate? The Commission seeks comment on whether there should be established criteria or guidelines to govern when and how discretion should be applied.

⁶ Neb. Rev. Stat. § 86-324.02 requires that "Any recipient of ongoing high-cost support from the Nebraska Telecommunications Universal Service Fund shall agree to submit to speed tests as determined by the commission." The Commission interprets this requirement to provide broad leeway in setting forth speed testing requirements for recipients of ongoing high-cost support.

⁷ Neb. Rev. Stat. § 86-324.02(2)

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7. Other Topics

The Commission welcomes comments on other topics relevant to its speed testing framework.

H E A R I N G

The Commission further finds that this matter should be set for hearing. A hearing will therefore be held on **Tuesday, August 6, 2024, at 1:30 p.m. Central Time** in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska. Videoconference access to the hearing will be available through the Commission's website, available at <http://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 days is needed when requesting an interpreter.

O R D E R

IT IS THEREFORE ORDERED that comments on the topics described above shall be due to the Commission by **Tuesday, July 23, 2024** with service to psc.nusf@nebraska.gov.

IT IS FURTHER ORDERED that a hearing in this matter shall be held on **Tuesday, August 6, 2024 at 1:30 p.m. Central Time** in in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska, and by videoconference as described above.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 25th day of June, 2024.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Eric M. Hamler

[Signature]

Tim Schram

Kevin Stocker

[Signature]

Chair

ATTEST:

Thomas W. Golden

Executive Director