

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of) Application No. NUSF-77.10
the Nebraska Telecommunications)
Association for Investigation)
and Review of Processes and)
Procedures Regarding the)
Nebraska Universal Service Fund:) DENIED
Application to the Nebraska)
Broadband Pilot Program (NEBP))
received from Citizens Telephone)
Company of Nebraska d/b/a)
Frontier Communications of)
Nebraska.) Entered: November 25, 2013

APPEARANCES:

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BY THE COMMISSION:

Background

By Application filed March 1, 2013 Citizens Telephone Company of Nebraska d/b/a Frontier Communications of Nebraska ("Applicant" or "Frontier") seeks Nebraska Broadband Pilot (NEBP) Program support. Notice of the Application appeared in the Daily Record, Omaha, Nebraska on March 8, 2013.

A Petition of Formal Intervention was filed by N.E. Colorado Cellular d/b/a Viaero Wireless (Viaero). A Protest was filed by Charter Communications (Charter).

A procedural conference was held on June 19, 2013. With the consent of the applicant, a procedural schedule was adopted. Pursuant to the Procedural Order, the staff's recommendation was filed on August 28, 2013. Pre-filed testimony was filed on September 27, 2013 and reply testimony was filed on October 11, 2013.

On November 5, 2013 the Commission held a public hearing on the application in Lincoln, Nebraska. For administrative efficiency, and with the consent of all parties, the hearing was consolidated with NUSF-77.08, NUSF-77.09 and NUSF-77.11 through NUSF-77.23. Mr. Kevin Saville entered an appearance on behalf of the applicant through local counsel Mr. Paul Schudel. Mr. Loel Brooks and Mr. K.C. Halm entered appearances on behalf of the Protestant, Charter.

Project Overview

Frontier is a common carrier subject to the jurisdiction of the Commission. Frontier holds a certificate of public convenience and necessity and operates general telecommunications businesses in Nebraska. Its principal office located in Mound, Minnesota. Frontier applied for NEBP support for two broadband projects. The first project was located in the Republican City, Naponee, and Bloomington exchanges (Project 1). The second project was located in the Miller and Sumner exchanges (Project 2).

Frontier provided a project timeline, a proposed budget showing project costs, a 25 percent match, and a detailed breakdown of the cost elements. Frontier provided a depreciation schedule showing the life of the investment. Frontier provided a copy of its latest financial report to demonstrate financial qualifications to complete its portion of the proposed project.

In addition, Frontier provided detailed map information showing the proposed project coverage in census blocks.

Staff Analysis

The Commission staff analyzed each project including the projects filed by Frontier. The staff first reviewed the application to determine whether the eligibility requirements had been met. Next, the staff reviewed the application to determine whether all application requirements listed in Progression Order No. 5 were fulfilled. Each project was then scored.

To score this application, the Commission staff took various pieces of information directly from the applications submitted for each project and utilized in factor development. This data included; retail monthly recurring and nonrecurring end-user rates for the provisioning of broadband service; the speed (Mbps) of the respective service being offered; and the total grant request amount for each project.

Additionally, the staff obtained various other data, from publicly available sources, also used in factor development. This data included: residential monthly recurring rates for voice service and subscriber line charges, if applicable;¹ population and household by census block;² area by census block;³ and broadband availability.⁴

The Commission staff then utilized a group assignment to prioritize areas determined as unserved,⁵ using the broadband mapping data as a starting point for its review. Staff triaged the projects into categories, or groups, based on the nature of each area being served and the total cost of each project. Any project comprised completely of unserved areas received a group assignment value of one (1). All remaining projects, containing some hybrid of various levels of unserved and underserved areas,

¹ Company specific publicly filed tariffs.

² United States Census Bureau, Census 2010 Summary File 1.

³ United States Census Bureau, 2010 Tiger/Line Shapefiles.

⁴ State Broadband Initiative Broadband Mapping Data, April 2013 submission.

⁵ See *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Docket No. NUSF-77, Progression Order No. 5, ORDER at 7 (November 21, 2011).

received a group assignment of two (2) through (4), based on the total cost of the project.⁶

The Commission staff noted the dramatic increase in the number of projects submitted resulting in demand which significantly outpaced supply. As such, the Commission staff utilized total cost in the determination of the group assignment in an effort to advance the objectives of the NEBP; expanding broadband service availability to the greatest number of Nebraskans.⁷ The staff's group assignment created a priority hierarchy. Within each hierarchy, the project was then scored based on the criteria described in the staff's recommendation.

The staff recommended approving Project 2, in the amount of **\$219,048.**

Hearing

Ms. Sue Vanicek, Director of the Department presented testimony at the hearing relative to the recommended adjustments to funding amounts. She testified that the Department reviewed each application and identified certain costs which should be excluded. Ms. Vanicek's testimony was offered and received into the record as Exhibit No. 19.

Mr. Tyler Frost, the staff Economist presented testimony related to the staff's methodology for recommending NEBP support. Mr. Frost provided further details about how the staff reviewed and scored each application. Mr. Frost's testimony was offered and received into the record as Exhibit No. 20.

Mr. Scott Bohler, manager of government and external affairs for the central region of the Frontier Communications companies testified in support of the application. His pre-filed testimony was marked and received into evidence as Exhibit No. 34. Mr. Bohler generally described Project 2 and supported the staff recommendation. As proposed, Frontier would build additional facilities to increase the transport capacity linking

⁶ All projects filed for the NEBP in 2013 are independent of all other projects filed by the same applicant.

⁷ See *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund*, Docket No. NUSF-77, Progression Order No. 7, ORDER at 5 (January 15, 2013) (describing the NUSF Act's goal to ensure all Nebraskans have comparable access to advanced services).

the exchanges of Miller and Sumner with existing facilities in Frontier's Kearney exchange.

Upon questioning, Mr. Bohler testified he did not have evidence to dispute Charter served customers in the Miller and Sumner exchanges. Mr. Bohler testified Frontier did not single out the number of rural households in its application. Rather Frontier provided household information on a per project basis.

Mr. Keith Hayes, Senior Vice President-Network Operations at Charter, testified in opposition to the application. Mr. Hayes' pre-filed direct and reply testimony was marked and received into evidence as Exhibit Nos. 32 and 33 respectively. Charter is a cable and broadband company serving parts of Nebraska and twenty-eight other states. Charter opposed the Frontier application because Charter provides broadband in those areas with service at or above the defined standards of 4Mbps download and 1 Mbps upload. Charter provided a list of census blocks and maps to demonstrate the potential overlap of Frontier's proposed broadband project compared to Charter's existing broadband network. According to Charter's records, they believe there are roughly 230 households that Charter covers which would also be covered by Frontier's application and another 30 or so rural subscribers that Frontier could potentially cover. Mr. Hayes further testified the Commission should not be picking winners and losers by subsidizing competitors to build networks in areas already served by companies that rely upon their own private capital and resources to build broadband networks.

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

On June 14, 2011, the Commission issued Progression Order No. 3 in NUSF-77, finding that making explicit NUSF support available for broadband deployment would complement the Commission's existing goal to support networks that provide voice service as well as advanced services. In addition, the Commission found promoting ubiquitous broadband availability was a state and federal responsibility which would require both state and federal financial support. Through further progression orders the Commission adopted criteria for the NEBP program eligibility, application requirements, and provided a timeline for the consideration of NEBP projects.

Based on the application and the evidence in the record, the Commission finds Frontier's application for NEBP program support should be denied. The Commission does not take issue with the staff's methodology which prompted its recommendation

to provide support for Project 2. The Commission understands that most broadband projects are "hybrid" projects which are not delineated completely in unserved and underserved areas. However, the Commission is concerned with providing its limited broadband support to Project 2 which, based on the record evidence, would result in an extensive overbuild an area where a competing wireline company already provides broadband service. We recognize there are some households within Project 2 which will continue to go underserved by today's decision to deny this application. Therefore, although we deny the application for NEBP support for the current funding year, we encourage Frontier to file a revised broadband application which is more specifically designed to reach the rural unserved or underserved subscribers in its exchanges. In the alternative, where transport facilities are concerned, we encourage Frontier to find a method to better apportion its costs so that the Commission's limited broadband support is used to reach the unserved/underserved subscribers in Frontier's exchanges while not directly supporting the construction of Frontier's broadband facilities in areas currently served by other carriers.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Application filed by Citizens Telephone Company of Nebraska d/b/a Frontier Communications of Nebraska shall be and it is hereby denied.

MADE AND ENTERED at Lincoln, Nebraska, this 25th day of November, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director