

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-92.04  
Public Service Commission, on )  
its own motion, seeking to )  
administer the Nebraska )  
Universal Service Fund's ) GRANTED AS AMENDED  
Broadband Program: Application )  
to the Nebraska Broadband )  
Program Received from )  
CenturyLink. ) Entered: June 24, 2014

APPEARANCES:

**For CenturyLink:**

Jill Vinjamuri Gettman  
Gettman & Mills, LLP  
10250 Regency Circle Suite 350  
Omaha, Nebraska 68114

**For Huntel CableVision, Inc. d/b/a Huntel Communications & Great Plains Communications:**

Paul M. Schudel  
WOODS AITKEN, LLP  
301 South 13th Street, Suite #500  
Lincoln, Nebraska 68508

**For Arapahoe Telephone Company:**

Jack Besse  
Knapp, Fangmeyer, Aschwege, Besse & Marsh, P.C.  
1323 Central Avenue  
Kearney, Nebraska 68848

**For N.E. Colorado Cellular, Inc. d/b/a Viaero & Charter Communications:**

Loel P. Brooks  
BROOKS, PANSING BROOKS, PC, LLO  
1248 O Street, Suite 984  
Lincoln, Nebraska 68508-1424

**For Nebraska Central Telephone Company, Rock County Telephone Company, Eastern Nebraska Telephone Company, Cable TV Company of Stanton, Cambridge Telephone Company & Consolidated Telephone Company:**

Paul M. Schudel  
WOODS AITKEN, LLP  
301 South 13th Street, Suite #500  
Lincoln, Nebraska 68508

**For Glenwood Telephone Company, Raicom, Inc., Southeast Nebraska Communications & Diode Cable:**

Andrew S. Pollock  
Rembolt Ludtke LLP  
1201 Lincoln Mall Suite #102  
Lincoln, Nebraska 68508

**For Pinpoint Wireless, Inc. d/b/a BLAZE Wireless:**

Russell Westerhold  
Fraser Stryker Law Offices  
409 South 17<sup>th</sup> Street #500  
Omaha, Nebraska 68102

**For Windstream Communications & United States Cellular Corporation:**

Deonne Bruning  
Deonne Bruning PC LLO  
2901 Bonacum Drive  
Lincoln, Nebraska 68502

**For the Commission:**

Shana Knutson  
1200 N Street, Suite 300  
Lincoln, Nebraska 68509

BY THE COMMISSION:

***Background***

By Application filed February 3, 2014, CenturyLink ("CenturyLink" or "Applicant") seeks Nebraska Broadband Pilot (NEBP) Program support. Notice of the Application appeared in the Daily Record, Omaha, Nebraska on February 7, 2014. On March 10, 2014, a Petition of Formal Intervention was filed by HunTel CableVision, Inc. d/b/a HunTel Communications ("HunTel") and Great Plains Communications ("Great Plains").

A staff recommendation was filed on April 22, 2014. Pre-filed testimony was filed by CenturyLink on May 9, 2014. Pre-filed testimony in opposition to the Application was also filed by HunTel on May 9, 2014. Pre-filed Reply testimony was filed by CenturyLink on May 28, 2014.

On June 10, 2014, the Commission held a public hearing on the application in Lincoln, Nebraska. For administrative efficiency, the hearing was consolidated with the hearings in NUSF-92.01 through NUSF-92.03 and NUSF-92.05 through NUSF-92.16.

Ms. Jill Gettman entered an appearance on behalf of the Applicant, CenturyLink. Mr. Paul Schudel entered an appearance on behalf of Formal Intervenor, HunTel and Great Plains.

### ***Project Overview***

Applicant is a common carrier with its principal office located in Monroe, Louisiana. Applicant originally proposed twelve (12) broadband projects in Nebraska. Applicant withdrew its request for support of one (1) project, identified as the Chadron project, on May 9, 2014.

Applicant provided a project timeline, a proposed budget showing project costs, a 25 percent match, and a detailed breakdown of the cost elements. Applicant provided a depreciation schedule showing the life of the investment. Applicant provided a copy of its latest financial report to demonstrate financial qualifications to complete its portion of the proposed project. In addition, Applicant provided information detailing the proposed project coverage in census blocks.

### ***Staff Analysis***

The Commission staff analyzed each project including the projects filed by CenturyLink. 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;<sup>1</sup> population and household by census block;<sup>2</sup> area by census block;<sup>3</sup> and broadband availability.<sup>4</sup>

---

<sup>1</sup> Company specific publicly filed tariffs.

<sup>2</sup> United States Census Bureau, Census 2010 Summary File 1.

The Commission staff then utilized a group assignment to prioritize areas determined as unserved,<sup>5</sup> 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). If not identified as Group Assignment one, the highest scoring project submitted by each applicant received a Group Assignment of two (2). All remaining projects, containing some hybrid of various levels of unserved and underserved areas, received a Group Assignment of three (3) through five (5), based on the total cost of the project.<sup>6</sup>

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.<sup>7</sup> The staff's group assignment created a priority hierarchy. Within each hierarchy, the project score assigns rank based on the criteria described in the Staff Recommendation.

As a result, the staff recommended approving CenturyLink's application, by recommending support for the twelve (12) projects in the amount of **\$1,185,413**.

### ***Hearing***

Ms. Sue Vanicek, Director of the Department presented testimony at the hearing relative to the recommended adjustments

---

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

<sup>4</sup> State Broadband Initiative Broadband Mapping Data, April 2014 submission.

<sup>5</sup> 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).

<sup>6</sup> All projects filed for the NEBP in 2014 are independent of all other projects filed by the same applicant.

<sup>7</sup> 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).

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. 22.

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. 23.

Ms. Ann Prockish, Director-State Regulatory Operations, testified in support of CenturyLink's application. Ms. Prockish's pre-filed testimony described the eleven proposed projects recommended for broadband support and her support for the Commission staff's recommendation. Ms. Prockish's pre-filed direct and reply testimony was received into evidence as Exhibit No. 24. CenturyLink's application was received into evidence as Exhibit No. 6. Ms. Prockish testified the projects would not be economic to build under the rules of the Federal Communications Commission's Connect America Fund Phase I program. In response to opposition testimony, Ms. Prockish acknowledged the Wakefield project did overlap census blocks where HunTel provides broadband service. However, she testified over 70 percent of the area is "unserved" according to the Commission's definition.

Mr. Joe Jetensky, President/General Manager of HunTel, testified in opposition to one CenturyLink project. HunTel opposed CenturyLink's Wakefield project. He testified HunTel provided broadband to 30 of the 118 census blocks included in CenturyLink's Wakefield project. Households in 23 of these 30 census blocks are within the city limits of Wakefield, Nebraska. Households in the remaining seven census blocks that are current HunTel customers are served by wireless last-mile facilities. If approved, CenturyLink will have the capability to compete with HunTel. Mr. Jetensky asked the Commission to find this situation comparable to NUSF-77.10 where an application of Frontier Communications was denied.

#### 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 evidence provided at the hearing, the Commission was not persuaded to deny funding for CenturyLink's Wakefield project. The Commission acknowledges that in many cases funding will overlap existing broadband coverage. The Commission Economist testified that there was just one project filed in a completely unserved area in 2014. The Commission finds it compelling that without support, the Wakefield project area would remain 70 percent unserved, leaving rural Nebraska subscribers without access to broadband. Accordingly, the Commission finds that the CenturyLink Wakefield project should be approved over the objection of HunTel.

The Commission finds CenturyLink's application for NEBP program support should be approved consistent with the staff recommendation and the request by CenturyLink to amend its application by withdrawing the Chadron project. The Commission approves support for the eleven remaining projects in an amount of **\$1,094,138 or the actual cost** of construction whichever amount is lower.

#### Reimbursement Process:

CenturyLink must first make the investment and then may file a request for reimbursement with the NTIPS Department. CenturyLink does not need to complete the construction process prior to seeking reimbursement; rather, it may work with the NTIPS Department to develop intervals at which reimbursement can be sought. The NEBP program will reimburse CenturyLink for reasonable expenditures made related to project specifications detailed in the application and approved in this Order. Once the investment is made, CenturyLink shall file a request for support, provide the NTIPS Department with copies of the invoices or other acceptable documentation<sup>8</sup> and shall certify to the Department that it had made the described investment for the provision, maintenance and upgrading of facilities and services in the area defined in the application.

As a NEBP program recipient, the Commission finds CenturyLink must meet the following conditions:

---

<sup>8</sup> The Commission will provide the Department with the discretion to determine the type of documentation needed to verify the expenditures made when not provided through a third-party invoice.

1. The supported broadband service upon completion of the deployment must be available as a service offering to all households within the area defined by the application for a minimum period of five (5) years;
2. The project must be completed within 24 months from the date of this Order unless otherwise extended by the Commission;
3. Voice grade service must be available to customers within the service area of the broadband deployment;
4. Access to emergency services must be available to customers within the service area of broadband deployment;
5. Broadband support must only be used for the purposes intended and which have been approved by the Commission;
6. Voice and broadband service in the area described in its application must be offered at reasonably comparable rates for comparable services it offers in urban areas;
7. Reporting, verification, and audit requirements adopted by the Commission for oversight of the NEBP program must be met; and
8. Adherence to all applicable Commission rules, regulations and orders.

Continuing Nature of Requirements:

The Commission will enforce these requirements throughout the period of the grant and the five (5) year period following the completion of the project to ensure the Commission's objectives for this program are being met. CenturyLink shall notify the Commission in writing once the project(s) have been completed and the proposed broadband service is being offered. The Commission may take any action it deems necessary and appropriate to enforce the requirements and conditions in this Order.

To encourage public awareness about the deployment of broadband service in Nebraska, we find CenturyLink should be required to report broadband availability to the Commission and its broadband mapping vendor for the duration of the State Broadband Data and Development (SBDD) Program.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria the Commission applied in this application for NEBP program support. The Commission may modify the minimum requirements and conditions for future petitions for support from the NEBP program.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Application filed by CenturyLink shall be and it is hereby granted as amended, to the extent provided herein.

IT IS FURTHER ORDERED that Applicant shall comply with requirements set forth herein.

IT IS FURTHER ORDERED that Applicant shall submit detailed and accurate invoices and other documentation required by the Department prior to reimbursement for the supported project(s).

IT IS FURTHER ORDERED that Applicant shall use Nebraska Broadband Program support only for the purposes described in its application and authorized by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 24<sup>th</sup> day of June, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director



O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Application filed by CenturyLink shall be and it is hereby granted as amended, to the extent provided herein.

IT IS FURTHER ORDERED that Applicant shall comply with requirements set forth herein.

IT IS FURTHER ORDERED that Applicant shall submit detailed and accurate invoices and other documentation required by the Department prior to reimbursement for the supported project(s).

IT IS FURTHER ORDERED that Applicant shall use Nebraska Broadband Program support only for the purposes described in its application and authorized by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 24<sup>th</sup> day of June, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Rene Boyle*

*Tim Schram*

*Paul J. ...*

*Bernard ...*

*Frank E. Landis*  
Chairman

ATTEST:

*Irene Meradith*

Executive Director

//s//Frank E. Landis