

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-92.16
Public Service Commission, on)
its own motion, seeking to)
administer the Nebraska)
Universal Service Fund's) GRANTED, IN PART
Broadband Program: Application)
to the Nebraska Broadband)
Program Received from Windstream)
Communications.) Entered: June 24, 2014

APPEARANCES:

For Windstream Communications:

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For Diller Telephone d/b/a Diode:

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For the Commission:

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BY THE COMMISSION:

Background

By Application filed January 28, 2014, Windstream Communications ("Windstream" or "Applicant") seeks Nebraska Broadband Program (NEBP) 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 Diller Telephone d/b/a Diode.

A staff recommendation was filed on April 22, 2014. Pre-filed testimony was filed by Windstream on May 9, 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-92.15. Ms. Deonne Bruning entered an

appearance on behalf of the Applicant. Mr. Andrew S. Pollock entered an appearance on behalf of Diller Telephone d/b/a Diode.

Project Overview

Applicant is a common carrier with its principal office located in Little Rock, Arkansas. Applicant sought broadband support for six (6) proposed projects throughout Nebraska.

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 proposed project including the six projects filed by Windstream. 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

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.

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). 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.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 score assigns rank based on the criteria described in the Staff Recommendation.

As a result, the staff recommended approving Windstream's application in part, by recommending support for the DuBois project in the amount of **\$298,272**.

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

⁴ State Broadband Initiative Broadband Mapping Data, April 2014 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).

⁶ All projects filed for the NEBP in 2014 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).

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.

Mr. Brad Hedrick, Division Vice President, Field Operations, for Windstream, testified in support of the application. Mr. Hedrick's pre-filed testimony described the proposed project recommended for broadband support and his support for the Commission staff's recommendation. Mr. Hedrick's pre-filed direct testimony was received into evidence as Exhibit No. 37. Windstream's application was received into evidence as Exhibit No. 18. Mr. Hedrick stated approval of the proposed project would bring broadband service to existing underserved areas of the state. The targeted locations will have minimum broadband speeds of 4 Mbps downstream and 1 Mbps upstream.

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 Windstream's application for NEBP program support should be approved in part, consistent with the staff recommendation. The Commission approves support for the proposed DuBois project up to an amount of **\$298,272 or the actual cost** of construction for the project whichever amount is lower.

No party testified in opposition to Windstream's request for NEBP support as recommended by the Commission staff.

Reimbursement Process:

Windstream must first make the investment and then may file a request for reimbursement with the NTIPS Department. Windstream 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 Windstream for reasonable expenditures made related to project specifications detailed in the application and approved in this Order. Once the investment is made, Windstream shall file a request for support, provide the NTIPS Department with copies of the invoices or other acceptable documentation⁸ 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 Windstream must meet the following conditions:

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.

⁸ 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.

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. Windstream 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 Windstream 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 Windstream Communications shall be, and it is hereby, granted in part, 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 24th day of June, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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MADE AND ENTERED at Lincoln, Nebraska, this 24th day of June, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Dave Boyle
Tim Lehman
Red Johnson
Gerald F. Kay

Frank E. Landis
Chairman

ATTEST:

Steve Meradith
Executive Director

//s//Frank E. Landis