

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Application No. NUSF-92.31
Public Service Commission, on	)	
its own motion, seeking to	)	
administer the Nebraska	)	
Universal Service Fund's	)	GRANTED
Broadband Program; application	)	
to the Nebraska Broadband	)	
Program Received from	)	
NebraskaLink Holdings.	)	Entered: May 27, 2015

APPEARANCES:

**For NebraskaLink Holdings LLC:**

Paul M. Schudel  
Woods & Aitken LLP  
301 South 13<sup>th</sup> Street  
Suite 500  
Lincoln, NE 68508

**For Windstream Communications Inc.**

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

**For the Commission:**

Shana Knutson  
300 The Atrium Building  
1200 N Street  
Lincoln, NE 68508

BY THE COMMISSION:

On December 10, 2013, the Nebraska Public Service Commission (Commission) opened NUSF-92 to serve as the vehicle for the Nebraska Universal Service Fund Broadband Program (NEBP). The Commission allocated \$500,000 for broadband adoption projects in calendar year 2015. On September 3, 2014, the Commission solicited applications for broadband adoption projects. The deadline for filing an application was November 26, 2014.

On November 26, 2014, NebraskaLink Holdings LLC ("NebraskaLink") filed a request for broadband adoption support.<sup>1</sup> Notice of the application appeared in the Daily Record, Omaha, Nebraska on December 15, 2014. On December 23, 2014, Charter Communications filed a Petition for Formal Intervention which was granted on December 31, 2014. On December 29, 2014, N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless ("Viaero") filed a Petition of Formal Intervention which was granted on January 9, 2015. On January 5, 2015, Windstream Communications, Inc. ("Windstream") filed a Petition of Formal Intervention which was granted on January 12, 2015. On January 5, 2015, Great Plains filed a Petition of Formal Intervention which was granted on January 15, 2015. Subsequently, Great Plains, Viaero and Charter withdrew their Interventions.

On March 13, 2015, a procedural order was entered determining the schedule for processing adoption applications. Pre-filed testimony was submitted on March 27, 2015. Reply Testimony was submitted on April 17, 2015. A hearing was held in Lincoln, Nebraska on April 27, 2015 with appearances entered for this application as shown above.<sup>2</sup> Mr. Jason Axthelm, Vice President for NebraskaLink Holdings, LLC, Ms. Pat Leach, Lincoln City Libraries Director, and Mr. Jeff Kirkpatrick, the Lincoln City Attorney, all testified in support of the application. Mr. Brad Hedrick, Division Vice President, Field Operations, and Ms. Sharon Webber, Vice President for External Affairs for Windstream testified in opposition to the application.

NebraskaLink formed in 2010 and was a recipient of a federal Broadband Technology Opportunities Program (BTOP) grant under the American Recovery and Reinvestment Act of 2009. NebraskaLink has deployed a high-speed fiber network throughout Nebraska connecting community anchor institutions such as state and local government agencies, educational networks, colleges, schools, healthcare providers and financial institutions.

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<sup>1</sup> The NebraskaLink application for the Lincoln City Libraries project was offered and received into the record as Exhibit No. 7.

<sup>2</sup> The hearing was consolidated with other broadband adoption applications for administrative efficiency.

NebraskaLink seeks broadband adoption support in partnership with Libraries. Specifically, it sought support in partnership with the Ashland Public Library, the Kilgore Memorial Library in York, the Seward Memorial Library and the Lincoln City Libraries. NebraskaLink withdrew its request for adoption support for the Seward Public Library, and subsequently withdrew its grant request for all but the Lincoln City Libraries project.

According to the application and testimony of Mr. Jason Axthelm,<sup>3</sup> NebraskaLink currently operates and maintains an extensive fiber optic network in and around the city of Lincoln. NebraskaLink, in partnership with the Lincoln, City Libraries, will utilize its existing fiber network and will construct new fiber routes as needed to connect each of the eight library locations. The proposed project plan will also connect the Lincoln Library Network to Network Nebraska which is a collaborative multipurpose telecommunications backbone network throughout the state serving a partnership of K-12 schools, higher education institutions, and public and private entities.

In support of this project, NebraskaLink stated research identifies the major barriers to broadband adoption as access, affordability, relevancy and usefulness. NebraskaLink further stated the Lincoln City Libraries were currently underserved in regard to their connectivity, capacity and service speeds.<sup>4</sup> In order to meet the demand of the community, library patrons and students, the Libraries require speed and capacity significant enough to meet these current and future needs.

As part of the partnership, NebraskaLink will make available for use by the Lincoln City Library twelve fiber strands on the Lincoln Library Network under a twenty-year indefeasible right to use agreement. In areas where NebraskaLink has existing fiber infrastructure, it will make available to the Lincoln Library Network two strands of fiber from each of the eight library locations back to the Network

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<sup>3</sup> The pre-filed Direct Testimony of Jason Axthelm was offered and received into evidence as Exhibit No. 15.

<sup>4</sup> NebraskaLink Application at page 3 citing *Internet Connectivity and Use in Nebraska: A Follow-Up Study* (April 2014), Vogt et al., pages 6-10.

Nebraska facility under a separate twenty-year infeasible right to use agreement. These fibers providing connectivity between the libraries and Network Nebraska will be provided as an in-kind match by NebraskaLink to facilitate the success of the project. The proposed project will increase the connectivity and capacity of the library facilities, bringing 1 Gbps service speeds to users, with a possibility of future increases to 10 Gbps. Upon questioning, Mr. Axthelm testified that NebraskaLink will not use any of the 12 fibers to carry traffic other than library traffic. Mr. Axthelm did not have any concern with the Commission conditioning its grant of support so that the fiber strands funded can only be used by the Lincoln City Libraries.

According to NebraskaLink, the community will see considerable benefits from this project. The applicant cites to the Commission's broadband planning team survey which found that thirty-two percent of the households without Internet access use the computer resources at public use facilities. NebraskaLink stated libraries serve as a gateway to broadband adoption through the use of digital literacy programs which emphasize the relevance and usefulness of broadband service.

The total cost of the project to cover a twenty-year period will be \$334,000.00. The NebraskaLink in-kind contribution to the project would be \$682,818.00 which was calculated by using what it otherwise would receive from a lease of the fiber per mile/month in the market.

According to Ms. Leach,<sup>5</sup> the libraries recognize the important role they play in providing broadband to consumers. On a daily basis, the staff assists people with Internet-related needs. The Lincoln City Libraries believe most people who use their personal computers are low income. People tell them they struggle with keeping computers up to date at home, keeping cartridges in the printer or keeping a stable Internet connection. Ms. Leach testified the current broadband connections to the Lincoln City Libraries locations do not provide enough bandwidth to keep pace with the needs of patrons, especially for video and audio. The Lincoln City Libraries are open 450 hours per week including evenings and

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<sup>5</sup> The pre-filed Direct Testimony of Ms. Pat Leach was offered and received into evidence as Exhibit No. 16.

weekend hours. When the doors open at the Bennett Martin library in the morning, there are people waiting to use the computers.

The construction of fiber connections for all library locations will serve the growing number of public school students who will be issued tablets as part of the school curriculum. Several of the libraries are placed to serve people who are low-income. The Lincoln City Libraries work with Center for People in Need, the Community Action Program and a variety of other organizations. Further, Ms. Leach provided, the libraries are collaborating with organizations, including AIM for Brilliance, which presents coding programs for young people. Ms. Leach recommended approval of the application.

In response to questions, Ms. Leach testified, the Lincoln City Libraries does receive federal universal service fund E-rate discounts for some services. She did not know what that discount was without checking.

Mr. Kirkpatrick on behalf of City of Lincoln testified in support of the application.<sup>6</sup> Mr. Kirkpatrick testified it was difficult for him to imagine any other broadband project in the City of Lincoln that would have the impact that this project will have as far as being able to reach the low income family demographic. Upon questioning, Mr. Kirkpatrick testified the city libraries assist low-income consumers in all branches.

Ms. Vanicek, Director of the Nebraska Telecommunications Infrastructure and Public Safety Department of the Commission, testified in support of the staff recommendation.<sup>7</sup> She stated the projects recommended for funding will represent a diverse test bed for the Commission to analyze which broadband adoption projects are most successful. Ms. Vanicek further testified all projects

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<sup>6</sup> The pre-filed Direct Testimony of Mr. Chris Beutler was offered and received into evidence as Exhibit No. 17. Due to the unavailability of Mr. Beutler, Mr. Jeffrey Kirkpatrick offered live testimony at the hearing.

<sup>7</sup> The pre-filed Direct and Reply Testimony of Ms. Sue Vanicek were offered and received into evidence as Exhibit Nos. 13 and 14 respectively.

recommended for funding by the staff benefit low-income consumers and are aimed at increasing broadband adoption.

Windstream opposed the application. Mr. Brad Hedrick<sup>8</sup> testified Windstream could provide the service to the libraries they seek, but were not asked to do so. He testified because Windstream had existing fiber near the library locations they could provide the service in a more cost-effective manner. In addition, he stated, Windstream already provides to, and has connection points with, Network Nebraska and could readily provide connectivity.

In response to Commissioner Vap's question about the comparability of the proposed free service offered to the library by Nebraskalink versus what Windstream would have charged, Mr. Hedrick stated that it would be something for Windstream to consider. He testified that an upgrade of service would be available to the library at a discounted rate through the federally administered E-rate program.

Ms. Sharon Webber<sup>9</sup> testified that in her opinion, the NebraskaLink proposal did not meet the criterion in the Commission's orders establishing the broadband adoption program. Further, she testified that it was not an efficient use of resources to provide support to over-build Windstream's existing infrastructure. More specifically, she had concerns that NebraskaLink did not state the infrastructure would only be used to serve the Lincoln City Libraries.

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

The Commission set aside \$500,000 for projects to increase broadband adoption and usage in Nebraska. Because it is a pilot program, the Commission found it would address these applications on an ad hoc basis rather than utilizing a specific methodology for choosing projects. Ten projects were proposed. In total, the amount of broadband adoption support

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<sup>8</sup> The pre-filed Reply Testimony of Mr. Brad Hedrick was offered and received into evidence as Exhibit No. 19.

<sup>9</sup> The pre-filed Reply Testimony of Ms. Sharon Webber was offered and received into evidence as Exhibit No. 20.

initially sought was \$1,225,276; more than twice the amount of available funding.

The Commission staff filed a recommendation on February 12, 2015. In its filing, the Commission staff recommended NebraskaLink's application be funded in the amount of \$334,000.

Based upon the application, the staff recommendation, and the testimony provided at hearing, the Commission finds the application should be granted. The Commission finds NebraskaLink's proposal qualifies as a broadband adoption project. The Commission purposefully left the criteria broad so that it could consider a diverse mix of projects that would promote the use of advanced services. Nebraska libraries serve and make Internet available to low-income, aged, disabled, and other underserved at-risk populations in the state. Libraries play a key role in supporting broadband adoption. Moreover, the fact that the broadband service offered by the libraries serves a broader scope of users is not unique among the projects reviewed and approved by the Commission this funding year.

We are also not persuaded to vote against this project because capital costs are involved. Of significance, NebraskaLink proposes to offer the libraries free broadband through a indefeasible lease agreement that will continue for at least twenty years and the in-kind contribution made by NebraskaLink which will make broadband service more affordable to the libraries. In addition, we believe the assistance and resources that libraries offer to those in the community will promote digital literacy among non-adopters.

Therefore, in consideration of all of the information presented, we find the staff recommendation with respect to the NebraskaLink project should be approved. Further, in order to address one of Windstream's concerns, we find the grant support for this project is to be restricted for the benefit of the Lincoln City Libraries only, and may not be used by NebraskaLink for any other commercial purpose.

The Commission will hold a workshop to discuss reporting requirements for this grant on **July 22, 2015 at 1:30 p.m.** in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska. A telephone bridge will be made available for this workshop.

Commissioner Crystal Rhoades dissenting:

The project presented by NebraskaLink and Lincoln Public Libraries is meritorious and remunerative however, it does not fit within the common definition of broadband adoption. The most commonly accepted principles of broadband adoption dictates projects should benefit those unable to afford broadband, those unable to access because of limited availability of broadband, and those who believe broadband is not relevant to them. While libraries certainly play a key role in providing broadband service to those who are unable to afford it the Lincoln Public Libraries already have a robust broadband connection and the implementation of this project will not necessarily provide additional residents with access, but focuses on providing faster speeds. Additionally, the purposed project is defined as a "dark fiber" project and this definition refers to unused fiber-optic cable. Often companies lay more lines than needed in order to curb costs of having to do it again and again. The dark strands can be leased to individuals or other companies who want to establish optical connections among their own locations. While this makes a great deal of sense because data demand continues to grow and the additional services will no doubt be needed in the future, the project doesn't fit well within the definition of adoption because it doesn't address target adoption populations and because it is an over build that will not be immediately used. Therefore, this project is a poor fit under the broadband adoption program because it is not likely to result in new users being able to access the internet.

While this project is not as a good fit under NUSF-92 adoption program because Lincoln is an urban area where in home access is available that does not mean that libraries should not be supported on the broadband adoption program. Libraries, particularly in rural high cost areas where in home broadband is not feasible or readily available should be funded because they would be providing vital service to a population for which in home service is not accessible thus meeting a target population for adoption programs.


Furthermore, while this particular application is not a good fit under NUSF-92 adoption fund the Commission should explore how to incorporate infrastructure enhancements to anchor institutions and third spaces such as libraries, schools, universities, parks, and other public spaces to create a robust broadband environment that supports modern



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global communications. The Commission should consider a modification of existing NUSF-92 rules to accommodate this goal or consider a separate program focused on enhancing connectivity in the public domain.

  
Commissioner Crystal Rhoades

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned application be, and it is hereby, approved as provided herein.

IT IS FURTHER ORDERED that a workshop to discuss reporting requirements for this grant will be held on **July 22, 2015 at 1:30 p.m.** in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska.

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 27th day of May, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s//Tim Schram  
//s//Frank E. Landis



Vice-Chairman

ATTEST:



Executive Director

COMMISSIONERS DISSENTING:

