

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-92
Public Service Commission, on its) PROGRESSION ORDER NO. 1
Own Motion, to Administer the)
Nebraska Universal Service Fund) ORDER SEEKING COMMENT
Broadband Program.) AND SETTING HEARING
)
) Entered: July 22, 2014

BY THE COMMISSION:

On December 10, 2013 the Nebraska Public Service Commission (Commission) opened the above-captioned docket to administer the Nebraska Universal Service Fund Broadband Program (NEBP). The Commission allocated \$9 million for the NEBP and solicited applications which were due on or before February 2, 2013. On June 10, 2014, the Commission completed round three of NEBP grants, approving fifteen applications in whole or in part supporting 61 capital broadband improvement projects across the state.

The Commission enters this Progression Order to seek comment on proposed modifications to the NEBP and to provide definitional clarity for future applicants.

Issues for Public Comment

A. Mobile versus Fixed Broadband

In NUSF-77, Progression Order No. 7, the Commission found that "comparable access could mean universal service access to one fixed and one mobile broadband provider."¹ But the Commission did not specifically define what constituted "fixed" versus "mobile" broadband access. In the last round of NEBP grants, the Commission staff used the classification employed by the National Telecommunications and Information Administration (NTIA) for reporting broadband availability in the State Broadband Mapping Initiative (SBI) to recommend resolution of a dispute on this issue. However, there was disagreement with the Commission staff's approach. Consequently, the Commission solicits comment on how to

¹ *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, Application No. NUSF-77, Progression Order No. 7, Order at 11 (January 15, 2013) ("Progression Order No. 7").*

define "fixed" and "mobile" broadband access going forward. We ask interested parties to provide any information helpful to the Commission for developing a definitional standard and answering the following questions:

- a. How should the Commission define mobile versus fixed broadband service? Are there key indicators which should be used as a threshold in this determination?
- b. How should fixed wireless service be defined when it has both a fixed and a mobile component?

Currently, applicants define whether their projects are mobile or fixed by describing the nature of the technology used in the project. Applicants describe their projects with varying degrees of specificity making it difficult for the Commission and interested parties to determine the type of service that will be offered. How should the NEBP applicants put the Commission and other interested parties on notice as to the fixed or mobile nature of their project(s)? What type or types of service features should be listed in each application in order to make this clear?

In the FCC's Transformation Order, the FCC defined "terrestrial fixed broadband service" as one that

serves end users primarily at fixed endpoints using stationary equipment such as the modem that connects an end user's home router, computer or other Internet access device to the network.²

The FCC further provided that this term includes fixed wireless broadband services (including those offered over unlicensed spectrum).³

Should the Commission use this definition to determine whether the project is a fixed broadband service? Should the

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 26 FCC Rcd at 17698-99, para. 98 (2011) ("Transformation Order")

³ *See id.*

Commission define a service by the primary use of the service rather than by technology? How should the Commission determine how the service is used primarily? How should the Commission treat mobile service providers who do not fall under the FCC's definition above which also have a fixed wireless product option? Please elaborate.

Should the Commission define mobile service by technological factors such as the amount of back-up power, transmitting equipment or the tower strength? If so, what should the specific standards be? Should the Commission define mobile service by the percentage of all telephone numbers which the service could reach on the applicants' network? If so, what should the percentage be? What about access to emergency services with location accuracy? Should only applicants required to comply with 47 C.F.R. § 20.18 requirements be considered as providing mobile service? Should Phase 2 wireless E911 location accuracy be a determining factor? Why would these factors be important to defining mobile broadband access versus wireline broadband access? Please elaborate.

B. Multi-Year Projects

The Commission also seeks comment on whether to entertain applications to support multi-year broadband projects. The Commission recognizes that some broadband build-out plans may not be viable or cohesive with one-time project support. The Commission believes it must balance this challenge with its need for administrative planning and efficiency. Consequently, if multi-year funding commitments were to be made by the Commission, we do not believe the Commission should consider funding commitments in excess of three years. Interested parties are invited to comment on this proposal as well as the following:

- a. Is there an interest by providers to apply for broadband support for multi-year projects? If not, why not? If so, what types of projects would the Commission most likely see?
- b. Would the consideration of multi-year projects result in a more cohesive and cumulative broadband build-out in Nebraska? Why or why not?

If multi-year projects are supported by the Commission, applicants must be required to clearly define their multi-year funding needs and commitments. Specifically, the Commission seeks comment on the following:

- a. How should the Commission modify its current application requirements to account for multi-year projects?
- b. Should there be any limits on multi-year projects? If so, what limitations should be considered?

As proposed, multi-year projects would have the effect of committing grant support in future years but would be ranked and scored in the year the application is filed. Are there any concerns with this approach? If so, please explain?

In addition, such funding would necessarily be contingent upon the universal service funding being available and appropriated to the Commission for this purpose. How can the Commission appropriately advise providers about this risk? Does this risk pose a deterrent for multi-year projects?

C. Project Caps

Additionally, the Commission seeks to refresh the record on the idea of instituting a per project cap. Such caps would not limit the total amount of NEBP support sought by each provider in any given year or limit the number of projects submitted, but would help the Commission prioritize projects in a way that potentially includes all areas of Nebraska and gives every provider the opportunity to compete for broadband support.

The Commission notes, the FCC recently adopted a per project cap on universal service broadband grant support provided through its experimental broadband expansion proceeding stating that capping broadband grants per project will "ensure diverse experiments."⁴

⁴See Public Notice, *Connect America Fund et al.*, WC Docket Nos. 10-90 et al. (July 11, 2014).

The Commission solicits comment on whether a \$450,000⁵ per project cap would be reasonable. If so, how should the Commission coordinate this cap with its prior proposal to permit multi-year projects?

D. Broadband Adoption

Finally, the Commission solicits comments on whether it should entertain proposals to increase broadband adoption with NEBP grant support.⁶ Access to broadband could take into account both the physical connection to broadband infrastructure and the subscriber's ability to purchase broadband service. Broadband availability may not be relevant in many cases if there are other barriers preventing its adoption. The Commission seeks comment on what factors other than infrastructure availability prevent "access to advanced telecommunications and information services [from being] provided in all regions of the state."⁷ Should the Commission modify the NEBP standards to account for these factors?

The Commission also specifically solicits comment on whether to include a financial aspect into its definition of "unserved" and "underserved" areas? If so, what should the revised definition look like? What factors should the Commission use to determine whether an area is unserved or underserved in terms of broadband adoption?

Should the Commission be concerned about low take rates in low-income areas or communities? If so, how should the Commission's policies and definitions be modified to tackle these concerns in relation to broadband adoption?

⁵ The proposed project cap would be a cap on the amount of support per project and would not include the provider match.

⁶ In NUSF-91, the Commission is investigating the development of a low-income broadband program. That proceeding is focused on providing a direct broadband discount for low-income subscribers. In this proceeding, the Commission has focused its efforts on broadband infrastructure availability by making grant support available only for capital improvement projects.

⁷ Neb. Rev. Stat. § 86-323(2)(2008).

The Commission solicits comment on whether it should designate \$500,000 from the NEBP in 2015 to go towards broadband adoption projects. If so, what types of projects should be considered for funding and why? Should the Commission consider proposals aimed at making broadband available through provider/community-based partnerships? Should the Commission accept joint broadband grant applications from providers and community groups, libraries, schools or other non-profit organizations to increase broadband adoption? Why or why not? If provider/community-based broadband adoption projects are deemed eligible for support, how should they be structured? Should the Commission impose a cap on support received as a percentage of the proposed \$500,000 available? Should the Commission cap broadband adoption support by project or by company? If the Commission does cap support, what would the appropriate percentage be? Should the Commission waive the standard match requirement for these types of projects?

Should the Commission also evaluate broadband adoption statistics in Tribal areas? Are there partnerships the Commission should leverage to increase broadband penetration in Tribal areas? Should the Commission give priority to applications which include Tribal land areas?

Comment and Hearing

The Commission declines to seek comment at this time on whether to shift its analysis away from providing broadband support to cover census blocks and moving to a population basis for determining where broadband projects should be approved. The Commission also declines to seek comment on whether to change the minimum application requirements by adding the requirement that applicants need to have the ability to provide access to Phase 2 E911 emergency services. However, interested parties are not limited to the issues specifically raised in this Order but are welcome to comment on other issues germane to this proceeding.

As noted in the Commission's prior Order in this docket, the Commission plans to open the NEBP application window beginning October 1, 2014. It is the Commission's intent to have these issues resolved before October 1, 2014. Accordingly, the Commission solicits public comment on or before **August 4, 2014**. The Commission requests that

interested parties provide specific comments for any definitional changes or modifications sought. Commenters should file one (1) paper copy and one (1) electronic copy of their Comments with the Commission. Electronic copies should be sent to Sue.Vanicek@nebraska.gov and Brandy.Zierott@nebraska.gov.

A hearing on these issues will be held on **August 19, 2014**, at 1:30 p.m. central time, in the Commission Hearing Room, 1200 N Street, Suite 300, Lincoln, Nebraska 68508. The hearing will be held in legislative format. 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 Commission at (402) 471-0213 (TDD) or the Nebraska Relay System at (800) 833-7352(TDD) or (800) 833-0920 (Voice). Advance notice of at least seven (7) days is needed when requesting an interpreter.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that interested parties may file comments responsive to this Order on or before **August 4, 2014** in the manner prescribed herein.

IT IS FURTHER ORDERED that a public hearing will be held in legislative format on **August 19, 2014** at 1:30 p.m., central time, in the Commission Hearing Room, 1200 N Street, Suite 300, Lincoln, Nebraska 68508.

MADE AND ENTERED at Lincoln, Nebraska this 22nd day of July, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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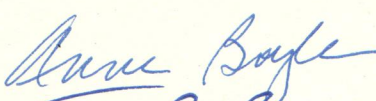



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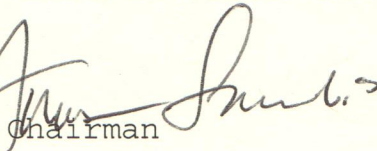
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//s//Frank E. Landis