

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-92
Public Service Commission, on its) PROGRESSION ORDER NO. 2
Own Motion, to Administer the)
Nebraska Universal Service Fund) ORDER
Broadband Program.)
) Entered: September 3, 2014

BY THE COMMISSION:

Background

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). On June 10, 2014, the Commission completed round three of NEBP grants, approving fifteen applications in whole or in part supporting 60 capital broadband improvement projects across the state.

On July 22, 2014 Commission issued Progression Order No. 1, to solicit comments on proposed modifications to the NEBP and to provide definitional clarity for applicants on the question of mobile versus fixed broadband service. The following entities filed comments in response to the Commission's Order: CenturyLink, the City of Lincoln, Cox Nebraska Telcom, LLC (Cox), N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (Viaero), Pinpoint Wireless d/b/a BLAZE Wireless (Pinpoint), the Rural Independent Companies (RIC), the Rural Telecommunications Coalition of Nebraska (RTCN), and Windstream Communications.

Mobile versus Fixed Broadband

In response to some concerns voiced in the last round of NEBP grants, the Commission solicited comments to develop a method to distinguish between "mobile broadband" and "fixed broadband" service. The Commission asked whether the definition should be based upon technical qualities of the service or consumer expectations.

For example, the Commission asked whether it should utilize the FCC's definition of "terrestrial fixed broadband service" ¹ from the *Transformation Order* which was defined as a broadband service which,

 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.¹

Likewise, the Commission asked whether it should consider the provider's obligation to comply with certain FCC rules. In addition to, or in the alternative, the Commission asked whether to base the standard on the consumer's primary use of the service.

CenturyLink stated the Commission should look at how service is used by the subscriber. In addition, CenturyLink stated mobile broadband service subscribers should be able to travel outside the limited range of the home service provider's tower(s).

Viaero stated the Commission should use the FCC's "terrestrial fixed broadband service" definition to define fixed wireless broadband in this program. Viaero further recommended carriers be classified by the Commission ahead of time.

Pinpoint also recommended using the FCC's definition. In response to the Commission's questions, Pinpoint recommended that applicants should state whether they wish to be categorized as a "fixed broadband" or "mobile broadband" provider. Pinpoint recommended against defining the service by the primary use of the technology.

RIC recommended using the FCC's "terrestrial fixed broadband service" definition along with federal regulations and eligibility for FCC's Mobility Fund support. In addition, RIC stated the Commission should consider consumer expectations.

RTCN and Windstream did not recommend a particular definition. Both commenters recommended the Commission should create a clear path forward. RTCN also recommended the definition be revisited frequently to keep pace with changes in technology.

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")

Based upon the comments and testimony received, the Commission is of the opinion and finds it necessary to delineate between a "mobile broadband" and a "fixed broadband" service using a mixture of the aforementioned criteria. First, the Commission finds the FCC's definition from the *Transformation Order* is a relevant starting point. Fixed broadband service shall be one which 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. Second, the Commission finds the definition should be based upon whether such service provider claims to comply with Phase 2 wireless E911 standards as defined in federal and state rules. Third, the Commission finds consumer expectations are probative to the determination of whether a broadband service is fixed or mobile in character. If the consumer expects to use the service beyond the limits of its home service provider through the use of a traditional "smartphone" handset, then the service should be considered a "mobile broadband" service.

Applying the foregoing criteria the Commission believes that N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, United States Cellular Corporation and Pinpoint Wireless d/b/a BLAZE Wireless serve as examples of mobile broadband providers offering a mobile broadband service. However, this list of providers should not to be considered as a closed class. The Commission believes any applicant meeting the above-listed criteria could ask to be classified as a mobile broadband provider offering a mobile broadband service. However, this classification must be made at the outset of the application process.

Multi-Year Projects

The Commission sought comment on whether to entertain applications to support multi-year broadband projects. The Commission asked whether it should provide funding for long-term projects with funding dedicated in each year spanning three funding years.

CenturyLink, Viaero, RIC, RTCN and Windstream all opposed multi-year projects as proposed by the Commission. Pinpoint was supportive of multi-year projects. CenturyLink stated that it did not believe multi-year projects were necessary as providers already have two years to deploy broadband to subscribers. RTCN

stated that multi-year projects would add an unnecessary layer of complexity to the program. Windstream stated the disadvantages of having multi-year projects outweigh the potential benefits.

Based upon the limited support for this proposal, and the administrative complexity associated with its adoption, the Commission declines to adopt this proposal at this time. The Commission may find it appropriate to revisit this issue again in a later funding round.

Project Caps

Additionally, the Commission sought to refresh the record on the idea of instituting a per project cap. Such a cap 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 noted, 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."² The Commission solicited comments on whether a \$450,000³ per project cap would be reasonable.

RIC supported a per project cap and believed the suggested \$450,000 per project cap was reasonable. RIC stated a per project cap would encourage a larger number of individual project applications for diverse areas of Nebraska. Pinpoint and Windstream also supported a per project cap. Windstream suggested that a \$500,000 per project cap would be reasonable. RTCN stated it did not oppose the \$450,000 per project cap.

CenturyLink and Viaero on the other hand, did not support a per project cap. CenturyLink stated it would exclude larger

²See Public Notice, *Connect America Fund et al.*, WC Docket Nos. 10-90 et al. (July 11, 2014).

³The proposed project cap would be a cap on the amount of support per project and would not include the provider match.

projects. Viaero preferred a change in the methodology used last round and suggested specific changes for the Commission's consideration in this next round. In the event that Viaero's suggested changes were not adopted, Viaero stated, the Commission should adopt a per project cap.

After consideration of the comments and testimony provided at the hearing, we find the per project cap proposal should be adopted. A per project cap would encourage a larger number of discrete and targeted broadband projects throughout the state. The per project cap will be set at \$450,000 (excluding the 25 percent recipient match) for the 2015 NEBP capital improvement project applications. The Commission declines to make other adjustments to the methodology at this time as suggested by Viaero. However, the Commission may revisit the need for a cap, the amount of the cap, or consider any other desirable modifications in a later funding round.

Broadband Adoption

Finally, the Commission solicited comment on whether to entertain proposals to increase broadband adoption through explicit NEBP grant support.⁴ The Commission stated its preliminary belief that broadband availability may not be relevant in many cases if there are other barriers preventing its adoption. The Commission sought 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."⁵ Further, the Commission asked whether it should be concerned about take rates in low-income areas or certain communities with lower broadband adoption.

A number of commenters supported a broadband adoption program. CenturyLink was supportive of the concept but recommended the Commission consider a smaller amount for the

⁴ 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.

⁵ Neb. Rev. Stat. § 86-323(2)(2008).

first year. Cox was very supportive of a broadband adoption program. Cox believed it reasonable to cap support at a certain level to allow numerous carriers to receive funding. Cox also supported a ten percent match. The City of Lincoln also strongly supported broadband adoption program. However the City of Lincoln commented the Commission should not limit eligibility of applicants. Windstream supported a modest set-aside for broadband adoption. Windstream believed a \$500,000 allocation for this purpose was reasonable. Windstream suggested that support be distributed on an ad hoc basis and recommended the Commission look at factors such as discount amount, duration of discount, speeds, usage limits, digital training and equipment.

Viaero stated it did not believe this docket was the appropriate vehicle for broadband adoption projects. Viaero suggested a broadband adoption program may be a useful program but recommended the creation of a separately defined program using an alternative funding mechanism.

RTCN did not oppose a broadband adoption program but recommended the Commission wait on the State Broadband Initiative (SBI) planning team's assessment of broadband adoption. RTCN suggested the Commission should hold off until 2015 when the FCC's Low Income Pilot Program results are available.

RIC stated it did not believe the Commission had authority in the NUSF Act to fund broadband adoption projects. In addition, RIC referenced the broadband planning team's study which found there were factors other than the cost of the broadband service which prevented broadband adoption. However, RIC stated, in the event the Commission does start a broadband adoption program, it should limit support to the \$500,000 and that it be a one-time pilot project.

After consideration of all comments and testimony submitted in this proceeding, the Commission finds it appropriate to designate \$500,000 from the NEBP in 2015 to initiate a pilot broadband adoption program. This program will be limited initially to projects submitted in the 2015 application window and will sunset after a twelve (12) month implementation period absent affirmative action by the Commission to extend the program.

We acknowledge, as discussed by RIC in its comments, the Commission staff previously concluded the Commission did not have the statutory authority to implement a broadband adoption program. Upon further review, we believe the Commission does possess the requisite statutory authority to provide targeted support to make advanced services more affordable to consumers. We believe utilizing support to advance the affordability of information service is consistent with the goals of the NUSF Act. We further find this docket is the appropriate vehicle to determine whether a broadband adoption program is an effective way to promote access to advanced telecommunications and information services to low-income consumers.

The Commission will consider broadband adoption proposals aimed at making broadband available through provider/community-based partnerships. Consistent with the NUSF Act's requirement to provide support to eligible carriers, applicants must partner with a broadband provider in order to be eligible for support in this program. Procedurally, the applications will be processed in the same manner as other applications filed with the Commission and in conformance with the Commission's Rules of Procedure.

The Commission will not utilize the same methodology used to distribute support for the capital improvement projects. The Commission agrees with Windstream that certain factors such as the discount offered, duration of the discount, broadband speeds, usage limits, and digital training are all relevant factors to be considered. The Commission will consider the filed projects on an ad hoc basis taking into account the specific attributes of each project including, but not limited to, the recommendations made by Windstream.

To encourage participation in the adoption program, the Commission declines to incorporate a matching requirement at this time. In addition, the Commission does not believe that a set project cap is necessary; however, it may limit the funding made available for each particular project at its discretion.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the findings and conclusions set forth herein shall be and they are hereby adopted.

MADE AND ENTERED at Lincoln, Nebraska this 3rd day of
September, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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September, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Dane Boyle
Tim Schram
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Gerald L. Vos

Frank E. Landis
Chairman

ATTEST:

Stacy Meredith
Executive Director

//s//Frank E. Landis