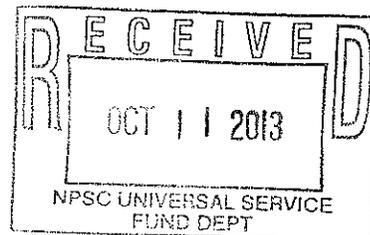


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NEBRASKA**

In the Matter of the Petition of Nebraska	)	Application No. NUSF-77.15
Telecommunications Association for	)	Progression Order No. 7
Investigation of Processes and Pending	)	
Procedures regarding the Nebraska	)	
Universal Service Fund: Application to	)	
the Nebraska Broadband Pilot Program	)	
(NEBP) received from Pierce Telephone	)	
Company	)	

**PRE-FILED REBUTTAL TESTIMONY OF [REPRESENTATIVE FOR WIRELESS  
PROVIDER]**

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME.**

3 A. My name is Daniel A Spray. My business address is 123 N. 4<sup>th</sup> Norfolk, NE.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

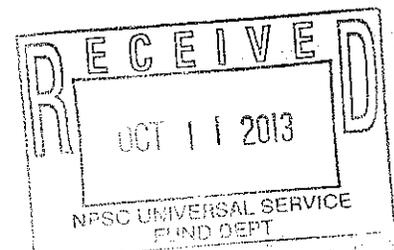
5 A. I am employed by Precision Technology, Inc. (“Connecting Point”). I am the President of  
6 Connecting Point.

7 **Q. FOR WHOM ARE YOU SUBMITTING THIS REBUTTAL TESTIMONY IN THIS**  
8 **PROCEEDING?**

9 A. I am providing rebuttal testimony on behalf of Connecting Point.

10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**  
11 **PROCEEDING?**

12 A. The purpose of my rebuttal testimony is to support Connecting Point’s Petition for Formal  
13 Protest and Cable One, Inc.’s (“Cable One”) protest of Pierce Telephone Company, Inc.’s  
14 (“Pierce”) NUSF-77 Broadband Application (“Application”), which seeks funding under  
15 the Nebraska Broadband Pilot Program (NEBP) to provide wireless broadband services to  
16 the rural areas surrounding the City of Norfolk, Nebraska, which by sheer proximity,  
17 obviously include surrounding areas within Madison County, Pierce County, Stanton  
18 County, and Wayne County. Furthermore, my rebuttal testimony will also confirm that—  
19 despite Pierce’s assertions stating otherwise—these areas are neither “unserved” nor  
20 “underserved” and multiple other fixed broadband providers, including Connecting Point  
21 and Telebeep Wireless, already provide internet access service exceeding the NEBP’s 4  
22 Mbps downstream and 1 Mbps upstream minimum standard.



1 **Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY IN THIS**  
2 **PROCEEDING.**

3 A. My pre-filed rebuttal testimony addresses several aspects of the NEBP and Pierce's  
4 Application seeking funding to provide wireless broadband services in the rural areas  
5 surrounding the City of Norfolk, Nebraska.

6 **Q. WILL YOU BE PRESENTING ANY EXHIBITS IN CONNECTION WITH YOUR**  
7 **REBUTTAL TESTIMONY?**

8 A. Yes. I will explain and present the following exhibit(s):

9 **Exhibit A** Box Diagram showing the technical layout of Connecting Point's system.

10 **Exhibit B** Propagation map showing the extent of Connecting Point's service in the  
11 four counties impacted by Pierce's application, including Madison County,  
12 Pierce County, Stanton County, and Wayne County.

13 **Exhibit C** Nebraska State Broadband Map.

14 I respectfully request that the Commission admit the aforementioned as exhibits in the  
15 record of this proceeding.

16 **Q. WERE THESE EXHIBITS PREPARED BY YOU OR UNDER YOUR**  
17 **SUPERVISION AND DIRECTION?**

18 A. Yes.

19 **II. NEBRASKA BROADBAND PILOT PROGRAM (NEBP)**

20 **Q. ARE YOU FAMILIAR WITH THE NEBRASKA BROADBAND PILOT**  
21 **PROGRAM (NEBP)?**

22 A. Yes.

1 **Q. COULD YOU PLEASE DESCRIBE THE NEBP, GENERALLY, INCLUDING ITS**  
2 **PURPOSE?**

3 A. The NEBP is a program that was created to provide specific and targeted broadband  
4 support to unserved and underserved areas in Nebraska to close the broadband availability  
5 gap. The Commission determined that support should be made available for broadband  
6 capital improvement projects and such support should be focused on providing quality  
7 high-speed services to consumers in all regions of Nebraska.

8 **Q. ARE YOU FAMILIAR WITH THE REQUIREMENTS SET FORTH UNDER THE**  
9 **NEBP FOR PROVIDERS SEEKING FUNDING FOR BROADBAND SERVICES?**

10 A. Yes.

11 **Q. COULD YOU PLEASE DESCRIBE THOSE REQUIREMENTS?**

12 A. Yes. As I stated above, the purpose of the NEBP is to “target support to areas of the state  
13 not served by broadband or areas which are underserved by speeds lower than 4/1 Mbps.”  
14 Ne. Pub. Serv. Comm’n (NPSC), *Order*, Application No. NUSF-77, Progression Order No.  
15 7, Application No. NUSF-69, Application No. NUSF-26 (Jan. 15, 2013) [hereinafter  
16 “*NPSC Order*, Jan. 15, 2013”]. Under the NEBP, the Commission is only permitted to  
17 provide funding—for “building infrastructure to provide adequate broadband service”—to  
18 one broadband network in a given service area, with first priority given to areas considered  
19 to be “unserved,” followed by “underserved” areas. *NPSC Order*, Jan. 15, 2013 (agreeing  
20 with Cox’s argument in which Cox raised concerns about the Commission providing  
21 funding under the NEBP “to a carrier that seeks to upgrade equipment and/or facilities  
22 located within, adjacent to, or nearby an area already served by an un-subsidized provider”  
23 and finding that funding under the NEBP should be limited to subsidizing transport to

1 unserved and underserved areas and “in no way be used to fund the enhancement of speeds  
2 or deployment of broadband within an already served area”); NPSC, *Order Issuing*  
3 *Findings, Seeking Further Comments and Setting Hearing*, Application No. NUSF-77,  
4 Progression Order No. 4 (Sept. 27, 2011) [hereinafter “*NPSC Order*, Sept. 27, 2011”]. By  
5 focusing on providing support to *unserved* areas, the Commission ensures that it does not  
6 “support[] more than one broadcast provider in a given support area.” *NPSC Order*, Sept.  
7 27, 2011; *see also* NPSC, *Order Seeking Comments*, Application No. NUSF-77,  
8 Progression Order No. 8 (Apr. 23, 2013) (“[T]he Commission has made it clear that its  
9 priority is to promote broadband availability in areas that are currently unserved or  
10 underserved.”). According to the NEBP, an “unserved” area is defined as any area where  
11 no facilities-based provider offers access at speeds greater than 56K whereas an  
12 “underserved” area is defined as any area where a facilities-based provider offers access at  
13 speeds greater than 56K down but less than broadband.

14 **III. PIERCE TELEPHONE COMPANY, INC.’S NUSF-77 BROADBAND**  
15 **APPLICATION SEEKING FUNDING FROM THE NEBP TO PROVIDE**  
16 **BROADBAND WIRELESS SERVICE IN THE RURAL AREAS**  
17 **SURROUNDING NORFOLK, NEBRASKA**

18 **Q. HAVE YOU REVIEWED PIERCE’S APPLICATION?**

19 A. Yes.

20 **Q. WHY IS CONNECTING POINT PROTESTING PIERCE’S APPLICATION?**

21 A. Pierce’s Application seeks funding under the NEBP in order to provide voice and  
22 broadband capability to rural areas surrounding the City of Norfolk, Nebraska, which given  
23 their proximity obviously include surrounding areas within Madison County, Pierce  
24 County, Stanton County, and Wayne County. These are areas that are already being served  
25 by multiple competing broadband providers, all of whom have made such services possible

1 through their own private investment, not government subsidization, and thus, Pierce  
2 should be ineligible for subsidization and the Commission should deny Pierce's  
3 Application. If the Commission grants Pierce's Application, it will not only be supporting  
4 unfair competition, but encouraging it, particularly here, where the proposed service areas  
5 are already being served by existing providers who have invested their own private capital,  
6 and unfair competition is not the purpose of the NEBP.

7 **Q. PLEASE DESCRIBE CONNECTING POINT AND IDENTIFY WHAT KINDS OF**  
8 **SERVICES IT CURRENTLY PROVIDES TO ITS CUSTOMERS.**

9 A. Connecting Point is a fixed wireless broadband provider who serves the City of Norfolk,  
10 Nebraska and surrounding areas and provides fixed wireless internet service to business  
11 and residential customers to many of these areas. More specifically, Connecting Point  
12 provides a WiMax System using a 5 GHz spectrum transmitting from a tower located at  
13 multiple locations which delivers speeds of 7 Mbps downstream and 3 Mbps upstream, and  
14 thereby exceeds the NEBP's 4 Mbps downstream and 1 Mbps upstream minimum standard.  
15 Connecting Point's ability to provide service that exceeds the NEBP's minimum standards  
16 is confirmed by the fact that Connecting Point has active customers in these areas—  
17 Connecting Point has 750 customers in Madison County, 525 customers in Pierce County,  
18 230 customers in Stanton County, and 625 customers in Wayne County. Additional  
19 support for Connecting Point's position may be gleaned from Exhibits C and D. Exhibit  
20 C shows the extent of Connecting Point's service in the four counties impacted by Pierce's  
21 Application and identifies that all portions of all four of these counties which can be served  
22 and which, according to Pierce's Application, are allegedly "unserved" or "underserved,"  
23 are already being served by Connecting Point's fixed wireless service. Furthermore,

1 Exhibit D also shows that, not only is Connecting Point's fixed wireless service available  
2 throughout all of the areas covered by Pierce's Application, there are other providers  
3 offering broadband service exceeding the NEBP's 4 Mbps downstream and 1 Mbps  
4 upstream minimum standard.

5 **Q. WHAT IS CONNECTING POINT'S SERVICE AREA?**

6 A. Connecting Point's service area includes various rural parts of Madison County, Pierce  
7 County, Stanton County, and Wayne County surrounding the City of Norfolk, Nebraska.  
8 Please see Exhibits C and D.

9 **Q. ARE THERE ANY OTHER SERVICE PROVIDERS WHO SERVICE THIS**  
10 **AREA?**

11 A. Yes. Notwithstanding Connecting Point's presence in these areas, there are also two other  
12 broadband providers serving rural areas around Norfolk with broadband wireless internet  
13 access service, including Cable One, Inc. and Telebeep Wireless. Please see Exhibit D.

14 **Q. CAN YOU DESCRIBE THE TYPES OF SERVICES PROVIDED BY CABLE ONE**  
15 **AND TELEBEEP WIRELESS?**

16 A. Cable One provides internet connectivity throughout these areas at 50 Mbps downstream  
17 and 5 Mbps upstream and Telebeep Wireless provides internet connectivity at up to 7 Mps  
18 downstream and 3 Mps upstream speeds.

19 **Q. DO ANY OF PIERCE'S PROPOSED SERVICE AREAS OVERLAP WITH**  
20 **CONNECTING POINT'S SERVICE AREAS?**

21 A. Yes and to the extent that these areas overlap with Pierce's proposed service areas, those  
22 overlapping areas should not be considered "unserved" or "underserved" by existing

1 broadband providers, and not eligible for subsidy to Pierce to build a new broadband  
2 service. Please see Exhibits C and D.

3 **Q. HOW ABOUT THE SERVICE AREAS FOR CABLE ONE AND TELEBEEP**  
4 **WIRELESS? DO THEIR SERVICE AREAS OVERLAP WITH PIERCE'S**  
5 **PROPOSED SERVICE AREAS?**

6 A. Yes and any assertion by Pierce that the rural areas around Norfolk are somehow  
7 "unserved" or "underserved" by existing broadband providers who provide sufficient  
8 download and upload speeds is wholly inaccurate, is unsupported conjecture, and contrary  
9 to the facts. Please see Exhibits C and D.

10 **IV. OVERVIEW AND RECOMMENDATIONS**

11 **Q. DO YOU HAVE A RECOMMENDATION FOR THE COMMISSION?**

12 A. Yes. It is my opinion that the assertion by Pierce that the rural areas around Norfolk are  
13 somehow "unserved" or "underserved" by existing broadband providers is wholly  
14 inaccurate, unsupported conjecture, and contrary to the facts, and that, ultimately,  
15 subsidizing Pierce's proposed operations would be unnecessary, contrary to law and unfair  
16 to existing providers, who already have expended significant private capital to build  
17 facilities and services in the aforementioned service areas. NUSF funds are not intended  
18 to be provided for projects, like the one proposed by Pierce, which seek funding to provide  
19 service in areas that are already served by existing providers at speeds equal to or exceeding  
20 the NEBP's minimum standards. Furthermore, Pierce has not (and cannot) demonstrate  
21 that the service areas proposed in its Application are truly unserved. Therefore, on behalf  
22 of Connecting Point and in support of Connecting Point's Petition for Formal Protest and  
23 Cable One's Protest, I respectfully request that the Nebraska Public Service Commission

1 deny Pierce's NUSF-77 Application seeking funding under the Nebraska Broadband Pilot  
2 Program and for any other relief the Commission deems just and proper.

3 **Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**

4 A. Yes.



**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the above and foregoing "Pre-filed Rebuttal Testimony of Daniel A Spray" and corresponding exhibits has been sent via e-mail on this 11<sup>th</sup> day of October, 2013, to the following:

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