

**BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Investigate Ways to Accelerate the Deployment of Broadband Consistent with Section 706 of the Telecommunications Act of 1996.

Application No. C-4807/PI-202

**COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®
IN RESPONSE TO THE COMMISSION’S DECEMBER 15, 2015 ORDER**

I. INTRODUCTION

On December 15, 2015, the Nebraska Public Service Commission (“Commission”) issued its Order opening this investigation into ways to accelerate deployment of broadband. CTIA¹ appreciates the opportunity to comment in this proceeding.

CTIA is aligned with the Commission’s goal to support broadband deployment for Nebraska’s consumers, and believes that effective, efficient broadband deployment is necessary to bring Nebraska’s communications landscape into the future. In this docket, the specific issue identified by the Commission is whether and how changes in state rights-of-way policy can facilitate more efficient use of federal broadband funding by supported carriers in Nebraska. To that end, CTIA has some concerns about how the scope of the Commission’s jurisdiction may impact its ability to accelerate deployment in a manner that is competitively-neutral.

¹ CTIA-The Wireless Association® (“CTIA”) is an international nonprofit membership organization that has represented the wireless communications industry since 1984. Membership in the association includes wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products. More information about CTIA is available on the Association’s website at <http://www.ctia.org/about-us>.

With regard to jurisdiction in particular, the Commission has referenced Section 706 of the Telecommunications Act of 1996 in both the title of the proceeding and in the first paragraph of its Order. As the Commission is likely aware, the extent to which Section 706 provides independent authority to support regulatory action regarding broadband services is a matter of substantial dispute and is currently under review at the United States Court of Appeal for the District of Columbia Circuit.² Similarly, both CTIA's members and other carriers in Nebraska have previously expressed concerns about the authority of the Commission under state law to address broadband issues.³

While broadband deployment is beneficial and states should ensure they do not have policies that stand in the way of deployment, affirmatively encouraging deployment requires additional care and well-reasoned judgment. Deployment is influenced by demand and adoption patterns as market forces guide investment. Should the Commission take affirmative steps to encourage broadband deployment, the Commission must be careful not to create an unlevel playing field when considering all technologies in the market. Since the extent of the Commission's jurisdiction is not the same across different broadband technologies, the Commission must craft its approach with care to avoid disparate impacts. Finally, in taking action, the Commission should remain vigilant not to add new charges to customer bills, as Nebraska wireless customers already pay amongst the highest taxes, fees and surcharges in the nation on their wireless bills.

² See *United States Tel. Ass'n, et al. v. FCC*, Docket No. 15-1063 (and consolidated cases), Joint Brief for Petitioners USTelecom, NCTA, CTIA, ACA, WISPA, AT&T and CenturyLink, Doc. # 1565510 (D.C. Cir., filed July 30, 2015).

³ See, e.g., *In the Matter of the Commission, on its Own Motion, to Increase Broadband Adoption Among Low-Income Consumers Through the Adoption of a Nebraska Broadband Telephone Assistance Program*, Application No. NUSF-91, Verizon's Reply Comments (Cot. 25, 2013) at 3 n.6 (listing other comments that also argued that the Commission lacked jurisdiction to create the Broadband Telephone Assistance Program).

II. THE COMMISSION SHOULD APPROACH BROADBAND DEPLOYMENT IN A HOLISTIC AND TECHNOLOGY-NEUTRAL MANNER

While CTIA above noted the general jurisdictional concerns that this case raises, there are also technical, regulatory and marketplace differences among different types of carriers – ILEC, CLEC, rural, VoIP, and wireless. The Commission appears to have acknowledged those differences by limiting the scope of this proceeding narrowly (at least at this stage) to policies that impact those three wireline carriers who will be receiving funds under the Connect America Fund (“CAF”) program. Although this proceeding is focused on CAF recipients, the Commission should consider the *entire* broadband ecosystem when considering the important goal of broadband deployment, as CTIA has emphasized in previous filings on this subject.

In particular, the Commission should ensure that, by making use of what jurisdiction *is* available to it, the Commission does not inadvertently favor those entities within its jurisdiction at the expense of carriers – and customers – using other modalities that are not subject to the Commission’s jurisdiction. It is critical that the Commission should be technology-neutral when addressing broadband deployment, and take into account evolving consumer preferences for broadband, including mobile broadband. The Commission must be careful to not create programs that favor CAF-recipients over non-recipients, or that favor other sectors over wireless broadband providers.

Finally, should the Commission develop potential programs that would incur state costs, the Commission should take care to encourage broadband deployment in a way that limits any additional costs on customer bills, and as noted in the Commission’s Progression Order in NUSF-99, there should be a very high bar set to avoid duplication of state and federal funding.

III. SPECIFIC QUESTIONS

In its Order, the Commission posed five specific questions. Questions 1-4 all pertain to the need for an effective, efficient process for locating physical facilities. For wireless carriers, this has traditionally involved local zoning and other land-use permitting, although new challenges are arising with the growing use of small cell solutions. The Commission does not have direct authority over these issues. However, to address directly the Commission's request for information on what might facilitate broadband deployment, uniform siting rules and streamlining of land-use permitting for facilities would both be beneficial to faster, more cost-effective deployment of mobile broadband.

Question 5 raises directly CTIA's fundamental point as to the importance of looking beyond just CAF recipients to others who may be deploying or potentially deploying broadband in Nebraska. The question asks how the Commission or public stakeholders can encourage rapid deployment of broadband "where federal CAF support is being provided." The better question for public stakeholders is, within the scope of their jurisdiction, what role can they play in facilitating rapid deployment of broadband to *all* Nebraskans – not just those in areas receiving CAF funds. While maximizing the efficiency and effectiveness of CAF funds is an important goal that CTIA has advocated for in this and other Nebraska proceedings, the Commission should approach this challenge in a technology-neutral and competitively-neutral manner that takes into account the wider broadband ecosystem and the many carriers and their customers who are not in CAF-receiving parts of the state.

IV. CONCLUSION

The Commission's goal of rapid broadband deployment to serve Nebraska citizens is unquestionably a good goal and one shared by CTIA. CTIA also shares the Commission's

interest in eliminating barriers to efficient and effective use of CAF funds. Those goals, however, can only be pursued within the scope of the Commission's jurisdiction, which is limited in this case. Limitations on the Commission's jurisdiction make it all the more important that the Commission consider the impacts of any decisions it makes in this docket on carriers beyond the three listed at page 2 of the Order. Efforts to facilitate rapid deployment of broadband should be technology-neutral and consider the entire broadband ecosystem of the entire state of Nebraska – including mobile broadband solutions.

Respectfully submitted this 20th day of January, 2016.

/s/ Bret A. Dublinske

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