

Nebraska Public Service Commission **Performance Report**

Capital Projects Fund 2023 Report

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Executive Summary

The State of Nebraska was awarded \$128,740,178 for the fulfillment of the goals established by the U.S Department of the Treasury (“Treasury”) Coronavirus Capital Projects Fund (“CPF”). Pursuant to Neb. Rev. Stat. § 81-12,245, CPF funds provided to Nebraska were designated as follows:

1. Congressional District 1: No less than \$40,000,000 for eligible broadband infrastructure projects.
2. Congressional District 2: No more than \$35,000,000 for the rehabilitation or expansion of existing multipurpose community facilities.
3. Congressional District 3: No less than \$40,000,000 for eligible broadband infrastructure projects within cities of the second class and villages.

The Nebraska Public Service Commission (“Commission”) is administering the Capital Projects Fund, Broadband Infrastructure Projects portion utilizing the framework of the Nebraska Broadband Bridge Program which was established by the Nebraska Legislature in 2021 to award broadband grants to eligible entities to build out broadband infrastructure to provide service of at least 100 Mbps download and 100 Mbps upload to areas lacking service of 100 Mbps download and 20 Mbps upload or greater.

On January 31, 2023, the Commission entered into a Memorandum of Understanding with the Nebraska Department of Economic Development (“DED”) to administer the broadband infrastructure project portion of CPF funding as related to Nebraska Congressional Districts 1 and 3 in accordance with the Nebraska Broadband Bridge Act, Neb. Rev. Stat. §§ 86-1301 – 1312. On August 30, 2022, Nebraska received approval from Treasury for the broadband portion of the Nebraska CPF awarding \$87,740,178.00 for the Nebraska Broadband Bridge Program. (See Plan ID: CPF_GP-000126)

The Department of Economic Development is responsible for funding that is earmarked for enhanced multi-purpose community facilities for Congressional District 2, which will be performed through a separate process. (See Plan ID: CPF_GP-000177)

A map showing Nebraska’s Congressional Districts is included as Attachment A. The program objective stated in the Program Plan as related to the Broadband Infrastructure Projects portion administered by the Commission is “to provide broadband service of at least 100 Mbps download and 100 Mbps upload to Nebraska residences and businesses in Congressional District 1 and 3 which currently lack reliable broadband service of 100 Mbps download and 20 Mbps upload between 2023 and 2026 through a competitive grant program.”

The Commission has made significant progress towards the objective stated in the Program Plan. The following is a highlight of the important events that have taken place to achieve the goal of broadband deployment to unserved and underserved areas.

- January 10, 2023 in docket CPF-1 setting out the application process and requirements and disclosing the scoring criteria that will be used to determine eligible projects.
- February 9th to February 24th was the application window
- March 1, 2023 all applications received were posted to the Commission [website](#).
- March 8, 2023 notices of intent to challenge due to the Commission and Applicant
- April 7, 2023 all Challenges must be submitted to the Commission

- April 12, 2023 Commission notified applicants of 1) defects that must be cured and areas of overlap with other applications; and, 2) challenges received; and, 3) Notices of Intent to Reclassify priority tier sent to the Applicants
- April 24, 2023 – deadline for applicants to 1) supplement challenged applications and/or submit response to challenges and; 2) supplement or modify application defects and/or revise areas of overlap with other applications.
- May 16, 2023 – Commission released determinations as to the credibility of partial challenges and as to the reclassification of applications.
- June 27, 2023 – Commission issued an Order granting funding for certain applications and releasing the results of remaining challenges.

The Commission has received all required forms/documentation from the applicants that were awarded funds, which includes the Grantee Acknowledgement and Attestation Form and the Subaward Attestation an Agreement. All approved subrecipients have submitted the required paperwork necessary to receive the first grant award payment of twenty-five (25) percent of the total award. We anticipate that first payment will be released at the beginning of August 2023.

Uses of Funds

The Commission made funding available in Congressional Districts 1 and 3 for Broadband Infrastructure projects that facilitate the deployment of broadband networks in unserved and underserved areas of Nebraska. Nebraska will prioritize those investments in fiber-optic infrastructure where feasible and prioritize projects that address affordability as a barrier. The State of Nebraska allocated approximately \$40,000,000 for broadband infrastructure in Congressional District 1 which includes Lincoln, Norfolk, Columbus and Fremont. The 12 counties of Congressional District 1 differ in their demographics and needs. County populations range from nearly 325,000 in Lancaster County to just over 5,000 in Polk County. The percent of rural population without wired broadband of at least 100 Mbps down and 20 Mbps up ranges from 10.3% in Cuming County to 85% in Madison County.

The State of Nebraska allocated approximately \$40,000,000 for broadband infrastructure in Congressional District 3. In 39 of those counties, less than half of the county’s rural population has wired broadband of at least 100 Mbps down and 20 Mbps up available, making it difficult or impossible for rural resident to work, participate in online education, or utilize health monitoring remotely. Compounding the challenges in District 3, 67 of the 80 counties in the district have population densities below 20 persons per square mile which increases the cost to build out broadband in the district. Treasury approved the Commission’s Plan on February 4, 2022.¹

The Commission opened a proceeding in docket CPF-1, [Order Opening Docket and Releasing Procedural Schedule](#) on December 13, 2022.² The Commission issued an [Order Issuing 2023 Grant Applicant Schedule and Application Materials](#) on January 10, 2023. To assist potential applicants and inform the

¹ Assistance Listing Number 21.029 and Federal Award Notification Number (FAIN) CPFFN0183.

² The Commission initiated the proceeding on its own motion to administer federal Coronavirus Capital Projects Fund funding for broadband development in Nebraska pursuant to Neb. Rev. Stats. 81-12,245 and in accordance with the Nebraska Broadband Bridge Act, Neb. Rev. Stat. 86-1301 – 1312.

public, the Commission issued an [Order Scheduling Workshop](#) on January 18, 2023. The Commission held the workshop on January 24, 2023 in its hearing room and via videoconference. Four industry representatives participated in the workshop in person, representing Windstream Nebraska Inc., Great Plains Communications, the Nebraska Rural Broadband Alliance, and Hamilton Telecommunications. Participating virtually were representatives from industry and community members.

Based on feedback received during the workshop, the Commission issued an [Order Modifying Guidance on Eligible Area](#) on January 24, 2023. The Commission recognized that some of the material that the applicants were required to provide during the application process is confidential information. As a result, the Commission issued a [Protective Order](#) on February 3, 2023.

The window to submit applications opened on February 9th and closed on February 24th. The Commission received 130 applications from 20 Internet Service Providers.³ On March 1, 2023, the Commission [posted all applications](#) received on its public facing website. The Commission also updated the [Nebraska Broadband Bridge Map](#) to show the project area and locations included in the applications. Any ISP could file a Challenge to an application either in whole or in part.

The Commission designed a [Challenge](#) process that allowed submission of a partial challenge or a challenge to the entire project area. A Type 1 challenge can be submitted when the challenger can certify that it “Currently provides service at the minimum 100/20 Mbps speeds threshold to all serviceable locations within the challenged portion of the project area.” A Type 2 challenge can be filed when an ISP is “currently constructing broadband infrastructure in the project area or is proximate to the project area and anticipates completion of the broadband infrastructure providing a minimum 100/20 Mbps speed threshold to all serviceable locations within the challenged portion of the project area no later than 18 months after the date grants are awarded.” The Commission evaluates the information submitted in a challenge and makes a determination as to whether the challenge is credible.⁴

ISPs could review the original application submitted and the Nebraska Broadband Bridge Map to determine if it would be appropriate to file a Type 1 or 2 challenge in whole or in part. ISPs were required to notify the applicant of a potential challenge by filing a [Notice of Intent to Challenge](#) no later than March 8, 2023. The Challenger was required to provide notice both to the applicant and the Commission of the Notice of Intent to Challenge. Applicants and the Challenger were encouraged to work together to resolve any overlap in service area. Applicants could voluntarily decide to update the original application and submit the same to the Commission. If the applicant submitted a modified application to the Commission, it was posted to the Commission website and the challenger was informed. Applicants could also choose to withdraw the original application.⁵

³ Utilizing the Department of Treasury’s definition of Internet Service Provider. The SLFRF and CPF Supplementary Broadband Guidance, where Treasury states that “for purposes of this guidance, the term “ISP” includes subrecipients and contractors installing broadband infrastructure using SLFRF and CPF funds, and is not limited to entities that provide retail Internet access service.

⁴ Neb. Rev. Stat. § 86-1307.

⁵ A total of eight (8) applications were withdrawn after submission by three ISP’s. This reduced the number of applications to 122.

Formal challenges were due to the Commission by April 7, 2023. Seven (7) ISPs submitted fifty-four (54) formal challenges to the Commission. Of those, thirty-eight (38) were partial challenges and sixteen (16) were full challenges, impacting a total of forty-five (45) projects.

A review of applications and challenges was performed in accordance with the criteria as set forth in the [CPF-1 Order Issuing 2023 Grant Applicant Schedule and Application Materials](#) on January 10, 2023.

On April 12, 2023 the Commission notified applicants, if applicable, of 1) defects that must be cured and areas of overlap with other applications or prior approved grant applications⁶; 2) [challenges received](#); and 3) notice of intent to reclassify prioritization tier.

Applicants were required to supplement applications that were challenged and/or submit a formal response to the challenge and; 2) supplement or modify application defects and/or revise areas of overlap with other applications.

On May 16, 2023 the Commission entered an [Order Issuing Challenge Determinations and Reclassification of Applications](#). This order determined the disposition of challenges filed to portions of applicant project areas but not the entire project area (partial challenges), either Type 1 or Type 2. In the case of a partial challenge upheld by the Commission, applicants would be given until June 2, 2023 to submit a revised application that removed the challenged portion of their project area and locations. Of the thirty-eight (38) partial challenges received, the Commission upheld fourteen (14) and denied twenty-one (21). Three (3) of the challenges were considered moot because the applicant already submitted a revised application addressing the challenged area.

Eleven projects were determined in the initial review to have incorrect tier classification upon submission of the application. Those projects originally submitted applications indicating that all locations in the project area were “unserved”. Upon further review by the Commission, the Commission found that the locations in the project area were a combination of unserved and underserved locations, which would change the classification to a Tier 3 application. For three (3) of the applications, the Commission received revised applications. However, all eleven (11) were reclassified to a Tier 3 in the Commission order.

A review of the remaining applications and challenges was performed in accordance with the criteria as set forth in the [CPF-1 Order Issuing 2023 Grant Applicant Schedule and Application Materials](#) on January 10, 2023. Within each Congressional District, applications were first placed within the respective prioritization tier and then scored for consideration. A detailed explanation of the scoring criteria can be found in the [2023 CPF Scoring Reference Sheet](#).

The Commission issued an [Order Issuing Grant Awards and Results of Challenges](#) on June 27, 2023.⁷ The Commission granted awards in Congressional District One to twenty-seven (27) projects to 10 (ten) ISP’s for a total of \$40,311,361.47. The Commission granted awards in Congressional District Two to thirty-

⁶ Overlap could be the result of prior approved Nebraska Broadband Bridge grants; grants approved under Commission Order NUSF-99 or 108; RDOF and CAF-1 or CAF-2 areas.

⁷ [Congressional District One](#) awards are available in our website. [Congressional District Three](#) awards are available on our website. In addition, we have made available the Scoring Summary for [District One](#) and [District Three](#) on our website.

eight (38) projects to ten (10) ISP's for a total of \$21,033,925.62.⁸ Subrecipients were given until July 6, 2023 to execute the subaward attestation and agreement. That deadline was extended by one week for three Subrecipients requesting additional time.

Sixteen (16) full challenges were filed against fifteen (15) applications. Eight (8) of those challenges were upheld and the original application was denied funding. Seven (7) of those challenges were denied. One (1) challenge was deemed moot as the application was withdrawn. Providers submitting a Type 2 challenge (full or partial) that was upheld by the Commission had to attest that they were either currently constructing broadband infrastructure in the project area, or provide service proximate to the project area and anticipated completion of broadband infrastructure providing a minimum 100/20 Mbps speed threshold to all serviceable locations within the challenged portion of the project area within eighteen (18) months. Type 2 challenges that were upheld were required to submit to the Commission a [Challenger Acknowledgement and Attestation Form](#) no later than July 6, 2023.

Type 2 challengers must submit documentation to the Commission no later than December 27, 2024 demonstrating that the challenger has fulfilled its commitment to deploy broadband Internet service with access to the Internet at the stated speeds in the entire project area. Type 2 challengers are also required to submit to the Commission [quarterly progress reports](#) regarding their construction of service in the project area by the fifteenth day of the first month following each quarter, beginning in the third quarter of 2023.

Subrecipients are held to all of the requirements under the Nebraska Broadband Bridge Program, as listed in the Act and by order of the Commission.⁹ Successful applicants are required to submit a [Grantee Acknowledgment and Attestation Form](#) and an executed [Capital Projects Fund Subrecipient Agreement, and Civil Rights Attestation](#).

As of the date of this report, all required forms for the approved applications for each project has been received. The Commission is currently working on issuing the first payment of 25% of the approved award amount to each subrecipient.

The Commission's payment structure for the Capital Projects Fund mirrors the pre-existing Nebraska Broadband Bridge Program. The Commission will pay 25% of the award amount within sixty (60) days of the issuance of the Order. The next 25% will be paid nine (9) months after the issuance of the award. The final payment will be made once the project is confirmed as substantially complete and will be based on actual eligible costs. Subrecipients will be required to provide invoices and other documentation to substantiate the actual eligible cost for the approved project. The subrecipient will also be required to complete the [CPF Certification of Project Completion](#), [CPF Speed Test Certification](#) and [CPF Reimbursement Request](#).

The Commission anticipates numerous activities over the next year, as follows:

⁸ The Commission will undertake a second round of grant funding for Congressional District Three for the remaining \$18,654,712.91 in funds to be expended for the Capital Projects Fund.

⁹ In particular, the deadline to complete the project is eighteen (18) months after the issuance of the award, in this case December 27, 2024. A subrecipient can request one six month extension if good cause is shown.

- Working with subrecipients to begin collecting the data necessary to complete the required Performance and Expenditures report. The first report for the Commission is due on October 31, 2023. This includes providing subrecipients with additional information on how to provide the required data to the Commission as well as creating standardized forms to collect the data.
- The Commission will issue an Order opening the second round of funding for Congressional District Three. The Commission will update the [CPF Program Guide](#) and other appropriate forms. The Commission anticipates utilizing a comment period to collect comments from ISPs and the public prior to issuing a final order to open the second application window period.
- The Commission will complete processing the first and second payment to applicants for the work performed in accordance with the awards issued in the first round.

Promoting Equitable Outcomes

Equity is at the heart of the Nebraska Broadband Bridge Program, including grants funded through Capital Projects Fund. The program has a goal of bringing broadband service to areas lacking 100/20 Mbps service. Additionally, the program recognizes that areas without 25/3 service have the greatest need and prioritizes applications for areas lacking 25/3 Mbps service.

All applications received were required to include a Digital Inclusion Plan. The plan must describe the applicant's process to consult with the community and consider affordability. It must describe how the project will meet the objective of providing broadband infrastructure deployment within the project area to directly enable work, education, and healthcare monitoring. It must describe how it will address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency. It must identify any critical needs of the community to be served and how the project will be tailored to meet those needs. It must specify how the project will impact access to and use of information and communication technologies by all individuals and communities in the project area, including the most disadvantaged individuals and communities. The plan must describe the pricing structure of the 100/100 Mbps plan being offered to low income subscribers. Digital Inclusion Plans that include a discounted service plan for low-income subscribers that is less than \$50.00 per month prior to Lifeline or Affordable Connectivity Program discounts or cost less than 25% less on a monthly basis than the carrier's next lowest price plan offering, whichever is lower, were given an additional five (5) points in scoring.

The Nebraska Legislature and the Nebraska Public Service Commission have also taken steps to make more projects in very rural areas financially feasible. There is no match requirement for the Capital Projects Fund, though carriers that provide a match will receive additional points. The Commission also added location density to the scoring criteria, awarding up to 20 points to projects which serve rural areas. Points for location density were allocated as follows:

- Less than or equal to 10 locations per square mile – 20 points
- More than 10 locations per square mile, but less than or equal to 20 locations per square mile – 12 points
- More than 20 locations per square mile, but less than or equal to 42 locations per square mile – 5 points.

Projects approved range in density from 3.184716 locations to 1,055.5762 per square mile.

Labor

The Commission's Order granting funding for certain projects was approved on June 27, 2023. The subrecipients had not initiated work related to the grants prior to the end of the reporting period. The Commission anticipates being able to provide more information in the next annual report when most of the projects should have undertaken a significant percentage of the work required under the grants.

Community Engagement

Community participation will be built into the program in several ways. Prior to passage of LB1024 the State was able to weigh in on the usage of these funds through the legislative hearing process. In addition to participating in the legislative process, the community is also able to engage their local leaders. For Congressional District 3, applications must be initiated at the local level. The state has also conducted multiple studies throughout the state to determine those areas that are underserved and unserved when it comes to broadband. By prioritizing communities in this program the state is responding to their needs.

The Commission uses an open rule-making process in implementing its programs, including requesting written comments and holding hearings. The Commission opened a docket on proposed amendments to the Nebraska Broadband Bridge Program on February 1 2022. Communities with critical needs were invited to submit comments by March 1, 2022, and participate in the hearing on March 22, 2022. The Capital Projects Fund is designed similarly to the Nebraska Broadband Bridge Program. The Commission incorporated the proposed modifications when opening the [docket for the Capital Projects Fund](#) on December 13, 2022.

The Commission also participates in advisory groups such as the Nebraska Rural Broadband Task Force and the Nebraska Information Technology Commission Community Council. Meetings of these advisory groups provide opportunities for the Commissioners to engage with stakeholders.

The Commission and partner organizations such as the Nebraska Information Technology Commission and Nebraska Department of Economic Development also engage in outreach efforts such as speaking at conferences and meetings, developing resource materials, hosting webinars.

The Commission participated in monthly stakeholder meetings held by the Nebraska Broadband Coordinator which allowed interested parties to discuss overarching broadband topics of interest. These meetings were also used as an opportunity to develop a comprehensive broadband strategic plan. Updates on all broadband related activities were shared at these meetings, including the Capital Projects Fund.

The Commission conducted statewide community outreach related to broadband availability and affordability. While the primary focus of these sessions was focused on Broadband Equity Access and Deployment (BEAD) and Digital Equity planning, information related to the Capital Projects Fund was shared during these sessions. There were nearly 30 Listening Sessions during the months of April, May, and June, which were intentionally planned to be geographically diverse, and to reach out to a diverse audience. They were held in conjunction with the Office of the CIO, the entity responsible for generating the state Digital Equity Plan. Each session provided opportunities to educate attendees about various broadband and digital equity programs and share information about current broadband projects or

applications within each respective community which included CPF application areas. There was also an opportunity for attendees to share what they perceive the broadband related priorities of the community to be.

Within these outreach efforts, the Commission identified a diverse group of stakeholders. Recognizing the power of local knowledge and resources, we will continue to leverage local partnerships including but not limited to the State’s Economic Development Districts, Chambers of Commerce, municipal governments, and existing nonprofit coalitions and collaboratives to reach all of these different stakeholder categories. Targeted engagement groups will explicitly include unserved and underserved communities, as determined by the PSC’s ongoing mapping project. Additionally, members of historically underrepresented and marginalized groups have been prioritized in community outreach.

Stakeholder Category	Groups to Engage¹⁰
Local government entities	Nebraska League of Municipalities Nebraska Association of County Officials
Labor organizations/unions	NE Dept. of Labor Nebraska Farmers Union Communications Workers of America
Non-profit and Community-based organizations	Low-Income Serving Groups (connect through United Way and Give Nebraska) Community Action Agencies (connect through CAAN) Bring Up Nebraska Collaboratives NE Department of Health and Human Services
Workforce development organizations	Connect through local WIOA offices
Economic Development	Department of Agriculture Regional Development Districts Chambers of Commerce Nebraska Pork Producers Association Nebraska Corn Growers Nebraska Wheat Growers Rural Prosperity Nebraska Department of Agricultural Economics Nebraska Farm Bureau Foundation Nebraska Cattlemen Nebraska Soybean Association
Minority- and Women-Owned Businesses (MB/WBE)	Small Business Association Department of Economic Development Local Governments
Schools (Community Anchor Institution)	Public Schools Educational Service Units Nebraska Department of Education
Libraries (Community Anchor Institution)	Nebraska Library Commission

¹⁰ This list is not comprehensive and will be updated as groups are engaged throughout the process.

Healthcare Providers (Community Anchor Institution)	Hospitals and medical centers Low-income health clinics Behavioral health providers
Public Safety Entities (Community Anchor Institution)	Local law enforcement
Higher Education (Community Anchor Institution)	Chadron State Peru State Wayne State University of Nebraska Central Community College Mid-Plain Community College Northeast Community College Western Nebraska Community College Southeast Community College
Community Centers (Community Anchor Institution)	Connect through Development Districts and United Way agencies
Civil Rights Organizations	Nebraska Civic Engagement Table
Local Education Agencies	Department of Education Early Childcare Providers (list available through DHHS) After School Programs
Adult Education/Literacy Programs	Connect through Development Districts
Public Housing Authorities and Owner/Operators of HUD-Assisted Housing	Department of Economic Development Regional Development Districts
Older Adults	AARP, Nebraska Health Care Association
Individuals with Disabilities	Assistive Technology Partnership ARC of Nebraska Nebraska Vocational Rehabilitation
Individuals with Language Barriers	Resettlement agencies: LFS, Catholic Social Services, Refugee Empowerment Center Nebraska Department of Health and Human Services
People of Color	Latino America Commission
LGBTQIA+	OutNebraska
Immigrants	Resettlement agencies: LFS, Catholic Social Services, Refugee Empowerment Center Nebraska Department of Health and Human Services
Veterans	Department of Veterans' Affairs American Legion Veterans of Foreign Wars Paralyzed Veterans of America Disabled American Veterans
Incarcerated Individuals	RISE

Internet Service Providers	Nebraska Telecommunications Associations ISPs LECs
Consumer Advocates/Advocacy Groups	Public Service Commission
Faith Based Organizations	Project Interfaith Trifaitth Initiative Local faith-based institutions

Applicants were also required to show community engagement when submitting their applications. Applicants were required to identify community leaders or individuals with decision-making authority within the community or communities included in the project area. Applicants were required to demonstrate engagement efforts with the proper parties. A template letter for community outreach was made available on the Commission website. Applicants were free to deviate from the template but were required to include at a minimum the following information:

- A description of the project and technology to be used;
- A description of the project area;
- The proposed speed tiers and pricing;
- The Commission’s contact information for providing feedback to the Commission; and
- The deadline by which feedback must be provided.

The applicant was required to either carbon copy the Commission or file copies of their outreach materials with their application materials due by February 24, 2023. Community feedback was considered if received on or before April 24, 2023. Copies of community feedback were made available on our website. In the case of negative feedback, depending on the nature of the issues raised, the Commission could determine what steps were warranted such as investigating any concerns raised and working with the applicant and community leaders to find possible solutions. Depending on the nature of any negative feedback submitted, the Commission has the ability to determine whether such information merits a reduction to an applicant’s overall technical capability score.

