

**Before the  
NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public Service                    )  
Commission, on its Own Motion, to make                            )  
adjustments to its high-cost distribution mechanism        )   Application No. NUSF-108  
and make revisions to its reporting requirements.            )

**COMMENTS OF CTIA IN RESPONSE TO PROGRESSION  
ORDER NO. 6 IN APPLICATION NO. NUSF-108**

CTIA respectfully submits these Comments in response to the Nebraska Public Service Commission’s (“Commission’s”) Order Opening Docket and Seeking Comment in the above-captioned proceeding entered April 21, 2021 (“Progression Order No. 6”).<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

The Commission issued Progression Order No. 6 to consider further changes to the Nebraska Universal Service Fund (“NUSF”), including changes urged by the Rural Independent Companies involving allocation of NUSF broadband deployment support.<sup>2</sup> But consideration of the changes suggested in Progression Order No. 6 is inadvisable at this time due to the impending allocation and distribution of significant subsidy dollars that will change the broadband deployment landscape in Nebraska.

For instance, the upcoming distribution of hundreds of billions of dollars from the American Rescue Plan Act (“ARPA”)<sup>3</sup> to states and localities across the country includes over \$2.3 billion to Nebraska that is available for use to expand broadband deployment.<sup>4</sup> There is also

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<sup>1</sup> *In the Matter of the Nebraska Public Service Commission, on its Own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements*, Order Opening Docket and Seeking Comment, Application No. NUSF-108 (Apr. 21, 2021).

<sup>2</sup> *See generally id.* at 1.

<sup>3</sup> *See* Pub. L. No. 117-2 (signed into law on Mar. 11, 2021).

<sup>4</sup> *See infra* notes 10-13.

the high likelihood of additional disbursements of federal funding for infrastructure in the near term.<sup>5</sup> Unlike NUSF funding, these new funds will come from the Federal Treasury and will not increase Nebraska communications consumers' bills. Additionally, there is legislation currently before Governor Ricketts that would appropriate tens of millions of new dollars for broadband funding annually – and empower the Commission with its distribution.<sup>6</sup>

As a result, the Commission should not consider changes that could expand the NUSF high-cost program until, at a minimum, the scope of the next round of appropriated federal funding coming to the State for broadband deployment is determined. To the extent that the Commission *does* make any changes to the NUSF high-cost program at this time, it should focus on changes that reduce the size of the NUSF by eliminating support for rate of return companies that are overearning, and targeting all high-cost support only to areas where it is clearly needed.

## **II. THE NEED FOR NUSF SUPPORT CANNOT BE DETERMINED ACCURATELY UNTIL IMMINENT INFUSIONS OF FEDERAL SUPPORT ARE DETERMINED**

Recently passed federal legislation appropriates enormous amounts of funding that can be used for broadband, additional federal infrastructure funding for broadband is likely to be forthcoming within the next year, and the Nebraska Legislature is set to provide the Commission with millions of dollars annually to help with broadband deployment. For all these reasons, the Commission should wait for a clearer picture of the broadband deployment funding landscape before moving forward with NUSF reform.

On the federal side, Nebraska has already started directing funding from the U.S. government towards achieving broadband connectivity goals. Under Governor Ricketts, the State “directed nearly \$30 million of federal coronavirus assistance” from the Coronavirus Aid,

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<sup>5</sup> See *infra* notes 14-15.

<sup>6</sup> See *infra* note 16.

Relief, and Economic Security (or “CARES”) Act<sup>7</sup> to “begin connecting 17,600 households with broadband.”<sup>8</sup> Even more recently, a total of \$350 billion was appropriated in the ARPA for states and localities to help fund coronavirus-related recovery activities, including broadband deployment.<sup>9</sup> Nebraska is set to receive over \$2.3 billion of this funding, with over \$1.04 billion going directly to the State itself,<sup>10</sup> over \$175 million going to the cities of Grand Island, Lincoln, Omaha, and Carson City, and over 90 different counties in Nebraska receiving direct funding.<sup>11</sup> These monies are already in the pipeline; the U.S. Department of the Treasury has issued an Interim Rule and is in the process of deploying this funding to states and localities.<sup>12</sup> In addition to the ARPA funding, the federal government is considering adoption of an infrastructure package that would, among other things, allocate \$100 billion for broadband deployment.<sup>13</sup> A

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<sup>7</sup> See Pub L. 116-336 (2020).

<sup>8</sup> Press Release, Office of Gov. Pete Ricketts, Connecting Every Corner of Nebraska (Feb. 16, 2021), available at <https://governor.nebraska.gov/press/connecting-every-corner-nebraska> (last visited May 24, 2021).

<sup>9</sup> See generally U.S. DEP’T OF TREASURY, *Fiscal Recovery Funds: State Funding*, available at <https://home.treasury.gov/system/files/136/fiscalrecoveryfunds-statefunding1-508A.pdf> (last visited May 24, 2021); see also Henry Cordes, *Nebraska Will Reap \$5 Billion – And Probably Much More – From Federal Stimulus Bill*, OMAHA WORLD-HERALD (Mar. 19, 2021), available at [https://omaha.com/news/state-and-regional/nebraska-will-reap-5-billion-and-probably-much-more-from-federal-stimulus-bill/article\\_ae275c60-86a9-11eb-82c8-c7ba3e1d9e2c.html#tracking-source=home-top-story-1](https://omaha.com/news/state-and-regional/nebraska-will-reap-5-billion-and-probably-much-more-from-federal-stimulus-bill/article_ae275c60-86a9-11eb-82c8-c7ba3e1d9e2c.html#tracking-source=home-top-story-1) (last visited May 24, 2021) (also detailing payments to individual Nebraskans).

<sup>10</sup> See generally U.S. DEP’T OF TREASURY, *Fiscal Recovery Funds: City Funding*, available at <https://home.treasury.gov/system/files/136/fiscalrecoveryfunds-metrocitiesfunding1-508A.pdf> (last visited May 24, 2021).

<sup>11</sup> See generally U.S. DEP’T OF TREASURY, *Fiscal Recovery Funds: County Funding*, available at [https://home.treasury.gov/system/files/136/fiscalrecoveryfunds\\_countyfunding\\_2021.05.10-1a-508A.pdf](https://home.treasury.gov/system/files/136/fiscalrecoveryfunds_countyfunding_2021.05.10-1a-508A.pdf) (last visited May 24, 2021).

<sup>12</sup> See Temp. Treas. Reg. § 35.1 *et seq.*, 86 Fed. Reg. 25786-824 (May 17, 2021) (“Subpart A – Coronavirus State and Local Fiscal Recovery Funds”).

<sup>13</sup> Press Release, The White House, FACT SHEET: The American Jobs Plan (Mar. 31, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/> (last visited May 24, 2021).

competing federal funding proposal under consideration agrees with the concept of supporting broadband through an infrastructure package, and proposes to allocate \$65 billion for broadband.<sup>14</sup>

In addition to this federal funding, Nebraska is poised to deploy additional dollars from the state budget for broadband deployment. Just last week on May 20, 2021, the Nebraska Legislature voted unanimously to adopt Legislative Bill 388, the “Nebraska Broadband Bridge Act.”<sup>15</sup> The Legislature has expressed its “intent . . . to appropriate twenty million dollars *annually*” for the Commission to distribute in the form of grants as part of a new “Broadband Bridge Program.”<sup>16</sup> Such a large figure as compared to the size of the NUSF would dramatically alter the state of broadband subsidies within the State, and the bill currently sits on the desk of a Governor who has previously spoken in its favor.<sup>17</sup>

These infusions of funding are likely to provide the State of Nebraska with a much greater opportunity to ensure that all Nebraskans have access to robust broadband service than through the more limited NUSF, and to do so independently of a surcharge on Nebraska’s communications ratepayers. As a result, the Commission should not make any significant

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<sup>14</sup> See, e.g., David Shepardson, *White House Would Back Smaller Broadband Internet Boost*, REUTERS (May 21, 2021, 5:30 PM), available at <https://www.reuters.com/technology/white-house-would-back-smaller-broadband-internet-boost-2021-05-21/> (last visited May 24, 2021) (“The White House said on Friday it was willing to accept a smaller Republican proposal to spend \$65 billion to expand high-speed broadband internet to unserved areas as it seeks to win Republican support for a broader infrastructure plan.”).

<sup>15</sup> See NEB. LEGISLATURE, *LB 388 – Adopt the Nebraska Broadband Bridge Act*, available at [https://nebraskalegislature.gov/bills/view\\_bill.php?DocumentID=43697](https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=43697) (last visited May 24, 2021).

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> See *supra* note 9.

decisions to expand the NUSF high-cost program at this time, but rather should wait to see how these other funding sources are implemented to determine how best to meet the State's needs.

### **III. ANY CHANGES TO THE NUSF AT THIS TIME SHOULD FOCUS ON REDUCING THE BURDEN ON NEBRASKA COMMUNICATIONS CUSTOMERS**

To the extent that the Commission makes any changes to the NUSF at this time, it should focus on reducing the size of the program in order to minimize the burden on Nebraska communications customers. The NUSF should be the minimum size necessary to accomplish the State's goals, and with so much federally appropriated broadband funding headed towards the State, the time is ripe to consider reducing the size of the NUSF high-cost program. For example, among the issues raised in Progression Order No. 6, the Commission should:

*Eliminate support for rate-of-return incumbent local exchange carriers (ILECs) that are overearning.* Progression Order No. 6 seeks comment on various proposals for redistributing funding in cases where ILECs are overearning.<sup>18</sup> Rather than redistributing such support, it should be eliminated, which will reduce the overall size of the NUSF. Any additional broadband deployment goals that could have been pursued with the redistributed NUSF support can better be pursued using the forthcoming streams of federal support.

*Appropriately target ongoing support.*<sup>19</sup> As the Commission rightly notes in Progression Order No. 6, there are significant questions about whether ongoing high-cost support is needed in some areas where it currently is provided.<sup>20</sup> The Commission should focus on identifying those areas for the purpose of shifting high-cost support to areas where it is more needed. The information from the Federal Communications Commission's ongoing Digital Opportunity Data

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<sup>18</sup> Progression Order No. 6 at 2.

<sup>19</sup> *Id.* at 4-5.

<sup>20</sup> *Id.*

Collection will certainly play a role in this.<sup>21</sup> In addition, legislation pending in Nebraska this year will require the Commission to address the extent of deployment in the State, and this information will be crucial to the allocation of both federal funding and NUSF support.<sup>22</sup> Thus, the Commission should await this information before acting on this issue in this proceeding. Appropriately targeting support will not only reduce the size of the NUSF, but also lower the burden on Nebraska consumers.<sup>23</sup>

*Focus affordability considerations on Lifeline.* While Progression Order No. 6 seeks comment on whether to add an affordability component to NUSF support,<sup>24</sup> this issue would be much better addressed in the context of consideration of Nebraska’s *existing* affordability program – Lifeline. If the Commission is concerned about affordability, it should focus first on whether there are ways to improve the Lifeline program, and increase participation in it.

#### IV. CONCLUSION

CTIA appreciates the opportunity to submit these Comments, and looks forward to continuing to work with the Commission and the State of Nebraska to ensure all Nebraskans enjoy robust voice and broadband services.

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<sup>21</sup> See generally FED. COMM’NS COMM’N, *Broadband Data Collection*, available at <https://www.fcc.gov/BroadbandData> (last visited May 25, 2021) (detailing the Federal Communications Commission’s broadband mapping reform efforts and timeline).

<sup>22</sup> [[TBD, may excise depending on passage.]]

<sup>23</sup> See, e.g., Katherine Loughead, *Thirteen Priorities for Pro-Growth Tax Modernization in Nebraska*, TAX FOUNDATION (Feb. 2, 2021), available at <https://taxfoundation.org/comprehensive-state-tax-reform-plan-nebraska/> (last visited May 25, 2021) (“On the Tax Foundation’s *State Business Tax Climate Index*, a measure of tax structure, Nebraska ranks slightly below-average, signifying significant room for structural improvement.”); TAX FOUNDATION, *State Business Tax Climate Index: #28 Nebraska* (Oct. 21, 2020), available at <https://statetaxindex.org/state/nebraska> (last visited May 25, 2021).

<sup>24</sup> Progression Order No. 6 at 6-7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 28<sup>th</sup> day of May, 2021, an original and one copy of the Comments of CTIA in Response to Progression Order No. 6 in Application No. NUSF-108 were filed with the Nebraska Public Service Commission and a copy was served via electronic mail to the following:

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