

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. CPF-1
Public Service Commission, on )
its own motion, to administer ) ORDER ISSUING 2023 GRANT
federal Capital Projects Funds ) APPLICATION SCHEDULE AND
for broadband development in ) APPLICATION MATERIALS
Nebraska. )
) Entered: January 10, 2023

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") initiated this proceeding on December 13, 2022 to administer federal Coronavirus Capital Projects Fund ("CPF")<sup>1</sup> funding for broadband development in Nebraska pursuant to Neb. Rev. Stat. § 81-12,245 and in accordance with the Nebraska Broadband Bridge Act, Neb. Rev. Stat. §§ 86-1301 - 1312.

O P I N I O N A N D F I N D I N G S

The Commission is required by statute to conduct CPF cycles of the Nebraska Broadband Bridge Program ("NBBP") "in a manner consistent with the Nebraska Broadband Bridge Act."<sup>2</sup> The Commission finds that maintaining uniformity to the maximum extent possible between CPF and NBBP cycles will reduce confusion and encourage participation in both programs. The Commission therefore finds that the application materials and program guide previously developed for the NBBP should be utilized to the maximum extent in the CPF grant cycles. However, because the CPF grant program contains additional goals and objectives which must be met in accordance with federal funding guidelines, certain adjustments to the application requirements and program guidance have been made. Further, due to issues that arose during the last NBBP cycle, the Commission has made some additional modifications and clarifications to the Application Template and Program Guide. The adjustments are discussed herein and incorporated into the attachments to this Order.

<sup>1</sup> U.S. Department of Treasury ("Treasury"), Notice of Award, Coronavirus Capital Projects Fund, Federal Award Identification Number (FAIN) CPFFN0183.
<sup>2</sup> See Neb. Rev. Stat. § 81-12,245(2).

**1) Program Overview/Federal Requirements**

*a) Use of Award Funds and Goals of the Program*

The CPF must be designed to meet the following objectives: (1) broadband infrastructure deployment to directly enable work, education, and healthcare monitoring; (2) address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and (3) address a critical need of the community to be served by it. The Commission will be required to monitor and oversee the grant recipients' use of funds and other activities related to the award to ensure that grant recipients comply with the applicable statutory and regulatory requirements, and terms and conditions of the award pursuant to 2 C.F.R. § 200.332. Applicants will be required to provide a short narrative describing how CPF grant funding will meet each of these objectives in the overall project description and/or in their digital inclusion plan.

*b) Minimum Speed Requirements*

The CPF funding may only be awarded for projects where the broadband infrastructure is designed to provide service to households and businesses with an identified need, as determined by the recipient, for such infrastructure. At a minimum, the broadband infrastructure shall be designed upon completion to reliably meet or exceed symmetrical 100 Mbps download and 100 Mbps upload speeds. While the CPF program contains an impracticability exception to the 100/100 Mbps requirement, the Commission finds the minimum 100/100 Mbps speed requirements of Neb. Rev. Stat. § 86-1306, which are required in the NBBP, will continue to apply as further described below.

*c) Affordability*

A grant recipient will be required to participate in the Federal Communications Commission's Affordable Connectivity Program (ACP), or any subsequent subsidy program(s) identified by Treasury for any CPF-funded completed broadband infrastructure investment project that provides service to households for as long as the funded broadband infrastructure is in use. The Application Template and the Program Guide have been modified to incorporate this requirement.

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### *d) Reporting and Record Retention*

As receipt of grant funds under the CPF constitutes a federal subaward, all applicants will need to obtain a Unique Entity Identifier (UEI) in the federal System for Award Management (SAM.gov).<sup>3</sup> As the process may take a few weeks, applicants are encouraged to do so as soon as possible. The Commission will require applicants to include their UEI in their application. This number will be utilized for identifying the grant recipient in reports provided to the Treasury throughout the grant period. The Application Template and the Program Guide have been updated to include these modifications.

Moreover, in order to achieve compliance with federal grant requirements, recipients of CPF funds will be required to execute a subaward attestation and agreement prior to the receipt of any federal funding. Notably, grant recipients will be required to submit progress reports to the Commission on a regular basis. These reports will be designed to include construction progress reporting and reporting on the financial metrics needed for the Commission's quarterly and annual compliance filings to the Treasury. Additionally, the Commission is responsible for ensuring that subrecipients of federal funding comply with federal rules and regulations with respect to federal awards,<sup>4</sup> rules and regulations pertaining to Civil Rights compliance, and drug-free workplace policies. As a result, provisions requiring adherence to such requirements will be included in the subaward attestation and agreement as well as a separate Civil Rights Compliance Attestation and Agreement.<sup>5</sup> The Commission will post these

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<sup>3</sup> See 2 C.F.R. Part 25.

<sup>4</sup> See generally 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.

<sup>5</sup> For example, recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d-1 *et seq.*, and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 *et seq.*, and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, and the

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templates on its website prior to the opening of the grant application period. A grant recipient's failure to agree to conditions of the grant award, and any subsequent failure to timely file compliance reports, may result in cancellation of the award and repayment of any CPF funds provided.

*e) Timing and CPF Completion*

All grant projects must be fully complete and all grant funds must be expended by the Commission prior to December 31, 2026. Any grant funds not used by December 31, 2026 must be returned to Treasury unless an extension is specifically provided.

## **2) Additional State Requirements**

Neb. Rev. Stat. § 81-12,245 governs the disbursement of CPF grants to eligible projects by Congressional District. Section 81-12,245(1)(b) provides in relevant part that, "no less than forty million dollars to eligible projects that are located within a congressional district which contains a city of the primary class." In addition, § 81-12,245(1)(c) provides that,

[n]o less than forty million dollars to eligible projects that are located within a congressional district which does not contain a city of the metropolitan class or a city of the primary class. Grants under this subdivision shall be awarded to eligible projects in cities of the second class and villages.

The Commission therefore will require projects within Congressional District 3 to only serve locations within cities of the second class<sup>6</sup> and villages.<sup>7</sup> Boundaries for these areas are defined by the 2020 US Census.

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Department's implementing regulations at 31 C.F.R. part 23. A certification of compliance will be required to be signed by each grant recipient.

<sup>6</sup> Cities of the second class are defined in Neb. Rev. Stat. § 17-101 as a municipality containing more than eight hundred and not more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census unless it adopts or retains a village form of government.

<sup>7</sup> Villages are defined in Neb. Rev. Stat. § 17-201 as any municipality containing not less than one hundred nor more than eight hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census incorporated as a village. A

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To the extent that all CPF allocations are not awarded in the first grant cycle, the Commission will administer a subsequent grant cycle. The Nebraska Department of Economic Development in conjunction with the Commission will issue a notice announcing any future grant cycle.

A proposed procedural schedule was attached to the Commission's December 13, 2022 Order opening this proceeding. To ensure timely awards can be made, and so that all funds can be expended by the December 31, 2026 deadline, the Commission will adopt the proposed schedule released on December 13, 2022 with one slight modification which includes the date by which the Commission will release determinations on partial challenges. The modified procedural schedule attached hereto and fully incorporated herein as Attachment A to this Order is adopted.

Neb. Rev. Stat. § 81-12,245(2) requires the grant awards to be determined using the NBBP structure to the maximum extent possible except that there will be no match requirement for CPF applications. Consistent with this provision, there will be no match requirement for grant applications. However, as discussed below, applicants that offer a match in their application will receive additional points in the scoring calculation.

### **3) Adjustments to Scoring Criteria**

The Commission will extensively utilize the scoring system adopted in its May 10, 2022 NBBP Order, with additional clarifications or modifications as set forth below.

#### *a. Financial Capability*

The Commission will continue to rely on the audited financial statements required to be filed by applicants as the primary component to be reviewed in this category. A showing of positive cash flow should not be a requirement for a project to be approved. CPF funds will only be awarded to recipients where the applicant has demonstrated that the projects can be maintained long term. Therefore, applicants will continue to be required to submit cash flow projections for a period of five years following completion

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village consists of the people residing within the territorial boundaries of such village and the residents of any territory duly and properly annexed to such village.

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of the project. Applicants whose projects do not reflect a positive cash flow at the end of five years must also submit a written explanation as to how the project will be maintained over the life of the facilities.

Applicants will be required to disclose any prior receipt of federally awarded grant funds for broadband deployment and provide copies of any past audits of federal awards in Attachment G of the Application materials.

In addition, the Commission slightly modifies the financial capability guidelines to require Applicants to describe how their take rate assumptions were calculated.

### *b. Technical Capability*

In its May 10, 2022, NBBP Order, the Commission found it appropriate to require applicants to identify the expected useful life of the facilities to be built. Applicants were required to include a statement as to the technological components used, and, if applicable, which components may require more frequent repair or replacement. Given the nature of the CPF grant reporting requirements, the Commission will again require inclusion of this information. Applicants must include a detailed description of the proposed network architecture including homes passed, fiber miles, and the specific technology to be used to provide service to end users. Further, the Commission modifies its application requirements to require applicants proposing to utilize fixed wireless technology to meet the CPF requirements to file propagation maps, proposed tower locations, and a description of whether applicant proposes to use licensed or unlicensed spectrum. These additional requirements are set forth in more detail in the Program Guide which is Attached to this Order as Attachment A.

Although the CPF guidelines allow the Commission to award grants to projects which are not deployed at speeds of 100/100 Mbps in areas where it may be impracticable, Neb. Rev. Stat. § 86-1308(2)(a)(ii) requires all NBBP grant recipients to commit to providing service at a minimum of 100/100 Mbps in all locations that receive grant funding. Consistent therewith, the Commission will require that all CPF applicants meet the minimum statutory technical and speed requirements for the NBBP. As with the NBBP, CPF grant recipients will need to describe their technical

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capability to meet those statutory requirements throughout the fifteen-year period.

In addition, Treasury's CPF guidelines require the reporting of community engagement efforts and activities that occurred in connection with considering awards for the program, as well as any feedback received during project construction and implementation of the project. As such, the Commission plans to conduct additional outreach in the communities where applications have been filed and will follow up with communities during project construction.

To ensure that applicants have the first opportunity to discuss the details of their proposed projects in the communities impacted, and to provide communities with sufficient time necessary for feedback, the Commission will require applicants to engage in community outreach.<sup>8</sup> A template letter which can be utilized by an applicant for community outreach will be posted on the Commission's website prior to the opening of the application period.<sup>9</sup> Applicants may deviate from the Commission's template but are required to include the following minimum information: 1) description of the project and technology to be used; 2) description of the project area; 3) proposed speed tiers and pricing; 4) the Commission's contact information for feedback to the Commission; and 5) the deadline by which feedback must be provided. The applicant will be required to identify community leaders or individuals with decision-making authority within the community or communities included in their project area. This information must be included in the business plan narrative in the application. The applicant must either carbon copy the Commission or file copies of their outreach materials with the Commission. Community feedback must be directed to the Commission and filed on or before April 24, 2023 in order to be considered with the application. Copies of any community response will be forwarded to the applicant.

In the case of negative feedback, depending on the nature of the issues raised, the Commission may take such steps as further investigating any concerns raised and working with the applicant and the community leaders to find possible solutions. Additionally, depending on the nature of any negative feedback

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<sup>8</sup> The Commission continues to also encourage applicants to file letters of support from communities and consumers impacted.

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submitted and the response from the applicant, the Commission may determine such information merits a reduction to an applicant's overall technical capability score.

### *c. Legal Capability*

In its May 10, 2022 NBBP Order, the Commission required applicants to list an attorney licensed to practice in Nebraska and in good standing, or, in the alternative, an attorney admitted to practice pro hac vice for purposes of this docket. The Commission will maintain this requirement for the purpose of the CPF applications. Deductions will be issued to applicants with a history of late compliance or remittance filings within the five years preceding the filing date of the application. However, the Commission clarifies that the receipt of a one-time waiver for late filings will not be counted against an applicant in the Commission's review and scoring in the legal capability category. Applicants seeking a grant award for projects within tribal lands must demonstrate to the Commission that Tribal Government approval has been obtained. Such demonstration must be filed on or before April 24, 2023. The 2023 CPF-NBBP scoring reference sheet which is attached hereto and fully incorporated herein as Attachment C to this Order.

### *d. Matching Component*

While a match is not a requirement in the CPF program, projects that include a matching component can be used to further leverage the CPF federal grant funds received by Nebraska to extend broadband service to unserved and underserved areas, and to address adoption barriers. Therefore, although not required, the Commission will encourage applicants to offer a match by providing additional points to applicants who offer a match in their application. However, to account for the fact that a match is not required the possible scoring points have been modified in the scoring calculation. The available points for a project match are more fully described in the Program Guide and in the 2023 CPF-NBBP scoring reference sheet.

Applicants should also be aware that additional reporting requirements may be required for any applicant match which must be considered consistent with 2 C.F.R. § 200.306, including additional reporting when other federal funding sources are used.



*e. Public-Private Partnerships*

The use of public-private partnerships continues to be a valuable tool in leveraging grant funds to meet the needs of a community. For the purposes of the CPF, the Commission will retain the NBBP scoring criteria and award points for public-private partnerships. The Commission notes that any cost-sharing agreement should be documented and filed with the Commission. Documentation identifying the amount of the match funding provided by the public partner and assuring the commitment of the public partner should be submitted with the application. The non-public partner must be an ETC in the portions of Nebraska to be served by the project.

**4) Challenge Process**

*a. Geographic Area Identification and Speed Testing Requirements*

The Commission generally retains the requirements in the NBBP 2022 Program Guide as it relates to challenges. Challengers who claim that they are serving locations in the proposed project area (also known as "Type 1" challengers) should be required to submit speed test data supporting the challenge. To the fullest extent possible, speed test data submitted should follow the Performance Measures Testing standards set by the FCC with regard to its High Cost Universal Broadband ("HUBB") portal.<sup>10</sup>

In submitting a Type 1 challenge, challengers should submit at least one week of speed and latency testing data, performed on active subscribers' locations.<sup>11</sup> The active subscribers must be located within the challenged area. Testing should be performed daily on an hourly basis between the hours of 6:00 p.m. - 12:00 a.m., on a number of locations as follows:

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<sup>10</sup> A description of the HUBB Performance Measures Testing can be found at <https://www.usac.org/high-cost/annual-requirements/performance-measures-testing/>.

<sup>11</sup> The Commission clarifies that one week means seven (7) days of speed test data.

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<u>Number of Subscribers in Area</u>	<u>Number of Test Locations</u>
50 or fewer	5
51-500	10% of total subscribers
Over 500	50

The testing must have been completed within six months of its submission to the Commission and must reflect that at least 80% of the speed measurements reflect speeds at 80% or more of the 100/20 Mbps standard. Challengers must demonstrate that the locations chosen to be tested were randomly selected.

*b. Challengers Submitting both Type 1 and Type 2 Challenges*

In the last round of the NBBP awards, the Commission received both Type 1 and Type 2 challenges by a single entity for the same project. While an entity can submit a Type 1 and a Type 2 challenge for a project, the Commission clarifies that challengers submitting both Type 1 and Type 2 challenges for the same project will be required to submit two separate challenges identifying the basis for the challenge in each filing. The Commission will no longer accept challenges containing both Type 1 and Type 2 challenges in the same challenge filing.

*c. Challenges to Portions of Applications and Modification of Applications*

In its May 10, 2022 NBBP Order, the Commission found that an initial determination as to the credibility of a challenge will be made after a challenge is submitted. Applicants were given an opportunity to respond to a challenge submitted and could submit documentation supporting a position that a challenge was not credible to supplement the original application. Acceptable documentation included speed testing demonstrating where the location/address where the speed test was completed, as well as the speed tier to which the customer is subscribed.

The Commission will continue to utilize this framework for the first round of CPF applications. In instances where a partial challenge is found to be credible, applicants will continue to be allowed an opportunity to resubmit their application with the

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successfully challenged portions removed.<sup>12</sup> If a modified application is not submitted, the application will not be funded.

A modified application should reflect changes in buildout cost, locations served, and documentation as to any other items that would differ once the successfully challenged portion is excluded from the grant award. The modified application should use the same technologies as originally proposed and should not extend beyond the original geographic boundaries of the application. Applicants may not increase the amount of grant support being requested.

#### *d. Challenge Deadlines*

In its May 10, 2022 NBBP Order, the Commission utilized an abbreviated timeframe balancing the objectives of issuing grant awards more quickly but also allowing challengers the time necessary to perform speed tests for Type 1 challenges. Here again, the Commission proposed in its December 13, 2022 Order that the deadline for challenge submissions for all applicants for the CPF grant cycle continue to be 60 days following the application deadline. The challenge deadlines are set forth in Attachment A to this Order are adopted and are fully incorporated herein. All filings must be submitted no later than 5 p.m., central time, on the date the filing is due.

#### *e. Post-Challenge Requirements*

The Commission will apply the post-challenge requirements of the NBBP in the CPF grant program. Pursuant to LB 1144 (2022), challengers who do not provide required service within eighteen (18) months of a successful challenge will be subject to civil penalties. Challengers who do not currently provide service in the project area will still be required to submit quarterly progress reports regarding their construction of service in the project area by the fifteenth day of the first month following each quarter, and will be required to submit documentation within eighteen months of the successful challenge 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.

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<sup>12</sup> The Commission emphasizes that applicants are in no way barred from seeking other funding sources to construct networks in portions of a project area that were successfully challenged.

Challengers currently providing service in the project area, and whose challenge is upheld, will be required to submit an attestation that they will continue to provide 100/20 Mbps service in the entire challenged area. These challengers will also be required to notify Commission should the challenger's service offerings in the area change.

## **5) Remaining Grant Funding; Additional Federal Funds**

If the grant recipient is using CPF in conjunction with other federal funding this information must be disclosed on the application. Grant recipients must ensure that the CPF grant funding will not be used for costs that will be reimbursed by the other federal or state funding streams. CPF must be used only for complementary purposes. Additional reporting requirements will apply in those circumstances including more detailed reporting of cost allocation among the grant programs.<sup>13</sup>

## **6) Revisions to Applications**

The reclassification process used in the last NBBP cycle will continue to be used in the CPF grant process. Applications may be reclassified by the Commission if it is determined that broadband service with speeds of 25/3 Mbps is available to any location in the project area. Reclassification determinations will be made based upon the best available data, including, but not limited to, speed test information available to the Commission through public and non-public sources. Applicants will be given an opportunity to respond to the formal Notice of Intent to Reclassify and may supplement their applications with speed test data or other information. The results of reclassification will be made publicly available on the Commission's website.

## **7) Data Plans and Usage Caps**

As with the 2022 NBBP program, the Commission will continue to allow applications reflecting data plans with usage caps or "throttling" mechanisms to be scored in the CPF program. Data plans

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<sup>13</sup> See Treasury Coronavirus Capital Projects Fund Compliance and Reporting Guide for States, Territories and Freely Associated States, issued August 2022, at 5.

with "pay as you go" models will also be allowed. However, these plans will receive a score deduction of 2 points per listed category in the "Rate Comparability" section. A detailed description of this scoring adjustment may be found in Attachment C.

### **8) Digital Inclusion**

A critical element to the CPF grant program is that the funding be used for a project which is designed to address a critical need in the community to be served by it. The Commission is required to consider whether the broadband service options offered by recipients of CPF grant funding will be affordable to their target market. Accordingly, all applicants must demonstrate that they are participating or will participate in the FCC's Affordable Connectivity Program (ACP), or any subsequent subsidy program(s) identified by Treasury, once a grant funded project is deployed. This demonstration will be viewed as a threshold eligibility requirement for CPF consideration. Applicants must also describe any discounts and/or support programs to be offered for low-income individuals. The Commission will continue to award points to applicants participating in other federal or state discount programs. To receive points in this category, these plans must include broadband service at speeds of at least 100/100 Mbps and must also either cost less than \$50 per month prior to Lifeline and ACP discounts or cost 25% less on a monthly basis than the carrier's next lowest-priced plan offering, whichever is lower.

In addition, the Commission will require all applicants, not solely applicants proposing to serve underserved areas, to file a digital inclusion plan. In the digital inclusion plan, applicants will be required to describe how their project addresses current challenges that exist today including how the grant award will promote (1) broadband infrastructure deployment to directly enable work, education, and healthcare monitoring; (2) address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and (3) address a critical need of the community to be served by it. Applicants must also describe how access and use of funded technologies will be made available to individuals and communities in the project area at an affordable rate, including how the applicant will target the most disadvantaged individuals and communities. Finally, applicants must describe any proposed outreach to raise awareness and address

the critical needs of the community to be served by the proposed project.

### **9) Rates**

LB 1144 requires the Commission to consider an applicant's ability to offer rates in the project area that are comparable to its rates outside the project area. Therefore, like the NBBP program, the Commission will require applicants to submit information to the Commission reflecting the applicant's speed tier offerings elsewhere in Nebraska for purposes of the CPF application and scoring process. The Commission will review the comparability of rates proposed in the CPF project application to the applicant's offering of 100/100 Mbps service elsewhere in Nebraska. If an applicant does not currently offer 100/100 Mbps service in Nebraska, the Commission will consider the comparability of rates offered by the applicant for service speeds greater than 100/100 Mbps.<sup>14</sup> Moreover, applicants that will not offer 100/100 Mbps broadband service at rates at or below \$65 per month will not receive points for Rate Comparability.<sup>15</sup>

Applicants will be required to include the proposed rate list for the services to be offered within the project area over the five (5) years following completion of the project. Applicants will have the option to build in good faith estimates of any rate increases during the five (5) year period. Actual pricing data will be required to be filed with the Commission on an annual basis during the five (5) year period so that the Commission can include the information in its reports to Treasury, and so that the Commission can calculate the annual Rate Comparability average.

Grant recipients will be required to report rate information to the Commission on a regular basis throughout the duration of the CPF grant reporting period as such reporting is required for the Commission under federal CPF guidelines.

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<sup>14</sup> The offered upload speed and download speed must each be at or greater than 100 Mbps for an existing service offering to be considered under this category.

<sup>15</sup> The median monthly cost was \$ 64.23 per month in the 2022 program year. This average excluded any base monthly cost utilized by carriers in metered plans. Note that scoring deductions under Rate Comparability may still apply as outlined in "Data Plans and Usage Caps," above.

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## **10) Penalties**

Applicants requesting to or required to return CPF grant funds to the Commission after an award is made will be disqualified from receiving future grant awards from the Commission unless an exception is granted by the Commission. In cases where this occurs, applicants will be required to provide an explanation to the Commission and the Commission must approve any future eligibility and participation requirements. This determination will be made on a case-by-case basis.

## **11) Distribution of Support**

Unless otherwise determined by Treasury, funds awarded will be distributed as follows: 1/4 of the funds awarded will be distributed upon award of the grant, 1/4 of the funds will be distributed in the ninth month following the grant award, and the final 1/2 distributed upon completion of the project, the required speed testing, and invoice submittals to justify expenses. Successful applicants will need to verify required documentation for receipt of ACH payments from the State of Nebraska is on file immediately upon the award of a grant in order to ensure that the first payment is not delayed.

### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above findings be, and they are hereby adopted, and the 2023 Capital Projects Fund cycle of the Nebraska Broadband Bridge Program be conducted in accordance with said findings.

IT IS FURTHER ORDERED that the procedural schedule and filing deadlines for the 2023 Capital Projects Fund cycle of the Nebraska Broadband Bridge Program attached hereto as Attachment A be adopted.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that the Application Template attached hereto as Attachment B be released.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that the 2023 CPF-NBBP scoring reference sheet attached hereto as Attachment C is hereby adopted and released.

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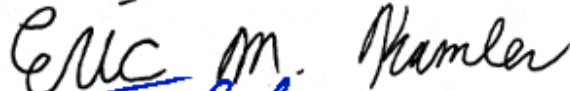


IT IS FURTHER ORDERED by the Nebraska Public Service Commission that the 2023 CPF-NBBP Program Guide attached hereto as Attachment D is hereby adopted and released.

IT IS FINALLY ORDERED by the Nebraska Public Service Commission that applications for grants awarded during the 2023 Capital Projects Fund cycle of the Nebraska Broadband Bridge Program shall be filed with the Commission by electronic mail to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov) no later than 5:00 p.m. Central Time on **February 24, 2023.**

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 10th day of January, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Executive Director



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### Attachment A: Procedural Schedule

<u>Event</u>	<u>Date</u>
Commission enters order setting out application materials	Tuesday, January 10, 2023
Application period begins	Thursday, February 9, 2023
Deadline to submit applications	Friday, February 24, 2023
Applications posted to Commission website	Wednesday, March 1, 2023
Notices of intent to challenge due to Commission and to Applicant	Wednesday, March 8, 2023
Challenges due	Friday, April 7, 2023
Commission to notify applicants of: 1. defects that must be cured and of areas of overlap with other applications; and 2. challenges received Notice of Intent to Reclassify released	Wednesday, April 12, 2023
Deadline for applicants to: 1. supplement challenged applications and/or submit responses to challenges; 2. supplement or modify application defects and/or revise areas of overlap with other applications; and 3. provide documentation of tribal consent. Community feedback responses due	Monday, April 24, 2023
Commission releases determinations as to credibility of partial challenges and as to reclassification of applications	Tuesday, May 16, 2023

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Deadline for applicants to submit modified applications in response to successful partial challenges	Friday June 2, 2023
Grant awards released; results of remaining challenges released	Tuesday June 20, 2023 Or Tuesday June 27, 2023
State of Nebraska W-9 and ACH enrollment form, Grant Attestation and Agreement, and Civil Rights Compliance form due from successful applicants	Friday, July 6, 2023



# Nebraska Capital Projects Fund (CPF) Grant Application

## Section I: Applicant Details

Original

Revised

1. Applicant name:			
2. Applicant type:			
3. Applicant street address:			
3a. Applicant city:			
3b. Applicant state:			
3c. Applicant zip code:			
4. Applicant contact (first and last name):			
5. Applicant e-mail:			
6. Applicant phone number:			
7. Provider name:			
8. Provider contact (first and last name):			
9. Provider e-mail:			
10. Provider phone number:			
11. Legal representative name (must be an attorney licensed to practice law in Nebraska or an attorney admitted to practice pro hac vice for purposes of this program):			
12. Legal representative e-mail:			
13. Legal representative phone number:			
14. Applicant's Nebraska ETC status:			
15. Does the applicant currently report through FCC Form 477 speeds of at least 100/100 Mbps provided to customers within the State of Nebraska?		15a. If yes, does the applicant clearly offer the minimum 100/100 Mbps speeds required on their public-facing website:	
15b. Provide the service provider's website URL that reflects the minimum 100/100 Mbps speeds currently available. Also, provide instructions on how to view available speeds, if not a direct link:			
16. Does the applicant currently participate in FCC's Affordable Connectivity Program (ACP)?			

17. Does the applicant commit to participating in FCC's ACP program, or subsequently identified subsidy program, for as long as the funded infrastructure is in use?	
18. Applicant's System for Award Management (SAM) Unique Entity Identifier (UEI):	

## Section II: Project Details

1. Project name:			
2. Project location description (the cities/ communities where the project(s) will take place):			
3. Estimated number of locations served in project area:	3a. Unserved (<25/3 Mbps):	3b. Underserved (<100/20 Mbps):	3c. Total:
4. Technology type(s) to be deployed in project area:			
5. Current maximum connection speed bandwidth in project area (Mbps):		6. Projected minimum connection speeds at completion (Mbps):	
7. Monthly customer rate for proposed 100/100 Mbps service:		7a. Does the rate plan for the proposed project area impose data or usage caps?	
7b. Does the rate plan for the proposed project area involve throttling speeds after usage limits are reached?		7c. Does the rate plan for the proposed project area involve metered or "pay as you go" service model?	
7d. Does the rate plan for the proposed project area impose early termination fees?		7e. Does the rate plan for the proposed project area lock customers into a particular plan or term with a long term contract?	
8. Maximum speeds all serviceable locations in project area will be capable to be scalable to upon completion:		9. Expected project completion date:	
10. Project geographic contiguity type:		11. If noncontiguous, are the areas included from the same exchange or adjacent exchanges?	
12. Total project costs (based on allowed costs):		13. NBBP grant amount requested:	
14. Does the project involve any portion of deployment on tribal land?		NOTE: If the answer to 14 is "yes," proof of tribal consent must be provided to the Commission no later than April 24, 2023.	
15. Congressional District in which the project will take place:		16. If Congressional District 3, is the project area only serving locations within a city of the second class or village?	

## Attach/Include:

Please label attachments as follows: “[Applicant Name]\_[Project]\_[Attachment Letter].” If it is necessary to submit multiple attachments under one attachment letter category, label the attachments to identify the separate attachments. Ex. “[Applicant Name]\_[Project]\_[Attachment Letter]\_1”, “[Applicant Name]\_[Project]\_[Attachment Letter]\_2”, etc.

- A polygon shapefile polygon (.shp) reflecting the project area **must** be included. Any supporting files necessary to open the shapefile must also be attached. (Attachment Letter: A)
- A point shapefile which identifies serviceable locations in the project area **must** also be included. Any supporting files necessary to open the shapefile must also be attached. (Attachment Letter: B)
- Applicants that answered “Yes” to section I; field 15 should attach documentation that 100/100 Mbps speeds are currently delivered to customers in other areas served by the applicant and that those speeds are advertised. (Attachment Letter: C)
- Applicants that answered “Noncontiguous” in section II; field 10, should provide a statement explaining the reasoning for including noncontiguous areas. This should include an explanation regarding what natural connection the noncontiguous project areas have to each other. (Attachment Letter: D)
- Technical capability statement: Applicants must include a statement relating to their experience providing broadband, whether they currently provide broadband at the minimum 100/100 Mbps speeds, the useful life of the facilities, and how the project will be resilient and sustainable in the long-term. This statement should also include the number of technical staff that will be dedicated to serving the project area once the project is complete, the level of technical ability of staff, the technological components used and which components may require more frequent repair or replacement, a detailed description of the proposed network architecture including homes passed, fiber miles, and the specific technology to be used to provide service to end users, a description of the applicant’s technical capability to meet the requirement to provide a minimum 100/100 Mbps in all locations that receive grant funding, and their plans to meet the minimum statutory technical and speed requirements in place for the NBBP throughout the fifteen-year period, and how the service area will be maintained throughout the useful life of the facilities, and any other relevant technical expertise of the applicant. (Attachment Letter: E)
- Rate comparability details: Attach information demonstrating that the retail rates for the proposed service area are comparable to the applicant’s rates outside the project area for the same speed tiers of a minimum 100/100 Mbps or next highest tier if 100/100 Mbps is not offered. Additionally, information regarding the terms and conditions offered, and the terms of service must be provided. Specifically, a statement must be provided with the application detailing whether the plan involves data caps, throttling speeds after usage limits are reached, long-term contracts, Early Termination Fees, or metered “pay-as-you-go” service. (Attachment Letter: F)
- A business plan for the proposed network: The business plan should include: a description of any risk factors or legal challenges that must be addressed prior to or during the project in question, such as local zoning, right of way, tribal approval\*, and permitting processes, and how the applicant intends to mitigate these risk factors or legal challenges, a financial analysis for the project including cash flow projections for the project for a minimum of 5 years including an explanation of revenue assumptions and take rate, a description of the plans for long-term maintenance of the network built through the grant, disclose any prior receipt of federally awarded grant funds for broadband deployment and provide copies of any past audits of federal awards, and community engagement demonstration. NOTE: Projections that do not reflect positive capitalization should include a written explanation as to how a project will be maintained over the life of the facilities. For projects that involve broadband development on tribal lands, permission from and approval by tribes is required and documentation of the approval must be provided to the Commission no later than April 24, 2023. (Attachment Letter: G)
- A funding breakdown for the grant must be attached in Excel format. This should include a proposed budget reflecting a clear and detailed breakdown of cost elements based on total allowable project costs. This should also include the total grant amount requested and detail any matching funds committed. (Attachment Letter: H)
- Non-ETC applicants attach the most current year’s audited financial statements. (Attachment Letter: I)
- A digital inclusion plan must be attached for consideration. The plan should specify: the applicant’s process to consult with community and consider affordability; a description of how the project will meet the objective of providing broadband infrastructure deployment within the project area to directly enable work, education, and healthcare monitoring; a description of how the project will address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; identify any critical needs of the community intended to be served by the project, and how the project will be tailored to meet those

needs, including the carrier's efforts to ensure members of the community to be served will be able to afford the services offered and must describe any discounts and/or support programs to be offered for low-income individuals; specify how the project will impact access to and use of information and communication technologies within the communities it serves, including individuals and communities that are the most disadvantaged; include the pricing structure of the 100/100 Mbps plan being offered to low-income subscribers in addition to the availability of Lifeline or Affordable Connectivity Program (ACP) discounts and any additional terms and conditions of service; include evidence of outreach efforts to relevant stakeholders (community leaders, community members, civic organizations, etc.) in the areas they are wishing to serve. (Attachment Letter: J)

Applications proposing to use technology other than fiber or proposing to use a combination of fiber and other technologies, must include an attestation from a qualified engineer describing the speed capabilities of the proposed technology, and should provide the following: (1) How the proposed spectrum can meet or exceed the relevant performance requirements at peak usage periods. Clearly identify the licensed and unlicensed spectrum that will be used; (2) Provide the calculations used for each frequency band, to design the last mile link budgets in both the upload and download directions at the cell edge using the technical specifications of the expected base station and customer premise equipment. Submit assumptions regarding fading statistics, cell edge probability of coverage, and cell loading for each relevant performance tier; (3) Provide detailed radio access network (RAN) infrastructure information used to generate the coverage maps for each unique cell including longitude, latitude, antenna height, antenna orientation, antenna down-tilt, antenna model, antenna system configuration, effective radiated power, operating spectrum amount, operating spectrum type, and operating radio technology; (4) Describe the underlying propagation model used to prepare the coverage maps and how the model incorporates the operating spectrum, antenna heights, distances, fading statistics, terrain resolution, and clutter resolution. Additionally, for applicants proposing to use fixed wireless technology, applicants must include: (1) tower location shapefiles for existing and planned towers; (2) shapefile polygon demonstrating coverage for the planned and/or existing networks that will be used to meet the BEAD public interest obligations, including where the upload and download speeds will meet or exceed the required speeds (100/100 Mbps), and showing that coverage encompasses the locations included in Attachment B. (Attachment Letter: K, K1 (tower locations), and K2 (propagation data)).

Match source documentation: A table detailing the confirmed matching fund commitments by source must be included. Documentation of the match source(s) should also be provided. This could include but is not limited to a signed contribution certification for community partner match, NUSF census block information (in Excel format), documentation regarding timeline for RDOF deployment, justification for the value of any in-kind contributions such as labor, equipment, and inventory on hand. (Attachment Letter: L)

Other supporting documentation (if applicable), such as supplemental speed test data, letters of support from members of the community, supplemental financial information such as the most recent year's federal tax return, etc. (Attachment Letter: M)

**APPLICANT CERTIFICATION:** By signing this statement, the applicant certifies that the information submitted on the application and all supporting documents are true and correct. The applicant agrees to offer broadband internet in the project area for fifteen years after receipt of grant funding and commits to maintaining minimum speed capability of 100Mbps/100Mbps in all locations for which the applicant will receive support for the fifteen years after receipt of grant funding. The applicant agrees to perform and adhere to all grant requirements, and to comply with all state and federal regulations and requirements pertaining to this program. In addition, the applicant agrees not to use equipment prohibited by the FCC within the network, to maintain the rates reflected in their application within the project area for a minimum of five years following completion of the project, to submit network speed testing information as prescribed by the Commission, and to complete the project build within eighteen months following the grant award unless granted an extension.

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Printed Name of Authorized Person

Date

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Title of Authorized Person

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Signature of Authorized Person

ATTACHMENT C - Scoring and Weighting Sheet

Criteria	Points Available	Y/N	Points	Reference Sheet Lookup
Financial Capability	N/A		N/A	A
Financial Capability - Points	10			
Legal Capability	N/A		N/A	B
Legal Capability - Points	10			
<u>Technical Capability</u>				C
FCC Form 477	0-10			
Website Offerings	0-5			
Lack of Community Support	(-10)			
Dig. Inclusion Plan/Low-Income Offering	0-5			D
<u>Rate Comparability</u>				E
100/100+ Mbps Comparability	0-5			
Median Rate Comparison	0-5			
Rate Deductions	(-10)			
Speed Additive	0-10			F
Match Source	0-10			G
Match Percentage	0-60			H
Location Density	0-20			I
ETC Certification	0-5			J
PPP Participation	0-5			K
<b>TOTAL</b>	<b>160</b>		<b>0</b>	

## Reference Sheet – Scoring Criteria

### A – Financial Capability – (Yes/No), and up to 10 points

- In order to be considered for grant support, non-ETC applicants must submit financial statements that demonstrate overall financial viability. ETC applicants must have submitted financial statements to the Commission that demonstrate overall financial viability. This item will be scored as a Yes/No, where the lack of required financial information demonstrating financial capability (No) would disqualify the applicant from receiving a grant.
- Long-term viability of the project is a priority, and up to 10 scoring points will be available if a business plan is included that provides the required details about the project, cash flow projections, including a description of revenue and take rate assumption calculation, for a period of five years following completion of the project, and a description of how the proposed network will be maintained over the expected useful life of the facilities.

### B – Legal Capability – (Yes/No), and up to 10 points

- Applicants are required to include contact information for their legal representation. Omission of this information will disqualify the applicant from grant consideration. Legal representative must be licensed and in good standing to practice law in Nebraska, or an attorney admitted to practice pro hac vice in Nebraska.
- If this information is included, applicant will be awarded up to 10 points, but deductions will be made if: applicant/carrier partner has late filed annual reports (-2 points), applicant/carrier partner has late-filed NUSF remittances (-2 points), applicant fails to identify legal challenges that are anticipated, such as local zoning, permitting, access to rights-of-way, etc. (-2 points).

### C – Technical Capability – (Yes/No), and up to 15 points

- Applicants are required to include information with their application that demonstrates their technical ability to deploy and operate broadband Internet service at speeds of at least 100/100 Mbps. If this information is included, the application can be scored as follows:
- FCC Form 477 – Does the most recent publicly-available FCC Form 477 data demonstrate that the applicant offers 100/100 Mbps (or greater) service in Nebraska? If Yes, 10 points will be awarded. If no, 0 points will be awarded.
- Website Offerings – Does the applicant’s (or carrier partner’s) public-facing website clearly state that they offer services that meet the 100/100 Mbps or greater speed minimum? If yes, 5 points will be awarded. If no, 0 points will be awarded.
- Deductions to technical capability may be made if the project receives negative support from the community it proposes to serve. Deductions will be made on a case by case basis up to 10 points deducted from this category (-10 points).

### D – Digital Inclusion Plan – (Yes/No), and up to 5 points available

- Digital Inclusion Plans (DIP) are required for all applications for Capital Projects Funds – applications submitted without a DIP will be disqualified from further consideration.
- Does the digital inclusion plan offer a discounted service plan to low-income subscribers that is below their standard rate and eligible to be discounted further with Lifeline or



Affordable Connectivity Program (ACP) discounts?

- Plan must be below \$50 per month prior to discounts being applied, or cost 25% less on a monthly basis than the carrier's next lowest price plan, whichever is lower.

#### **E – Rate Comparability – 10 points available**

- Are the rates included in the application for 100Mbps/100Mbps or the next highest tier if applicant does not offer 100/100 Mbps comparable to what they offer in other areas they serve in Nebraska? If yes, 5 points will be awarded.
- Are the rates included in the application for 100Mbps/100Mbps service at or below \$65 per month? If yes, 5 points will be awarded. If no, 0 points will be awarded.
- Applications will receive score deductions for rate comparability as follows: Plans requiring long-term contracts (-2), plans throttling speeds after usage limits are reached (-2), plans with data caps (-2), plans with Early Termination Fees (-2), metered service or pay-as-you-go models (-2).

#### **F – Speed Additive – Up to 10 points available**

- Additional points will be awarded if applicant/carrier partner includes evidence that they plan to offer speeds in excess of the 100/100 Mbps minimum. These additional speed tiers must be available to customers at the time of application, and offerings have to meet both the upload and download speed minimums to be awarded points. Points will be awarded as follows:
  - o 100/100 Mbps only – 0 points
  - o 500/500 Mbps – 5 points
  - o 1 Gbps/1Gbps – 10 points

#### **G – Match Source – Up to 10 points available**

- Sources of match that are outside of existing federal or state broadband programs will be given additional points, as outlined here:
  - o NUSF High Cost – 0 points
  - o Federal Broadband Funds match – 5 points
  - o Applicant and/or carrier outside funds – 10 points
- See Program Guide for additional details

#### **H – Match Percentage – Up to 60 points available for projects that include a match**

- Points will be awarded for each percentage point of match up to 60%.

#### **I – Location Density – Up to 20 points available**

- Does the application serve low density areas of the state? If yes, up to 20 points will be awarded as follows:
  - o Less than or equal to 10 locations per square mile – 20 points
  - o More than 10 locations per square mile, but less than or equal to 20 locations per square mile – 12 points
  - o More than 20 locations per square mile, but less than or equal to 42 locations per

square mile – 5 points

**J – ETC Certification – Up to 5 points available**

- If the applicant/carrier partner is an ETC at the time of application, 5 points will be awarded.
- If an ETC application is pending, 3 points will be awarded.
- If the applicant/carrier partner plans to file for ETC Certification within 30 days of the application deadline, 1 point will be awarded.
- If the applicant does not fall under an ETC certification category as listed above, 0 points will be awarded.

**K – Public Private Partnership – 5 points available**

- Does the applicant identify an eligible public/private partnership as part of the application? Eligibility is determined based on a documented contribution of a public partner. Documentation of the contribution commitment must be submitted with the application. The non-public partner in the PPP must be an ETC in the portions of Nebraska to be served by the project.



# Nebraska Capital Projects Fund (CPF) Guide

## Program Year 2023

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# 1 Capital Projects Fund: General Information

## 1.1 Program Overview

Under Section 604 of the Social Security Act, as added by Section 9901 of American Rescue Plan Act of 2021, the U.S. Department of the Treasury has established the Coronavirus Capital Projects Fund (CPF). The purpose of the fund is to empower States, territories, freely associated states, and Tribal Governments “to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19).” Nebraska has been awarded \$128,740,178 for the fulfillment of the goals established by the CPF, which includes administrative costs. Pursuant to Neb. Rev. Stat. § 81-12,245, in accordance with the Nebraska Broadband Bridge Act, Neb. Rev. Stat. §§ 86-1301 – 1312, and in cooperation with the Department of Economic Development, Nebraska Public Service Commission will utilize the grant framework established under the Nebraska Broadband Bridge Program to determine funding eligibility. The total funding amount will be made available as follows:

1. Congressional District 1 - No less than \$40,000,000 for eligible projects.
2. Congressional District 3 - No less than \$40,000,000 for eligible projects within cities of the second class and villages.

NOTE: No more than \$35,000,000 has been designated for the improvement of multipurpose community facilities in congressional district 2, which will be distributed through the Nebraska Department of Economic Development in a separate process.

As empowered by Neb. Rev. Stat. §§ 86-1301 – 1312, the Nebraska Public Service Commission (Commission) has the authority to grant awards to assist applicants with eligible infrastructure installation costs for qualifying projects. Qualifying projects must provide broadband Internet service scalable to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater (100Mbps/100Mbps). There will be no match requirement for CPF applications, but applicants that offer a match will be eligible for additional scoring points.

The CPF is intended to address the following priorities:

1. Broadband infrastructure deployment designed to directly enable work, education, and healthcare monitoring;
2. Address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
3. Address a critical need of the community to be served by the deployment.

## 1.2 Eligible Applicants

Eligible applicants for this program include:

- (1) a broadband Internet service provider including any telecommunications company, cable television company, or wireless network provider that provides broadband Internet service;
- (2) a cooperative;
- (3) a political subdivision;
- (4) a tribal government. Applications from a political subdivision or a tribal government shall be made as part of a public-private partnership with a broadband Internet service provider.

### 1.3 Eligible Project Areas

A project involving development of a broadband network in an unserved area or an underserved area in Congressional District 1 or Congressional District 3 may be considered. Additionally, under Neb. Rev. Stat. § 81-12,245, Congressional District 3 projects must be entirely located within the geographical boundaries of cities of the second class and villages. Boundaries for these areas are defined by the 2020 US Census. Definitions for second class cities and villages are as follows:

- Cities of the second class are defined in Neb. Rev. Stat. § 17-101 as a municipality containing more than eight hundred and not more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census unless it adopts or retains a village form of government.
- Villages are defined in Neb. Rev. Stat. § 17-201 as any municipality containing not less than one hundred nor more than eight hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census incorporated as a village. A village consists of the people residing within the territorial boundaries of such village and the residents of any territory duly and properly annexed to such village.

An unserved area is defined as area of Nebraska in which locations lack access to broadband Internet service at speeds of at least twenty-five megabits per second for downloading and three megabits per second for uploading (25Mbps/3Mbps). An underserved area is defined as an area of Nebraska in which locations lack access to broadband Internet service at speeds of at least one-hundred megabits per second for downloading and twenty megabits per second for uploading (100Mbps/20Mbps). See [section 4.1](#) for additional detail related to grant prioritization tiers.

### 1.4 Eligible Program Costs

The CPF can pay up to 100% of the eligible development costs for a qualifying project with a grant requested amount of up to \$5 million for a single project. Development costs are defined as the amount paid for acquisition and deployment of infrastructure that provides broadband Internet service scalable to at least 100Mbps/100Mbps, such as costs for project planning, obtaining construction permits, construction of facilities including both middle-mile and last-mile infrastructure, equipment, and installation and testing of the broadband Internet service. Middle-mile will be funded only if required for the last-mile build. Examples of allowed and disallowed costs can be found on our website at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp>.

The NBBP grant funding period begins after the grant application is received, reviewed, and officially approved with an award notification. Eligible program costs are those that are incurred after the program year grant award notice and end at the conclusion of deployment, or at the established deadline for deployment for the NBBP grant project, based on whichever is earlier.

### 1.5 Matching Fund Requirement

To be approved for a Nebraska CPF grant, an applicant does not need to provide a matching source of funds. However, applicants including matching funds as part of their application will be awarded additional points – See [Section 4.2](#). Additionally, since no match is required for the CPF cycle, the necessity for designation of “high cost” and “non high-cost” areas has been effectively removed. Applicants should also be aware that additional reporting requirements may be required for any applicant match in accordance with 2 C.F.R. § 200.306, including additional reporting when other federal funding sources are used.

## 2 Application Process

### 2.1 Filing Window – February 9<sup>th</sup>, 2023 to February 24<sup>th</sup>, 2023

The grant application window for program year 2023 will open on February 9<sup>th</sup>, 2023 and close at 5:00 p.m. Central Time on February 24<sup>th</sup>, 2023. While the Commission will consider any applications received before the end of the filing window, applicants are strongly encouraged to submit their applications as soon as they are ready.

***Applicants must submit their applications to the Nebraska Public Service Commission (Commission) on or before the application deadline of February 24th, 2023, no later than 5:00 p.m. Central Time. Late filed applications will not be considered.***

### 2.2 Preparing an Application

The application form is located on our website at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp>. For the best experience, we recommend that you open the file in Acrobat Reader or Professional, rather than a browser. You may submit additional pages to expand on application form fields if additional room is needed. The completed application and supporting documentation should be emailed to [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov) no later than February 24th, 2023 at 5:00 p.m. Central Time.

The application form is a fillable PDF and applications must be received in PDF format. Printed applications will not be accepted. Upon request, the Commission can return a date-stamped, printed PDF of the application to the applicant as confirmation of the data submitted. The items that make up an application are further outlined below:

#### 2.2.1 Application Section I - Applicant Details

- Field 1. Applicant name: This field should include the name of the applicant entity applying for funding.
- Field 2. Applicant type: This field should identify the applicant type. Options include:
  - 1. Service provider
  - 2. Cooperative
  - 3. Political subdivision
  - 4. Tribal Government

NOTE: An application from a political subdivision or a tribal government must be made as part of a public-private partnership with a service provider.
- Field 3. Applicant street address: This field should include the street address of the applicant.
- Field 3a. Applicant city: This field should include the city for the address of the applicant.
- Field 3b. Applicant state: This field should include the state for the address of the applicant.
- Field 3c. Applicant zip code: This field should include the zip code of the applicant.
- Field 4. Applicant contact (first and last name): This field should include the name of the contact person for questions related to the application and the overall project.
- Field 5. Applicant e-mail: This field should include the e-mail address of contact person identified in field 4.
- Field 6. Applicant phone number: This field should include the phone number of contact person identified in field 4.

- Field 7. Provider name: This field should include the name of the service provider for the project. This field is required if answer to field #2 is “Political Subdivision” or “Tribal Government.” The input for this field may be identical to field 1 if the service provider is also the applicant.
- Field 8. Provider contact (first and last name): This field should include the name of the contact person for the service provider that can answer questions related to the project. The input for this field may be identical to field 4 if the service provider is also the applicant.
- Field 9. Provider e-mail: This field should include the e-mail address of the contact person identified in field 8. The input for this field may be identical to field 5 if the service provider is also the applicant.
- Field 10. Provider phone number: This field should include the phone number of contact person identified in field 8. The input for this field may be identical to field 6 if the service provider is also the applicant.
- Field 11. Legal representative name: This field should include the name of the legal representative for the applicant, which must be an attorney licensed and in good standing to practice law in Nebraska, or, in the alternative, an attorney admitted to practice pro hac vice in Nebraska for purposes of Commission Docket No. CPF-1.
- Field 12. Legal representative e-mail: This field should include the e-mail address of contact person identified in field 11.
- Field 13. Legal representative phone number: This field should include the phone number of contact person identified in field 11.
- Field 14. Applicant’s Nebraska ETC status: This field should include the applicant’s Nebraska ETC status. Options include:
1. Not applicable;
  2. Currently certified as Nebraska Eligible Telecommunications Carrier (NETC), in good standing;
  3. Application for Nebraska Eligible Telecommunications Carrier (NETC) certification has been filed with the Commission;
  4. Applicant attests they will submit application to the Commission for NETC certification at least six months prior to project completion.
- Field 15. Does the applicant currently report through FCC Form 477 speeds of at least 100Mbps/100Mbps provided to customers within the State of Nebraska? This field should indicate whether the applicant/service provider partner currently reports through FCC Form 477 speeds of at least 100Mbps/100Mbps service is being provided to customers in Nebraska located outside of the project area. Response options include: Yes or No.
- Field 15a. If the answer to 15 is “Yes,” does the public-facing website clearly reflect available speeds? Response options include: “Yes,” “No,” or “NA.”
- Field 15b. If the answer to 15a is “Yes,” this field should include the service provider’s public-facing URL that reflects the currently available speeds. Also, provide instructions on how to view available speeds, if not a direct link.
- Field 16. Indicate whether the applicant currently participates in FCC’s Affordable Connectivity Program (ACP).
- Field 17. Indicate whether the applicant commits to participating in FCC’s ACP program, or subsequently identified subsidy program, for as long as the funded infrastructure is in use.
- Field 18. Include the applicant’s Unique Entity Identifier (UEI) from System for Award Management (SAM.gov) registration.

## 2.2.2 Application Section II – Project Details

- Field 1. Project name: This field should include the descriptive name given to the project.
- Field 2. Project location description (the cities/communities where the project(s) will take place): This field should include a brief description of the project location, including the cities, communities, etc. where the project will take place.
- Field 3. Estimated number of locations served in project area: The inputs for this field are captured in fields 3a, 3b, and 3c, which are explained below.
- Field 3a. Unserved (<25/3 Mbps): This field should include the number of locations within the project area which meet the definition of unserved (i.e., lacking broadband internet service at speeds of at least 25 Mbps downloading and 3 Mbps uploading).
- Field 3b. Underserved (<100/20 Mbps): Enter the number of locations within the project area which meet the definition of underserved (i.e., lacking broadband internet service at speeds of at least 100 Mbps downloading and 20 Mbps uploading).
- Field 3c. Total: This field should include the sum of fields 3a and 3b.
- Field 4. Technology type(s) to be deployed in project area: The input in this field should describe the technology type(s) to be deployed within the project area. Applicants proposing to use fixed wireless technologies must submit additional information.
- Field 5. Current maximum connection speed bandwidth in project area (Mbps): This field should include the current maximum download and upload speeds available within the project area.
- Field 6. Projected maximum connection speeds at completion (Mbps): This field should include the minimum connection speeds for download and upload upon completion of the project.
- Field 7. Monthly customer rate for proposed 100Mbps/100Mbps service: This field should include the monthly customer rate to be billed for 100Mbps/100Mbps service provided within the project area.
- Field 7a. Does the rate plan for the proposed project area impose data or usage caps?
- Field 7b. Does the rate plan for the proposed project area involve throttling speeds after usage limits are reached?
- Field 7c. Does the rate plan for the proposed project area involve metered or “pay as you go” service model?
- Field 7d. Does the rate plan for the proposed project area impose early termination fees?
- Field 7e. Does the rate plan for the proposed project area lock customers into a particular plan or term with a long term contract?
- Field 8. Maximum speeds all serviceable locations in project area will be capable to be scalable to upon completion: To qualify, the project must provide broadband Internet service that is scalable to 100Mbps/100Mbps, or greater. This field should indicate the maximum speeds that all serviceable locations within the project area will be scalable to upon project completion.
- Field 9. Expected Project Completion Date: This field should indicate the expected completion date for the project, and when service is expected to begin within the project area at the required speeds.
- Field 10. Project geographic contiguity type: This field should indicate whether the project area is contiguous, or whether the project includes noncontiguous geographical areas.
- Field 11. If the answer to field 10 is “Noncontiguous,” are the areas included from the same exchange or adjacent exchanges? Response options include: “Yes” or “No.”



- Field 12. Total project cost (based on allowed costs): This field should indicate the total estimated cost of the project based on costs deemed eligible within the NBBP. See our website at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp> for a list of examples of allowed and disallowed costs.
- Field 13. NBBP grant amount requested: This field should indicate how much grant money from the NBBP is being requested for this application. This amount cannot exceed \$5,000,000.
- Field 14. Indicate whether the project involves any portion of deployment on tribal land. If so, proof of tribal consent must be provided to the Commission no later than April 24, 2023.
- Field 15. Indicate the Congressional District in which the project will take place. (Must be either: Congressional District 1 or Congressional District 3).
- Field 16. If the project is in Congressional District 3, the project area must serve locations only within a city of the second class or village.

### 2.2.3 Attachments

Please label attachments as follows: “[Applicant Name]\_[Project]\_[Attachment Letter]” If it is necessary to submit multiple attachments under one attachment letter category, label the attachments to identify the separate attachments. Ex. “[Applicant Name]\_[Project]\_[Attachment Letter]\_1”, “[Applicant Name]\_[Project]\_[Attachment Letter]\_2”, etc.

1. Polygon shapefiles reflecting the project area must be included. (Attachment Letter: A).
2. A point shapefile that indicates the locations the project intends to serve must be included. (Attachment Letter: B).
3. Applicants that answered “Yes” to section I; field 15 should attach documentation that 100Mbps/100Mbps speeds are currently delivered to customers in other areas served by the applicant and that those speeds are advertised. (Attachment Letter: C).
4. Applicants that answered “Noncontiguous” in Section II, Field 10 should provide a statement explaining the reasoning for including noncontiguous areas. This should include an explanation regarding what natural connection the noncontiguous project areas have to each other. (Attachment Letter: D).
5. Technical capability statement: Applicants/Service Providers must include a statement including:
  - a. A description of the applicants experience providing broadband and whether they currently provide broadband at the minimum 100Mbps/100Mbps speeds.
  - b. The useful life of the facilities to be built and how the service area will be maintained throughout the useful life of the facilities.
  - c. How the project will be resilient and sustainable in the long-term. This statement should also include the number and skill level of technical staff that will be dedicated to serving the project area once the project is complete.
  - d. The expected useful life of the facilities to be built including a statement as to the technological components used, and, if applicable, which components may require more frequent repair or replacement,
  - e. A detailed description of the proposed network architecture including homes passed, fiber miles, and the specific technology to be used to provide service to end users.

- f. Describe their technical capability to meet the requirement to provide a minimum 100/100 Mbps in all locations that receive grant funding, and their plans to meet the minimum statutory technical and speed requirements in place for the NBBP throughout the fifteen-year period. (Attachment Letter: E).

NOTE: Applicants proposing to utilize fixed wireless technology are required to file additional information in Attachment K.

6. Rate comparability details: Attach information demonstrating that the retail rates for the proposed service area are comparable to, or lower than, the applicant's rates outside the project area for the same speed tiers of a minimum 100/100 Mbps or next highest tier if 100/100 Mbps is not offered. Additionally, information regarding the terms and conditions of service must be provided. Specifically, a statement must be provided with the application detailing whether the plan involves data caps, throttling speeds after usage limits are reached, long-term contracts, early termination fees, or metered "pay-as-you-go" service. (Attachment Letter: F).
7. A business plan for the proposed network including the following:
  - a. Details of the proposed project,
  - b. A description of any risk factors or legal challenges that must be addressed prior to or during the project in question, such as local zoning, right of way, tribal approval\*, and permitting processes, and how the applicant intends to mitigate these risk factors or legal challenges,
  - c. A financial analysis for the project including cash flow projections for the project for a minimum of 5 years, including an explanation of revenue assumptions and take rate. Projections that do not reflect positive capitalization should include a written explanation as to how a project will be maintained over the life of the facilities.
  - d. A description of the plans for long-term maintenance of the network built through the grant.
  - e. Disclose any prior receipt of federally awarded grant funds for broadband deployment and provide copies of any past audits of federal awards.
  - f. Community Engagement: Applicants must identify community leaders or individuals with decision-making authority within the community or communities included in the project area, and applicants must demonstrate engagement efforts with the proper parties. A template letter for community outreach will be made available on our website. Applicants are free to deviate from this template but are required to include the following minimum information:
    - i. A description of the project and technology to be used;
    - ii. A description of the project area;
    - iii. The proposed speed tiers and pricing;
    - iv. The Commission's contact information for providing feedback to the Commission; and
    - v. The deadline by which feedback must be provided.

The applicant must either carbon copy the Commission or file copies of their outreach materials with their application materials due by February 24, 2023. Community feedback will be considered if received on or before April 24, 2023. Copies of any community response will be forwarded to the applicant. In the case of negative feedback, depending on the nature of the issues raised, the Commission may take such steps as further investigating any concerns raised and working with the applicant and the community leaders to find possible solutions. Additionally, depending on the nature of any negative feedback

submitted and the response from the applicant, the Commission may determine such information merits a reduction to an applicant's overall technical capability score. If a grant is awarded, the Commission will follow up with communities during project construction. Post-deployment, grant recipients are required to advertise the minimum 100/100 Mbps service in the project area. Advertisements must be made available in multiple languages.

\*NOTE: For projects that involve broadband development on tribal lands, permission from and approval by tribes is required and documentation of the approval must be provided to the Commission no later than April 24, 2023. (Attachment Letter: G).

8. A funding breakdown for the grant must be attached. This should include a proposed budget reflecting a clear and detailed breakdown of cost elements based on total allowable project costs. Any disallowed expenses must be adjusted from the total project costs to determine total allowable costs for calculating the grant amount requested and required match percentage. This should also include the total grant amount requested and detail any matching funds committed. The funding breakdown should be submitted in Excel format. (Attachment Letter: H).
9. Non-ETC applicants must attach the most current year's audited financial statements. (Attachment Letter: I).
10. A digital inclusion plan must be attached for consideration. The plan must describe:
  1. The applicant's process to consult with the community and consider affordability. The description should identify community leaders within the project area, outreach efforts to consult with the identified leaders, and should include an analysis of 2020 Census Data<sup>1</sup> pertaining to the project area(s), and could also include any available data including but not limited to documentation of existing broadband internet service performance and pricing; federal and/or state collected broadband data; user speed test results; federal and/or state collected data, such as the American Community Survey, the U.S. Department of Commerce – National Telecommunications and Information Administration's Indicators of Broadband Need Map, or the U.S. Department of Housing and Urban Development's Qualified Census Tracts, related to internet use, device ownership, income, and poverty; reports from community organizations; and any other information deemed relevant.
  2. A description of how the project will meet the objective of providing broadband infrastructure deployment within the project area to directly enable work, education, and healthcare monitoring;
  3. A description of how the project will address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency,
  4. Identify any critical needs of the community intended to be served by the project, and how the project will be tailored to meet those needs, including the carrier's efforts to ensure members of the community to be served will be able to afford the services offered and must describe any discounts and/or support programs to be offered for low-income individuals.
  5. The plan should specify how the project will impact access to and use of information and communication technologies within the communities it serves, including individuals and communities that are the most disadvantaged.

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<sup>1</sup> <https://www.census.gov/quickfacts>

6. The plan should include the pricing structure of the 100/100 Mbps plan being offered to low-income subscribers in addition to the availability of Lifeline or Affordable Connectivity Program (ACP) discounts and any additional terms and conditions of service.
7. Include evidence of outreach efforts to relevant stakeholders (community leaders, community members, civic organizations, etc.) in the areas they are wishing to serve.

NOTE: To be eligible for scoring points, the digital inclusion plan must offer at least one low-income option for a discounted service offering at a minimum of 100/100 Mbps at a monthly cost of less than \$50 per month. The applicant must participate in federal broadband internet access subsidy programs such as Lifeline or Affordable Connectivity Program (ACP), and the low-income plan must be eligible to be discounted further with Lifeline and ACP discounts. (Attachment Letter: J).

11. Applications proposing to use technology other than fiber or proposing to use a combination of fiber and other technologies must include an attestation from a qualified engineer describing the speed capabilities of the proposed technology, and should provide the following:
  1. How the proposed spectrum can meet or exceed the relevant performance requirements at peak usage periods. Clearly identify the licensed and unlicensed spectrum that will be used.
  2. Provide the calculations used for each frequency band, to design the last mile link budgets in both the upload and download directions at the cell edge using the technical specifications of the expected base station and customer premise equipment. Submit assumptions regarding fading statistics, cell edge probability of coverage, and cell loading for each relevant performance tier.
  3. Provide detailed radio access network (RAN) infrastructure information used to generate the coverage maps for each unique cell including longitude, latitude, antenna height, antenna orientation, antenna down-tilt, antenna model, antenna system configuration, effective radiated power, operating spectrum amount, operating spectrum type, and operating radio technology.
  4. Describe the underlying propagation model used to prepare the coverage maps and how the model incorporates the operating spectrum, antenna heights, distances, fading statistics, terrain resolution, and clutter resolution.

Applicants must include tower location shapefiles for existing and planned towers. They must also provide a shapefile polygon demonstrating coverage for the planned and/or existing networks that will be used to meet the BEAD public interest obligations, including where the upload and download speeds will meet or exceed the required speeds (100/100 Mbps), and showing that coverage encompasses the locations included in Attachment B. (Attachment Letter: K, K1 (tower locations), and K2 (propagation data)).

12. Match source documentation: A table detailing the confirmed matching fund commitments by source must be included. Documentation of the match source(s) should also be provided. This could include but is not limited to a signed contribution certification for community partner match, NUSF census block information (in Excel format), documentation regarding timeline for RDOF deployment, justification for the value of any in-kind contributions such as direct labor, equipment, and inventory on hand. (Attachment Letter: L).

13. Other supporting documentation (if applicable), such as supplemental speed test data, letters of support from members of the community, supplemental financial information such as the most recent year’s federal tax return, etc. (Attachment Letter: M).

### 2.3 Submitting an Application:

Completed applications and all required supporting documentation must be received electronically via e-mail to the Commission at [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov) by the 5:00 on February 24<sup>th</sup>, 2023. The application form should be submitted in .pdf format using the provided application form, all required polygon shapefiles and point shapefiles should be submitted along with other application materials and must include all supporting files necessary to open the shapefiles. If all documents CANNOT be attached within a single e-mail due to size limitations, the submission may be sent in more than one e-mail. If it is necessary to submit in separate transmissions, the subject of the e-mails should clearly indicate the applicant and project name, and how many e-mails are being sent (e.g., Email 1 of 4, etc.). Files should be attached to the e-mails; links to websites are not acceptable. Alternatively, you may utilize programs such as zip files, Dropbox, Sharefile, provided that they contain individual files. Each attachment should be clearly labeled to indicate the contents (Refer to [2.2.3 Attachments](#) for details). Late filed applications will not be considered.

### 2.4 Protecting Confidential Information in an Application:

A Protective Order governing the 2023 grant application cycle will include specific information that can be submitted confidentially. A copy of the Protective Order will be available on the Commission website once entered. Applicants and Challengers are required to closely follow the terms of the Protective Order. All confidential materials must be clearly marked as such both in the filename and as a stamp or watermark on each page of the document itself. Commission Staff will contact applicants who submit information incorrectly marked as Confidential to provide an opportunity to remove the marking. The Commission does not guarantee that information submitted that is not marked in accordance with the terms of the Protective Order will be protected.

Applicants in the 2023 grant application cycle whose applications are challenged may review challenge materials that would otherwise be considered confidential by completing and filing with the Commission a Non-Disclosure Agreement. A blank Non-Disclosure Agreement will be made available in conjunction with the Protective Order. All participants must comply with the terms of the Protective Order and may not disclose Confidential Materials to persons who have not signed a Non-Disclosure Agreement on behalf of the applicant or challenger receiving the Confidential Materials.

### 2.5 Applications Posted to Commission Website:

Applications received for program year 2023 will be posted to the Commission website on March 1<sup>st</sup>, 2023, for review by interested parties.

## 3 Challenge Process

### 3.1 Notice of Intent to Challenge – Due March 8<sup>th</sup>, 2023

The intent of the “Notice of Intent to Challenge” process is to encourage parties to resolve differences, such as overlapping project areas, prior to the beginning of the Challenge process. Challengers are required to submit a notice of intent to challenge no later than five days following publication of the application(s) to the Commission website. The Notice of Intent to Challenge must be provided both to the NBBP applicant against which the challenge shall be brought and to the Nebraska Public Service Commission by March 8<sup>th</sup>, 2023, in order for a subsequent formal challenge to be considered. The submission of a Notice of Intent to Challenge does not require a party to submit a challenge. Please refer to the template “Notice of Intent to Challenge” on our website.

### 3.2 Detailed Challenges Due April 7<sup>th</sup>, 2023

A challenging provider may, within 60 days after the publication notice on the Commission’s website, submit to the Commission, on forms provided by the Commission, a challenge to an application containing information demonstrating that at the time of submitting the challenge:

- (a) the provider provides or has begun construction to provide a broadband network in the proposed project area with access to the Internet at speeds equal to or greater than 100Mbps/20Mbps, or
- (b) the provider provides broadband service through a broadband network in or proximate to the proposed project area and the provider commits to complete construction of broadband infrastructure and provide a broadband network to the proposed project area with access to Internet at speeds equal to or greater than 100/20 Mbps within 18 months after the date grant awards are made.

Please note, if a challenging party wishes to submit both a type 1 and type 2 challenge against a project, they must submit a separate challenge for each; i.e. if company A challenges project B on both type 1 and type 2 grounds, company A would submit two separate challenge forms rather than a combination of the two.

**Required information for Challenge:** The following must be submitted as part of a challenge:

- **Type 1 Challenger:** If the challenging provider is currently providing service at the minimum 100Mbps/20Mbps speed threshold to all serviceable locations within the challenged portion of the project area, they must include with their challenge the following:
  - A polygon shapefile identifying the portion(s) of an application that the challenger currently serves with 100Mbps/20Mbps speeds along with all supporting files required to open the shapefile;
  - A point shapefile identifying locations served in the project area along with all supporting files required to open the shapefile
  - At least one week (7 days) of speed and latency testing data performed on active subscriber locations within the challenged area must be submitted. Speed test data should follow the Performance Measures Testing standards set by the FCC with regard to the HUBB portal. Testing should be performed daily on an hourly basis between 9:00 am to 9:00 pm. The speed test data must support the availability and access to 100Mbps/20Mbps speed service the active subscriber locations in the challenged portion of the proposed project area. The data provided must include the location where the speed test was run, the date and time of the test(s). The testing must have been completed within six months of its submission to the Commission and must reflect that at least 80% of the speed measurements reflect speeds at 80% or more of the 100/20 Mbps standard. Challengers must demonstrate that the locations chosen to be tested were randomly selected. The number of speed test locations required is based on the number of subscribers in the challenged area, as follows:

<u>Number of Subscribers in Area</u>	<u>Number of Test Locations</u>
50 or fewer	5
51-500	10% of Total Subscribers
Over 500	50

- Evidence demonstrating that the speed thresholds (100Mbps/20Mbps) are being advertised to customers within the challenged portion of the project area.
- Evidence demonstrating that the requisite information is part of their most recent FCC Form 477 filing or attest that it will be part of the earliest subsequent filing.
- A plant map showing existing facilities in relation to the proposed project area, including a description of the type of facilities (Copper, fiber, etc.).

- If utilizing fixed wireless technologies to serve the area, challengers must also include tower location shapefiles for existing and planned towers. They must also provide a shapefile polygon demonstrating coverage for the planned and/or existing networks, including where the upload and download speeds meet or exceed the required speeds (100/20 Mbps), and showing that coverage encompasses the locations included in the challenged area. Propagation shapefiles and a description of the spectrum utilized must also be provided.
- Type 2 Challenger: If the challenging provider is currently constructing broadband infrastructure in the project area, or is proximate to the project area and anticipates completion of broadband infrastructure within the project area within eighteen months, the challenging party must provide at a minimum:
  - A polygon shapefile identifying the portion(s) of an application that the challenger is currently constructing broadband infrastructure and/or the area they intend to build to at 100Mbps/20 Mbps speeds within eighteen months.
  - A description of the project underway, including a timeline for what has been completed to date, and a construction timeline that indicates completion within the 18-month timetable.
  - A description which includes the identification of any 3<sup>rd</sup> party contractors, and evidence of costs incurred and/or work being initiated, including invoices or copies of purchase orders, local permits applied for and received, and locate request tickets.
  - A construction map showing facilities to be deployed in the project area; and
  - A statement agreeing that if the challenge is deemed credible that the provider submitting the challenge agrees to provide documentation within 18 months demonstrating that they have fulfilled the commitment to provide broadband Internet service with access to the Internet at the stated speeds in the proposed project area. The statement should acknowledge understanding that if the challenger does not provide broadband Internet service to the proposed project area within eighteen months, the Commission shall impose a civil penalty for each day such provider fails to provide service after the expiration of such eighteen-month period, and such provider shall not challenge any grant application or make any application for a grant under the Nebraska Broadband Bridge Act for the provider shall not challenge any grant for the following two fiscal years unless the challenger can demonstrate that the failure to provide such service is due to factors beyond the provider's control.
  - If utilizing fixed wireless technologies to serve the area, challengers must also include tower location shapefiles for existing and planned towers. They must also provide a shapefile polygon demonstrating coverage for the planned and/or existing networks, including where the upload and download speeds meet or exceed the required speeds (100/20 Mbps), and showing that coverage encompasses the locations included in the challenged area. Propagation shapefiles and a description of the spectrum utilized must also be provided.

### 3.3 Applicant notification of challenge:

The Commission will notify applicants of challenges filed for the respective project areas within three days of the filing.

### 3.4 Applicant response to challenge:

**Applicant response to challenge:** The applicant has 10 business days following the notification of the challenge to provide any supplemental information and/or response to the challenge. For program year 2023, the due date for the supplemental information and/or response is April 24<sup>th</sup>, 2023.

**Partial challenge response details:** In the event of a partial challenge for a portion of the project area, applicants will be given an opportunity to respond to a challenge submitted and may submit documentation supporting a position that a challenge is not credible to supplement the original application. Such documentation may include speed testing, which should show the location/address where the speed test was completed, as well as the speed tier to which the customer is subscribed.

The Commission will make an initial determination as to the credibility of a challenge will be made after a challenge is submitted. For program year 2023, the Commission will release the determinations as to credibility of partial challenges on Tuesday, May 16, 2023.

- If a partial challenge is deemed not credible, the original application will be considered within the scoring process.
- If a partial challenge is found to be credible, applicants will be allowed an opportunity to resubmit their application with the successfully challenged portions removed. A modified application should contain all attachments and forms originally required in this grant cycle, modified to reflect revised project costs and other necessary changes and documentation as to any other items that would differ once the successfully challenged portion is excluded from the grant award. The modified application should use the same technologies as originally proposed and should not extend beyond the original geographic boundaries of the application. Applicants may increase the amount they wish to contribute towards a proposed match percentage but cannot increase the amount of grant support being requested. For program year 2023, the due date for the modified application is June 2, 2023. The Commission will consider the modified application in which the credible challenged portion was removed within the scoring process. If the applicant does not submit a modified application prior to the deadline for modification, the application will be considered withdrawn and not considered for funding.

### 3.5 Publishing of Challenge Results:

The Commission will evaluate all available information and make a determination as to the credibility of the remaining challenges received. The remaining final challenge results will be released on June 20, 2023 or June 27, 2023, in conjunction with the notification of grant awards. The results will be posted on the Commission website.

### 3.6 Post Challenge Requirements:

Type 1 challengers: Successful type 1 challengers must submit an attestation that they will continue to provide 100/20 Mbps service in the entire challenged area. These challengers will also be required to notify Commission should the challenger's service offerings in the area change.

Type 2 challengers: Successful type 2 challengers must submit to the Commission:

- Quarterly progress reports regarding the construction of service in the project area must be submitted to the Commission by the fifteenth day of the first month following each quarter. An NBBP Challenge Progress Report form can be found on the NBBP website.
- Documentation 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. This must be submitted to the Commission on or before the due date stated in the C-5368 order issuing grant awards and results of challenges.

PENALTY ASSESSMENT: If a successful challenger does not successfully provide broadband Internet service to the entire project area within eighteen months, the Commission shall impose a civil penalty for each day such provider fails to provide service after the expiration of such eighteen-month period, and such provider shall not challenge any grant application or make any application for a grant under the Nebraska Broadband Bridge Act for the following two fiscal years unless they can demonstrate that the failure to provide such service is due to factors beyond the provider's control.

## 4 Selection Criteria

The Act specifies certain priorities that the Commission must consider when selecting grant recipients. The Commission intends to evaluate applications to ensure statutory requirements are met and to award grants to the projects that



provide the highest return in public benefit for the public costs incurred. The NBBP applications will be reviewed by a team composed of Commission staff who will use the following criteria to prioritize, score, and award grants:

#### 4.1 Grant Prioritization Tiers

Grant applications will first be sorted into prioritization tiers. Those tiers are defined as follows:

**Priority Tier 1** - An unserved area is an area of Nebraska in which locations lack access to broadband Internet service at speeds of at least twenty-five megabits per second for downloading and three megabits per second for uploading (25Mbps/3Mbps), and has not received public assistance for development of a broadband network;

**Priority Tier 2** - An unserved area is an area of Nebraska in which locations lack access to broadband Internet service at speeds of at least twenty-five megabits per second for downloading and three megabits per second for uploading (25Mbps/3Mbps), and has received federal support for development of a broadband network but construction will not be completed within twenty-four months after the grant application deadline if its determined that NBBP grant funding will accelerate deployment of the broadband network; and

**Priority Tier 3** - An underserved area is an area of Nebraska in which locations lack access to broadband Internet service at speeds of at least one-hundred megabits per second for downloading and twenty megabits per second for uploading (100Mbps/20Mbps).

NOTE: Projects that include a mix of both unserved and underserved project areas will be considered in priority tier 3.

#### 4.2 Application Scoring/Weighing Criteria

Once applications are sorted into the three prioritization tiers, applications will be further reviewed and scored. Applications are eligible for a maximum 160 scoring points. The following criteria and associated point values will be used to score and award grants.

1. **Financial Capability Demonstrated** – Yes or No, and up to 10 points:
  - a. If the answer to either of the following questions is “Yes,” the application passes to the next scoring criteria. If the answer to both of the following questions is “No,” the application will not be considered.
    - i. Is applicant/carrier partner a certificated carrier or ETC that has demonstrated overall financial viability based on financial statements recently submitted to the Commission?
    - ii. Is the applicant/carrier partner a non-ETC that has submitted audited financial statements that demonstrate overall financial viability?
  - b. **Financial Capability Points:** Has the applicant included a business plan that provides details for the long-term maintenance of the network built through the grant as required? Long-term viability of the project is a priority, and up to 10 scoring points will be available if a business plan is included that provides the required details about the project, a description of how the proposed network will be maintained over the expected useful life of the facilities. Applicants must also provide cash flow projections for a period of five years following completion of the project and a description of revenue and take rate assumption calculation must be included.
2. **Legal Capability Demonstrated** – Yes or No, and up to 10 points:

Has the applicant included contact information for their legal representation? Applicants are required to include contact information for their legal representation, which must be an attorney licensed to practice law and in good standing in Nebraska, or, in the alternative, an attorney admitted to practice in Nebraska pro hac vice for purposes of Commission Docket No. C-5368. Omission of this information will disqualify the applicant from grant consideration. If the necessary legal contact information is included, the application passes to the next scoring criteria. If not, the application will not be considered.

- a. **Legal Capability Points:** 10 points will be awarded as a default for applicants that provide contact information reflecting appropriate legal representation. Point deductions will be applied as follows (remove 2 points for each as applicable):
  - i. Applicant had late-filed annual reports within the five (5) years preceding the application filing date,
  - ii. Applicant has late-filed NUSF remittances within the five (5) years preceding the application filing date,
    1. One-time waivers will be excluded from consideration when reviewing legal capability
  - iii. Applicant fails to identify legal challenges that must be addressed prior to or during the project in question, such as local zoning, right of way, and permitting processes.

3. **Technical Capability** – Yes or No, and up to 15 points:

Applicants are required to include information with their application that demonstrates their technical ability to deploy and operate broadband Internet service at speeds of at least 100/100 Mbps. If this information is included, the application can be scored as follows:

- a. FCC Form 477: Does the most recently available FCC Form 477 data show that the applicant/carrier partner offers 100Mbps/100Mbps service anywhere else in Nebraska. If yes, 10 points will be awarded. If no, 0 points will be awarded.
- b. Website Offerings: Does the applicant/carrier partner's public-facing website clearly state that they offer services that are at least 100Mbps/100Mbps? If yes, 5 points will be awarded. If no, 0 points will be awarded.
- c. Deductions to technical capability may be made if the project receives negative support from the community it proposes to serve. Deductions will be made on a case by case basis up to 10 points deducted from this category (-10 points).

4. **Digital Inclusion Plan** – Yes/No, and up to 5 points available:

Digital Inclusion Plans (DIP) are required for all applications for Capital Projects Funds. Applications submitted without a DIP will be disqualified from further consideration. Applications meeting the following criteria will receive 5 points in this category:

- a. Does the digital inclusion plan offer a discounted service plan to low-income subscribers that is below their standard rate and eligible to be discounted further with Lifeline or Affordable Connectivity Program (ACP) discounts?
- b. Is the low-income plan below \$50 per month prior to discounts being applied, or cost 25% less on a monthly basis than the carrier's next lowest price plan, whichever is lower.

5. **Rate Comparability** – Up to 10 points will be awarded as follows:

- a. Are the rates included in the application comparable to or lower than what they offer in other areas they serve in Nebraska for 100/100 Mbps or the next highest tier if applicant does not offer 100/100 Mbps? If yes, 5 points will be awarded.
- b. Are the rates included in the application for 100Mbps/100Mbps service at or below \$65.00 per month? If yes, 5 points will be awarded.
- c. Applications will receive score deductions for rate comparability as follows: Plans requiring long-term contracts (-2), plans throttling speeds after usage limits are reached (-2), plans with data caps (-2), plans with Early Termination Fees (-2), metered service or pay-as-you-go models (-2).

6. **Speed Additive** – Up to 10 points will be awarded as follows:

Does the application detail additional service offerings that will be available to customers that exceed the 100 Mbps/100Mbps minimum? Additional points will be awarded if the applicant/carrier includes evidence that they plan to offer speeds in excess of the 100Mbps/100Mbps minimum. These additional speed tiers must be available to existing customers at the time of application, and offerings must meet both the upload and download speed minimums to be awarded points. Points will be awarded as follows:

Speeds (Mbps)	Points
100/100	0 Points
500/500	5 Points
1,000/1,000	10 points

7. **Match Source** – Up to 10 points will be awarded as follows:

Sources of match that are outside of existing federal or state broadband programs will be given additional points, as outlined here:

- a. NUSF High Cost – 0 points
  - i. NUSF ongoing support is not an eligible match source.
  - ii. NUSF-99 BDS funds cannot be used as a match source for areas receiving support for fiber builds supported through use of NUSF-99 BDS.
  - iii. NUSF-108 BDS funds cannot be used as a match source for projects that have already been noticed and/or are underway through use of NUSF-108 BDS.
  - iv. NUSF-108 BDS funds can only be used as a match source for new NUSF project areas if the applicant attests that funds available through NUSF-108 BDS are not enough to build out the entire area.
  - v. When NUSF is used as a match source, the combined match sources (NUSF BDS, NBBP grant support, and other match sources) should not exceed the sum of NUSF BDS-MARA for the census blocks in the project area.
  - vi. If using NUSF as a match source, a list of census blocks for the NUSF project area must be included with the application in addition to the polygon shapefile and point shapefile required by the NBBP.
  - vii. Subsequent reimbursement requests for NUSF and/or NBBP support will be required to provide an explanation regarding the cost allocation methodology. Reimbursement requests for NUSF and NBBP will be reviewed for reasonable cost allocation. If support is received through NBBP, the census blocks in which NUSF BDS support was used as a match would be removed from modeled support in subsequent program years.
- b. Federal Broadband Funds match – 5 points
  - i. Certain federal broadband funds may be allowed as a match source for NBBP grants. Exceptions to the allowable match source for this category include:
    1. Areas that were awarded bids in the Rural Digital Opportunity Fund (RDOF) may be considered a valid match source if the applicant can demonstrate that the RDOF awardee will not provide service within 2 years and/or if the application was not challenged.
    2. Areas supported through the USDA ReConnect program would not be considered a match.
    3. Alternative Cost Model (A-CAM):
      - a. Census blocks with locations fully funded through A-CAM would not be considered a match since the funding model is based on a fiber to the home architecture.
      - b. Support and match calculations for A-CAM blocks with capped locations should be done in accordance with the calculation outlined below, where the amount of A-CAM support received is accounted for over the 10 years of the A-CAM program. As an example, for a block with 1 location, and a modeled total investment cost of \$20,000, with a monthly modeled CapEx per location of \$217 and an OpEx of \$161, the calculation of support received for buildout through A-CAM is:
        - i.  $\$217/(\$217+\$161) = 57.4\%$

- ii. Monthly A-CAM CapEx support received per location =  $\$200 * .574 * 1$  location =  $\$114.80$
  - iii. Note – applicants should use the actual per location A-CAM support received if less than  $\$200$
  - iv. Payments received over the life of A-CAM =  $\$114.80 * 12$  (months/year) \* 10 (program years) =  $\$13,776$
  - v.  $\$13,776$  can be considered the federal portion of the match of the total cost of the project
- c. Applicant and/or carrier outside funds – 10 points
- i. A demonstrated financial commitment from the applicant and/or carrier partner are permissible for consideration of points under this category.
  - ii. Tangible in-kind contributions, such as equipment and inventory on hand can be allowed as a match if justification is provided such as receipts or invoices showing the value of the asset at the time of acquisition. In-kind direct labor can be considered as a valid match source if the applicant can demonstrate that the stated value of the in-kind direct labor is fair and reasonable. An example of acceptable proof is prior invoices for similar non-grant projects or other documentation. If including in-kind direct labor as a match source, a further breakdown by category should be provided as confirmation that disallowable costs have been excluded. Other in-kind contributions including but not limited to right of way access, savings as a result of partnerships, are not considered an acceptable match source.
  - iii. A verified match commitment from a community partner would be scored as part of an applicant and/or carrier match. However, a Contribution Certification Form **must** be attached to the application for the community partner match amount to be considered. Non-financial contributions by the public partner, such as access to rights-of-way, expedited permits, or pole attachments can be considered towards this match percentage, but must include documentation as to the value of the asset.
  - iv. NOTE: Existing deployments including but not limited to existing infrastructure or middle-mile fiber paths already in-place are not considered part of the total project costs nor an allowable match source for this program.
- d. NOTE: If the application involves a combination of match sources, the project would be considered under the lower point category.
8. **Match Percentage** – Up to 60 points will be awarded as follows:
- a. Any match up to 60% will be awarded points on 1 point/percentage point basis.
9. **Location Density** – Up to 20 points will be awarded for applications serving low-density areas of the state, using the following criteria:

Density	Points
Less than or equal to 10 locations/Sq. Mile	20
More than 10 but less than 20 locations/Sq. Mile	12
More than 20 but less than or equal to 42 locations/Sq. Mile	5

10. **ETC Certification** – Up to 5 points will be awarded as follows:
- a. If the applicant is currently certified as a Nebraska Eligible Telecommunication Carrier (NETC) and in good standing at the time of application, 5 points will be awarded.
  - b. If the applicant has filed an application for NETC certification with the Commission prior to or at the time of application, 3 points will be awarded.

- c. If the applicant attests that they will file for NETC Certification within 30 days of the application deadline, 1 point will be awarded.
- d. If the applicant does not fall under an NETC certification category as listed above, 0 points will be awarded.

**11. Public Private Partnership (PPP)** – Up to 5 points will be awarded as follows:

Does the applicant identify an eligible public/private partnership as part of the application? Eligibility is determined based on a documented contribution of a public partner equaling at least 50% of the matching funds offered in an application. Documentation of the contribution commitment must be submitted with the application. The non-public partner in the PPP must be an ETC in the portions of Nebraska to be served by the project.

**Tiebreaker** - If applications receive the same score requiring a tiebreaker, the application demonstrating the lower cost to build per location, based upon NBBP grant dollars requested, would be given preference.

### 4.3 Grant Award Notification

For program year 2023, grant awards will be released June 20, 2023 or June 27, 2023. ACH documentation requirement: Successful applicants will need to submit required documentation for receipt of ACH payments from the State of Nebraska immediately upon the award of a grant in order to ensure that the first payment is not delayed. Additional instructions will be provided when grant awards are released.

## 5 Distribution of Support Details

The NBBP grant funds awarded will be distributed to individual grant recipients as follows:

- 1/4 of the funds awarded will be distributed upon award of the grant,
- 1/4 of the funds awarded will be distributed in the ninth month following the grant award,
- 1/2 of the funds awarded will be distributed upon completion of the project, successful speed testing results, and receipt of invoice submittals to justify allowable expenses.

Upon project completion, grant recipients must submit a certification that the broadband network described in the application has been completed. The NBBP Certification of Project Completion form can be accessed on the NBBP website at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp>.

Within 90 days of project completion, grant recipients must submit a reimbursement request to the Commission for consideration of the final grant payment. The NBBP Reimbursement Request form can be accessed on the NBBP website at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp>. Invoices and supporting documentation justifying allowable expenses must be submitted along with the NBBP Reimbursement Request form for review and consideration. A 90-day extension may be considered if the request is submitted prior to the close of the first 90-day window and good cause is shown.

## 6 Other Requirements

In accordance with Nebraska Revised Statute § 86-1308:

As conditions for accepting a grant under the program, the applicant and its successors and affiliates shall agree to:

- (i) Offer broadband Internet service in the project area for fifteen years after receipt of grant funding; and
- (ii) Commit to maintaining minimum speed capability of one hundred megabits per second for downloading and one hundred megabits per second for uploading in all locations for which the applicant will receive support for

the fifteen years after receipt of grant funding. Any applicant that declines to accept these conditions shall not be eligible to receive a grant.

Failure to comply with the agreed-upon conditions may result in the Commission imposing civil penalties pursuant to Neb. Rev. Stat. § 75-156 on non-compliant grant recipients.

### 6.1 Debarment/unqualified contractors

Grant applicant must not be presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency. The grant applicant must use licensed and qualified contractors to fulfill grant requirements.

### 6.2 Federal System for Award Management

Consistent with 2 C.F.R. Part 25, all subrecipients of a federal grant award must obtain a Unique Entity Identifier (UEI) in the federal System for Award Management (SAM.gov). Subrecipients should obtain the UEI prior to submitting an application and provide a valid unique entity identifier in its application.

### 6.3 Reporting, Compliance and Record Retention:

To achieve compliance with federal grant requirements, recipients of CPF funds will be required to execute specific agreements prior to the receipt of any federal funding. These agreements contain provisions requiring adherence to federal requirements including but not limited to reporting requirements, drug-free workplace policies, records retention, and Civil Rights compliance. The required forms: "Sub-award Attestation and Agreement" and "Civil Rights Compliance Agreement" will be made available on our website at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp> for applicant review and consideration.

Grant recipients are required to submit progress reports to the Commission on a regular basis, including construction progress and reporting on financial metrics. Forms will be made available on our website for the required quarterly reports, annual performance reports, and final close out report. Refer to the CPF-1 order and Sub-award Attestation and Agreement for additional details. Grant recipients must comply with all federal grant requirements, and any Treasury or additional Commission reporting requirements necessary to comply with ARPA.

### 6.4 Penalties

Applicants requesting to return CPF grant funds to the Commission after an award is made will be disqualified from receiving future grant awards from the Commission unless an exception is granted by the Commission. In cases where this occurs, applicants will be required to provide an explanation to the Commission and the Commission must approve any future eligibility. This determination will be made on a case-by-case basis.

## 7 Post-Deployment Requirements

### 7.1 Speed and Latency Testing

Following deployment of the completed network as outlined in the application, grant recipients will be required to submit speed test information to the Commission. In the 2023 program year, speed test data submitted to the Commission are required to follow the standards for the verification of broadband service provider coverage and speed data as set forth in Commission Order NUSF-133, which generally models the Performance Measures Testing standards set by the FCC. This requirement will apply both during the application and challenge process, and for purposes of post-deployment speed testing. The NBBP Speed Test Certification form should be used when reporting speed test information to the Commission. The form can be accessed on the NBBP website and includes additional detail pertaining to this requirement.

Testing must be performed on an hourly basis between the hours of 6:00 p.m. and 12:00 a.m. local time each day. The speed tests should reflect actual download and upload speeds that are experienced by users, using a random sample of locations of subscribing consumers as selected by the Commission. A minimum of one test per hour should be

conducted during the test window, with one week (7 days) of testing for each project. To test latency, a carrier must conduct one latency test per minute at each selected test location for the duration of the testing period. The number of locations required to be tested will depend upon the number of locations within the project area, as outlined below:

Number of locations in application	Number of test locations
50 or fewer	5
51-500	10% of the total number of locations
Over 500	50

To the extent possible, grant recipients serving more than 500 locations in a project area should attempt to test at least 10% of served locations. Should an applicant’s testing fail to reflect that the entire project area is capable of being served at the required speeds as approved in the grant application, the applicant must submit along with speed test results a written proposal to remedy the deficiencies. This proposal must include the date upon which speed testing will be conducted a second time, which must be no later than sixty (60) days following the initial speed testing.

## 8 Period of Performance

Please note that for all CPF projects, ALL FUNDS MUST BE EXPENDED BY December 31, 2026 per guidance from the U.S. Treasury. No extensions will be allowed past that date. As such, all grant projects approved for CPF must be fully complete and all grant funds expended by the Commission prior to December 31, 2026. Furthermore, grant recipients must submit certification of completion, performance testing reflecting adequate speeds and latency, and requests for reimbursement along with all supporting documentation to the Commission within a reasonable period of time to allow for sufficient processing time for payment prior to the December 31, 2026 deadline. Any grant funds not disbursed by December 31, 2026 must be returned to Treasury.

## 9 Post-Award Repayment

Neb. Rev. Stat. § 86-1304 requires a grant recipient to repay the grant in certain situations. First, if a grant recipient fails to complete the project by the agreed upon or extended deadline (if requested and granted), the recipient shall repay the grant as provided in Neb. Rev. Stat. § 86-1304 (2)(b). If no extension is permitted, 10% of the grant shall be repaid for each month that the project is not complete after the eighteen-month period, up to 100% of the grant. If an extension is permitted, 20% of the grant shall be repaid for each month that the project is not complete after the 24-month period up to 100% of the grant. Additionally, pursuant to Neb. Rev. Stat. § 86-1304(3)(b), if the broadband network does not provider services at the speeds required, the grant recipient shall be allowed a reasonable time to address the speed deficiencies and conduct a second set of speed tests. If the network does not provide service at the speeds required pursuant to the second set of speed tests, the grant recipient shall repay the grant.

In instances where a grant recipient is required to repay grant award funds as required by the Act, the Commission will issue a Notice and Demand for Payment to the grant recipient. The grant recipient would then be provided an opportunity to respond to the Notice, and, if contested, would be afforded a hearing on the matter subject to the Commission’s Rules of Procedure for contested case proceedings.

## 10 Contact Information

For more information including the application and template forms, consult our website at <https://psc.nebraska.gov/telecommunications/nebraska-broadband-bridge-program-nbbp>. The Commission staff can be contacted via e-mail at [psc.broadband@nebraska.gov](mailto:psc.broadband@nebraska.gov).