February 26, 2025

VIA ELECTRONIC MAIL

The Honorable Shelley Moore Capito
Chairman, Senate Committee on
Environment and Public Works

The Honorable Sheldon Whitehouse
Ranking Member, Senate Committee on
Environment and Public Works

Re: Hearing on *Infrastructure Investment and Jobs Act Implementation and Case Studies* Before the Senate Committee on Environment and Public Works

Chairman Capito, Ranking Member Whitehouse, and Members of the Committee –

On behalf of the National Association of Convenience Stores (NACS), thank you for the opportunity to share our industry's perspective as you assess the implementation of the Infrastructure Investment and Jobs Act (IIJA). To that end, we offer the following observations related to specific IIJA programs, which are illustrative of our members' experiences as transportation stakeholders:

- **The National Electric Vehicle Infrastructure (NEVI) program** was established under the IIJA and has provided important lessons learned at both the state and federal levels.
    - Federal funding appropriated for NEVI grants has recently been called into question, causing confusion in the public and private sectors about which projects—if any—can move forward. Many of our members expended significant time and resources in reliance on the established NEVI frameworks, which in some cases require them to meet several years of post-construction milestones before their eligible expenses are fully reimbursed. Regardless of the future of NEVI overall, these businesses acted in good faith under the law as it then existed, and Congress should at least make provisions to keep them whole.
    - Certain states, Pennsylvania and Ohio among them, stand out for their efficient and pro-competitive NEVI grant administration; other states, like Texas and Colorado, offer examples of what not to do.[1] If NEVI is renewed or replaced in some fashion, Congress should use these best and worst practices to inform new federal baseline requirements for the program that will ensure taxpayer funds are well spent.
    - The longstanding ban on commercialized interstate rest areas was not altered by the IIJA itself, but resulting NEVI guidance from the Federal Highway Administration (FHWA) underscores the importance of protecting the statutory ban. Specifically,

[1] See the enclosed *NEVI Program Implementation: Best Practices Guide*, coauthored by NACS and its industry partners, for detailed examples from these and other states.

FHWA has seemingly suggested that a NEVI-funded electric vehicle charging station could be operated at rest areas, which conflicts with the statutory ban on commercial activity.[2] Our members rely on that ban to make considerable off-highway investments in the communities they serve, including investments in electric vehicle chargers through NEVI and otherwise. To protect these off-highway investments and the local economic benefits they bring, the current commercialization ban should be maintained without exception.

- **The Charging and Fueling Infrastructure (CFI) grant program** was created by the IIJA with the intention of leveraging public/private partnerships to deploy new infrastructure for alternative sources of transportation energy. In practice, we are concerned that CFI-funded projects may instead be putting the public sector into active competition with existing private investments.[3] Congress should ensure programs like CFI do not incentivize state and local governments to compete with businesses in this manner going forward.

- **The Safe Driver Apprenticeship Pilot (SDAP) program** was authorized by the IIJA to help alleviate the commercial driver shortage, but it required subsequent amendment after a burdensome agency implementation. While the SDAP concept enjoyed industry support, FHWA went on to impose substantial extra-statutory requirements that discouraged participation until Congress stepped in to overrule the agency.[4] When establishing pilot programs like SDAP, which seek to leverage voluntary private action in response to a compelling public need, Congress should consider reasonable statutory guardrails to prevent similar instances of agency overreach.

Thank you, again, for your focus on the lessons learned from IIJA program implementations. NACS stands ready to serve as a resource as this Committee explores further legislative actions to strengthen the nation's transportation infrastructure.

Sincerely,

Matthew T. Durand
Deputy General Counsel

Encl. (1)

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[2] See the FHWA's *National Electric Vehicle Infrastructure (NEVI) Formula Program Q&A*, Question 2.1, suggesting that the analysis turns on the cost to the consumer. NACS would respectfully suggest that operating an electric vehicle charging station is not a permitted activity under the commercialization ban, regardless of whether a fee is collected by the station operator.

[3] See the FWHA's *Charging and Fueling Infrastructure Program Grant Recipients* for the full list of awards, including projects that would seem to compete with traditionally private-sector products and services. For example, in Round 1A, a municipal government was awarded $19.6 million to develop its own public electric vehicle charging facility, including various amenities akin to those of a truck stop or service station.

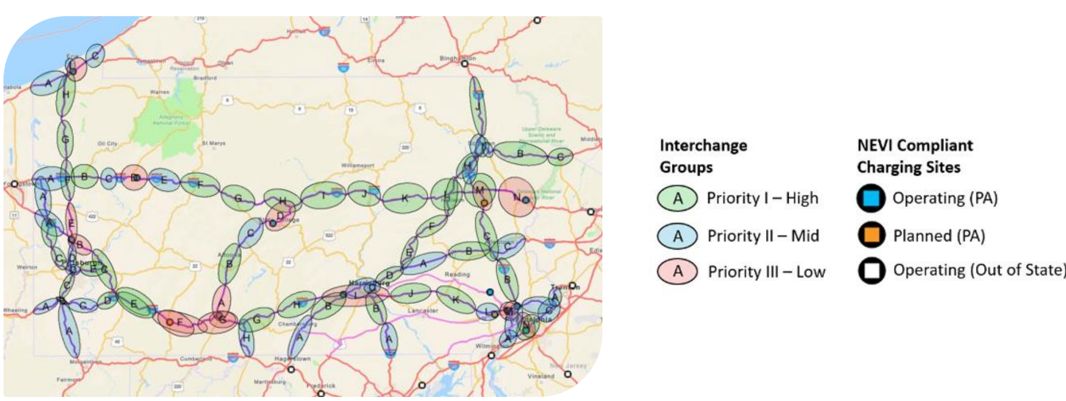
[4] See the Congressional Research Service's *Safe Driver Apprenticeship Pilot Program: In Brief*, at pages 2-3 (describing initial and amended "Department of Transportation Program Requirements") and page 7 (describing "Section 422 of P.L. 118-42, changing some of DOT's requirements for program participation").

NEVI PROGRAM IMPLEMENTATION: BEST PRACTICES GUIDE

The National Electric Vehicle Infrastructure (NEVI) Program aims to jumpstart a charging market that provides electric vehicle (EV) drivers with a positive, reliable experience across the country. When they prioritize the consumer experience, state departments of transportation can play a vital role in enabling the buildout of a robust, reliable charging network. Divergent approaches among the various states, however, can contribute to a more balkanized EV charging station locations and reliability vary greatly from state to state.

Best practices for state departments of transportation to ensure a competitive, sustainable charging network:

- Ensure that site hosts are financially motivated to offer positive consumer experiences. This can often be achieved via more granular assessments of proposed charging stations' surrounding amenities.
    - The standardization of price ($/kWh), speed (≥ 150 kWh), and reliability of service (97% uptime) is important for a uniform nationwide network. So too is the collocation of chargers with amenities that drivers want while refueling. From the consumer perspective, 24/7 food and beverage offerings, restroom access, and on-site staff are essential elements of the on-the-go refueling experience.
    - Ohio and Pennsylvania both successfully designed their NEVI implementation plans to prioritize the consumer experience and maximize competition. In Ohio, **80%** of the 2023 NEVI grant funds were awarded to sites collocated with 24/7 amenities. Similarly, over **90%** of PennDOT's NEVI-awarded EV charging stations are collocated with 24/7 amenities.
- Providing adequate response times for grant solicitations (60-90 days is appropriate).
- Establishing clear grant application expectations and engaging in open communication with potential applications in advance (e.g. hosting webinars before releasing a grant solicitation).
- Offering one-on-one meetings before, and throughout, the grant solicitation process.
- Providing easy access to maps of locations being evaluated for potential awards.
    - PennDOT executed this well with its 2023 NEVI map:



Measures that may limit a competitive, sustainable charging network:

- Conducting only high-level assessments of surrounding amenities.
    - In Colorado, applicants were asked to discuss "nearby" amenities. No further analysis was requested or conducted. As a result, **50%** of Colorado's awards were ***not*** collocated with 24/7 amenities, despite being sited in close proximity to 24/7 locations.
    - The only amenity that TXDOT requested information on was the availability of restrooms; nothing on food, drinks, or security. Restrooms only count for 5% of the total points given to applicants, and TXDOT does not even inquire as to whether restrooms will be open 24/7.

12. Restrooms available to the public.	Full points for yes or zero points for no.	5

- Rewarding applications without committed site host agreements with site owners.
- Establishing a cap on the rate of return.
    - Both Minnesota and Iowa have instituted a 15% cap on returns on investment (with the rest remitted to the respective state's DOT). These guardrails make sense for traditional DOT infrastructure projects. They do not make sense for programs designed to incentivize private investment to flow to a nascent market.
    - Caps on the rate of return and/or revenue sharing requirements will dissuade private businesses from applying for NEVI grants in those states. A competitive market environment does not accommodate uncompetitive pricing, as such pricing would invite new market entrants to offer a more attractive proposition to consumers.
    - When charging becomes more profitable as utilization rates increase, NEVI awardees will be at a competitive disadvantage relative to privately funded chargers. This will discourage fuel retailers from participating in the NEVI program.
- Restricting evaluation areas.
    - Texas, for example, is overly prescriptive of where charging stations may be sited under NEVI. This results in potential applicants located within several miles of TxDOT-identified locations being excluded from the application process altogether for reasons unrelated to the provision of positive charging experiences.
        - Texas DOT's NEVI strategy appears designed to creatively maximize the amount of dollars the state receives under the program, rather than encouraging its existing refueling network to build out a competitive, consumer-friendly charging network. Texas is home to a growing EV fleet and more truckstops than any other state, yet TXDOT is precluding most of those truckstops from even *applying* for NEVI grants because they are not located at TXDOT-identified exits.
    - California, Oregon, and Washington use a 'grouping' approach. Instead of rewarding the best individual sites, these states will award a whole highway segment to one bidder. This approach makes it virtually impossible for consumer-oriented site hosts to participate; grants will likely be rewarded to charging station networks and/or public utilities that are less likely to create a positive consumer charging experience.
- Prohibiting engagement with applicants during the grant solicitation process.
    - States should enable applicants to submit questions throughout the solicitation period.