February 4, 2022

Alan Davidson
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration
1401 Constitution Ave NW
Washington, DC 20230

Re: Request for Comment on Infrastructure Investment and Jobs Act Implementation, Docket No. 220105-0002

Dear Assistant Secretary Davidson:

On behalf of Common Cause, we write today in response to the National Telecommunications and Information Administration's ("NTIA") Request for Comment ("RFC").[1] Through the RFC, NTIA has requested input on all matters relevant to implementation of the Infrastructure Investment and Jobs Act ("IIJA"). We submit these comments on behalf of our 1.5 million members who believe that there is no democracy without an open, accessible, and affordable Internet for everyone.

Broadband has fundamentally changed how people engage with their communities. It is used for work, education, civic-engagement, healthcare, and much more. Despite this importance to modern society, at least 14.5 million Americans still lack connectivity because availability and affordability continue to serve as barriers to adoption.[2] In fact, just over 30 percent of households with an average income of less than $30,000 have access to broadband,[3] demonstrating how significant of a barrier affordability is to adoption. While 80 percent of white adults have broadband access, only 71 percent of Black adults and 65 percent of adults in the Latino community are connected at home.[4] Further, we must also ensure that all households are digitally ready to participate in our democracy, economy and society. Access to connected devices and adequate digital literacy training are important tools to ensure communities who have historically been left behind can effectively use technology. These contours of the digital divide make it

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[1] *Infrastructure Investment and Jobs Act Implementation*, Request For Comment, 87 Fed. Reg. 1122 (Jan. 10, 2022)("IIJA").

[2] Federal Communications Commission, "Fourteenth Broadband Deployment Report" (2021), https://www.fcc.gov/reports-research/reports/broadband-progress-reports/fourteenth-broadband-deployment-report.

[3] Emily A. Vogels, "Digital Divide Persists Even as Americans With Lower Incomes Make Gains in Tech Adoption," Pew Research Center (June 22, 2021), https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/.

[4] Sara Atske and Andrew Perrin, "Home Broadband Adoption, Computer Ownership Vary by Race, Ethnicity in the U.S.," Pew Research Center (July 16, 2021), https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/.

critical to the success of IIJA's broadband programs that input comes from a diverse group of stakeholders.

The funding for broadband deployment in the IIJA represents a tremendous step in closing the digital divide. In setting up the Broadband Equity, Access, and Deployment program (BEAD) and implementing the Digital Equity Act, NTIA must take a number of steps to ensure funds are deployed equitably and efficiently. First, NTIA needs to prioritize funding for future-proof networks, capable of meeting households' evolving connectivity needs. Second, they must foster competition by including non-incumbent providers in funding opportunities. Third, BEAD-funded networks must close gaps in connectivity, particularly for communities of color and other marginalized groups that have historically been on the wrong side of the digital divide. Fourth, NTIA should align the BEAD program's low-cost option with the Federal Communications Commission's ("FCC" or "Commission") Affordable Connectivity Program ("ACP") while setting a baseline standard for service. Finally, NTIA has to include robust stakeholder engagement requirements within the State Digital Equity Planning Grants. These requirements will serve to ensure that the needs of marginalized communities are heard and addressed.

I. THE BEAD PROGRAM SHOULD PRIORITIZE FUNDING FOR FUTURE-PROOF NETWORKS TO ENSURE CONNECTIVITY WILL BE CAPABLE OF MEETING HOUSEHOLDS' EVOLVING DIGITAL NEEDS

The COVID-19 pandemic has demonstrated that the need for robust, reliable, and affordable broadband has never been greater.[5] Households rely on high-speed connectivity for a variety of needs including telework, virtual learning, telemedicine, and other high-capacity uses. Therefore, networks deployed with BEAD funding must be future-proof, capable of not only meeting the connectivity needs of consumers now, but also their needs ten, twenty, thirty years down the road. NTIA can ensure these networks are future-proof by requiring networks to be scalable to meet speeds of 1gbps symmetrical and encouraging projects that use fiber networks. Further, NTIA should set high standards for broadband quality and collect data to monitor network quality of service standards.

A. Networks Should Be Deployed To Meet Minimum Speeds of 100 Symmetrical and Scalable To Meet Speeds of 1 Gbps Symmetrical

While IIJA requires networks to have minimum speeds of 100mbps/20mbps, the networks funded through BEAD should offer 100mpbs symmetrical speeds and be scalable to meet speeds of 1 gbps symmetrical at a minimum.[6] This is a forward-looking standard that would provide

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[5] Cecilia Kang, Davey Alba, and Adam Satariano, "Surging Traffic Is Slowing Down Our Internet," New York Times (Mar. 26, 2020), https://www.nytimes.com/2020/03/26/business/coronavirus-internet-traffic-speed.html.
[6] IIJA § 60102(h)(4)(A)(i)(I)

NTIA with flexibility while ensuring networks are able to meet the steadily growing demand for broadband without requiring more costly upgrades.

Most networks today are already capable of meeting IIJA's minimum standards, and many more are able to provide speeds of 1gbps symmetrical with a couple providers even offering speeds that are faster than 1gbps.[7] For example, AT&T now offers 2 gigabit and 5 gigabit upload and download speeds to customers on their fiber network,[8] and Comcast is offering symmetrical speeds of 3 gbps.[9]

Today, consumers use the internet for all facets of daily life and it is common for multiple people in a household to be engaged in various high-bandwidth activities at once. Both download and upload speeds are more important than ever. A family of four might have one child using the internet to go to school, another child streaming video, one parent in a teleconference for work and the other seeing a doctor via a telehealth service. All of these services, and more are going to require an increasing amount of data. As more consumers use these services broadband usage per household will continue to increase.[10] No longer is broadband usage limited to our computers and video game systems; it is projected that by 2027 there will be more than 41 billion internet connected devices consumers use for everything from home security to automating their appliances.[11] AT&T forecasts that by 2025 there will be an average of 35 connected devices per home.[12] These connected devices will amount to an even greater increase in broadband consumption and NTIA must set speed standards capable of adapting to consumers' ever evolving needs.

B. Fiber Networks Have The Technical Capacity To Meet Evolving Connectivity Needs

Of all the broadband technologies available today, open access fiber is best equipped to provide the quality of service and speeds consumers need well into the future. Fiber has the ability to hold terabits of spectrum capacity without the need for constant upgrades, something that is not

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[7] Measuring Fixed Broadband, Federal Communications Commission (Aug. 3, 2020), https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixedbroadband-ninth-report.

[8] Michael Kan, "AT&T Starts Offering 2-Gigabit and 5-Gigabit Home Internet Amid Cost Hike," PCMag (Jan. 24, 2022), https://www.pcmag.com/news/att-starts-offering-2-gigabit-and-5-gigabit-home-internet-amid-cost-hike.

[9] Trey Paul, "Comcast Now Offers Triple-Gig Internet Speeds Nationwide: How To Sign Up," CNET (Nov. 25, 2021), https://www.cnet.com/home/comcast-now-offering-triple-gig-internet-speeds-nationwide/.

[10] Sara Fischer and Margaret Harding McGill, Broadband Usage Will Keeping Growing Post-Pandemic, Axios (May 4, 2021), https://www.axios.com/broadband-usage-post-pandemic-increase-32d0858b-9f54-4065-aa9b-b1716dcf6c2f.html.

[11] Peter Newman, "THE INTERNET OF THINGS 2020: Here's What Over 400 IoT DecisionMakers Say About the Future of Enterprise Connectivity and How IoT Companies Can Use it to Grow Revenue," Business Insider (Mar. 6, 2020), https://www.businessinsider.com/internet-ofthings-report?IR=T.

[12] Tom Wheeler, "Striking a Deal to Strengthen Broadband Access for All," Brookings (May 14, 2021), https://www.brookings.edu/research/striking-a-deal-to-strengthen-broadband-access-for-all/.

true for copper, cable, and long-range wireless technologies.[13] One study found that fiber is the cheapest technology on the market to install per gigabit and requires less frequent upgrades to keep increasing capacity than is required by cable and fixed wireless.[14] If NTIA is to make the most out of the IIJA funding, it needs to encourage investment in the technology best suited for efficient usage of federal funds.

C. BEAD-Funded Networks Should Have High Quality of Service Standards

Quality of service is a metric that ensures households have access to reliable broadband. These metrics include actual speed data, latency, data caps, denials of service, and network vulnerability and resiliency. Despite the importance of broadband quality, too many households today experience network outages, slow speeds, and high latency.[15] In many cases, network service disruptions are a result of carrier neglect and deregulation of IP-based services, resulting in inadequate service and a lack of reliable connectivity.[16] Therefore, NTIA should set clear and high broadband quality standards for providers receiving BEAD funds. Further, NTIA should institute a reporting requirement to periodically collect data on quality of service metrics.

II. THE BEAD PROGRAM SHOULD FOSTER COMPETITION BY ENSURING NON-INCUMBENT PROVIDERS ARE INCLUDED IN FUNDING OPPORTUNITIES

The RFC asks "how can NTIA ensure that all potential subrecipients, including small and medium providers, cooperatives, non-profits, municipalities, electric utilities, and larger for-profit companies alike have meaningful and robust opportunities to partner and compete for funding under the program?"[17] NTIA should require states to include municipal networks and other non-incumbent providers in subgranting opportunities. Municipal networks and small, non-incumbent providers play a critical role in ensuring all people are connected to reliable, high-speed broadband. They often provide consumers with faster internet, lower prices, and better

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[13] Ernesto Falcon, "A Universal Gigabit Future Depends on Open Access Fiber," Electronic Frontier Foundation (Oct. 27, 2021), https://www.eff.org/deeplinks/2021/10/universal-gigabit-future-depends-open-access-fiber.

[14] Benoit Felten and Thomas Langer, Wholesale Fiber is the Key to Broad US FTTP Coverage, Diffraction Analysis (Oct. 2021), https://www.eff.org/document/wholesale-fiber-key-broad-us-fttp-coverage.

[15] Alejandra Marquez Janse, Amy Isackson, & Alisa Change, "Life Without Reliable Internet Remains a Daily Struggle for Millions of Americans" NPR (Nov. 22, 2021), https://www.npr.org/2021/11/22/1037941547/life-without-reliable-broadband-internet-remains-a-daily-struggle-in-nevada.

[16] *See* Report of the Minnesota Department of Commerce, *In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications*, Docket No. P-407, 405/CI-18-122, (Jan. 4, 2019), http://mn.gov/commerce-stat/pdfs/frontierservice-quality-report-final.pdf (finding that Frontier failed to maintain its copper network leading to frequent and lengthy internet outages); *see also* Karl Bode, Wildfire Victims Don't Have Cell Service Thanks to Greedy Telecoms, Vice (Oct. 29, 2019) (explaining how the California wildfires have led to massive cellular outages).

[17] *Infrastructure Investment and Jobs Act Implementation*, Request For Comment, 87 Fed. Reg. 1122 (Jan. 10, 2022).

customer service.[18] Non-incumbent providers often also provide similar benefits.[19] In addition, the presence of increased competition tends to bring down overall prices and raises speeds.[20] There are other benefits associated with municipal broadband as well, with the potential to create thousands of jobs and offer billions of dollars in "community benefits" by attracting both people and businesses while reducing dependency on large incumbents.[21]

III.   THE BEAD PROGRAM SHOULD PROHIBIT DIGITAL DISCRIMINATION

NTIA must ensure that allocation and use of BEAD funds close gaps in connectivity, particularly for communities who have disproportionately lacked access. While broadband deployment to unserved and underserved areas has improved over the years, home broadband access for communities of color continues to lag behind the rest of the country. According to a recent Pew report, 35 percent of the Latino community and 29 percent of African Americans do not have a wired connection.[22] Significant disparities in broadband access also exist for communities of color living in rural areas. A recent report from the Joint Center for Political and Economic Studies found that 38 percent of African Americans in the Black Rural South lack home internet access compared to only 23 percent of white residents in the same region.[23]

One structural barrier marginalized communities face to achieving broadband access is digital redlining where broadband providers have withheld high-speed internet services from certain parts of their service area. A study by the Communications Workers of America and the National Digital Inclusion Alliance found that AT&T prioritized network upgrades to wealthier areas within its 21-state footprint, leaving lower-income communities with outdated technology.[24] Other research has indicated that digital redlining takes place in cities across the country served

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[18] James K. Wilcox, "How Municipal Broadband Helped an Ohio Town Cope During the Pandemic," Consumer Reports (Aug. 31, 2021), https://www.consumerreports.org/municipal-broadband/municipal-broadband-helped-ohio-town-cope-during-pandemic-a3845246875/.

[19] Jonathan Sallet, Broadband for America's Future: A Vision for the 2020s, Benton Institute for Broadband & Society (Oct. 2019), https://www.benton.org/publications/broadband-policy2020s.

[20] Jonathan Sallet, "Better Together: Broadband Deployment and Broadband Competition," Brookings (Mar. 15, 2017), https://www.brookings.edu/blog/techtank/2017/03/15/better-together-broadband-deployment-and-broadband-competition/.

[21] Andrew Schaengold, "Can Municipal Networks Close the Digital Divide?", The Verge (Aug. 11, 2021), https://www.theregreview.org/2021/08/11/schaengold-municipal-broadband-networks-close-digital-divide/.

[22] Internet Broadband/Fact Sheet, Pew Research Center (April 7, 2021), https://www.pewresearch.org/internet/fact-sheet/internet-broadband/#who-has-home-broadband?menuItem=3109350c-8dba-4b7f-ad52-a3e976ab8c5f.

[23] Dominique Harrison, Affordability & Availability: Expanding Broadband in the Black Rural South, Joint Center for Political and Economic Studies at 2 (Oct. 6, 2021), https://jointcenter.org/wp-content/uploads/2021/10/Affordability-Availability-Expanding-Broadband-in-the-Black-Rural-South.pdf.

[24] Communication Workers of America and National Digital Inclusion Alliance, "AT&T's Digital Redlining: Leaving Behind Communities for Profit," (Oct. 2020), https://cwa-union.org/sites/default/files/20201005attdigitalredlining.pdf.

by other providers.[25] NTIA should set clear guidance that prohibits discriminatory deployment practices. Further, once the FCC adopts rules prohibiting digital discrimination pursuant to IIJA,[26] NTIA should coordinate with the agency to ensure providers receiving deployment funding are in compliance with the rules. Providers found to be in violation of the rules should be required to return funds received through IIJA.

IV. THE BEAD PROGRAM'S LOW-COST OPTION SHOULD ALIGN WITH THE FCC'S AFFORDABLE CONNECTIVITY PROGRAM AND ADOPT A BASELINE STANDARD OF SERVICE

The IIJA requires BEAD funding recipients to offer at least one low-cost option and directs NTIA to determine which providers are eligible for that low-cost option.[27] NTIA should define the eligible subscriber criteria for the low-cost option to be identical to the FCC's Affordable Connectivity Program.[28] Aligning subscriber eligibility with the ACP will allow households to combine the ACP benefit with the broadband service funded through BEAD.

NTIA should also require BEAD funding recipients to participate in ACP. Mandating provider participation in ACP would produce a number of benefits for low-income households. First, it would allow low-income households to apply the ACP benefit to the low-cost option, making the offering more affordable. Provider participation in ACP would also ensure eligible households have low barriers to entry to enroll in the program and have robust consumer protections.[29] Finally, ACP's advertising requirements[30] will ensure providers advertise the availability of the low-cost option along with their other service products, giving qualifying households additional offerings to choose from.

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[25] Shara Tibken, "The Broadband Gap's Dirty Secret: Redlining Still Exists in Digital Form," CNET (June 28, 2021), https://www.cnet.com/features/the-broadband-gaps-dirty-secret-redlining-still-exists-in-digital-form/.

[26] IIJA § 60506(b).

[27] IIJA § 60102(h)(5)(A).

[28] *Affordable Connectivity Program*, *Emergency Broadband Benefit Program*; WC Docket No. 21- 450, 20-44, Report and Order and Further Notice of Proposed Rulemaking 25-26 (January 14, 2022)("Pursuant to the Infrastructure Act, a household may qualify for the Affordable Connectivity Program if at least one member of the household: (1) meets the qualifications for participation in the Lifeline program (with the modification that the qualifying household income threshold is at or below 200 percent of the Federal Poverty Guidelines for a household of that size); 145 (2) has been approved to receive school lunch benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act, or the school breakfast program under section 4 of the Child Nutrition Act of 1966; (3) has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 in the current award year; (4) meets the eligibility criteria for a participating provider's existing low-income program, subject to approval by the Commission and any other requirements deemed by the Commission to be necessary in the public interest; or (5) receives assistance through the WIC Program, established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. § 1786)").

[29] *Affordable Connectivity Program*, *Emergency Broadband Benefit Program*; WC Docket No. 21- 450, 20-44, Report and Order and Further Notice of Proposed Rulemaking 24-46, 66-88 (January 14, 2022).

[30] *Affordable Connectivity Program*, *Emergency Broadband Benefit Program*; WC Docket No. 21- 450, 20-44, Report and Order and Further Notice of Proposed Rulemaking 92-96 (January 14, 2022).

In addition to aligning the low-cost broadband service option with ACP, NTIA should also adopt a baseline standard of service for the offering. The baseline standard should ensure that the low-cost option can reliably enable households to participate in telework, virtual learning, telehealth, and other high-bandwidth applications. The baseline standard should also be capable of simultaneously supporting several family members engaging in multiple online activities at once. Further, the baseline standard should be scalable and periodically evaluated in order to meet the evolving connectivity needs for low-income households.

V.   STATE DIGITAL EQUITY PLANNING GRANTS SHOULD INCLUDE ROBUST STAKEHOLDER ENGAGEMENT REQUIREMENTS TO ENSURE MARGINALIZED GROUPS HAVE A VOICE IN THE PLANNING PROCESS

Strong plans require stakeholder engagement throughout the entire planning process. This means actively seeking stakeholder input at the beginning of the process, and communicating with stakeholders after planning grants have been awarded. While the IIJA requires states to take certain steps to engage the public in digital equity planning grants,[31] NTIA should expand these requirements to ensure robust stakeholder engagement.

First, states should hold public hearings seeking stakeholder input prior to preparing their digital equity planning grant applications. The state's digital equity administering entity should advertise the public hearings broadly and coordinate with other state agencies and local governments to engage in robust outreach to stakeholders. When submitting the planning grant application, states should include a description of how stakeholders will continue to be consulted and engaged during the plan's implementation over the entire implementation period, particularly regarding implementation that directly impacts particular stakeholder groups. NTIA should institute a regular reporting requirement to ensure states are engaging with groups throughout the planning process, and after the grants are awarded.

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[31] IIJA § 60304(c)(2).

VI. CONCLUSION

Both the BEAD program and the Digital Equity Act represent a tremendous opportunity to make meaningful progress in closing the digital divide. The recommendations discussed here will help ensure that broadband networks are sustainable and affordable and safeguard robust stakeholder engagement for digital equity planning to support the needs of our most marginalized communities.

Respectfully submitted,

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