

June 30, 2021

Office of the Undersecretary for Domestic Finance
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments, RIN 1505-AC77, Docket ID: TREAS-DO-2021-0008-0002

Dear Undersecretary for Domestic Finance:

The National Rural Electric Cooperatives Association (NRECA) submits these comments in response to the Department's request for comment on its State and Local Fiscal Recovery Funds Interim Final Rule's questions with respect to ensuring broadband investments will best meet our nation's needs.

NRECA applauds the work of the Congress, the Biden Administration and the U.S. Treasury Department, in recognizing with the American Rescue Plan (ARP) Act that, our nation continues to face serious challenges in connecting homes and businesses to reliable high-speed broadband, and especially those in low-density, rural areas.

The ongoing COVID-19 crisis has put the spotlight on the absolute and outright necessity for ubiquitous high-performing broadband for all Americans. The pandemic has forced us to rethink the practice and delivery of healthcare, education, and professional services, among many other things. We move forward in the midst, and wake, of the pandemic both on the local and national levels, but a realistic picture is being painted in rural America. In many of our communities, the impacts will be challenging and enduring. Simply stated, numerous people and businesses in rural America will struggle to emerge into a changed world that depends more each day on remote healthcare (telehealth), remote education (distance learning), and remote work (virtual offices).

The members of NRECA are dedicated to improving the communities in which they serve and are active in rural economic development efforts. More than 200 electric co-ops in thirty-nine states are working toward meaningful and diverse solutions to provide broadband services, which can help bridge the digital divide and jumpstart local economies. Another 100 or so are exploring the feasibility of providing broadband, either on their own or through partnerships. This cooperative commitment is vital for some 30% of rural Americans that still lack access to broadband, compared to about 2% in urban areas. NRECA specifically appreciates the provision in the Interim Final Rule (IFR) that recognizes the important role that cooperatives— as not-for profit entities with less pressure to turn a profit- can play in bridging the digital divide.

The ARP recognizes growing digital disparities in broadband infrastructure that must be addressed for our country to fully recover from the pandemic and to compete in the global economy. The ARP State and Local Fiscal Recovery Funds with \$350 billion allocated for states, counties, cities, and towns, as well as the \$10 billion allocated for the Coronavirus Capital Projects Fund, can play a major role in

moving the needle on broadband deployment. Broadband networks built with ARP funds must not just meet today's minimum definition (25/3 Mbps) but require a network at the very minimum provide 100/20 Mbps scale able to 100/100 Mbps to meet the growing speed and bandwidth needs for a decade or more. Where feasible, projects providing at least 1 gigabit fixed wireline connectivity (fiber) or higher are prioritized.

In deciding which broadband projects to finance through the State and Local Fiscal Recovery and Capital Projects Funds, NRECA believes that this investment must be made in robust and reliable networks that can offer least 1 gigabit fixed wireline connectivity where feasible. Below NRECA addresses the specific questions Treasury raises in the IFR on broadband.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Setting minimum standards that have the potential to promote additional fiber deployment are beneficial to communities not currently served by fiber and will help to bring rural broadband service up to a comparable level to that in urban areas. In addition to bringing futureproof fiber to the home (FTTH) services to a community, deployment of fiber has many other benefits as well. A fiber backbone will enable mobile wireless service that requires robust backhaul capacity. This will help support a number of technologies, including 4G and 5G mobile services, fixed wireless, and even satellite in some cases where earth stations are used. These services can empower a diverse ecosystem of applications which would take too long to explore in-depth here. One major application that would particularly benefit rural communities is precision agriculture which relies on wireless coverage (fixed and/or mobile) of large swaths of farm and cropland and needs robust backhaul that fiber can provide.

As drafted, the Interim Final Rule (IFR), sets an expectation of 100/100 Mbps, but allows 100/20 Mbps network capability in some situations where the geography and topography make deployment of a 100/100 Mbps network difficult and costly. NRECA supports the goal of the IFR to require networks to provide 100/100 Mbps, and prioritizing investments in fiber optic infrastructure where feasible. NRECA fully understands that a 100/100 Mbps network may not be feasible in all areas and supports the IFR proposal to allow fund recipients to build a 100/20 Mbps network in such cases, as long as they are scalable to 100/100 Mbps. This is a reasonable and measured approach and will help ensure access to more communities at a reasonable price. NRECA member cooperatives are keenly aware of affordability issues since they collectively serve 92% of persistent poverty counties as identified by the U.S. Census Bureau. From the consumer perspective, there is no difference between having no access to broadband service and having access but not being able to afford it. The result is the same and therefore affordability is a key component.

The IFR correctly aims well above the outdated minimum definition of broadband, 25/3 Mbps. In its 2020 report (based on 2018 data) the FCC stated, "The vast majority of Americans, surpassing 85% of the population in 2018, now have access to fixed terrestrial broadband service at 250/25 Mbps."¹ In the FCC's 2020 Rural Digital Opportunity Fund (RDOF) Phase I reverse auction over 85% of the locations with winning bids were won by providers promising to deliver gigabit-speed broadband.² A new study released by the Fiber Broadband Association (FBA) determined a family of four will require

¹ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 19-285, 2020 Broadband Deployment Report, FCC 20-50, paras. 3 (2020) (2020 Report).

² *SUCCESSFUL RURAL DIGITAL OPPORTUNITY FUND AUCTION TO EXPAND BROADBAND TO OVER 10 MILLION RURAL AMERICANS*, FCC News Release, available at: <https://docs.fcc.gov/public/attachments/DOC-368588A1.pdf>.

symmetrical broadband speeds of at least 2 Gbps by 2030 in order to adequately meet their needs.³ Clearly, Treasury should not adjust down the speed requirements in the Interim IFR but keep them as proposed. To lower the speed threshold would not be in the public interest.

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

The Interim IFR provides states and localities with the proper level of flexibility in regard to the networks that applicants must build. There is no need to complicate the process by adding additional requirements based on the specific type of project. In determining whether a project should be approved to deploy the lower 100/20 Mbps network the best measure is density level. Low density is the primary driver of cost and therefore should be the key determinant. NRECA recommends that household density be used rather than population density. This is due to the fact that broadband is deployed to locations and not people.

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

The advantage of setting the network standard at 100/100 Mbps is clear – the homes and business that receive broadband service under this program will receive a sufficient level of service that will meet their growing speed and bandwidth needs for years to come. When the pandemic hit, many consumers and small businesses found their 25/3 Mbps service inadequate to meet the increasing demand of real-time two-way video conferencing that became the norm for remote education and work. Multiple surveys have shown that during the pandemic between 30% and 40% of the families that worked or schooled from home indicated that the upload connections were not adequate.⁴

By setting the fall back standard of 100/20 Mbps in the IFR, Treasury makes significant progress over today's definition of broadband (25/3 Mbps) which was set back in 2015. NRECA is concerned that the lower definition, while an improvement, will result in homes and businesses once again with inadequate upload capacity in the next crisis or when the next hot new bandwidth intensive application comes to market. Luckily, the IFR requires resulting 100/20 Mbps networks to be scalable to 100/100 Mbps or higher.

Some might claim that setting a standard of 100/100 Mbps will limit the technologies that can participate in the program and will raise cost so as to reduce the number of locations that can be served. To those arguments, NRECA points to the results of the FCC's 2020 RDOF Phase I auction. As the FCC announced in a news release on December 7, 2020, 99.7% of the RDOF locations won will receive broadband with speeds of at least 100/20 Mbps, with an overwhelming majority (over 85%) getting

³ Dana Goovaerts. "FBA tips household broadband speed need to surpass 2 Gbps by 2030," *Fierce Telecom* (2021), available at: <https://www.fiercetelecom.com/>.

⁴ Doug Dawson. "What's the Right Definition of Upload Speed?", POTs and PANs, June 14, 2021, available at: <https://potsandpansbyccg.com/2021/06/14/whats-the-right-definition-of-upload-speed/>.

gigabit-speed broadband.⁵ The FCC created a special circumstance in the RDOF under which fixed wireless and DSL technologies could make the case that they can deliver gigabit level services. Despite little to no track record of these technologies ability to do so in rural America, the fixed wireless industry won billions of dollars to deploy gigabit level service in the auction to hundreds of thousands of locations. While the true ability of these fixed wireless providers to actually deliver on their RDOF promises won't be known for years, it clearly shows that increasing the speed threshold for ARP projects to 100/100 Mbps will not disadvantage any technology. In addition, the 99.7% of RDOF locations that will receive at least 100/20 Mbps will do so at a fraction of the cost of support that has been given to the incumbents to deploy only a 10/1 Mbps network for the last several years. A higher speed network does not mean that less locations will receive service.

NRECA believes the IFR establishes a balanced approach between meeting the increasing broadband needs of homes and small businesses and recognizing the potential for a lower cost 100/20 Mbps network where a more robust network would be cost prohibitive. NRECA supports the current draft and opposes any proposal to further lower the broadband standard.

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Electric cooperatives serve very low-density and high-cost areas. Many of which are completely unserved. NRECA agrees that priority should be given to projects that have no service. NRECA agrees with the IFR's definition of an eligible area as one that lacks access to a wireline network that reliably delivers 25/3 Mbps. The terms "wireline" and "reliably" are key to NRECA members. Often, rural American's are marketed and sold service at 25/3 Mbps but many rarely or never receive that level of service. The IFR should make clear that "advertised" speeds can not be used to determine the actual level of service that is received by rural homes and businesses. While fixed wireless technologies have improved over the years and some co-ops use fixed wireless architecture, it's abilities can be impacted more easily by a multitude of factors (weather, distance, foliage or other obstructions) compared to a wired connection. There is a clear reason a fiber connection is the gold standard for broadband connectivity to a home or business – it is fast and extremely reliably. Where disputes arise, incumbent providers must be required to prove that they "reliably" provide a fixed wired connection using third party speed tests, such as Ookla and M-Labs.

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

NRECA believes that the IFR strikes the right balance and provides states and localities with the proper level of flexibility. Specifically, the rules provide states and localities with a sufficient level of guidance without being overly prescriptive. In the questions raised by Treasury we have discussed broadband speed standards and NRECA supports the Treasury Guidance as drafted. One issue not discussed has been latency. NRECA recommends the FCC follow the low latency standard used by the FCC in the recent RDOF Phase I auction. In RDOF, low latency was defined as equal or lesser than 100

⁵ *Ibid*, p.1.

milliseconds. Latency above 100 milliseconds could impede voice services and therefore any network funded through ARP should meet that standard. Any further restrictive guidance from the Department is contrary to the statutory language and would hamper the ability of state and local policymakers—who are much more knowledgeable about the level of broadband service available within their jurisdictions—to address unique local barriers to broadband deployment.

Conclusion:

Congress intentionally provided broad latitude to states and localities on how best to use these funds. As the Federal Communications Commission (FCC) has acknowledged, federal data and maps on broadband availability are widely inaccurate and ongoing efforts to collect more granular data won't be complete for a couple years. Any further restriction on use of the funds, no matter how well intended, has the potential to create winners and losers and is likely to result in rural communities being left further behind in the digital economy.

NRECA urges Treasury to make not to make changes to the IFR in its final rule that would reduce the level of service that communities would receive or that would make more areas unavailable for funding. Any changes to the IFR could cause more confusion in states and localities that have already begun planning to utilize the funds to address the particular challenges to broadband deployment in their respective areas.

NRECA thanks you for the opportunity to provide input on the IFR and we look forward to working with you on this and future broadband funding opportunities. Thank you for your consideration of our comments.

Respectfully submitted,

National Rural Electric Cooperative Association

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By: Brian M. O'Hara

Senior Director Regulatory Issues – Broadband & Telecommunications

National Rural Electric Cooperative Association

4301 Wilson Blvd.

Arlington, VA 22203

703-907-5798

brian.ohara@nreca.coop