Before the
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, DC 20230

In the Matter of:	)	
	)	
Infrastructure Investment and Jobs Act Implementation	)	**Docket No. NTIA-2021-0002**
	)	
	)	

COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

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The National Rural Electric Cooperative Association ("NRECA") hereby submits these Comments in response to the Notice and Request for Comment ("Notice") in the above-captioned docket,[1] seeking input and recommendations for consideration by the National Telecommunications and Information Administration ("NTIA") in the development of broadband programs established by the Infrastructure Investment and Jobs Act ("Bipartisan Infrastructure Law").[2]

I. INTRODUCTION

A. Background on NRECA

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electric energy to approximately 42 million people in 48 states, or approximately 12 percent of electric customers. Rural electric cooperatives serve 88% of the counties of the United States, including 327 of the nation's 353 "persistent poverty counties,"

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[1] *Infrastructure Investment and Jobs Act Implementation*, Docket No. NTIA-2021-0002, Notice and Request for Comment (Jan. 10, 2022) ("Notice").

[2] Infrastructure Investment and Jobs Act, H.R. 3684, 117th Congress, *available at* https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf ("Bipartisan Infrastructure Law").

which is 93% of these persistent poverty counties. Of the 42 million Americans served by cooperatives, an estimated four million live in persistent poverty counties.

Rural electric cooperatives were formed to provide safe, reliable electric service to their member-owners at the lowest reasonable cost. They are dedicated to improving the communities in which they serve, and the management and staff of rural electric cooperatives are active in rural economic development efforts. Electric cooperatives are private, not-for-profit entities that are owned and governed by the members to whom they deliver electricity. Electric cooperatives are democratically governed and operate according to the seven Cooperative Principles.[3]

B. Electric Cooperatives Are Deeply Committed to Promoting Broadband

NRECA and its members are deeply committed to promoting the deployment of advanced telecommunications capabilities within the rural communities and areas in which electric cooperatives provide electric service. About 200 NRECA members provide fixed broadband service today, deploying fiber-based, fixed wireless or combined fiber and fixed wireless technologies. Thirty-two (32) rural electric cooperatives won bids in the Connect America Phase II auction, securing $254,720,764.50 over ten years in 15 states to bring broadband to 86,716 locations. One hundred and fifteen (115) electric cooperatives won RDOF bids securing more than $1.1 billion dollars over ten years to deploy broadband to over 616,000 locations in 27 states. In the first two rounds of the USDA Rural eConnectivity Program (the "ReConnect Program"), twenty-seven (27) cooperatives won more than $270 million in 21 states. NRECA estimates that another 100 or so are currently exploring the feasibility of providing broadband, either on their own or through partnerships. Many more are exploring

[3] The seven Cooperative Principles are: Voluntary and Open Membership, Democratic Member Control, Members' Economic Participation, Autonomy and Independence, Education, Training, and Information, Cooperation Among Cooperatives, and Concern for Community.

ways they can assist other providers in deploying vital broadband service to their unserved and underserved communities.

Prior to adoption of the Bipartisan Infrastructure Law, NRECA members took meaningful steps to support rural area households to remain connected to the internet during the first wave of the COVID-19 pandemic. NRECA members providing broadband services maintained broadband service to customers despite lack of payment, waived late fees because of economic distress, and opened Wi-Fi hotspots to those in need. NRECA member broadband providers went a step further to increase their customers' internet speeds without charge.[4]

For these and other important reasons, NRECA is thankful for the opportunity to provide input and recommendations to assist NTIA in implementing the broadband portions of the Bipartisan Infrastructure Law. NRECA applauds NTIA for the timely release of the Notice and commencement of the important process of implementing this historic, vitally important, and hugely beneficial legislation.

II. COMMENTS

A. How NTIA Can Most Effectively Make Broadband Available To All Americans

NRECA's input and recommendations for how NTIA can most effectively make broadband available to all Americans is responsive to the following Questions from the Notice:

Question #1: What are the most important steps NTIA can take to ensure that the Bipartisan Infrastructure Law's broadband programs meet their goals with respect to access, adoption, affordability, digital equity, and digital inclusion?

Question #7: How can NTIA ensure that all potential subrecipients, including small and medium providers, cooperatives, non-profits, municipalities, electric utilities, and

[4] *See* Cathy Cash, *Co-op Broadband Providers Pledge to Sustain Low-Income Service as Pandemic Hardships Increase*, NRECA, https://www.electric.coop/co-op-broadband-providers-pledge-to-sustain-low-income-service-coronavirus-pandemic-hardships-increase/ (Mar. 25, 2020).

larger for-profit companies alike have meaningful and robust opportunities to partner and compete for funding under the programs?

Question #8: States and regions across the country face a variety of barriers to achieving the goal of universal, affordable, reliable, high-speed broadband and broadband needs, which vary from place to place. These challenges range from economic and financial circumstances to unique geographic conditions, topologies, or other challenges that will impact the likelihood of success of this program. In implementing the Bipartisan Infrastructure Law's broadband programs, how can NTIA best address such circumstances?

1. Funding should be prioritized for electric cooperatives and other nonprofit entities

Consistent with the longstanding commitment of electric cooperatives to rural economic development and to the communities they serve, 200 of NRECA's nonprofit electric cooperative members already provide vital fixed broadband service today, another 100 are exploring the feasibility of providing broadband, and many more are assisting other providers in deploying broadband service to their unserved and underserved communities.

Electric cooperatives are taking the lead in providing vital broadband services to their unserved and underserved communities today just as they took the lead in the 1930s to provide vital electricity service to their rural communities when no one else would. This longstanding historic commitment to rural communities makes it no wonder why electric cooperatives have already been successful, and will continue to be successful, in providing broadband services to their rural members. The hard won and longstanding trust between electric cooperatives and their member-owners has enabled cooperatives to again succeed in bringing a vital service to areas that were previously underserved. And the quality of that broadband service is cutting edge, as many coops now provide symmetrical gigabit service, and the often the lowest speed they offer is 100/100 Mbps.

Community-based providers like electric cooperatives can successfully provide robust broadband deployment to their rural, high-cost communities because they are willing to take on longer return on investment time frames. This is made possible by their focus on serving their member owners and community rather than turning a quick profit. They live and work in the communities they serve – if there is a problem, they hear about it at church, or the PTA meeting, or at the grocery store. Significantly, that kind of customer interaction cannot be matched by distant large, for-profit providers that are based many states away and usually have little to no presence in rural communities.

Because of this this longstanding commitment to serving rural America, the longstanding trust between electric cooperatives and their member-owners, and the remarkable initiative and success cooperatives have had to date in delivering broadband to unserved communities, NRECA respectfully submits that one of the most important steps NTIA can take to ensure that the Bipartisan Infrastructure Law's broadband programs meet their goals is to make funding for nonprofit electric cooperatives a priority, along with funding for other nonprofit and community based organizations.

Such priority funding for cooperatives and other nonprofits is consistent with the U.S. Treasury Department's recent encouragement that recipients of State and Local Fiscal Recovery Funds under the American Rescue Plan Act give such entities priority. As explained by the Treasury Department, cooperatives and nonprofits are less guided by profits, more committed to serving entire communities, and otherwise can be critical for deploying broadband:

> The final rule maintains the interim final rule's encouragement for recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives, given that these networks have less pressure to generate profits and a commitment to serve entire communities. This encouragement provides flexibility for recipients to select

> providers that best fit their needs, while noting the critical role that networks owned, operated, or affiliated with local governments and community organizations can play in providing sufficient coverage, affordable access, or increased competition in the broadband sector.[5]

Such priority funding for cooperatives and other nonprofits is also consistent with the U.S. Department of Agriculture's funding for the Round Three ReConnect Program, which provides additional scoring points to applications from cooperatives, nonprofits and local governments, which USDA recognized all lack a profit motive.[6]

2. Accurate broadband coverage maps are essential

Award of any BEAD funds is contingent on the Federal Communications Commission ("FCC") completing its ongoing work to improve broadband data collection and mapping. NRECA fully supports these efforts but is concerned that these new maps may not be the panacea many expect. The input that the FCC appears to rely on from incumbent carriers for its broadband mapping efforts are the carriers' "advertised" speeds instead of their "actual" speeds. Communicating advertised speeds instead of actual speeds enables these incumbent carriers to prevent funding for potential competitors, but leaves huge areas of the country with substandard broadband service. What is needed instead of "advertisements" is confirmable testing of minimum speeds. Entities that provide newer, fiber-based services are better able to achieve broadband capacity speeds than many legacy telephone and cable companies which still use copper or coaxial cable to provide their signals, especially in the rural areas. It is difficult to maintain broadband speeds as you move away from power sources, and so testing must be

[5] U.S. Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Final Rule, RIN 1505-AC77, at p. 310 (rel. Jan. 6, 2022), available at: SLFRF-Final-Rule.pdf (treasury.gov). ("Treasury Department SLFRF Final Rule").

[6] Department of Agriculture, Funding Opportunity Announcement for ReConnect Program Round Three (Oct. 25, 2021): 2021-23128.pdf (federalregister.gov).

performed over a wide area at reasonable usage periods, instead of allowing incumbents to test two or three spots close to their Digital-Subscriber-Line-Access-Multiplexer (DSLAM) or amplifier on a low usage time of day to "verify" that everyone is getting whatever speeds are being "advertised." The reality instead is that 1000 feet down the line and beyond such broadband speeds are not even close to those advertised.

3. Electric easements and ROWs should be improved to better leverage existing electric facilities for broadband services

Electric utilities hold existing easements and rights-of-way ("ROW") which cover electric facilities and service. Running fiber solely to support electric operations requires minimal effort and typically is covered as an electric facility. However, existing easements and ROW might not cover commercial broadband service (retail or wholesale) when it is transmitted across that same fiber, whether by an electric cooperative retail broadband provider itself or by some other third party retail provider leasing fiber capacity.

Similar easement and ROW issues exist for utilities and others attempting to install and maintain middle-mile broadband facilities. In addition, existing transmission (as opposed to local distribution) rights-of-way often do not allow the ROW holder to bury facilities. Expanding such ROWs/easements to allow for the burying of broadband facilities could reduce regulatory approvals, expanding the options for middle mile routes and speeding broadband deployment.

To address these concerns, NTIA should encourage States to include in their state plans the adoption of laws expanding electric easements and ROW to include broadband. Absent relief, the time and cost of a cooperative to renegotiate new easements and ROWs with each

existing locality and landowner would take years and be cost prohibitive.[7] To date, about 18 states have adopted such laws to make easements and ROW more compatible with broadband expansion, but issues remain in the others. NTIA can help drive relief in this area by incentivizing states to address this issue in their state broadband plans, which will reduce cost and speed deployment.

This same issue also exists when crossing federal lands, which causes major delays and costs. For example, NRECA member Yampa Valley Electric Association ("YVEA") applied for and was awarded a USDA ReConnect Grant to provide broadband service in Colorado. Because it was using its own existing electric infrastructure, the cooperative did not anticipate any permitting problems. The U.S. Interior Department's Bureau of Land Management ("BLM"), however, became involved in this process and required full oversight and review of the proposed USDA funded infrastructure project, simply because the project involved broadband service, not electric service. As a result, the co-op was required to undergo an expensive, time consuming and onerous permitting process through BLM. The charges for cost recovery by BLM and for environmental consultants added an unanticipated, unbudgeted $800,000 to the project and the work added months of delay. This time and expense incurred by YVEA to provide broadband is shocking considering there is no such additional time and expense incurred when YVEA upgrades the very same facilities to provide electric service. For electric service, the existing ROW suffices, but because YVEA was attaching broadband infrastructure BLM treated the deployment as a greenfield build triggering a full environmental review even though the broadband equipment would be attached to existing utility poles with existing electric wires.

[7] Easement Clarity Would Help Texas Co-ops Deliver Broadband, by Cathy Cash, April 2019, available at https://www.electric.coop/easement-clarity-would-help-texas-co-ops-deliver-broadband.

To avoid such egregious and unnecessary expenses and delays, NTIA should work with BLM, the Forest Service, and other federal agencies to address such issues pertaining to environmental and other oversight on federal lands to speed broadband deployments.

B. How NTIA can best support states and subgrantees

NRECA's input and recommendations for how NTIA can best support states and subgrantees are responsive to the following Questions from the Notice:

Question #9: Several Bipartisan Infrastructure Law broadband programs provide that, absent a waiver, a grant or subgrant recipient must contribute its own funding, or funding obtained from a non-federal source, to "match" funding provided by the BIL program. Under what circumstances, if any, should NTIA agree to waive these matching fund requirements, and what criteria should it assess (in accordance with any criteria established by the statute) when considering waiver requests?

Question #4: NTIA has an interest in ensuring that the Bipartisan Infrastructure Law is implemented in a way that promotes the efficient use of federal funds. How should NTIA and grant recipients verify that funding is used in a way that complements other federal and state broadband programs?

1. NTIA should grant each state the flexibility to meet its particular circumstances

The economics, geography, population densities, income levels and broadband availability of rural New Jersey or rural Texas is not the same as rural Montana or rural Vermont, and such states need the flexibility to address their own needs and concerns in a manner best suited to their particular circumstances. As Secretary Raimondo pointed out in her February 1, 2022, testimony before the Senate Committee on Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies:

> We're focused on getting this done right and giving states the flexibility they need to ensure this benefits everyone. … Essentially: it doesn't make sense to address Kansas challenges

> with Rhode Island solutions. That's why the law has built-in flexibility to address each state's specific needs.[8]

To this end, States should have the flexibility to craft rules that allow recipients to leverage various programs for matching funds, as long as appropriate accounting safeguards are in place and awards are not duplicative. NTIA should allow State funds to be used to cover matching requirements. And, like USDA's ReConnect Program, NTIA should allow Bipartisan Infrastructure Law grant funds to finance areas already covered by RDOF and other funding as long as the additional funding is used for complimentary, and not duplicative, purposes. For example, funding from one source could be used to install the fiber, while funding from another could be used to pay for the electronics.

C. How NTIA Can Ensure Success for the $42.45 Billion Broadband Equity, Access and Deployment (BEAD) Program

NRECA's input and recommendations for how NTIA can ensure success for the $42.45 billion Broadband Equity, Access and Deployment ("BEAD") Program are responsive to the following Questions from the Notice:

Question #13: NTIA is committed to ensuring that networks built using taxpayer funds are capable of meeting Americans' evolving digital needs, including broadband speeds and other essential network features. What guidance or requirements, if any, should NTIA consider with respect to network reliability and availability, cybersecurity, resiliency, latency, or other service quality features and metrics? What criteria should NTIA establish to assess grant recipients' plans to ensure that service providers maintain and/or exceed thresholds for reliability, quality of service, sustainability, upgradability and other required service characteristics?

Question #14: NTIA is committed to ensuring that networks constructed using taxpayer funds are designed to provide robust and sustainable service at affordable prices over the long term. What criteria should NTIA require states to consider to ensure that projects will provide sustainable service, will best serve unserved and

[8] Written Statement of Gina M. Raimondo, Secretary, U.S. Department of Commerce, Before the Senate Committee on Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies, "Expanding Broadband Access: Department of Commerce Broadband Programs in the Infrastructure Investment and Jobs Act" (Feb. 1, 2022), at 2 ("Secretary Raimondo Testimony").

underserved communities, will provide accessible and affordable broadband in historically disconnected communities, and will benefit from ongoing investment from the network provider over time?

Question #15: In its effort to ensure that BEAD-funded networks can scale to meet Americans' evolving needs, and to ensure the public achieves the greatest benefit from the federal investment, NTIA seeks to understand reasonably foreseeable use cases for America's broadband infrastructure over the next five, ten, and twenty years. What sort of speeds, throughput, latencies, or other metrics will be required to fully connect all Americans to meaningful use over the next five, ten, and twenty years? How can the BEAD program meet our nation's broadband network connectivity needs in the future and what other benefits can Americans expect from this program and the networks it will help fund in other industries and across the economy? How can existing infrastructure be leveraged to facilitate and amplify these benefits? What are the best sources of evidence for these questions and for predicted future uses of broadband?

Question #16: Broadband deployment projects can take months or years to complete. As a result, there are numerous areas where an entity has made commitments to deploy service—using its own funding, government funding, or a combination of the two—but in which service has not yet been deployed. How should NTIA treat prior buildout commitments that are not reflected in the updated FCC maps because the projects themselves are not yet complete? What risks should be mitigated in considering these areas as ''served'' in the goal to connect all Americans to reliable, affordable, high-speed broadband?

Question #17: Ten percent of total BEAD funding is reserved for distribution based on how many unserved locations within a state or territory are also locations in which the cost to deploy service is higher than the nationwide average. The Bipartisan Infrastructure Law provides that, in calculating the cost of deployment, NTIA should consider factors such as the area's remoteness, population density, topography, poverty rate, or ''any other factor identified by the Assistant Secretary, in consultation with the [FCC], that contributes to the higher cost of deploying broadband service in the area.'' BIL § 60102(a)(2)(G). What additional factors, if any, should NTIA consider in determining what constitutes a ''high-cost area''?

Question #18: The Bipartisan Infrastructure Law provides that BEAD funding can be used in a variety of specific ways, including the provision of service to unserved and underserved areas, connection of community anchor institutions, data collection, installation of service within multi-family residential buildings, and broadband adoption programs. The law also permits the Assistant Secretary to designate other eligible uses that facilitate the program's goals. What additional uses, if any, should NTIA deem eligible for BEAD funding?

1. To meet current and future needs, broadband networks must be fixed terrestrial broadband networks with 100/100 Mbps capabilities

NRECA respectfully submits that BEAD funding is far better spent supporting networks that are robust enough to address existing and future needs, instead of networks that are currently outdated or will soon be obsolete. To better support concurrent and future use of multiple devices within a household, fixed terrestrial broadband networks having a minimum performance tier of 100/100 Mbps are required.

The FCC's "Broadband Speed Guide" estimates that a household with two telecommuters and two students working remotely today need 100 Mbps download speed to work simultaneously.[9] And the U.S. Treasury Department's final rule implementing the Coronavirus State and Local Fiscal Recovery Funds established under the American Rescue Plan Act establishes a standard of reliable 100/100 Mbps service for the broadband projects it funds:

> In the final rule, Treasury also requires that broadband projects must meet a standard of reliably delivering at least 100 Mbps download speeds and upload speeds, or in cases where it is not practicable to do so, reliably delivering at least 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed while being scalable to 100 Mbps upload and download speeds. Treasury expects that this threshold will yield long-term benefits and allow networks to meet both pandemic-related and future needs. The Federal Communications Commission (FCC) estimates that currently a household with two to three remote learners using the internet simultaneously needs a connection supporting 100 Mbps download speeds. While a lower threshold may have resulted in lower near-term costs to build, it would have potentially constrained future utility from the infrastructure by producing infrastructure that would more quickly – potentially in the near-term – become obsolete and no longer meet household needs, potentially requiring sooner replacement and generally decreasing the return on investment. As

[9] See Federal Communications Commission, Broadband Speed Guide, available at https://www.fcc.gov/consumers/guides/broadband-speed-guide (last visited February 1, 2022).

> such, projects meeting a lower threshold could not be considered "necessary" investments in broadband infrastructure, so Treasury has retained the threshold from the interim final rule.[10]

As Treasury elaborated in its Interim Rule:

> In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.[11]

NRECA agrees with the Treasury Department's analysis. Any network using the much-needed BEAD funding made available by the Bipartisan Infrastructure Law should be a robust fiber network that not only meets current household and business needs, but will also be "future proof" for decades down the road. The statute established a minimum build to speed of 100/20 Mbps. NTIA should treat that as a floor and not a ceiling, and prioritize fiber networks that can deliver speeds well above this minimum to meet growing bandwidth needs well into the future.

2. To avoid anticompetitive behavior, NTIA should prioritize locations without "actual" wireline broadband service, as opposed to "advertised" broadband service

NRECA believes NTIA should prioritize projects designed to serve locations that truly lack access to reliable wireline broadband service at the defined unserved (25/3 Mbps) and underserved (100/20 Mbps) speeds. Establishing a priority for such projects is also consistent with the Treasury Department's final rule implementing the Coronavirus State and Local Fiscal Recovery Funds.[12]

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[10] Treasury Department SLFRF Final Rule at 296 ("Treasury encourages recipients to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.")

[11] U.S. Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Interim Final Rule, RIN 1505-AC77, 86 Fed. Reg. 26786 (May 17, 2021), at 71.

[12] Treasury Department SLFRF Final Rule at 395-396 (footnotes omitted).

In establishing whether an area currently has access to reliable wireline 25/3 or 100/20 Mbps broadband service, NTIA should be careful to discount advertisements claiming that 25/3 or 100/20 Mbps broadband service exists. As explained above, it is very easy for an incumbent provider to avoid competition from a new (and superior) provider seeking BEAD funding simply by pointing to "advertised" claims of 25/3 or 100/20 Mbps capability. Consumers that pay for a 25/3 or 100/20 Mbps broadband package rarely receive these speeds and therefore advertised speeds cannot be solely relied upon to make funding decisions. Recognizing this, Congress required the FCC to create a challenge process to allow consumers and communities to challenge false claims of the level of broadband service available to a location or area. However, this new challenge process is untested and could take years to bear fruit in the form of impacting the accuracy of the more granular maps under consideration at the FCC.

The Treasury Department recognized this problem and in response discounted such advertisements: "In designing these projects, recipients should ensure that the broadband infrastructure provides 'reliable' service at required speeds and are not required to rely on providers' advertised speeds in their assessments."[13] Instead, NTIA should insist that any claim that existing areas already receiving 25/3 or 100/20 Mbps broadband service be verified. This could also include relying on state level data from states have undertaken more granular data collection and mapping.

As for assessing whether service providers can maintain and/or exceed thresholds for reliability, quality of service, sustainability, upgradability and other required service characteristics, much depends on what states consider necessary to address their particular needs and circumstances. However, in order to counteract pressure that states may receive from

[13] Treasury Department SLFRF Final Rule at 307.

incumbent providers regarding "reliability," NTIA should establish certain parameters for states to consider when evaluating whether 25/3 or 100/20 Mbps service is being "reliably" provided. Such parameters might include many (or all) of those that the Treasury Department identified in response to a "frequently asked question" on the topic:

> **6.11. For broadband infrastructure investments, what does the requirement to "reliably" meet or exceed a broadband speed threshold mean? [6/17]**
>
> In the Interim Final Rule, the term "reliably" is used in two places: to identify areas that are eligible to be the subject of broadband infrastructure investments and to identify expectations for acceptable service levels for broadband investments funded by the Coronavirus State and Local Fiscal Recovery Funds. In particular:
>
> - The IFR defines "unserved or underserved households or businesses" to mean one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speeds and 3 Mbps of upload speeds.
> - The IFR provides that a recipient may use Coronavirus State and Local Fiscal Recovery Funds to make investments in broadband infrastructure that are designed to provide service to unserved or underserved households or businesses and that are designed to, upon completion: (i) reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or (ii) in limited cases, reliably meet or exceed 100 Mbps download speed and between 20 Mbps and 100 Mbps upload speed and be scalable to a minimum of 100 Mbps download and upload speeds.
>
> The use of "reliably" in the IFR provides recipients with significant discretion to assess whether the households and businesses in the area to be served by a project have access to wireline broadband service that can actually and consistently meet the specified thresholds of at least 25Mbps/3Mbps—i.e., to consider the actual experience of current wireline broadband customers that subscribe to services at or above the 25 Mbps/3 Mbps threshold. Whether there is a provider serving the area that advertises or otherwise claims to offer speeds that meet the 25 Mbps download and 3 Mbps upload speed thresholds is not dispositive.
>
> When making these assessments, recipients may choose to consider any available data, including but not limited to documentation of existing service performance, federal and/or

> state-collected broadband data, user speed test results, interviews with residents and business owners, and any other information they deem relevant. In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency or jitter, or deterioration of the existing connections make the user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier).
>
> The IFR also provides recipients with significant discretion as to how they will assess whether the project itself has been designed to provide households and businesses with broadband services that meet, or even exceed, the speed thresholds provided in the rule.[14]

3. NTIA should prioritize funding for "high-cost areas" similar to USDA ReConnect priorities

The Bipartisan Infrastructure Law requires NTIA to consider factors such as remoteness, population density, topography, and poverty rates in determining what constitutes a "high-cost area."[15] The Notice asks if there are other factors NTIA should consider.

NRECA believes all of these factors are important, and that a priority should be established for funding associated with projects that will deliver broadband to such "high-cost areas." To this end, NTIA should consider using USDA's ReConnect Round Three funding as a model for establishing such priorities.

In the ReConnect Program, the Department of Agriculture established a priority for rural economic recovery, especially for disadvantaged communities. To achieve that priority, USDA granted additional points for applications covering many of the factors the Bipartisan Infrastructure Law deems important, as follows:

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[14] U.S. Treasury Department, Coronavirus State and Local Fiscal Recovery Funds, Interim Final Rule: Frequently Asked Questions, as of January 2022, FAQ 6.11; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

[15] Bipartisan Infrastructure Law at § 60102(a)(2)(G).

- **Rurality (25 points)** – Awarded for serving least dense rural areas as measured by the population per square mile of the proposed service area or if the proposed service area is located at least one hundred miles from a city or town that has a population of greater than 50k and population density of 6 or less. If multiple service areas are proposed, the density calculation will be made on the combined areas as if they were a single area.
- **Economic Need (20 points)** – Based on county poverty level based on the United States Census Small Area Income and Poverty Estimates (SAIPE) Program. If 75% of the proposed service area includes communities with a SAIPE score of 20% or higher, 20 points is awarded. A GIS layer identifying SAIPE areas can be found in the RUS mapping tool located at https://reconnect.usda.gov.
- **Affordability (20 points)** – Applications can receive 20 points based on their affordability measures. Applicants should demonstrate that the broadband prices they will offer are affordable to their target markets, provide information about the pricing and speed tiers they intend to offer, and include at least one low-cost option offered at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Applicants must also commit to provide Lifeline, Emergency Broadband Benefit (EBB) & successor programs.
- **Local governments, non-profits and cooperatives (15 points) -** Applications submitted by local governments, non-profits or cooperatives (including for projects involving public-private partnerships where the local government, non-profit, or cooperative is the applicant) are awarded 15 points.
- **Socially Vulnerable Communities (15 points)** – For applications where at least 75 percent of the proposed service area serves Socially Vulnerable Communities, 15 points

will be awarded. A Socially Vulnerable Community is a community or area identified in the Center for Disease Control's Social Vulnerability Index with a score of .75 or higher. A GIS layer identifying the Socially Vulnerable Communities can be found at https://www.usda.gov/reconnect.[16]

NRECA respectfully proposes that NTIA establish a similar system to grant priority to projects designed to meet these challenges in these "high-cost areas."

4. Cybersecurity and commercial uses (broadly defined) should be eligible for funding

NRECA believes that cybersecurity should be deemed eligible for funding and be added to any proposal, because cybersecurity is imperative today. Any entity performing any broadband planning, no matter what the envisioned use, should be thinking of cybersecurity first.

Apart from cybersecurity, any commercial use should also be eligible for funding, and "commercial use" should be broadly interpreted to include all broadband services providing value to the communities served. This would include any service that supports health, education, employment, agriculture, and other such activities, and which otherwise provide greater opportunities in socioeconomically challenged areas. In addition, NRECA notes that simply establishing broadband connections provides an economic benefit because those connections allow for shopping on line, access to training, access to health care, access to educational opportunities, and a multitude of other previously-unavailable opportunities.

[16] Department of Agriculture, Funding Opportunity Announcement for ReConnect Program Round Three (Oct. 25, 2021): 2021-23128.pdf (federalregister.gov).

5. BEAD funding should be made available for middle-mile projects

The $1 billion that the Bipartisan Infrastructure Law allocates for the Middle Mile Broadband Infrastructure Grant Program likely will be insufficient for certain middle mile requirements in certain States. Should a State determine that funding for middle mile projects is needed in addition to funding provided in the Middle Mile Broadband Infrastructure Grant Program, NRECA respectfully proposes that States be permitted to include BEAD funding for middle mile projects in their state broadband plans for use of BEAD funding.

6. State plans should be flexible but inclusive

As explained above, the economics, geography, population densities, income levels and broadband availability of rural New Jersey or rural Texas is not the same as rural Montana or rural Vermont, and such states need the flexibility to address their own needs and concerns in a manner best suited to their particular circumstances. As Secretary Raimondo pointed out in her February 1, 2022, testimony before the Senate Committee on Appropriations, Subcommittee on Commerce, Justice, Science and Related Agencies:

> We're focused on getting this done right and giving states the flexibility they need to ensure this benefits everyone. … Essentially: it doesn't make sense to address Kansas challenges with Rhode Island solutions. That's why the law has built-in flexibility to address each state's specific needs.[17]

To this end, States should have the flexibility to craft rules that allow recipients to leverage various programs for matching funds, as long as appropriate accounting safeguards are in place and awards are not duplicative. NTIA should allow State funds to be used to cover matching requirements. And, like USDA's ReConnect Program, NTIA should allow Bipartisan Infrastructure Law grant funds to finance areas already covered by RDOF and other funding as

[17] Secretary Raimondo Testimony at 2.

long as the additional funding is used for complimentary, and not duplicative, purposes. For example, funding from one source could be used to install the fiber, while funding from another could be used to pay for the electronics.

If States are required to contribute matching funds, then the higher the costs in an area and the higher the level of disadvantaged persons, the lower the required match should be. Also, any matching requirement should be flexible so that matching funds can be drawn concurrently when the grant dollars are provided, rather than requiring them to be available right away.

State plans should ensure that the voices of smaller providers and new providers, such as electric cooperatives, be included in their deliberations. It is especially important that smaller providers and new entrants be heard when a state is setting up a broadband advisory committee or other entity to guide the state in developing state broadband plans, in creating broadband grant programs, or in performing any other activities called for by the BEAD program.

Several states have been taking steps to address the digital divide within their borders. There is concern that these proactive states may be penalized because of their actions to address broadband deployment and adoption prior to the IIJA. Within its statutory authority, NTIA should strive to ensure that these proactive states are not penalized for their complimentary actions to reach our shared goal of ubiquitous broadband deployment.

NTIA should also consider proposing that states favor projects making use of multiple sources of Infrastructure Act and other funding, and not just broadband program funds. For example, an electric utility seeking smart grid or cybersecurity funding through the Infrastructure Act should be favored for Infrastructure Act broadband funding to encourage and enable entities to fund a variety of infrastructure projects in a variety of ways, all to the greater benefit of the communities they serve.

States should be required to make funds available for costs (unexpected or otherwise) of acquiring rights-of-way, easements, and other rights of access necessary to construct and maintain broadband services. Funds should also be clearly made available for procuring all necessary expertise, training and personnel for the project, including qualified consultants and additional staffing.

State plans should allow funding for installing or upgrading conduit, and pole replacement costs should be considered. At least two states have enacted legislation granting broadband providers the right to recover some percentage of pole replacement costs,[18] and similar legislation is pending in several other states.[19] What is critical in all of this legislation is that pole owners remain reimbursed 100% when poles are replaced to provide broadband, and that the newly-attaching broadband provider is the one required to seek reimbursement after paying pole owners upfront for the replacement.

State plans should likewise enable electric cooperatives providing broadband service to be similarly reimbursed for the pole replacement costs they incur to deploy and provide broadband service.

7. The mandatory low-cost option should be available in the providers' service area statewide

To maximize the availability of service everywhere, the low-cost option should be available in all of the provider's service area within a state. The Bipartisan Infrastructure Law stated that the Affordable Connectivity Program will be a permanent program, but allocated a set

[18] Such legislation was enacted in Texas (Texas Legislature Online - 87(R) Text for HB 1505) and North Carolina (S105v7.pdf (ncleg.gov) – see pp. 508-512).

[19] Such legislation has been introduced in Florida (HB 1543 (2022) - Broadband Infrastructure | Florida House of Representatives (myfloridahouse.gov)), Missouri (SB990 - Creates provisions relating to pole replacements for certain broadband facilities (mo.gov)), and West Virginia (HB4001 INTR.pdf (wvlegislature.gov)).

appropriation of $14.2 billion to fund it. What will happen when this funding is exhausted? Relying on annual appropriations from Congress can lead to variations in eligibility depending on funding levels. The impact of fluctuations in funding is something electric cooperatives have experienced on the electric side. For example, while funding for the Low-Income Home Energy Assistance Program (LIHEAP) has been consistent in recent years, there were other years when Congressional appropriations varied from year to year, resulting in consumers losing eligibility despite no change in their income or category of eligibility.

The current Lifeline program should be revised or replaced with a permanent low-cost program more in line with the FCC's Affordable Connectivity Program in order to provide a sustainable and long-term program to adequately address broadband affordability not subject to the vagaries of Congressional appropriations.

Voice service will still also be important, and whichever entity receives BEAD funding may be the only connection in a rural community. NRECA respectfully submits that NTIA, along with the FCC, should work with the states to create a potential subsidy for voice service to ensure that vital voice services remain affordable to rural homes. This is essential for access to public safety and 911 services.

8. Driving affordability will require flexibility and guidelines

In NRECA's view, the best way to drive affordability apart from the low-cost option is to allow each state to determine on its own what it needs and how to address it. As mentioned above, and as recognized by Secretary Raimondo, each state is different and each requires different solutions.[20] When the local broadband provider evaluates how much grant money it

[20] Secretary Raimondo Testimony at 2.

receives, that provider should be encouraged to consult with the local communities regarding affordability to work out a meaningful affordability program, whatever that might be. This type of local consultation and exchange is common with electric cooperatives, for example, since co-ops are member-owned and are always looking for ways to benefit the community.

NTIA and the states should make sure that low price temporary or "introductory" rates are not used to meet any affordability requirement. Any affordability proposal should be permanent, not temporary. Cooperatives seek to keep their rates, both electric and broadband, as low and consistent as possible. NRECA is not aware of a single cooperative that offers a temporary or "introductory" rate. This is because of the potential for rate shock at the expiration of any temporary rate.

To assist States in determining how best to manage affordability concerns, however, NTIA should consider establishing guidelines for the low-cost option similar to what was outlined with the Emergency Broadband Benefit Program.[21]

D. Input and Recommendations for the $2.75 Billion Digital Equity Act Funds

NRECA's input and recommendations to NTIA regarding the $2.75 billion Digital Equity Act funds are responsive to the following Questions from the Notice:

Question #25: The Bipartisan Infrastructure Law includes historic investments in digital inclusion and digital equity, promising to bring all Americans the benefits of connectivity irrespective of age, income, race or ethnicity, sex, gender, disability status, veteran status, or any other characteristic. NTIA seeks to ensure that states use Digital Equity Planning Grants to their best effect. What are the best practices NTIA should require of states in building Digital Equity Plans? What are the most effective digital equity and adoption interventions states should include in their digital equity plans and what evidence of outcomes exists for those solutions?

Question #26: Some states and territories will benefit from technical assistance in preparing Digital Equity Plans. What types of technical assistance, support, data, or programmatic requirements should NTIA provide to states and territories to

[21] *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 4612 (2021).

produce State Digital Equity Plans that fully address gaps in broadband adoption, promote digital skills, advance equitable access to education, healthcare and government services, and build information technology capacity to enable full participation in the economy for covered populations? What steps, if any, should NTIA take to monitor and assess these practices?

Question #30: The Bipartisan Infrastructure Law requires state and territories to consult with historically marginalized and disadvantaged groups, including individuals who live in low-income households, aging individuals, incarcerated individuals (other than individuals who are incarcerated in a Federal correctional facility), veterans, individuals with disabilities, individuals with a language barrier (including individuals who are English learners and have low levels of literacy), individuals who are members of a racial or ethnic minority group, and individuals who primarily reside in a rural area. What steps should NTIA take to ensure that states consult with these groups as well as any other potential beneficiaries of digital inclusion and digital equity programs, when planning, developing, and implementing their State Digital Equity Plans? What steps, if any, should NTIA take to monitor and assess these practices?

1. States should include hands-on internet access training to address digital equity and to reach marginalized groups

In the rural communities served by NRECA's electric cooperatives, many people have never had access to broadband services or the capabilities it creates. Because the service was unavailable, some rural residents may have never learned how to access the internet or explore its capabilities. Digital literacy training, especially in rural communities, should therefore be an important part of any state "best practices" to address digital equity.

Digital training needs to be hands-on because accessing the internet and exploring its capabilities can only be learned by doing. One example NTIA might consider is the "Senior2Senior" program of NRECA member Tri-County Rural Electric Cooperative in Mansfield, Pennsylvania, where high school seniors in the community sat down with senior citizens to teach them how to use the internet.[22] But this training is also necessary for a variety

[22] See Co-op Schools Seniors on Internet as it Builds Out Broadband (electric.coop) (last visited Feb. 1, 2022) ("'I've never seen so many smiles,' said Gerski, the senior vice president of business development at Tri-Co Connections. 'Now they are emailing their grandchildren. That's what it's all about.'")

of other rural Americans. Consider for example parents in rural areas who have had little to no experience with formal internet access other than cellular service, and who now need to support their children in their online educational pursuits.

In addition to recruiting high school students, NRECA requests that NTIA consider libraries and faith-based hands-on programs as potential "best practices" for a state to consider in order to enhance digital literacy.

E. Input and Recommendations for the $1 Billion Middle Mile Broadband Infrastructure Grant Program

NRECA's input and recommendations to NTIA regarding the $1 billion Middle Mile Broadband Infrastructure Grant Program funds are responsive to the following Questions from the Notice:

Question #32: Middle-mile infrastructure is essential to American connectivity. Lack of affordable middle-mile access can have a substantial impact on the retail prices charged for broadband services. How should the Assistant Secretary ensure that middle-mile investments are appropriately targeted to areas where middle-mile service is non-existent or relatively expensive? To what extent should middle-mile grants be targeted to areas in which middle-mile facilities exist but cannot economically be utilized by providers that do not own them? Should NTIA target middle-mile funds to areas where interconnection and backhaul costs are impacted by a lack of competition or other high-cost factors?

Question #33: The Bipartisan Infrastructure Law's provisions regarding the Middle Mile Broadband Infrastructure Grant Program set out a range of considerations governing NTIA's assessment of proposals seeking middle-mile funding, including improving affordability, redundancy and resiliency in existing markets, leveraging existing rights-of-way, assets, and infrastructure, and facilitating the development of carrier-neutral interconnection points. See BIL § 60401(e), (b)(2), (d)(2). How should NTIA implement these requirements, and the others listed in the legislation, in prioritizing middle-mile grant applications?

Question #34: What requirements, if any, should NTIA impose on federally funded middle-mile projects with respect to the placement of splice points and access to those splice points? Should NTIA impose other requirements regarding the location or locations at which a middle-mile grantee must allow interconnection by other providers?

Question #35: How can the Middle Mile Broadband Infrastructure program leverage existing middle-mile facilities, access to rights of way, poles, conduit, and other infrastructure and capabilities that are owned, operated, or maintained by traditional and non-traditional providers (public and investor-owned utilities, grid operators, co-ops, academic institutions, cloud service providers, and others) to accelerate the deployment of affordable, accessible, high-speed broadband service to all Americans? What technical assistance or guidance should NTIA provide to encourage applications for this program? Are there examples of successful deployments and/or benefits provided by non-traditional providers to highlight?

1. Middle-mile funding priority should be given to rural areas, to areas that lack middle-mile capacity, and to providers willing to serve communities along the entire middle-mile route

NRECA notes that many of the more expensive rural middle-mile routes are avoided by large providers, whether the added expense is due to low population densities, large numbers of unserved and underserved Americans, or areas with problematic terrain like mountains or rocky areas. And in rural areas where large carriers actually do run fiber, the carriers often do not serve the communities along the route. Instead, such middle-mile facilities merely link one urban area to another urban area and fail to benefit the rural communities in between. Some others may connect the small town population center(s) along the way but not the surrounding, more rural communities.

To address this problem, NTIA should establish a priority for funding middle-mile projects that are located in rural areas and that are constructed by electric cooperatives or other nonprofit entities, either alone or in collaboration and partnership with other electric co-ops, their communities, independent telephone cooperatives and other small community-based providers. As explained above, cooperatives and other nonprofit entities are not as concerned with profits and take a longer-term, more community-oriented approach to broadband investment and implementation. For these reasons, and as explained above, broadband funding administered by the Treasury Department and the Department of Agriculture both encourage priority support for

co-ops and other nonprofits.[23] NTIA should do the same. NRECA also notes that many electric cooperatives are already offering symmetrical gigabit service, and the lowest speed many offer is 100/100 Mbps. Such networks help to ensure middle-mile networks will remain "future proof," and capable of providing adequate capacity for at least 10 years, even as more rural communities are connected and the demand for bandwidth increases.

NTIA should also establish priority funding for middle-mile projects that are designed to serve communities along the entire middle-mile route. Priority should be given to middle-mile facilities which will actually and adequately serve the current and growing broadband needs of the communities they pass through, as measured using benchmarks like the percentage of broadband coverage and available capacity.

Finally, because many existing middle-mile facilities simply run fiber through a community without actually serving it, NTIA should prioritize middle-mile providers that actually will serve communities along the route, even if such middle-mile infrastructure spans the same route as existing facilities that do not serve the community.

2. Middle-mile providers should be encouraged, if not required, to allow interconnection all along the middle-mile route

Because of the "pass-through" problem described above, NTIA should encourage, if not require, funded middle-mile facilities to interconnect with the rural communities that they "pass through." Funding recipients should be encouraged or required to construct collocation shelters in these pass-through communities, and to coordinate with localities and anchor institutions to ensure that any locality or anchor institution (including farms, public safety entities, businesses, local government office, etc.) along the route that wants to receive service will not be left behind.

[23] Treasury Department SLFRF Final Rule at p. 310; Department of Agriculture, Funding Opportunity Announcement for ReConnect Program Round Three (Oct. 25, 2021): 2021-23128.pdf (federalregister.gov).

To incentivize this, the costs of collocation shelters and interconnection points should be an eligible expense.

Such interconnections all along the middle-mile route would enable the full use of middle-mile facilities passing through rural areas, creating a far better use of valuable middle-mile funding than simply linking one urban area to another. Indeed, NRECA notes that such interconnection is consistent with the electric cooperative model of collaboration and sharing with other cooperatives and entities, for the benefit of all communities.

3. NTIA should leverage existing facilities and access to poles, conduits and ROWs in several ways

As explained above, electric utilities hold existing easements and rights-of-way ("ROW") which cover electric facilities and service. Running fiber solely to support electric operations requires minimal effort and typically is covered as an electric facility. However, often existing easements and ROW might not cover commercial broadband service (retail or wholesale) when it is transmitted across that same fiber, whether by an electric cooperative retail broadband provider itself or by some other third party retail provider leasing fiber capacity.

Similar easement and ROW issues exist for utilities and others attempting to install and maintain middle-mile broadband facilities. Existing transmission (as opposed to local distribution) rights of way often do not allow the ROW holder to bury facilities. Expanding such ROWs/easements to allow for the burying of broadband facilities could reduce regulatory approvals, expanding the options for middle mile routes and speeding broadband deployment.

To address these concerns, NTIA should encourage States include in their state plans the adoption of laws expanding electric easements and ROW to include broadband. To date, about 18 states have adopted such laws to make electric easements and ROW more compatible with broadband expansion, but issues remain in the others.

This same issue also exists when crossing federal lands, which causes major delays and costs, as NRECA explained above using the example of Yampa Valley Electric Association's unexpected and unbudgeted Bureau of Land Management oversight costs and delays.

To avoid such egregious and unnecessary expenses and delays, NTIA should work with BLM, the Forest Service, and other federal agencies to address such issues pertaining to environmental and other oversight on federal lands.

III. CONCLUSION

NRECA greatly appreciates the opportunity to provide input and recommendations to NTIA regarding this historic funding for broadband projects that is enabled by the Bipartisan Infrastructure Law. NRECA is particularly sensitive to the challenges faced by rural communities lacking high speed internet access now and in the future, and to how this funding can be used to answer those challenges. We therefore respectfully request NTIA to consider these comments in support of a better future for rural America and for all of America.

Respectfully submitted,

National Rural Electric Cooperative Association

By: _____/s/_____

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