



February 4, 2022

Alan Davidson
Assistant Secretary of Commerce for Communications and Information
Douglas Kinkoph
Associate Administrator, Office of Internet Connectivity and Growth
National Telecommunications and Information Administration
1401 Constitution Ave NW
Washington, DC 20230

Re: Infrastructure Investment and Jobs Act Implementation, Docket No. 220105-0002

Dear Assistant Secretary Davidson and Administrator Kinkoph:

On behalf of The Leadership Conference on Civil and Human Rights and the undersigned groups, we write in response to the Request for Comment published in the Federal Register on January 10, 2022, titled "Infrastructure and Jobs Act Implementation." The Leadership Conference is a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the rights of all persons in the United States.

The Leadership Conference's Media/Telecommunications Task Force is committed to ensuring that all communities, particularly those who are underserved, have access to affordable, reliable, high-quality advanced communications services and that workers in the industry have good jobs. High-speed broadband is the essential infrastructure of the 21st century. It provides the platform for economic development, jobs, education, health care, public safety, energy efficiency, civic participation, entertainment, and communications among friends and family. Accordingly, lack of internet access among low-income people and communities of color is a critical equity and civil rights concern, and The Leadership Conference and our task force are well-positioned to offer a civil rights perspective on the issues presented for comment in the Federal Register notice.

Our comments on the implementation of the Infrastructure Investment and Jobs Act of 2021 (IIJA or the Bipartisan Infrastructure Law) focus on the following areas: bringing reliable, affordable, high-speed broadband to all Americans; ensuring the future of America is made in America by all of America's workers; ensuring publicly funded broadband networks that sustain and scale; allocation and use of BEAD funds to achieve universal, reliable, affordable, high-speed broadband; establishing strong partnerships between state, local, and tribal governments; establishing strong partnerships between state, local, and tribal governments; low-cost broadband service option and other ways to address affordability; low-cost broadband service option and other ways to address affordability; and state digital equity plans.

General Questions

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Bringing Reliable, Affordable, High-Speed Broadband to All Americans

Questions 1-2

The COVID-19 pandemic and resulting transition to remote living, learning, and earning underscores the lifeline role that affordable home broadband serves. It is an onramp for even the most basic aspects of daily life, functioning, and opportunity. As such, narrowing the digital divide is in many ways the emerging civil rights issue of the 21st century, with communities of color disproportionately lacking connectivity, thus extending and re-enforcing cycles of marginalization these communities have historically faced. According to the Bipartisan Policy Center, the number of disconnected urban or metro households is three times that of disconnected rural households.¹ A Pew Research report points to race, income level, and education attainment as markers for non-adoption — demographics more likely to be clustered and intersectional within urban areas.²

To maximize the efficacy and reach of the Bipartisan Infrastructure Law’s broadband programs, programs should be developed in partnership with a range of diverse stakeholders reflective of and with ties to the communities that overwhelmingly make up those caught within the digital divide, including people of color, immigrant and language minority communities, and low-income households. Stakeholders with understanding of the unique challenges and vulnerabilities faced by these households should be consulted early on and consistently throughout the pre-planning, development, and implementation processes. As outlined in response to questions 19-20 below in more detail, bringing together these kinds of community-based stakeholders with experience providing services and outreach to marginalized communities — particularly those that have not been historically engaged in digital equity advocacy but still have demonstrated models of community outreach and engagement — serves as a way to identify existing gaps and novel approaches in broadband programming. Identifying these stakeholders at the earliest stages of the state planning process can also protect against the exclusion of stakeholders representing groups disproportionately impacted by the digital divide. Finally, stakeholder engagement at the earliest stages of planning can help establish uniform goals and expected outcomes, preserving the integrity and scalability of the planning process as appropriately responsive to a state’s unique digital access needs.

Question 3

NTIA should avoid any block grant or similar proposals that have been especially vulnerable to diversion, mismanagement, and misuse. There have been multiple instances where funding appropriated to states for specific and laudable federal goals has been rejected by the state, underutilized, or accepted and then

¹ Alex Trollip, Understanding the Urban Digital Divide, Mar 05, 2021, <https://bipartisanpolicy.org/blog/urban-broadband-blog/>

² Pew Research Center, Internet/Broadband Fact Sheet, Who has home broadband, April 7, 2021, <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/?menuItem=b59d5c71-53f5-4023-9955-78a8bacc4e56>.

repurposed for other needs. To prevent these situations from recurring, NTIA should impose certain requirements on any state's receipt of funding. States must be held accountable when funding is diverted contrary to the statutory purpose. For example, any grants distributed to states should be subject to a reasonable shot-clock requiring states to act quickly to identify local beneficiaries and distribute funding or risk losing the funding. Agencies should also consider accountability measures such as provisions requiring restitution of diverted funds.

Ensuring the Future of America Is Made in America by All of America's Workers

Question 11

Eligible entity plans must assess how the objectives will impact the state's economic and workforce development goals. More and more employment opportunities — from job training to applying for work and, in many cases, performing one's job — require broadband. Studies have found that unemployed individuals using broadband at home or in a public place such as a library are 50 percent less likely to abandon their job search entirely than those who do not use the internet.³ Additionally, promoting broadband device access and digital literacy training to households where an individual may have lost employment is crucial to ensuring people remain attached to the labor market following such an event. NTIA should ensure that plans target funding in areas with especially high poverty, disability, and unemployment levels to ensure that women and people of color have full opportunity to secure essential job training and employment opportunities.

Accordingly, states should focus not only on who to serve, but also the types of programs that should be funded. Trusted community-based organizations, such as social service agencies, libraries, health centers, and social justice organizations, should be prioritized for funding. These and other anchor institutions can train "digital navigators," i.e. trusted experts who can assist with accessing online services that connect residents to employment and job training opportunities. Furthermore, states should focus on employing targeted, culturally relevant messaging and leveraging trusted community intermediaries who can provide one-on-one, personalized training approaches for community members to maximize relevance to each person's everyday life experiences.

New programs must empower those who become underemployed or unemployed to train, search, apply, and interview for new jobs using the same online tools that have long since been adopted by higher-income workers. At the same time, learning and developing broadband skills should be a component of any workforce training program, and these programs should provide broadband access and devices for job seekers. To help ensure that broadband funding is deployed in a way that maximizes the creation of good paying jobs and that women and people of color have full opportunity to secure those jobs, NTIA should ensure states fund proposals that involve training programs, pre-apprenticeships, Registered Apprenticeships, and related approaches that promote meaningful skills development, technical training, and job placement opportunities for populations that are underemployed and unemployed.

³ T. Randolph Beard, et al., Internet use and job search, 36(4) Telecomm. Pol'y 260-273 (May 2012), available at <https://www.sciencedirect.com/science/article/abs/pii/S0308596111002217?via%3Dihub>.

Workers should have good jobs using broadband and building the broadband networks funded by the Bipartisan Infrastructure Law. NTIA should therefore permit and encourage eligible entities to include requirements that will promote high-quality labor standards and practices (such as data from potential subgrantees on work conditions and subcontracting) and prioritize subgrantees that will directly employ their workforces.

In addition, states should prioritize proposals that involve partnerships and consortia-based models with established public, private, and nonprofit entities that have experience with covered populations and/or in addressing barriers to broadband adoption, such as workforce training programs, reentry programs, libraries, and public computing access centers. Many of these organizations have significant experience and credibility providing digital literacy, job training, and employment services to covered populations, and states should not hesitate to draw from those resources when drafting their plans. Furthermore, consortia-based models that integrate national and local private actors, public actors, and nonprofits have been effective in creating comprehensive workforce development and employment programs that combine the longevity and experience of larger entities with the responsiveness and community trust of local entities.

Broadband Equity, Access, and Deployment (BEAD) Program

Ensuring Publicly Funded Broadband Networks that Sustain and Scale

Questions 13-15

NTIA's BEAD program must ensure publicly funded broadband networks can sustain and scale in order to meet household connectivity needs today and far into the future. Today, consumers rely on broadband for all facets of daily life. Broadband is used to communicate with family, attend virtual classes, stream video, telework, and obtain telehealth services. These services require high-capacity networks capable of delivering fast speeds. Further, as more and more consumers rely on high-bandwidth services to meet their connectivity needs, broadband usage per household will continue to increase,⁴ making it critical for publicly funded networks to meet growing broadband demand over time.

To recognize the growing demand for high-speed broadband, NTIA's BEAD program should adopt a forward-looking standard that ensures networks are capable of delivering more data and video-intensive services and applications over the internet. A forward-looking standard would provide NTIA with flexibility while ensuring networks are able to meet the steadily growing demand for broadband without requiring more costly upgrades. NTIA can ensure these networks are "future proof" by encouraging projects using fiber networks and other modern-technology and requiring networks to be scalable to meet speeds consumers will need in the future.

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

Allocation and Use of BEAD Funds to Achieve Universal, Reliable, Affordable, High-Speed Broadband

Question 18

NTIA must ensure that allocation and use of BEAD funds close gaps in connectivity, particularly for communities that 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.⁵ 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.⁶ Asian American communities whose primary language is not English, as well as many Native Hawaiian and Pacific Islander communities, also face barriers to broadband access because of both affordability challenges and historical redlining issues that left these neighborhoods without critical infrastructure for services like broadband.

One structural barrier that marginalized communities face to accessing broadband is digital redlining, where broadband providers have withheld high-speed internet services from certain parts of their service area. Numerous studies have found network upgrades were implemented for wealthier areas and left lower-income communities with outdated technology.⁷ NTIA should set clear guidance that prohibits discriminatory deployment practices. Further, once the FCC adopts rules prohibiting digital discrimination pursuant to the IIA,⁸ NTIA should coordinate with the agency to ensure providers receiving deployment funding are following the rules. Providers found to be in violation of the rules should be required to return funds received through the IIA.

Research by Pew indicates that the cost associated with monthly connectivity is not the only affordability-related barrier to broadband adoption. Device access continues to pose barriers to broadband adoption, with only 67 percent of Latino and 69 percent of Black households owning a laptop or desktop computer, compared with 80 percent of their White counterparts.⁹ Further, lack of device access promotes over-

⁵ 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-a3e976ab8c8f>.

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

⁷ 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>; 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/>.

⁸ IIA, § 60506, codified at 47 U.S.C. § 1754.

⁹ Pew Research Center, Home broadband adoption, computer ownership vary by race, ethnicity in the U.S., 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/>

reliance on smartphones, an insufficient substitute for the range of activities taking place online.¹⁰ Lack of device access also directly impacts the digital readiness of vulnerable groups, which in turn impacts rates of educational attainment,¹¹ health care access,¹² and employment mobility.¹³ Device access programs and digital literacy and skills training programs are necessary to ensure that households are able to access *and maintain* broadband adoption over the long term. What is more, integrative programs that bundle access, devices, and trainings are more likely to succeed since multiple contact points are built into the life cycle of broadband adoption with households that are otherwise hard to reach or engage. With income level playing a major determinant in broadband adoption and the understanding that access alone does not necessarily translate to adoption (see response to question 2 above), programs should make each stage of the adoption process — from home connection to device purchase to literacy training — more affordable. Addressing these affordability needs heightens the likelihood of community-level engagement and successful adoption long term. NTIA should permit and encourage eligible entities to use BEAD funding for devices and digital literacy and training programs.

NTIA should also authorize and encourage eligible entities to use BEAD funding to ensure that their consultation, deployment, and inclusion efforts include people whose first language is not English in marketing, consumer education, and other efforts. Language that is in simple English and that can easily be translated is critical so that deployment and inclusion reach all people. Access to essential translation services is important for outreach. Translations should be completed in consultation with native-level speakers with cultural and contextual competency to ensure translations are understandable and accessible to communities. In addition to print and online media, translations should include PSAs on local ethnic broadcast stations and resources that community organizations can distribute directly to clients.

Establishing Strong Partnerships Between State, Local, and Tribal Governments

Questions 19-20

NTIA should prioritize bringing together stakeholders that are appropriately reflective of the groups most impacted in unserved and underserved areas within a specific state, particularly those groups that have also been historically marginalized and excluded from existing broadband delivery and adoption programs. NTIA should develop a rubric for measuring and achieving such parity in a particular stakeholder cohort to serve as guidance for states/territories during the earliest planning stages. Such

¹⁰ Pew Research Center, Internet/Broadband Fact Sheet, Who is smartphone dependent, April 7, 2021, <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/?menuItem=194b49c6-68e6-45f0-902a-575673edb17f>.

¹¹ Kristin Blagg and Grace Luetmer, *Even before the Pandemic, Students with Limited Technology Access Lagged behind Their Peers*, Urban Institute Blog, April 28, 2020, <https://www.urban.org/urban-wire/even-pandemic-students-limited-technology-access-lagged-behind-their-peers>.

¹² Krutika Amin et al., How might internet connectivity affect health care access?, Peterson-KFF Health System Tracker, Dec. 17, 2020, <https://www.healthsystemtracker.org/chart-collection/how-might-internet-connectivity-affect-health-care-access/>.

¹³ National Skills Coalition, *The “digital divide” is about access to devices and the internet – but it’s also about access to skills*, September 15, 2021, <https://nationalskillscoalition.org/blog/future-of-work/the-digital-divide-is-about-access-to-devices-and-the-internet-but-its-also-about-access-to-skills/>.

guidance should set out a target list of stakeholders to approach, including but not limited to, some proportionate combination of: community-based organizations (CBOs); community anchor institutions, such as schools or libraries; major internet service providers (ISPs), particularly those with low-income service offerings; local practitioners or groups that have defended against digital discrimination and redlining; municipal/state level technology or connectivity agencies; and others. Working with stakeholders with ties to vulnerable communities can also create a pipeline for constituent feedback and participation by communicating needs to CBOs or other community-level partners which in turn engage directly with the larger stakeholder group. Once a state or territory identifies and satisfies stakeholder diversity requirements, it should immediately work to establish an integrative feedback process, to be developed through consensus of the core group, which maximizes transparency and promotes stakeholder collaboration and engagement at each stage of the planning and implementation processes. In this way, stakeholders will be given meaningful ways to provide input and raise concerns at each step and become more actively engaged in the planning process. NTIA may also require periodic reporting requirements to ensure a state plan's goals and activities are aligned and that stakeholders are appropriately engaged.

In addition, state plans should prioritize inclusion of previously excluded, but directly impacted, stakeholders. Further, maximizing the diversity of stakeholder groups can promote development of novel approaches to connectivity programming. For example, including partners that provide digital skills programs, such as digital literacy groups and computer skills centers, can increase the longevity and scalability of a state's plan and ensure that programs are designed to appropriately meet the adoption needs once a household is connected for the first time. Including community-level centers that provide health care, housing, financial literacy, and other direct services can also provide valuable feedback when it comes to addressing the day-to-day needs of impacted communities in ways that are integrative and build on existing models with demonstrated records of success.

As part of the criteria for reviewing grantee plans, grantees should be required to certify to NTIA that they have provided for timely and meaningful public participation in the development of the plan and any subsequent revisions to the plan after the plan is finalized and implemented. The certification for timely and meaningful public participation should be detailed and include:¹⁴

- (1) A detailed description of how input from the public was obtained in the development of the plan (e.g., tribal council meetings, public hearings, draft plan posted to website and available for comment, hard copy of plan available for public view and comment, request for comments is advertised, comments are recorded, stakeholder consultation meetings, comment solicitation during outreach activities, and a section for other public input activities);
- (2) A list of the dates and locations of public hearings;
- (3) A list of the number of parties commenting on the plan;

¹⁴ This proposal is modeled on the LIHEAP statute's public participation requirement (42 USC section 8624(b)(12) and 8624(c)(2)). The LIHEAP model plan. HHS LIHEAP Action Transmittal LIHEAP AT-2021-03 (July 6, 2021) (attachment COMM_LIHEAP_AT-2021-03 Model Plan AT_FY2022 at Section 11) available at <https://www.acf.hhs.gov/ocs/policy-guidance/liheap-2021-03-model-plan-fy2022>.

- (4) A summary of the public comments on the plan at the public hearings and in written comments;
- (5) A description of changes made to the plan as a result of public participation (both written and through hearings and outreach activities); and
- (6) 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 stakeholder groups.

NTIA should require state planning under the BEAD program to mirror and run parallel to requirements and processes required by the Digital Equity Act, including consultation with the 11 categories of stakeholders contained in the DEA. See BIL, § 60304(B)(1)(D) under the BEAD program. Doing so will maximize efficiency; avoid duplication in the state consultation process; and ensure that plans are comprehensive and aligned with respect to goals, strategies, activities, and outcomes. NTIA should further urge consultation with organizations representing working people, including organized labor.

Low-Cost Broadband Service Option and Other Ways to Address Affordability

Questions 22-24

The Bipartisan Infrastructure Law requires BEAD funding recipients to offer at least one low-cost broadband option and directs NTIA to determine which subscribers are eligible for that low-cost option (BIL §60102(h)(5)(A)). NTIA should define “eligible subscriber” in a manner that includes the FCC’s Affordable Connectivity Program (see 47 CFR §54.1800 (j))(ACP definition of “eligible household”). While NTIA may opt for an even broader definition of “eligible household,” allowing for categorical eligibility into the BEAD low-cost option for households that qualify for ACP allows low-income households to combine the ACP benefit with the broadband service funded through BEAD. BEAD participants should also be required to participate in ACP (see e.g., 47 CFR §54.1801 re ACP participating providers). For low-income households, the ability to apply the ACP benefit to the low-cost option helps to ensure that the BEAD broadband service is affordable for limited-income households. Participation in ACP will also ensure that low-income consumers benefit from the ACP consumer protections.

Under the Bipartisan Infrastructure Law, states and territories are charged with developing low-cost service options in consultation with NTIA and broadband providers (§60102(h)(5)(B)). Affordability is a key objective in the Bipartisan Infrastructure Law’s broadband programs. In order to drive affordability beyond the low-cost option, as discussed above, NTIA should require that recipients of BEAD funds participate in the ACP so that low-income households can use the ACP toward broadband service. The Bipartisan Infrastructure Law establishing ACP requires that consumers be allowed to apply their ACP benefit on any broadband service offered by a participating provider. Low-income, economically fragile households may be very attracted to a low-cost service, particularly one priced at or below \$30/month (or if in a high-cost area, at or below \$75/month), but there could be more stable low-income households that can manage a more expensive offering with the help of the ACP discount. Thus, requiring BEAD grantees to participate in ACP ensures that low-income households will be able to leverage the ACP discount for

the service of their choice, thus increasing the affordability of the array of BEAD broadband services beyond the low-cost option.

Implementation of the Digital Equity Act of 2021

State Digital Equity Plans

Questions 27, 30

NTIA should implement the suggested consultation process described above for both the BEAD and Digital Equity Act programs. As noted, using the same process and standards for both programs will streamline implementation, permit the consultation to move forward in an efficient manner, and avoid leaving out any stakeholders in either program.

Working with national intermediaries that have local networks, such as UnidosUS, the National Urban League, and Asian Americans Advancing Justice | AAJC, can maximize responsiveness to and inclusion of historically marginalized and disadvantaged groups. National groups like these offer a national network of locally based organizations that are trusted messengers and direct service providers in their communities. Such a model allows for constant dialogue across providers and the intermediary institution, including the sharing of best practices and serving as an incubator for innovative program models. These networks are also well-versed in implementing federal programs and have the national infrastructure to implement these programs at scale quickly and in a way that is culturally competent and suited to the unique needs of each community.

National and regional intermediaries can also provide technical assistance, financial oversight, and data management so that community-based organizations can focus on providing the direct services. Through provision of technical assistance, these intermediaries provide a standardized approach by way of common forms and a common management information system, as well as through a common program design. Consistent program design in particular serves as an important metric when evaluating the impact of services. Such standardization also allows for replication and scalability of a program, while also serving as a way to identify ineffective dimensions of programming or implementation that may need to be updated.

Thank you for consideration of our views. We look forward to working with you on these and other issues of importance to our country. If you have any questions about the issues raised in this letter, please contact Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, United Church of Christ Media Justice Ministry, at cleanza@alhmail.com, and Yosef Getachew, director of media and democracy program, Common Cause at YGetachew@commoncause.org; Anita Banerji, Leadership Conference media/tech senior program director, at banerji@civilrights.org; or Bertram Lee, Jr., Leadership Conference media/tech counsel, at lee@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
Asian Americans Advancing Justice | AAJC



Common Cause

National Consumer Law Center on behalf of its low-income clients

National Hispanic Media Coalition

National Urban League

UnidosUS

United Church of Christ Media Justice Ministry