

Questions for the Record

Subcommittee on Communications and Technology Hearing on “Connecting America: Oversight of the NTIA” February 16, 2022

The Honorable Alan Davidson, Assistant Secretary of Commerce for Communications and Information, National Telecommunications and Information Administration

The Honorable Yvette D. Clarke (D-NY)

1. The NTIA’s responsibilities under the Infrastructure Investment and Jobs Act are substantial and complex. These responsibilities include evaluating proposals, ensuring that the funds are used appropriately, preventing waste and fraud, and establishing various public databases. Does the NTIA anticipate that it will use private contractors to perform any of these responsibilities? If so, will the NTIA set aside a portion of those contracts for small businesses?

RESPONSE: The National Telecommunications and Information Administration (NTIA) will resource these programs with a mix of government staff and contract services. To date, NTIA has awarded over \$22 million in contracts to small, disadvantaged businesses that have been assisting with planning, technology enablement, and initial program development. NTIA also recently awarded a professional services contract that will support NTIA’s broadband grant program development and administration. In the competitive solicitation for this professional services contract, NTIA included small business utilization as an evaluation factor for the award to demonstrate NTIA’s commitment to supporting small businesses and to promote the inclusion of small businesses in offeror proposals. NTIA awarded this contract to a contractor teaming arrangement which included a small business as one of the prime vendors as well as additional small businesses in subcontracting roles.

NTIA is leveraging the contractor support obtained through this professional services contract to provide operational and analysis support in the implementation of the Infrastructure Investment and Jobs Act (IIJA, P.L. 117-58) grant programs, including support for post-award grant monitoring.

It is important to note that inherently governmental responsibilities, including award recommendations and decisions will be explicitly performed by NTIA personnel, culminating in award decisions by the Assistant Secretary for Communications and Information recommendations, as presented by the Associate Administrator of the Office of Internet Connectivity and Growth. In the post award environment, the responsibility for conducting programmatic and

grants compliance monitoring to prevent waste, fraud, and abuse lies with NTIA and its staff as well as with the applicable Grant Office (NIST or NOAA, depending on the program). Contractor staff will support NTIA program staff in conducting grant monitoring and compliance efforts, but the responsibility and commitment to conduct a robust post award monitoring program remains with NTIA with support from the Grants Offices.

2. How does the NTIA, coordinating closely with the FCC and other relevant stakeholders, plan to ensure that the data collected by state programs implemented in unserved and underserved communities under the Digital Equity Act is not used to surveil these communities? Moreover, what safeguards will be put in place to protect the privacy of these communities, so this data is not sold to third parties without the explicit and informed consent of consumers?

RESPONSE: NTIA's positions on privacy are guided by the Administration's priorities and commitments, such as President Biden's Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, his Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, his call in the State of the Union Address for stronger privacy protections for children and teens, and his Blueprint for an AI Bill of Rights. To develop the record and determine possible steps going forward for addressing issues at the intersection of privacy, equity, and civil rights, NTIA held listening sessions in December 2021, will issue a Request for Comment (RFC) based on those listening sessions, and will ultimately issue a report based on the data collected. With respect to the Digital Equity Act of 2021 (included in P.L. 117-58, the Infrastructure Investment and Jobs Act at sections 60301 through 60307), NTIA will consider ways to help protect consumer data and to ensure that states do not make inappropriate use of any information collected to advance the Act's objectives. I share your view that programs designed to close equity gaps and bring opportunity to those who have been left behind should not be used to further disadvantage these groups, and I welcome all input on how to protect the privacy of all Americans served by the programs that NTIA oversees.

3. More than 10 million households in America have signed up for the Affordable Connectivity Program (ACP) to subsidize their monthly internet service cost. However, some service providers have circumvented the rules by forcing customers to switch to full-price plans once the subsidy ends or by requiring current customers to switch to a more expensive data plan in order to qualify for the subsidy. What steps is NTIA taking to ensure that internet service providers do not engage in similar exploitative tactics for consumers who are eligible for the ACP subsidy?

RESPONSE: I defer to my colleagues at the Federal Communications Commission (FCC) regarding the operation of the Affordable Connectivity Program (ACP). I will note, however, that when the Biden-Harris Administration established the ACP, the Administration very intentionally worked with members

of Congress—on a bipartisan basis—to put in place explicit statutory consumer protections to prevent problems that arose during the Emergency Broadband Benefit program. That included, among other things, ensuring enrolled households can apply to any plan offered by an Internet service provider (ISP) to prevent the silo of ACP participants into second-class or exploitative plans as well as prohibitions on inappropriate upselling or downselling by a participating provider. Each state and territory that participates in the Broadband Equity, Access, and Deployment (BEAD) grant program is required not only to participate in the ACP program, but also to define, subject to NITA’s approval, a low-cost broadband service option. Providers that are selected by the states and territories to receive BEAD grants to deploy broadband infrastructure will be required to offer at least one low-cost broadband service option for eligible subscribers. I will be mindful of the concern you have expressed as I review each state and territory’s proposed low-cost broadband service definitions.

4. Some households at the margins of the eligibility guidelines for the Affordable Connectivity Program may still be unable to afford internet access due to rising costs of living. Is there a plan to identify how many households could qualify at a tier beyond the current eligibility guidelines and would NTIA support any future efforts to expand affordable internet to that population?

RESPONSE: We want fast, high-quality broadband service to be accessible and affordable by everyone, and thankfully, the IJA has given us some important tools for helping to make that happen. The ACP expanded eligibility to a wide range of Americans, including those in households with incomes of up to 200% of the poverty level, and while any adjustment to that threshold falls to Congress rather than NTIA, we stand ready to work with your office on any proposal to further refine the eligibility criteria. While a subsidy program like ACP is vital to low-income households, it also is important to stimulate affordability of broadband more generally. We are keeping this in mind when it comes to the BEAD low-cost plan requirements, and we’re also interested in the potential for the middle mile grant program to stimulate competition and drive down prices.

5. As NTIA implements programs of the Digital Equity Act, how will NTIA engage with industry partners on implementation? Will there be an opportunity for the private sector to bid on/implement programs to further the programs’ objectives?

RESPONSE: The Digital Equity Act of 2021 does not contemplate that for-profit, private sector entities will be eligible to participate directly in the three grant programs established under that Act. We fully expect the entities that are awarded grants under the State Digital Equity Capacity Grant Program and the Digital Equity Competitive Grant Program will seek to partner with industry to find the most effective ways to promote the achievement of digital equity and support digital inclusion activities.

6. How does NTIA plan to make use of the expertise of American technology firms as it works to develop evaluation criteria for Phase I Planning Grants and Phase II Capacity Grants?

RESPONSE: NTIA’s Request for Comment, released in early January with comments received on February 4, 2022, elicited a significant number of responses from industry, including technology firms. NTIA reviewed each of the submitted comments, including those of industry, to understand stakeholder perspectives and to develop, shape, and implement the new broadband programs. These comments helped NTIA determine and refine relevant policy objectives and the criteria included in the Digital Equity Planning Grant Notice of Funding Opportunity (NOFO), including those associated with evaluation criteria for the review and assessment of applications (Section V) and inputs into state or territory subgranting processes (IV(C)).

7. How will NTIA ensure that states prioritize digital literacy, as well as physical connectivity, in their digital equity grant programs?

RESPONSE: The Digital Equity Act of 2021 requires that each State Digital Equity Plan include “measurable objectives for documenting and promoting...digital literacy,” as well as “the availability of, and affordability of access to, fixed and wireless broadband technology”. See Digital Equity Act at § 60304(c)(1)(B). Moreover, any state that applies for a state capacity grant must certify that the state, acting through its administering entity, will implement its State Digital Equity Plan (*see* State Digital Equity Planning Grant NOFO at I(A)). NTIA will ensure that all State Digital Equity Plans meet the necessary criteria, and will monitor each state’s implementation to ensure that the development of digital literacy is appropriately prioritized alongside physical connectivity.

The Honorable Marc Veasey (D-TX)

1. Administrator Davidson, NTIA is also administering the Minority Communities Program, a \$268 million grant program authorized under the Consolidated Appropriations Act of 2021, that will help eligible Historically Black Colleges or Universities, Tribal Colleges or Universities, among others, to purchase broadband internet service, equipment, or devices. It was recently announced that over 200 applications totaling more than \$833 million in funding requests have been made.
 - a. How does such a high volume of applications for the Connecting Minority Communities Pilot Program display the importance of a program like this and the need to expand affordable broadband access to minority communities?

RESPONSE: The number of Connecting Minority Communities Pilot Program (CMC) applications submitted, and the oversubscription of funds requested, is a representation of the need for better broadband access and connectivity that exists within the Historically Black College or University (HBCU), Tribal College or University (TCU), and Minority-Serving Institution (MSI) communities.

The Honorable Tom O'Halleran (D-AZ)

1. Assistant Secretary Davidson, the Infrastructure Investment and Jobs Act included a provision explicitly allowing ReConnect funding to be used for pole attachment fees and replacements for the shared use of utility poles by broadband providers. Can you confirm whether NTIA will allow BEAD funds to be used for the same purpose and whether the NTIA will include requirements that states may not prohibit the use of BEAD funds for this purpose?

RESPONSE: Section 60102 of the Infrastructure Investment and Jobs Act (IIJA), which creates the Broadband Equity, Access, and Deployment (BEAD) Program, does not directly address pole attachment fees, terms, and conditions. We are cognizant, however, of the important role that reasonable access to poles, conduit, and rights of way plays in broadband deployment. In the Notice of Funding Opportunity, we directed states and territories to tell us what they plan to do to streamline permitting and similar processes. We also are working with our partners at the federal level to minimize barriers to broadband deployment.

2. Assistant Secretary Davidson, certain broadband projects require significant permitting and rights-of-way approvals before construction can begin. Current procedures at the Bureau of Indian Affairs (BIA) requires BIA to weigh in on granting rights of way on tribal land, even in instances where other federal agencies are involved. This policy has the effect of delaying and disincentivizing private investment in projects on tribal land. As federal funding from the Tribal Broadband Connectivity Program, BEAD program, and other programs deploying broadband in tribal areas, would the NTIA consider entering into an interagency agreement with the Department of Interior to clarify the BIA's right-of-way authority?

RESPONSE: NTIA appreciates the unique circumstances of broadband deployment on Tribal land and is exploring opportunities to promote streamlined permitting. NTIA participates in regular discussions with the Bureau of Indian Affairs.

On August 9, 2022, NTIA and the Department of the Interior's Bureau of Indian Affairs (BIA) announced an agreement to coordinate responsibilities in ensuring compliance with environmental, historic preservation, and cultural resources requirements related to the Tribal Broadband Connectivity Program (TBCP). This collaboration allows high-speed internet service to be deployed quickly while also ensuring safeguards to protect Native lands and interests. Additionally, it streamlines the National Environmental Policy Act reviews for both NTIA, as the lead Federal agency for high-speed internet grant programs, and BIA, as authorized to grant rights-of-way over and across land held in trust or restricted status by the United States under the Indian Right-of-Way Act of 1948 (Act of Feb. 5, 1948, P.L. 80-407, codified at 25 U.S.C. §§ 323-38).

3. Assistant Secretary Davidson, coordination of federal funding for broadband projects is essential. With the creation of the NTIA's Office of Internet Connectivity and Growth (OICG), there have been significant steps toward ensuring federal agencies responsible for deploying broadband coordinate funding. The Federal Communications Commission is in the process of authorizing funding for winning bidders through the Rural Digital Opportunity Fund (RDOF) while other agencies are concurrently reviewing grant applications or will be for broadband projects. There is concern that the current timeline may disadvantage areas where winning bidders have defaulted or withdrawn their application if other federal programs prohibit projects in RDOF areas.

- a. What steps is the NTIA taking to ensure there is adequate support for communities where RDOF support has been denied or may be withdrawn?

RESPONSE: NTIA is working with other federal agencies to coordinate broadband investment programs (*e.g.*, the FCC's Rural Digital Opportunity Fund (RDOF) and the U.S. Treasury's Capital Projects Fund), to best ensure that affordable, reliable, high-speed internet access is deployed to every serviceable location in the United States.

Meeting the goal of connecting all Americans will require a "whole of government" approach that includes close coordination among federal, state, and community actors. We are in regular communication with our interagency colleagues and the White House Infrastructure Task Force to ensure full coordination. In addition, NTIA, FCC, and the U.S. Department of Agriculture (USDA) signed an interagency agreement in June 2021 that documents their commitment to coordinate resources and leverage data from each to appropriately identify areas of need, and work to avoid duplication of efforts where feasible. In May 2022, NTIA, the FCC, USDA, and the U.S. Department of the Treasury (Treasury) announced an interagency agreement to share information about and collaborate regarding the collection and reporting of certain data and metrics relating to broadband deployment.

- b. Would the NTIA consider implementing guidelines that direct states to prioritize areas that have had bidders default on RDOF awards?

RESPONSE: The Infrastructure Investment and Jobs Act does not contemplate prioritizing areas where bidders default on RDOF awards. States are, however, required to award funding in a manner that prioritizes unserved service projects. NTIA is working closely with the states as well as the FCC to best ensure that affordable, reliable, high-speed internet access is deployed to every serviceable location in the United States.

4. Assistant Secretary Davidson, Congress established the NTIA's Connecting Minority Communities Pilot Program in the Consolidated Appropriations Act of 2021,

providing \$268 million for the program. Dine College, a tribal land-grant college in my district, applied through the program for a grant to provide critical support for broadband, as well as equip students in need with laptops and Internet access. The application window for the program closed on December 1, 2021, and the Notice of Funding Opportunity outlined the NTIA will complete its review, selection of successful applicants, and award processing by March 1, 2022. When does the NTIA expect to begin announcing awards through the program?

RESPONSE: On July 22, 2022, NTIA announced more than \$10 million, including \$2,925,627.00 for Dine College, in CMC grants. NTIA will continue to announce CMC awards on a rolling basis. NTIA received more than 200 applications and more than \$833 million in grant requests for the \$268 million pilot program.

The Honorable Anna G. Eshoo (D-CA)

1. The Infrastructure Investment and Jobs Act (IIJA) prohibits a state's subgrantees receiving funding through the Broadband Equity, Access, and Deployment (BEAD) program from using funds to purchase equipment from entities on the FCC's Covered List.

- a. How else can NTIA protect the security of our country's telecommunications systems from foreign adversaries?

RESPONSE: Section 60102(b)(4)(B)(ii) of the IIJA requires NTIA to provide technical and other assistance to eligible entities "regarding cybersecurity resources and programs available through Federal agencies, including the Election Assistance Commission, the Cybersecurity and Infrastructure Security Agency, the Federal Trade Commission, and the National Institute of Standards and Technology." Further, Section 60102(g)(1)(B) of IIJA requires that every BEAD Program subgrantee "comply with prudent cybersecurity and supply chain risk management practices, as specified by the Assistant Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Commission." NTIA staff has been engaged with colleagues at NIST to ensure that the BEAD Program incorporates appropriate and prudent cybersecurity and supply chain risk management practices.

- b. Is the NTIA considering national security-related requirements for the other IIJA broadband and connectivity programs it is implementing?

RESPONSE: NTIA will continue to consider national security-related requirements when instructed by Congress, and to work with our interagency partners to incorporate appropriate and prudent national security risk management practices.

2. I've been working for years to establish a national 'dig once' policy to eliminate the need for duplicative and costly roadway excavation. Has NTIA taken a position on 'dig once' policies and do you believe there's a role to advance 'dig once' policies through implementation of IIJA's broadband programs? If so, what?

RESPONSE: NTIA is supportive of dig-once policies as part of an efficient broadband infrastructure deployment strategy. NTIA supports the U.S. Department of Transportation's Federal Highway Administration (FHWA) regulations, published in 2021, which require State departments of transportation (State DOTs) to coordinate to facilitate the installation of broadband during road construction projects, alongside other utilities, to minimize the need for further excavation in the future. See FHWA regulations, 23 CFR § 645.307(a)(4). This approach can minimize cost and disruption to the traveling public, and make federal funding go further by leveraging an existing construction project to deploy

broadband. The FHWA regulations also require State DOTs to identify broadband utility coordinators and establish a process to register broadband entities. We will encourage the BEAD and Middle Mile recipients to coordinate with these broadband utility coordinators to maximize the federal funding they receive.

3. I appreciate NTIA's work on protecting privacy, including hosting three recent listening sessions on the role of privacy, equity, and civil rights with respect to personal data.

a. Is NTIA considering additional listening sessions, reports, or other action related to these issues?

RESPONSE: NTIA, and the Administration as a whole, are committed to protecting privacy, equity, civil, and human rights. In addition to the three listening sessions held in December 2021, NTIA will soon release a request for comment to solicit written feedback and expertise on these issues and possible ways forward. Those comments, along with input from the listening sessions, will inform our findings in a subsequent report.

b. In its capacity as an advisor to the Administration, has the NTIA taken a position on what actions are needed to protect privacy?

RESPONSE: NTIA's positions on privacy are guided by the Administration's priorities and commitments, such as President Biden's Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, his Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, his call in the State of the Union for stronger privacy protections for children and teens, and his Blueprint for an AI Bill of Rights. NTIA is looking at possible steps forward to address issues at the intersection of privacy, equity, and civil rights in its report, building off of the December listening sessions and forthcoming Request for Comment.

4. I was pleased by the success of the NTIA's partnership with the FDA to reduce illegal opioid sales online through a trusted notifier program.

a. Do you believe Congress should take additional steps related to this particular program (e.g., codify the program in statute)?

RESPONSE: NTIA is proud of the trusted notifier pilot with the U.S. Food and Drug Administration (FDA) and domain name registries, which serves as a proof of concept that voluntary, collaborative programs to address illegal Internet content (in this case, websites selling illegal opioids to Americans) can and do work. I welcome the opportunity to discuss how these efforts can be strengthened or enhanced with you or your staff.

- b. Has the NTIA considered implementing similar programs for other areas of rampant illegal activity online? If so, what other areas might be appropriate for trusted notifier programs?

RESPONSE: NTIA is exploring further work on trusted notifier and similar, voluntary programs to address illegal activity online in ways that should prove durable for the rapidly changing Internet environment. We are currently exploring options and opportunities with stakeholders.

The Honorable Peter Welch (D-VT)

1. Administrator Davidson, we share the goal of rapid and efficient broadband deployment in our communities under the IIA broadband grant program. Can you discuss the challenges in achieving that goal as it relates to the new the domestic content requirements under the law and what options the agency may be considering to address it?

RESPONSE: Secretary Raimondo and I are intent on maximizing the use of goods, products, and materials produced in, and services offered in, the United States in connection with the broadband infrastructure grant programs NTIA is responsible for administering. In the short term, we are actively working with industry to understand the impact that domestic content preferences will have on the Middle Mile Grant Program and the BEAD Program. On September 17, 2022, NTIA sought public comment on a limited applicability nonavailability waiver that would provide recipients of federal financial assistance under NTIA's Middle Mile Grant Program a limited exemption from application of the Buy America Preference as applied to limited classes of manufactured products and construction materials.

2. If NTIA chooses to pursue a targeted waiver, what metrics will the agency consider to be the most appropriate to apply? Are you considering how previous applications of Buy America requirements to federal broadband programs worked and if so, what have you learned?

RESPONSE: The Commerce Department is committed to faithfully implementing the Infrastructure Investment and Jobs Act (IIJA), including the Build America, Buy America provisions. As I said during my testimony, the Department will only waive these requirements where the acquisition of domestic components would be inconsistent with the public interest, their cost would be unreasonable, or the relevant materials or products are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. As noted above, on September 17, 2022, NTIA sought public comment on a limited applicability nonavailability waiver that would provide recipients of federal financial assistance under NTIA's Middle Mile Grant Program a limited exemption from application of the Buy America Preference as applied to limited classes of manufactured products and construction materials.

The Honorable Tony Cárdenas (D-CA)

1. Wi-Fi is the most heavily used wireless technology in the world and was born in the U.S. consumers, schools, and businesses rely on it more now than ever before. How does NTIA plan to support the FCC's recent efforts to make more spectrum available for Wi-Fi use?

RESPONSE: As the manager of federal spectrum and the President's principal advisor on telecommunications and information policy, NTIA plays a key role in developing and enacting our nation's spectrum policy. That includes coordinating on the FCC's efforts to make more spectrum available for unlicensed usage for critical technologies like Wi-Fi.

NTIA also played an essential role in the development of the shared spectrum technologies in the Citizen Broadband Radio Service (CBRS). This innovative band allows unused spectrum to be used on a permissive basis, while giving priority to incumbent federal users and users with priority access licenses as needed.

Shared spectrum systems like those deployed in the CBRS band offer a roadmap for how federal spectrum can be shared with licensed users and others. I am committed to meeting our nation's evolving communications needs and to coordinating with FCC to allow us to continue leading the world in the development and deployment of innovative spectrum technologies and policies.

On August 2, 2022, the FCC and NTIA announced an updated Memorandum of Understanding (MOU) between the agencies on spectrum coordination. The MOU establishes a stronger framework for managing spectrum use and planning, including, among other things, through: 1) normalized high-level planning; 2) a longer-term spectrum outlook; 3) greater coordination; 4) improved transparency and data sharing; and 5) clearer dispute resolution.

2. I know making sure NTIA is appropriately coordinating and funding projects to Tribes is important to you, and I know there is much work to be done on Indian country and pent-up demand. When do you anticipate distributing all of the funds to the grant recipients? How many applicants have not made it past the first round, and how are you communicating and providing notice to applicants that have been disqualified during the initial review?

RESPONSE: While award notifications have begun on a rolling basis, the process is still ongoing and we are unable to speak to the status of applications under review until we've formally completed the awards process. Per the guidance set forth in the Notice of Funding Opportunity (NOFO), unsuccessful applicants will receive notification from the program office and be afforded the opportunity to meet with program staff to discuss the content of that notification.

The timeline for awards has been adjusted based upon a number of factors, including additional amendments to program funding under Infrastructure Investment and Jobs Act (IIJA), Build America, Buy America provisions and waiver considerations requiring OMB approvals, and the need for further consultation with Tribes regarding how best to treat the additional funding appropriated under IIJA in an equitable manner. As of September 22, 2022, NTIA has made a total of 70 awards totaling \$755,737,402.24 from the initial round of funding under the June 3 Tribal Broadband Connectivity Program (TBCP) NOFO.

Given the volume of requests submitted in response to the June 2021 TBCP NOFO and the significant need to quickly expand high-speed internet service on Tribal lands, NTIA announced on August 9, 2022, that it had added \$1 billion from the IIJA to the current TBCP funding period, which closed September 1, 2022, increasing the total available for high-speed internet grants as part of that notice to \$1.98 billion. NTIA alerted Tribal entities who applied in June 2021 that there is no action required on their part and NTIA will continue to announce additional awards on a rolling basis as they move through NTIA's review process. The additional IIJA funding added to the TBCP round one will ensure a portion of the IIJA funding reaches eligible applicants faster and reduces the burden on applicants to apply in a second NOFO but does, however, increase the amount of time to conduct application review and curing as well as when we are permitted to notify unsuccessful applicants.

3. As NTIA considers how to distribute funding designated for the Broadband Equity, Access, and Deployment (BEAD) program, how will you ensure the most intense use of the infrastructure that it expects to fund?

RESPONSE: The IIJA lays out a clear framework for eligible entities to fund broadband infrastructure projects, which requires them to prioritize unserved locations, then underserved locations, and then community anchor institutions. The NOFO requires that eligible entities faithfully adhere to that framework so that unserved areas are addressed first.

4. Telecommunications infrastructure can be shared by multiple broadband providers. Leveraging this publicly funded infrastructure to support more than one technology and/or provider would promote competition and benefit consumers. What will NTIA do to ensure that multiple providers have access to the infrastructure developed with BEAD money on a reasonable and non-discriminatory basis?

RESPONSE: The middle mile program is the force multiplier of the three IIJA programs. It will be the first out of the gate when it comes to our disbursement of funds and will help us leverage the biggest benefit from the BEAD program. One of the criteria for evaluating middle mile applications at the merit review stage includes whether providers commit to offering open access to the network. Section 60401(e)(1) of the IIJA states that “[t]o be eligible to obtain a middle mile

grant, an eligible entity shall agree, in the application submitted through the process established under subsection (d), to prioritize—

- (A) connecting middle mile infrastructure to last mile networks that provide or plan to provide broadband service to households in unserved areas;
- (B) connecting non-contiguous trust lands; or
- (C) the offering of wholesale broadband service at reasonable rates on a carrier-neutral basis.”

There are specific wholesale requirements in the IIJA. Section 60102(h)(4)(H) states that if a BEAD Program subgrantee is “no longer able to provide broadband service to the locations covered by the subgrant at any time, [the subgrantee] shall sell the network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to other broadband service providers or public sector entities.”

5. Recently, the White House celebrated the success of the Emergency Broadband Benefit (EBB) program and its successor the Affordable Connectivity Program (ACP), both bipartisan and bicameral programs developed by Congress to address affordability. These programs now have over 10 million participants, allowing many homes to afford high-speed, high-capacity broadband for the first time. Given this success, do you believe that low-cost option for your broadband grant programs should be modeled on these affordability efforts, especially when it comes to who is eligible for these programs?

RESPONSE: Congress tasked NTIA, and the states, with helping to ensure that every person in America has access to affordable, reliable, high-speed internet access. The BEAD NOFO provides several affordability tools to participating states and territories: (1) it requires all funded networks to provide a low-cost option to eligible subscribers; (2) it requires all states and territories to have plans to address middle-class affordability; and (3) it requires states to prioritize funding proposals that improve affordability. States and territories have significant flexibility with respect to how they achieve this goal. As stated in the NOFO, “We expect that Eligible Entities will adopt diverse strategies to achieve this objective.”

The Honorable Robin Kelly (D-IL)

1. Apart from funding Congress is preparing to appropriate in the USA Telecom Act, as NTIA shapes its rules for each of these programs under the BIL, in what ways will NTIA consider Open-RAN architecture for connecting consumers?

RESPONSE: NTIA supports industry's development of Open RAN, and NTIA has been at the forefront of Executive Branch engagement to promote the development and deployment of this innovative approach to telecommunications network infrastructure. NTIA expects wireless-related solutions such as Open RAN to play a role in advancing the connectivity goals outlined in the BIL.

The Honorable Bob Latta (R-OH)

1. During the hearing, I asked about the definition of “unserved” for the Broadband Equity, Access, and Deployment (BEAD) Program, which by statute includes areas that may be considered as “served” in up to 20% of the area. While I appreciate your response that NTIA will follow the law, including that definition, the law also provides you the discretion to prioritize certain projects that, “provide broadband service that meets speed, latency, reliability, consistency in quality of service, *and related criteria as the Assistant Secretary shall determine.*”
 - a. Given that NTIA will be using the forthcoming maps produced by the FCC consistent with the Broadband DATA Act to make these funding decisions, will you commit to prioritizing projects that will serve areas that are 100% unserved, meaning areas that lack access to 25/3 Mbps?

RESPONSE: The Infrastructure Investment and Jobs Act (IIJA) lays out a clear framework for eligible entities to fund broadband infrastructure projects, which requires them to prioritize unserved locations, then underserved locations, and then community anchor institutions. The Notice of Funding Opportunity requires that eligible entities faithfully adhere to that framework. Eligible entities will need to demonstrate that they have the ability to deploy to unserved locations before they begin deploying to underserved locations.

In particular, we require that every state or territory develop a plan that ensures deployment of qualifying broadband service at 100 Mbps downstream/20 Mbps upstream to every unserved location. Where a state or territory has funds left over after that, it must use those funds to ensure deployment to all underserved locations (those lacking service at 100 Mbps/20 Mbps). Only if the state or territory will meet those goals can it use additional BEAD Program funds for other purposes.

2. Permitting delays present a real challenge to deploying broadband in rural areas, and I led my colleagues in introducing the Boosting Broadband Connectivity Agenda to streamline the permitting process in a technology neutral manner.
 - a. Is NTIA considering adding requirements for States to streamline their permitting processes, and if so, what types of requirements is NTIA considering?

RESPONSE: Section 60102 of the IIJA, which creates the BEAD Program, does not directly address permitting issues. We are cognizant, however, of the important role that these issues play in broadband deployment, and in the Notice of Funding Opportunity we directed states and territories to tell us what they plan to do to streamline permitting and similar processes, and we are working with our partners at the federal level to minimize barriers to broadband deployment.

3. When you were questioned about community broadband, you stated, “the data shows that these can be very valuable approaches, and the statute is quite clear. The law that we’re implementing says that municipal broadband, co-ops, non-profits, other types of non-traditional providers can participate.”
 - a. What data were you referring to that shows community broadband can be an effective approach? Please provide any such reports, data, or findings to the Committee.

RESPONSE: Various studies have demonstrated that community broadband systems can offer benefits to consumers in various circumstances. For example, in 2018 the Berkman Klein Center for Internet and Society at Harvard University published a report finding that community-owned fiber-to-the-home networks tended to offer pricing below that of commercially owned Internet Service Providers. (David Talbott and Kira Hessekil, “Community-Owned Fiber Networks: Value Leaders in America,” <https://cyber.harvard.edu/publications/2018/01/communityfiber>). Last year, the Institute for Local Reliance published findings indicating that nine of the ten fastest networks in the country are municipally owned. (Snapshots of Municipal Broadband, <https://ilsr.org/wp-content/uploads/2021/05/05-2021-Snapshots-Fact-Sheet.pdf>). The BEAD Program is not designed to prefer municipally owned networks. The law, however, calls on NTIA to ensure that such providers are able to compete for BEAD funding.

4. In the Infrastructure Investment and Jobs Act (IIJA), eligible community anchor institutions are defined as lacking access to gigabit level service, but there is no requirement these institutions to be unserved. Meaning, you could provide funds to anchor institutions that are already served at less than gigabit speeds to upgrade their existing services rather than connect new anchor institutions in unserved communities. This could lead to overbuilding.
 - a. Will you commit to prioritizing anchor institutions in areas that remain unserved rather than funding projects that would overbuild existing infrastructure?

RESPONSE: Minimizing funding duplication is critical to the success of the BEAD program and the overarching goal of ensuring that all Americans have access to affordable, reliable, high-speed internet. IIJA lays out a clear framework for eligible entities to fund broadband infrastructure projects, which requires them to prioritize unserved locations, then underserved locations, and then community anchor institutions. The Notice of Funding Opportunity (NOFO) requires that eligible entities faithfully adhere to that framework. The NOFO explicitly prohibits states and territories from treating any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband as “unserved” or “underserved,” which for community anchor institutions is 1 Gbps symmetrical. It also strongly encourages states and

territories that are able to ensure deployment to all unserved and underserved locations to focus funding on eligible community anchor institutions – those lacking service at 1 Gbps or better.

5. The IIJA provides NTIA direction on how to determine the eligibility of broadband projects, but it also gives States the power to decide how to disburse the money.
 - a. Reverse auctions have been extraordinarily successful in stretching Federal funding efficiently, and reducing the potential for waste, fraud, and abuse. Does NTIA plan on including guidance to States that recommend using reverse auctions when disbursing BEAD funds?

RESPONSE: Each eligible entity faces unique circumstances – there is no “one size fits all” solution to broadband deployment. As such, successful execution of the BEAD Program demands close collaboration between NTIA, as the program administrator, and the eligible entities, who will have significant flexibility when choosing how to fund broadband deployments. NTIA will engage in early, clear, and transparent communication during all phases of the process to help the eligible entities ensure that the subgrantees they choose are well equipped to ensure affordable, reliable, high-speed broadband at every location within their jurisdictions. For some states, this may include conducting reverse auctions.

6. The Digital Equity Act grant programs require States to submit a digital equity plan that is to guide any grant money they receive. However, it also permits a State to select an “administering entity” which under the law can be anything from a “community anchor institution” to a “non-profit foundation.”

- a. How do you plan on ensuring there is transparency in the way administering entities are chosen and perform the duties of the State plan?

RESPONSE: The Department of Commerce, NTIA, eligible entities, and subgrantees each have a critical role to play in ensuring that the Digital Equity Act grant programs are implemented in a manner that ensures transparency, accountability, and oversight sufficient to, among other things, minimize the opportunity for waste, fraud, and abuse; ensure that recipients of grants under the Program use grant funds to further the overall purpose of the Program in compliance with the requirements of the IIJA, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth at 2 C.F.R. Part 200, and other applicable law; and to allow the public to understand and monitor grants and subgrants awarded under the Program.

- b. What steps is NTIA taking to ensure that there are measurable performance metrics and standards to hold these administering entities accountable to objective and measurable levels of success?

RESPONSE: NTIA has established robust financial and program progress reporting mandates that are aligned to the programmatic objectives and intended outputs and outcomes of each discrete program. These initiatives will ensure reporting that tracks, monitors, and collects data on project performance and results. For example, the BEAD NOFO imposes regular reporting obligations on states and territories, which must report within 90 days of receiving any funds, again within one year of receiving funds, and then semi-annually. These reports will cover a host of metrics, many of which will be set forth in more detail in future guidance. BEAD Program subgrantees also are subject to extensive reporting on a semiannual basis (or more frequently, at the state or territory's discretion). The Middle Mile Grant Program NOFO sets forth detailed biannual reporting requirements for grant recipients. The Digital Equity Planning Grant NOFO likewise establishes detailed reporting obligations for participants (states, territories, and Tribal entities), including the provision of financial and performance reports. Notably, these various reporting obligations will work in concert with ongoing auditing requirements to ensure robust oversight of each program.

7. The IJA is clear that grants must first go to unserved areas with broadband speeds under 25/3 Mbps before states can consider moving onto funding underserved areas, which are defined as areas with access to broadband speeds between 25/3 and 100/20 Mbps. How will NTIA ensure that States and subgrantees have the resources and time necessary to fully serve Americans currently living in unserved areas, before certifying states to move onto underserved areas?

RESPONSE: The IJA lays out a clear framework for eligible entities to fund broadband infrastructure projects, which requires them to prioritize unserved locations, then underserved locations, and then community anchor institutions. The Notice of Funding Opportunity requires that eligible entities faithfully adhere to that framework. Eligible entities will need to demonstrate that they have the ability to deploy to unserved locations before they begin deploying to underserved locations. If an entity is able to demonstrate that it can deploy to both unserved and underserved locations at the same time, that may be permissible. But this question will ultimately be considered application-by-application.

The Honorable Cathy McMorris Rodgers (R-WA)

1. During the hearing, I asked you about NTIA’s commitment to using—and requiring the States to use—the FCC’s forthcoming Broadband DATA Act maps.

While I am pleased that NTIA will be using the FCC maps, I am concerned about how NTIA or the FCC will resolve discrepancies when maps produced by a State conflict with the FCC’s map. The IJA provides that NTIA shall entertain challenges before the formula-dependent funds are awarded to States, but it is unclear as to how that challenge process should be structured.

- a. Will NTIA commit to requiring any challenges to be run through the FCC’s process as outlined in the Broadband DATA Act?

RESPONSE: The IJA directs the Assistant Secretary, in coordination with the Commission, to allocate BEAD funds amongst the states once the Broadband DATA maps are made public. I agree that accurate mapping data is vital, and that the FCC’s challenge processes – both for the Fabric and for provider data submitted in conjunction with the new Broadband Data Collection – are critical to improving their accuracy. The FCC’s challenge processes are ongoing, and the accuracy of the maps will improve over time. We are working closely with our colleagues at the FCC to determine how best to balance the need to provide certainty regarding the amounts to be allocated to the states and territories in a timely manner against the need to allow the FCC, states, and providers to review and validate the content of the maps.

By statute, the FCC’s Broadband DATA Act will be used to identify the universe of unserved and underserved locations that each eligible entity will put out for bid during their subgrantee selection process. Section 60102(h)(2)(A) of the IJA requires eligible entities to “ensure a transparent, evidence-based, and expeditious challenge process under which a unit of local government, nonprofit organization, or other broadband service provider can challenge a determination made by the eligible entity in the initial proposal as to whether a particular location or community anchor institution within the jurisdiction of the eligible entity is eligible for the grant funds, including whether a particular location is unserved or underserved.” The BEAD NOFO directs eligible entities to “update the data provided in their Initial Proposal to reflect the most recently published version of the Broadband DATA Maps available as of the initiation of the challenge process.”

Eligible entities are required to include a detailed plan for their challenge process as part of their Initial Proposal, which should include descriptions of the types of evidence that the eligible entity may consider as part of that challenge process. NTIA will review each of these proposals, and the Assistant Secretary may modify the challenge process proposed by the eligible entity as necessary.

NTIA has worked and will continue to work closely with each eligible entity on ensuring that the challenge process required under Section 60102(h)(2) is transparent, evidence-based, and expeditious.

2. The IIIA leaves discretion to impose net neutrality style regulations on recipients of the grant funds because recipients are required to adhere to “quality of service standards” as established by the Assistant Secretary.
 - a. Do you plan to impose net neutrality type requirements? Will you prohibit States from imposing similar requirements?

RESPONSE: The Notice of Funding Opportunity does not impose net neutrality requirements. Net neutrality issues are best addressed by the FCC or Congress, which can choose whether to apply such mandates at a nationwide level.

The Honorable Brett Guthrie (R-KY)

1. As a member of the Energy and Commerce Committee and co-Chair of the Spectrum Caucus, I believe that making more spectrum available to non-federal users is critical, especially as 5G and other wireless technologies are being deployed in the United States.

To that end, I have introduced the SMART Spectrum Act, which would require NTIA to establish an Incumbent Informing Capability system that would establish a framework for sharing spectrum between federal and non-federal users in an efficient manner.

- a. How would an Incumbent Informing capability help NTIA work with federal agencies to resolve technical concerns?

RESPONSE: We believe the proposed Incumbent Informing Capability (IIC) represents an important enabling technology that could address many spectrum sharing challenges. The IIC is envisioned as a time- and geographic-based spectrum sharing tool, where the objective is to use temporal and spatial dimensions to make the best use of federal spectrum. IIC would inform new entrants in a shared band when nearby incumbent systems must be avoided. New entrants' access to spectrum would be controlled through a nearly-real-time Spectrum Coordination System (SCS), which is similar to techniques used in the ground-breaking Citizens Broadband Radio Service (CBRS) – but notably would avoid some of the difficulties experienced in CBRS's reliance on environmental sensing. CBRS can offer the first use case for IIC, and IIC in turn could improve CBRS – illustrating how federal spectrum could be shared more robustly. Our vision for the IIC is that it will evolve into a common platform for managing federal and non-federal shared spectrum. As a common platform, the IIC would include technical analysis tools and access to trusted data that could be used by federal agencies – working through NTIA to resolve technical concerns.

- b. Has NTIA begun implementing an Incumbent Informing capability, and if so, can you provide an update on progress?

RESPONSE: No, however, if NTIA were to receive appropriations to do so, the first steps would be to establish the IIC as an official program and then stand-up a federal agency working group. NTIA has continued developing the IIC concept to allow for more durable implementation once funded.

- c. Could this tool help federal incumbents use their spectrum more efficiently and enable more commercial use of spectrum licensed for federal government use? What other plans do you have to improve the most efficient use of spectrum?

RESPONSE: Yes, the IIC concept can be applied both to federal-commercial sharing as well as federal-federal sharing. NTIA believes improved spectrum use efficiency will have many benefits, including enabling other users to access the

spectrum when incumbents are not. Our initial focus for the IIC would be to target mid-band spectrum (i.e., 3GHz) for shared federal and non-federal use. Over time, NTIA likely would expand IIC to include other bands as well.

Additionally, NTIA's Institute for Telecommunication Sciences is engaged in ongoing activity with respect to interference analysis, spectrum monitoring, and propagation modeling to maximize efficiency of spectrum.

Lastly, NTIA and FCC signed an agreement in February 2021 to support the National Science Foundation's Spectrum Innovation Initiative, which seeks to advance spectrum management and wireless technology research and contribute to transformative use and management of the electromagnetic spectrum. We expect this collaboration to be instrumental to long-term solutions for improving efficient use of spectrum.

2. In the National Defense Authorization Act (NDAA) for Fiscal Year 2021, Congress created the Public Wireless Supply Chain Innovation Fund to accelerate the development and deployment of Open RAN compatible technology. I am concerned about this delay in funding, especially given the amount of money that has been appropriated for broadband infrastructure.
 - a. Understanding that you are waiting for Congress to appropriate funds for this grant program, what actions are you taking now so that NTIA can move quickly to award grants from the Fund to promote Open RAN compatible technology and accelerate the deployment of Open RAN compatible networks?

RESPONSE: With the enactment of P.L. 117-167, commonly known as the "CHIPS and Science Act"—which appropriates \$1.5 billion for the Public Wireless Supply Chain Innovation Fund (PWSCIF)—on August 9, 2022, NTIA has initiated implementation activities. Prior to funds being appropriated for the PWSCIF, NTIA could not carry out implementation activities but began planning next steps in consideration of the legislative requirements to the extent practicable consistent with the Anti-Deficiency Act.

NTIA has been at the forefront of Executive Branch engagement to promote the development and deployment of this innovative approach to telecommunications network infrastructure. NTIA recognizes the significance of public funding to trusted 5G and future wireless technology solutions. Our regular stakeholder outreach and interagency leadership on Open RAN support our understanding of the opportunities this model presents, possible barriers to wider deployment, and the importance of successful implementation of measures like the PWSCIF.

3. As you know, the FCC has not yet completed their work to update federal broadband maps. Further, while the first public maps will be more granular than what is currently available, there may still be inaccuracies. How does the NTIA plan to address this problem as the BEAD program is rolled out?

RESPONSE:

Section 60102(h)(2)(A) of the Infrastructure Investment and Jobs Act *requires* that each eligible entity “ensure a transparent, evidence-based, and expeditious challenge process under which a unit of local government, nonprofit organization, or other broadband service provider can challenge a determination made by the eligible entity in the initial proposal as to whether a particular location or community anchor institution within the jurisdiction of the eligible entity is eligible for the grant funds, including whether a particular location is unserved or underserved.” NTIA has the opportunity and the obligation to review the results of that challenge process.

4. It is frustrating to see other agencies without spectrum engineering expertise publicly involve themselves in technical disputes. We saw this recently in the C-Band, when the FAA involved itself on behalf of the aviation industry. Does the FAA have technical, radiofrequency engineering experts working on this issue?
 - a. If yes, what steps are you taking to ensure NTIA’s technical experts are communicating with the spectrum experts at other federal agencies, so concerns are communicated in a timely manner?

RESPONSE:

NTIA serves as the President’s principal advisor on telecommunications and spectrum, and there are numerous spectrum experts throughout the federal agencies, including at the FAA, who provide advice to us through the Interdepartment Radio Advisory Committee (IRAC) and other channels. Through these engagements, NTIA is working with Federal agencies to ensure that spectrum policy concerns and other related information are shared with NTIA timely. In addition, NTIA and FCC signed an updated Memorandum of Understanding on August 2, 2022—that allows for more meaningful consideration of proposals.

The Honorable Bill Johnson (R-OH)

1. Pole access and cost allocation disputes can stall or even halt broadband buildout. In order to ensure that these disputes do not jeopardize timely completion of broadband deployment projects, would NTIA consider requiring states to adopt an expedited process for resolving disputes between broadband subgrantees and pole owners over access to poles, or the processing of pole attachment applications?

RESPONSE: We recognize that a lack of reasonable access to poles – and permitting, conduits, and rights of way more generally – can be a key barrier to broadband deployment. We directed states and territories to tell us what they plan to do to streamline permitting and similar processes, and we are working with our partners at the federal level to minimize barriers to broadband deployment. We recognize the importance of removing unnecessary barriers faced by those entities that will build the networks required to achieve our goal of universal, affordable, high-speed internet access.

The Honorable Richard Hudson (R-NC)

1. Mr. Davidson, across America, different entities work to provide broadband service. That includes utilities of all sizes, from investor-owned utilities to electric cooperatives and public power utilities and public utility districts, work diligently to provide broadband service to their communities.
 - a. How is NTIA approaching the administration of the middle-mile broadband infrastructure grant program under the Infrastructure Investment and Jobs Act (IIJA)?

RESPONSE: The Middle Mile Program is the force multiplier of the three IIJA programs. It will be the first program when it comes to our disbursement of funds and will help us leverage the biggest benefit from the BEAD program, while addressing affordability overall.

The Notice of Funding Opportunity (NOFO) specifies that grants can be used for the construction, improvement, or acquisition of middle mile infrastructure, including: construction, improvement, or acquisition of facilities and equipment; engineering design, permitting and work related to project reviews; personnel costs, including salaries and benefits for staff and consultants; and other costs necessary to programmatic activities.

When considering an application at the merit review stage, the NOFO lays out the criteria for evaluating a proposed project's purpose, benefit, and sustainability. The criteria for evaluating the project's purpose and benefit include: the extent to which the project either facilitates deployment of high-speed broadband networks to unserved/underserved areas, or improves affordability in already-served markets; whether the project offers non-discriminatory interconnection; whether providers commit to offering open access to the network; the extent to which the project will otherwise benefit the service area; and the comprehensiveness and appropriateness of the proposed technical solution for meeting the community's needs. With respect to project sustainability, the criteria include the applicant's organizational capability; the reasonableness of proposed budget; the project's fiscal sustainability; and any non-federal cost-share commitment above 30%.

At the Programmatic Review stage, we will consider other benefits of the proposed project, such as its likelihood of reducing end-user broadband prices or reducing latency in remote locations and its likelihood of benefiting low-income Americans, unserved areas, Tribal lands, and anchor institutions (among other things). In the final stage, we will work to ensure geographic diversity and diversity in project size in the final slate of projects selected.

- b. How is NTIA planning to ensure the long-term viability of any projects funded under the middle-mile broadband grant program so that funds are not wasted or

duplicative?

RESPONSE: The IJA articulates a clear purpose for the Middle Mile Grant Program in section 60401(b) and gives NTIA clear guidance on how it is to prioritize applications for the program, as detailed above. NTIA will faithfully adhere to the guidance set forth in the statute. Among other things, the Middle Mile NOFO specifies that 40 of the 100 points available during the Merit Review stage will be awarded based on the proposed project’s sustainability, including sustainability after the award period has ended.

The Honorable Tim Walberg (R-MI)

1. The Infrastructure Investment and Jobs Act (IIJA) is drafted so that NTIA is actually not the entity providing grants to subgrantees—rather, that is the role of the States. Typically, federal grant programs come with safeguards to guard against waste, fraud, and abuse. These safeguards allow agencies to recover misused funds. Will those same federal clawback mechanisms apply to this program since the States are actually awarding the funds? How NTIA will oversee the grants once the money goes to States?

RESPONSE: See below.

- a. Is there anything in the IJA that gives NTIA the authority to recover these funds from subgrantees in the event of a default or finding of fraud or abuse?

RESPONSE: Section 60102(g)(2)(B) of IJA requires states to “stipulate, in any contract with a subgrantee for the use of such funds, reasonable provisions for recovery of funds for nonperformance.” Section 60102(g)(3)(B)(i) further permits the Assistant Secretary to “deobligate grant funds awarded to an eligible entity that” fails to fulfil this obligation or “demonstrates an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Assistant Secretary.”

In addition, BEAD Program grants are subject to 2 CFR Part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Pursuant to 2 CFR § 200.101(b)(2), “[t]he terms and conditions of Federal awards . . . flow down to subawards to subrecipients unless [another provision of 2 CFR 200] or the terms and conditions of the Federal award specifically indicate otherwise.”

- b. Would you consider government-owned broadband providers high-risk, especially if they have never operated a broadband network before, and does NTIA plan on having a stricter review process for new or first-time providers?

RESPONSE: Section 60102(h)(1)(A)(iii) of IJA states that eligible entities “may not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts,

or local governments from eligibility for [BEAD Program] grant funds.” Section 60401(a)(4) similarly defines the universe of entities eligible to apply for grants as “a State, political subdivision of a State, Tribal government, technology company, electric utility, utility cooperative, public utility district, telecommunications company, telecommunications cooperative, nonprofit foundation, nonprofit corporation, nonprofit institution, nonprofit association, regional planning counsel, Native entity, or economic development authority” or “a partnership of 2 or more” such entities.

Sections 60102(g)(2)(A) and 60401(d)(3) also require that NTIA and the states ensure that any entity selected to deploy broadband infrastructure be able to do so “in a competent manner” and that they have the “technical and operational capability” to carry out the projects they propose. The NOFO faithfully adheres to the guidance set forth in the statute, regardless of the nature of the applicant.

2. What will the NTIA do to ensure that all kinds of utilities, including investor-owned utilities, rural electric cooperatives, and public power utilities, as well as public utility districts, have robust and meaningful opportunities to access funding for middle- and last-mile broadband infrastructure deployment?

RESPONSE: Section 60102(h)(1)(A)(iii) of IJA states that eligible entities “may not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility for [BEAD Program] grant funds.” Section 60401(a)(4) similarly defines the universe of entities eligible to apply for grants as “a State, political subdivision of a State, Tribal government, technology company, electric utility, utility cooperative, public utility district, telecommunications company, telecommunications cooperative, nonprofit foundation, nonprofit corporation, nonprofit institution, nonprofit association, regional planning counsel, Native entity, or economic development authority” or “a partnership of 2 or more” such entities, and section 60401(c) directs the Assistant Secretary to “establish a program under which the Assistant Secretary makes grants on a technology-neutral, competitive basis to eligible entities for the construction, improvement, or acquisition of middle mile infrastructure.” NTIA will faithfully adhere to the guidance set forth in the statute.

3. To date, how many new staffers has NTIA hired to assist states with their IJA plans? How many does NTIA intend to hire? Will these FTEs remain at NTIA following the completion of grant distribution?

RESPONSE: NTIA’s Office of Internet Connectivity and Growth, the office that is implementing the new grant programs, has grown by 100% since enactment of IJA and had 109 staff as of August 1, 2022. In December 2021, NTIA obtained Direct Hire authority for more than 100 new staff members and NTIA has been proactively recruiting, hiring, and onboarding staff. NTIA intends to continue

these staffing levels after grant award/distribution to support post award monitoring and technical assistance.

4. The IIJA exempts the BEAD program from the Administrative Procedures Act (APA), which includes the Freedom of Information Act. Will you nonetheless commit to transparency and openness of information in establishing and administering this program, particularly evaluating grants?

RESPONSE: We are committed to running a transparent process. The Department, NTIA, eligible entities, and subgrantees each have a critical role to play in ensuring that the BEAD Program is implemented in a manner that ensures transparency, accountability, and oversight sufficient to, among other things, minimize the opportunity for waste, fraud, and abuse; ensure that recipients of grants under the Program use grant funds to further the overall purpose of the Program in compliance with the requirements of the Infrastructure Investment and Jobs Act, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth at 2 C.F.R. Part 200, and other applicable law; and to allow the public to understand and monitor grants and subgrants awarded under the Program.

5. The IIJA gives you the authority to waive certain requirements included in the Act. Will you commit to use this power sparingly and alert Congress when you do?

RESPONSE: NTIA expects there will be some instances where waivers will need to be issued, but those waivers will be evaluated and crafted carefully. NTIA believes that waivers will have to be tailored and that the bar for a waiver will be high.

The Honorable Earl L. “Buddy” Carter (R-GA)

1. I appreciate your commitment to working with the Committee, and I was encouraged by your emphasis on fast, accountable deployment of broadband to unserved areas like those in my district. As you know, burdensome regulations can slow down or prevent investment in broadband buildout.
 - a. Will you commit to not imposing undue regulatory obligations, such as product and service mandates or “open access” requirements, on subgrantees as a condition of funding eligibility – and prohibit the states from doing so, as well – in order to avoid creating disincentives to participation?

RESPONSE: I am keenly aware of the importance of ensuring that the programs NTIA is developing are faithful to the guidance provided by Congress in the IIJA, and that potential participants will carefully weigh the costs and benefits of participating in those programs. The Notice of Funding Opportunity adheres to the statute. It does not impose any open access or other undue regulatory obligations on subgrantees as a condition of funding eligibility. NTIA has endeavored to ensure that our programs maximize incentives for participation and benefits to the public.

2. Mr. Davidson, what can the NTIA do to ensure the ability of states and localities to make the broadband investments that are best for their communities, with robust, reliable, and secure broadband?

RESPONSE: Each eligible entity faces unique circumstances – there is no “one size fits all” solution to broadband deployment. As such, successful execution of the BEAD Program demands close collaboration between NTIA, as the program administrator, and the eligible entities, who will have significant flexibility when choosing how to fund broadband deployments. I have directed NTIA to engage in early, clear, and transparent communication during all phases of the process to help the eligible entities ensure that the subgrantees they choose are well equipped to deliver affordable, reliable, high-speed broadband to every location within their jurisdictions. I note further that Section 60102(g)(2) of the IIJA obligates eligible entities to, among other things, ensure that any prospective subgrantee is capable of carrying out activities funded by the subgrant in a competent manner in compliance with all applicable Federal, State, and local laws; has the financial and managerial capacity to meet the commitments of the subgrantee under the subgrant, the requirements of the Program, and such requirements as may be further prescribed by the Assistant Secretary; and has the technical and operational capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award.

3. Mr. Davidson, as I’m sure you’re aware, concerns were recently raised by the Federal Aviation Administration (FAA) over interference with aviation safety equipment from

the deployment of 5G in the C-Band. Since then, both the telecommunications industry and the commercial aviation industry have worked hard and collaborated closely with the FAA to mitigate these aviation safety risks.

- a. Does NTIA have any sort of Memorandum of Understanding (MOU) with other agencies, especially safety regulators of critical infrastructure, that could address these issues in the future?

RESPONSE: As the U.S. spectrum managers, the FCC and NTIA maintain an MOU that serves as the main mechanism that guides our overall coordination on spectrum matters. The MOU, updated in August 2022, establishes a framework for compliance with a statutory provision that requires the heads of FCC and NTIA to meet at least twice per year to conduct joint spectrum planning on various issues. It formalizes collaboration practices between the agencies with the intention to promote efficient spectrum use, increase commercial access, and prevent harmful interference. In particular, the MOU states that the FCC and NTIA are to provide each other advance notice of actions and work together to resolve technical and policy differences by consensus whenever possible. The MOU also outlines ongoing communication requirements the two agencies are to maintain.

As for other agency participation in spectrum matters, NTIA has the Interdepartment Radio Advisory Committee (IRAC), an advisory committee to the NTIA Administrator that is chaired by NTIA. IRAC is the primary mechanism for federal agency coordination on domestic spectrum-management activities, including when the FCC is planning to allocate spectrum or develop technical service rules through a rulemaking proceeding.

- b. Are there spectrum reallocation process changes that you are considering to provide certainty and transparency to all stakeholders?

RESPONSE: In February 2022, FCC Chairwoman Jessica Rosenworcel and I announced a Spectrum Coordination Initiative to strengthen coordination between our two agencies. We will be meeting regularly. Our goal is collaboration to strengthen U.S. Government spectrum coordination and advance our shared priorities. Specific targets of the Initiative include: (1) formalizing our regular meetings, (2) updating the existing Memorandum of Understanding (MOU) between our agencies, (3) working collaboratively on a whole-of-government national spectrum strategy that takes into account federal and non-federal needs and forges deeper interagency cooperation and coordination, (4) including staff participation as observers in each other's advisory committees and (5) establishing best practices for spectrum management. I am confident these initiatives will help increase certainty and transparency for stakeholders.

On August 2, 2022, the FCC and NTIA announced an updated MOU between the agencies on spectrum coordination. This marks the first time the MOU has been

updated in nearly twenty years. As contemplated in the Spectrum Coordination Initiative, the MOU establishes a stronger framework for managing spectrum use and planning, including, among other things, through: 1) normalized high-level planning; 2) a longer-term spectrum outlook; 3) greater coordination; 4) improved transparency and data sharing; and 5) clearer dispute resolution.

The Honorable John R. Curtis (R-UT)

1. Congress has long sought to work with federal agencies to expedite broadband deployment on Federal land, including by tasking NTIA with a lead role in coordinating interagency efforts. Under 47 U.S.C. § 1455(b)(3)(A), federal agencies are required to grant or deny a duly filed application for an easement, right-of-way, or lease that is in, over, or on a building or other property owned by the Federal Government to install a communications facility within 270 days of receipt of the application.
 - a. How will NTIA work with agencies like the United States Forest Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the United States Army Corps of Engineers to streamline permitting processes to ensure that the 270-day shot clock is satisfied?

RESPONSE: Section 606 of the MOBILE NOW Act contains several provisions intended to facilitate the deployment of communications facility installations on federal property. Consistent with Section 606(c), in particular, NTIA coordinated with the Departments of the Interior, Agriculture, Defense, and Transportation, the Office of Management and Budget, and the General Services Administration to develop recommendations for streamlining processes for considering applications to locate broadband facilities on federal property and submitted those recommendations to Congress in May 2022.

On August 9, 2022, NTIA and the Department of Interior's Bureau of Indian Affairs (BIA) announced an agreement to coordinate responsibilities in ensuring compliance with environmental, historic preservation, and cultural resources requirements related to the Tribal Broadband Connectivity Program (TBCP). This collaboration allows high-speed internet service to be deployed quickly while also ensuring safeguards to protect Native lands and interests. Additionally, it streamlines the National Environmental Policy Act reviews for both NTIA, as the lead Federal agency for high-speed internet grant programs, and BIA, as authorized to grant rights-of-way over and across land held in trust or restricted status by the United States under the Indian Right-of-Way Act of 1948.

2. How does NTIA plan on removing barriers to broadband deployment projects funded through the Broadband Equity, Access, and Deployment (BEAD) program, such as excessive permitting fees and lengthy approval timelines?

RESPONSE: Section 60102 of the Infrastructure Investment and Jobs Act, which creates the BEAD Program, does not directly address pole attachment fees, terms, and conditions. We are cognizant, however, of the important role that reasonable access to poles, conduit, and rights of way plays in broadband deployment. In the Notice of Funding Opportunity we directed states and territories to tell us what they plan to do to streamline permitting and similar

processes, and we are working with our partners at the federal level to minimize barriers to broadband deployment.