BEFORE THE UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration

Notice and Request for Comment
Docket No. NTIA 2021-0002

Comments of the Montana Telecommunications Association

Introduction

The Montana Telecommunications Association (MTA) represents locally-owned, community-based broadband providers serving rural Montana communities and beyond. MTA member companies' service territories cover over 70 percent of Montana's geographic area. Montana is the nation's fourth largest state and the third least densely populated. The *average* household density served by MTA's member companies is three households per mile.

MTA member companies invest all they can in capital and operating expenditures to bring the benefits of broadband connectivity to the communities they serve. These are community-based companies that are not focused on generating profits or maximizing shareholder value. Yet, there is more to do to achieve the Biden-Harris Administration's goal of ensuring all Americans have access to affordable, reliable, high-speed broadband. We support the President's goal to close the digital divide once and for all.

We appreciate this opportunity to respond to this Notice and Request for Comment. Following are MTA's responses to specific questions.

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

The most important thing NTIA can do is ensure that state plans are singularly focused on closing the digital divide with reliable broadband service to all Americans that meets or exceeds anticipated demand for symmetric 100 mbps broadband speeds. The President and Congress have afforded the nation a once-in-a-generation opportunity to get this done right. We cannot afford to settle for what is "good enough" today, when we have the resources to build a broadband infrastructure that will address tomorrow's needs. Any state plan that fails to realize the promise of closing the digital divide for the foreseeable future will fail to achieve the interests of the President, Congress and the American consumer.

As a general matter, MTA recommends that NTIA carry forward Treasury Final Rules that apply to implementation of the American Rescue Plan Act (ARPA) to the greatest feasible extent. (See Final Rules, pp. 294-312.) Consistency with Treasury rules will make it easier and more efficient for both the Administration and broadband providers to implement the intent of both ARPA and the BIL: to close the digital divide.

For example, Treasury rules provide the following priorities:

- Funded broadband infrastructure should be fiber-based, capable of delivering *symmetric 100 mbps downstream and upstream speeds*. If symmetric 100 mbps speeds are not feasible, 100/20 mbps or greater is permissible, but only if it can be *scaled* to symmetric 100 mbps;
- investment should be directed to households and businesses with an identified need, such as lack of access to *reliable* broadband service;
- households and businesses with an identified need for additional broadband infrastructure investment do not have to be the only ones in the service area served by an eligible broadband infrastructure project. Indeed, serving these households and businesses may require a *holistic approach* that provides service to a wider area, for example, to make ongoing service to certain households or businesses within the service area economical;
- recipients may consider a variety of factors, including whether users receive internet service at or above the speed thresholds *at all hours of the day*; and whether factors other than speed such as latency, jitter, or deterioration of the existing connections make their *user experience* unreliable;
- recipients may consider the *actual experience* of current broadband customers when making their investment determinations;
- recipients should ensure that the broadband infrastructure provides "*reliable*" service at required speeds and does not rely on providers' advertised speeds;
- projects should focus on *last-mile connectivity*—whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service;
- participation in the Federal Communications Commission's (FCC) *Affordable Connectivity Program* (ACP);
- prioritize support for broadband networks owned, operated by, or affiliated with *community based providers* with less pressure to generate profits and a commitment to serve entire communities.

Finally, MTA cautions against adopting rules that limit our broadband horizon to today's broadband speeds of 100 mbps downstream and 20 mbps upstream (100/20). We realize that the BIL defines "underserved" areas at 100/20. This does not mean that an area with 100/20 is served, however. 100/20 is what consumers demand today. The BIL and ARPA combined provide a once-in-a-lifetime opportunity to close the digital divide. We won't close that divide by embracing today's technology. In fact, if we bypass areas that receive 100/20 service today, we simply will recreate today's digital divide: some areas will receive fiber-based symmetric 100/100+ service, while those areas that receive 100/20 service today will be condemned to a future of inferior service that's "good enough" for today, but clearly deficient in the foreseeable near-term future.

General Questions

6. How should NTIA assess a particular state's award process? Are there specific types of competitive subgrant processes that should be presumed eligible (e.g., publicly released requests for proposals and reverse auctions)?

Reverse auctions are a bad idea; you get what you pay for. The largest "winner" in the most recent reverse auction conducted by the FCC—the Rural Digital Opportunity Fund (RDOF)—is a low earth orbit (LEO) satellite broadband provider that doesn't even offer a commercially-demonstrated product. Several *ex parte* communications filed at the FCC question whether LEO satellite broadband service can deliver the capabilities that LEO providers claim. And even if claims are proven accurate, it means that LEO-served locations will get broadband service that's good enough for today (100/20), but will not be sufficient to meet near-term future demand for reliable, high-speed symmetric 100 mbps service. Moreover, being the low-cost option in a reverse auction doesn't mean that the option is low-cost over the life of the asset. In fact, a more durable investment in fiber proves to be economically more cost effective over the life of the investment—while delivering a superior user experience immediately.

MTA also cautions against top-down driven requests for proposals that can limit innovative solutions to complex challenges.

In evaluating a state's award process, NTIA should ask, will the state's plan close the digital divide? NTIA should discourage "solutions" that settle for good enough. There's a once-in-a-lifetime opportunity to deliver reliable, high-speed (symmetric 100 mbps) broadband to nearly every community in the nation. NTIA should grasp this opportunity and settle for nothing less.

NTIA likely will hear from providers that are unable to offer symmetric 100 mpbs service. They'll claim that rules should be "competitively neutral," a euphemism for protectionism of obsolete technologies. True competitive neutrality starts with a clearly articulated objective: reliable, high speed broadband connectivity. Any provider is welcome to compete with any technology that meets the objective. The objective, not the provider, determines competitive and technology neutrality.

7. How can NTIA ensure that all potential subrecipients, including small and medium providers...have meaningful and robust opportunities to partner and compete for funding?

Treasury Final Rules, reflecting Presidential policy, prioritize support for broadband networks owned, operated by, or affiliated with community based providers with less pressure to generate profits and a commitment to serve entire communities. NTIA should ensure that states prioritize the financial, operational and managerial experience of subgrantees. In reviewing this experience, states should look closely at subgrantee's demonstrated history of investing in their communities and delivering superior customer experience.

8. How can NTIA best address challenges that range from economic and financial circumstances to unique geographic conditions or other challenges that affect the likelihood of success in this program?

NTIA should ensure that the maximum amount of funding available is directed to the hardest-to-reach, highest-cost, low population density areas, where investment in reliable high-speed (symmetric 100 mbps) broadband is most at risk and cannot be made without considerable external financial support, such as that provided by ARPA and the BIL. MTA cautions against using such metrics as "number of locations" or "average cost per location." Those metrics would slant funding toward more populated, lower cost areas. Instead, "rurality" (cost, population density, income) should be a primary consideration.

10. What are likely consequences from workforce and supply chain constraints on the speed with which providers and others can achieve the BIL's objectives? What steps can NTIA take to mitigate the effect of workforce or supply chain limitations?

Supply chain challenges are both real and undetermined. We know that labor costs are increasing as workforce shortages make it more difficult to recruit and retain workers. We know that critical capital, from construction equipment to fiber optic cable, is in short supply due to Covid pandemic shortages. These pressures will be exacerbated as the billions of dollars of ARPA and BIL funds fuel increased demand for workforce and capital equipment.

The effects of these supply chain challenges are likely going to be higher costs and longer times to complete projects. NTIA should exercise flexibility to the maximum extent feasible in allowing states and providers to stagger projects. This would include considering rolling application windows and staggered start dates for projects.

Unfortunately, the BIL includes a "hard stop" for funding investment by December 31, 2026. This poses a problem for on-time completion of projects if supply chain challenges threaten timely completion of projects. NTIA should be prepared to seek a waiver of this deadline or explore alternatives that could "front load" BIL funding and allow private matching funds to be expended later in project investment life cycles, for example.

Broadband Equity, Access and Deployment (BEAD) Program

In the introduction to this section, the Notice states that "NTIA will distribute the remaining funding based on a formula that considers the number of unserved and high-cost locations in the state…" MTA strongly recommends that NTIA remain focused on using BEAD funds to close the digital divide in the hardest-to-serve, highest cost areas, including those areas with low population density. These generally are the areas that will find themselves on the wrong side of the digital divide without substantial financial support. MTA believes this is precisely the intent of the President and Congress in ensuring access by all Americans to reliable, high-speed broadband connectivity.

13 - 14. How should NTIA ensure providers maintain and/or exceed thresholds for reliability, quality of service, sustainability and other service characteristics? What criteria should NTIA require states to consider to ensure that projects will best serve unserved and underserved communities…and will benefit from ongoing investment?

It is important to focus on closing the digital divide with ubiquitous reliable, high-speed broadband connectivity. NTIA should prioritize the financial, operational and managerial competence of subgrantees that demonstrate a history of delivering quality of service and superior user experience. NTIA should coordinate and communicate with the FCC to ensure that universal service funds maintain sustainability of infrastructure investment in areas where it is uneconomic to sustain network operations without support.

Sec. 60104 of the BIL calls for a report by the FCC on the future of the Universal Service Fund. NTIA should participate in this proceeding to ensure the sustainability of projects funded by NTIA under the BIL and ARPA. Moreover, NTIA should work with the FCC to ensure the sustainability of the Universal Service Fund. The Fund is threatened by a diminishing contributions base despite increasing demand for robust high-speed broadband infrastructure by entities that do not contribute to the Fund. It is critical that the Universal Service Fund continue to support the sustainability of investment in universal, reliable high-speed broadband infrastructure. The beneficiaries of such infrastructure must share equitably in the cost of sustaining it.

15. NTIA seeks to understand reasonably foreseeable use cases for America's broadband infrastructure over the next five, ten, and twenty ears. How can existing infrastructure be leveraged to facilitate and amplify these benefits?

MTA members report that today's consumers are demanding 100/20 service. Today. Increasingly, these consumers are demanding faster upload speeds. It is easy to predict that the increasing number of interconnected devices, artificial intelligence, virtual reality, autonomous vehicles, two-way video, cloud-based computing, migration to the metaverse and more will demand increasing download *and upload* speeds. Existing infrastructure, such as copper or legacy cable infrastructure, cannot support the near term, let alone long-term, future demand for reliable, high-speed broadband connectivity. Many middle mile networks and existing last mile infrastructure needs to be upgraded. However, much existing infrastructure—such as conduits, rights of way, and existing central office facilities—can be leveraged to facilitate upgrades to reliable, high-speed broadband infrastructure that meets or exceeds standards for future demand.

16. How should NTIA treat prior buildout commitments that are not reflected in the updated FCC maps because the projects themselves are not yet complete?

NTIA should treat an area that is unserved or underserved as unserved or underserved, eligible for broadband investment supported by this Act. Areas that *might* receive funding to deliver

100/20 or less should not be considered ineligible for investment in reliable high-speed infrastructure that meets or exceeds standards for future demand.

It is not clear whether companies that won first round approvals under the FCC's Rural Digital Opportunity Fund (RDOF) Program will make it to, or through the second round, "authorized for long form approval." If an incumbent provider is planning to upgrade infrastructure in a currently unserved or underserved area, it should have an opportunity to commit to investing in reliable, high speed infrastructure that meets or exceeds symmetric 100 mbps speed and other minimum quality, latency, and user experience requirements of NTIA under this Act within the next 3 years. Otherwise, consumers should not be placed on hold pending approval of funding that may not arrive, or funding that may support infrastructure that cannot deliver reliable, high-speed broadband that meets or exceeds minimum standards.

In Montana, for example, the FCC has tentatively approved roughly $125 million of RDOF support in the State. The two largest recipients of *preliminary* approval from the FCC have not been determined "ready to authorize long form applications," the next step in the funding approval process. The largest single winning first round bid in this category is SpaceX (d.b.a., StarLink), an LEO satellite provider, which won approximately $73 million, roughly 60% of RDOF funds allocated to Montana. StarLink's satellite broadband service has not been demonstrated commercially. Its capabilities to deliver 100/20 broadband speeds have been questioned in several *ex parte* communications filed at the FCC. The second largest first round winning bid (approximately $28 million, or about 22% of RDOF funds allocated to Montana) was CenturyLink. Neither StarLink nor CenturyLink—accounting for over 80% of RDOF funds allocated to Montana—has been approved for the "ready to authorize" round.

Consumers should not wait for projects whose approval is not certain. Nor should they be condemned to a future of "good enough" broadband service, were these RDOF applicants to advance to the next round of RDOF approval. NTIA should proceed with funding infrastructure investment. If RDOF recipients receive funding to build out broadband infrastructure, they should be afforded the opportunity to challenge projects approved for areas in which they receive RDOF funding. They should be required to demonstrate they can and will provide reliable high speed broadband service that meets or exceeds symmetric 100 mbps speed and other minimum quality, latency, and user experience requirements of NTIA under this Act.

If RDOF or other funding sources support investment at lower speeds, the BIL provides that funds received under this the Act are intended to supplement, not supplant other funds. (§60102(k).) Investment in RDOF areas should be no less stringent (i.e., reliable broadband that meets or exceeds symmetric 100/100 speeds) than in any other area.

17. What additional factors, if any, should NTIA consider in determining what constitutes a "high-cost" area?

MTA encourages NTIA to prioritize sparsely populated, hard-to-reach areas over such metrics as number of locations served, or average cost per location/area. The hardest to reach, least populated areas necessarily will be more expensive so serve. But ARPA and the BIL provide once-in-a-lifetime funds that will enable us to reach the overwhelming majority of these locations. And it is these very locations that are the least likely to cross the digital divide without the funding provided by ARPA and the BIL. Moreover, by reaching these populations with reliable, fiber-based high-speed broadband infrastructure, we have the opportunity to build the right infrastructure once, the first time, without having to return with additional funding rounds, which may not materialize. Fiber infrastructure lasts longer, delivers scalable bandwidth without need for upgrades. It is the most cost effective investment we can make today.

19 - 20. What requirements should NTIA establish for states/territories to ensure that local perspectives are critical factors in the design of state plans? What state agencies or stakeholder groups should be included?

NTIA should ensure that states demonstrate they have solicited participation in good faith from all interested stakeholders. Local support is important to the success and sustainability of infrastructure investment. That is not to say, however, that states should prioritize support for broadband networks owned, operated by or affiliated with local governments. Government-owned broadband networks are risky business at best. They often are launched with a "Field of Dreams" plan, where they overestimate demand, and underestimate cost and other challenges associated with operating and sustaining a technologically sophisticated, competitive enterprise with which they have little, if any, experience. Those government-owned networks that have survived generally rely on cross subsidies from captive customers of municipally owned water or electric utilities-masking the actual cost to local citizens who support these risky ventures.

This is not to say that local government participation necessarily should be discouraged. Local governments offer valuable perspectives on what is needed by the community. They can provide financial and public support in partnership with broadband providers that bring demonstrated financial, managerial and operational experience.

22 – 24. Low-cost broadband service option and other ways to address affordability.

MTA recommends that NTIA consider participation FCC's Affordable Connectivity Program (ACP) as sufficient for provision of a low cost option. MTA cautions against creating a barrier to broadband investment by creating multiple requirements on providers that result in *below*-cost, as opposed to *low*-cost options.

MTA looks forward to working with the State of Montana and NTIA to achieve the common goal of closing America's digital divide.

Respectfully submitted,

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