Communications and Information Technology Alert

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NTIA Issues a Request for Comment on Broadband Funding Programs

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Key Points

- This request for comment is the first formal step for NTIA to establish rules for distributing more than $48 billion in broadband funding contained in the Infrastructure Investment and Jobs Act.

- NTIA is seeking comments on general funding issues as well as issues specifically involving the Broadband Equity, Access and Deployment Program and the Middle Mile Broadband Infrastructure Program.

- Written comments are due by February 4, 2022.

On January 10, 2022, the National Telecommunications and Information Administration (NTIA) published a request for comment on how it should administer several of the broadband funding programs created under the recently enacted Infrastructure Investment and Jobs Act (IIJA). The IIJA tasked NTIA with disbursing more than $48 billion in broadband funding and this release is the first formal step in getting that funding to broadband providers.

NTIA seeks comment on specific components of the IIJA, including the Broadband Equity, Access and Deployment (BEAD) Program, the Digital Equity Planning Grant Program, and the Middle Mile Broadband Infrastructure (MMBI) Program, as well as general comments on the broadband package as a whole. At a later date, NTIA will be seeking comment on the State Digital Equity Capacity Grant and Digital Equity Competitive Grant Programs, as well as conducting a Tribal consultation regarding the additional funding for the Tribal Broadband Connectivity Program.

Set forth below is a general overview of the topics of greatest interest to broadband providers and investors about which NTIA would like stakeholders to comment. Written comments are due by February 4, 2022, and NTIA will be holding additional "listening sessions" regarding the broadband funding programs on January 12, January 26, February 9 and February 23. The IIJA requires NTIA to issue the first notice of funding opportunity for the $42.45 billion BEAD program by May 14, 2022, which among other things will request states to declare their intention to participate in the program, and

Contact Information

For questions on any of the foregoing, or if you would like to work with us on filing comments with NTIA or be kept apprised of developments in this proceeding, please contact:

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contain additional details about the program, including the permissible uses of grants, and standards for how states should assess broadband providers' capabilities.

General Comments

- **Coordinating with Other Broadband Programs**: Given the array of existing federal and state broadband funding programs, NTIA asks how to verify that IIJA funding complements other federal and state broadband programs. For example, NTIA will likely be interested in how to ensure that broadband providers do not receive duplicative funding to meet the same buildout requirements, and how current recipients of state or federal broadband funds can use those funds in conjunction with IIJA funds.

- **Matching Funds Requirement**: Certain programs under the IIJA require recipients to put up their own matching funds or obtain them from other sources. The law allows NTIA to grant waivers, and NTIA would like comment on the circumstances and criteria that should be required for a waiver of the matching funds requirement.

- **NTIA Influence Over State Broadband Programs**: States will be the primary recipients of funding and will be responsible for allocating funds toward projects in accordance with state broadband plans. However, NTIA will first need to approve those plans to release funding. NTIA wants to know how it should assess such plans and whether specific types of competitive subgrant processes (e.g., publicly released requests for proposals and reverse auctions) should be presumed acceptable. Additionally, NTIA would like comment on how best to ensure that a wide variety of potential providers are able to access funds, including municipal broadband, public-private partnerships, cooperatives, utility companies, and small and large traditional providers.

- **Made in America / Supply Chain Problems**: The IIJA contains "buy American" requirements to help support American industry. However, there are currently supply chain interruptions and workforce shortages, and NTIA would like comment on how best to balance the concerns animating the "buy American" requirements with the goal of deploying broadband quickly.

- **Data Collection Requirements**: NTIA wants to know what data recipients of IIJA broadband funding should be required to collect and submit to the federal government to help with program assessment and funding coordination.

Broadband Equity, Access and Deployment Comments

- **Technical Requirements**: What technical requirements should NTIA impose on recipients of BEAD funding? The IIJA requires broadband speeds of at least 100/20 Mbps, and NTIA asks what guidance or requirements it should provide with respect to factors such as cybersecurity, latency, network resiliency, and other service quality features and metrics. Moreover, NTIA wants to ensure that BEAD-funded networks meet Americans' evolving needs in the future, and the IIJA directs states to give precedence to "priority broadband projects," which could have more stringent speed, latency, reliability, upgradability and other service requirements as defined by NTIA.

- **Low-Cost Broadband Option**: Recipients of BEAD funding will be required to offer a low-cost broadband option. NTIA will set the eligibility standards, and states will be able to determine (in consultation with NTIA) what features the low-cost product

must have (price, speeds, data caps, etc.). NTIA would like comment on how to determine consumer eligibility for the low-cost option, and the best way to guide states in defining their low-cost options. Some commenters could argue that a recipient's subscribers outside of the BEAD funded areas should be eligible for the low-cost option.

- **Eligible Areas**: While BEAD funding must wait until the Federal Communications Commission (FCC) has completed the new broadband availability maps, areas where service providers have committed to provide service through other programs—but have not yet deployed—will not be captured in the new maps. NTIA would like comment on how to handle such areas for purposes of the BEAD program. Here, NTIA will need to balance the risk of providing duplicative funding to a provider with the risk that a provider might not meet the broadband service commitment it has made through another funding program.

- **Other Uses of Funds**: The IIJA already allows BEAD funding to be spent on deployment, data collection, and adoption programs, but also gives NTIA broad discretion to designate other expenses as eligible. What other expenses should NTIA deem eligible for BEAD funding?

Middle Mile Broadband Infrastructure (MMBI) Grants

- **How to Target Funding**: MMBI funding will be needed in areas that currently lack middle-mile infrastructure, as well as in areas where middle-mile services are too expensive. The absence of adequate middle-mile broadband facilities has often been a bottleneck, contributing to the digital divide. NTIA seeks comment on how best to target and prioritize middle-mile funding, and how competition or high-cost factors should be considered.

- **Splice Points**: The IIJA seeks to encourage carrier-neutral interconnection points and bring down backhaul costs. Should NTIA impose requirements on MMBI grant recipients regarding the location of or access to splice points? Should recipients be required to allow other providers to interconnect?

- **Scalability**: As network demand intensifies, NTIA would like to know what, if any, scalability requirements should be imposed on MMBI funding recipients with respect to middle-mile capacity.

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