



February 4, 2022

**Via Electronic Filing**

National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue NW  
Washington, DC, 20230

**Re: Infrastructure Investment and Jobs Act Implementation (Docket No. NTIA-2021-0002)**

To Whom It May Concern:

The U.S. Chamber of Commerce (“Chamber”) respectfully submits these comments to the Department of Commerce’s National Telecommunications and Information Administration (“NTIA”) in response to a Request for Comment on *Infrastructure Investment and Jobs Act Implementation* for NTIA programs. (“Request for Comment”).<sup>1</sup> The Chamber commends NTIA for rapidly implementing the broadband programs contained in Infrastructure Investment and Jobs Act (“IIJA”) and for seeking stakeholder feedback to inform effective implementation.<sup>2</sup>

**Top Principles and Priorities for Implementation**

The Chamber offers the following top principles and priorities for implementing NTIA’s broadband programs in the IIJA.

- Enabling Robust and Ongoing Stakeholder Engagement and Participation
- Ensuring Transparency and Public Accountability in Implementation
- Promoting the Efficient Use of Federal Funds
- Supporting Eligible Entities and Providers to Deploy Broadband Infrastructure
- Reducing Barriers to the Timely Deployment of Broadband Infrastructure

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<sup>1</sup> Infrastructure Investment and Jobs Act Implementation, 87 Fed. Reg. 1122 (proposed Jan. 10, 2022).

<sup>2</sup> Infrastructure Investment and Jobs Act, Pub. L. No. 117-48, 135 Stat. 429.

- Implementing the Broadband Programs to Prevent Duplication and Ensure a Uniform Approach
- Reducing the Cost of Connectivity and Enabling Broadband Affordability
- Supporting Digital Equity to Connect All Americans
- Effectively Implementing the Middle Mile Broadband Infrastructure Grant Program

These principles and priorities are outlined in detail, with specific recommendation, in the sections below.

### **Enabling Robust and Ongoing Stakeholder Engagement and Participation**

Stakeholder participation and engagement is critical to ensure the effective implementation of IJJA's broadband programs. Several portions of the IJJA explicitly require stakeholder engagement, and we encourage NTIA to adhere to the spirit of the IJJA in executing its responsibilities under the IJJA.<sup>3</sup> In response to Question 2, the Chamber encourages NTIA to work with a diverse set of stakeholders, including internet service providers, suppliers, edge providers, and industry end-users of broadband (e.g. healthcare organizations, small businesses) as well as non-industry stakeholders to ensure that all perspectives and questions are considered relating to the implementation of IJJA's broadband programs. NTIA should also work with existing federal entities to implement existing connectivity and similar device programs, such as the Department of Education (DOE), Centers for Medicare and Medicaid Services (CMS), the Federal Communications Commission (FCC), the Department of Agriculture, and the Department of the Treasury. Furthermore, engagement with state, local, and tribal governments is crucial considering IJJA provides a central role for these stakeholders in implementation of IJJA's broadband programs.<sup>4</sup>

Collectively, governmental and non-governmental stakeholders can provide and share best practices, promote awareness, and encourage participation in IJJA's broadband programs. Finally, given the importance of this program to expanding broadband deployment, stakeholder engagement in ensuring the proper implementation of these programs should extend beyond this Request for Comment. NTIA should facilitate an active dialogue with affected stakeholders as these programs are implemented and consider revising the parameters of these programs as appropriate.

### **Ensuring Transparency and Public Accountability in Implementation**

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<sup>3</sup> Infrastructure Investment and Jobs Act § 60102(e).

<sup>4</sup> § 60102(e)(3)(A)(i)(II)(BB).

In response to Question 3, the Chamber agrees that transparency and public accountability should be the cornerstone of NTIA's implementation given the substantial size and scope of these programs. NTIA should facilitate a standardized approach to collecting data from eligible entities and subgrantees that minimizes administrative burdens and enables efficient data analysis. Furthermore, beyond existing statutory requirements, NTIA should collect data on other aspects essential to the success of the programs, including data related to the length of the permitting process, regulatory burden of state and local permitting requirements, and the long-term viability of subgrantees' proposed broadband projects.<sup>5</sup> These additional categories of data will ensure that NTIA and policymakers can fully understand the barriers facing broadband deployment. Finally, the Chamber suggests that all data, excluding confidential business information, be made publicly available and accessible in a machine-readable format to strengthen public accountability and transparency.

### **Promoting the Efficient Use of Federal Funds**

In response to Question 4, the federal government already has a substantial number of broadband deployment programs spread across agencies including NTIA, the FCC, the Departments of Education, Treasury, Health and Human Services, and Agriculture.<sup>6</sup> The IJJA correctly recognizes that IJJA's broadband programs should take into account existing programs to prevent duplication and facilitate the efficient use of taxpayer funding.<sup>7</sup> The Chamber recommends that eligible entities should be responsible for this verification and not subgrantees. Eligible entities will likely have the broadest understanding of existing federal and state broadband programs within their respective state or territory.<sup>8</sup> Consequently, NTIA should encourage eligible entities to have a sufficient process or office to track different sources of federal funding to better enhance coordination. In addition, NTIA should ensure that eligible entities and subgrantees focus on serving unserved areas first, as required by IJJA, which is the best way to close the digital divide for good and provide the most efficient use of taxpayer funding.<sup>9</sup> Prior broadband deployment programs have not made unserved areas as a focus, which has led to an exacerbation of the digital divide and inefficient use of taxpayer funds.

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<sup>5</sup> U.S. Chamber's Technology Engagement Center, *America's Next Tech Upgrade: Connecting All Americans* (Oct. 2020),

[https://www.uschamber.com/assets/documents/ctec\\_techupgrade\\_broadband\\_final.pdf](https://www.uschamber.com/assets/documents/ctec_techupgrade_broadband_final.pdf).

<sup>6</sup> NAT'L TELECOMM. AND INFO. ADMIN., BROADBANDUSA FY21 INTERACTIVE FEDERAL FUNDING GUIDE (2021).

<sup>7</sup> §§ 60201(e)(4)(A)(i)(I)(bb), 60102(h)(3)(B), 60102(j)(1)(E).

<sup>8</sup> Anna Read & Lily Gong, *Which States Have Dedicated Broadband Offices, Task Forces, Agencies, or Funds?*, THE PEW CHARITABLE TRUSTS (Nov. 30, 2021), <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/06/28/which-states-have-dedicated-broadband-offices-task-forces-agencies-or-funds>.

<sup>9</sup> §§ 60102(c)(3)(B) and 60102(e)(4)(A)(i)(I)(aa).

## Supporting Eligible Entities and Providers to Deploy Broadband Infrastructure

The IJJA places a significant role to states, territories, and broadband providers to scope out and execute the objectives of IJJA's broadband programs.<sup>10</sup> The Chamber provides several recommendations to ensure that states, territories and broadband providers can effectively fulfill the objectives of IJJA's broadband programs and help close the digital divide.

First, states vary in broadband needs as well as capabilities to plan and finance broadband deployment. In response to Question 5, the Chamber believes that states will need flexible and diverse support throughout the course of IJJA's broadband programs to best meet the evolving needs of their populations. The Chamber asks NTIA to offer technical assistance to states as they move through the programs, and for NTIA to also provide technical support on how to best leverage IJJA broadband funding with existing broadband programs. This includes working with existing organizations implementing existing connectivity and similar devices programs at relevant federal agencies as well as public and private stakeholders. Finally, the Chamber recommends that NTIA provide technical assistance on development and deployment of broadband-related programs to traditionally underserved populations, including, but not limited to, consumer outreach and education.

Second, subgrantees will play a critical role in the success of the IJJA's broadband programs. In response to Question 6, the Chamber believes that the NTIA should set a transparent and uniform approach for state and territory's subgrant award process. NTIA should take into consideration criteria including demonstration of a proven track record to meet the requirements of the grant, ability to sustain and maintain the network, technology neutrality, and the ability to innovate and deploy technologies to improve connectivity to conduct activities in modern life. Adding these criteria will ensure a level playing field for subgrantees, minimize waste, and secure the longevity of newly-build broadband networks.

Third, the Chamber believes that any provider that can meet the criteria determined by NTIA above will allow all provider types to participate and successfully execute the objectives of the IJJA. In response to Question 7, the Chamber believes a technologically neutral approach that supports any proposal that meets the 100/20 speed threshold of the statute, and other statutory requirements, will allow the United States to achieve the greatest outcome, given the varying challenges faced by

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<sup>10</sup> § 60102(e)

different states with respect to geographic conditions, topologies, and speed of deployment.<sup>11</sup>

Fourth, the Chamber appreciates NTIA's awareness that eligible entities will experience a wide range of barriers to deploy broadband. In response to Question 8, the Chamber recommends that NTIA continue its efforts for broad engagement across states and their communities, and to consider goals for important broadband use cases, such as healthcare and education.<sup>12</sup> This will foster consideration and development of use case specific needs. Moreover, the Chamber encourages NTIA to consider all types of technologies that could meet the statutory requirements and account for unique conditions in certain states and regions.<sup>13</sup>

### **Reducing Barriers to the Timely Deployment of Broadband Infrastructure**

The Chamber supports the objectives of the IJJA and policymakers to ensure the timely deployment of broadband infrastructure, which necessitates a policy environment that reduces barriers to broadband deployment.

First, in response to Question 10, the Chamber believes that "resilient, efficient, and secure supply chains are essential to the economy and American's standard of living".<sup>14</sup> The Chamber is very concerned that supply chain challenges of critical components, such as semiconductors, will hinder broadband deployment.<sup>15</sup> Similarly, workforce shortages are adversely impacting businesses across the board, and broadband is no different.<sup>16</sup> The Chamber urges NTIA and the Administration to continue to prioritize addressing these disruptions through encouraging legislative action, including enacting the CHIPS for America Act, as well as adopting solutions to address workforce shortage in the U.S., such as those included in the U.S. Chamber's

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<sup>11</sup> See § 60102(g)(1)

<sup>12</sup> Nam Pham & Mary Donovan, *Unlocking the Digital Potential of Rural America*, U.S. CHAMBER TECH. ENGAGEMENT CTR. (Mar. 2019), <https://americaninnovators.com/wp-content/uploads/2019/03/Unlocking-the-Digital-Potential-of-Rural-America.pdf>.

<sup>13</sup> U.S. Chamber's Technology Engagement Center, *America's Next Tech Upgrade: Connecting All Americans* (Oct. 2020), [https://www.uschamber.com/assets/documents/ctec\\_techupgrade\\_broadband\\_final.pdf](https://www.uschamber.com/assets/documents/ctec_techupgrade_broadband_final.pdf).

<sup>14</sup> U.S. Chamber of Com., *Supply Chain*, <https://www.uschamber.com/security/supply-chain> (accessed Feb. 4, 2022).

<sup>15</sup> Dileep Srihari & Erik Jacobs, *The Global Semiconductor Shortage: Impact on U.S. Broadband and Recommendations for Policymakers*, ACCESS PARTNERSHIP (Dec. 16, 2021), <https://www.accesspartnership.com/whitepaper-the-global-semiconductor-shortage-impact-on-u-s-broadband-and-recommendations-for-policymakers/>.

<sup>16</sup> Doug Dawson, *Labor Shortages in Broadband Are Likely to Slow Deployment*, THE CTR. FOR GROWTH AND OPPORTUNITY (Nov. 30, 2021),

America Works Agenda.<sup>17</sup> We note that the IJA contains the Telecommunications Skilled Workforce Act, which among other provisions, directs the FCC to establish an interagency working group dedicated to addressing the workforce needs of the telecommunications industry.<sup>18</sup> Furthermore, NTIA and the Administration should examine the impact of onerous regulatory requirements and other artificial barriers on the workforce and supply chain to identify additional mitigations to ensure the timely deployment of broadband networks. Finally, NTIA should consider the impact of workforce shortages and supply chain constraints throughout implementation of IJA's broadband programs and provide maximum flexibility for subgrantees and eligible entities.

Second, in response to Question 12, the Chamber expresses strong concerns about requirements contained in the IJA that would subject broadband to Buy America requirements.<sup>19</sup> Artificial barriers to broadband deployment, including domestic content requirements, will significantly hinder IJA's stated objectives of closing the digital divide and providing consumers access to high-speed broadband.<sup>20</sup> The present workforce and supply chain challenges stemming from the COVID-19 pandemic exacerbates this concern, directly impacting the expeditious deployment of broadband infrastructure.<sup>21</sup> NTIA should recognize the substantial challenges of applying domestic content requirements to broadband, considering much of the broadband equipment necessary to build broadband networks is not American-made.<sup>22</sup> The Chamber recommends that NTIA, in conjunction with other relevant agencies, collaborate with affected stakeholders to address any consequences resulting from imposing domestic content restrictions.

## Implementing Broadband Programs to Prevent Duplication and Ensure a Uniform Approach

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<sup>17</sup> John Drake & Jordan Crenshaw, *Congress Must Fund Semiconductor Legislation to Bolster Innovation and Supply Chains*, U.S. CHAMBER OF COM. (Nov. 22, 2021), <https://www.uschamber.com/security/supply-chain/congress-must-fund-semiconductor-legislation-to-bolster-innovation-and-supply-chains>; U.S. Chamber of Com, *The America Works Agenda: Policy Solutions to Address the Nation's Worker Shortage* (Sept. 21, 2021), <https://www.uschamber.com/workforce/the-america-works-agenda-policy-solutions-to-address-the-nations-worker-shortage>.

<sup>18</sup> § 60602.

<sup>19</sup> § 70914.

<sup>20</sup> Diana Goovaerts, *Broadband Groups Seek Waiver From IJA 'Buy American' Requirements*, FIERCE TELECOM (Feb. 1, 2022), <https://www.fiercetelecom.com/telecom/broadband-groups-seek-waiver-buy-american-requirements>.

<sup>21</sup> U.S. Telecom – the Broadband Association, *Semiconductor Supply Chain Resiliency* (Sept. 20, 2021), <https://www.ustelecom.org/research/semiconductor-supply-chain-resiliency/>.

<sup>22</sup> Goovaerts, *supra* note 20.

The Chamber strongly supports the objectives of the BEAD program and believes the proper implementation of the program can help close the digital divide. In addition to the considerations outlined earlier, the Chamber offers several recommendations for NTIA.

First, in response to Question 13, the Chamber strongly believes that any guidance or requirements should be uniform across states to avoid a confusing patchwork of rules. Moreover, the Chamber believes that the requirements contained in IIJA relating to quality of service merit a supplemental rulemaking that includes a longer public comment period. Many of these quality of service issues are complex and merit a robust public comment process, especially considering the non-application of the Administrative Procedure Act to the BEAD Program.<sup>23</sup> Finally, any requirements should be formulated in conjunction with the FCC, which possess substantial expertise on quality of service issues.

Second, in response to Question 16, the Chamber appreciates NTIA's consideration of how planned buildout commitments and other government programs relate to the implementation of the BEAD program. We believe that the BEAD program should treat as served (and not eligible for funding) those areas where a broadband provider is already receiving (or scheduled to receive) government funding to serve that area. If the BEAD program were to allow for two publicly subsidized providers to offer service in the same area, it would disrupt the economics of those arrangements, undercutting the viability of both grantees, particularly undermining the functioning of the first program. If NTIA is concerned an existing awardee of another program may fail to meet their commitments, there are solutions to mitigate that concern other than duplicating funding and improperly using taxpayer dollars. Possible solutions include requiring an affirmative showing that an existing grantee in another program has materially defaulted on its commitment.

Third, in response to Question 17, in addition to the factors listed to determine what constitutes a "high-cost area," the Chamber recommends that NTIA should consider existing connectivity of community-essential activities, including but not limited to health departments, social support services, and educational facilities. NTIA may also wish to consider mobile adoption rates within the area, including within unserved and underserved populations, to help close the digital divide.

Fourth, in response to Question 18, the Chamber recommends that NTIA consider community health needs for connectivity as an eligible use to facilitate the BEAD goals of digital equity. The COVID-19 pandemic highlighted the importance of access to broadband services for health purposes, as consumers required connectivity to remain connected to their healthcare professionals and engaged in

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<sup>23</sup> § 60102(o)(2).

their healthcare.<sup>24</sup> Additionally, many home digital health products offered today work most effectively with a sufficient and sustained internet connection.<sup>25</sup> Providing these services not only requires robust broadband infrastructure, but also programs that enable consistent, affordable access for vulnerable communities. Improved broadband access is a key part of ensuring digital health equity and inclusion.

In addition, the Chamber suggests that BEAD funding can be used to mitigate the cost of state and local permitting requirements for broadband deployment, including through reimbursing broadband providers for the cost of required pole replacements.<sup>26</sup> Permitting requirements can significantly increase the cost of broadband deployment by providers, so enabling the BEAD program to address those costs would help address the costs of permitting requirements and better facilitate the deployment of broadband infrastructure.<sup>27</sup>

Fifth, in response to Questions 19 and 20, the Chamber applauds NTIA for considering the need of stakeholder perspectives in designing state plans considering the variability of state and local broadband needs. The Chamber recommends that NTIA require states and territories to proactively engage stakeholders, including local governments, health departments, medical providers, impacted individual businesses, and state and local chambers of commerce and business associations.

## **Reducing the Cost of Connectivity and Enabling Broadband Affordability**

The Chamber supports efforts to address broadband affordability and also programs including the FCC's Affordable Connectivity Program ("ACP").<sup>28</sup> Policymakers should seek to reduce the costs of deploying broadband networks, which would ultimately benefit consumers through lower costs and more investment in networks. The Chamber offers several recommendations to address the cost and affordability of broadband.

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<sup>24</sup> Priya Bathija, *Digital Is the Next Frontier of Health Equity*, AM. HOSP. ASS'N (Apr. 7, 2021), <https://www.aha.org/news/healthcareinnovation-thursday-blog/2021-04-07-digital-is-next-frontier-health-equity>.

<sup>25</sup> Gary Shapiro, *Broadband Access: Health Care's Newest Challenge*, STAT (Nov. 12, 2021), <https://www.statnews.com/2021/11/12/broadband-access-newest-challenge-health-care/>.

<sup>26</sup> U.S. Chamber's Technology Engagement Center, *America's Next Tech Upgrade: Connecting All Americans* (Oct. 2020), [https://www.uschamber.com/assets/documents/ctec\\_techupgrade\\_broadband\\_final.pdf](https://www.uschamber.com/assets/documents/ctec_techupgrade_broadband_final.pdf).

<sup>27</sup> BROADBAND DEPLOYMENT ADVISORY COMM., FEDERAL COMM'N. COMM'N, REPORT OF THE REMOVAL OF STATE AND LOCAL REGULATORY BARRIERS WORKING GROUP (2018).

<sup>28</sup> U.S. Chamber of Com. Comment Letter on Public Notice on the Affordable Connectivity Program (Dec. 28, 2021), <https://americaninnovators.com/advocacy/comment-letter-to-the-fcc-on-the-affordable-connectivity-program/>.



First, the IJJA requires funding recipients to offer one low-cost broadband option.<sup>29</sup> In response to Questions 22 and 23, the Chamber believes that NTIA should ensure that states receiving funding treat providers' participation in the FCC's ACP as sufficient to satisfy the obligation to provide a low-cost service option.<sup>30</sup> This will simplify the rules, reduce consumer confusion, and mitigate the administrative costs associated with requiring providers to offer disparate plans in each state and territory. Moreover, a uniform approach will ensure that consumers who may move to other states and territories remain eligible for the low-cost option. Finally, this approach is consistent with the intent of Congress considering the ACP was also enacted as part of IJJA.<sup>31</sup>

Second, in response to Question 24, the Chamber believes that the requirement to offer a low cost option in addition to the establishment of the ACP is sufficient to address affordability concerns in terms of new requirements or programs. However, the Chamber recommends that the NTIA should consider supply-side solutions to reduce the costs of building broadband networks specifically through addressing workforce and supply chain challenges and burdensome permitting requirements. Finally, the Chamber notes that the FCC is presently engaged in a proceeding that seeks to address similar concerns related to the future of broadband affordability.<sup>32</sup>

## **Supporting Digital Equity to Connect All Americans**

The Chamber supports addressing digital equity to ensure that all Americans are connected and online. To ensure that State Digital Equity Plans impact and interact with state goals related to health, the Chamber recommends that NTIA should consider existing health-related digital equity initiatives at the federal, state, and community level, and provide support to states to enable integrations and maximization of all available programs. For example, the Chamber encourages NTIA to work with CMS and state Medicaid programs to promote broadband benefit programs to beneficiaries, or perhaps integrate support and enrollment where feasible.

## **Effectively Implementing the Middle Mile Broadband Infrastructure Grant Program**

Middle mile broadband infrastructure is essential to connecting all Americans, and the Chamber has several recommendations to ensure the effective implementation of the Middle Mile Broadband Infrastructure ("MMBI") program. First, the Chamber in response to Question 32 believes that MMBI should be targeted to

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<sup>29</sup> § 60102(h)(4)(B).

<sup>30</sup> FCC Affordable Connectivity Program Report and Order, 47 C.F.R. §54 (2022).

<sup>31</sup> § 60502.

<sup>32</sup> § 60104.

areas that are unserved or underserved in accordance with IJA requirements.<sup>33</sup> Utilizing MMBI for other objectives will lead to an inefficient use of taxpayer resources and duplication. It is also outside of the scope of the program. Second, in response to Question 33, if a broad goal of the MMBI program is to increase broadband access, MMI program grant recipients should demonstrate that they included as many of the considerations in their projects as outlined in § 60401(e), (b)(2), and (d)(2). The more those considerations are included in their project, the more their application should be prioritized by NTIA.

Third, in response to Question 34, the Chamber notes the diversity of middle mile broadband infrastructure deployments, so it would be challenging to impose a set of standard requirements with respect to the placement and access to splice points. Finally, in response to Question 36, any scalability requirements should enable every technology in the broadband ecosystem to access that fiber connection—including fixed broadband, cable, cellular (mobile & 5G), and satellite to deploy meaningful connectivity.

The Chamber appreciates the opportunity to provide comments to NTIA's Request for Comment on *Infrastructure Investment and Jobs Act Implementation*. We look forward to working with NTIA and the Department of Commerce on these issues in the future. Please contact Matt Furlow at [mfurlow@uschamber.com](mailto:mfurlow@uschamber.com) with any questions.

Sincerely,



Matt Furlow  
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U.S. Chamber of Commerce

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<sup>33</sup> §§ 60102(c)(3)(B) and 60102(e)(4)(A)(i)(I)(aa).