

May 5, 2023

The Honorable Alan Davidson
Assistant Secretary of Commerce for Communications and Information and NTIA Administrator
U.S. Department of Commerce
1401 Constitution Ave N.W.
Washington, DC 20230

RE: Comments on Proposed Model BEAD State Challenge Process.

Dear Assistant Secretary Davidson:

Thank you for the opportunity to comment on the Proposed Broadband, Equity, Access, and Deployment (“BEAD”) Challenge Process Guidance. Early in the implementation of the BEAD Program, the National Broadband Mapping Coalition and undersigned organizations identified the BEAD State Challenge Process as the only opportunity that many individuals, families, and communities would have to ensure their eligibility to participate in this generational and transformative opportunity to expand reliable broadband infrastructure.

We applaud the National Telecommunications and Information Administration (“NTIA”) for taking this responsibility seriously and putting forth proposed clarification, guidance, and a model process that recognizes the importance of and establishes a pre-approved framework that minimizes the burden on communities and Eligible Entities that are already overburdened. While the guidance and model process are designed with this in mind, there are several clarifications, revisions, and additions that are necessary for this Challenge Process to minimize the undue exclusion of unserved and underserved locations.

Without these changes the NTIA risks excluding key community data sets, miss critical disconnected locations, and restrict state and local efforts to collect the best data possible for use in their challenge process. Without these key pieces, the NTIA risks failing to meet the goals laid out in its own policy documents and those set by Congress.

I. Initial Location Data Requirements

Throughout the Federal Communication Commission's ("FCC") Broadband Data Collection process, the Commission has highlighted that the accuracy of the maps is an iterative process. These iterations include improvements to the Fabric data and accuracy of provider filings made through self-improvement processes and the public challenge process. Given these ongoing improvement efforts, the version of the map that is used by Eligible Entities could have a meaningful impact on the efficiency and effectiveness of the process.

The Policy Notice and Model Challenge Process need critical clarifications before Eligible Entities begin to determine whether to use this or their own challenge processes.

The BEAD NOFO states:

Eligible Entities should 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.¹

While this language is straightforward, it was seemingly drafted before the concept of a two volume Initial Proposal was built into program sequencing. With the multi-phased Proposal process in place, we believe that clarity is needed with respect to the following excerpts.

The Policy Note states:

As part of Volume 1 of the Initial Proposal, Eligible Entities are required to identify each unserved location and underserved location within the Eligible Entity (*i.e.*, under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands), using the most recently published National Broadband Map as of the date of submission of the Initial Proposal.

This language indicates that the version of the National Broadband Map that is used to identify unserved and underserved locations will be based on the date that Volume 1 is submitted. Clarity is needed on an important point: can an Eligible Entity modify the list of

¹ See BEAD NOFO at 34, Section IV.B.6.

unserved and underserved locations between the submission of Volume 1 and the initiation of the Challenge Process based on updates published to the National Broadband Map?

The answer to this question will have a major impact on how Eligible Entities approach the preparation and submission of Volume 1 and the implementation of the challenge process itself. Some Eligible Entities will have a desire to move quickly and submit their challenge process (Volume 1) to the NTIA as soon as possible after the window opens on or before June 30, 2023. However, Version 3 of the Map won't be published until October or November of 2023.

If Eligible Entities must use the version of the Map as of the submission of Volume 1, there will inevitably be tension between the desire to move quickly to submit and using the best data possible. This tension is significantly amplified by the NTIA's stance on the inability of this challenge process to address missing Broadband Serviceable Locations ("BSL"). The version of the Fabric available between June 30 and the release of Version 3 in October or November will still be deeply flawed. Fabric flaws are particularly bad in some of the most unserved areas, with a disproportionate margin of error on Tribal lands.

Restricting the version of the Maps to the date of submission for Volume 1 would be inconsistent with BEAD NOFO, which states that Eligible Entities should update the data to the most recent version as of the initiation of the Challenge Process.

We strongly urge the NTIA to adopt a flexible approach allowing Eligible Entities to update their lists of unserved and underserved locations with data published up until their Challenge Process is initiated. If the NTIA does not allow this to happen, some of the most unserved areas will be unduly excluded from this generational funding opportunity.

Another point of clarification needed centers on the Example Response to 1.2.2 in the Model Challenge Process, which states:

Note that only the first edition of each month can be selected, and the publication date of the National Broadband Map cannot predate the submission of the Initial Proposal by more than 59 days, a time frame designed to allow Eligible Entities sufficient time to identify eligible locations from the National Broadband Map and submit the Initial Proposal.

It is unclear whether or not the 59 day restriction is based on the submission of Volume 1 or Volume 2. If it is based on Volume 2 and the NTIA does not allow subsequent modifications, the submission of Volume 1 will set a time limit for the submission of Volume 2. If a shot clock is intended, the NTIA must make Eligible Entities aware as soon as possible to allow for proper planning.

II. Permissible Challengers

An inclusive challenge process is critical to ensuring that the BEAD Program has its intended impact. Many of the communities that will be reliant on this process do not have the capacity to carry out these challenge processes on their own and may rely on support from a wide range of partner and stakeholder organizations. We encourage the NTIA to adopt the widest possible definition of nonprofit to avoid limiting the support available to the communities that need it the most.

a. Inclusive Process for Tribes

Tribal governments are not local Governments. A reference to Tribal governments should be included alongside every reference to local governments. The NTIA can make this change in the following ways:

- In the first paragraph of both the Policy Note and Model Challenge Process (pg. 1), it states that “a unit of local government, nonprofit organization, or broadband service provider may challenge.” This should include Tribal governments as outlined in 7.3 Permissible Challengers.

- In section 7.6.b of the Policy Note, Eligible Entities should be required to actively inform Tribal governments of the Challenge Process and its deadlines, in addition to units of local government, relevant nonprofit organizations and broadband providers
- In the Policy Note on Table 5, “Guidance on Data Formats for Challengers,” there should be a code in the “Category” row for T=Tribal Government
- In the Model Challenge Process, under the Optional Speed Test Module, Tribal governments should be allowed to gather and submit speed tests, in addition to units of local government, relevant nonprofit organizations and broadband providers.

This is not a comprehensive list, but the most important sections where the NTIA needs to explicitly include Tribal governments.

III. Deduplication Process

The Coalition strongly supports the NTIA’s decision to require a “legally binding agreement which includes a Tribal Government Resolution between the Tribal Government of the Tribal Lands encompassing that location or its authorized agent and a service provider offering qualifying broadband service to that location” in order for any location subject to an enforceable federal, state, or local commitment to deploy qualifying broadband to be considered an “enforceable commitment.”

We recommend that the NTIA goes further to ensure that Tribal Resolutions are required for any location on Tribal Lands to be considered covered by an enforceable commitment. In doing so, we recommend that the NTIA require any non-Tribal recipients of federal funding awards to provide proof of a Tribal Resolution before those awards constitute an enforceable commitment, rather than placing the burden on Tribes to challenge a determination. In this process, if a recipient provides a Tribal Resolution or other documentation of support, the Eligible Entity should take steps to verify with the Tribe that the support provided was authorized by the Tribal government. NTIA should build this approach into the guidance, Model Process, and the BEAD Eligible Entity Planning Toolkit.

IV. Allowable Challenges

a. Speed Tests

i. Crowdsourced Data

We support the NTIA's inclusion of an optional Speed Test Module, in addition to what has already been included. However, the NTIA must enable Eligible Entities to use readily available, field-tested, and peer reviewed Internet measurement data sources such as Ookla's speedtest.net and M-Lab's NDT. These datasets provide real-time, aggregated, and ground-truthed insights into the quality of broadband service in communities across the nation.² Ignoring these resources will dramatically limit Eligible Entities' ability to identify areas of need.

Millions of users curious about their network performance use Ookla, M-Lab, and other measurement tools to gauge the performance of their providers for both fixed and mobile service. When comparing the number of tests run on these popular platforms to direct collection efforts in some states, Ookla and M-Lab individually generate orders of magnitude more measurements in the same geographic areas.³

There is a common argument that crowdsourced longitudinal speed test data is biased due to the preponderance of individuals seeking to measure their quality of service when they experience a problem. To address the potential for this bias, Eligible Entities can take a segment of the fastest results contributed by users who have taken more than one test. With a reasonable sample of similar demographics, the best measurements for a given area can provide a strong indicator that better connectivity is likely not available.⁴

² See National Broadband Mapping Coalition, Recommendations for Browser Based Speed Test Surveys, (Nov. 2, 2022), <https://broadbandmappingcoalition.org/recommendations-for-browser-based-speed-test-surveys/>

³ Ookla and Measurement Lab are used to perform an average of 1 million performance tests per day each in the U.S.

⁴ Tom Reid, Achieving Accountability in Broadband, <https://reidconsultinggroup.com/project-details/achieving-accountability-in-broadband/> (last visited May 4, 2023).

ii. Remove Restrictions on Time of Test for Challengers

The NTIA must also allow Eligible Entities to consider speed test results taken outside of the recommended 7-11pm timeframe for challenge data. This restriction would exclude individuals,⁵ methodologies,⁶ and relevant network performance data. The 7-11 pm threshold is based on a traditional understanding of “peak hours.” While there may be a desire to restrict ISP rebuttal data to peak hours, restricting challenger speed tests does not follow the same logic. If a challenger is experiencing substandard speeds outside of these peak hours, that should be viewed as an even stronger indicator that service performance is not reliable. Put another way, if somebody’s house flooded at low tide, we shouldn’t make them wait until high tide to call for help.

iii. Reducing the Burden on Individuals

NTIA’s model process currently outlines a multi-step set of tests that an end user must undertake to meet the threshold of an official speed test challenge. Each group of three speed tests must include:

- The name and street address of the customer conducting the speed test;
- A certification of the speed tier the customer subscribes to (e.g., a copy of the customer's latest invoice);
- An agreement, using an online form provided by the Eligible Entity granting it, any contractors supporting the challenge process, and the service provider access to the above information.⁷

The current model places the burden exclusively on subscribers to share personal information with their respective state agency and furthermore, to procure their often-bundled

⁵ Not everyone is home during these hours, due to work and/or other responsibilities.

⁶ In 2022, the Nisqually Indian Tribe carried out a broadband survey for Thurston County, WA which included a speed test component. To ensure a baseline of reliable results, they carried out in-person surveys including support performing the speed test. Limiting speed tests to a window of 7-11pm would make this method unviable. Apart from not wanting to interfere with families evening routines, it is dark past 7 half of the year and would be unsafe for the surveyors.

⁷ See Proposed BEAD Model Challenge Process at 18 section 1.4.6.

cable or Internet bill, which could include information individuals would not wish to share with the state. Such a requirement is a major barrier that will ultimately deny some communities the opportunity to improve their broadband infrastructure with BEAD funding.

The NTIA should remove the requirement to disclose any personal information beyond name and address. The Eligible Entity could include a field in an online form that requests the tier of service a consumer subscribes to. If the providers are given an address and name, they should be able to produce a rebuttal that demonstrates that a higher tier of service is actually available in cases where it is.

A recent study undertaken by the Deep East Texas Council of Governments found that many households without Internet also lacked email addresses and were barred from contributing to the Federal BDC challenge as a result.⁸

iv. Honoring Local Data Gathering Efforts

In anticipation of enhanced broadband funding, many states and local governments have undertaken data collection efforts to understand broadband availability and performance. Efforts by groups like the Deep East Texas Council of Governments or Merit Network's Michigan Moonshot are examples of good data collection procedures. These groups have set up secure websites collecting demographic and contact information, broadband use metrics, and browser-based speed test results.

Community surveys commonly include information such as subscriber name, service address, household income, internet subscription pricing, and other data points designed to

⁸ Mickey Slimp, FCC Broadband Mapping Analysis and Reporting for the Deep East Texas Region (Jan. 31, 2023), https://www.detcog.gov/_files/ugd/a7f184_49d14317202e424b987a1408a5ecb1c8.pdf.

address the limitations of crowdsourced speed tests. Disallowing this data wholesale will exclude an untold amount of quality, community-level data.

Public engagement is often difficult and these efforts accrue considerable financial costs. Due to these factors, repeating survey efforts is often outside the capacity of many communities, especially the most marginalized, under-resourced, and vulnerable. To increase model flexibility, the NTIA should accept data older than six months old, and move away from the outdated FCC model emphasizing data timeliness in areas without new infrastructure. Disallowing data based on aggressive timeliness standards would be a major barrier that should be addressed. These crowdsourced test efforts undertaken in anticipation of BEAD funding may bolster a state's depth of understanding and layer additional redundancies identifying areas of greatest need.

v. Transparency in Rebuttals

Additionally, we recommend that Internet Service Providers submitting speed test rebuttals be required to disclose their measurement methodology. Presently, the NTIA model does not clearly define which quality of service measurements states should allow to overrule end-user speed test challenges. In order to effectively adjudicate the rebuttal process, Eligible Entities need transparency into the rebuttal measurements provided by ISPs, including details on the methodologies they use in their performance tests.

vi. Considering Additional Metrics

Finally, the BEAD challenge process should be allowed to include performance metrics beyond bandwidth and (unloaded) latency, such as loaded latency (latency impacted by bufferbloat), jitter, and packet loss. These three metrics quantify the qualitative end-user

experience and are tightly interwoven. In particular, the portion of available bandwidth, or throughput that a user actually achieves is directly affected by loss and latency.⁹

b. Availability

Many Eligible Entities are likely to adopt the Model Challenge Process due to time constraints and capacity issues. If adopted wholesale, there are critical clarifications needed in the list of acceptable evidence provided in Table 3 of the BEAD Challenge Process Policy Notice for the “Availability” challenge type.

The NTIA must clarify that the letter or email documenting a failure to provide service may come from an individual prospective customer documenting or providing a testimonial account concerning an exchange using any advertised methods for requesting service. This includes, but is not limited to, visits to storefronts, phone calls, text messages, emails, website, or anything other advertised medium of communication.

Additionally, if a failure to install service within 10 days deems a location as unserved, then a failure to restore service within 10 days of being notified of an outage should similarly qualify an area as unserved. Further, in areas serviced by DSL, many providers do not accept new customers, or even allow for transfers of service to new owners, or those whose plans have lapsed, without joining a waiting list. These areas should be considered unserved even if customers are currently subscribed to a plan that qualifies them as underserved or served.

V. Missing Challenge Types

a. Technologies or Offerings That Lack the Ability to Provide Internet for All

The FCC’s Broadband Data Collection Program makes determinations on broadband availability based on “mass-market” services that are available to residential and/or business

⁹ David Tuber, Measuring network quality to better understand the end-user experience, (Apr. 18, 2023), <https://blog.cloudflare.com/aim-database-for-internet-quality/>.

(non-enterprise) customers. The definition of mass-market does not, however, establish a benchmark for the capacity of the networks to actually provide advertised services to every location in their reported area of coverage. In other words: Could the ISP reporting coverage in a given area provide the advertised level of service to every location if they all subscribed? If not, how scalable is the network to increase capacity along with demand? If there is no question of a provider's ability to scale service to meet demand, an Eligible Entity should have authority to modify or allow particular challenge types.

In particular, this approach could be reasonably applied to some Licensed Fixed Wireless providers. In the absence of BEAD or other funding opportunities, fixed wireless providers are likely to remain the sole provider in these markets and thus carry a de facto status as “carriers of last resort.” Given this reality, the Challenge Process needs the ability to ensure providers’ ability to deliver reliable Internet service for everyone in their service area, not just active subscribers. Accordingly, Eligible Entities should be able to allow challenges for Licensed Fixed Wireless providers using data on spectrum holdings, locations of towers, nodes, and backbone, as well as tower loading constraints.

Within the Optional Speed Test Module of the Model Challenge Process, providers are required to rebut an area challenge using the 80/80 threshold. Meaning 80 percent of the locations must show speeds of at least 80 percent of the relevant threshold for unserved and underserved designations.¹⁰ At a minimum, any provider should be able to demonstrate that they have the ability to provide reliable service to at least 80 percent of the locations in their reported service area at a single point in time to rebut any challenges or modifications.

¹⁰ The 80/80 threshold is drawn from the requirements in the CAF-II and RDOF measurements. *See* BEAD NOFO at 65, n. 80, Section IV.C.2.a.

b. Plans with Built-in Network Deprioritization

Section 7.2 of the BEAD Challenge Process Policy Notice is missing a key Challenge Type that affects hundreds of thousands locations across the country. Currently, there is no ability for consumers to challenge plans with built-in network deprioritization.

For example, some cellular carriers implement network deprioritization based on plan type. For mobile plans this means providing a lower level of network priority to “Heavy-Data Users,” based on a defined threshold of bandwidth consumption. Some carriers also state that home Internet customers receive the same network prioritization as Heavy Data Users.

Deprioritized Internet service is not reliable Internet and the BEAD Challenge Process should account for this.

To streamline this for Eligible Entities and communities, adding a module to the Model Challenge Process that allows Eligible Entities to treat locations that the National Broadband Map shows to have available qualifying broadband service (*i.e.*, a location that is “served”) delivered solely via Fixed LTE or 5G as “unserved” or “underserved” if the provider of that service has policies in place that deprioritize home Internet (fixed) subscribers. The change in designation could be evidenced by the submission of plan contracts, terms of service, or Open Internet Policies that contain deprioritization clauses, or other evidence that shows throttling occurring.

A provider could rebut this presumption by providing to the Eligible Entity evidence in their policies that they do not “deprioritize, throttle, or otherwise limit quality the service for fixed subscribers in favor of other offerings.”

VI. Area and MDU Challenge Module

We applaud the NTIA for enabling Eligible Entities to use the “Optional Area Challenge Module” to shift the burden of proof in cases where a defined threshold is met. This sets a strong precedent, not only for the BEAD program, but for other challenge processes concerning broadband availability and grant eligibility.

The proposed module makes great strides for limiting the burden on challenging entities, such as Tribal and local governments, and the Coalition urges the NTIA to make several modifications to this module to ensure that the implementation of this generational opportunity for broadband expansion is based on accurate location eligibility classifications.

a. Geographic Units Used to Define “Area”

While the Coalition strongly supports the Area and MDU Challenge Module, several clarifications or modifications are needed to ensure it can be implemented smoothly.

i. Clarifying How Challenge Areas Are Defined

First, a point of clarity is needed regarding the geographic area denoted by the following portion of the policy note:

If the challenger determines that an area served by a provider within a census block should be reclassified as unserved or underserved in step (1), the Eligible Entity may issue an area challenge

Is an area challenge issued for an entire census block or is an Eligible Entity able to identify geographic units or methods to define the "challenge area?" If Eligible Entities are given discretion to identify challenge areas through their own methods, do challenge areas need to be confined within a census block? If not, are they allowed to cross census blocks?

If this language does restrict Eligible Entities ability to define challenge areas, a few critical issues arise:

- Neither unit is granular enough in rural and remote areas
- Networks do not adhere to the borders of Census Blocks and CBGs

If the current policy is intended to restrict challenge areas to census blocks, the NTIA must modify its Policy Note and Model Challenge Process for more flexibility. Adopting a more flexible approach to defining challenge areas will allow Eligible Entities to account for the variable nature of terrain, foliage, and other factors that impact fixed wireless propagation. Adopting such an approach allows challenge areas to be defined by shapefiles, hexes, or other geographic units that may span across multiple census blocks or census block groups.

ii. Discrepancies in the Units of Geography Used Between Documents

Between the Policy Note and the Model Challenge Process, several discrepancies in the geographic units used to define the “challenge areas” have been identified.

The Policy Note states:

If the challenger determines that an area served by a provider within a census block should be reclassified as unserved or underserved in step (1), the Eligible Entity may issue an area challenge (*i.e.*, may declare all locations by that provider within the area to be similarly unserved or underserved). All locations in that area enter the “challenged” state.

The Model Challenge Process states:

An area challenge is triggered if 6 or more broadband serviceable locations using a particular technology and a single provider within a census block group are challenged.

It also states:

Area challenges for availability need to be rebutted with evidence that service is available for all BSL within the census block group, e.g., by network diagrams that show fiber or HFC infrastructure or customer subscribers.

Clarification is needed on how each document uses census blocks and census block groups. Without this clarification, the NTIA risks receiving a multitude of state plans that utilize definitions that are inconsistent with its deployment goals. Providing clarification now, reduces the review NTIA will need to do in the future.

b. Area Challenge Rebuttal Process

The Coalition supports the shifting of the burden of proof and the approach that requires providers to demonstrate that they are meeting the requirements for every served location in a challenge area. However, some components of the rebuttal process should be modified and several points of clarification are needed.

i. Representative Sample

One major issue with the representative sample approach is that there is no guidance on how Eligible Entities adjudicate a rebuttal. It is easy to understand how this would be implemented when an entire area receives the same verdict, but what happens when some locations are “sustained” and some are rejected?” Since the rebuttals are only a sample of the area, Eligible Entities will have to determine how the outcomes of each rebuttal extrapolate out to the entire challenge area. This becomes increasingly problematic, if the NTIA requires challenge areas to be defined at the level of census block or census block group.

The issues with extrapolating rebuttals using a sample of the area requires that the challenge areas are defined at the discretion of the Eligible Entity or challenger. This approach also raises concerns about how a “representative sample” is determined by the Eligible Entities. Determining what is representative of a geographic area and network should be described in

greater specificity. The ability of a sample to accurately reflect the reality of coverage ultimately depends on how the area is defined. Representative random sample is useful unless the challenge area is defined appropriately.

c. MDU Challenge Process

We commend the NTIA for including MDUs in the Challenge Process. The broadband availability issues facing some residents of MDUs are a major digital equity barrier. We appreciate that the barrier to trigger an MDU challenge remains relatively low, but would like to reiterate our previous comments with respect to the speed tests and the area challenge.

The biggest concern with the MDU process remains the BSL Fabric. The Policy Notice states that altering the BSL's "Building Type" classification on the Fabric to reflect a BSL's subscription to mass-market broadband service is not allowed. We recommend that the NTIA clarify that the Building Type may be altered to reflect whether the building is an MDU, as that does not impact its status as a BSL. Additionally, Challengers and Eligible Entities should not be beholden to the Fabric unit count, if the actual unit count differs from the data in the Fabric.

VII. The Broadband Serviceable Location Issue

We recognize that it is the NTIA's interpretation that the Infrastructure Investment and Jobs Act (IIJA) does not allow for the NTIA or Eligible Entities to modify the existence or designation of a Broadband Serviceable Location (BSLs) as identified on the FCC's Broadband Data Maps. We feel an obligation to continue to point out that this restriction will have a negative impact on this generational opportunity for all Eligible Entities. The communities most impacted by the digital divide, especially Tribal lands, have experienced some of the highest margins of error with respect to the accuracy of BSLs.

The issues with the inaccuracies in the Fabric go in both directions – the missing locations will result in unserved locations being excluded from eligibility and the extraneous locations could result in Eligible Entities building fiber to empty fields. This is an iterative process, and the Fabric is improving over time, but this presents a real possibility of an inequitable outcome of the BEAD.

The NTIA should provide a few important clarifications within the BEAD Challenge Process Guidance that would mitigate the potential for some of the worst outcomes:

- Are the Eligible Entities required to fund builds to the unserved BSLs, that are known to be labeled in error, before they fund builds to underserved areas that are accurately identified?
- Will the conclusion of the Challenge Process lock in the version of the Fabric that is used to determine the eligibility of funding for the Eligible Entity, or will updates be allowed in the Final Proposal based on improved location data?

In addition to the missing locations, there is another complication that needs to be addressed and clarified by the NTIA. There are numerous examples of locations where a BSL dot is placed on a legitimate BSL, but the address is wrong.¹¹ In some cases, these are simple address matching issues, in which the house number is off or the street name differs slightly. However, in some cases the geo-coordinates of the BSL and the location of the address are over 70 road miles from each other.

The NTIA needs to address this issue and provide guidance to Eligible Entities on how they are allowed to handle these requirements. In thinking through this issue, please consider the following scenarios: There are two unserved residences and between the two locations only one BSL exists. The problem is compounded by the fact that the geo-coordinates of the BSL fall on the footprint of one residence, but the address is

¹¹ Robert Martin, How good is the FCC Broadband Map in a Big City?, (Dec. 14, 2022), <https://medium.com/@rbrtmrtn/how-good-is-the-fcc-broadband-fabric-in-a-big-city-16bfdcdb3c45>

associated with the other residence. To raise the stakes, let's say each location is at the end of a gravel road a mile past the closest BSL and therefore would be unlikely to be included in a buildout unless paid for with BEAD funds. Which residence does the Eligible Entity provide funding for and which one remains unserved? Can both residences be served if the address of one is in the Fabric and the location of the other is in the Fabric, thus including both?

The BEAD NOFO states that at least 80 percent of the BSLs in a funded service project, must meet the relevant designation of unserved/underserved. This allows Eligible Entities to include up to 20% of locations that are not designated BEAD Eligible in service projects. We recommend that the NTIA use this flexibility to allow Eligible Entities to address the inevitable remaining flaws in the Fabric. In addition to this approach, establishing a waiver process that enables Eligible Entities to request modifications to the list of eligible BSLs, adding or removing BSLs, as necessary for the successful implementation of the Internet for All programs.

VIII. Community Anchor Institutions

a. Defining Anchor Institutions

In Section 60102(a)(2)(E) of the Infrastructure Act and BEAD NOFO the definition of Community Anchor Institutions (CAIs) concretely identifies a list of entity types, such as libraries and schools, while building in flexibility for Eligible Entities to include community support organizations that “facilitate greater use of broadband service by vulnerable populations.”

Each community is unique and the type of entities that step up to support needs, including around the digital divide, can prove to be just as unique. For this reason, we also support the NTIA's openness to allowing Eligible Entities to include additional CAIs that are not explicitly

defined in the Infrastructure Act. We believe that this flexibility is a critical component of the BEAD and Digital Equity Act Programs. However, without some additional guidance, we are concerned that CAIs that fall outside the traditional parameters may be excluded due to uncertainty.

The uncertainty around the definitions of CAIs could be addressed through additional clarity in the BEAD Challenge Process. In particular, we recommend that the guidance includes clarity on how the NTIA will review an Eligible Entity's determinations on which CAIs are included and excluded, including what justifications and evidence will be taken into consideration. Is there a baseline expectation required to justify these determinations or is the determination primarily based on the discretion of the Eligible Entity?

Furthermore, will Eligible Entities be empowered to make individual determinations within a category of institution? For example, if there is a local computer shop in a small community that provides digital navigation services and makes their facilities available as an access point for community members, an Eligible Entity could make a reasonable determination that this location is a CAI. However, that doesn't mean that every Apple Store within the jurisdiction of the Eligible Entity should or could be defined as CAIs. Similarly some, but not all, houses of worship absolutely facilitate greater broadband use by vulnerable populations.

We recommend that the NTIA allows and encourages this flexibility in the determination of CAIs. This will enable a more inclusive definition that is based on the uniqueness of each community and accounts for important differences around which institutions provide these functions on a community by community basis.

To support these decisions, we encourage the NTIA to provide greater detail on how the determination around Eligible CAIs will be reviewed and assessed, without being prescriptive.

b. Identifying Eligible CAIs

While we understand that Eligible Entities must assess the needs of CAIs within their jurisdictions and create an inventory of CAIs that are eligible for BEAD-funded infrastructure opportunities, we are concerned about NTIA's guidance regarding the starting point for Eligible Entities to identify such CAI locations. The Policy Note generally states that Eligible Entities must use the National Broadband Map "as the starting point" for identifying "the full universe of BEAD-eligible locations." Given that the Map designates many CAIs as non-broadband serviceable locations, it does not effectively provide broadband availability data about all CAIs within an Eligible Entity, let alone those locations that may be eligible for BEAD-funded infrastructure opportunities because they lack access to gigabit-level service.

Accordingly, we ask NTIA to clarify that Eligible Entities may use their own data in addition to the Map to identify Eligible CAI locations even if they are classified as non-BSLs in the Fabric and/or on the Map. We additionally ask NTIA to clarify that a CAI's potential designation as a non-BSL in the Fabric and/or on the Map does not preclude an Eligible Entity from including that CAI location in its list of Eligible CAIs (as long as it meets the definition of an Eligible CAI as provided in the IIJA legislation and BEAD NOFO).

c. Timing Requirements for CAIs

Eligible Entities face a huge challenge in identifying and assessing the broadband availability of all the CAIs within their borders for inclusion of an Eligible CAI Inventory in Volume 1 of the Initial Proposal. Since the FCC's Broadband Data Collection Program does not include any data on the broadband availability for CAIs, Eligible Entities will be reliant on their own existing data and data collection processes.

To address the reality of this challenge, we recommend that the NTIA allow Eligible Entities to identify CAIs where the broadband service available to that location is unavailable or

unknown. If an Eligible Entity submits a list that includes CAIs with undetermined service levels, that should be accompanied with a plan to collect the data necessary to make the determination on their classification as an Eligible CAI. This approach would mitigate the exclusion of CAIs that should be eligible.

IX. Utilizing Existing Data to Ease the Burden

Between November 18, 2022 and January 13, 2023, our National Broadband Maps had more attention than ever before, resulting in millions of challenges to locations and provider filings.¹² Beyond January 13, these challenges have continued at a less frenzied pace and additional “crowdsourced” data has been provided to the FCC.

There was an incredible amount of public and private resources, energy, and time that went into the FCC’s Challenge Process. Given the stakes of this process, many entities expended precious political capital to solicit the contribution of individuals, organizations, governments, companies, and more. Unfortunately, many of these challenges were rejected on technicalities or because the data provided was more than 6 months old.

This data represents a significant contribution to a public process and that data ultimately should belong to the public as a resource to ensure that Eligible Entities are equipped with all of the best data available. To honor this effort, we argue that the FCC should be required to make the data from rejected challenges available to the NTIA to be packaged for Eligible Entities. We recognize that this is not in the NTIA’s authority to mandate, but recommend the NTIA make this request to the FCC.

Broadband infrastructure has remained stagnant for decades. Using a 6 month cutoff for the age of the data was a public policy failure that failed to recognize the challenge that our most

¹² Federal Communications Commission, The National Broadband Map – Getting Better All the Time (Mar. 23, 2023), <https://www.fcc.gov/news-events/notes/2023/03/23/national-broadband-map-getting-better-all-time>.

unserved communities face. Rural communities do not get the privilege to conduct infrastructure surveys every 6 months, especially when nothing changes. Since this data has already been packaged, prepared, and submitted to the federal government for the purpose of correcting the National Broadband Maps in a direct nexus to the BEAD Program, we urge the FCC and NTIA to coordinate to make as much data as possible available to Eligible Entities.

Respectfully Submitted,

National Broadband Mapping Coalition

Adaptive Spectrum and Signal Alignment Incorporated(ASSIA)
Aurora Communications
BroadbandThing.com
BROADLINC Public Development Authority
Bufferbloat.net
California Community Foundation Digital Equity Initiative
Citizens Fiber Initiative Group
City of Shreveport
ECC Technologies
Hexvarium
Institute for Local Self-Reliance
King County IT (WA)
Learn Design Apply Inc
Merit
Measurement Lab
Next Century Cities
Nextgen California
Nisqually Indian Tribe
#OaklandUndivided
Ohio Valley Regional Development Commission
Opheim Consulting LLC
Ottawa County Department of Strategic Impact
The Papp.in Group
Petrichor Broadband LLC
Public Knowledge
Ready.net
Southern Ohio Health Care Network
University of Chicago Internet Equity Initiative
Washington State Broadband Office
ZCorum

The comments and recommendations of the National Broadband Mapping Coalition incorporate input and contributions from a wide range of stakeholders well beyond those listed above. However, in the short window of time available for this public comment opportunity, many entities that contributed were unable to secure approval to sign prior to submission. This includes the contributions of both Ookla and the North Carolina Division of Broadband and Digital Equity, who were unable to fully review the comments and sign-on, but contributed to portions of the comments. There were many other contributors that we wish we had the time to recognize.