

## Broadband Programs in the Bipartisan Infrastructure Bill

On November 5, 2021, the United States House of Representatives voted 228-206 to pass the “[Infrastructure Investment and Jobs Act](#)” (“Infrastructure Bill”). The United States Senate had already approved the legislation 69-30 in August, which means the legislation only needs President Joe Biden’s signature before it is enacted into law. The Infrastructure Bill would provide \$65 billion in federal funding for broadband infrastructure. It also establishes various new programs that direct funding toward broadband adoption, inclusion, and affordability. The most significant funding (\$42.5 billion) is allocated for a broadband infrastructure deployment program to be administered by the National Telecommunications and Information Administration (NTIA). The following provides a summary of several of the broadband-centric programs contained in the Infrastructure Bill.

### **I. Broadband Equity, Access and Deployment Program – Title I, Secs. 60101-60105, pp. 754-779**

The Infrastructure Bill establishes the “Broadband Equity, Access, and Deployment Program” (the “Program”). The Program requires NTIA to administer \$42.5 billion in funding through formula-based grants to states. Sec. 60102(b)(2), p. 756. The states in turn would competitively award grants to support broadband infrastructure deployment, mapping, and adoption projects. Funds would remain available until expended, although NTIA is directed to obligate the funds “in an expedient manner.” Sec. 60102(b)(3), p. 757. Grant funding must be made available to any “eligible entity,” which is defined as a “state” which is further defined to include the District of Columbia; Puerto Rico; and American Samoa, Guam, the United States Virgin Islands, and the Northern Mariana Islands. Sec. 60102(a)(2)(F) & (M), p. 755, 756. Following enactment of the Infrastructure Bill, NTIA must issue a Notice of Funding Opportunity (NOFA) for the Program within 180 days. The NOFA would establish a process for states to apply for funding by submitting a letter of intent (LOI), an Initial Proposal, and a Final Proposal. Sec. 60102(e), pp. 759-766.

#### ***Available Funding***

The NTIA program would allocate three discrete categories of funding to individual states. The first category of funding (\$5.3 billion) is a minimum allotment of \$100 million to each state (“Minimum Allotment”). Sec. 60102(c)(2), p. 757. With respect to the Minimum Allotment, each state (to include the District of Columbia and Puerto Rico) will receive \$100 million, with an additional \$100 million in funding to be allocated equally among American Samoa, Guam, the United States Virgin Islands, and the Northern Mariana Islands. *Id.*

The second category of funding (\$4.25 billion) would be allocated for broadband deployment projects based on unserved locations in high-cost areas in each state (“High Cost Funding”). Sec. 60102(c)(1), p. 757. An unserved location is defined as an area that lacks broadband access or access to at least 25/3 megabits per second (Mbps) speed and latency sufficient to support real-

time, interactive applications. The legislation further defines “high-cost area” as an unserved area in which “the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States” as determined by NTIA, incorporating factors that include (1) the remote location of the area; (2) the lack of population density of the area; (3) the unique topography of the area; (4) a high rate of poverty in the area; or (5) any other factor identified by NTIA that contributes to the higher cost of broadband deployment in the area.

The third category of funding (approximately \$32.2 billion) would be allocated for broadband deployment projects based on any unserved locations in each state (“Unserved Funding”).

### ***Funding Allocations***

On or after publication of the broadband maps (“DATA Maps”) by the Federal Communications Commission (FCC) pursuant to the recently enacted Broadband DATA Act, NTIA must allocate the High Cost Funding and the Unserved Funding to states. Secs. 60102(c)(1), (3), pp. 757, 758. Each state’s allocation for High Cost Funding will be based on a formula that divides the number of unserved locations in high-cost areas within the state by the total number of high-cost areas in the United States. A similar formula will be used for each state’s Unserved Funding but will take into account all unserved areas within the state. Secs. 60102(c)(1)(B), (c)(3)(B), pp. 757, 758.

Each state’s receipt of allocated funding under all three funding categories is subject to NTIA’s approval of its Letter of Intent (LOI), Initial Proposal, or Final Proposal, as applicable. Sec. 60102(c)(4), p. 758. In the event a state fails to submit an LOI, Initial Proposal, or Final Proposal, a political subdivision or consortium of political subdivisions of the state (“Political Subdivision”) may submit the applicable type of covered application in its place. In the event a state or Political Subdivision fails to apply for grant funding, NTIA must reallocate the grant funding to other states. Secs. 60102(c)(5)(B), (C), pp. 758.

### ***NTIA’s Application Framework and Initial Proposal Requirements***

The NOFA would establish a deadline for states to submit their LOI to NTIA and would also contain details about the Program. For example, the NOFA must include information about application requirements, permitted use of grant funding, and a process through which states can seek funding for planning and pre-deployment activities. Sec. 60102(e), pp. 759-767. NTIA must also provide a template for both an Initial Proposal and a Final Proposal. Sec. 60102(e)(1)(A)(iv), p. 760.

The form of the LOI will be established by NTIA and may require information that includes, but is not limited to, identification of any existing broadband program or office within their state, any barriers they may face in administering awarded grants, and the amount of any additional funding it may have to support its efforts. States may also request 5% of allocated funding associated with each state’s Minimum Allotment of \$100 million that can be used for planning purposes. Sec. 60102(e)(1)(C), p. 761. Any state receiving such an initial planning grant must

then provide NTIA with a five-year action plan (“Action Plan”) that details its funding priorities and associated costs. NTIA may also require an Action Plan to include information on proposed solutions for affordable broadband service within the state, how best to serve unserved locations, and the amount of time it would take to build out universal broadband service within the state. Sec. 60102(e)(1)(D), p. 762. On or after publication of the Broadband DATA Maps by the FCC, NTIA would then be required to issue a notice to each state that identifies their estimated amount available from all three funding mechanisms (i.e., Minimum Allocation, High Cost Funding, and Unserved Funding). The NTIA notice would also invite states to submit their Initial Proposal and Final Proposal for consideration. Sec. 60102(e)(2)(A)&(B), p. 763.

The Program would require each state to include detailed information in its Initial Proposal, which must be submitted through an online portal. Among other things, the Initial Proposal must include information that outlines the long-term objectives for deploying broadband and closing the digital divide. It must also include a plan to “competitively award” subgrants to ensure timely deployment of broadband. States must also identify each of their unserved or underserved locations and each community anchor institution that lacks access to gigabit broadband service. If NTIA grants a state’s Initial Proposal, it must make 20% of the funding available to the state under all three funding categories, although NTIA may also allocate a higher percentage. Sec. 60102(e)(3)(D)(ii)(III)(aa)&(bb), p 764.

Once NTIA approves a state’s Initial Proposal, the state may then submit its Final Proposal to NTIA for the remainder of the amount available to it under all three funding categories. A state’s Final Proposal must include a detailed plan that specifies how it will allocate grant funds for the deployment of broadband to unserved and underserved locations, a timeline for implementation, a process for oversight and accountability, and a description of its coordination with local governments, along with local and regional broadband planning processes. Upon NTIA’s approval of the Final Proposal, it is required to make available to the state all remaining funding under the three categories. Sec. 60102(e)(4), pp. 765-766.

### ***Local Coordination Requirements***

The Program requires substantial coordination by the state with local and regional entities. For example, each state’s five-year action plan must be informed by collaboration with such local entities. In addition, states must allow an opportunity for political subdivisions to submit plans for consideration by the state, and to comment on the state’s Initial Proposal and Final Proposal. Secs. 60102(e)(3)(A)(ii), (4)(A)(ii), pp. 763, 765.

### ***Project Requirements***

Once a state completes the NTIA process, they may use their funds to “competitively award” subgrants to eligible entities. Eligible entities include cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments. With respect to local governments, the Infrastructure Bill is silent about states with laws preempting municipal broadband networks. In awarding grants, states must ensure that any subgrantee has the requisite financial, managerial, technical, and operational

capabilities to provide the services promised in the subgrant. Secs. 60102(g)(2)(A)(ii) &(iii) pp. 767-768.

### ***Use of Grant Funding***

Although the Program does not define to whom a state may award subgrants, states are prohibited from excluding cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility. Any such subgrantees may use their competitively awarded funding for the following projects:

- Unserved service projects (defined as an area that lacks access or access to 25/3 Mbps speed and latency sufficient to support real-time, interactive applications) and underserved service projects (defined as an area that lacks access to 100/20 Mbps speed and a latency sufficient to support real-time, interactive applications).
- Connecting eligible community anchor institutions, which are defined as entities such as a school, library, health clinic, health center, hospital, or other medical provider; public safety entity; institution of higher education; public housing organization; or community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals, that lack access to gigabit-level broadband.
- Data collection, broadband mapping, and planning.
- Installing broadband infrastructure or providing reduced-cost services within a multifamily residential building, with priority given to a building that has a “substantial share” of unserved households or is in a designated poverty area.
- Broadband adoption, including programs to provide affordable internet-capable devices. Sec. 60102(f), p. 767.

Subgrantees must provide service at a speed of not less than 100 Mbps/20 Mbps with latency sufficient to support real-time, interactive applications, and with network outages that do not exceed, on average, 48 hours over any 365-day period. They must also provide access to broadband service to each customer served by the project who desires broadband service and must also offer no less than one low-cost broadband service option for low-income subscribers. The low-cost broadband service must be defined by the state in its Final Proposal and is subject to approval by NTIA. Sec. 60102(h)(5)(B)(iii), p. 772. The Program also expressly prohibits NTIA from regulating the rates charged for broadband service by a subgrantee. The network must be deployed, and service commenced, no later than four years after the date of the subgrant. Sec. 60102(h)(4)(C), p. 771.

### ***Matching Requirement***

A state must provide, or must require a subgrantee to provide, a matching contribution equivalent to at least 25% of project costs. NTIA may waive the matching contribution requirement, which does not apply in high-cost areas. In general, the match must be derived from non-federal funds. However, the Program specifically provides that matching funds may

come from a federal regional commission or authority – as well as the Families First Coronavirus Response Act, the CARES Act, the Consolidated Appropriations Act of 2021, or the American Rescue Plan Act of 2021 – if the funds were for the purpose of deployment of broadband service. The match may also include in-kind contributions. Sec. 60102(h)(3), p. 770.

### ***Funding Prioritization***

The bill requires states to award subgrants in accordance with the following prioritization:

- Unserved service projects;
- Underserved service projects (after the state certifies that it will ensure universal coverage of all unserved locations); and
- Eligible community anchor institutions (after the state certifies that it will prioritize underserved service projects).

In addition, states must prioritize projects based on deployment of a broadband network to persistent poverty counties or high-poverty areas; the speeds of the proposed broadband service; the expediency of project completion; and a demonstrated record of, and plans to be in compliance with, federal labor and employment laws. Sec. 60102(h)(1), pp. 768-769. It is unclear whether the prioritization scheme is meant for mutually exclusive categories of service projects. For example, for community anchor institutions located in unserved areas, it is unclear what level of prioritization they should receive under the funding scheme.

### ***Challenge Process***

After submitting its Initial Proposal, and before allocating any grant funds for the deployment of broadband networks, a state must “ensure a transparent, evidence-based, and expeditious challenge process” is in place. Sec. 60102(h)(2)(A), p. 769. Under the challenge process, a unit of local government, nonprofit organization, or other broadband service provider can challenge a determination made by the state in its Initial Proposal as to whether a particular location or community anchor institution within the state is eligible for the grant funds, including whether a particular location is unserved or underserved. *Id.*

After resolving each challenge, and no later than 60 days before allocating grant funds received for the deployment of broadband networks, a state must provide public notice of the final classification of each unserved location, underserved location, or eligible community anchor institution within the state. NTIA retains the authority both to modify a state’s challenge process or to reverse a state’s determination with respect to the eligibility of a particular location or community anchor institution. Sec. 60102(h)(2)(B)&(D), p. 769.

### ***Reporting Requirements***

Both states and subgrantee recipients are subject to various reporting requirements under the Program. Sec. 60102(j), pp. 773-776. Subgrantees must submit to the state a semiannual report for the duration of the subgrant to track the effectiveness of the use of funds provided. Among other things, each report must describe each type of project carried out using the funds, the list

of addresses or locations that will be served, and whether each address is residential, commercial, or a community anchor institution. The report must also describe the facilities that have been constructed, peak and off-peak actual speeds, and the maximum speed of broadband service being offered. Sec. 60102(j)(2), pp. 774-775.

States must submit to NTIA an Initial Report, Semiannual Report, and a Final Report. Sec. 60102(j)(1), pp. 773-774. The Initial Report must be submitted to NTIA after the state receives its grant funds, and must describe the planned and actual use of funds, the planned and actual process for subgrants, and the mechanisms by which the state will ensure eligible use of the funds. Sec. 60102(j)(1)(A), p. 773. One year after receiving its grant funds, and semiannually thereafter, the state must submit to NTIA its Semiannual Report. Sec. 60102(j)(1)(B), p. 773. The Semiannual Report must describe how the state expended the grant funds, each service provided with the grant funds, and the number of locations at which broadband service was made available using the grant funds. The Final Report is due to NTIA one year after a state has expended all of its grant funds and must describe the same information, but must also include all of the reports it received from its subgrantees. Sec. 60102(j)(1)(C), p. 774.

### ***Report on the Future of USF***

The Program also includes various miscellaneous provisions, including a requirement for the FCC to commence a proceeding to issue a report on the future of the Universal Service Fund (USF). No later than 270 days after the date of enactment of the Infrastructure Bill, the FCC must submit a report to Congress on the agency's options for improving its effectiveness in achieving the universal service goals for broadband. The report can make recommendations to Congress on further actions the FCC and Congress could take to improve the ability of the FCC to achieve the universal service goals for broadband. Sec. 60104, pp. 2062-2064.

## **II. Enabling Middle Mile Broadband Infrastructure – Title IV, Sec. 60401, pp. 803 -810**

The Infrastructure Bill also establishes a \$1 billion grant program at NTIA for the construction, improvement, or acquisition of middle mile infrastructure, which is defined as “any infrastructure that does not connect directly to an end-user location, including an anchor institution.” Sec. 60401 (a)(9)(A), p. 804. The bill directs NTIA to make grants on a technology-neutral, competitive basis to eligible entities for the construction, improvement, or acquisition of middle mile infrastructure. Sec. 60401(c), p. 806.

The Infrastructure Bill defines eligible entities as a state, political subdivision of a state, tribal government, technology company, electric utility, utility cooperative, public utility district, telecommunications company, telecommunications cooperative, nonprofit foundation, nonprofit corporation, nonprofit institution, nonprofit association, regional planning counsel, Native entity, or economic development authority. The definition also includes a combination of two or more such entities. Sec. 60401(a)(4), p. 803.

NTIA is instructed to establish an application process for middle mile grants to eligible entities that meet two or more conditions. Such conditions include that the eligible entity has adopted fiscally sustainable middle mile strategies, will offer its services on a nondiscriminatory basis, has identified supplemental investments or in-kind support, or has demonstrated that its project will benefit national security. Eligible entities must also demonstrate that they have the financial, technical, and operational capability to carry out the proposed project. Sec. 60401(d), pp. 806 -807.

Among other things, prioritization must be given to connecting middle mile infrastructure to last mile networks that provide or plan to provide broadband service to households in unserved areas, and the offering of wholesale broadband service at reasonable rates on a carrier-neutral basis. Secs. 60401(e)(1)(A), (C), p. 807. Buildout of the middle mile network must be completed within five years after grants are made available to the eligible entity. Sec. 60401(e)(2), p. 807. The grant program is authorized for five years, from FY 2022 through FY 2026. Sec. 60401(h), p. 810.

### **III. Digital Equity Act Competitive Grant Programs – Title III, Secs. 60301-60307, pp. 781-803**

The Infrastructure Bill also includes \$2.75 billion in funding under the Digital Equity Act of 2021 (“Equity Act”), which creates two distinct grant programs to be administered by the U.S. Department of Commerce: the State Digital Equity Capacity Grant Program (“Capacity Grant Program”) and the Digital Equity Competitive Grant Program (“Competitive Grant Program”). Sec. 60304, pp. 784-794, Sec. 60305, pp. 794-800.

The purpose of both programs is to promote digital equity, support digital inclusion activities, and promote increased broadband adoption. The Equity Act defines “digital equity” as “the condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States.” Sec. 60302(10), p. 783. “Digital inclusion” is defined as “activities that are necessary to ensure that all individuals in the United States have access to, and the use of, affordable information and communication technologies,” such as fixed and wireless broadband internet services and internet-enabled devices. Sec. 60302(11), p. 783.

Whereas the Capacity Grant Program is directed toward broader state efforts to achieve digital equity and inclusion, the Competitive Grant Program focuses more narrowly on covered populations, such as senior citizens, veterans, minorities, and individuals with a language barrier. In establishing both programs, NTIA is directed to consult with multiple agencies, including the FCC, the Federal Trade Commission, the U.S. Department of Agriculture, and others.



## **State Digital Equity Capacity Grant Program – Section 60304**

The purpose of the Capacity Grant Program is to “promote the achievement of digital equity, support digital inclusion activities, and build capacity for efforts by states relating to the adoption of broadband by their residents.” Sec. 60304(a)(1)(A), p. 784.

The Capacity Grant Program will be administered by NTIA, which will make grants available to states and other eligible entities, including nonprofit organizations, community anchor institutions, or public housing authorities. Sec. 60304(a)(1), pp. 784-785.

To receive grant funding, eligible entities must develop a State Digital Equity Plan, which must include such things as the identification of barriers to digital equity, measurable objectives for documenting and promoting the funded efforts, and a description of how the state plans to collaborate with key stakeholders. States must also make their Digital Equity Plans publicly available prior to submission to NTIA and must also consider any comments received. Sec. 60304(c), pp. 786-787.

The Capacity Grant Program is appropriated \$60 million for planning grants to states to develop State Equity Plans, and \$240 million for FY 2022 and \$300 million per year for FY 2023 through FY 2026 to support implementation and digital inclusion initiatives. Distributions by NTIA will be based on a formula that takes into account each state’s populations, demographics, and availability and adoption of broadband. Sec. 60304(k), p. 794.

## **Digital Equity Competitive Grant Program – Section 60305**

The Equity Act appropriates \$250 million per year to the Competitive Grant Program for competitive grants to public and nonprofit entities for a range of digital inclusion and broadband adoption activities. Sec. 60305(l)(1), p. 800. More specifically, the Competitive Grant Program focuses on increased digital equity and inclusion efforts directed toward covered populations. NTIA may award grants to administering entities within the state, to include political subdivisions, Indian tribes, nonprofit entities, community anchor institutions, or entities involved in workforce development. Sec. 60305(b), p. 795.

An entity seeking a grant must submit an application to NTIA that includes how it will use grant funds to achieve the goals of the Competitive Grant Program, the time frame for expending the grant funds, a justification for the grant amount, and the source of any other federal, state, or other funding sources the entity receives. Sec. 60305(c), p. 796. In deciding whether to award grants, NTIA must take into account whether the applicant’s proposal will increase internet access and the adoption of broadband among covered populations to be served by the applicant, the comparative geographic diversity of the applicant’s proposal in relation to other eligible applications, and the extent to which it may duplicate or conflict with another program. Recipients of grant funding must generally expend the funds with four years of the award. Sec. 60305(d), pp. 796-798.



#### **IV. Broadband Affordability – Title V, Sec. 60501-60506, pp. 810-818**

Title V of the Infrastructure Bill addresses broadband affordability and makes the FCC's [Emergency Broadband Benefit \(EBB\) Program](#) permanent, renaming it the "Affordable Connectivity Program." Sec. 60502(a)(2), p. 810-811. The Infrastructure Bill allocates \$14.2 billion to the Affordable Connectivity Program, which will remain available until expended.

The program provides a \$30 per month subsidy for low-income families to use toward any internet service plan of their choosing, with the exception that a household in a high-cost area may receive up to \$75 per month if a participating provider is able to show that the \$30 level would cause "particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network." Sec. 60502(a)(3)(B), p. 811. The legislation expands the EBB program eligibility to include households that participate in the federal Women, Infants, and Children (WIC) program, but removes eligibility based on loss of income. Sec. 60502(b)(1)(E), p. 814.

It removes the original EBB program requirement that the subsidy can only be applied toward service offerings that were in existence as of December 1, 2020, and requires participating providers to permit any eligible household to apply the benefit to any of their service offerings. Furthermore, the legislation prohibits a participating provider from requiring credit checks, however, it can terminate the service after 90 days of nonpayment from the customer. Participating providers must also carry out public awareness campaigns to highlight the value and benefits of broadband service and the availability of the program.

For its part, the FCC must establish a consumer complaint process and must require participating providers to inform their subscribers about the complaint process. The FCC must also regularly issue public reports about complaints it receives. The FCC is also permitted – but not required – to conduct outreach efforts to encourage eligible households to enroll. Sec. 60502(a)(3)(A), p. 2156.

The FCC must also establish rules to protect consumers who enroll in the program. Among other things, such rules must address inappropriate upselling or downselling by providers, inappropriate opt-ins for extended contracts, and other practices that may undermine the purpose of the program. Within one year of the Infrastructure Bill's enactment, the FCC must issue final rules regarding the annual collection by the FCC of data relating to the price and subscription rates of each internet service offering of a participating provider under the program. The FCC must also make the data it collects publicly available. Sec. 60502(a)(9)&(11), pp. 812-813.

**Consumer Broadband Labels – Sec. 60504, p. 816**

Section 60504 of the bill requires the FCC to promulgate rules within one year of its enactment that would require broadband providers to display broadband consumer labels, as described in the FCC's [2016 Public Notice](#), disclosing information regarding their respective broadband internet access service plans. Sec. 60504(a), p. 816. Such disclosures must also include information regarding whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period. The FCC is also required to conduct a series of public hearings to assess how consumers evaluate broadband plans and whether such disclosures are available, effective, and sufficient. Secs. 60504(b), (c), p. 816.

**Digital Discrimination – Sec. 60506, pp. 817-818**

Finally, the Infrastructure Bill requires the FCC to adopt rules within two years of the bill's enactment to address digital discrimination. Specifically, the rules must facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility. The rules must prevent such digital discrimination based on income level, race, ethnicity, color, religion, or national origin, and must also identify necessary steps for the FCC to take to eliminate such. Sec. 60506(b), p. 818.

The bill also requires the FCC and the U.S. Attorney General to ensure that federal policies promote equal access to robust broadband internet access service by prohibiting deployment discrimination based on an area's income level or ethnicity composition, or other factors the FCC determines be relevant based on its findings associated with its requisite rulemaking. Sec. 60506(c), p. 818. Finally, the FCC must develop "model policies and best practices" for states and localities to prevent digital discrimination. Sec. 60506(d), p. 818.

For more information about the Infrastructure Bill or any of the associated programs, please contact one of the authors listed on this summary.

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