

Before the
National Telecommunications and Information Administration
Washington, D.C. 20230

In the Matter of)
)
)
Infrastructure Investment and Jobs) Docket No. NTIA-2021-0002
Act Implementation)
)
)

JOINT COMMENTS OF:
NATIONAL MULTIFAMILY HOUSING COUNCIL,
NATIONAL APARTMENT ASSOCIATION,
NATIONAL LEASED HOUSING ASSOCIATION,
NATIONAL ASSOCIATION OF HOUSING COOPERATIVES,
INSTITUTE OF REAL ESTATE MANAGEMENT,
COUNCIL FOR AFFORDABLE RENTAL HOUSING,
MANUFACTURED HOUSING INSTITUTE,
NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

The National Multifamily Housing Council, the National Apartment Association, the National Leased Housing Association, the National Association of Housing Cooperatives, the Institute of Real Estate Management, the Council for Affordable Rental Housing, the Manufactured Housing Institute, and the National Affordable Housing Management Association submit these Comments in response to the Public Notice released on January 7, 2022. These national associations represent for-profit and non-profit owners, operators, developers, property managers and housing cooperatives involved in the provision of rental housing, both affordable and conventional.

The COVID-19 pandemic has forced millions of Americans to rely on connectivity for reality of home schooling and teleworking. It has also laid bare the challenges many families continue to face in gaining access to the internet whether because of a lack of service, subpar service and

speed availability or real challenges in affordability of service when it does exist. Whether in rural communities or low and middle-income communities in our urban core, COVID-19 has highlighted how essential broadband service has become. The opportunity presented by the historic investments made in broadband deployment and adoption by the Infrastructure Investments and Jobs Act (IIJA) is of huge importance in achieving our shared goal of ending the digital divide once and for all and ensuring that every American – regardless of where they live or how much money they make – can benefit from the promise of the internet.

The laudable, bipartisan work done by the Biden Administration and Congress in crafting the IIJA includes the establishment of the Broadband Equity, Access, and Deployment Program (BEAD) at the National Telecommunications and Information Administration (NTIA). The \$42.5 billion allocation to this program demonstrates the serious commitment of federal policymakers to bringing all stakeholders together to make long-overdue progress in deploying and upgrading broadband infrastructure across the country and acknowledging what broadband really is—essential to daily life and economic activity. Further, the creation of BEAD provides a historic opportunity to bring the public and private sectors together with significant resources to achieve our shared goals.

On behalf of the rental housing industry and our nation’s renters, we applaud the bipartisan work done to establish BEAD and thank NTIA for the opportunity to present our views on how best to capitalize on this important moment as we build and modernize our broadband infrastructure for the future.

The Digital Divide & Rental Housing—the Challenge at Hand

The digital divide is often discussed in a binary way, where broadband service exists and where it does not. But in reality, the challenge is much more complicated. In urban or suburban low-income and workforce housing communities where broadband service does exist, adoption can be impacted by a variety of considerations such as affordability of service or the quality and reliability of that service. The FCC’s Lifeline program and the FCC’s new Affordable Connectivity Program (ACP) attempts to address the affordability of service challenge. ACP funding, in particular, will be of great help in getting service to those who need it. But in all too many cases, low and middle-income renters are faced with the choice of using limited funds, even with subsidies, to pay for broadband service that is slow, unreliable, and unable to support modern demands such as e-learning, remote work or video streaming.

To improve the reliability and quality of the broadband service at low-income and workforce rental properties of all types, including manufactured housing, housing cooperatives, and apartment communities, significant investments and upgrades are needed. The economics of financing those updates have continued to prevent meaningful improvements to the communications networks at low-income and workforce rental properties and exacerbated a different side of the digital divide. Housing owners and operators of affordable rental housing units are often small firms, housing cooperatives, non-profits or individual owners operating with little-to-no profit margin and must provide essential services such as property maintenance, security, etc. Broadband providers, where they do exist in low-income communities, often do not invest capital on necessary maintenance or upgrades of existing infrastructure because the return on investment on such investments is not deemed to be economically viable. Other segments of the rental market also face a similar dynamic, where

broadband providers have increasingly tried to shift the cost burden of building out or maintaining networks to property owners, which in turn drives up operating costs and puts upward pressure on rents residents pay, even as housing shortages and affordability challenges grow across the nation.

The result of these financial hurdles is subpar and dated infrastructure, such as aging copper wire installed decades ago, continuing to be relied upon although it is unable to meet current and future needs. To understand the gravity of the infrastructure challenge at hand, one needs to look no further than at a snapshot of the nation's rental housing stock:

Over 75% of rental housing is in buildings with fewer than 20 units, with the majority of those being in very small properties.¹ Broadly speaking, naturally occurring affordable housing, properties that accept Section 8 Housing Choice Vouchers or participate in other affordable housing programs are generally going to be a part of this housing stock. The nation's rental housing stock is aging rapidly—in fact, the Joint Center for Housing Studies estimates that more than half of all rental units were built before 1980 and nearly a fifth built before 1950.² Rehabilitation, including the modernization of their communications backbone, of these and other rental properties is key to affordability and preventing displacement in communities across the country.

Cost Barrier & Impact on Housing Affordability:

Improvements or modernization of existing broadband infrastructure in low-income and workforce housing communities will, again, require significant financial resources that many low-income and workforce housing rental providers do not have. Without broadband providers being able or willing to contribute to upgrading and modernizing a building's network, housing providers are left with little recourse and their residents without access to the promise of high-speed and reliable internet service. Existing demands for property operation and maintenance funds, exacerbated by the financial strain of COVID-19 on operating budgets, means that the cost of any new broadband infrastructure is not feasible in most circumstances. Given the financial pressure on these properties, any significant investment in broadband (or any large capital expenditure for that matter) by rental property owners will ultimately put upward pressure on rents, at a time of serious housing affordability challenges across the country. BEAD grants have the potential to meet a significant need at low-income rental housing communities while helping maintain a property's overall affordability.

BEAD Implementation: Impact on Rental Housing Communities & Renters

The establishment of BEAD to address the digital divide is historic and has the potential to provide broadband to the millions of Americans who lack access to reliable, affordable service. In conjunction with additional resources dedicated to broadband deployment at the state and local levels, as well as those provided by federal policymakers at the FCC, and the US

¹ https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf

² https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf and <https://weareapartments.org/data>

Department of Agriculture (USDA), BEAD can address our nation's need to overcome the digital divide.

In passing the IIJA and establishing BEAD, Congress rightly acknowledged the challenges faced by operators of rental housing in making needed upgrades or deploying modern broadband infrastructure in low-income rental housing communities. Our industry is deeply appreciative that Congress explicitly authorized BEAD grantees to make subgrants available for "installing internet and Wi-Fi infrastructure or providing reduced-cost broadband within a multi-family residential building." Purposefully including multifamily properties and their residents to benefit from BEAD funding is an incredibly important step to addressing the digital divide in many communities faced with subpar or obsolete broadband infrastructure that prohibits the delivery or adoption of internet service.

It is also important to highlight the role that BEAD will play in building out broadband to areas that lack service completely—mainly in exurban or rural areas of the country—where rental properties and their residents are desperate for broadband. Here too, BEAD will be instrumental in delivering broadband to communities comprised of rental housing of all types, including manufactured housing, housing cooperatives and apartment communities. Again, BEAD funding coupled with USDA, FCC and state and local resources will make great strides in delivering or enhancing internet service for millions of Americans.

With the shared goal of seeing BEAD succeed and guided by the principle that those harmed by the digital divide—regardless of where they live—need access and benefit from high-speed, reliable broadband, we offer the following specific comments to questions posed by NTIA as it develops program rules and distributes funds to grantees. We also provide input on the need for BEAD rules to allow for technology flexibility.

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

As NTIA works to develop Notices of Funding Opportunity (NOFOs) for each of the broadband grant programs to be implemented pursuant to the IIJA, the rental housing industry urges continued collaboration between all stakeholders in both the public and private sectors. Of particular importance to the rental housing industry is NTIA's work to implement BEAD rules, funding guidance and technical recommendations for grantees.

As highlighted earlier, Congress rightly authorized multifamily properties to be eligible subgrantees under BEAD and we encourage NTIA to reassert this eligibility as a priority for grantees as a critical tool in bridging the digital divide. Too often, even when allowed under federal program rules, the rental housing sector is excluded from participation or allocated a very small portion of available funding when federal grant dollars are distributed by state or local grantees. Again, it is important for policymakers at all levels of government to acknowledge that the digital divide impacts both urban and rural America, and significant resources should be dedicated to addressing the problem in both regards.

18. *The Bipartisan Infrastructure Law provides that BEAD funding can be used in a variety of specific ways, including the provision of service to unserved and underserved areas, connection of community anchor institutions, data collection, installation of service within multi-family residential buildings, and broadband adoption programs. The law also permits the Assistant Secretary to designate other eligible uses that facilitate the program's goals. What additional uses, if any, should NTIA deem eligible for BEAD funding?*

By Congress authorizing grantees to make subgrants to multifamily properties, it established priority for properties with a substantial share of unserved households unserved or that are located in an area where the percentage of individuals with a household income at or below 150% of the Federal Poverty Line (FPL) is higher than the national percentage. We appreciate and support prioritizing BEAD funding in this fashion given the significant need for broadband infrastructure investments in multifamily communities that typically house these populations.

As the Assistant Secretary considers designating additional eligible uses for BEAD funding, we encourage NTIA to expand eligibility to include a broader population of the rental housing stock and our nation's renters. As discussed previously, broadband infrastructure challenges are significant across the housing ecosystem and are especially acute in older, smaller, low-income, middle-income and workforce housing. Properties that are comprised of renters earning up to 80% of Area Median Income (AMI) should also be granted eligibility under this funding. Too often, owners and operators of these types of properties are not able to find service providers who are willing to invest resources in installing, upgrading or maintaining broadband infrastructure given their inability to meet their own need return on investment targets, which leads to either limited-to-no broadband service options or limited internet speed. Similarly, and much like owners and operators of low-income housing, those operating middle-income, workforce or smaller housing properties of all types face the same economic challenges, which is why BEAD eligibility should be extended to them and their residents.

24. *Affordability is a key objective of the Bipartisan Infrastructure Law's broadband programs. What factors should be considered in the deployment of BEAD funds to help drive affordability beyond the low-cost option?*

As NTIA crafts implementation guidelines and provides much-needed technical assistance for BEAD grantees, the rental housing industry believes funding distributed at the state and local level must take into consideration the critical investment that is needed in infrastructure to ensure that affordable housing units are preserved, and residents have the services they so desperately need.

The rental housing industry has long worked to provide its residents with access to technology and connectivity that would support their needs. Varying segments of the market have done so, always guided by federal rules that govern how broadband providers and property owners can partner to deliver broadband service. In much of the market, the existing partnership model between property owners and broadband providers has facilitated competition and ultimately led to the deployment and operation of reliable, high-speed broadband networks at rental housing communities where renters receive faster speeds and higher service standards at a more affordable price than what is available in the broader community.

In some cases, often with access, affordability and reliability in mind, housing providers have partnered with broadband providers to provide bulk internet services to residents. This model provides significant consumer benefits to residents and is especially effective in getting broadband service to typically underserved populations in low-income, HUD-supported and senior housing. A typical bulk model allows for instant access to broadband service upon move-in, no need for credit checks or financial deposits, often comes at a significantly reduced cost and provides for better, more reliable service than if a resident were to secure service on their own. When this model is utilized, property owners also have the ability to negotiate with providers to ensure their residents are well served. As NTIA and grantees look to ensure affordability and access, grantees should be encouraged to allow the use of BEAD funds to deploy bulk internet service.

Lastly, to ensure this funding improves access and affordability, BEAD grantees should be prohibited from imposing regulation that, while often well-intended, could ultimately harm the goal of deployment, competition, affordability and ultimately adoption of broadband services in low-income communities. Currently, federal telecommunications rules allow for marketing, cost-share, access, bulk billing and wiring agreements to guide the partnership between property owners and broadband providers. Attempts by grantees to prohibit or limit such agreements would not only run counter to FCC regulation but also be counter-productive, likely resulting in broadband providers opting not to serve the exact communities that are in desperate need of their investment and service, increased costs and reduced service quality for residents.

BEAD: The Need for Technology Flexibility

As NTIA crafts implementation guidelines and provides much-needed technical assistance for BEAD grantees, the rental housing industry believes funding distributed at the state and local level must allow for flexibility in a number of ways. Flexibility is needed to navigate the significant architectural, design and engineering challenges of the nation's rental housing stock.

- Grantees should be required to be technologically neutral in their program criteria. For example, in the rental housing context, given the age or size of some affordable housing stock in need of BEAD support, Wi-Fi technology may not be the best or most cost-effective solution to deploy at a property. In some instances, deploying fiber throughout a property or utilizing other technologies to ensure robust and seamless connectivity both within resident's individual homes and throughout the community may be most effective. Conversely, a combination of technologies may be most appropriate and should be allowed, and even encouraged by NTIA and administering grantees. Ensuring that BEAD allows for flexibility will make sure that whatever technology is deployed will be able to provide reliable connectivity for years to come and support continually changing needs of consumers and building systems.
- Grantees should also be flexible in what eligible expenses are allowed under program rules. Installing or upgrading broadband infrastructure and wiring to enable high-quality and reliable broadband connectivity at rental communities can carry with it a wide range of expenses that should also be allowed. Examples of some common expenses include

installation or expansion of wiring panels, Intermediate Distribution Frames (IDF), or aesthetic and other necessary repairs as a result of the installation or expansion of broadband infrastructure.

Conclusion

On behalf of the owners, developers, and operators of rental housing as well as our nation's renters, we greatly appreciate the opportunity to share our thoughts on how best to ensure that the IIJA's BEAD program is a success and helps to preserve the livability and affordability of our nation's rental housing stock. The digital divide in this country remains significant, with the potential to do long-term damage on a number of levels if this divide is not reversed. We must do better. We will need collaboration between policymakers, property owners, and service providers of all kinds to erase this line between those who have broadband and those who do not. BEAD funding will be a game-changer across that nation, and we applaud Congress, the Biden Administration and the NTIA for making bold investments to address all sides of the digital divide.

EXHIBIT A

Real Estate Association Descriptions

Council for Affordable and Rural Housing (“CARH”):

CARH is a national industry trade association with headquarters in Alexandria, Virginia. For over 40 years, CARH has represented the interests of for-profit and non-profit builders, developers, management companies, and owners, as well as financial entities and suppliers of goods and services to the affordable rental housing industry in rural communities throughout the country.

Institute of Real Estate Management (“IREM”):

IREM® is an international institute for property and asset managers, providing complete knowledge to take on real estate management’s most dynamic challenges. That means knowledge prepared for the day-to-day *and* the one-of-a-kind: from solving the latest tenant crisis to analyzing market conditions.

For over 85 years, our members have made us the world’s strongest voice for all things real estate management. Today, almost 20,000 leaders in commercial and residential management call this home for learning, certifications, and networking.

Manufactured Housing Institute (“MHI”):

The Manufactured Housing Institute (MHI) is the only national trade association that represents every segment of the factory-built housing industry. Our members include home builders, suppliers, retail sellers, lenders, installers, community owners, community operators, and others who serve the industry, as well as 49 affiliated state organizations. In 2019, our industry produced nearly 95,000 homes, accounting for approximately 10 percent of new single-family home starts. These homes are produced by 32 U.S. corporations in 129 plants located across the country. MHI’s members are responsible for close to 85 percent of the manufactured homes produced each year.

National Apartment Association (“NAA”):

The National Apartment Association (NAA) serves as the leading voice and preeminent resource through advocacy, education, and collaboration on behalf of the rental housing industry. As a federation of 149 state and local affiliates, NAA encompasses over 93,000 members representing more than 10.5 million apartment homes globally. NAA believes that rental housing is a valuable partner in every community that emphasizes integrity, accountability, collaboration, community responsibility, inclusivity and innovation.

National Affordable Housing Management Association (“NAHMA”):

The National Affordable Housing Management Association (NAHMA) is the leading voice for affordable housing management, advocating on behalf of multifamily property managers and owners whose mission is to provide quality affordable housing. NAHMA supports legislative and regulatory policy that promotes the development and preservation of decent and safe affordable housing, is a vital resource for technical education and information and fosters strategic relations between government and industry. NAHMA's membership represents 75 percent of the affordable housing management industry and includes its most distinguished multifamily owners and management companies.

National Association of Housing Cooperatives (NAHC):

The National Association of Housing Cooperatives (NAHC) represents housing cooperatives, mutual housing associations, other resident-owned or controlled housing as well as professionals, organizations and individuals who work with and advocate for housing cooperatives. Incorporated in 1960 as a 501(c)(3) non-profit, NAHC is the only national cooperative housing association in the U.S. Members govern the organization through a national board of directors responsible for developing and implementing the organization's strategic plan and priorities. Housing cooperatives offer the more than one million families who live in them several benefits such as: a collective and democratic ownership structure, limited liability, lower costs and non-profit status.

National Leased Housing Association ("NLHA"):

NLHA is widely recognized as the only national organization serving all major participants--private and public--in the multifamily rental housing field. NLHA is a vital and effective advocate for nearly 500 member organizations, including developers, owners, managers, public housing authorities, state housing finance agencies, local governments, investment bankers, attorneys, accountants, architects, non-profit sponsors and syndicators involved in government related rental housing. This unique coalition is committed to public and private sector interaction as the most pragmatic means of meeting this nation's rental housing needs. Though NLHA's constituencies are many, the goal of the Association is one: the provision and maintenance of decent, affordable rental housing for all Americans, particularly those of low and moderate income.

The National Multifamily Housing Council ("NMHC"):

Based in Washington, D.C., the National Multifamily Housing Council ("NMHC") is a national nonprofit association that represents the leadership of the apartment industry. Our members engage in all aspects of the apartment industry, including ownership, development, management and finance, who help create thriving communities by providing apartment homes for 40 million Americans, contributing \$3.4 trillion annually to the economy. NMHC advocates on behalf of rental housing, conducts apartment-related research, encourages the exchange of strategic business information and promotes the desirability of apartment living. Over one-third of American households rent, and over 20 million U.S. households live in an apartment home (buildings with five or more units).