

Congress of the United States

Washington, DC 20510

May 26, 2021

The Honorable Janet Yellen, Ph.D., Secretary
Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Yellen,

We write to comment on the Broadband Infrastructure section of the Interim Final Rule to implement the Coronavirus State and Local Fiscal Recovery Funds as required under the American Rescue Plan Act.¹ We appreciate your encouragement of community broadband, and we recommend a change to one aspect of the Interim Final Rule that will enable more communities to use the Funds to deploy broadband networks as authorized by statute.

We appreciate the Interim Final Rule's detailed and thoughtful discussion about the need for high-speed broadband. We agree with your assessment that high speeds are necessary to meet the digital needs of Americans today *and* that any investment should meet reasonably anticipatable bandwidth requirements in the near future. We applaud the Interim Final Rule's encouragement of local governments, nonprofits, and co-operatives that administer networks. Over 900 such community networks have been deployed across the U.S.,² and importantly, research shows that community broadband produces higher quality service at lower costs.³

We request that any Final Rule reevaluate the limit the Interim Final Rule imposes on community broadband networks by stating that communities can only deploy in areas that "lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload" ("25/3").⁴ In Questions 25 and 26, you ask about this limitation, and we provide our response to these questions below.

The 25/3 standard is insufficient and it has been for years. The standard was initially set in 2015 by the Federal Communications Commission (FCC),⁵ and some argued it was behind the curve and out of step with achievable speeds even in 2015.⁶ For example, a few months after the FCC established 25/3, the City of Chattanooga, Tennessee announced that it would offer symmetrical 10 Gbps speeds – that's 400 times the FCC's download speeds and over 3,000 times the FCC's upload speeds.⁷ In a time when a household may consistently have more than one person using video conferencing simultaneously, the 25/3 standard is insufficient for even one video conference in high quality using Zoom or Google Meet.⁸ Public interest groups,⁹ lawmakers from both sides of the aisle,¹⁰ and private companies¹¹ have all found that 25/3 simply doesn't cut it.

The Interim Final Rule states, "many households use upload and download speeds of 100 Mbps to meet their daily needs" and it expects broadband projects to deliver "service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps" (100/100). We find inconsistency in that the Interim Final Rule encourages deployment of 100/100 but limits communities to investing in areas served by speeds of 25/3 or less. Many non-rural and minority

communities have access to 25/3 and would be limited from investing ARPA funds to upgrade to a more modern network.

Furthermore, expecting municipalities to determine what areas are “reliably” served by 25/3 is itself a major obstacle. For years, the federal government has failed to develop a map of where broadband at 25/3 speeds is available and one still doesn’t exist. Analyses of private datasets consistently show that the FCC’s maps are unreliable at best.¹² It’s unreasonable to expect a city to determine if and to what extent its residents are served by 25/3 when the federal government has failed to do so for years. On this basis, the Institute for Local Self-Reliance, which is a leading voice on community broadband issues, found this provision so limiting that it has the effect of saying that “cities should not use broadband dollars for broadband.”¹³

While we support Treasury’s goal of investing ARPA funds where the need is greatest, we worry that the dearth of information about where broadband is offered and the disagreement over how to draw an equitable service quality threshold will limit expanding broadband to communities that need it the most.

In summary and to directly respond to Questions 25 and 26, we do not believe that Treasury needs to set a speed threshold for determining where states and municipalities may invest. Communities wishing to invest should be free to make that assessment while still being encouraged to invest in infrastructure that meets minimum speeds to ensure it will last into the future. If Treasury sets any threshold, it should be set to the higher standard of 100/100, which is consistent with the detailed discussion Treasury lays out regarding the needs of Americans.

This one change of removing the 25/3 limitation on broadband projects will enable many more communities to use the Coronavirus State and Local Fiscal Recovery Funds to expand access to high-speed broadband, should they so decide.

We thank you in advance for your consideration of our recommendation.

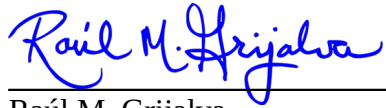
Most gratefully,



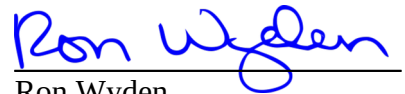
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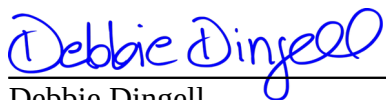
Jerry McNerney
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Member of Congress



Peter Welch
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Debbie Dingell
Member of Congress

¹ Social Security Act, §§602-603 of Title VI, 42 U.S.C. §§802-803, as added by the American Rescue Plan Act of 2021 (Pub. L. No. 117-2), §9901.

² “Community Network Map,” Institute for Local Self-Reliance, January 2020, <https://muninetworks.org/communitymap>.

³ Claire Park, “Community Broadband: The Fast, Affordable Internet Option That’s Flying Under the Radar” (New America’s Open Technology Institute, May 20, 2020), <https://www.newamerica.org/oti/reports/community-broadband/>.

⁴ “Interim Final Rule to implement the Coronavirus State and Local Fiscal Recovery Funds” (Department of Treasury, May 17, 2021) (“Interim Final Rule”), p. 67, <https://public-inspection.federalregister.gov/2021-10283.pdf>; *see also*, “Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions” (Department of Treasury, May 10, 2021), pp. 11-12 (Question 35), <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>; “FACT SHEET: The Coronavirus State and Local Fiscal Recovery Funds Will Deliver \$350 Billion for State, Local, Territorial, and Tribal Governments to Respond to the COVID-19 Emergency and Bring Back Jobs” (Department of Treasury, May 10, 2021), p. 7, <https://home.treasury.gov/system/files/136/SLFRP-Fact-Sheet-FINAL1-508A.pdf>.

⁵ “2015 Broadband Progress Report” (Federal Communications Commission, February 4, 2015), <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2015-broadband-progress-report>.

⁶ Ernesto Falcon, “The American Federal Definition of Broadband Is Both Useless and Harmful,” Electronic Frontier Foundation, July 17, 2020, <https://www.eff.org/deeplinks/2020/07/american-federal-definition-broadband-both-useless-and-harmful>.

⁷ “Chattanooga Implements World’s First Community-wide 10 Gigabit Internet Service” (EPB, October 15, 2015), <https://epb.com/about-epb/news/articles/62>.

⁸ *E.g.*, Zoom requires up to 4.0 Mbps download speeds and 3.8 Mbps upload speeds for 1080p HD video; Google Meet requires up to 4.0 Mbps download speeds and 3.2 Mbps upload speeds. “System requirements for Windows, macOS, and Linux” (Zoom, April 20, 2021), <https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux>; “Google Meet hardware requirements” (Google), <https://support.google.com/meethardware/answer/4541234>.

⁹ *See, e.g.*, Public Knowledge, Common Cause, and Next Century Cities, “In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion,” GN Docket No. 19-285 (Federal Communications Commission December 9, 2019), [https://ecfsapi.fcc.gov/file/1209298887295/706%20Reply%20Comment-%20Public%20Knowledge%2C%20Common%20Cause%2C%20Next%20Century%20Cities%20\(12.9.19\).pdf](https://ecfsapi.fcc.gov/file/1209298887295/706%20Reply%20Comment-%20Public%20Knowledge%2C%20Common%20Cause%2C%20Next%20Century%20Cities%20(12.9.19).pdf); Sean Gonsalves, “Why 25/3 Broadband Is Not Sufficient,” Institute for Local Self Reliance, November 13, 2020, <https://muninetworks.org/content/why-253-broadband-not-sufficient>.

¹⁰ *See, e.g.*, Makena Kelly, “Senators Call on FCC to Quadruple Base High-Speed Internet Speeds,” *The Verge*, March 4, 2021, <https://www.theverge.com/2021/3/4/22312065/fcc-highspeed-broadband-service-ajit-pai-bennet-angus-king-rob-portman>.

¹¹ Mike Robuck, “Comcast doubles download speed of its Internet Essentials tier for low-income families,” *Fierce Telecom*, February 2, 2021, <https://www.fiercetelecom.com/telecom/comcast-doubles-download-speed-its-internet-essentials-tier-for-low-income-families>.

¹² *See, e.g.*, Russell Brandom and William Joel, “This Is a Map of America’s Broadband Problem,” *The Verge*, May 10, 2021, <https://www.theverge.com/22418074/broadband-gap-america-map-county-microsoft-data>.

¹³ Christopher Mitchell, “Biden Administration Decides Cities Should Not Use Broadband Dollars for Broadband,” Institute for Local Self-Reliance, May 11, 2021, <https://muninetworks.org/content/biden-administration-decides-cities-should-not-use-broadband-dollars-broadband>.