



1100 G Street, NW, Suite 800  
Washington, DC 20005

June 8, 2021

Ms. Jennifer Duane  
Senior Broadband Program Specialist  
Office of Telecommunications and Information Applications  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue, NW, Room 4874  
Washington, DC 20230

**Re: NTIA's Broadband Infrastructure Grant Program Notice of Funding Opportunity**

Dear Ms. Duane:

INCOMPAS, the internet and competitive networks association, represents a diverse membership of competitive network companies that are building the next generation of communications networks across the country, including fiber, fixed wireless, mobile, and satellite broadband networks. Our member companies are making substantial investments in broadband infrastructure and innovative technologies to offer residential, small business, and enterprise customers cutting-edge services at affordable prices in urban, suburban, and rural areas. A number of our members have participated in the FCC's Connect America Fund, the Rural Digital Opportunity Fund, and USDA's ReConnect program, and we have members that provide broadband service and technology solutions to schools and libraries through the FCC's E-rate program and healthcare facilities through the Rural Healthcare Fund.

We applaud the work of the Department of Commerce and the National Telecommunications and Information Administration (NTIA) in recognizing that despite our nation's best efforts and significant investment by the public and private sectors, we still face serious challenges in connecting all Americans to reliable, high-speed broadband. This includes homes and businesses of all sizes and community anchor institutions, such as schools, libraries, and health care facilities. Many Americans have faced significant challenges during the COVID-19 pandemic due to the fact that they do not have broadband network availability in their communities or they cannot afford it, and INCOMPAS' member companies have been working diligently throughout the pandemic to keep their customers connected and to extend connectivity and competitive broadband options wherever possible. Indeed, 70% of our qualifying members are participating in the FCC's Emergency Broadband Benefit program, and we are anticipating that percentage will be even higher for the FCC's Emergency Connectivity Fund.

As you well know, the needs are significant, and we are hopeful that NTIA's Broadband Infrastructure Grant Program will be another cure to communities who lack the necessary

broadband infrastructure to meet the needs of their citizens. INCOMPAS believes it is critical that this \$288 million investment be made in robust and reliable networks that can offer greater connectivity today and higher speeds in the future, and we are pleased to see NTIA’s preference for future proof projects that will scale to meet consumer and business demand over time. INCOMPAS believes it is critical that this investment be made in robust and reliable networks that can offer at least 1 gigabit fixed connectivity today and higher speeds in the future where it is feasible.<sup>1</sup>

There are three areas of concern that members have raised with us with respect to the Notice of Funding Opportunity that we wanted to bring to your attention in hopes they could be clarified and resolved during your upcoming webinars about the program and/or additional materials you may make available. First, the Notice relies upon the Act’s definition of “eligible service area,” which relies on the new maps from the FCC once the Broadband DATA Act has been implemented, or if those maps are not available, NTIA’s most recent information, including information from the FCC that is based on Form 477 submissions.<sup>2</sup> We understand that NTIA has a number of data sets that it may be consulting, including information it has obtained through state mapping efforts. We urge NTIA to also consider information from State Broadband Offices and other state and local officials who can attest to the lack of broadband availability in their jurisdictions, including in situations where state and local officials can demonstrate that the Form 477 on broadband availability is not accurate.

As NTIA is undoubtedly aware, the Form 477 data does not lend itself to sound analysis of broadband availability. This is because providers indicate where they “could” provide service in their Form 477 submissions—not where they *actually* provide service—as required by the instructions to the Form. To make matters worse, the Commission’s existing approach, which treats any census block where a provider “could” provide service as entirely served even where the provider only indicates that it “could” offer service to a single location within the census

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<sup>1</sup> As we saw in the Federal Communications Commission’s recent reverse auction for unserved census blocks, there was significant interest in delivering 1 gigabit connectivity. Indeed, well over the majority of winning bids were in the gigabit tier. *See* Rural Digital Opportunity Fund Phase I Results, available at <https://www.fcc.gov/reports-research/maps/rdof-phase-i-dec-2020/>; *see also* Joan Engebretson, “RDOF Winner Map: Fiber, Fixed Wireless Win Big, Winners Commit to Gigabit Speeds,” Telecompetitor, Dec. 8, 2020, available at <https://www.telecompetitor.com/rdof-winner-map-fiber-fixed-wireless-win-big-winners-commit-to-gigabit-speeds/>. INCOMPAS members are often delivering fiber to the premise; however, in certain situations members may be delivering last mile connectivity via a fixed wireless connection. INCOMPAS recognizes that some flexibility in determining the most cost effective and efficient technologies may be appropriate in some situations. Our member companies are working with their state and local officials to plan networks to ensure consumers, businesses, and anchor institutions’ connectivity needs are being met today and in the future with the most cost-effective technology. They also are hiring locally and are supporting local job growth.

<sup>2</sup> Notice of Funding Opportunity, at 4.

block, thereby overstating the amount of broadband availability.<sup>3</sup> This overstatement of availability is what led Congress to pass the Broadband DATA Act to ensure that the FCC’s broadband maps are improved and are more accurate, and the FCC continues to implement those changes through its Digital Opportunity Data Collection proceeding.<sup>4</sup> However, it is unlikely those changes will be completed prior to NTIA’s consideration of grant projects. Given that state and local entities will be part of the covered partnership for these grants, and they know which areas need network investment, we believe it is important to defer to the information that they possess to demonstrate where broadband service is not available. There is nothing in the Act that prohibits such an approach, and the Act also allows for NTIA to use its most recent information. Moreover, given that NTIA will have a challenge process for areas that are under consideration for grants,<sup>5</sup> this should assuage concerns that funding may go to areas that are already receiving high-speed broadband service.

The second concern members have raised is with respect to the definition of unserved areas eligible for funding based on a definition of qualifying broadband service of at least 25/3 Mbps, which does not reflect current fixed broadband needs of consumers. Entry-level service options by major BIAS providers are at least 50 Mbps, and usually at least 100 Mbps up to 2 Gbps.<sup>6</sup> Indeed, Ookla finds that the average U.S. fixed internet download speed is now 191.97 Mbps (67.80 Mbps upload), which far exceeds the FCC’s current 25/3 Mbps benchmark.<sup>7</sup> As NTIA’s Notice duly recognizes, the U.S. needs scalable, future proof networks; however, a 25/3 Mbps unserved threshold will eliminate a number of areas that need such infrastructure, thereby reducing the opportunities for deployment. Accordingly, INCOMPAS encourages NTIA to

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<sup>3</sup> In December 2019, all five Commissioners agreed in an oversight hearing before the House Subcommittee on Communications and Technology that the Commission should not be relying upon the inaccurate information produced by the current Form 477 data. *See* Accountability and Oversight Hearing of the Federal Communications Commission, Subcommittee on Communications and Technology (Dec. 5, 2019), *available at* <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-accountability-and-oversight-of-the-federal-communications-0>.

<sup>4</sup> *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 & 11-10; *see also* Broadband Deployment Accuracy and Technological Availability Act, 47 U.S.C. §§ 641—646 (2020).

<sup>5</sup> Notice of Funding Opportunity, at 42-43.

<sup>6</sup> *See* Catherine McNally, *Best High Speed Internet Providers: Compare the Fastest ISPs*, REVIEWS.ORG (Sep. 10, 2019), *available at* <https://www.reviews.org/internet-service/fastest-internet-providers/>.

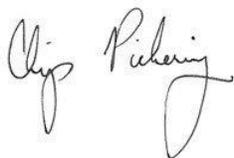
<sup>7</sup> Ookla SpeedTest, United States, *available at* <https://www.speedtest.net/global-index/united-states#fixed>. Moreover, using the FCC’s Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.

consider projects that will increase availability for unserved areas, as well as those who are underserved and do not have access to fixed/wired broadband at speeds of at least 100/20 Mbps.

The third area of concern is where proposed projects may overlap with other federal or state-funded broadband projects, and the potential exclusion of locations from the BIP program of these areas. Due to the fact that NTIA's program requires that locations be served within a year, whereas some of the current funding programs allow up to six years for deployment, the BIP program can actually be used to speed up deployment to unserved areas. Moreover, the FCC's RDOF program is still in process so it may be even longer than six years before some locations receive service, which is too long given the current need. Accordingly, INCOMPAS urges NTIA to permit BIP funding to be used to deploy broadband infrastructure to currently unserved areas where broadband infrastructure can be deployed faster as a result of the BIP funding. NTIA could condition the funding so that the grantee cannot receive double funding and require that the recipient make the necessary filings to that effect with other grant agencies to ensure no funding overlap occurs to the extent that NTIA is concerned about such a result.<sup>8</sup>

INCOMPAS looks forward to working together with NTIA and the Department of Commerce on this grant program moving forward, and if any other opportunity to help contribute and provide your staff with feedback, please let us know. Thank you for your consideration of our views.

Sincerely,

A handwritten signature in cursive script that reads "Chip Pickering".

Chip Pickering  
CEO  
INCOMPAS

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<sup>8</sup> RDOF winners already are finding that certain areas should be excluded from funding and making filings to the FCC to adjust their deployment requirements and related funding. *See, e.g.*, Charter RDOF Waiver Request, WC Docket No. 19-126 (May 11, 2021).