Before the
DEPARTMENT OF THE TREASURY
Washington, D.C. 20220

In the Matter of	RIN 1505–AC77
Coronavirus State and Local Fiscal Recovery Funds	

COMMENTS OF NEW AMERICA'S OPEN TECHNOLOGY INSTITUTE, MEDIAJUSTICE, AND ACCESS HUMBOLDT

Pursuant to the U.S. Department of the Treasury's May 17, 2021, Notice regarding the Department of Treasury's Interim Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act, New America's Open Technology Institute, MediaJustice, and Access Humboldt (hereafter, Joint Advocates) submit these comments.

1. Introduction

This year, the pandemic laid bare the dangers of the digital divide Joint Advocates had long warned about, with people everywhere having to rely on their internet service to remain connected to work, benefits, school, and their doctors during lockdown and social distancing. In particular, the public health emergency threw into sharp focus deep social, political, and economic inequalities in society that have only widened during the course of the year. Joint Advocates are therefore excited for the rollout of the Coronavirus State and Local Fiscal Recovery Funds in response to the negative economic impacts of COVID-19, and are particularly interested in the successful implementation of these funds to provide broadband access to those within the United States who need it desperately during the pandemic and

beyond. The Department of the Treasury ("Treasury") raises several key questions on how to ensure that this funding best connects the communities impacted most heavily by this virus, particularly low-income households, historically marginalized communities, and the Indigenous across both rural and urban areas. Joint Advocates offer several answers and key recommendations to maximize the impact of this funding, including:

- prioritizing funding broadband projects meeting a minimum of 100/100 Mbps symmetrical download and upload speeds;
- granting exemptions to minimum service standards only given demonstrated community need;
- ensuring that funding reaches historically marginalized populations and does not perpetuate digital redlining;
- supporting providers that create not just sufficiently fast but also affordable internet service plans;
- encouraging network buildout that is community driven and community based, with maximum local input; and
- investing in networks in Tribal communities that have historically had less access to telecommunications services than any other segment of the population.

2. The Interim Final Rule's Proposed Minimum Symmetrical Download and Upload Speeds of 100 Mbps are Appropriate.

The Interim Final Rule asks what minimum service standards would be appropriate for investment and proposes minimum symmetrical download and upload speeds of 100 Mbps.[1] As the Interim Final Rule notes, the increased use of video sharing, video conferencing, and other applications has caused a significant increase in average upload speeds, even before the pandemic.[2] As of November 2019, the average upload speed was 48.41 Mbps.[3] Carriers, however, limit their customers' upload speeds and use upload speeds as a price discrimination

[1] Interim Final Rule at p. 74.
[2] Interim Final Rule at p. 72.
[3] *Id*. at p. 73.

tool. For example, cable providers, the companies that have deployed high-quality broadband infrastructure in most urban areas, have the capability to offer upload speeds of 200 Mbps where they have deployed DOCSIS 3.0 and 1 Gbps where they have deployed DOCSIS 3.1.[4] However, cable providers like Comcast, Spectrum, and Cox Communications exclude upload speeds from marketing materials on their web sites.[5] Customers face upselling if they request higher upload speeds than are provided with a basic package. To receive 35 Mbps upload speeds from Comcast, for example, customers must purchase an expensive 1 Gbps download speed plan.[6] Spectrum follows the same strategy, with customers required to buy 1 Gbps download service to receive 35 Mbps upstream.[7] Cox requires customers to purchase a 300 Mbps download plan to receive 30 Mbps upstream.[8]

Despite ample evidence that symmetrical 100 Mbps services are necessary for a family of four,[9] ISPs have consistently failed to deliver those speeds. Additionally, where ISPs offer faster upload speeds, they do so at a premium price. While this may be good for ISPs' profits, it places adequate broadband service out of reach of historically unserved and underserved populations

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[4] Cablelabs.com, CableLabs Technologies, *available at* https://www.cablelabs.com/technologies#DOCSIS%C2%AE-3.1-Technology (last accessed July 7, 2021).

[5] *See* Xfinity.com, Build Your Package, *available at* https://www.xfinity.com/learn/offers/ (last accessed July 7, 2021); Cox.com, Cox Internet Service: a Whole New Way to Connect to the Internet, *available at* https://www.cox.com/residential/internet.html (last accessed July 7, 2021); Spectrum.com, Spectrum Internet: Your Internet, Your Speed, *available at* https://buy.spectrum.com/buyflow/store-front (last accessed July 7, 2021).

[6] Comcast.com, Comcast Network Management (April 21, 2021), *available at* https://www.xfinity.com/networkmanagement (last accessed July 7, 2021).

[7] Spectrum.com, Spectrum Terms of Service/Policies: Broadband Label Disclosure, available at https://www.spectrum.com/policies/spectrum-broadband-disclosure (last accessed July 7, 2021).

[8] Cox.com, Cox Internet Service Disclosures (March 23, 2021), available at https://www.cox.com/aboutus/policies/internet-service-disclosures.html (last accessed July 7, 2021).

[9] "Using the Federal Communication Commission's (FCC) 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." Interim Final Rule at p. 72 (citation omitted).

and serves to widen the digital divide. Accordingly, the Final Rule should require minimum symmetrical download and upload speeds of 100 Mbps.

3. While Exemptions to the Minimum Service Standards May be Necessary, Those Exemptions Should Only be Granted Based on Community Need.

The Interim Final Rule asks whether the 100 Mbps minimum standard might be impractical for particular projects, and whether the Final Rule should only require that those projects serve a minimum of 100 Mbps download and 20 Mbps upload speeds.[10] There could be some locations where there are legitimate reasons, not including income or demographic discrimination, that ISPs cannot meet a mandate of symmetrical 100 Mbps service. Accordingly, any rules should include a fact-driven process by which a provider may request an exemption and a requirement that exemptions must be granted on *community needs* rather than ISP convenience. Identifying areas for exemptions would also provide the Treasury with meaningful targets for public investment in deploying public broadband access.[11]

Additionally, robust enforcement of its regulations will be key to bridging the digital divide. Since the Federal Communications Commission reclassified broadband as a Title I service, it "has essentially given broadband providers carte blanche to behave badly at the expense of the public."[12] Without robust enforcement, ISPs will continue their bad behavior. Therefore, Joint Advocates suggest fining ISPs each day they have not met these requirements, among other potential remedies.

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[10] Interim Final Rule at p. 77.
[11] Interim Final Rule at p. 76.
[12] "FCC Gives Broadband Providers Carte Blanche to Ignore Public Interest | Public Knowledge : Public Knowledge," *available at* https://www.publicknowledge.org/blog/fcc-gives-broadband-providers-carte-blanche-to-ignore-public-interest/ (last accessed June 29, 2021).

Joint Advocates note that ISPs would have more incentive to serve low-income communities with comparable service if those communities were more profitable. With the Emergency Broadband Benefit, Congress has temporarily provided low-income consumers with $50 a month to pay for broadband.[13] Should Congress or the FCC create a long-term broadband subsidy providing more than Lifeline's $9.25 a month, ISPs may wish to service these communities.

4. Focusing Investments on Areas Without Access to 25 Mbps Download by 3 Mbps Upload Speeds is Inadequate and Causes Disproportionate Harm to Unserved and Underserved Communities That Have the Least Broadband Access and Would Perpetuate Digital Redlining.

The Interim Final Rules asks whether investment should be restricted to areas that do not have access to 25 Mbps download and 3 Mbps upload speeds.[14] Doing so would prevent investment in many low-income communities and communities of color and would perpetuate digital redlining. "Digital Redlining" includes infrastructure deployment choices that have disparate impacts based on socio-economic status or demographic characteristics. This discrimination in 21st century access is primarily driven by ISPs' decisions on where to deploy fiber within their network and most importantly, where they decide not to deploy it. As noted by the Institute for Local Self-Reliance:

> Nearly all cable networks appear from afar to be capable of offering 25/3, and some 90% of American households have access to cable according to their trade association…. Add in the small amount of DSL or rural fiber, and probably 90-95 percent of Americans are in areas that cannot use the Rescue Plan broadband

[13] "Emergency Broadband Benefit Program," Federal Communications Commission, February 26, 2021, *available at* https://www.fcc.gov/emergency-broadband-benefit-program (last accessed July 16, 2021).
[14] Interim Final Rule at p. 77.

> infrastructure dollars without having to risk running afoul of these rules….**That is basically all of urban and suburban America**.[15]

There are many more households that lack home broadband service in urban cities and counties than lack home broadband service in rural counties.[16] These urban and suburban households are disproportionately people of color: a study by the National Digital Inclusion alliance determined that there were 3.8 million residents in rural counties that lacked home broadband access, and 2.9 million of those residents were white and non-Hispanic. [17] However, in urban counties, there were 17.7 million residents that lacked home broadband access, and **12 million** of those residents were people of color.[18]

A number of recent studies indicates disparate access to high-speed, reliable broadband not only for low-income consumers in urban and suburban areas, but also for communities of color in those areas.[19] For example, a study by the USC Annenberg School for Communication and Journalism concludes that in Los Angeles, "broadband infrastructure upgrades…are skewed

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[15] Christopher Mitchell, Biden Administration Decides Cities Should Not Use Broadband Dollars for Broadband (May 20, 2021), *available at* https://muninetworks.org/content/biden-administration-decides-cities-should-not-use-broadband-dollars-broadband (last accessed July 7, 2021) (emphasis added).

[16] National Digital Inclusion Alliance, Limiting Broadband Investment to "Rural Only" Discriminates Against Black Americans and other Communities of Color (June 2020), *available at* https://www.digitalinclusion.org/digital-divide-and-systemic-racism/ (last accessed July 7, 2021).

[17] *Id*. Rural counties were defined as counties where at least 75 percent of the population were rural as determined by the FCC's 2020 Broadband Deployment Report.

[18] *Id*. Urban counties were defined as counties whose populations were less than 5 percent rural.

[19] Hernan Galperin, Thai Le, Kurt Daum, "Who gets access to Fast Broadband? Evidence from Los Angeles County 2014-17", at p. 2 (Oct. 2019), *available at* https://arnicusc.org/publications/who-gets-access-to-fast-broadband-evidence-from-los-angeles-county-2014-17/ (last accessed June 26, 2021) (hereafter, USC report); Vinhcent Le and Gissela Moya, "On the Wrong Side of the Digital Divide: Life Without Internet Access, And Why We Must Fix It In The Age Of Covid-19," (June 2020), *available at* https://greenlining.org/publications/online-resources/2020/on-the-wrong-side-of-the-digital-divide/ (last accessed June 23, 2021) (hereafter, "Greenlining report"); Communications Workers of America and the National Digital Inclusion Alliance, *AT&T's Digital Redlining: Leaving Communities Behind for Profit* at pp. 5-6 (Oct. 2020), *available at* https://www.digitalinclusion.org/wp-content/uploads/dlm_uploads/2020/10/ATTs-Digital-Redlining-Leaving-Communities-Behind-for-Profit.pdf (last accessed June 26, 2021) (hereafter, CWA/NDIA report).

against less affluent areas and communities of color"[20] and that broadband infrastructure underinvestment is most severe in Black communities.[21] A recent report by The Greenlining Institute[22] notes that broadly, "[c]ompetition and fiber-based services are less widely available in low-income areas and communities of color, with the most severe deficits observed in census block groups that combine poverty and a large percentage of Black residents," and that "today's map of communities in and near Oakland lacking high-speed internet access resembles official redlining maps from the 1930s:"[23]

Broadband quality in historically redlined communities remains poor, widening the digital divide. As a result, the redlined urban communities of the past have become part of the unserved and underserved communities of today. Low-income families, who are disproportionately people of color and people with disabilities, cannot afford to move away from those neighborhoods. In neighborhoods where high-speed broadband is available, they often cannot afford service.

The discriminatory impacts of ISPs' failure to serve low-income communities and communities of color results from redlining and other historical discriminatory practices. Much like ISPs' failure to invest in rural high cost areas, ISPs' failure to deploy broadband in low-income communities and communities of color, especially Black and tribal communities, has

[20] Hernan Galperin, Thai Le, Kurt Daum, "Who gets access to Fast Broadband? Evidence from Los Angeles County 2014-17", at p. 2 (Oct. 2019), *available at* https://arnicusc.org/publications/who-gets-access-to-fast-broadband-evidence-from-los-angeles-county-2014-17/ (last accessed June 26, 2021) (hereafter, USC Report).
[21] USC Report at p. 4.
[22] Vinhcent Le and Gissela Moya, On the Wrong Side of the Digital Divide: Life Without Internet Access, And Why We Must Fix It In The Age Of Covid-19 (June 2020), available at https://greenlining.org/publications/online-resources/2020/on-the-wrong-side-of-the-digital-divide/ (last accessed June 23, 2021) (hereafter, "Greenlining Report").
[23] Greenlining Report.

replicated and perpetuated discrimination against those communities. These outcomes are not only appalling and profoundly unjust, but also deprive those communities of economic, health and educational opportunities. The disparate impact of ISPs' deployment decisions perpetuates the effects of redlining, including disinvestment in historically redlined, unserved, and underserved communities in favor of wealthy communities, and therefore expands the digital divide.

ISPs will undoubtedly argue that their decisions regarding network deployment and upgrades are purely based on business rationales and that their decisions about where to place high-speed broadband are based on maximizing profitability and minimizing costs. However, ISPs' business decisions could be "rational" while still having a disparate impact on consumers of color, consumers with disabilities, and other unserved and underserved communities:

> The broadband companies attempt to maximize their expected profitability by minimizing some of their expected costs in allocating their investment in the deployment of infrastructure. So for that infrastructure that the broadband companies expect great demand for, they will devote more resources than to those for which they expect demand to be less. If the expected demand for infrastructure in minority areas is expected to be less than the expected demand for lines in non-minority areas, then the deployment of infrastructure areas will be superior to its demographic counterpart….[b]roadband companies may bypass minority urban areas and rural residential neighborhoods for more lucrative urban business areas. Therefore, it should also be no surprise that these rural and urban areas with a higher concentration of minority residents may have less broadband infrastructure.[24]

A minimum standard for 25/3 Mbps residential broadband service, with no accompanying investment in affordable access and other measures to help urban as well as rural residents get connected, would have disparate impacts against households of color in urban and suburban areas.

[24] Leonard M. Baynes, "The Mercedes Divide?"—American Segregation Shapes the Color of Electronic Commerce, 29 Western New England Law Review 165, 176 (2006).

Additionally, "[t]o assume that communities with speeds at or above 24/3 Mbps are adequately served—and to ignore cost as a factor in this consideration—would be severely misguided, and it ignores the reality on the ground for American students, working families, and businesses."[25] Symmetrical speeds are necessary to support economic development and other goals of the program. In addition to economic benefit, network capacity that is publicly funded must meet community needs and interests for public health and safety, for education, for culture and arts, for civic engagement, and for community development. Local communities include producers of information and data intensive applications that demand upload speeds equal to consumer demands for content. Setting thresholds for identifying unserved or underserved communities, and other standards, means looking towards achieving equitable broadband access for marginalized communities, including low-income households and people of color. Focusing investments on areas without access to 25 Mbps download by 3 Mbps upload speeds would be inadequate and would only maintain the discriminatory status quo.

5. Focusing Investments on Areas Without Access to 25 Mbps Download by 3 Mbps Upload Speeds is Inadequate andWill not Lead to Future-Proof Infrastructure that Serves Long-Term Community Needs.

The Interim Final rule asks how the Treasury should set minimum standards for projects that receive federal funding, and which standards are practical.[26] Federal funding should be spent on building broadband infrastructure that meets 21st century needs. Networks should be fast and use the best technology available—more specifically, fiber—to create future-proof, resilient networks that are not just useful now but will serve communities years from when these

[25] Letter from Senator Ron Wyden to Janet Yellen, Secretary of the Treasury (May 25, 2021), *available at* https://www.wyden.senate.gov/imo/media/doc/052521%20RW%20Broadband%20Letter%20to%20Treasury.pdf (last accessed July 12, 2021).
[26] Interim Final Rule at p. 77.

networks are deployed. As research from the Electronic Frontier Foundation shows, fiber outpaces other infrastructure technology like cable and wireless in factors including available bandwidth, Signal to Noise Ratio, theoretical capacity, real-world throughput, latency, and jitter.[27] Fiber systems have at least a 10,000-fold advantage over cable systems in terms of raw bandwidth, meaning it can carry more than 100 terabits per second (100,000 Gb/s) down a single fiber, and is also easier to upgrade.[28] Not only is fiber the current "gold standard" in the broadband marketplace, delivering high quality, low latency and high-performance service, it also provides a foundation for both high speed wired and wireless connections, meaning that much-hyped future wireless innovations like 5G depend on fiber buildout, an area in which the U.S. is currently drastically behind the global pace. Even major ISPs like AT&T, that argue that rural communities don't need fiber, will admit to investors that fiber is a superior product because of its symmetrical downloads and uploads, is the foundation that fuels networks, and is the technology capable of scaling to multiple gigabits in the near future.

The Interim Final Rule encourages recipients to, "prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities."[29] Any federal program must fund long-lasting, resilient broadband infrastructure that enables businesses to serve their consumers, provide opportunities for people to telework, allow students to continue distance learning, attend class and do their homework online, enable schools and libraries to connect their communities, allow

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[27] Bennett Cyphers, The Case For Fiber to the Home, Today: Why Fiber is a Superior Medium for 21st Century Broadband, the Electronic Frontier Foundation (2019), *available at* https://www.eff.org/files/2019/10/15/why_fiber_is_a_superior_medium_for_21st_century_broadband.pdf (last accessed July 15, 2021).

[28] Bennett Cyphers and Ernesto Falcon, "Why Fiber is Vastly Superior to Cable and 5G," (October 16, 2019), the Electronic Frontier Foundation, *available at* https://www.eff.org/deeplinks/2019/10/why-fiber-vastly-superior-cable-and-5g (last accessed July 16, 2021).

[29] Interim Final Rule at p. 75.

patients to connect with their health providers online, and fulfill 21st century broadband needs for many years. Many communities have been left behind through the practice of "digital redlining," as internet service providers deployed older, legacy networks that offered slower service to low-income and historically marginalized communities, while upgrading wealthier neighborhoods. These communities have been left with the worst technologies for far too long. These extractive practices from internet service providers highlight the importance of the Treasury ensuring that the money, resources, and deployments from the Recovery Fund do not mirror these disparities and replicate mistakes of the past. Instead, the Treasury must adopt rules that create a program that results in the construction of fiber networks that will provide state-of-the-art broadband service for many years to come.

6. The Final Rule Should Prioritize Support for Providers That Integrate Affordability Options into Their Program Plans.

Speed of service is a moot point if one is unable to afford to buy a plan. Federal funding should be tailored to support providers who are not primarily motivated by profits but are instead interested in bringing high quality service to everyone in a community, regardless of their means. The COVID-19 pandemic laid bare the burden of the high cost of internet service. Last year, 14 percent of adults in the United States last year worried about being able to pay for their high-speed internet connection at home during the coronavirus outbreak.[30] Furthermore, the lack of affordability in the broadband marketplace has an outsized negative impact on communities of color and lower-income households—30 percent of Black, Hispanic and other non-white adult

[30] S. O'Dea, "U.S. adults who worry about paying internet and cell phone bills during COVID-19 2020," (Nov. 9, 2020), Statista, *available at* https://www.statista.com/statistics/1131157/united-states-adults-worried-paying-internet-cell-phone-bills/ (last accessed July 16, 2021).

respondents earning less than $50,000 reported last year that they have missed at least one payment on an internet bill since the pandemic started in January 2020, compared to 14 percent of lower-income whites.[31] About half of lower-income people of color say they are at least somewhat worried about being able to pay for their cell phone coverage and high-speed internet connection at home for the next few months, compared to 37 percent of white lower-income adults who said the same about their internet bill and 34 percent about their phone bills.[32]

OTI's 2020 Cost of Connectivity report found that, on average, advertised monthly internet service plans cost $68.38.[33] The current permanent federal subsidy for telecommunications service, Lifeline, is $9.25 per month for qualifying low-income households, yet essentially no plans in the Cost of Connectivity study met the price of $10 a month. Furthermore, only 64 of the 118 plans costing less than $50 a month meet the current FCC minimum standards for broadband speeds at 25/3 Mbps.[34]

Joint Advocates support the Treasury's suggestion that funding recipients integrate affordability options into their program design. Other commenters in the docket agree on the importance of incorporating affordability into standards of funding—for instance, local governments note that despite the Treasury's recognition of the importance of affordable service

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[31] Sam Sabin, "Among Lower Earners, People of Color Are More Likely Than Whites to Worry About Paying Internet, Phone Bills," (June 30, 2020), *available at* https://morningconsult.com/2020/06/30/internet-service-providers-pandemic-low-income-billing-poll/ (last accessed July 16, 2021).

[32] Sam Sabin, "Among Lower Earners, People of Color Are More Likely Than Whites to Worry About Paying Internet, Phone Bills," (June 30, 2020), *available at* https://morningconsult.com/2020/06/30/internet-service-providers-pandemic-low-income-billing-poll/ (last accessed July 16, 2021).

[33] Becky Chao and Claire Park, The Cost of Connectivity, *available at* https://www.newamerica.org/oti/reports/cost-connectivity-2020/focus-on-the-united-states (last accessed July 16, 2021).

[34] Becky Chao and Claire Park, The Cost of Connectivity, *available at* https://www.newamerica.org/oti/reports/cost-connectivity-2020/focus-on-the-united-states (last accessed July 16, 2021).

in the Interim Rules, no affordability factor is actually incorporated in determining whether a household or an individual is unserved or underserved.[35] Joint Advocates recommend that the Treasury incorporate an affordability factor to determine which communities need support, as addressing the lack of affordability in service is a crucial part of closing the digital divide.

7. The Final Rule Should Prioritize Support for Broadband Networks Owned by Local Governments, Non-Profits, and Co-Operatives and Broadband Networks that Offer Open Access.

Community-based networks most effectively leverage local investments and existing assets to meet local needs and interests—particularly for inclusion and equity. OTI's Cost of Connectivity study found that some of the most affordable internet service plans advertised in the country were from municipal broadband networks rather than from major, for-profit internet service providers.[36] Even the mere presence of a municipal network brought down the average cost of broadband by $0.06 to $0.52 per Mbps.[37] Community broadband networks like municipal networks, which are designed to service communities rather than prioritize profits, serve more than 900 communities nationwide today.[38] They frequently deliver higher-speed, more affordable internet service where an incumbent provider does not, challenge incumbent private providers in the area to deliver higher-quality and more affordable internet, and expand social and economic

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[35] Comment from Boston, Chicago, Los Angeles, Washington, Montgomery County, MD; U.S. Conference of Mayor; TCCFUI on Interim Final Rule on Broadband Use Answers to Questions 22 through 26, June 16, 2021, *available at* https://www.regulations.gov/comment/TREAS-DO-2021-0008-0139 (last accessed July 16, 2021).

[36] Becky Chao and Claire Park, The Cost of Connectivity, *available at* https://www.newamerica.org/oti/reports/cost-connectivity-2020/focus-on-the-united-states (last accessed July 16, 2021).

[37] Becky Chao and Claire Park, The Cost of Connectivity, *available at* https://www.newamerica.org/oti/reports/cost-connectivity-2020/focus-on-the-united-states (last accessed July 16, 2021).

[38] Community Network Map, *last updated* January 2020, The Institute for Local Self-Reliance, available at https://muninetworks.org/communitymap (last accessed July 15, 2021).

opportunities by connecting people to online educational, telehealth, and employment opportunities, among others.

As the Interim Final Rule notes, funding should be prioritized towards supporting broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives who are committed to service their communities rather than turning profits. As the Electronic Frontier Foundation has detailed in the context of California Governor Gavin Newsom's proposal to fund a public broadband network, open access networks are not only better to improve access but also are better fit for long-term financing as well: "Long-term financing and fiber go hand in hand… That long-term value is an uncomfortable fit with the short-term expectations of Big ISP market investors, whose focus on immediate returns has held back much-needed American investment in adequate digital infrastructure, fit for the 21st century."[39]

Other commenters in the docket also agree on the power of community-based networks to connect low-income households at little to no cost. The National Digital Inclusion Alliance highlights several successful examples of "gap" networks, or networks that have been created and used particularly in the last year to address the affordability challenge many low to moderate income households face in subscribing to the internet.[40] These networks, built and created for each community, offer competitive service at extremely low rates to low-income households, students, and other vulnerable groups for $10 to $15 a month.

[39] Ernesto Falcon, Electronic Frontier Foundation, Governor Newsom's Budget Proposes Historic Investment in Public Fiber Broadband (May 14, 2021), available at https://www.eff.org/deeplinks/2021/05/governor-newsoms-budget-proposes-historic-investment-public-fiber-broadband (last accessed July 15, 2021).

[40] Comments of NDIA on Interim Final Rule for Coronavirus State and Local Fiscal Recovery Funds, May 27, 2021, https://www.regulations.gov/comment/TREAS-DO-2021-0008-0052

Tribal governments have similarly innovated over the years to close the digital divide in Indian Country, and their solutions should be well supported by this funding. More than 500 years of oppression committed against the Indigenous has left almost half of those residing on tribal lands and American Indian reservations without live and work without a computer or home internet access, and have also been deprived of other basic pieces of infrastructure like running water, indoor plumbing, and healthcare. OTI's Cost of Connectivity research on internet service within the Navajo Nation found the average advertised monthly, non-promotional price for internet service to be $127.51, almost double the average advertised monthly cost of service found for the country at large. Not only is service on tribal lands unaffordable, OTI's research supported the Government Accountability Office's findings that the FCC overstates broadband access on tribal lands; none of the current FCC data on broadband in the Navajo Nation could be verified by publicly available sources. Some tribal solutions have included building networks using public airwaves (otherwise unused spectrum), installing more wireless hotspots and establishing vehicles with mobile service that can park near schools and community centers.

Overall, the Treasury should consult and collaborate with local officials to ensure that funding meets community needs. State and local officials, municipal governments, anchor institutions, advocates, and community leaders are best positioned to know for what purposes and where funding is most needed to best connect their communities. Local officials and advocates are the most knowledgeable in community needs, yet are often left out or absent from federal policy discussions like this one. Going forward, the Treasury should consider as many avenues for more local input as possible.

8. The Final Rule Must Ensure Equitable Deployment of Broadband in Tribal Lands.

Joint Advocates appreciate the Interim Final Rule's acknowledgement that "Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure."[41] However, this acknowledgment vastly understates the disproportionate access that Tribal lands have to infrastructure: "[b]y virtually any measure, communities on tribal lands have historically had less access to telecommunications services than *any other segment of the population*."[42] Approximately half of households in Tribal lands lack home broadband service.[43] As discussed above, Joint Advocates note that there may be locations where there are legitimate reasons that ISPs cannot meet a mandate of symmetrical 100 Mbps service, but that there is a substantial risk that providers will seek exemptions improperly. Given ISPs' historical failure to serve Tribal lands, or of providing Tribal lands with second class broadband service, the risk of ISPs abusing the exemption process is an especially grave concern. It will therefore be critical that, as discussed above, that exemptions be granted based on community needs through a fact-driven process with multiple opportunities for input from community members.

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[41] Interim Rule at p. 70.

[42] Federal Communications Commission, "In the Matter of Extending Wireless Telecommunications Services to Tribal Lands," Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-266, FCC 00-209, Adopted June 8, 2000, p. 5, *available at* http://wireless.fcc.gov/auctions/general/releases/fc000209.pdf (last accessed June 12, 2021) (emphasis added).

[43] U.S. Department of Commerce, FACT SHEET: Biden Administration Offers Nearly $1 Billion in Grants to Help Connect Tribal Lands (June 3, 2021), *available at* https://www.commerce.gov/news/fact-sheets/2021/06/fact-sheet-biden-administration-offers-nearly-1-billion-grants-help (last accessed July 12, 2021).

9. Conclusion

The Coronavirus State and Local Fiscal Recovery Funds come at a time of urgent need. The Center on Budget and Policy Priorities reports that about 10 percent of all adults say their household sometimes or often didn't have enough to eat in the last seven days.[44] Moreover, more than 1 in 4 adults in the country reported it was somewhat or very difficult for their household to cover usual bills in the past seven days, including expenses for food, rent, mortgages, car payments, medical expenses, and student loans.[45] Internet service is yet another essential utility that many cannot afford now, nor could afford prior to the pandemic. In this emergency climate, the Final Rule regarding funding should encourage rather than discourage applicants for funding and set high standards for quality broadband service.

Funding should also not be limited to rural recipients only, as this discriminates against consumers who need service in urban areas, especially people of color. Projects that prioritize bringing not just quality service, but internet access that communities can afford, should receive funding. Funding should be for networks that will last, using high-speed technology like fiber, and recipients should be allowed flexibility to apply funding to all kinds of solutions, from municipal to community broadband networks. Overall, we look forward to the Treasury's Final Rule that will ensure equitable deployment of affordable service meeting the current and future broadband needs of people all across the country, especially those in communities that have

[44] "Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships," Center on Budget and Policy Priorities, July 12, 2021, https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and

[45] "Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships," Center on Budget and Policy Priorities, July 12, 2021, https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and

traditionally been ignored or even discriminated against who need acute support, including low-income households, communities of color, and the Indigenous.

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/s/ Claire Park
Claire Park
Policy Analyst
New America's Open Technology Institute
740 15th Street NW #900
Washington, DC 20005
Phone: (202) 596-3433
Email: park@opentechinstitute.org

/s/ Paul Goodman
Paul Goodman
Legal Counsel
MediaJustice
1300 Clay St. Ste. 600 Oakland, CA 94612
Phone: 510-698-3800
paulsgoodman@gmail.com

/s/ Brandon Forester
Brandon Forester
National Organizer, Internet Rights and Platform Accountability
MediaJustice
1300 Clay St. Ste. 600 Oakland, CA 94612
Phone: 316.207.8585 | Email: brandon@mediajustice.org

/s/ Sean Taketa McLaughlin
Sean Taketa McLaughlin
Executive Director
Access Humboldt
P.O. Box 157, Eureka, CA 95502
Phone: (707) 476-1798
Email: sean@accesshumboldt.net