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April 8, 2021

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Yellen:

The U.S. Chamber of Commerce's Technology Engagement Center ("C_TEC") recognizes that the COVID-19 pandemic has demonstrated the need to connect all Americans. America's private sector-led broadband networks have led the world in maintaining capacity, keeping the "digital" lights on for small businesses, ensuring tens of millions of Americans could continue to work from their homes, helping students learn virtually, and allowing patients to utilize telehealth. Unfortunately, there are some areas of the country that have never been connected and, therefore, could not realize these benefits. In October 2020, C_TEC released its technology agenda calling on Congress to provide robust but targeted funding to address this digital divide.[1]

On March 11, 2021, the President signed into law the American Rescue Plan ("ARP"), which among other things provides $350 billion to states and localities for COVID-19 relief and "to make necessary investments in water, sewer, or broadband infrastructure."[2] The ARP also establishes a $10 billion capital expenditures fund.[3]

The Secretary of the Treasury is empowered to ensure these funds are used responsibly and efficiently through regulations.[4] In drafting the necessary regulations and guidance, the Chamber recommends: 1) priority be given to traditional infrastructure in 2021; 2) broadband funding should target truly unserved areas; 3) transparency mechanisms should be established; and 4) critical needs like security and permitting must be addressed.

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[1] Chamber Technology Engagement Center, *America's Next Tech Upgrade: Connecting All Americans* (October 2020) *available at* https://americaninnovators.com/wp-content/uploads/2020/10/CTEC_TechUpgrade_Broadband.pdf.

[2] American Rescue Plan Act of 2021, Pub. L. No. 117-2, tit. IX, subtitle M, § 9901 (2021).

[3] *Id*.

[4] *Id.*
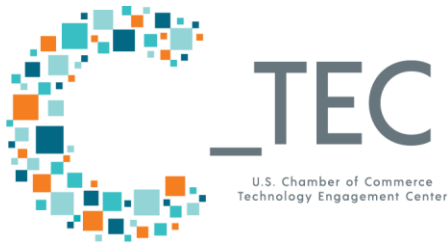
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A. Prioritize Funding for Traditional Infrastructure

Although the Chamber believes it is vital that all Americans are connected, it is equally important that relief be targeted toward all necessary infrastructure projects and be spent efficiently. For example, the *2021 Report Card for America's Infrastructure* by the American Society of Civil Engineers gave the United States a "C-" for infrastructure. The report also noted that "there is a water main break every two minutes and an estimated 6 billion gallons of treated water lost each day in the U.S."[5] The same is true for other aging infrastructure like bridges, roads, and levees. ARP funds should be used to address urgent needs like water and sewer infrastructure modernization.

B. Target Areas Unserved by Broadband and Adoption

1) *Access*

Given the importance of addressing a diverse range of general infrastructure needs, it is imperative that any funding for direct broadband infrastructure deployment be targeted to those who truly lack access and are unserved, and areas that are not already designated to receive federal funding to build out broadband networks. For example, the Federal Communications Commission ("FCC" or "Commission") estimates that at least 14.5 million Americans lack access to broadband, which is defined by the agency as service with 25/3 Mbps.[6]

In order to better determine which areas of the country lack access to broadband, Congress in 2020 enacted the Broadband DATA Act, tasking the Commission with modernizing and accurately mapping high-speed internet coverage.[7] Congress later fully funded the FCC's mapping duties with $65 million in December in the Consolidated Appropriations Act of 2021.[8]

Although it is hoped that the Commission will fulfill its duty and complete mapping by the end of 2021, the Department of the Treasury should issue guidance that targets direct broadband deployment funding to areas of the country that are truly unserved by 25/3 broadband and not those areas defined as "underserved." In order to determine which areas are unserved, states and local governments should follow the FCC's 25/3 Mbps definition in order to prevent funding areas already covered by high-speed broadband where return on investment is higher, thus leaving those living in completely unserved rural and tribal areas without service. Further,

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[5] American Society of Civil Engineers, 2021 Drinking Water Report Card *available at* https://infrastructurereportcard.org/wp-content/uploads/2020/12/Drinking-Water-2021.pdf.
[6] Federal Communications Commission, *Fourteenth Broadband Deployment Report* (January 19, 2021) *available at* https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf.
[7] Broadband DATA Act, Pub. L. No. 116-130 (March 23, 2020).
[8] Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, tit. IX, div. N, § 906 (December 27, 2020).
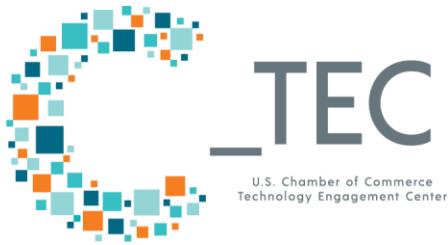
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spending more federal funding in locations already scheduled for government support for broadband is an inefficient use of limited resources and should be avoided.

ARP funding should not be spent on large-scale broadband projects until the FCC completes its mapping under the Broadband DATA Act. For those states and localities that have conducted mapping based on FCC Form 477 data, funding should be directed only to truly unserved areas. Government-owned broadband networks should be avoided to prevent duplicative network buildout that could be used to extend infrastructure to areas without any service.

Additionally, funding for broadband should be distributed in a technology-neutral manner that waives legacy Eligible Telecommunications Carrier requirements.

2) *Adoption*

The COVID-19 pandemic has had a tremendous impact on the ability of lower-income and middle-class Americans to afford essential services during government-mandated shutdowns. According to one report, "[m]ore than 80 million adults—35 percent of all adults—reported it was somewhat or very difficult for their household to cover usual expenses in the last seven days."[9] Efforts like passage of the Emergency Broadband Benefit are laudable[10] and are certainly preferable to highly regulatory approaches like rate regulation, which are unnecessary and would reduce investment in broadband. In fact, broadband prices overall are declining while speeds are increasing.[11] If states and localities decide to use ARP funds to address affordability and promote broadband adoption in a timely and targeted manner, they should do so by providing benefits directly to COVID-19 impacted households that they can use to help pay for service and equipment.

Beyond that, as importantly – if not more importantly – states should establish comprehensive, broad-based digital literacy programs designed to increase broadband adoption by groups that presently under-participate in the digital economy.

C. Promoting Efficient Allocation of Resources

As state and local governments work to prioritize relief for much-needed infrastructure projects, the Secretary should institute programs that ensures efficient allocation of resources.

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[9] Claire Zippel, "Hardship Remains High, Latest Census Data Show," Center on Budget and Policy Priorities (Jan. 27, 2021) *available at* https://www.cbpp.org/blog/hardship-remains-high-latest-census-data-show.

[10] *Supra* n. 8 at § 904.

[11] *See* 2020 Broadband Pricing Index *available at* https://www.ustelecom.org/research/2020-broadband-pricing-index-report/.
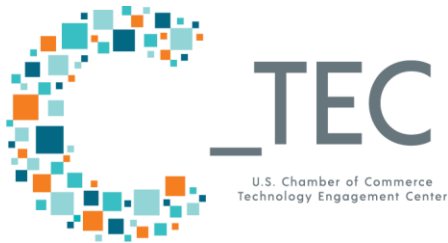
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The Chamber recommends in the case of broadband spending that a real-time online tracker be established to provide transparency about deployment funds. The online tracker should state which entities are the recipients of contracts and funding for infrastructure deployment, how much funding an entity receives, and where projects are being undertaken. Such data will efficiently allocate resources to areas of the nation truly unserved by broadband.

D. Permitting

The COVID-19 pandemic has also impacted the ability of state and local governments to consider applications for new infrastructure projects including broadband.[12] Issues such as remote work, social distancing measures, and understaffing have led to bottlenecks in the permitting process. The Chamber recommends that the Secretary prioritize funding for increasing staff and modernizing information technology systems of local and state permitting offices so that necessary investments in broadband are realized. Such investments will help permitting offices make decisions in a timely manner about broadband projects that are ready to deploy. America's broadband providers are waiting on decisions by governments to determine issues like siting, environmental review, and pole attachment and replacement issues. Such funding relief could help local governments make decisions more efficiently and provide certainty for those broadband projects ready to invest.

E. Securing America's Networks

Before COVID-19, cyberattacks and the proliferation of ransomware on state, local, tribal, and territorial government (SLTT) systems was already an overwhelming problem that has grown considerably in the months since. Well-publicized incidents like the August 2019 Texas Cyber Incident[13], the attack on Louisiana public schools[14], the Baltimore cyber disruption[15], and most recently, the attack on the City of Oldsmar water treatment facility[16] underscore the vulnerabilities in legacy information technology (IT) and operation technology (OT) systems and networks. Previously limited resources are now overwhelmed by the substantial increase for online services combined with the vastly expanded attack surface due to remote work capabilities. As SLTT leverage ARP appropriations to invest in and expand water, sewer, and broadband services, it is vital that SLTT governments adhere to security-by-design principles

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[12] National League of Cities, "Keeping Local Permitting Processes Moving During COVID-19," (May 4, 2020) *available at* https://www.nlc.org/article/2020/05/04/keeping-local-permits-and-licenses-moving-during-covid-19/.

[13] https://dir.texas.gov/View-About-DIR/Article-Detail.aspx?id=209

[14] https://gov.louisiana.gov/index.cfm/newsroom/detail/2270

[15] https://mayor.baltimorecity.gov/news/press-releases/2019-05-20-city-provides-update-baltimore-ransomware-attack

[16] https://www.cnn.com/2021/02/08/us/oldsmar-florida-hack-water-poison/index.html#:~:text=%28CNN%29%20A%20hacker%20gained%20access%20into%20the%20water,said%2C%20putting%20thousands%20at%20risk%20of%20being%20poisoned.
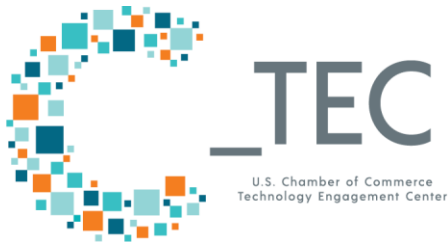
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and incorporate best industry cybersecurity standards into their procurement and acquisition cycles and network management practices.

The ARP fiscal relief provides that opportunity , and we urge you to consider the following cybersecurity services: cyber threat intelligence, artificial intelligence and machine learning, endpoint monitoring, managed security services, cloud-as-a-service, email and phishing threat protection, antivirus, ransomware response, training, exercises, and technical assistance. The Chamber has long championed technology-neutral investments in cybersecurity. Such investments allow for the modernization of outdated digital infrastructure, which multiple SLTT governments can scale to create shared services agreements between entities. Deploying broadband, extending water and sewer systems, and cybersecurity should go hand in hand for future resilience and an organization's ability to defend continuously against malicious activities, breaches, and cyber-attacks.

The Chamber appreciates the opportunity to work with you to ensure that America's infrastructure, including broadband, meets the needs of the 21st century economy and enables all Americans to reap the benefits of economic recovery.

Sincerely,

Tom Quaadman
Executive Vice President
Chamber Technology Engagement Center