January 13, 2023

VIA EMAIL

The Honorable John Thune
United States Senate
511 Dirksen Senate Office Building
Washington, DC 20510

Re: Responses of the Schools, Health & Libraries Broadband (SHLB) Coalition to December 6, 2022 Letter Regarding the Implementation of the Infrastructure Investment and Jobs Act and Other Broadband Issues

Dear Senator Thune:

The Schools, Health & Libraries Broadband (SHLB) Coalition is pleased to respond to your letter of December 6, 2022 asking for our organization's comments on the current broadband regulatory structure, our priorities for the coming year, and our responses to your questions.

The SHLB Coalition is a non-profit public interest organization with the core mission of promoting open, affordable, high-quality broadband to anchor institutions and their communities. Our organization consists of over 300 members, including representatives of schools, libraries, health care providers and networks, state broadband offices, private sector companies, state and national research and education networks, and consumer advocates. Our broad membership allows for collaboration among those from different backgrounds of the broadband landscape, so we can promote the needs and interests of all anchor institutions. We believe that the conversation around broadband must involve each of us if we want to solve the digital divide for all Americans.

The pandemic laid bare the importance of connecting all Americans to reliable, affordable internet. It also reiterated the critical role our anchor institutions play in broadband deployment and adoption efforts. Community anchor institutions[1] provide not only internet connections to their patrons (both inside the building and sometimes to surrounding neighborhoods), but also countless services like device lending and digital skills training. These institutions are increasingly connecting with their patrons remotely to supply essential services. To continue their efforts, which is important now more than ever, all anchor institutions need robust, multi-gigabit internet connectivity. We are pleased that the Infrastructure Investment and

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[1] Community anchor institutions include schools, healthcare providers, libraries, museums, public housing, community centers, institutions of higher education, houses of worship, and all other public institutions that provide essential social services to their communities.

Jobs Act (IIJA) mentions anchor institutions 29 times, and that the Broadband Equity, Access and Deployment (BEAD) Program specifically includes a preference for projects that serve those institutions lacking access to gigabit-level internet service.[2]

As an initial matter, the SHLB Coalition shares your view that fixed and mobile broadband services are vital to America's communities. As your letter correctly notes, broadband services promote health care, education, economic development and much more. As trusted community members, the nation's community anchor institutions can play an especially important role in ensuring that consumers throughout the United States have access to open, affordable, high-quality broadband services.

The nation has made great progress over the last 13 years after the Federal Communications Commission (FCC) issued the National Broadband Plan in March of 2010, but we have not yet reached our goals. For instance, approximately 23% of households in this country do not subscribe to broadband service,[3] and in some communities that number is between 30% and 40%. Further, the National Broadband Plan called for anchor institutions to have gigabit connectivity by the year 2020, a target the nation did not meet. In fact, we do not even know how much progress we have made to connect anchor institutions because government agencies have not collected the data to determine the level of broadband available to them (as we discuss in greater detail below).

We understand that the complexity of federal programs and agencies handling broadband can be confusing. In our view, however, if we are to truly solve the digital divide for all consumers, then *every* government agency – federal, state and local - ought to include broadband programs and policies in their portfolio of activities. Broadband is a "meta-infrastructure" that improves the operations of our electrical grid, our transportation system, our social safety net and our environment. For instance, just as the Department of Education has an Office of Educational Technology, the Departments of Transportation, Energy, Homeland Security, and Health & Human Services (among other agencies) should also have technology programs to encourage broadband deployment and adoption.

Finally, we note that the biggest problem with our nation's broadband policies has been underbuilding, not overbuilding particularly in rural, low income, disadvantaged and Tribal communities. We simply have not invested enough resources to solve the digital divide for every resident. We are pleased that Congress enacted several significant broadband programs in the last two years, and we are ready to work with you in your oversight role to ensure that these programs are implemented successfully to bring broadband to unserved and underserved people. As we explain further, our nation's community anchor institutions can help to achieve that goal.

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[2] U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA), *Broadband Equity, Access and Deployment (BEAD) Program, Notice of Funding Opportunity (NOFO)*, 2022, pg. 7, Washington, DC: Government Printing Office.
[3] https://www.pewresearch.org/fact-tank/2021/08/19/some-digital-divides-persist-between-rural-urban-and-suburban-america/.

Below you will find our answers to certain questions from your letter. We list the question first and then provide a response directly thereafter.

1. **As part of the IIJA, Congress established a technology-neutral approach for the BEAD program. Do you believe NTIA followed Congress' intent in establishing a technology-neutral approach? If not, should Congress consider amending the IIJA statute to make it more explicit that all technologies are allowed to participate? If so, how?**

SHLB Response: The SHLB Coalition recommends that NTIA should be technology-neutral but not technology-blind. Fiber optic cables can carry a virtually unlimited amount of traffic and are the best long-term solution to broadband needs of the future. Having said that, wireless broadband services can also be more economically feasible in certain hard-to-reach or remote areas. When considering technology solutions, it is not enough to focus only on the one-time deployment costs; the ongoing operational costs of maintaining fiber-based networks may also be significant, and wireless technologies can be easier to sustain over several years. There are also other technologies such as G.hn that can deliver up to Gigabit services over the legacy copper or coax wiring in and to MDUs at a fraction of the cost of rewiring. Over 25% of U.S. residents live in MDUs.

Rather than dictating a particular technology, NTIA should defer to the judgments of state and local officials who are in the best position to choose the most cost-effective technology to serve each market. We recommend an educational program for state and local officials so that they can familiarize themselves with the options available. We believe that the current statute and the BEAD NOFO provides enough flexibility for these local decisions without additional amendments.

2. **The BEAD NOFO promotes government-owned networks. Do you believe government-owned networks are an effective entity to deploy broadband networks? If yes, please explain.**

SHLB Response: The SHLB Coalition believes the BEAD NOFO does not explicitly promote government-owned networks, but instead it makes such networks (and other providers) eligible for federal funding.[4] Accordingly, we do not believe that the BEAD NOFO "tips the scales" in favor of government-owned networks over others. With this context in mind, we believe that a wide variety of broadband providers and deployment structures are needed to achieve optimum financial and operational broadband solutions for varying communities within a state. We strongly support the concept that non-traditional broadband providers, such as municipalities and

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[4] The language in the BEAD NOFO states that "Eligible Entities may not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments. . . from eligibility for grant funds." *Id*. at 50-51.

other non-profits like state-based research and education networks (discussed further below), should be eligible for broadband funding.[5] Non-profit or governmental providers may, or may not, provide a superior level of service in certain communities depending on the local market and the qualifications of the provider. Although these funding decisions should be made by local and state leaders who can evaluate the pros and cons of each type of broadband provider, it is important to educate them on the pros and cons of various options available. Another important objective is to promote a competitive broadband network environment.

Research and education networks (RENs) are one type of non-traditional broadband provider that can be a vital asset to the future of broadband planning and deployment. Some RENs are affiliated with state governments (either being created or chartered by a state government) and are mission-driven, non-profit organizations that support the academic research and educational information technology infrastructure of higher education and other community anchor institutions.[6] RENs can contribute technical expertise (like network design and consultation) and have a long history of successfully creating strategic public-private partnerships with industry partners to accomplish similar goals.[7] RENs do not provide mass-market retail broadband services but instead partner with last-mile providers who offer such services. RENs operate significant middle-mile infrastructure, which can connect specific areas of unserved and underserved areas of a community in the future. Because of their technical expertise in operating middle-mile networks and working with commercial and other types of partners at the local level, RENs (like other non-traditional broadband providers) can be uniquely positioned to assist broadband leaders to develop infrastructure planning and deployment.[8] RENs can also provide a certain level of future-proofing as they look at and test more advanced infrastructure and applications years ahead of traditional broadband providers. As such, RENs should also have the opportunity to be eligible for grant funding under the BEAD program and other grant programs.

3. **One of the provisions of the IIJA requires products and materials used for broadband projects to be produced in the United States. Given the current supply chain issues, should Congress consider modifying this obligation or otherwise clarify this provision?**

SHLB Response: The SHLB Coalition acknowledges the importance of increasing U.S. manufacturing of goods and materials, both from an economic perspective and to ensure that sensitive infrastructure (including broadband) is kept secure. Due to the fast-approaching distribution of funding to the states under grant programs like the BEAD program, combined with the urgent goal to connect all Americans with internet connectivity, however, strict application of the IIJA's domestic content procurement preference could drastically hinder the

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[5] We emphasize that we do not, however, support a preference for any specific retail provider.

[6] *See* THEQUILT.NET, *Value of a REN as Broadband Infrastructure Partners*, https://www.thequilt.net/wp-content/uploads/2022/05/Quilt-Value-of-a-REN-Broadband-Final-05042022.pdf.

[7] *Id.*

[8] *Id.*

effectiveness of its funding programs in multiple ways. As such, the SHLB Coalition strongly urges policymakers to waive or modify this obligation.

It is our understanding that the majority of broadband network equipment is not currently manufactured in the U.S., resulting in the need for companies to purchase such equipment from abroad. This has largely created equipment delivery delays and other issues.[9] Although we support the Biden administration's goal to increase U.S. based manufacturing of these products, we fear that the IIJA's requirement will not immediately solve such delays. Alternatively, we are concerned that countless sub-recipients of imminent federal funding stand to face *exacerbated* equipment delivery and installation delays because it will take time for companies to establish U.S. manufacturing processes.

Further, strict application of the IIJA's domestic content procurement requirements could not only delay deployment projects but could shut them down altogether. For example, companies that have the ability to supply U.S. manufactured products in time for IIJA-related broadband projects could inflate costs and cause budgeting uncertainty for sub-recipients. This could result in significant scaling back of buildout or prompting sub-recipients to make the unfortunate choice to forgo certain projects. This is especially true for smaller service providers that may have less bargaining power to negotiate for underlying construction materials.

With these considerations in mind, the SHLB Coalition sent a letter in May 2022 to the Hon. Gina Raimondo, U.S. Secretary of Commerce, endorsing a broad public interest waiver of the Build America Buy America Act (BABA) provisions required under IIJA for broadband network equipment and consumer devices, until companies have time to set up their U.S. manufacturing processes.[10] We argue that, without a broad-based public interest waiver, sub-recipients are likely to submit hundreds of individual waiver requests, potentially increasing administration burden on the Department of Commerce (DOC) and Office of Management and Budget.[11] Additionally, without action, we fear that states may implement varying processes to determine whether projects satisfy the IIJA's requirements, causing confusion for sub-recipients as they plan their projects.[12] As we do not see any improvement in the supply chain and manufacturing issues laid out above, we still request a general waiver of these BEAD program requirements ahead of time.

If the DOC is unable or unwilling to grant a blanket waiver, we maintain that certain modifications could be made to alleviate immediate issues, such as price hikes. For example,

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[9] Our members have reported that current network-related equipment and service deliveries were delayed generally between 6-12 months, and that they were facing atypical challenges like receiving only a partial order or being unable to quickly secure the workforce necessary to install equipment once it's delivered.

[10] Letter from John Windhausen, Jr., Executive Director, the SHLB Coalition, to The Honorable Gina Raimondo, U.S. Secretary of Commerce, U.S. Dep't of Comm., (May 10, 2022), *available at* https://www.shlb.org/uploads/Policy/Infrastructure/SHLB%20Ltr%20to%20Commerce%20Dept%20-%20Buy%20America%20waiver%20-%20May%202022%20-%20FINAL.pdf.

[11] *Id.*

[12] *Id.*

states that disburse grant funding could consider options where a service provider complies with the requirements over a period of time, rather than immediately up front.

Finally, if a blanket waiver or other modifications cannot be accomplished, we urge the NTIA to clarify specific BABA requirements as soon as possible, rather than at a later time (such as when funds are distributed). Service providers consider capital planning efforts prior to their request for proposal development and response. If certain BABA requirements remain unclear during the planning stage, including when the window for waiver applications will open and who will be eligible to apply for a waiver, service providers are at risk of over and under-inflating costs associated with their projects.

4. **Are there other technical issues in the BEAD program that Congress should address before NTIA announces funding allocations by June 30, 2023?**

SHLB Response: NTIA's NOFOs governing the BEAD and Middle Mile programs establish a letter of credit (LOC) requirement for grant recipients. Specifically, each prospective subgrantee must obtain an irrevocable standby LOC from a bank equaling no less than 25% of the subaward amount.[13] Although the SHLB Coalition understands the need to ensure financially responsible and efficient use of grant funds, the LOC requirements for these programs run the risk of precluding various smaller broadband providers from eligible participation. For instance, banks may not issue such a document for smaller providers or ones with no or less-funded parent companies or affiliates. Even if a bank is willing to issue the LOC, smaller companies simply may not have the requisite amount of funds on hand to satisfy such a requirement. Such preclusion would effectively favor larger or more well-established companies, which runs afoul of the IIJA's goal to distribute funds in a non-discriminatory manner. Furthermore, simply because a prospective sub-recipient can obtain a LOC, it does not automatically guarantee that its proposed project will ultimately be financially viable.

Given these considerations, we recommend that the NTIA modify the LOC requirement for both the BEAD and Middle Mile programs. One way it could approach a solution is to adopt alternative requirements to demonstrate an applicant's fiscal strength. For example, the USDA Reconnect program requires a recipient to submit projected financial statements covering the construction period. Here, the NTIA could include a similar financial statements requirement, with a LOC requirement as an alternative option.

5. **There are over 130 programs supporting broadband access across 15 agencies.**
   a. **To date, which of these programs do you believe has had the most success in delivering broadband services to truly unserved areas?**

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[13] BEAD NOFO at 72-73; U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA), *Middle Mile Grant (Middle Mile) Program, Notice of Funding Opportunity (NOFO)*, 2022, pg. 10, Washington, DC: Government Printing Office.

b. **Should Congress consider eliminating any of these programs? If so, which ones?**

c. **Should Congress merge and combine any of these programs? If so, which programs would be best suited to be merged?**

SHLB Response: As we stated earlier in this letter, we are not concerned about the diversity of broadband programs, as some programs have specialized focuses to address the needs of certain communities. We have been trying to solve the digital divide for over two decades, and yet still about 23% of households nationwide do not subscribe to broadband. We should be using every possible tool in the toolkit to solve this problem. There are several different components of need, including but not limited to the lack of middle-mile infrastructure , a shortage of cost effective connectivity in brownfield multiple dwelling units (MDUs), the need for "carrier hotels" and regional interexchange points in rural markets, the need for last-mile investments in unserved/underserved areas, faster permitting approvals, faster and low-cost access to poles, environmental reviews, plus digital literacy training and affordable computers and consumer devices for low-income persons. There should be a variety of federal, state and local broadband programs to address such a wide variety of needs. Centralizing our broadband policies into a few programs may lead to oversimplification of the problem and may give excessive control to a few stakeholders. It is better to marshal as many resources as possible and foster a competitive environment for broadband technologies and services to help drive broadband investment and adoption.

6. **What specific reforms and constraints should Congress consider to ensure federal funds are not being awarded where providers are receiving other federal or state broadband funding support?**

SHLB Response: The federal government broadband programs should be open and transparent, and they should clearly identify which areas and providers are already receiving funding support. Having said that, we believe that the concern about potential overbuilding is overblown. While the existence of other federal programs should be taken into account, there are several reasons why it may be appropriate to fund a provider even when another provider already exists, such as:

- A recipient of funding may have to pass through a served area in order to reach an unserved community;
- A recipient of funding may be deploying a different technology with a better quality of service than an existing provider;
- A recipient of funding may need to serve some customers in a served area in order to make it economically feasible to sustain the network's service to unserved or underserved communities;
- A recipient of funding may provide competition, bringing lower prices and improved customer service than an existing provider that has not upgraded its technology to serve future demand.

- It would save the government money if a more innovative technology were developed that can offer can the same broadband benefit at a lower cost.

For all these reasons, it is too simplistic to assert that any and all overbuilding is wasteful or a sign of abuse. The presence of existing providers should certainly be taken into consideration along with the other factors mentioned above and judgments about funding should be made on a case-by-case basis.

7. **Should Congress take additional action in response to concerns that broadband funding may be used to overbuild existing service? If so, what reforms and constraints should be implemented?**

SHLB Response: The SHLB Coalition does not believe that reforms or constraints are necessary regarding concerns that broadband funding may be used to overbuild existing service. (See answer to the prior question.) Rather, program administrators should be allowed to make these determinations on a case-by-case basis. Determining the best service provider is a multi-faceted quantitative and qualitative analysis. Although cost is an important consideration, it is not the only factor used in determining the most cost-effective broadband solution in a community. For example, applicants may want to consider additional criteria such as the quality of the fiber connection, interconnection points, security and reliability, and route. As such, even if there is an existing service provider in a given area, its offerings may be dated, it may not have enough capacity to serve the current and future needs of the community, it may be leased out to other users, and it may not be adequately maintained. For these reasons and more, certain broadband providers should not be automatically entitled to a privileged position simply because they maintain existing services in an area, but should be reviewed to see if they are meeting the community's current needs.

8. **Should Congress take additional action in response to concerns that broadband funding may be conditioned upon recipients imposing some form of rate regulation of broadband services, whether or not such requirements are explicitly denominated "rate regulation?" If so, what reforms and constraints should be implemented?**

SHLB Response: Congress should clarify the ongoing confusion about the regulatory status of broadband service. The central question of whether broadband is subject to regulation under the Communications Act has gone back and forth over the last decade. While the private sector has made enormous progress in investing in new network facilities to serve a majority of Americans, the private sector is understandably reluctant to invest in high-cost areas that are uneconomic to serve. If we are truly determined to solve the digital divide for all consumers, there must be some level of federal government oversight over broadband service and broadband providers to ensure that we achieve the goal of universal and ubiquitous broadband service for everyone, similar to efforts to bring telephone service and electricity to all Americans.

9. **How effective have the Memoranda of Understanding between (1) the FCC, USDA, and NTIA, and (2) the FCC, USDA, NTIA, and Treasury been with respect to broadband coordination efforts? Are there additional reforms federal agencies should implement to better coordinate on broadband deployment efforts?**

SHLB Response: We understand that these federal government agencies have increased their level of collaboration over the past few years, which is generally helpful. Since there is no public record of these meetings, however, it is difficult to know whether or not they are fruitful. We note, however, that each government program has its own objectives and rules, some set by Congress and others set by the agency. A government agency should not be able to veto the broadband awards of another government agency in the need for "coordination." Some diversity of programs and rules is healthy and should be encouraged.

10. **Should Congress take steps to increase the transparency of agencies when allocating and disbursing broadband funds? If so, what steps should Congress take?**

SHLB Response: The SHLB Coalition believes that the planning, allocation and disbursement of federal broadband funding, which is generated by taxpayer dollars, should be transparent. Access to information about future buildouts, proposed broadband plans, and spending helps ensure that the myriad of deployment efforts are harmonized and realized on a broad level. It also ensures that broadband planning is generated by all stakeholders, rather than by only a simple few.

First, when broadband providers have the ability to obtain anticipated buildout information in a state or municipality's proposed plan, it can anticipate its own future development in the areas where it is needed most. Second, transparent funding processes achieve inclusivity for all stakeholders, including non-profit organizations, consumer organizations, and broadband providers, because they have the information they need to supply valuable input into future planning strategies. For example, the SHLB Coalition is pleased that such inclusivity considerations were part of the implementation of the BEAD program, whereby eligible entities are required to engage with and seek feedback from community stakeholders (including anchor institutions) when developing their plans.[14] Such processes provide the building blocks for states, territories, tribal lands, and municipalities to gain valuable insight about specific community needs that ultimately ensure sustainable planning and help make funding dollars go further. Such transparency could also preclude any opportunity for certain parties with political influence to gain inside intelligence that is not available to people without such connections. Third, transparency with broadband planning and funding allocation makes it easier to ensure compliance with proposed plans as they are implemented.

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[14] Specifically, the BEAD NOFO requires that, "[p]rior to submission to NTIA, the Initial Proposal must be made available for public comment, and the Initial Proposal must incorporate local coordination feedback for the Assistant Secretary's review" and that "[p]rior to submission to NTIA the Final Proposal must be made available for public comment." BEAD NOFO at 9-10.

The SHLB Coalition is concerned that the agencies responsible for broadband planning and allocation requirements lack a consensus about implementing transparent measures around future build outs and broadband plans. For future grant programs, we implore state agencies to require recipients to make plans publicly available, require community engagement and feedback processes, and open up proposals for public comment. Further, final broadband plans submitted to and approved by an agency should be made publicly available.

11. Would updating pole attachment regulations spur more rural broadband deployment? If so, what actions should be taken?

SHLB Response: The SHLB Coalition believes that streamlined access to existing infrastructure like utility poles is a critical and urgent component to solving the digital divide, especially in rural areas where it may be more costly to deploy broadband services. Many families, schools, libraries, and healthcare facilities are located in areas where new broadband infrastructure is unavailable, difficult, or costly to obtain at the rate necessary to solve their urgent connectivity needs. Leveraging existing infrastructure can reduce the costs of deployment to rural, unserved areas and help to solve this digital disparity. Many of our members have expressed concern, however, over current pole attachment practices at a state and local level that often impede expeditious and cost-effective deployment. Accordingly, we agree that certain actions can and should be taken to update pole attachment regulations.

In September 2021, the SHLB Coalition filed a detailed letter with the FCC outlining various pole attachment recommendations, and we have attached a copy of those recommendations here as Attachment 1.[15] These principles attempt to balance the interests among the parties involved in pole attachment negotiations and help streamline future deployment projects. For example, we suggest that easements and public rights-of-way limited to use for electric and telephone wires should be expanded to encompass additional facilities for broadband and communications use. We also suggest having consistent pole access rules throughout the country, rather than the patchwork of requirements (or lack thereof) that exist today which vary depending on the type of pole owner involved. Also, to help defray the high costs associated with utility pole replacements and make ready work for new attachments, SHLB supports federal and state funding for pole owners and broadband providers to help reduce the costs associated with adding broadband infrastructure to poles.

In June 2022, the FCC initiated a public comment proceeding to determine potential reform of current utility pole replacement practices, including the allocation of costs between a pole owner and new attacher, the timing for processing pole attachment applications, and the process for resolving FCC disputes between the pole owner and attacher.[16] The SHLB Coalition

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[15] *SHLB Ex Parte Notice with Pole Attachment Principles to Expedite Broadband Attachments for Anchor Institutions and Their Communities*, WC Docket No. 17-84 (Sept. 2, 2021) https://www.fcc.gov/ecfs/search-search-filings/filing/10902194611832.

[16] *In the Matter of Accelerating Wireline Broadband Deployment By Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Further Notice of Proposed Rulemaking, FCC 22-20 (WCB Mar. 16, 2022).

provided comment in this proceeding, seeking a more fair allocation of replacement costs between pole owners and new attachers, efficient and transparent mechanisms for processing pole attachment applications, and timely resolution of pole disputes in front of the FCC.[17] The record in this proceeding is now complete and we believe that the FCC swiftly issuing an order clarifying such pole replacement cost issues is imperative to the success of future deployment projects. This is especially true given the urgency of projects that will be funded over the next handful of years under the BEAD program, which itself requires state leaders to take steps to promote cost-effective access to existing infrastructure like poles.[18]

In our comments, we emphasized the importance of establishing *equitable* and *efficient* solutions regarding the cost-allocation methodology for pole replacement costs. For example, assuming that a new attacher is always responsible for the entirety of a pole replacement cost may inequitably subsidize the pole owner, as it may have otherwise been responsible for that replacement at a future time (such as in the case of an older pole).[19] We also urged that future cost allocation standards encourage efficiency, such as by requiring pole owners to maintain adequate recordkeeping practices and promoting up-front transparency around applications, project timelines, and costs related to both make-ready and replacement work.[20] Such practices, we believe, contribute to the predictability of the project and allow the attacher an opportunity to assess whether it can successfully move forward without incurring exorbitant costs.[21]

Pole replacement standards matter greatly because they can directly affect whether broadband providers can find cost-effective ways to reach rural, unserved and underserved areas. When high pole replacement costs and uncertainty about equitable solutions exist, negotiating parties may delay the broadband buildout project or decide to forego it completely.[22] Congress

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[17] *See* Comments of the Schools, Health & Libraries Broadband Coalition in WC Docket No. 17-84 (June 27, 2022), https://www.fcc.gov/ecfs/document/106282945908521/1 (SHLB Comments) and Reply Comments of the Schools, Health & Libraries Broadband Coalition in WC Docket No. 17-84 (Aug. 26, 2022), https://www.fcc.gov/ecfs/document/1082670987192/1 (SHLB Reply Comments).

[18] An Eligible Entity's Initial Proposal must "[i]dentify steps that the Eligible Entity will take to reduce costs and barriers to deployment, promote the use of existing infrastructure, promote and adopt dig-once policies, streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements." BEAD NOFO at 32. Status of implementation of these steps must further be identified in the Eligible Entity's Final Proposal. *Id*. at 48.

[19] SHLB Comments at 10. We also argue that, when an existing pole is replaced, we generally find that both the pole owner and attacher benefit from that replacement. Considerations such as the remaining "life" of the pole, should also be accounted for in the methodology. *Id*. at 10-11.

[20] *Id*. at 11.

[21] *Id*.

[22] Many of our members provided examples of inequitable or failed negotiations due to high pole replacement costs. *See* SHLB Comments at 6-8. For example, in Socorro County, New Mexico, the school district secured proposals for broadband infrastructure upgrades for two of its rural elementary schools. Due to exorbitant and unexpected pole replacement costs, the district ultimately had to abandon the projects. The engineering and consulting firm that conducted the survey noted that the poles in Socorro County are "collectively the worst poles [they've] seen anywhere, although other communities also wrestle with this same problem." Cathy Cook, *Socorro County has the Second Worst Broadband Access in New Mexico, According to Report*, EL DEFENSOR CHIEFTAIN (Aug. 5, 2021), https://dchieftain.com/socorro-county-has-the-second-worst-broadband-access-in-new-mexico-according-to-report.

should encourage the FCC to issue an order in this proceeding as soon as possible so that timely and cost-efficient pole access is maximized.

Furthermore, given the statutory limitation that the FCC's order will have on the full range of pole owners, we recommend that states develop additional techniques to resolve issues related to pole attachments. For example, we recommend that each state implement a pole attachment working group whereby various stakeholders can discuss deployment plans, arising issues, and resolve disputes under strict time limits.[23] Encouraging states to adopt their own variation of a working group would create a place for consistent review of pole attachment policies, and provide a neutral space for pole owners and attachers alike to work together to resolve disputes. These working groups could invite stakeholders to convene on a voluntary basis. Any such working group, however, would need to prioritize quick resolution of disputes and ensure that costs are equitably shared between pole owners and attachers.

12. **Does the FCC presently possess sufficient authority to preempt state and local requirements that may unreasonably impede the deployment of broadband networks? If not, what steps should Congress consider to address the unreasonable impediments?**

SHLB Response: Utility poles may be owned and operated by various entities, including investor-owned utility companies (IOUs), incumbent telephone companies, and municipal utilities and cooperatives. Furthermore, many states independently regulate their pole rates, terms, and conditions, barring the FCC's authority over those rules. Given this inconsistent patchwork and the potential for wide variation between applicable standards, we submit that pole attachment policies should strive to achieve parity between *all* pole owners. Further, access to poles, including applicable rates, terms, and conditions, should be foremost reasonable, predictable and prompt.

The SHLB Coalition generally does not propose that the FCC should preempt state and local requirements regarding broadband deployment. Regarding pole attachment and replacement regulations, we suggest that the FCC's rules act as a model for state and local governments. The Commission's rules are well-developed, through the input of all stakeholders and extensive consideration by an expert agency. This includes "self-help" remedies and "one-touch make-ready" options that allow attachers to proceed promptly and safely without unnecessary delays.

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[23] For example, Massachusetts established a make-ready working group in 2018, initiated by Governor Charlie Baker and Lieutenant Governor Karyn Polito, and managed by the Massachusetts Broadband Institute. The working group consisted of various stakeholders including utility companies, internet service providers, and construction contractors, to hold meetings to discuss pole attachment practices, and escalate any issues that arose during negotiations. *See Partnering to Accelerate Broadband Deployment in Massachusetts*, CHARTER COMMUNICATIONS, June 6, 2022, https://policy.charter.com/partnering-to-accelerate-broadband-deployment-in-massachusetts.

We recognize that certain circumstances may require additional oversight, different solutions, or legislative consideration, so we do not propose a "one-size-fits-all" approach. State working groups can ideally analyze the particular circumstances of each market and develop tailored solutions that are equitable and timely. If, however, states do not implement pole attachment working groups (mentioned previously) to expedite and resolve pole attachment problems, Congress may want to consider closing the loophole in the statute to ensure that all pole owners are subject to consistent policies.

13. What specific steps can Congress take to reduce costs to broadband providers when deploying new networks?

SHLB Response: When Congress considers the future of broadband deployment funding and ways to reduce costs to broadband providers tasked with deploying new networks, it should include preferences for open access and community anchor-enabled networks.

Open access networks offer an alternative deployment solution to expand affordable, reliable internet services to both urban and rural communities by providing certain benefits. First, such networks can promote more efficient private investment. For example, when these networks are built, individual internet service providers do not need to spend additional capital to build overlapping or duplicative networks. They can instead focus their expenditures to reach farther into communities.[24] Second, open access networks can promote competition. The BEAD program subsidizes the deployment of broadband networks in unserved and underserved areas, and it is unlikely that such networks will face facilities-based competition. This creates the risk that BEAD-funded networks will be monopolies that have insufficient incentives to provide high-quality services at reasonable prices. Open access is the solution to this problem. The direct benefit of an open access network is that it allows multiple service providers the opportunity to connect to it. As a result, competition between available services and prices is fostered, which can drive prices down, improve service quality, and lead to more widespread adoption from end-users. Third, open access networks can promote affordability, which helps to bridge the digital divide. It is less expensive for retail service providers to lease capacity on an open access network than to build their own networks. This cost saving will be reflected in lower price offerings to consumers. Additionally, resellers have the incentive to attract new customers by tailoring their service offerings to the needs of those who might not otherwise subscribe to broadband service. Fourth, in the case of publicly owned networks, open access networks can promote community involvement by enabling community stakeholders to make choices about future innovation and solutions.[25]

The SHLB Coalition also believes that deploying broadband services "to and through" anchor institutions can reduce costs to broadband providers and provide an enormously successful means of connecting unserved and underserved consumers. The basic idea is to

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[24] Arnold, J. & Sallet, J. (December 2020). *If We Build It, Will They Come? Lessons from Open-Access, Middle-Mile Networks*. Pg. 4. Benton Institute for Broadband and Society. https://www.benton.org/sites/default/files/OAMM_networks.pdf.

[25] *See* Institute for Local Self-Reliance, *Open Access*, https://muninetworks.org/content/open-access.

deploy high-capacity broadband (often fiber) to the school or library and to make it open to interconnection so that others (a company or the school/library itself) can build off of it to reach surrounding consumers. In other words, an anchor institution's internet connection does not need to stop at the building. Additionally, an anchor institution itself can also be the catalyst to extend broadband services outward, by deploying their own wireless or fiber networks to surrounding residences and businesses. Such "anchor-enabled networks" allow each community the autonomy to build and operate its own broadband system to meet the needs of its local customers that may not be served by traditional commercial service providers.

In 2022, Dr. Raul Katz compiled a report (jointly commissioned by SHLB and the Wireless Future Project at the Open Technology Institute at New America) analyzing the economics of extending broadband to a surrounding community via an anchor institution. His research found that deploying wireless connections "to and through" anchor institutions "can often be the most low-cost and financially sustainable option to connect households in unserved and underserved areas."[26]

Regarding the concept of broadband deployment "to and through" an anchor institution, it is important to note that many schools and libraries receive federal funding through the FCC's E-rate program to support broadband projects to and within the building. The current E-rate rules limit the ability of these institutions to extend broadband service *off-campus*. The E-rate program does not bar a school/library from using non-E-rate funds to provide service off-campus, but if the school/library permits any of its E-rate funded network capacity to be used both for on-campus and off-campus connectivity, it must allocate the incremental cost of that off-campus use out of its E-rate reimbursement request. Such cost allocation will reduce the amount of total E-rate funding it can receive, and this arduous process includes the possibility that the Universal Service Administrative Company (USAC) (the entity responsible for denying or granting reimbursement requests) will reject its methodology. The SHLB Coalition believes that with remote education, telework, and telehealth services becoming a modern way of life for many Americans, schools and libraries should be incentivized to allow such build-outs, not discourage them. Many schools/libraries have unused capacity that they could share with the community, if the E-rate rules were to allow it. Accordingly, we continue to advocate for reform of the FCC's E-rate rules to waive cost-allocation requirements for off-campus service.

14. How are federal broadband programs addressing cybersecurity challenges? Should Congress consider reforms to improve cybersecurity?

SHLB Response: The SHLB Coalition considers cybersecurity protection vital to the success of continued broadband use in 21st modern society. It plays an especially important role to many of our members, as schools, libraries and other anchor institutions are particularly vulnerable to

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[26] Katz, R. (2022). *The "to and through" opportunity: An economic analysis of options to extend affordable broadband to students and households via anchor institutions*. Pg. 3. The Schools, Health & Libraries Broadband Coalition & the Wireless Future Project at the Open Technology Institute at New America. https://newamericadotorg.s3.amazonaws.com/documents/Off-Campus-Deployment-Economic-Assessment-final.pdf.

cyber-attacks.[27] Accordingly, we urge both the FCC and Congress to act quickly to seek ways to improve guidance for and access to cybersecurity services and features for anchor institutions.

In February of 2021, the Consortium for School Networking (CoSN), the SHLB Coalition and other interest groups filed a Petition for Declaratory Relief and Petition for Rulemaking with the FCC, urging that K-12 schools and libraries should be able to use E-rate discounts to pay for cybersecurity products and services.[28] We are pleased that the FCC recently initiated a proceeding to take public comment on the circumstances regarding eligibility of cybersecurity services and products under the E-rate program, including comment on the aforementioned CoSN petition.[29] Generally, we are aware of broad support for making certain cybersecurity services and products eligible under the E-rate program, as already expressed by the many filers on this topic in recent months.[30] The SHLB Coalition will be actively participating in this proceeding and, first and foremost, urge the FCC to take decisive action as soon as possible so that schools and libraries can anticipate future cybersecurity needs and budgets.

Although we believe that the E-rate Program provides an appropriate mechanism for funding certain cybersecurity products and services,[31] holistic cybersecurity guidance and tools for funding secure anchor institution broadband networks includes reform at various levels. In October of 2021, Congress passed the K-12 Cybersecurity Act of 2021, requiring the Cybersecurity and Infrastructure Security Agency (CISA) to study and evaluate the cybersecurity risks and challenges facing elementary and secondary schools, and develop voluntary recommendations, including cybersecurity guidelines and online training toolkits, to assist

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[27] As part of a 2021 investigation to better understand ransomware attacks in the United States, the Senate Committee on Homeland Security and Governmental Affairs reported that, "[i]n recent years, ransomware attack victims have included hospitals, school systems, local, state, and federal government agencies, as well as other critical infrastructure, including the water and energy sectors. In 2021, ransomware attacks impacted at least 2,323 local governments, schools, and healthcare providers in the United States." United States Senate Committee on Homeland Security & Governmental Affairs. (n.d.). *Use of Cryptocurrency in Ransomware Attacks, Available Data, and National Security Concerns*. Pg. 2. https://www.hsgac.senate.gov/imo/media/doc/HSGAC%20Majority%20Cryptocurrency%20Ransomware%20Report.pdf.

[28] Petition for Declaratory Relief and Petition for Rulemaking Allowing Additional Use of E-rate Funds for K-12 Cybersecurity, Consortium for School Networking, et. al, WC Docket No. 13-184 (Feb. 8, 2021) https://www.fcc.gov/ecfs/document/102081871205710/1.

[29] *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Public Notice, DA 22-1315 (Dec. 14, 2022).

[30] We specifically call attention the ransomware cyberattack on the second largest school district in the United States, Los Angeles Unified School District (LAUSD) in September 2022. This attack led to an outpouring of support by school systems around the country for E-rate support. LAUSD was able to collect signatures on a letter from 1,100 districts across the nation urging the Commission to authorize the ongoing, permanent use of existing E-Rate Program funds to bolster and maintain IT security infrastructure. *See generally* Letter from LAUSD et. al to the Honorable Jessica Rosenworcel, Chairwoman, the Honorable Brendan Carr, Commissioner, the Honorable Geoffrey Starks, Commissioner, and the Honorable Nathan Simington, Commissioner (Sep. 21, 2022), *available at* https://www.fcc.gov/ecfs/document/10922246829893/1.

[31] Cybersecurity features are often part and parcel of a school or library's network infrastructure, so we believe that E-rate discounts for such networks would naturally include many cybersecurity features and products.

schools.[32] We encourage various federal agencies, including the FCC, as well as Congress to consider the recommendations promulgated under both CISA's report and the aforementioned FCC proceeding. The record around cybersecurity protection will be voluminous in the coming months; holistic solutions must take into account feedback from our most vulnerable entities about what they need to keep our data safe.

15. Are there other broadband policy issues that Congress should consider reforming during the 118th Congress?

SHLB Response: The SHLB Coalition has two additional concerns that it urges Congress to address.

First, the Broadband DATA Act (DATA Act) passed by Congress in March of 2021 directs the FCC to publish a national broadband map that will be used to allocate broadband funding. The DATA Act requires the Commission to identify the broadband available to all "locations."[33]

Unfortunately, the first version of the FCC's National Broadband Map (Map) issued in November 2022 excludes most anchor institutions. Schools, libraries, health care providers, and other public institutions are either grayed out (treated as not broadband serviceable locations) or they are treated as "served" even though they only have 25/3 Mbps of broadband.

As a result, ISPs are not obligated to provide information about broadband availability to anchor institutions, which means they will not be listed as "unserved" and will not be eligible for investments to improve their broadband connectivity. This treatment of anchor institutions conflicts with the DATA Act and the IIJA, which says that anchor institutions are only served if they have gigabit-level broadband service. Further, this exclusion harms not just the anchor institutions themselves, but also harms the residential consumers that access the broadband service provided by such institutions.

The SHLB Coalition raised this concern with the FCC but was told that the map methodology is "locked in" and cannot be changed, even though the map is supposed to be updated every six months. We believe the FCC's approach violates the statutory language in the Broadband DATA Act and the IIJA. In short, we are not seeking a change in the law; we are seeking to enforce the law that already exists. We strongly urge Congress to direct the FCC to include anchor institutions in future versions of the Map as required by the statutory language.

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[32] K-12 Cybersecurity Act of 2021, Pub. L. No. 117-47, 135 Stat. 397. 2021.

[33] "The Commission shall create a common dataset of all *locations* in the United States where fixed broadband internet access service can be installed, as determined by the Commission." *See* Section 802(b)(1)(A)(i) of Public Law 116-130. Further, section 802(b)(1)(B) of the DATA Act says ''(B) FABRIC.—The rules issued by the Commission under subsection (a)(1) shall establish the Broadband Serviceable Location Fabric, which shall—
''(i) contain geocoded information for each *location* identified under subparagraph (A)(i);
''(ii) serve as the foundation upon which all data relating to the availability of fixed broadband internet access service collected under paragraph (2)(A) shall be reported and overlaid;''

Second, the SHLB Coalition strongly supports long-term funding for the Affordable Connectivity Program (ACP) and the Emergency Connectivity Fund (ECF). The funding for the current ACP program is scheduled to expire in 2024. This program is enormously helpful in connecting millions of low-income families to broadband internet access service, but these customers may be disconnected if the ACP subsidy disappears. Rural areas have a particularly high proportion of low-income ACP eligible persons. Appropriating additional dollars to continue this program for the next decade is vitally important to solve the digital divide.

Further, appropriating additional funding for the ACP program will promote economic efficiency. The success of broadband deployment in rural markets depends heavily on the revenues an ISP will receive from those customers. In other words, the government should allocate funding for the demand side of this provider/consumer relationship to make the supply side work. When creating rural broadband project proposals, ISPs will need to make assumptions about the revenues they will receive in each deployment area. If ACP funding expires, ISPs may not be able to generate the revenues necessary to sustain the operations of these networks. Conversely, if providers budget that ACP funding will disappear after 2024 and they apply for and obtain rural broadband funding, but ACP funding ultimately does continue, the government may essentially overpay for a network buildout.

Similarly, the ECF program is expected run out of funding later this year. It too has been extremely successful in helping connect unserved and underserved households. According to the FCC, about 8 million families currently receive ECF financial assistance,[34] while the ACP program provides support for approximately 15 million households. Schools and libraries are particularly effective in distributing funding to their students and library patrons because they are trusted institutions with a strong track record of serving their communities.

Thus, the SHLB Coalition urges Congress to provide additional, long-term funding for both the ECF and ACP programs in the near future.

Thank you for your consideration of these important matters. The SHLB Coalition and its members are grateful for this opportunity to share its expertise and experiences as to many broadband deployment issues and policies. We are also happy to provide you, and your committee colleagues, with further information. We would also be happy to testify at any oversight or legislative hearings the Committee may hold to explore these ideas in more detail. Please contact me if you have any further questions or if I can provide additional information.

Respectfully,

John Windhausen, Jr.

John Windhausen, Jr.

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[34] https://www.fcc.gov/emergency-connectivity-fund.

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Attachment 1

**POLE ATTACHMENT PRINCIPLES
TO EXPEDITE BROADBAND DEPLOYMENT
TO ANCHOR INSTITUTIONS AND THEIR COMMUNITIES**

June 28, 2021

The policies governing access to utility poles can have a significant impact on the pace of broadband deployment to unserved and underserved markets. Providing a consistent framework, while recognizing the variety of circumstances that affect local pole attachment costs, can help to streamline the pole attachment process and expedite broadband deployment to anchor institutions and their surrounding communities. The SHLB Coalition urges policy-makers and pole owners to incorporate the following principles into their pole attachment policies.

1. **All Pole Owners Should Be Subject to Comparable Rules Governing Pole Access.**

    - All pole owners should be required to offer reasonable rates, terms and conditions for pole access, with the goal of parity between the rules governing investor-owned utilities (IOUs) and those applicable to other pole owners, including cooperatives and municipalities.

    - Although the FCC regulates IOUs, many utility poles are owned and operated by other entities, including cooperatives and municipalities, not currently regulated by the FCC.

2. **Electric and Telephone Easements and Public Rights of Way Should Be Made Available for Broadband.**

    - In jurisdictions where easements and public rights of way for electric or telephone infrastructure are limited to electric and/or telephone wires, they should be expanded to encompass broadband and communications facilities as well.

3. **Rates, Terms and Conditions for Pole Access Should Be Just, Reasonable, Predictable, and Prompt.**

    - State and local governments should use their authority over access to poles to apply the FCC's rules regarding pole access and make-ready for all pole owners -- including IOUs, municipal utilities and cooperatives. FCC rules are well-developed, have received extensive consideration by an expert agency, and have been the subject of input from all stakeholders. This includes "self-help" remedies and "one-touch make-ready" options that allow attachers to proceed promptly and safely without unnecessary delays. State and local governments should be incentivized to implement these FCC rules and policies.

- Timelines and application procedures for accessing poles, including for the completion of make-ready work, should be predictable and prompt and should provide some flexibility. Denials of access must be specific and reasonably based upon safety, reliability, engineering, or capacity considerations.

- If a pole owner requires a written agreement to attach to poles, it should be required to negotiate such agreements in good faith, including updating those agreements to incorporate reforms to pole attachment rules that occur during the contract term.

4. **Pole Attachment Rates, Terms and Conditions Should be Non-discriminatory and Rates Should be Cost-based.**

- Federal, state and local regulators should ensure that pole owners do not use their ownership of key facilities to impede broadband competition.

- In general, pole owners should be required to extend comparable rates, terms and conditions of access to everyone —including those rates, terms and conditions that are provided to their own affiliates, their business partners, and for the purpose of deploying their own networks.

- In general, pole attachment rates should reflect actual costs – non-recurring charges should reflect the actual immediate costs of make-ready work, and recurring rates should reflect a portion of the actual long-term costs of pole installation, maintenance, ownership and replacement.

5. **To support broadband deployment, federal, state and local infrastructure funding should be made available to help defray pole make-ready and pole replacement costs.**

- Funding should be made available to pole owners and broadband providers to help jumpstart the deployment of broadband infrastructure in unserved areas of the country. Such funding will help to reduce the costs associated with broadband deployment, thereby increasing the accessibility and affordability of broadband service.

- Broadband providers should be able to partner with pole owners to leverage infrastructure funding for pole replacements and make-ready in order to expedite broadband deployments.

6. **Pole Capacity Should Be Expanded When Necessary and Costs Should be Shared Fairly**

- Poles that are too short, crowded or not strong enough to support new broadband facilities should be replaced or reinforced so that broadband can be deployed where it is needed.

- Costs for expanded capacity should be shared equitably.

- The cost of replacing older poles should not be borne entirely by new or existing attachers. Imposing the entire pole replacement costs on new or existing attachers unfairly subsidizes the pole owner's plant (as the pole owner would have otherwise been responsible for replacement) and unreasonably drives up the cost of new broadband and communications deployment. Pole owners share in the benefits of pole replacements, particularly by avoiding certain future replacement and maintenance costs, and should contribute to pole replacements accordingly.

- Make ready work for new attachers should not include costs for correcting pre-existing violations of licensors, licensees, or joint users.

7. Engineering and Safety Requirements Should Be Reasonable and Transparent.

- Pole owners' safety and engineering standards should be reasonable given local conditions—and should be based upon genuine safety and engineering considerations. Safety and engineering codes should not be used by pole owners as a pretext to force attachers to pay for improvements, or to make it more difficult for attachers to offer competing services.

- Safe temporary attachments and extension arms should be permitted to allow broadband to be extended to unserved areas pending completion of make-ready work on poles.

- Pole owners and providers should coordinate and use third party resources if necessary to expedite the engineering and permitting process.

8. Overlashing Should Be Permitted Upon Notice, Without Separate Application Requirements.

- Overlashing—*i.e.*, adding a new attachment to an existing one—helps speed broadband deployment by enabling broadband facilities to be deployed simply and safely, as long as overlashing follows generally accepted safety and engineering standards.

9. Regulators Should Make Prompt Dispute Resolution Available for Pole Access Disputes.

- Sensible pole access and attachment rules will only help speed broadband deployment if they are followed and enforced. Disputes must be resolved by regulators quickly.

- Policy-makers should include all stakeholders in the process of developing and implementing pole attachment policies.

10. Pole Owners Should Keep Sufficient, Timely Records to Calculate Recurring Rates, and Make the Records Available.

- Sensible rules governing just and reasonable rental charges for poles are only meaningful if pole owners maintain and share the data necessary to calculate those rates fairly and accurately.

- The process of rate calculation should be fair and transparent.

For questions about these Pole Attachment Principles, please contact John Windhausen, Executive Director, SHLB Coalition, at jwindhausen@shlb.org.