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July 16, 2021

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

Re: Department of Treasury (“Treasury”) interim final rule and request for comments regarding the Coronavirus State and Local Fiscal Recovery Funds; 86 *Fed. Reg.* 26786 (RIN 1505–AC77) (TREAS-DO-2021-0008-0002) (May 17, 2021).

Dear Secretary Yellen:

The Utilities Technology Council (“UTC”) is providing the following comments in the above-referenced proceeding in response to the Treasury’s Interim Final Rule (“IFR”).¹ Further, UTC supports the comments of the National Rural Electric Cooperative Association (“NRECA”), which support funding for broadband networks that provide faster speeds and lower latency to unserved and underserved locations that lack access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload 25/3 Mbps) service.

Introduction and Background

UTC is the international association for the telecom and information technology interests of all kinds of electric, gas and water utilities and other critical infrastructure industries (“CII”). Its members include large investor-owned utilities serving millions of customers across multi-state service territories, as well as smaller rural electric cooperative and public power utilities serving relatively fewer customers in isolated communities and remote areas. Despite their differences in size and service territories, these UTC members all own, manage or control extensive communications systems that they use to ensure the safe, reliable and secure delivery of essential electric, gas and water services to the public at large.²

UTC’s interest specifically in this proceeding is to promote opportunities for utilities to access broadband funding through the Coronavirus State and Local Fiscal Recovery Funds. Utilities are already deploying broadband into unserved areas and others are interested in doing so. These utilities are deploying network infrastructure that is capable of offering extremely high bandwidth with low latency in areas that often lack any other broadband services. Access to funding through the Coronavirus State and Local Fiscal Recovery Funds programs can make it possible for utilities to deploy broadband networks faster and further out into remote areas than they otherwise could on their own.

¹ Coronavirus State and Local Fiscal Recovery Funds, Treasury of the Treasury, Interim final rule; request for comments. 86 *Fed. Reg.* 26786 (RIN 1505–AC77) (TREAS-DO-2021-0008-0002) (May 17, 2021)(hereinafter “IFR”).

² For more information about the Utilities Technology Council, please visit www.utc.org.

UTC applauds the Treasury for its guidance in the IFR, and it provides the following responses to the questions posed in the IFR. Finally, and as described in further detail below, UTC also offers its support for investments in middle-mile broadband projects, and it applauds the Treasury for clarifying in its online FAQ that state and local governments may use payments from the Funds for middle-mile projects. UTC submits that middle-mile projects promote broadband affordability, and UTC supports the Treasury's request of recipients to integrate affordability options into state and local investments in broadband projects by prioritizing support for broadband networks owned, operated by or affiliated with local governments, non-profits and cooperatives. Many of the utilities who are deploying broadband are government-owned and operated utilities as well as electric cooperatives.

Responses to Questions in the IFR

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

UTC supports policies that promote the deployment of broadband networks that are robust, reliable and affordable. In that regard, we support the Treasury's guidance within the IFR that prioritizes funding for 100 Mbps symmetrical speeds for broadband projects. While the Treasury's guidance also allows for 100/20 Mbps speeds in areas where 100 Mbps symmetrical speeds are impractical due to the geography, topography, or excessive costs associated with such a project, UTC believes that most if not all areas can be readily served with 100 Mbps symmetrical speeds. As evidence, the recent FCC Rural Digital Opportunities Fund (RDOF) Phase I auction results showed that over 85% of the locations with winning bids were won by providers promising to deliver gigabit-speed broadband (i.e., 1 Gbps/500 Mbps). For purposes of the Treasury's IFR, this indicates that broadband providers should be technically and financially capable of providing 100 Mbps symmetrical speeds (or higher) in the vast majority of high-cost areas.

It is also important to underscore that utilities were the single largest group among the winning bidders in the Gigabit tier of the RDOF Phase I auction, which illustrates that utilities are deploying future-proof broadband technologies into unserved areas. The reason for this trend among utilities is that utilities realized that it makes sense to make a one-time investment in broadband technologies that are scalable to keep pace with increasing capacity requirements and can be upgraded without requiring a forklift replacement of the legacy network. Not only are the long-term avoided costs worth the investment, more importantly, consumers are able to get access to broadband services that provide all the panoply of benefits that go along with faster speeds, rather than being held back by slower speeds, data caps and other problems associated with marginal broadband networks.

Accordingly, UTC supports the Treasury's IFR regarding minimum broadband speeds for projects eligible for funding under the State and Local Coronavirus Fiscal Recovery Fund, and UTC applauds the Treasury for "[u]nderstanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs," such that "the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project."³ In that context, UTC supports allowing state and local entities to require even faster minimum broadband speeds and to ensure that investments are made in future-proof technologies that are capable of meeting increasing consumer demands that require more capacity. UTC agrees with the Treasury that general household bandwidth is increasing, and that a household with two telecommuters and two to three remote learners will need access to 100 Mbps download speeds to work simultaneously. UTC also agrees with the Treasury's reasoning for establishing faster minimum upload speeds, based upon market research data showing that the average upload speeds have increased from 10 Mbps in 2017 to 48.41 Mbps in 2019. Given that upload and download speeds are increasing and that different communities and their members may have a broad range of internet needs and that those needs may change over time, state and local governments should invest in projects that are capable of providing even faster speeds than 100/100 Mbps to keep pace with increasing consumer demand.

³ IFR 86 Fed. Reg at 26804.

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

As explained above, setting the 100/100 Mbps minimum speed requirement should not prove impractical for the majority of projects. Moreover, the Treasury has provided an alternative standard of 100/20 Mbps that projects could meet if the 100/100 Mbps minimum is impractical, based upon topography, geography, and financial factors. In addition to these factors, population density is also a significant factor to consider in determining whether an investment is impractical. Nonetheless, utilities have been able to deploy broadband networks that support broadband speeds exceeding 100/100 Mbps, even in remote areas with low population density. Moreover, these networks have been economically sustainable and they offer affordable broadband services. As a practical matter, the incremental cost of adding capacity to these networks to support these speeds is marginal, compared to the basic cost of deploying the broadband network generally. Moreover, making the one-time investment at the start of the project is far more cost effective than going back and upgrading later. Thus, UTC supports the Treasury's minimum standards for broadband projects, and it also recommends that the Treasury provide flexibility for state and local governments to determine whether a project is impractical.

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

As explained above, the advantage of setting a minimum speed standard of 100/100 Mbps is that it should support the upload and download speeds that the average household uses, based upon market data and current trends showing an increasing number of connected devices in the home and changes in the way that consumers are using broadband for video conferencing and other applications that require greater capacity for both upload and download. That said, the advantage of setting a fallback alternative standard of 100/20 Mbps for certain projects that would otherwise be impractical at the 100/100 Mbps minimum speeds is that it promotes broadband access to areas that would otherwise be unserved or underserved. Moreover, this alternative standard is still faster than the current definition of broadband at 25/3 Mbps that was established in 2015. It is also important that this alternative standard also requires that the project be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds. This ensures that the network will be capable of supporting faster speeds, even though the initial project is only capable of providing 100/20 Mbps. Finally, it should be noted that this fallback alternative standard should only be used in a minority of cases where the 100/100 Mbps projects are impractical. State and local governments should avoid investing in projects with these lower speed requirements because it limits the potential benefits to consumers if they are unable to access sufficient upload speeds. As such, UTC opposes any further reduction of the minimum standards for broadband projects.

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

UTC strongly supports focusing investments on those locations that lack access to a wireline connection that reliably delivers 25/3 Mbps speeds, and it believes that state and local governments should have broad flexibility to invest in projects to serve unserved and underserved locations. UTC particularly supports the terms "wireline" and "reliably". While UTC supports the use of wireless technologies to provide broadband, it recognizes that wireless connections will provide variable speeds depending on factors such as the distance from the transmitter to the receiver, terrain, foliage and other sources of interference with the signal. Defining unserved and

underserved locations as those that lack access to a wireline connection that reliably provides 25/3 Mbps speeds ensures greater regulatory certainty for state and local governments to follow when making investments in broadband project. At the same time, it allows state and local governments sufficient flexibility to determine if certain locations are not receiving reliable service in certain areas. This addresses two potential problems. First, it addresses the problem with broadband services that fail to provide their advertised speeds. This has been shown to be a significant problem across the country, and accordingly state and local governments should be permitted flexibility to invest in projects to provide broadband services that reliably deliver faster broadband services than what consumers are getting in certain locations. Second, it addresses the problem that exists with the accuracy of the FCC's broadband maps, which rely on self-reported data from broadband providers that tends to overstate the extent to which broadband service is available to all locations in a certain area. By defining an unserved or underserved location based on whether it is reliably served with 25/3 Mbps speeds, the IFR provides state and local government with the flexibility to invest in projects in locations that are not actually served, despite maps indicating otherwise. Therefore, UTC supports this threshold and opposes alternative lower thresholds.

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

The minimum standards set in the IFR appropriately balance the public's interest in setting requirement to promote broadband access, while at the same time providing flexibility for state and local governments to ensure that broadband services are robust, reliable and affordable to meet the varied needs of their communities. While UTC supports the minimum speed standards within the IFR, it believes that the IFR provides flexibility for state and local governments to invest in broadband projects with higher speeds and greater capacity. In addition, UTC recommends that the Treasury develop standards for latency, which is increasingly important for real-time and interactive applications. Moreover, latency can affect VoIP if it exceeds 100 milliseconds. Accordingly, the Treasury should incorporate latency along with speed and scalability when developing its requirements for broadband projects.

Support for Funding for Middle-Mile and Last-Mile Broadband Projects and Promoting Broadband Affordability

Finally, UTC takes this opportunity to support funding for middle-mile as well as last-mile broadband projects. While investments in last-mile projects are necessary to provide broadband services to consumers, middle-mile projects are equally important for enabling broadband into unserved areas. That is one of the main reasons that an increasing number of utilities are deploying middle-mile broadband infrastructure in unserved areas. They recognize that they can promote broadband access into unserved areas by deploying middle-mile infrastructure and partnering with third party ISPs, who use the middle-mile broadband infrastructure to interconnect and provide last-mile broadband services to consumers. Utilities are able to deploy middle-mile broadband infrastructure at the same time that they deploy electric infrastructure, which creates synergies and reduces the overall cost of deployment. In turn, this helps to promote broadband affordability as well as access, which is a key component of the IFR and directly advances the purposes of the State and Local Coronavirus Fiscal Recovery Funds to offset the impact of the pandemic. In this context, UTC applauds the Treasury for clarifying in its FAQ that state and local governments may use the payments from the Funds for middle-mile projects, and it respectfully requests that the Treasury support investments by state and local governments in middle-mile project in order to promote last-mile broadband access and affordability.

UTC also takes this opportunity to support the Treasury's efforts to promote broadband affordability, particularly

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by encouraging recipients to “prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives.”⁴ UTC agrees that affordability is an important goal of the State and Local Coronavirus Recovery Funds, together with promoting broadband access. UTC also agrees with the Treasury’s observation that utilities are providing broadband at affordable prices. Many utilities who are providing broadband services offer gigabit speeds and lower speed services for less than \$100/month. Take rates for these services are high and customer churn is low, reflecting the value that consumers are getting and the importance of broadband services to their daily lives. Utilities are providing broadband services and deploying broadband infrastructure to promote economic recovery and to improve the quality of life for the communities that they serve. In that way, utilities promote the same values as the Treasury is promoting in its IFR. Therefore, UTC is pleased to support the Treasury’s effort to promote broadband affordability as well as access.

In conclusion, UTC supports the Treasury’s IFR and looks forward to working with state and local governments to support access to robust, reliable and affordable broadband services through investment in and the deployment of last-mile and middle-mile broadband networks by state and local governments together with electric, gas and water utilities, including investor-owned, cooperative and public power utilities. UTC appreciates the opportunity to comment and for consideration of the above-referenced recommendations for the provisions within the IFR. If there are any questions concerning this matter, please contact the undersigned.

Respectfully,



Brett Kilbourne

⁴ IFR 86 Fed. Reg. at 26806.