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STATE & LOCAL POLICYMAKERS' BROADBAND PLANNING TOOL KIT

The Parameters of Effective Broadband Planning

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KEY TAKEAWAYS

- Deliberate, data-driven, and inclusive broadband planning is critical to guiding the wise and efficient investment of government resources.
- Optimal planning processes are collaborative and transparent, ensuring that all voices are heard and that all potential partnerships are explored.
- Cities and states must be cautious when engaging third-parties to assist in broadband planning and should thoroughly vet potential partners.

Why is the Broadband Planning Process Important?

Broadband projects of any size are complex and expensive undertakings that implicate a host of technical, financial, legal, and consumer issues. Successful outcomes hinge on careful planning to ensure that every aspect of a project is addressed and that, in the event a disruption occurs, there is a plan in place to address it.

State and local policymakers regularly spearhead broadband planning inquiries. These take many forms, including hearings, working groups, or formal commissions chartered to develop recommendations and plans for addressing specific connectivity issues. These can also include informal discussions with ISPs, businesses, community groups, and others to gather anecdotal data about the state of connectivity.

Over the last few years, planning activity has increased at the local level as cities and counties evaluate whether and how to use Coronavirus Recovery Funds made available by the American Rescue Plan Act.¹ Some localities have invested available funding to hire consultants to guide their planning processes, an approach that could yield suboptimal outcomes if essential precautions are not taken (see below for further discussion). Others have leveraged existing city or county bodies – e.g., City Council committees – to identify priorities and the most efficient ways of addressing them.

State broadband planning efforts have ramped up considerably due to the availability of significant BEAD funding for broadband expansion projects. States have developed plans and related materials for submission to NTIA, which will review and approve them before releasing grant funds for broadband deployment.²

In general, state planning in the context of BEAD has been focused primarily on detailing how funding will be used to facilitate broadband deployment to unserved and underserved locations.³ These efforts generally align with much of the ongoing broadband planning efforts at the local level, although some localities are unwisely electing to spend funds on overbuilding duplicative infrastructure.

This document articulates best practices and guiding principles for state and local policymakers seeking to engage in an inclusive and robust planning process. Doing so will

ensure that the planning process identifies real broadband challenges and deploys feasible solutions.

What Factors Contribute to Successful Broadband Planning?

Effective broadband planning reflects several core best practices that should inform and shape any broadband planning process. These best practices encourage state and local broadband planning processes to be:

- **Inclusive.** Planning processes should be a vehicle for bringing all stakeholders – incumbent ISPs, potential new ISPs, businesses, community groups, etc. – together for solution-focused dialogues. Too often, planning is an insular undertaking that pits parties against each other from the start. A better approach is to be inclusive from the outset so that every perspective is heard and weighed equally in the outcome.
- **Transparent.** Planning should happen in the sunshine to the maximum extent possible. Planning should not occur behind closed doors. Being transparent throughout the entire planning process – from pre-planning, through its formal launch and during the drafting of a plan or recommendations – will ensure that the public is apprised of what will likely be a substantial project that will impact them. Healthy, public, data-driven debates will enhance outcomes.
- **Collaborative.** The third major step is collaboration – *i.e.*, actively working with stakeholders to forge partnerships and other joint efforts aimed at bolstering broadband availability. Proceeding with a collaborative mindset from the outset will help to steer planning efforts towards recommendations and projects that include PPPs, which are the optimal approach to addressing many connectivity issues. Conversely, beginning a planning process with an outcome already in mind – or hiring a consultant with a history of recommending a single “solution” to broadband challenges – makes collaboration difficult.
- **Data-Driven.** Gathering insight and as much relevant data as possible from stakeholders during the planning process is essential to precisely identifying which parts of a city or state remain without robust broadband availability or where broadband adoption is lagging. These data should be supplemented with as much additional information as possible – information ideally gathered from trusted sources.
- **Cautious.** Broadband planning can attract a wide range of firms interested in working with a state or local government in the pursuit of better broadband connectivity. Some of these firms are established entities, like incumbent ISPs or local chambers of commerce, which might bring valuable ideas and data to the table. A range of other firms, though, might only be interested in potential paid opportunities (*e.g.*, generating a feasibility study) and not in working with a city or state to improve its long-term wellbeing. States and cities should proceed cautiously when engaging with firms that might be pursuing one-off opportunities.

How Can Decisionmakers Thoroughly Vet Third Parties Seeking to do Business with a City or State as Part of Its Broadband Planning?

Many cities and states hire third-parties to assist with broadband planning. Such entities typically include:

- **Consultants**, which are tasked with spearheading development of a broadband master plan or a GON feasibility study;
- **Survey firms**, which might assist a consultant in gathering public input regarding the state of broadband connectivity in an area; and
- **Engineering firms**, which might help a city or state inventory key assets for use in bolstering broadband availability.

Many of these firms specialize in broadband planning, and some have developed reputations for delivering the same or similar recommendations and work-product across very different markets (e.g., firms that always recommend a GON or a particular model for facilitating new market entry). In addition, some firms seek to profit from an engagement with a city or state in multiple ways – e.g., by securing a contract to develop a study that eventually recommends a GON, and then bidding on the contract to design and/or build the system that the firm itself recommended. This dynamic does little to help develop plans reflecting the myriad nuances in connectivity likely evident in a city or state. Accordingly, *it is critically important that state and local policymakers proactively vet the entities they are engaging to help in the planning process.*

To assist in this vetting, questions that might be posed to these entities – either as part of the bidding process (e.g., as a questionnaire included in an RFP) or as a requirement to be completed during the contracting stage (*i.e.*, after the RFP process but before formally locking in a contract) – are included in the ACLP’s **Questions to Ask Firms Seeking to Assist in Broadband Planning**. These questions are designed to elicit important information regarding the track-record and motives of a firm under consideration.

What is the Significance of Cybersecurity Issues in Broadband planning?

There have been numerous recent examples of city and state government websites being hacked by bad actors. Some critical systems, like hospital networks, have been forced offline for weeks. The generally poor track record of public IT systems is highly relevant in the context of discussions regarding a possible government-owned broadband network or other government-led broadband project.

As such, it is critical that state and local policymakers ensure that whatever entity may be assisting them in the development of their broadband plans has an operational understanding – *and visible track record* – regarding the many legal, technical, financial, and operational issues implicated by rising and ever-evolving cybersecurity threats facing governments across the country.

It should also be noted that NTIA included a range of cybersecurity-related requirements in its BEAD program, reiterating the importance of this issue.⁴ However, NTIA set a low threshold for vetting firms on these key parameters. NTIA allows states to allocate grants to firms with little or no experience with cybersecurity issues so long as those firms have a cybersecurity plan that is “ready to be operationalized upon providing service.”⁵ When designing their BEAD grant programs, states should strive to exceed NTIA’s minimum threshold and prioritize applicants that have a demonstrated track-record of success vis-à-vis deploying cybersecurity plans and successfully thwarting cyber-attacks.

¹ For an overview, see Coronavirus State and Local Fiscal Recovery Funds, U.S. Dept. of Treasury, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

² For an overview of this process, see *An Overview of the Infrastructure Investment & Jobs Act's BEAD Program*, ACLP at New York Law School (Dec. 2021), https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1000&context=reports_resources.

³ States that request and receive funding to assist in these planning efforts must develop a 5-Year Action Plan, the requirements of which are set forth in Section 60102(e)(1)(D) ARPA. To receive the first tranche of funding for broadband deployment, states must then submit an Initial Proposal, the requirements of which are set forth in Section 60102(e)(3)(A) of ARPA. To receive the remaining funds for broadband deployment, states must submit a Final Proposal, the requirements of which are set forth in Section 60102(e)(4)(A) of ARPA. For additional information, see *generally BEAD NOFO*.

⁴ *BEAD NOFO* at p. 70.

⁵ *BEAD NOFO* at p. 70.