



Oregon Citizens' Utility Board

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To: Chair Bynum, Vice-Chair Morgan, Vice-Chair Nguyen and members of the House Committee on Economic Development and Small Business

From: Jennifer Hill-Hart, Policy Manager, Oregon Citizens' Utility Board (CUB)

Re: Support for HB 3201 – Aligning Statute to Maximize Federal Broadband Funding

CUB is a membership-based 501(c)3 nonprofit consumer advocacy organization that represents the interests of Oregonians before legislative, administrative, and judicial bodies. We appreciate the efforts and thought legislators have put into bills that seek to increase access to broadband in Oregon. CUB believes that HB 3201 is the best bill to ensure Oregon is situated to access federal funding in a timely manner. While Oregon can access around \$700 million dollars for broadband expansion, if our laws are too restrictive, Oregon is at risk of losing the full allocation of the federal funding opportunities. CUB urges this Committee to support HB 3201 with the -1 and -2 amendments and pass it on to your colleagues with a do pass recommendation.

Broadband is an essential communications tool in the 21st century, quickly replacing traditional landline voice services. In some parts of Oregon, the existing landline infrastructure is archaic and starting to fail, and the repairs are costly. Couple this with the decline of landline voice service and it's logical to assume that telephone companies will be reluctant to invest in landline infrastructure upgrades or long-term repairs. This can leave Oregon communities at risk of band-aid solutions, rather than long-term investment, as companies and communities wait for broadband to replace landlines. Also, if those telephone service upgrade or repair costs are passed onto customers, they can be extremely costly. Because broadband expansion is inevitable, Oregon must be prepared to be at the front of the line to access federal funds and thereby reduce the costs of bringing broadband to those with little or no access to it.

Oregon's definitions of "underserved" and "unserved" are outdated and put our state at risk of losing access to federal funding.

HB 3201 gives Oregon the best chance to quickly maximize federal funding opportunities to expand broadband. The Oregon Broadband Fund, the federal American Rescue Plan Act (ARPA), and federal Infrastructure Inflation and Jobs Act's (IIJA) Broadband Equity, Access, and Deployment (BEAD) Program each have different funding criteria. For example, the Oregon Broadband Fund has different speed requirements for "underserved" and "unserved" than the BEAD program. Last year's understanding of underserved and unserved areas was based upon

upload and download speeds that fit the definition at the time. Since then, those numbers have changed: the Oregon Broadband Fund statute's current definition of "underserved" is considered "unserved" by the BEAD program and "underserved" is a higher standard than current Oregon law.¹ The BEAD program recognizes there are more folks considered underserved than we thought a year ago.

For example, the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) administers BEAD funding. In their Notice of Funding Opportunity for BEAD funds, NTIA acknowledges that some states may have laws that predate the IIJA and may place restrictions on broadband assistance. If these laws are still in place, they can impact the success of a state's application.² The Oregon Broadband Fund also uses different geographic mapping of these areas than BEAD.³ Accordingly, we are at high risk of losing access to BEAD funds or delaying our application with our restrictive definition. This funding is critical to growing broadband and reducing costs to Oregonians. HB 3201 is a simple fix to remove that threat.

HB 3201 does not remove the "unserved" and "underserved" criteria. Rather, that criteria recognizes that it is most prudent to allow the Oregon Broadband Office to identify those criteria. The Legislature has already tasked the Oregon Broadband Office, under the advisement of the Oregon Broadband Advisory Council,⁴ with leading Oregon's efforts to close the digital divide. The Oregon Broadband Office has the responsibility of administering and issuing the Oregon Broadband Fund grants and loans and is also responsible for applying for federal funding and distributing broadband funds.

To make sure Oregon can access federal funds in a timely manner, our statutes must remove unnecessary barriers. Rather than trying to keep pace with fast-moving internet technology changes and then come back to the Legislature to regularly update speeds or other criteria, it makes sense to permit the Oregon Broadband Office to make these decisions. To ensure Oregon can access federal funds in a timely manner, our statutes must not include any unnecessary barriers. The Oregon Broadband Office is well-poised to be the most up to date on broadband trends and opportunities. Oregon must be prepared to adjust to contemporary understandings of what equitable access to broadband looks like, and removing unnecessary barriers will put us in a more competitive position to access maximum federal funding in a timely manner.

¹ U.S. Department of Commerce, Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program (BEAD NOFO), pp 16–17 (<https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>).

² *Id.* at 51.

³ *See id.* at 16–17.

⁴ <https://www.oregon.gov/biz/aboutus/boards/bac/Pages/default.aspx>

Federal funding opportunities have time limits and Oregon must be able to quickly use federal funds.

BEAD funding recipients must begin providing broadband services within four years of the date they received the grant funds,⁵ whereas those receiving ARPA funds have until December 31, 2024, to decide how the funds will be used and until 2026 to use them.⁶ HB 3201 considers these approaching deadlines. Removing the “right of first refusal” language from the law enables this process to move quickly so Oregon can start broadband projects as soon as possible. HB 3201 with the -1 and -2 amendments provide for a process for parties denied a grant to appeal that decision on the front end, rather after a project is awarded as would be the case with right of first refusal. **Notably, new and existing providers can apply for the available federal funding grants.** HB 3201 in no way prohibits existing providers to apply for federal funding grants through the Oregon Broadband Office.

The digital divide was an urgent policy concern before COVID-19 and as we all know, was further exposed by the pandemic. Oregon responded by prioritizing public policies that increase access to affordable and reliable broadband service. If Oregon’s laws are too restrictive to keep up with changing broadband technologies and capabilities, or are too cumbersome to implement in accordance with federal funding requirements, we risk losing those funds that many of our communities need. Broadband expansion is necessary, but it is also expensive, particularly for providing access and necessary infrastructure for Oregon’s unserved and underserved communities. CUB urges the Committee’s support for HB 3201 with the -1 and -2 amendments and swift movement toward passage. Thank you for your consideration.

⁵ BEAD NOFO at 65.

⁶ Coronavirus State and Local Fiscal Recovery Funds, 87 FR 4338-01, p 4340 (Jan. 27, 2022) (available at: <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>).