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Via Electronic Mail

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Re: Talkie Communications, Inc.'s Comments on Delaware DTI's Draft Final Proposal for BEAD

Dear Assistant Secretary Davidson *et al.*:

Talkie Communications, Inc. ("Talkie") hereby submits its comments on the Delaware Department of Technology and Information's ("DTI") Broadband Equity, Access, and Deployment ("BEAD") Program Draft Final Proposal ("DFP"). Talkie is a Maryland, family-owned small business that has rapidly deployed its Fiber-to-the-Home ("FTTH") network and is bringing Gigabit-speed broadband services to various rural communities in Maryland and Delaware.¹

¹ For more information on Talkie, see <https://talkiefiber.com/>.

For the three significant reasons provided below, Talkie urges NTIA to reject DTI's DFP and require the DTI to reopen its BEAD application process and cure the failures and shortcomings associated with its DFP.

1. Rejection of the DFP is Appropriate Because It Directs Funds to Deploy in Areas Subject to “Enforceable Commitments.”

First, the DFP should be rejected because it includes 31 BEAD funded locations where there are existing Rural Digital Opportunity Fund (“RDOF”) Enforceable Commitments. **Exhibit 1** attached hereto identifies and shows the specific locations where DTI improperly proposes to award BEAD grants that directly overlap locations where Talkie is already obligated to deploy its broadband network pursuant to the Federal Communications Commission’s (“FCC”) RDOF Program.²

As the DTI is well aware, these 31 locations are not eligible for BEAD funding because the BEAD Notice of Funding Opportunity (“NOFO”) explicitly prohibits treating locations with Enforceable Commitments as “unserved” or “underserved.” The NOFO expressly states: “[i]n identifying an Unserved Service Project or Underserved Service Project, an Eligible Entity may not treat as ‘unserved’ or ‘underserved’ any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband . . .” Additionally, the NOFO clarifies that an Enforceable Commitment exists when a location is covered under RDOF support authorized by the FCC.

DTI’s proposed allocation of BEAD funding to such locations violates these directives. This express prohibition under the NOFO disallows such BEAD funding where overlap would occur with existing Enforceable Commitments, and must be followed to prevent wasteful spending of taxpayer dollars. In short, permitting Delaware to spend BEAD funds to overbuild RDOF areas duplicates existing commitments and wastes taxpayer resources.

Nor should any middle-mile facilities (which DTI did not reveal in its DFP materials) through RDOF territories be funded by BEAD. The DTI has not shown such

² By way of background, on February 14, 2022, the FCC formally approved Talkie’s long-form application and authorized RDOF support to deploy its Fiber-to-the-Home (“FTTH”) services to 7,749 locations in Delaware. *See Rural Digital Opportunity Fund Support Authorized for 2,576 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, DA 22-151 and Attachment A pp. 31-84 of 129 (rel. Feb. 14, 2022), *available at* <https://www.fcc.gov/document/rdof-auction-904-sixth-authorization-public-notice>).

middle-mile facilities could not be obtained from the RDOF winner in such areas. Delaware BEAD grant winners requiring access to middle-mile infrastructure in such RDOF areas should look to lease it from RDOF providers in such areas, such as Talkie, so as to avoid unnecessary duplicative fiber deployment in these RDOF areas. Until these overlaps are eliminated from the DFP, NTIA should reject the DFP and not disburse any funding requested under it.

To recap, the 31 locations that overlap with RDOF Enforceable Commitments must be removed from the DFP. In addition, where the DFP seeks to fund another provider to deploy middle-mile through RDOF areas, such areas should be removed from the DFP. Funding such locations diverts resources from truly unserved communities and contravenes BEAD's mission to bridge the digital divide. These adjustments are essential to ensure compliance with federal guidelines and to prevent the inefficient and wasteful allocation of funds.

2. Rejection of the DFP is Appropriate Because DTI Failed to Ensure a Fair, Open, and Competitive Process.

Second, the DFP should be rejected because DTI's BEAD application process utterly failed to "ensure a fair, open, and competitive process"³ that should have ensured small, women-owned and minority owned businesses participated and were considered in the program.⁴ Instead, small businesses, like Talkie, were prejudiced by DTI's supposed concerns that such providers could not satisfy—in the Delaware Broadband Director's own words—NTIA's "very high standards." This statement, among others, made it clear that the DTI favors and caters to large businesses. Indeed, NTIA's overly burdensome criteria as implemented by the DTI effectively created insurmountable barriers for small businesses, which thereby excluded them from meaningful consideration and participation.

This approach not only contradicted the principles of equitable access to broadband funding and promotion of competition for such funding, but also further entrenches the dominance of large established players/businesses that do not care about the average consumer, especially those in rural communities. Adding insult to

³ See DFP at 3, Section 1.2 (Text Box: Describe the steps that the Eligible Entity took to ensure a fair, open, and competitive process...").

⁴ See NTIA Notice Of Funding Opportunity ("NOFO"), BEAD Program at 6, 20, 52-53, 85, 88-89 (May 13, 2022), *available at* <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

injury, the ultimate victims of DTI's rigged practice are the rural broadband consumers who are the intended beneficiaries of these government resources.

DTI's biased Subgrantee Selection Process only made preliminary awards to large incumbent providers in Delaware. Rather than take such an unfair and biased approach that only supports large businesses, DTI should instead be following the approach of other states, such as Nevada and Louisiana, that have a wide range of small, medium, and large ISPs selected as proposed subgrantees.⁵

But this is not the first time that DTI has engaged in such overbuilding and prejudice. For instance, in 2021, the DTI limited a \$56 million ARPA RFP to “[c]urrent State of Delaware cable television service provider franchisees with existing broadband infrastructure.”⁶ No other providers or competitors were allowed to apply for such ARPA funds⁷ and Delaware awarded 56 million to overbuild areas where Talkie has already been funded to deploy facilities through the FCC's RDOF program in Delaware.⁸ Talkie is investigating DTI's continuing preferential and anticompetitive behavior through a Freedom of Information Act (“FOIA”) request it launched in September; however, the DTI has yet to provide the emails and documents requested.

To make matters worse, Delaware fails to disclose such wasteful spending of taxpayer ARPA dollars on overbuilding in its [Broadband Project Dashboard](#) map. This map *only* shows where such ARPA funds were awarded along with the status of the

⁵ See Nevada Governor's *OSIT Announces Provisional Winners of the \$550 Million High Speed Nevada Initiative Phase II*, Publishes BEAD Final Proposal for Public Comment (Dec. 16, 2024), available at <https://osit.nv.gov/uploadedFiles/ositnv.gov/Content/Broadband/NV%20BEAD%20FP%20Press%20Release.pdf>; see also *Bead Final Proposal Provisional Awards, Louisiana ConnectLA* (Nov. 18, 2024), available at https://connect.la.gov/media/y0lfipff/final-gumbo2_selections-11_14_2024.xlsx.

⁶ Adam Bender, *Del. Broadband Grants to Big ISPs Raise Concerns*, CommunicationsDaily (April 11, 2022), available at <https://web.archive.org/web/20220411135951/https://communicationsdaily.com/article/2022/04/11/del-broadband-grants-to-big-isps-raise-concerns-2204080034> (attached hereto as **Exhibit 2**).

⁷ *Id.*

⁸ See *Delaware Announces Start of Universal Broadband Construction* (Mar. 17, 2022), available at <https://news.delaware.gov/2022/03/17/delaware-announces-start-of-universal-broadband-construction/>.

construction (which was largely completed in 2023). Despite the completion of such projects in 2023, DTI has failed to update the FCC's Broadband Funding Map to show such funding and wasteful overbuilding of RDOF areas in Delaware using the ARPA [Capital Projects Fund](#) or [State and Local Fiscal Recovery Fund](#).⁹

At this time, absolutely nothing in the DFP indicates why such preliminary awards are fair, impartial, or are otherwise appropriate. NTIA should not tolerate this seemingly inequitable/imbalanced preliminary awards and failure of transparency. Rather, NTIA should deny DTI's DFP and require DTI to go back to the drawing board and require it to employ a fair, impartial, and fully transparent approach.

3. Rejection of the DFP is Appropriate Because Spending on Non-Deployment Initiatives is Excessive.

Third, the DFP should be rejected because DTI proposes to inappropriately spend over \$76,357,861.66 in funding for "non-deployment" uses, which is 4.38 times more for "non-deployment," than on "deployment" initiatives. While the BEAD program under 47 U.S.C. § 1702(f) allows for some funds to be spent on non-deployment adoption measures, the purpose for BEAD funding was to assist primarily with deployment, rather than non-deployment initiatives. The whole point of the BEAD program was to improve the lives and prosperity of the unserved and underserved in rural communities. DTI should not be allowed to direct tens of millions of dollars to Delaware's special interests/non-deployment initiatives and exploit the BEAD program.

Given the change in administration, allocating huge amounts in discretionary/non-deployment initiatives under the DFP at this juncture would be fiscally inappropriate. Such spending decisions should be deferred until the next administration establishes its policy objectives, implementation strategies, and funding priorities for non-deployment initiatives, *especially when other states and territories have complained they do not have enough BEAD funding to cover their deployment initiatives*. Moreover, approving the \$76,357,861.66 allocation now, during a transitional, "lame duck" period, risks misalignment with future NTIA leadership and their directives and exposes any such substantial funding award for non-deployment initiatives (relative to deployment initiatives) to clawback.

⁹ See **Exhibit 3** (attached hereto) comparing Delaware's [Broadband Project Dashboard](#) map with the FCC's Broadband Funding Map for [Capital Projects Fund](#) or [State and Local Fiscal Recovery Fund](#) and [RDOF](#).

For the foregoing reasons, the DTI's DFP should be rejected and DTI should be required to (a) reopen its BEAD application to allow for a fair, transparent, and non-preferential process and (b) cure the issues discussed herein.

Respectfully submitted,



Andre DeMattia Co-CEO,
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Exhibits 1, 2, and 3 attached.

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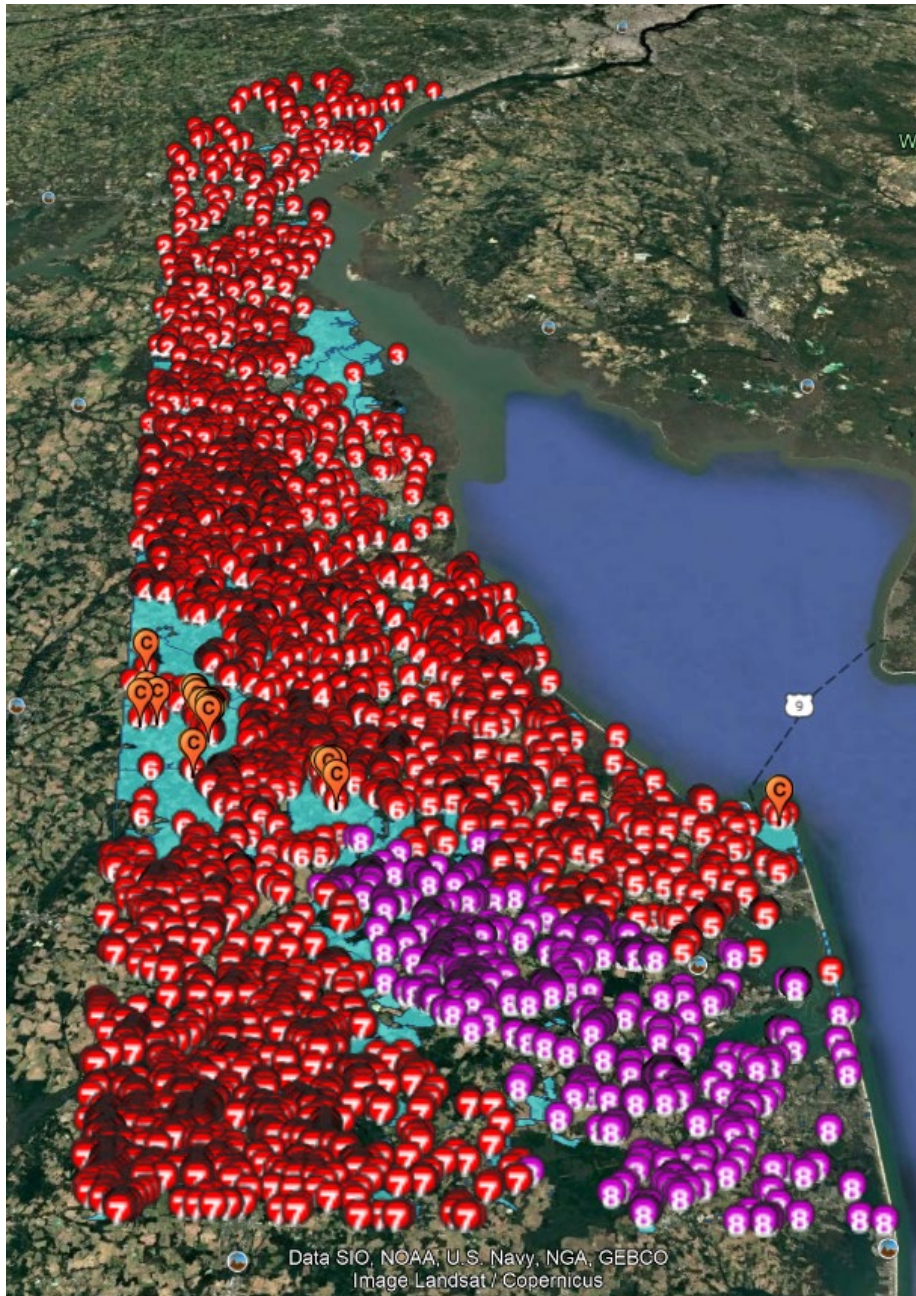
Exhibit 1

DE BEAD Location IDs Improperly Overbuilding RDOF Locations

1310896557
1310872615
1310869013
1310869015
1310874507
1310874506
1310874508
1310870934
1310870936
1310874505
1310896556
1310869023
1310869021
1310869024
1310869025
1310869011
1310869026
1310869014
1310869016
1310869019
1310869017
1310874504
1354337377
1354337378
1354337825
1354337826
1354337819
1354337815
1354329291
1354337833
1412939911

The above list of numbers are the Delaware Location IDs where the DTI proposes to award BEAD grants that directly and improperly overlap locations where Talkie is already obligated to deploy its broadband network pursuant to the FCC's RDOF Program.

Map 1: Shows all BEAD Funded Locations in Delaware



Legend

Red Dots with Numbers 1-7= Verizon Delaware LLC (Verizon) Proposed Subgrantee BEAD Awards for Grant Areas 1-7. See DTI-BEAD Final Proposal Budget Narrative at 2-3.

Purple Dots with Number 8 = Comcast Cable Communications Management LLC Proposed Subgrantee BEAD Award for Grant Area 8. See DTI-BEAD Final Proposal Budget Narrative at 3.

Orange Dots with a C = Conflict - Verizon Proposed Subgrantee BEAD Award for Grant Areas that improperly overbuild on RDOF areas that are existing Enforceable Commitments.

Map 2: Blow up of areas in Map 1, above, where proposed BEAD-funded locations improperly overbuild RDOF locations that are existing Enforceable Commitments.



Exhibit 2

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Del. Broadband Grants to Big ISPs Raise Concerns

Competitors raised concerns with Delaware limiting eligibility for \$56 million in American Rescue Plan Act (ARPA) funding to big ISPs with existing cable franchises. Competitive telecom groups said they hoped for open and technology-neutral bidding processes there and in other states. A Delaware official defended the state program's eligibility restriction, which excluded a Rural Digital Opportunity Fund (RDOF) winner, as an "edge-out" strategy to extend broadband more quickly.

Delaware awarded \$33.1 million to Comcast last month, \$11.8 million to Verizon and \$11.1 million to Mediacom. The state said construction would begin in weeks and over 36 months will extend 100 Mbps download and 20 Mbps upload speeds to 11,600 homes (see 2203170053). Competitors weren't eligible for the funding under the state's request for proposals. The RFP said: "Current State of Delaware cable television service provider franchisees with existing broadband infrastructure are eligible to apply for these Award Funds."

Maryland-based fiber ISP Talkie would have bid for Delaware money to supplement RDOF support it received for parts of the state bordering Maryland, if there hadn't been a restriction, said Talkie co-CEO Andre DeMattia in an interview. Talkie got final FCC approval Feb. 14 for \$13.3 million to cover 7,749 Delaware locations over 10 years.

Delaware wasted money by paying incumbents to expand into places where Talkie is obligated to build out fiber under RDOF, said DeMattia: The state could have spent less by augmenting Talkie's RDOF support, he said. "Now

there's going to be two providers in the exact same spot." In the fiber business, "the first provider there wins, so whoever's there second is going to get very low return on investment," said DeMattia. "The race now is on."

States shouldn't be allowed to discriminate, said Talkie lawyer Philip Macres of Klein Law Group. Delaware's eligibility limit violates the Treasury Department's ARPA guidance to require competitive bidding processes and to avoid waste, said Macres: Using ARPA money for areas funded by RDOF is effectively overbuilding. "There might have been other smaller providers that wanted to be part of this" and could have built out areas for less money, said Macres. "They didn't even have a chance to compete."

Areas where Delaware awarded ARPA money overlap 100% with places where Talkie won RDOF support, said Macres. Delaware failed to widely publicize the RFP on its website and there was no way to challenge incumbents' bids, he said. On possible legal next steps, Macres said Talkie will evaluate its options. It's unclear if Delaware would impose similar restrictions in future RFPs, he said: "I'm not optimistic."

'Gap-Fill' Strategy

Delaware's "overarching interest was in deploying future-proof, high-speed infrastructure as quickly as possible -- both to satisfy urgent demands of currently unserved and underserved households and to avoid exceeding grant-required deadlines," emailed Chris Cohan, Delaware Department of Technology and Information chief-policy and communications. "Based on these priorities, we adopted an edge-out and gap-fill strategy to provide broadband to unserved areas ... by utilizing existing providers that have significant investments and resources in the state's current infrastructure."

Delaware received proposals from three of its four franchise ISPs, said Cohan. "The planning and procurement process was conducted in accordance with state procurement laws" and "within the parameters of the ARPA requirements," he said. "ARPA and RDOF are two separate funding programs that are not connected. They do not have the same requirements."

Mediacom has "always maintained that the most efficient and effective way to bridge America's digital divide is to ... leverage the existing fiber infrastructure that runs through or near the targeted unserved/underserved areas," said a spokesperson: Such programs "will be able to stretch their dollars further, reach more homes and businesses, and create more sustainable projects." Comcast and Verizon declined to comment.

Delaware consulted with CTC Energy and Technologies as it developed its RFP. CTC's May 2021 report, which the state referenced in a Sept. 22 press release, didn't specifically recommend limiting eligibility, though it noted incumbent ISPs "could use an edge-out approach" to reach nearly 90% of unserved residents if they expanded footprints by one-half mile into unserved areas. Talkie got RDOF support for Delaware, but "questions remain about execution," the CTC report said. "We do not know whether Talkie can deliver." CTC didn't comment now.

ARPA doesn't specifically direct states as to whom they must make funds available, unlike the Infrastructure Investment and Jobs Act, said Ken Fellman, a telecom attorney for local governments. "I can challenge the wisdom of that policy ... but I don't know that there's anything in ARPA that would keep the state from doing that." Delaware or other states probably could be refused federal funding if they tried to impose such limits on IIJA broadband equity, access and deployment support, the lawyer said.

Competitive Concerns

The Fiber Broadband Association asked Delaware to reconsider the restriction. “We are concerned that by restricting eligible entities to incumbent cable television service providers, the program is neither maximizing use of its limited funding -- stranding many ‘unserved’ households that could be served -- nor necessarily selecting the best provider to deploy future-proof infrastructure,” wrote FBA President Gary Bolton in a Nov. 4 letter to the Delaware Department of Technology and Information. “Expanding the eligibility pool and using a competitive bidding process would address both flaws.”

“We had concerns about the process being more targeted,” Bolton told us now, but “my understanding is the result looks very fiber-friendly.” Verizon is an FBA member that will deploy fiber-to-the-home, and while Comcast and Mediacom aren’t members, Bolton believes they too will deploy fiber, he said. Bolton doesn’t want “any kind of thumb on the scales,” but “if people are getting fiber and you’re serving every member of the community ... that’s great if an experienced provider can do that.”

Bolton didn’t receive a formal response to his Nov. 4 letter, but “we were heard,” said the FBA president, saying he had “discussions with folks that have influence on these things.”

Competitive wireline and wireless associations urged open processes. “It is imperative that all ISPs have a chance to compete to bring future proof broadband networks to unserved and underserved areas,” emailed Incompas General Counsel Angie Kronenberg. “Competition for broadband funding brings new networks and faster speeds to local communities. Favoring incumbents or excluding competitors altogether results in taxpayers paying more than they should for deployment. Entrenching monopolies by rewarding them for their failure to build is anticompetitive and squanders a real opportunity to inject competition into the marketplace.”

The Wireless ISP Association thinks the “process, in Delaware and elsewhere, should be open and tech-neutral to all comers who can make bids, and offer viable solutions to bring broadband to the unserved,” a WISPA spokesperson said. “This open process will bring more players to the table, and best serve the purposes of the variety of broadband funding programs out there now.”

Free State Foundation President Randolph May would “prefer that a state’s grant process not limit eligible funding recipients only to fixed terrestrial broadband providers, while expressly excluding fixed wireless, mobile, and satellite, as the Delaware grant process appeared to do,” he said. But Delaware’s RFP stressed readiness as a priority, he said. “To the extent timeliness of deployment is a legitimate consideration, broadband providers with existing infrastructure are going to have an advantage.”

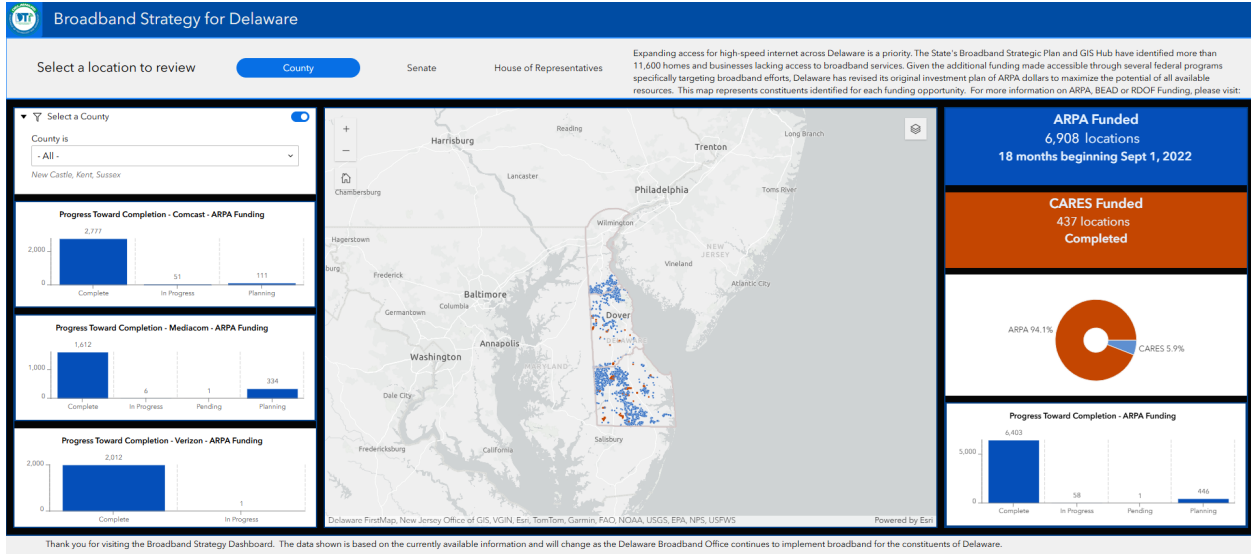
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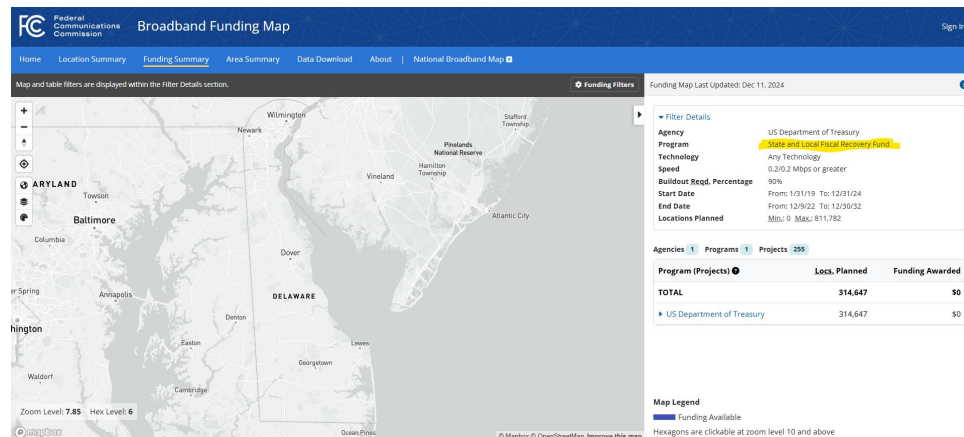
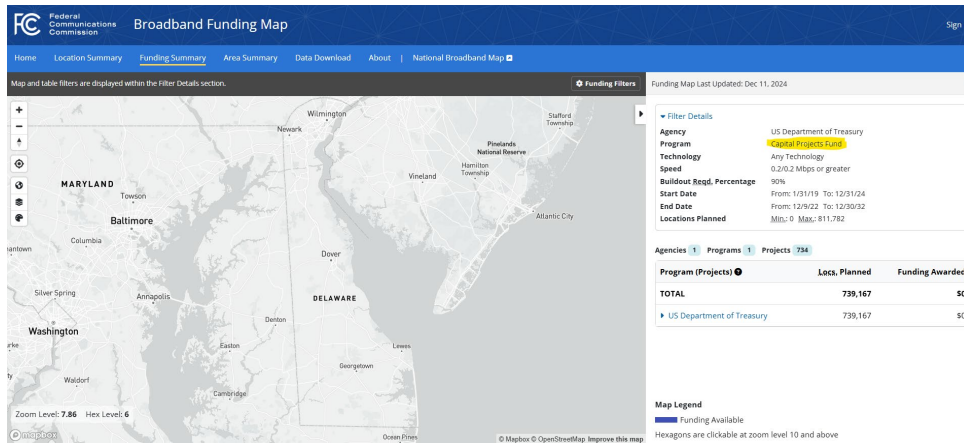
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Exhibit 3

➤ **DTI's Broadband Strategy for Delaware Funding Map (Showing DE ARAP Funded Broadband Deployment Projects in Blue Dots)**



➤ **FCC's Broadband Funding Map for Delaware (Not Showing DE's ARPA Capital Projects Fund or State and Location Fiscal Recovery Fund Broadband Deployment Projects)**



➤ **FCC's Broadband Funding Map for Delaware (Showing RDOF Broadband Funded Deployment Projects)**

