

# United States Senate

WASHINGTON, DC 20510

April 20, 2023

The Honorable Alan Davidson  
Assistant Secretary of Commerce for Communications and Information  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue NW  
Washington, D.C. 20230

Dear Assistant Secretary Davidson:

We write to express concerns with the direction the National Telecommunications and Information Administration (NTIA) is taking with respect to the \$42.45 billion Broadband, Equity, Access, and Deployment (BEAD) program. In order to fulfill Congress' goal of providing broadband connectivity to unserved Americans, NTIA must address concerns related to its Notice of Funding Opportunity (NOFO) for the BEAD program. As numerous states and stakeholders have articulated, current BEAD rules divert resources away from bringing broadband service to rural America and are inconsistent with NTIA's statutory authority in the Infrastructure Investment and Jobs Act (IIJA). NTIA's failure to resolve these concerns will prolong the digital divide and put billions of scarce taxpayer dollars at risk.

Therefore, we urge NTIA to revise or issue a new NOFO for the BEAD program to address the following issues:

*Labor Requirements:* Under the IIJA, Congress directed NTIA to give priority to eligible broadband providers that have a “demonstrated record of and plans to be in compliance with Federal labor and employment laws.” The NOFO goes far beyond this statutory objective, however, by actively discriminating against workers in ways that could deny communities—particularly those in more rural areas—access to reliable broadband services.

For instance, the NOFO requires subgrantees to prioritize certain segments of the workforce, such as “individuals with past criminal records” and “justice-impacted [...] participants,” when building out broadband networks. As long as a provider is in compliance with Federal labor and employment laws, NTIA should not add extraneous requirements to achieve targeted social outcomes and make projects less economical.

*Encouragement of Government-Owned Networks:* The NOFO gives favorable treatment to government-owned networks over private investment. Specifically, the NOFO requires states to include “an explanation for awards to traditional broadband providers when one or more non-traditional providers submitted competing proposals.” This misguided incentive, which was not included in the IIJA, could divert program dollars to less capable providers—a real risk given municipal broadband's track record of costly failure.

*Tech-Neutrality:* The NOFO generally prohibits non-fiber projects from receiving BEAD funding despite Congress' technology neutral stance in the IIJA, which permitted all technologies, including wireless service, to be eligible for funding as long as they meet the IIJA's network requirements. Further, under the NOFO's rules, a state that does not use fiber must submit an overly complex and burdensome waiver request, inconsistent with Congress' intent. States, working with the broadband providers that serve their communities, should not be precluded from awarding sub-grants to alternative technologies, if doing so is the right solution for their communities. In the absence of such flexibility, NTIA will fail in its mission to efficiently connect all Americans.

*Mandates for Affordability and Rate Regulation:* The IIJA does not allow NTIA "to regulate the rates charged for broadband service." Contrary to Congress' intent, the NOFO requires states to "ensure that high-quality broadband services are available to all middle-class families in the BEAD-funded network's service area at reasonable prices." This provision falsely suggests that states and NTIA have the authority to regulate rates for broadband service and should be removed from BEAD rules. Additionally, the NOFO introduces an additional form of rate regulation by giving preference to providers that agree to interconnect with their competitors at wholesale rates. NTIA should make it clear that states do not have the authority to regulate rates, and NTIA should refrain from introducing any new rules relating to rate regulation or wholesale access requirements that are inconsistent with its direction from Congress.

*Climate Change Mandates:* The NOFO makes several references to and includes a policy that was not included in the IIJA relating to climate change. The NOFO states "eligible entities must account not only for current [climate-related] risks but also for how the frequency, severity, and nature of these extreme events may plausibly evolve as our climate continues to change over the coming decades." This extraneous requirement was not envisioned by Congress and diverts resources away from bringing broadband connectivity to unserved Americans. The NOFO is not the place for NTIA to be pushing the Biden administration's unrealistic environmental agenda onto the American public, and it therefore should be removed.

*Supply-Chain Issues:* The IIJA rightfully recognizes the importance of purchasing broadband products and supplies from American workers and businesses. At the same time, the IIJA provides agencies the ability to waive such a requirement should it satisfy a number of strict thresholds. If NTIA wants to ensure broadband projects are built in a timely manner, NTIA should work alongside stakeholders to develop a consistent waiver process for certain components of a broadband network.

Thank you for your attention to our request, and we look forward to hearing back from you by Thursday, May 4, 2023.

Sincerely,



John Thune  
United States Senator



Ted Cruz  
United States Senator



Roger F. Wicker  
United States Senator



Deb Fischer  
United States Senator



Dan Sullivan  
United States Senator



Marsha Blackburn  
United States Senator



Todd Young  
United States Senator



Ted Budd  
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Eric Schmitt  
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JD Vance  
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Shelley Moore Capito  
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