

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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October 3, 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, N.W.
Washington, DC 20230

Dear Assistant Secretary Davidson,

In 2021, Congress provided \$65 billion to close the digital divide. The National Telecommunications and Information Administration (NTIA) is responsible for administering most of this money, including the \$42.45 billion Broadband Equity, Access, and Deployment (BEAD) program, which will provide states grant money to award providers to deploy broadband networks in unserved and underserved areas. We are concerned about state plans that propose to use funds in ways that will not provide universal connectivity or that are contrary to law.

States have significant discretion in how to award BEAD funds. However, they must submit their plans for using these funds in the five-year actions plans and initial proposals.¹ These plans outline how the state intends to achieve universal connectivity given their budget from BEAD. Many states, such as Maine,² Montana,³ and Louisiana,⁴ correctly recognize that connecting every unserved household will require a mix of technologies, including fixed wireless and satellite. Even California, which makes the troubling statement that the approximately \$5 billion it has from BEAD and other funds “will not enable deployment of broadband

¹ Infrastructure Investment and Jobs Act (IIJA), P.L. 117-158 §§ 60102(e)(1)(D), (e)(3) (2021).

² Montana Broadband Office, BEAD Five-Year Action Plan at 5 (July 25, 2023), https://connectmt.mt.gov/docs/2023.07.25_BEAD-Five-Year-Action-Plan_vClean-FINAL-SUBMITTED.pdf.

³ Maine Connectivity Authority, Five Year Action Plan DRAFT at 32-33 (2023), <https://drive.google.com/file/d/1XOJoEDikSC1CjM9VyP6ZxXTXO0P1ne4q/view>.

⁴ La. Off. of Broadband Development & Connectivity, Internet for All: Five-Year Action Plan at 53 (2023), https://connect.la.gov/media/3cxpxlgb/connectla_five-year-action-plan.pdf.

infrastructure to all unserved locations in the State,”⁵ acknowledges that it will “develop and administer a grant program using a mix of technologies to fit within the BEAD allocation.”⁶ Unfortunately, other states are taking the opposite approach, seeking to exclude certain technologies from use in the program or in their definition of a served location. Ohio and Vermont, for example, plan to consider locations served by fixed wireless as unserved,⁷ even though NTIA includes forms of this technology as a reliable broadband service.⁸

Congress provided a record amount of funding for the BEAD program, so it is frustrating to hear states claim that this is not enough money or try to exclude certain technologies that will help them achieve universal connectivity. This massive investment in broadband will not come again, nor should it be necessary. We recognize that serving every unserved household with this money will require making tough choices, but thankfully, a variety of technologies, including fixed wireless and satellite, can help achieve universal connectivity at different costs. Indeed, that is why the Infrastructure Investment and Jobs Act (IIJA) requires the program to use all available technologies. Thus, if a state is following the law and remaining technology-neutral, there is no excuse for it to assert it lacks sufficient funding to serve every household following this program.

We have been encouraged by previous statements made by NTIA officials on how the Biden administration will evaluate state plans. At our NTIA oversight hearing in May, you said that NTIA “will not approve plans that don't show us how they're going to connect everybody in the state.”⁹ BEAD Program Director Evan Fineman made a similar statement at a 2022 Technology Policy Institute event, stating, “Every state is going to send us a plan. If that plan does not accomplish universal coverage, the plan will be sent back to the state, and they will try again.”¹⁰ We expect the Biden administration to follow through on these statements.

We are also concerned by some efforts by states to regulate the cost of broadband plans. Virginia, for example, asks providers to keep the cost of gigabit symmetrical service “at or below \$100 per month, inclusive of all taxes, fees, and charges billed to the customer,” in order to

⁵ California Public Utilities Commission, BEAD Five-Year Action Plan at 2, 6-7 (Aug. 28, 2023), <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/california-bead-five-year-action-plan---final-draft---20230828.pdf>.

⁶ *Id.* at 7.

⁷ BroadbandOhio, Initial Proposal, Volume I Broadband Equity, Access, and Deployment (BEAD) Program at 12 (2023), <https://broadband.ohio.gov/static/20230721-DRAFT-Ohio-BEAD-Initial-Proposal-Volume-I-vf.pdf>; Vermont Community Broadband Board, Vermont’s Draft Broadband Equity, Access, and Deployment Initial Proposal Volume 1 at 22 (2023), https://publicservice.vermont.gov/sites/dps/files/documents/Vermont%20BEAD%20Initial%20Proposal%20Volume%201_draft%20for%20public%20comment.pdf.

⁸ *Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program* at 15 (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

⁹ Oversight and Reauthorization of the National Telecommunications and Information Administration: Hearing Before the Subcomm on Comm’n & Tech. of the H. Comm. on Energy & Com., 118th Cong. (May 23, 2023) (response of Asst. Sec. Alan Davidson to Chair Cathy McMorris Rodgers).

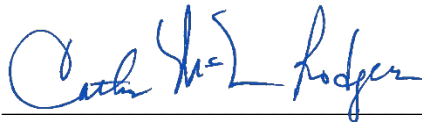
¹⁰ Technology Policy Institute, How Can the States Distribute Broadband Subsidies Effectively?, YouTube (Aug. 16, 2022), <https://www.youtube.com/watch?v=rwebArOSddo>.

receive full credit for affordability under its scoring system.¹¹ Louisiana includes a similar requirement.¹² Affordable broadband is important, but setting rates is not the way to achieve this goal. Indeed, the IIJA explicitly prohibits NTIA from engaging in rate regulation.¹³ Although it is the states setting these rates, we view NTIA's approval of such plans to be NTIA regulating rates in violation of the IIJA. We expect the Biden Administration to abide by Congress' clear prohibition.

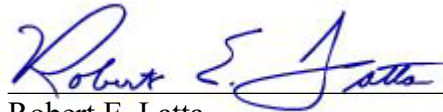
Given the concerning proposals from some states, we ask that you affirm in writing your commitment that you will not approve a state plan that does not achieve universal connectivity using its BEAD allocation or a state plan that sets rates for broadband plans. We look forward to your response by October 17, 2023.

Thank you for your attention to this important matter.

Sincerely,



Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce



Robert E. Latta
Chairman
Subcommittee on Communications and
Technology

¹¹ Va. Dept. of Housing & Community Development, Broadband Equity, Access and Deployment Program Initial Proposal Volume 2 at 9 (Aug. 16, 2023),

<https://www.dhcd.virginia.gov/sites/default/files/Docx/vati/finalpubliccomment-virginiabeadvolume2.pdf>.

¹² La. Off. of Broadband Development & Connectivity, BEAD Initial Proposal Volume 2 at 96-97 (2023), <https://connect.la.gov/media/3gylvrgc/bead-vol-2-final.pdf> at 96-97 (“Any FTTH application that includes a five-year commitment to offer symmetrical 1 Gbps service for a monthly reference price of not more than \$100, with no installation, equipment fees or other charges to the end user, shall receive a baseline score of 100.”).

¹³ IIJA § 60102(h)(5)(D).