

June 9, 2022

The Honorable Ben Ray Luján
Chairman
Committee on Commerce, Science, & Transportation
Subcommittee on Communications, Media, & Broadband
U.S. Senate
498 Russell Senate Office Building
Washington, DC 20510

The Honorable John Thune
Ranking Member
Committee on Commerce, Science, & Transportation
Subcommittee on Communications, Media, & Broadband
U.S. Senate
511 Dirksen Senate Office Building
Washington, DC 20510

RE: Oversight of the National Telecommunications and Information Administration

Dear Chairman Luján, Ranking Member Thune, and Members of the Committee:

Broadband connectivity has never been more important to Americans, and I commend this Committee for its work in ensuring that all Americans have access to the Internet. The Infrastructure Investment and Jobs Act allocated \$42.45 billion to the Broadband Equity, Access, and Deployment (BEAD) program to support deployment of critical infrastructure to primarily unserved and underserved areas, and tasked the National Telecommunications and Information Administration (NTIA) with its oversight.¹ Just last month, the NTIA released a Notice of Funding Opportunity (NOFO) for states to participate in the program, but unfortunately, the NOFO includes many provisions that run counter to both the goals of the program and the carefully struck agreement of Congress.²

In particular, the NOFO includes a variety of provisions designed to strongly favor government-owned networks,³ rate regulation,⁴ open access requirements,⁵ and the utilization of union labor.⁶ These types

¹ Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021).

² Notice of Funding Opportunity, “Broadband Equity, Access, and Deployment Program” National Telecommunications and Information Administration (May 2022) (“NOFO”).
<https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

³ For example, by waiving matching fund requirements for “non-traditional providers” or additional explanations for awarding funds to traditional broadband providers when “non-traditional providers: submitted competing proposals. NOFO at pp. 20, 48.

⁴ Such as by requiring that states include a middle-class affordability plan in their proposals. NOFO at p. 66.

⁵ NOFO at p. 44.

⁶ States must develop an effective plan for compliance with federal labor and employment laws, which the NOFOs states can be done with provider’s binding commitment to things like “pre-hire collective bargaining agreements between union and contractors that govern terms and conditions of employment for all workers on a construction project.” NOFO at p. 57.

of provisions target some of the different priorities of the current administration, but can actively contradict the purpose of connecting unserved Americans to high-speed broadband: If BEAD funds are tied to unrelated policy initiatives from the executive branch that add additional costs on industry, broadband providers may not participate in the program at all, leaving those truly unserved communities behind.

To highlight one potential example, the NOFO includes a prohibition on awarding funds to a provider that imposes “unjust or unreasonable network management practices.”⁷ The NOFO, however, doesn’t include any definition of “unjust or unreasonable network management practices,” a topic fiercely debated in the net neutrality discussions at the Federal Communications Commission over the past two decades.⁸ As a result, state broadband offices may develop their own net neutrality regulations that, while not law, effectively require broadband providers to comply if they wish to participate in the program.

If the goal of this program is to promote progressive broadband policies such as net neutrality, rate regulation, or government-owned networks, this NOFO would certainly get the job done. Yet these policies can serve as a deterrent for private investment in broadband networks and make it less likely for providers to participate in the BEAD program. As a result, unserved Americans across the country could get left behind despite the massive financial investment the BEAD program provides.

During the oversight hearing, this Committee should carefully scrutinize the NOFO to ensure that the policies in the document actually serve the goal of connecting unserved Americans. I commend the Committee for holding this hearing and look forward to working with you to ensure that all Americans can reap the benefits that high-speed broadband connectivity can provide.

Sincerely,

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American Action Forum
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cc

The Honorable Maria Cantwell
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The Honorable Roger Wicker
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⁷ NOFO at 68.

⁸ Jeffrey Westling, “Net Neutrality Refresher,” American Action Forum (Jan 11, 2022).
<https://www.americanactionforum.org/insight/net-neutrality-refresher/>.