

**House Energy and Commerce Committee**  
**Subcommittee on Communications and Technology**

**May 23, 2023, Hearing**

***Oversight and Reauthorization of the National Telecommunications and  
Information Administration***

**Response to Questions for the Record**

**Alan Davidson**

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## **Attachment I-Additional Questions for the Record**

### **The Honorable Tim Walberg**

NTIA's BEAD NOFO in several places expresses preference for a unionized workforce, paying prevailing wages, and providing detailed information regarding a subgrantee's compliance of its contractors and subcontractors with labor and employment laws. Specifically, states are encouraged to mandate workforce development requirements that could deter ISP participation in an already difficult labor markets, including requirements to use directly employed personnel instead of contractors/subcontractors, requirements to use project labor agreements, labor peace agreements, and to commit to union neutrality. Such requirements would extremely burdensome and administratively difficult and inefficient.

1. Why did NTIA include these requirements and how will NTIA ensure that these requirements do not deter participation by qualified and experienced broadband providers?

**Response:** The NOFO sets forth general labor-related principles but provides no specific requirements for how eligible entities should comply with these principles, outside of compliance with Federal labor and employment laws. The NOFO lists certain criteria states must consider when selecting subgrantees. This is not a list of requirements, but a list of considerations. NTIA's Internet for All programs will create thousands of safe good-paying jobs, and NTIA will work with states, territories, and other partners to ensure that those jobs are accessible to a workforce that looks like America.

### **The Honorable Randy Weber**

NTIA issued a joint statement with DoD last week announcing the U.S. government's proposal for the upcoming regional spectrum harmonization meeting to support a mobile allocation in the 3300-3400 MHz band that will support 5G mobile services at the World Radiocommunication Conference.

1. When you say "5G mobile services", does that include technologies like what is used in CBRS?

**Response:** At the Inter-American Telecommunications Commission (CITEL) meeting in May 2023, the U.S. Government proposed updating international Radio Regulations to identify the 3300-3400 MHz band as possible for 5G use in the Americas by countries that choose to do so. The International Mobile Telecommunications (IMT) designation broadly refers to mobile broadband systems which can include a variety of licensing methodologies including CBRS.

2. Can you explain the process and timeline by which you are developing the National Spectrum Strategy within the Biden Administration?
3. What is the NTIA's plan for coordinating with agencies currently using spectrum?

**Response #2 and #3:** On March 15th, NTIA kicked off the development of a National Spectrum Strategy by issuing a Request for Comment. NTIA received 131 written

responses from stakeholders, all of which are available online. NTIA also held two public listening sessions, two government-to-government tribal consultations, and a closed listening session with federal agencies that use spectrum as part of their core missions.

In addition to the closed listening session with the federal agencies, NTIA held a number of working level sessions with agency representatives to discuss bands for potential study. NTIA also chaired a meeting on potential bands for study with the Policy and Plans Steering Group (PPSG), which is comprised of the top leaders for spectrum planning and management within the federal departments and agencies. NTIA will continue to coordinate closely with the federal agencies as it works on other parts of the spectrum strategy.

NTIA is also holding one-on-one meetings with any stakeholder that requests a meeting and is accepting supplemental filings.

4. To what extent will these comments inform how NTIA prioritizes feasibility studies to examine which Federal spectrum bands can be made available for commercial use?
5. How will this influence future action by NTIA?

**Responses #4 and #5:** As noted in #3 above, NTIA has received a tremendous amount of feedback—through the responses to the Request for Comment and the outreach described above—on the development of a National Spectrum Strategy. NTIA has been reviewing this feedback and has begun the process of drafting the Strategy.

The Strategy will identify at least 1,500 megahertz of spectrum to study in the near-term for repurposing. NTIA hopes to identify additional spectrum bands for study in the longer term to meet future requirements for both non-federal and federal users. Developing a strategy to increase spectrum access will help ensure continued U.S. leadership in emerging technologies, advance connectivity, and competition, create jobs, and produce improvements to overall quality of life.

6. In preparation for the World Radio Conference, what steps is the NTIA taking to coordinate with Federal agencies on developing the U.S. position for Inter-American Proposals?

**Response #6:** NTIA works closely on a near daily basis with federal agencies in developing U.S. positions for both CITEL and the World Radio Conference (WRC) in coordination with the Federal Communications Commission (FCC) and the Department of State.

During the hearing, we discussed FEMA's Low to Moderate Income (LMI) formula.

7. Is NTIA coordinating with FEMA on using the LMI formula as part of its programs?

**Response:** NTIA staff has reached out to FEMA to understand the source of the LMI and consider how it may be utilized in NTIA's grant programs.

## **The Honorable Rick Allen**

“Buy America” guidance from OMB and NTIA have noted that it “may be in the public interest” to provide a Build America, Buy America waiver to “states that have assumed procurement obligations pursuant to the Government Procurement Agreement.” My state is not one of those states and could therefore face higher costs and diminished access to products sourced from partner countries.

1. How are you ensuring that NTIA fulfills the IIJA requirement to apply BABA in a manner “consistent with U.S. obligations under international agreements,” and how will this impact efforts to connect people to the internet in my state?

**Response:** The Administration is fully committed to Build America, Buy America (BABA) and views these investments as an opportunity to promote U.S. jobs and manufacturing capability in the United States. We understand that there are important questions raised by how the Broadband Equity, Access, and Deployment (BEAD) program and BABA requirements should be applied consistent with U.S. obligations under free trade and other international agreements. NTIA is actively working with other federal agencies to address these issues and will issue further guidance later this summer.

## **The Honorable Russ Fulcher**

1. For states like Idaho that may have limited resources, what steps is NTIA taking to ensure that internet domains are not abused or supporting cybersecurity attacks that could have devastating attacks on our local governments or businesses?
2. How do you think this positions NTIA among the interagency to address the cybersecurity challenges facing the communications industry?
3. Can you expand on the role NTIA plays in the interagency on cybersecurity policy?

**Responses #1-#3:** Although NTIA is not the Sector Risk Management Agency for the Communications Sector (the Department of Homeland Security is the lead Agency tasked with promoting the security of the Communications Sector), securing the digital ecosystem is a top priority for NTIA, particularly as we work to close the digital divide and minimize risks in our communications networks. Our efforts in this area range from our work on telecommunication supply chain issues—including our historical participation in the Team Telecom process, presenting the Executive Branch’s consolidated national security and law enforcement views and concerns to the FCC, and administering the \$1.5 billion Public Wireless Supply Chain Innovation Fund. Our efforts also include facilitating conversations with all stakeholders to act upon vulnerabilities that threaten the security and integrity of the Border Gateway Protocol (BGP), which is central to the Internet’s global routing system.

NTIA’s Communications Supply Chain Risk Information Partnership (C-SCRIP) is aimed primarily at trusted small, medium, and rural communications providers and equipment suppliers, with the purpose of improving their access to risk information about key elements in their supply chain. Through C-SCRIP, we coordinate with Federal agencies to share supply chain security risk information and resources with small and rural communications

providers and suppliers that have traditionally lacked access to this information. C-SCRIP has hosted two public webinars on key cybersecurity and cyber supply chain risk management resources required by the BEAD NOFO.

### **The Honorable Diana Harshbarger**

The Infrastructure Investment and Jobs Act provided \$1 billion for The Enabling Middle Mile Broadband Infrastructure (MM) Program. NTIA received applications in Fall 2022 with awards scheduled to be announced no earlier than March 1, 2023.

1. When does NTIA plan to announce its first award?
2. Will all the awards be made at the same time or in separate announcements?

**Responses #1 and #2.** Middle mile connections are crucial to fully closing the digital divide, and the Middle Mile Broadband Infrastructure program is the force multiplier of the three Bipartisan Infrastructure Law programs. NTIA received more than 260 applications totaling \$7.47 billion in funding requests, showing the great need for middle mile capacity throughout the country. NTIA was proud to announce \$930 million in awards to cover over 350 counties across 35 states and Puerto Rico on June 16, 2023, and will continue to announce the remaining awards on a rolling basis, subject to funding availability.

### **The Honorable Bill Johnson**

Mr. Davidson, Chair Rodgers noted that later this week, the Americas region will be meeting to develop a regional position on several important spectrum matters at CITELE. You described NTIA's role in the domestic policy development process as representing the interests of executive branch agencies in this process to make sure the U.S. can continue to protect their mission critical operations. Given that:

1. Do have any recommendations on how the United States' process to get to a unified domestic position can be improved?

**Response:** The United States is in a good place regarding its positions for the Inter-American Telecommunication Commission (CITELE). NTIA is supporting U.S. leadership and promoting U.S. interests. There are experienced U.S. government negotiators and staff leading this effort. NTIA is engaging with others within the U.S. government in intensive efforts to finalize national proposals and positions, identify potential U.S. delegates and engage other governments at the CITELE and International Telecommunication Union (ITU) preparatory meetings.

There are roughly 20 separate agenda items comprising proposals for a full range of terrestrial and space-based radio services, including mobile broadband, satellite, aeronautical and maritime services. Within the U.S., there is well over 90% agreement on the agenda items. Regarding the other items, we are in the process of working those out. Some of the spectrum bands being discussed cannot be used because they are quite congested and important to national security missions and to the Federal missions with the priority to ensure the safety of Americans. NTIA's obligation is to work with the agencies to ensure that we have the spectrum needed for our economic security and growth while protecting national security and critical Federal missions and capabilities.

## **The Honorable Lizzie Fletcher**

I introduced a bill last Congress and again this Congress, the *Broadband Incentives for Communities Act*, which provides grants for local governments to hire and train employees, purchase software, and expand their permitting capabilities. In my district in Houston, where we have some of the largest broadband operators and companies who are building this infrastructure, we have seen that is essential for effective broadband deployment.

1. Assistant Secretary Davidson, how would a grant program like this prevent bottlenecks and delays at the local level and support rapid broadband deployment in all communities?

**Response:** This has been a complex issue for the federal government – and state and local governments – for decades. We recognize the importance of removing unnecessary barriers faced by the entities that are going to build the networks required to achieve our goal of universal, affordable, high-speed internet access. We know that local governments often suffer from a lack of capacity in their permitting teams, which further resources could aid. NTIA looks forward to working with you on your bill, the *Broadband Incentives for Communities Act*.

## **The Honorable Ann Kuster**

1. Assistant Secretary Davidson: It's important to recognize the role of Wi-Fi technology as an essential tool to expand broadband services to all Americans. Publicly available Wi-Fi services are a lifeline to households that lack broadband due to availability or affordability. However, as Wi-Fi usage continues to grow, legacy spectrum bands are becoming increasingly congested. With the emergence of new satellite and wireless technologies, FCC has a responsibility to manage spectrum to ensure the coexistence of the technologies Americans depend on every day.
  - a. Assistant Secretary Davidson: Do you have an update on the FCC's progress on making a determination about the future of the 6 GHz band? How will this impact the future of Wi-Fi services in the country?

**Response:** There is an on-going Federal Communications Commission (FCC) proceeding on 6 GHz. Therefore, the FCC is in the best position to provide a status update on the future of the 6 GHz band as well as its impact on Wi-Fi services. Additionally, there are no substantial federal operations in this band that NTIA manages. This is a priority agenda item for this year's World Radio Conference, which we support.

## **The Honorable Tony Cardenas**

1. Mr. Davidson, I keep hearing about utility pole access being a barrier to timely deployment of broadband infrastructure, especially in unserved communities. I think we can all agree that we don't want government funded projects like BEAD significantly delayed with pole access disputes that will only increase the costs of deployment. When NTIA released its BEAD Notice, it highlighted timely pole access

as a necessary issue for BEAD recipients to address in their states. How will NTIA hold these states accountable for fixing the pole access issues in their states, so it doesn't slow deployment down?

**Response:** We are cognizant of the important role that reasonable access to poles, conduit, and rights of way plays in broadband deployment. The BEAD NOFO strongly encourages Eligible Entities and their political subdivisions to remove time and cost barriers associated with BEAD projects, including by expediting permitting timelines and waiving fees where applicable, when doing so does not undermine other critical policy goals. It further requires that Eligible Entities identify, as part of their initial proposals, steps that each state will take to reduce costs and barriers to deployment, promote the use of existing infrastructure, promote, and adopt dig-once policies, and streamline permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements.

2. Under the NTIA BEAD NOFO, Part 200 applies in full. This includes a prohibition on making income on the network being built, requires a second procurement process after an award is made, requires the government to have a "federal interest" in grant-funded and property for the useful life of the assets, as well as other requirements that are inconsistent with fixed award grants. Will NTIA work to streamline the application of, or develop exceptions to, such requirements as Treasury has done with respect to ARPA grants?

**Response:** NTIA recognizes that many stakeholders are closely tracking the manner in which the Uniform Guidance will be applied to BEAD subgrants. As federal agencies within the Biden Administration, we share with the Department of the Treasury a common goal of ensuring that everyone in America has access to affordable, reliable, high-speed Internet service. Also, we both recognize that to achieve this goal, our regulatory frameworks must strike a balance that prioritizes efficiency while preserving program integrity.

To that end, NTIA and the Department of the Treasury are closely coordinating our respective approaches on this topic. The approach NTIA is considering for the BEAD program is directionally aligned with the Department of the Treasury's proposal. NTIA recently released a Request for Comment on our proposal, and the Department of the Treasury's guidance serves as the basis for many of our proposals.

3. States have limited resources and personnel managing the distribution of funding under both the ARPA and IIJA laws. The Department of the Treasury recently published guidance to the states that significantly streamlines the Part 200 Uniform Guidance rules while also ensuring appropriate guardrails are in place. I understand that this guidance went through significant review at OMB as well. What, if anything, prevents NTIA from adopting the exact same guidance to eliminate burdens on the states and grant recipients? If there are places where the guidance must differ, can you please explain each issue and what requires a different outcome.

**Response:** The approach NTIA is considering for the BEAD program is directionally aligned with the Department of the Treasury's proposal. However, differences between the two grant programs do exist. BEAD is structured differently than the Department of the Treasury programs, and BEAD is subject to different statutory requirements.

A key difference is the status of those providers selected to deploy broadband infrastructure. The Department of the Treasury provided clarification that in their programs, states and localities are able to determine, per 2 CFR 200, whether these providers should be designated as subrecipients or contractors. But in the BEAD program, NTIA already made clear that, by statute, subgrantees are not performing projects as contractors, but instead are subrecipients. (See footnote 15 of the BEAD NOFO.)

4. The BEAD NOFO includes some conditions that will be in place for the “useful life of the network assets”. Under the BTOP program, that meant that conditions lasted for two decades with respect to certain assets (and are even still in place today). Will NTIA replace the “useful life” period associated with some of the BEAD conditions with a specific duration as the Department of Treasury has recently done with respect to ARPA projects? Specifically, Treasury has issued guidance setting a federal interest period of 8 years after completion of Capital Projects Funds and Coronavirus State and Local Fiscal Recovery Fund projects and we note that the FCC has set a duration of 4 years for conditions associated with RDOF projects.

**Response:** NTIA recently released a Request for Comment (RFC) on this issue. Treasury’s guidance serves as the basis for NTIA’s proposal in that RFC.