

**TESTIMONY OF JUSTIN FORDE**

**VICE PRESIDENT OF GOVERNMENT RELATIONS  
MIDCONTINENT COMMUNICATIONS**

**on**

**Connecting Every American: The Future of Rural Broadband Funding**

**before the**

**Committee on Energy and Commerce  
Subcommittee on Communications and Technology  
UNITED STATES HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C.**

**September 21, 2023**

**SUMMARY OF TESTIMONY OF JUSTIN FORDE  
VICE PRESIDENT OF GOVERNMENT RELATIONS  
MIDCONTINENT COMMUNICATIONS**

Midco is the leading provider of reliable, high-speed internet via fiber and fixed wireless technology, as well as offering IPTV, phone, data center and advertising services. More than 490,000 residential and business customers in primarily rural areas count on Midco services across five states: Kansas, Minnesota, North Dakota, South Dakota, and Wisconsin.

Currently, over 94.5% of U.S. homes have access to terrestrial broadband service that offers speeds of at least 25 Mbps download and 3 Mbps upload. 89% of all American homes and businesses have access to Gigabit-speed service – and of those served by cable, that figure rises to 99%. This is a great success story. But the challenge of connecting those homes that do not have any internet service available persists. In the last few years, the federal government has devoted hundreds of billions of dollars and expended extraordinary levels of time, effort and energy, to create programs to get high speed broadband infrastructure to the communities that lack it. This is a once in a lifetime opportunity to solve this longstanding problem once and for all. We cannot waste this opportunity by allowing these programs to get off track or lose focus.

There are seven thematic pillars that policymakers should rely on in closing deployment gaps and achieving our nation's collective goal of getting broadband to all Americans.

1. **Target scarce funds where people lack service**, by limiting eligibility to areas where a high percentage of households are unserved, taking into account where funding or private investment exists, and setting speed thresholds that focus funding on the neediest areas.
2. **Let all ISPs participate in federal programs** without favoring a particular technology or legal organizational structure, and demand that providers receiving funding have quality and experience.
3. **Have a coordinated approach** that directs all federal resources toward achieving the collective goal of getting broadband to unserved areas.
4. **Remove regulatory impediments** hindering participation in programs, such as specific labor requirements, wholesale access requirements and rate regulation.
5. **Address post-award barriers to broadband deployment**, such as overly complex and time-consuming permitting requirements and outdated pole attachment laws.
6. **Keep Americans connected** through the Affordable Connectivity Program, so that the dollars being spent on deployment benefit all Americans, especially low income Americans for whom broadband service might meaningfully change their lives.
7. **Carefully evaluate** federal support programs. Once this tremendous influx of funds has been put into the marketplace, the government must evaluate its impact before investing additional billions or expanding universal service contributions. There is no reason that some of these programs need to exist in perpetuity.

Chair Latta, Ranking Member Matsui, and Members of the Subcommittee, thank you for inviting me here to discuss Midco's thoughts about the future of broadband funding in rural America and how existing federal broadband funding programs should evolve and change considering the tremendous investment in broadband infrastructure made by Congress in recent years through the Broadband Equity Access and Deployment ("BEAD") program and other programs. My name is Justin Forde, and I am the Vice President of Government Relations at Midcontinent Communications ("Midco"). Midco is the leading provider of reliable, high-speed internet via fiber and fixed wireless technology, as well as offering IPTV, phone, data center and advertising services. By 2025, Midco will deploy 10G – the next great leap for broadband – while expanding our fiber network to rural areas.

More than 490,000 residential and business customers count on Midco services across five states: Kansas, Minnesota, North Dakota, South Dakota, and Wisconsin. Midco communities range from fewer than 100 people in places like St Leo, Minnesota, to our largest community, Sioux Falls, South Dakota, which has a metro population of nearly 290,000. The majority of the approximately 450 communities we serve are very rural. Many have less than 50,000 people; most have populations between 500 and 5,000.

The last few years have put a renewed spotlight on the importance of broadband connectivity for all Americans and the persistent gaps in coverage that still remain for some. At Midco, we constantly strive to connect as many people as possible throughout our service area. We have invested more than \$765 million in private capital in the last six years to extend and upgrade our fiber network. Collectively, ISPs have invested more than \$2 trillion in private capital since 1996 to get America connected, including \$21.7 billion last year alone. Currently, over 94.5% of U.S. homes have access to terrestrial broadband service that offers speeds of at

least 25 Mbps download and 3 Mbps upload. 89% of all American homes and businesses have access to Gigabit-speed service – and of those served by cable, that figure rises to 99%. At Midco, we provide Gigabit service to 100% of the largely rural communities that we serve with our fiber network. And with even more scalable, technological innovation on the horizon, widescale diffusion of broadband networks across the country offering 10 Gigabit connections to U.S. households is well within view.

This is a great success story. But as a nation, the steady expansion and improvement of our existing networks does not mean that our work is done. Rather, the challenge remaining is to connect those homes that do not have any access to robust and reliable internet service.

Unserved communities lack broadband for one reason above all others: they are prohibitively expensive to serve. The cost of deploying infrastructure over expansive, difficult terrain is exponentially higher than in other areas and at the same time, the potential revenue associated with the few homes and businesses located in such areas is inversely less. In such areas, government funding is essential to offsetting these dynamics and incenting companies to build.

In the last few years, the federal government has devoted hundreds of billions of dollars and expended extraordinary levels of time, effort and energy to create, develop and improve programs that will get high speed broadband infrastructure to the communities that lack it. This exceptional effort now involves 15 agencies administering at least 133 programs<sup>1/</sup> – and this is only at the federal level. The critical pieces are in place to make momentous progress in expanding the reach of broadband. This is a once in a lifetime opportunity to solve this longstanding problem. It is critical that we not waste this opportunity by allowing these programs to get off track or lose focus.

---

<sup>1/</sup> Statement of Andrew Von Ah, Director, Physical Infrastructure, GAO, “Broadband: A National Strategy Needed to Coordinate Fragmented, Overlapping Federal Programs,” (May 20, 2023) at 1.

Given these stakes and the multiplicity of existing programs, we believe that there are seven thematic pillars in this effort that policymakers should rely upon in closing deployment gaps and achieving our nation's collective goal of getting broadband to all Americans. They are as follows:

1. **Target scarce infrastructure funds to areas where people lack service**, not on funding a second competitor in areas that already are or will be served.
2. **Let all ISPs participate in federal programs** without favoring a particular technology or legal organizational structure, and demand that providers receiving funding have quality and experience.
3. **Encourage a coordinated approach** that directs all federal resources dedicated to funding broadband infrastructure toward common standards and approaches that will minimize forum-shopping and promote the collective goal of getting broadband to unserved areas.
4. **Remove regulatory impediments or conditions** that add unnecessary costs and discourage participation in programs, such as specific labor requirements, wholesale access requirements and rate regulation.
5. **Address post-award barriers to broadband deployment**, such as overly complex and time-consuming permitting requirements and outdated pole attachment laws.
6. **Keep Americans connected** through the Affordable Connectivity Program, so that the dollars being spent on deployment benefit all Americans, especially low income Americans for whom broadband service might meaningfully change their lives.
7. **Carefully evaluate** federal support programs to determine if subsidies have achieved their intended results. Once this tremendous influx of funds has been put into the marketplace, the government must step back and evaluate the effectiveness of both the appropriated funding given to various agencies and the FCC's Universal Service Fund ("USF"). There is no reason that some of these programs need to exist in perpetuity.

I would now like to address each of these pillars.

### **Target Scarce Funds to Unserved Areas**

Broadband programs addressing infrastructure gaps should target funding to truly unserved areas, where private investment is not going to occur without government assistance but consumers need to be connected.

One important means of keeping funding in unserved areas and not wasting scarce resources on subsidized competition is ensuring that a high percentage of homes in a proposed project area lack broadband service for the area to qualify for funding. Recently, some programs have been straying from that goal. For example, while the Rural eConnectivity program run by the Department of Agriculture’s Rural Utilities Service (“RUS”), better known as the “ReConnect” program, originally required that at least 90% of households in a project area qualify as unserved to be eligible for funding, the most recent round of funding significantly relaxed this requirement and considered areas to be eligible for funding even when as many as 50% of households already had access to broadband service. Only slightly better, NTIA’s Broadband Equity Access and Deployment program – better known as BEAD – only requires that 80% of households in a project area be unserved for the area to qualify for funding. The most likely result of these relaxed standards is that monies will be diverted from the areas that are completely unserved, which are typically the hardest areas to serve, and those areas will remain unserved.

In identifying “unserved” households, government policymakers also need to recognize that future subsidies are not appropriate in areas that are already being built out, whether due to awards from other government programs, other government commitments, or private investment. Allowing government broadband programs to grant funding to a new provider in places where other government awards have already been committed to a different provider for broadband construction dangerously decreases the effectiveness of the funding programs.

For example, Midco was overbuilt by two ReConnect awards in rural South Dakota, even though it was already building a fixed wireless network serving those areas that was being partially funded by an FCC grant. Because Midco had not yet finished construction, the area was

still considered “unserved,” and so Midco’s challenges to those funding awards were denied. There needs to be a common understanding of eligibility, one that takes into account areas already funded for deployment, so the funds are bringing service to new areas, not duplicating service already available. We need to know where those areas are, and when multiple agencies are involved, they must respect those areas when awarding additional funding. The Minnesota state broadband funding program, for example, uses a sound approach that takes into account both where government funding has been granted and where private investment is already getting broadband deployed.

A final consideration in identifying areas eligible for infrastructure subsidies is greater diligence in prioritizing the delivery of service to those lacking a baseline level of broadband service. When eligibility is restricted to, or prioritized in, areas that do not receive a basic level of broadband service, such as 25/3, funding secures its highest benefit in bringing broadband where it did not previously exist. But when areas are defined as eligible for funding unless they have a higher level of service, many areas where we and others have invested heavily, including through public/private partnership programs, are suddenly considered “unserved.” In many programs, such as ReConnect, agencies fail to apply such rigor, compromising the effectiveness of the program in closing infrastructure gaps.

When areas previously considered served are suddenly eligible for funding, providers will naturally pursue projects to upgrade service in those newly eligible areas, because it is less expensive to deploy broadband there, and the areas have better potential economic return. Those areas most in need of assistance, however, will again end up at the back of the line. The exact same people who are unserved today will not benefit from today’s huge infusion of government funds. Instead, areas that already have robust broadband service will get even faster service, and

areas that are not economical to reach, and have struggled for years to attract broadband deployment, will remain without, even after billions of dollars in funding are spent. For example, in North and South Dakota, where we serve, the vast majority of funding has not gone to areas that never had any level of broadband service; it has been used for upgrading already served areas. If the post-BEAD world is meant to look different from today, this backsliding in standards must be stopped.

Notably, a promising piece of legislation, the *Rural Internet Improvement Act of 2023*, introduced by Representatives Cammack, Soto, Jackson, and Gluesenkamp Perez, would go a long way toward ensuring that the USDA programs help make the post-BEAD world look vastly different from today. Most notably, the RIIA provides important protections against overbuilding, modernizes eligibility rules, and calls for substantially increased coordination among the various agencies distributing broadband funding. Other agencies should follow the lead of this important legislation.

### **Allow The Greatest Possible ISP Participation**

For broadband to reach rural America as quickly as possible, it is critical that funding programs be technology-neutral and encourage the broadest participation of qualified broadband providers. Outdated regulatory requirements, such as the FCC's requirement in some USF programs that recipients seek state or federal approval to be designated as "eligible telecommunications carriers" ("ETCs") needlessly diminish participation, putting form over substance, as do nonsensical requirements that ban broadband providers simply due to their legal organizational structure. Midco, for example, was originally barred from participation in the ReConnect program, because our company is legally organized as a partnership. We had to work extensively with RUS to obtain an informal waiver of the ban on partnership participation,



wasting time and energy that could be better spent building broadband. Even worse, not only do some rules discourage participation among well-qualified providers, but others compound the injury by promoting unwarranted preferences and bias for certain providers (government networks, nonprofits and cooperatives) based not on their experience in building and operating modern broadband networks, but rather based purely on how they are organized as a business.

Rather than impose rigid requirements that do nothing to ensure that broadband networks reach rural America quickly and will be run well, there should be more weight given to applications from those providers with a proven track record of successful deployment and the financial and technical experience to get the job done right. Too often, funding goes to entities that may mean well but have never had the experience of constructing and deploying broadband networks and are unfamiliar with the host of tasks needed to accomplish this goal – including securing supplies, labor, multiple government permits, and pole attachment rights, each of which is a complicated and lengthy process. They abandon the work before completion, meaning that government dollars are wasted and residents of the planned service area remain unserved. Ensuring that funding goes to established providers avoids this result and creates an environment in which the project is most likely to succeed and government dollars well spent.

Similarly, many programs are designed with “build to” speed requirements that do not allow us to deploy our fixed wireless technology, even when it makes the most sense to do so because the area is not suitable for fiber deployment. For broadband to reach rural America as quickly as possible, programs must be as flexible as possible, to allow for use of different standards when needed. Setting high “build to” speed thresholds that can only be delivered by a fiber network build may sound helpful, but in practice will continue to leave many behind.

## **Improved Coordination Among Agencies**

With numerous federal agencies and nearly all states dedicating funding to broadband deployment, the government must establish greater consistency and better communication between federal agencies when awards are made, so that money is spent transparently and does not duplicate other agencies' efforts. With billions of dollars flowing, it is increasingly important to ensure that all relevant agencies and state programs that are awarding grants for buildout are aware of current awards, to ensure that government support is coordinated and being used efficiently to reduce the number of unserved households and advance the goal of universal connectivity.

The recent Memorandum of Understanding Regarding Information Sharing between the FCC, U.S. Department of Agriculture, the National Telecommunications and Information Administration of the U.S. Department of Commerce, and the U.S. Department of the Treasury is an important first step towards reaching that goal, but further actions will be required in the coming years, as the pace of grant activity and broadband construction intensifies.

One important aspect of further coordination would be action to make the programs, their eligibility standards, and their requirements as consistent as possible. Entities seeking funding should not be able to "forum shop" for the least restrictive program. Midco faced a situation recently where we successfully challenged a provider under the ReConnect program from overbuilding our network in rural North Dakota, but the applicant responded by applying for funding in that same area under the ARPA Capital Projects Fund program and succeeded in obtaining funds to overbuild Midco's existing service.

To avoid this result, government entities awarding funding for broadband infrastructure should promptly report those awards to the Federal Communications Commission and vice

versa, so that maps used for granting broadband funding are consistent and everyone works off a common data set in determining areas eligible for funding. The National Broadband Map is an important first step to achieving this result, but ideally, all agencies would rely on a single map that shows areas that are served, areas where networks are being constructed by private investment, and all areas where federal, state, or local funding has been awarded, so that remaining dollars can be targeted at the areas not yet covered. Programs should work together toward the common goal of connecting more Americans and reducing the rolls of the unserved.

### **Reduce Regulatory Barriers**

Agencies and states administering funding programs must also resist the temptation to try and advance other interests by layering on contested policies and regulations related to operational practices that needlessly raise costs and discourage participation. Rate regulation (whether directly imposed, or indirectly in the form of requiring “affordable” service offerings), interconnection and open-access requirements, and unduly burdensome labor rules that disfavor or discourage applicants with proven experience distract from the goals of these programs and add costs to serving areas that are already too expensive to serve.

In some cases, agencies are going well beyond what Congress intended in these areas and disrupting the delicate balance Congress envisioned. For example, Congress in the Infrastructure Investment and Jobs Act (“IIJA”) required that priority be given to projects based on “a demonstrated record of and plans to be in compliance with Federal labor and employment laws.” In implementing the program, however, NTIA went much further. Its rules automatically presume that a provider with a non-unionized workforce or that does not use a project labor agreement will not be able to demonstrate compliance with its legal obligations.

Such requirements are counterproductive: given that only a small fraction of the telecommunications workforce is unionized, it would be extremely difficult or impossible to use only unionized labor while still meeting the timelines and expectations of the broadband funding programs. Nor is it necessary. The cable industry has a long history of recruiting and retaining a talented workforce by offering excellent wages and benefits. America's cable industry supports a diverse workforce of 3 million direct and indirect jobs, including at least 300 in each congressional district of the country. Employment of people of color in the industry exceeds the national benchmark, and the cable workforce represents all demographic and educational backgrounds, spanning both rural and urban communities throughout America. There is no shortage of careers or growth within cable's workforce. There is no reason to treat funding applicants differently based purely on the identity of their labor pool, and doing so discourages the widespread participation on which these programs' success relies.

Similarly, NTIA and RUS have at times imposed a host of other regulatory requirements as a condition of participation, such as agreeing to rate regulation, wholesale access, net neutrality, "affordability," or other attempts at government micromanagement that most providers believe are unnecessary, disruptive to their business, and contrary to existing law. At a time when all hands on deck are needed to close broadband gaps, Congress should discourage agencies from adding programmatic obligations that interfere with standard operational practices, making the challenging economics of serving rural, high-cost areas even more difficult or even impossible. BEAD, and indeed all government programs seeking to incent companies to build in the hardest-to-reach parts of the country, can only succeed with the broadest participation by well-qualified ISPs.

## **Remove Post-Award Barriers to Deployment**

Once a broadband provider secures a deployment award, it must meet specific deployment deadlines or risk forfeiting the funding. Yet it must first navigate a labyrinth of federal, state and/or local permitting requirements to even gain the necessary access to the rights-of-way and begin construction, and often, is at the mercy of third parties, who despite being competitors, are allowed to control access to the poles needed for deployment.

At the federal level, a number of permitting regulations are impeding broadband deployment. Most importantly, not all technologies are covered by existing rules. Any federal law allowing broadband providers access to the federal rights-of-way or to utilize any other federally created incentive for broadband deployment should be technology-neutral and apply to all providers of broadband service, wired or wireless. Keeping laws technology-neutral ensures a level playing field, which stimulates deployment.

Additionally, there is a lack of a clear process for obtaining access to federal rights-of-way. There is no standardized approval process, and in some cases, multiple federal entities claim control. There should be a fast and uniform process for evaluating requests, and there should be a lead federal entity, so that providers do not have to coordinate with multiple agencies, pay multiple fees, or perform multiple engineering studies to satisfy different requirements. Moreover, access fees should be limited to recovery of costs.

Updating pole attachment regulations also would ensure that providers can meet the deadlines imposed under rural broadband funding programs. A provider's entry, upgrades, and on-going service operations may be unreasonably delayed or affected if a government or cooperative entity demands excessive and unjustifiable attachment rates and terms, such as unreasonable access standards or treating overloading as a new attachment subject to permitting

requirements. Congress has long recognized that attaching communications service facilities to poles is a necessary part of expansion, and so regulates the rates of such attachments. Yet, there is an exemption for state and local governments and other non-investor owned entities (*i.e.*, municipal, and cooperative utilities) that has remained on the books, even as these entities have gotten into the provision of broadband service and are now competitors. These exemptions from coverage should be eliminated. Congress should require all pole owners to allow access to the poles, ducts, and conduits they own or manage. A reasonable standardized formula should apply to government-owned and cooperative utilities as it does to investor-owned utilities, and terms of access should be required to be fair and reasonable.

### **Keep Americans Connected**

Broadband funding can only be put to its highest and best use if all Americans share in the resulting benefits by subscribing to broadband service. Cable ISPs have a long history of offering low-income subscribers an affordable service offering, through programs like Connect-2-Compete and others. Midco has been a proud part of these efforts and has committed to assisting its low-income subscribers receive service for many years. But none of these efforts can achieve the scale and scope of Congress's Affordable Connectivity Program ("ACP").

ACP, launched only last year, grants qualified low-income households a subsidy to use towards purchasing broadband service. Cable broadband leaders, including Midco, eagerly signed up to participate in the program, reflecting the industry's long history in directing millions of dollars and significant efforts towards helping those within reach of broadband networks to subscribe. They developed and rolled out new service offerings tailored to the ACP requirements. Cable has also partnered with community organizations and state and local governments to identify qualifying households and to educate families about the opportunities

broadband offers.

The program has been a tremendous success. It recently announced enrollment exceeding 20 million customers. Midco has thousands of customers using ACP benefits, including nearly 2,000 who were not subscribers before the program. Low-income Americans rely on this program and would suffer a meaningful negative impact if the program ends. Further, fewer potential subscribers could affect broadband providers' calculus regarding whether to bid to build to certain areas. Yet today, this valuable program is at risk due to lack of continued funding.

Some have suggested that the program should be rolled into the Federal Communications Commission's Universal Service Fund and funded through increased assessments on consumer bills for existing or new services. But regardless of whether or not that is the right approach, the fact is that there is no time for the USF reform that would be required to accomplish this goal. ACP funding is expected to run out in the first quarter of next year, meaning that by the end of this year, without new funding, ISPs will likely be forced to begin notifying their customers that they will lose their subsidy, so that they can act accordingly and prepare for the possible loss of service. If the goal of the post-BEAD world is to have more Americans able to access the extensive job, health, educational, and entertainment benefits that broadband can offer, Congress should allocate funding for the program's continued support.

### **Evaluating Results**

Finally, Congress should carefully assess the federal support programs tied to broadband infrastructure spending to determine if the unprecedented levels of funding that will be dedicated over the next several years are achieving their intended results. Before we can even start to entertain questions about new funding, we will need to aggressively pressure-test the need for

legacy support and consider changes that would shrink, rather than expand, the burdens carried by consumer bills on their monthly bills.

As I stated at the outset, broadband funding should not be a replacement for private investment in deployment, nor a subsidy for running a broadband business. It should exist only to provide a “boost” to get networks to areas where private investment is not going to occur without government funding. Once these deployment programs have provided that needed boost, and networks have been built to reach the farthest corners of the country, there may no longer be a need for some or all of them, and they may not be the best use of limited government resources. The USF programs, too, may no longer make the best sense in their current form and in no case should BEAD-funded networks be eligible for high-cost universal service support without a detailed demonstration that ongoing operating subsidies are necessary.

Rather than continue to pump money into these programs – or even, as some have suggested, expand the USF program to tax broadband customers – Congress should await the results of the current investment, and carefully evaluate the money that was spent and the gain that was realized as a result. Before we figure out how much money we need for the future, if any, we first must review the effectiveness and impact of the money already spent, both through USF and appropriated funds. Only following such an examination should Congress decide whether continued investment is needed and makes sense.

\* \* \*

In closing, I commend the Subcommittee for its focus on ensuring that the billions of dollars being spent on broadband deployment are spent wisely and benefit all Americans – including those in rural America. With your continued help and guidance, the post-BEAD world could look very different from the marketplace today, and the need for continued deployment



subsidies may disappear. Thank you again for inviting me here today, and Midco looks forward to working with you on these important issues.