



## MEMORANDUM

To: Members, Energy and Commerce Committee  
From: Majority Staff  
Re: Communications and Technology Subcommittee Hearing

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### I. INTRODUCTION

On Tuesday, December 5, 2023, at 10:30 a.m., the Subcommittee on Communications and Technology will hold a hearing in 2322 Rayburn House Office Building titled “Oversight of the National Telecommunications and Information Administration.”

### II. WITNESS

- **The Honorable Alan Davidson**, Assistant Secretary of Commerce for Communications and Information and Administrator, National Telecommunications and Information Administration

### III. BACKGROUND

The National Telecommunications and Information Administration (NTIA), a division of the U.S. Department of Commerce, is the Executive Branch agency principally responsible for advising the President on telecommunications and information policy issues.<sup>1</sup> The NTIA states that its programs and policymaking focus largely on expanding broadband internet access and adoption in America, expanding the use of spectrum by federal and non-federal users, and ensuring that the internet remains an engine for continued innovation and economic growth.<sup>2</sup> In addition to working with other Executive Branch agencies to develop policy, the NTIA represents the Executive Branch in both domestic and international telecommunications and information policy activities.<sup>3</sup>

The NTIA accomplishes its mission in the following core areas: (1) Domestic and International Policies; (2) Spectrum Management; (3) Advanced Communications Research; (4) Broadband Programs; and (5) Public Safety Communications.

The Consolidated Appropriations Act, 2023, appropriated to NTIA \$62 million.<sup>4</sup> The NTIA currently employs 154 full-time equivalents for 157 positions. The total NTIA budget request for

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<sup>1</sup> 47 U.S.C. 902(b)(2)(D).

<sup>2</sup> See About NTIA, available at <https://ntia.gov/page/about-ntia>.

<sup>3</sup> See Office of International Affairs (OIA), available at <https://ntia.gov/office/office-international-affairs-oia>.

<sup>4</sup> Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022), <https://www.congress.gov/bill/117th-congress/house-bill/2617>.

Fiscal Year (FY) 2024 is \$109.665 million, which is \$47.665 million more than the amount appropriated for FY23.<sup>5</sup>

#### IV. SELECT ISSUES

Given the Committee's jurisdiction over the NTIA, Members may expect a wide-ranging discussion of important policy matters, including:

##### 1. Broadband Programs

###### *Infrastructure Investment and Jobs Act (IIJA)*

The IIJA tasked the NTIA with managing several grant programs that carry out broadband deployment and adoption activities. This includes:

- \$42.45 billion for the Broadband Equity, Access, and Deployment (BEAD) Program, which will provide last-mile deployment grants to states for unserved and underserved areas;
- \$2.75 billion for the State Digital Equity Capacity Grant Program and the Digital Equity Competitive Grant Program, which support digital equity and inclusion activities;
- \$1 billion for the Middle Mile Grant Program, to support the deployment of middle-mile infrastructure; and
- \$2 billion for the Tribal Connectivity Program, to support connectivity-related activities for Tribal communities.<sup>6</sup>

Oversight of the NTIA's administration of these programs has been a priority this Congress, but the BEAD program will require continued scrutiny to ensure funds are used to close the digital divide and not to overbuild existing networks. Under BEAD, the NTIA will provide grants to states, who will then distribute subgrants of that money to broadband providers to deploy last-mile broadband with speeds of at least 100/20 Mbps to unserved and underserved locations.

In May 2022, the NTIA released its Notice of Funding Opportunity (NOFO) outlining requirements for the BEAD program.<sup>7</sup> The NTIA announced state allocations on June 26, 2023.<sup>8</sup> States have received funds to begin planning. By the end of this year, states must submit initial proposals describing how they plan to use and award funds. A state's final proposal, which describes which providers will receive funds and for which locations, is due within one year of

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<sup>5</sup> Consolidated Appropriations Act, 2023 (P.L. 117-328).

<sup>6</sup> Infrastructure Investment and Jobs Act, P.L. 117-58, div. F, tit. I-V (2021), <https://www.congress.gov/bill/117th-congress/house-bill/3684>. (IIJA)

<sup>7</sup> "Notice of Funding Opportunity, Broadband, Equity, Access, and Deployment Program," National Telecommunications and Information Administration (rel. May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

<sup>8</sup> Office of Public Affairs, *Biden-Harris Administration Announces State Allocations for \$42.45 Billion High-Speed Internet Grant Program as Part of Investing in America Agenda*, National Telecommunications and Information Administration (June 26, 2023), <https://www.ntia.gov/press-release/2023/biden-harris-administration-announces-state-allocations-4245-billion-high-speed>.

the approval of the state's initial proposal. Providers will have four years from the date they receive funds to finish building their network.<sup>9</sup>

### *The Consolidated Appropriations Act, 2021*

The NTIA has also received significant funding from other legislation to deploy broadband. The Consolidated Appropriations Act, 2021, included COVID-19 stimulus funding, and provided the NTIA with \$1.3 billion for broadband grants: \$1 billion for Tribal areas and \$300 million for broadband deployment in unserved areas.<sup>10</sup> The Tribal grants may be used by Tribal governments not only for broadband deployment on Tribal lands, but also for telehealth, distance learning, broadband affordability, and digital inclusion. The broadband expansion grants support broadband infrastructure deployment to areas lacking broadband, especially rural areas.

The Consolidated Appropriations Act, 2021 also created the Connecting Minority Communities Pilot Program, which included \$285 million to expand broadband capacity and access in communities surrounding Historically Black Colleges and Universities, Tribal colleges and universities, and minority-serving education institutions.<sup>11</sup>

Given the NTIA's history of administering broadband grant programs, oversight of this funding is crucial. In 2009, the American Recovery and Reinvestment Act (P.L. 111-5) created the \$4.7 billion Broadband Technology Opportunities Program (BTOP), a broadband-grant program administered by the NTIA. A number of the projects funded with this money overbuilt existing broadband networks.<sup>12</sup> The Government Accountability Office (GAO) issued reports assessing the efficiency and effectiveness of BTOP in meeting its statutory and program objectives, finding that the NTIA did not have adequate data identifying reliable broadband availability in underserved and unserved areas.<sup>13</sup> The Department of Commerce Office of Inspector General (OIG) found that BTOP's size and complexity presented the NTIA with significant challenges, particularly with staffing, which led to delays, inefficiencies, and miscommunications.<sup>14</sup>

## 2. Spectrum

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<sup>9</sup> IJA § 60102(h)(4)(C).

<sup>10</sup> Consolidated Appropriations Act, 2021, P.L. 116-260, div. N, tit. V, § 905 (2020).

<sup>11</sup> Consolidated Appropriations Act, 2021, § 902.

<sup>12</sup> See, e.g., Andy Vuong, Inside the controversial Colorado EAGLE-Net broadband project, DENVER POST (Mar. 1, 2013), <https://www.denverpost.com/2013/03/01/inside-the-controversial-colorado-eagle-net-broadband-project/> (reporting that a \$100.6 million grant awarded to Eagle-Net in Colorado resulted in overbuilding of multiple existing broadband networks, rather than expanding service in unserved areas); Eric Eyre, \$126M Broadband Project A "Train Wreck," Delegate Says, CHARLESTON GAZETTE-MAIL (Jan. 7, 2013), [https://www.wvgazette.com/news/special\\_reports/126m-broadband-project-a-train-wreck-delegate-says/article\\_7792fcb0-c07b-5803-9d2a-2678bc957f64.html](https://www.wvgazette.com/news/special_reports/126m-broadband-project-a-train-wreck-delegate-says/article_7792fcb0-c07b-5803-9d2a-2678bc957f64.html) (reporting that a \$126 million grant awarded to West Virginia was supposed to make fiber available to 1,064 public facilities and build a 900-mile fiber network provided fiber to only 600 sites, many of which already had fiber).

<sup>13</sup> U.S. Gov't Accountability Office, GAO 10-823, Recovery Act: Further Opportunities Exist to Strengthen Oversight of Broadband Stimulus Programs at 2 (2010), <https://www.gao.gov/assets/310/308512.pdf>.

<sup>14</sup> NTIA Must Continue to Improve its Program Management and Pre-Award Processes for BTOP (ARR-19842), U.S. Dept. of Commerce Off. of Inspector Gen. (Apr. 2010), [https://www.oig.doc.gov/OIGPublications/ARR-19842\\_Abstract.pdf](https://www.oig.doc.gov/OIGPublications/ARR-19842_Abstract.pdf).

Demand continues to grow for more radio frequency spectrum (spectrum) to be available for commercial users on a licensed, shared, unlicensed basis. At the same time, federal users depend on spectrum resources to fulfill a wide range of missions in national security, law enforcement, and public safety. The NTIA is statutorily responsible for spectrum management for all federal agencies,<sup>15</sup> and is actively pursuing innovative approaches to protect federal interests, while also granting greater access to spectrum for commercial purposes. The NTIA is also responsible for communicating the Executive Branch's position on issues related to federal spectrum to the Federal Communications Commission (FCC).<sup>16</sup>

On November 13, 2023, the NTIA released its National Spectrum Strategy (Strategy),<sup>17</sup> which was directed by a Presidential Memorandum to the heads of executive departments and agencies.<sup>18</sup> The Strategy outlines several spectrum bands that are currently under study for potential reallocation from Federal use to non-Federal use or shared Federal and non-Federal use.<sup>19</sup> The Strategy also outlines an effort to increase the ongoing collaboration between the Federal government and private industry throughout the spectrum policy planning process, including by standardizing the methodologies by which spectrum is studied for repurposing. Finally, the Strategy will increase research and development of spectrum sharing, including through the creation of a national dynamic spectrum sharing testbed, and attract, train and grow the next generation of the spectrum workforce. The NTIA is also expected to follow the Strategy with the release of an implementation plan.

On September 28, 2023, the Secretary of Defense submitted a report, the Emerging Mid-Band Radar Spectrum Sharing (EMBRSS) Feasibility Assessment, to the Secretary of Commerce.<sup>20</sup> This report was required by section 90008(a) of the Infrastructure Investment and Jobs Act (IIJA).<sup>21</sup> The NTIA and the Secretary of Commerce, in coordination with other agencies and stakeholders, are currently working to identify which frequencies between 3.1 to 3.45 gigahertz (GHz) can be made available on a shared basis between Federal use and non-Federal commercial licensed use, subject to flexible-use service rules, pursuant to section 90008(b)(2)(A) of the IIJA.<sup>22</sup> The National Spectrum Strategy requires the Secretary of Commerce to lead another study evaluating this same spectrum for repurposing opportunities.

The NTIA oversees the Institute for Telecommunication Sciences (ITS). ITS is the nation's premier communications testing center, which undertakes efforts to: (1) advance innovation in communications technologies, (2) inform spectrum and communications

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<sup>15</sup> 47 U.S.C. 902 § (b)(2)(A).

<sup>16</sup> 47 U.S.C. 902 § (b)(2)(J).

<sup>17</sup> The White House, National Spectrum Strategy (Nov. 13, 2023),

[https://www.ntia.gov/sites/default/files/publications/national\\_spectrum\\_strategy\\_final.pdf](https://www.ntia.gov/sites/default/files/publications/national_spectrum_strategy_final.pdf)

<sup>18</sup> "Memorandum on Modernizing United States Spectrum Policy and Establishing a National Spectrum Strategy," (Nov. 13, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/11/13/memorandum-on-modernizing-united-states-spectrum-policy-and-establishing-a-national-spectrum-strategy/>.

<sup>19</sup> The Strategy identified the following bands for study: 3100-3450 MHz, 5030-5091 MHz, 7125-8400 MHz, 18.1-18.6 GHz, 37.0-37.6 GHz.

<sup>20</sup> See, <https://www.ntia.gov/press-release/2023/joint-statement-department-defense-cio-john-sherman-and-assistant-secretary>.

<sup>21</sup> IIJA § 90008(a).

<sup>22</sup> *Id.*

policymaking, (3) and investigate the most pressing telecommunications challenges.<sup>23</sup> ITS works with other Federal agencies through Interagency Agreements (IAAs) and engages directly with industry and academia through Cooperative Research and Development Agreements (CRADAs).<sup>24</sup>

### 3. First Responder Network Authority (FirstNet)

The First Responder Network Authority (FirstNet) was created in 2012 as an independent authority within the NTIA charged with developing a reliable, secure, and interoperable nationwide public safety broadband network (NPSBN) to support the communications needs of first responders and other public safety officials.<sup>25</sup> Its creation was recommended by the 9/11 Commission. The NPSBN is supposed to enable more reliable and secure communications among public safety officials across jurisdictions and support innovative applications, services, and devices for public safety uses. In March 2017, AT&T won a 25-year contract to build the network.<sup>26</sup> FirstNet will provide AT&T \$6.5 billion over the first five years and access to the 20 MHz of spectrum.<sup>27</sup> FirstNet's authority sunsets on February 22, 2027.<sup>28</sup> The GAO, which is tasked with reporting to Congress on what actions should be taken regarding that sunset, submitted a report in February 2022 recommending that Congress reauthorize FirstNet, but consider FirstNet's placement within the federal government.<sup>29</sup>

### 4. Wireless Innovation

The Public Wireless Supply Chain Innovation Fund (Innovation Fund), authorized under the FY 2021 National Defense Authorization Act<sup>30</sup> and funded through the CHIPS and Science Act of 2022,<sup>31</sup> directs the NTIA to make grants driving wireless innovation, fostering competition, and strengthening supply chain resilience.<sup>32</sup> The Innovation Fund provides grants to facilitate the promotion and deployment of open and interoperable wireless networks by accelerating commercial deployment of interoperable 5G equipment; promoting a multi-vendor environment; identifying compliance standards; and promoting security features in these

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<sup>23</sup> See <https://its.ntia.gov/about-its/its-the-nation-s-spectrum-and-communications-lab/>

<sup>24</sup> *Id.*

<sup>25</sup> Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, tit. VI, subtit. B, § 6204 (2012), <https://www.congress.gov/bill/112th-congress/house-bill/3630/text>.

<sup>26</sup> See <https://2014-2018.firstnet.gov/news/firstnet-partners-att-build-wireless-broadband-network-americas-first-responders>

<sup>27</sup> The First Responder Network (FirstNet) and Next-Generation Communications for Public Safety: Issues for Congress. April 27, 2018. <https://fas.org/sgp/crs/homesecc/R45179.pdf>.

<sup>28</sup> Middle Class Tax Relief and Job Creation Act of 2012, § 6206(f).

<sup>29</sup> U.S. Gov't Accountability Office, GAO-22-104915, Public-Safety Broadband Network: Congressional Action Required to Ensure Network Continuity (2022), <https://www.gao.gov/assets/gao-22-104915.pdf>.

<sup>30</sup> William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, P.L. 116-283, tit. XCII § 9202 (2021).

<sup>31</sup> Chips and Science Act, P.L. 117-167, div.A, § 106 (2022).

<sup>32</sup> *Public Wireless Supply Chain Innovation Fund*, National Telecommunications and Information Administration (accessed Oct. 17, 2023), <https://www.ntia.gov/page/innovation-fund>.

networks.<sup>33</sup> Since releasing the initial Notice of Funding Opportunity on April 12, 2023,<sup>34</sup> the NTIA has made three awards totaling \$5.5 million in funding.<sup>35</sup> These awards fund research in energy-efficiency, improving open radio access network testing with data-driven and generative artificial intelligence (AI) testing methods, and the continued development of research in secure and adaptive spectrum sharing.

## V. KEY QUESTIONS

- Will every American have access to broadband following the BEAD program?
- What steps is the NTIA taking to improve the coordination and management of Federal spectrum?
- Is the NTIA effectively administering its grant programs for broadband and wireless innovation?
- What steps is the NTIA taking to provide oversight of public safety activities, including the First Responder Network Authority?

## VI. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Kate O'Connor, Evan Viau, John Lin, Giulia Leganski, or Slate Herman of the Committee Staff at (202) 225-3641.

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<sup>33</sup> *Id.*

<sup>34</sup> "Notice of Funding Opportunity, Public Wireless Supply Chain Innovation Fund Grant Program – Expanding Testing and Evaluation," National Telecommunications and Information Administration (rel. Apr. 12, 2023), [https://www.ntia.gov/sites/default/files/publications/pwscif\\_final\\_nofo.pdf](https://www.ntia.gov/sites/default/files/publications/pwscif_final_nofo.pdf).

<sup>35</sup> *Biden-Harris Administration Awards First Grants from Wireless Innovation Fund*, National Telecommunications and Information Administration (Aug. 08, 2023), <https://www.ntia.gov/press-release/2023/biden-harris-administration-awards-first-grants-wireless-innovation-fund>.