



## MEMORANDUM

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

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### I. INTRODUCTION

On September 10, 2024, at 10:30 a.m. (ET), the Subcommittee on Communications and Technology will hold a hearing in 2322 Rayburn House Office Building. The hearing title is “From Introduction to Implementation: A BEAD Program Progress Report.”

### II. WITNESS

- **Misty Ann Giles**, Director and Chief Operating Officer, Montana Department of Administration
- **Basil Alwan**, Chief Executive Officer, Tarana Wireless
- **Shirely Bloomfield**, Chief Executive Officer, NTCA – The Rural Broadband Association
- **Blair Levin**, Policy Analyst, New Street Research; Non-Resident Fellow, Metropolitan Policy Project, Brookings Institution

### III. BACKGROUND

The *Infrastructure Investment and Jobs Act* (IIJA) appropriated \$65 billion for broadband activities.<sup>1</sup> The National Telecommunications and Information Administration (NTIA) received \$42.5 billion of this funding for the Broadband Equity, Access, and Deployment (BEAD) Program, which provides grants to states to deploy broadband in unserved and underserved areas. As a result of this federal-state partnership, there are 56 individualized programs with a litany of eligible subgrantees, ranging from largescale traditional providers to cooperatives and municipalities.

In May 2022, the NTIA released its Notice of Funding Opportunity (NOFO) outlining requirements for the BEAD program.<sup>2</sup> The NTIA announced state allocations of funding in June 2023, and states were required to submit initial proposals describing how they plan to use and award funds by the end of 2023.<sup>3</sup> To date, NTIA has approved the initial proposals of 34 states

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<sup>1</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>2</sup> Notice of Funding Opportunity, Broadband, Equity, Access, and Deployment Program, National Telecommunications and Information Administration (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

<sup>3</sup> Seamus Dowdall, *BEAD Program Announces State-Allocations for Internet For All Initiative*, National Association of Counties (Jul. 10, 2023), <https://www.naco.org/blog/bead-program-announces-state-allocations-internet-all-initiative>.

and territories. A state's final proposal describing the selected subgrantees and locations served is due within one year of the approval of the state's initial proposal.

The Committee has prioritized oversight of the NTIA's administration of this high-dollar program. NTIA Administrator Alan Davidson testified before the Committee in May 2023, December 2023, and May 2024.<sup>4</sup> As the BEAD program continues to be implemented, the Committee is seeking testimony from the state broadband offices and broadband providers ultimately responsible for implementation and deployment.

#### IV. SELECT ISSUES

##### 1. Rate Regulation

The IIJA prohibits the NTIA from regulating the rates charged for broadband service.<sup>5</sup> At the same time, NTIA requires states receiving BEAD funds to define a low-cost broadband service option.<sup>6</sup> NTIA is responsible for reviewing and approving these low-cost options and has used this requirement as a way to regulate rates. The Committee considers these rate regulated approvals to be a violation of the IIJA's rate regulation prohibition.<sup>7</sup>

##### 2. Technology Neutrality

To close the digital divide, states must make use of all technologies currently available. Although fiber deployment makes sense in some parts of the country, its cost-per-mile may soar exorbitantly in regions with sparse populations or difficult terrain.<sup>8</sup> For this reason, it is important that the BEAD program allow states flexibility to craft broadband plans that meet the needs of the state. Unfortunately, NTIA has, to this point, insisted on making BEAD a "fiber-first" program with the potential to leave rural Americans behind once again.<sup>9</sup> Technologies like

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<sup>4</sup> Hearing memo, *Oversight and Reauthorization of the National Telecommunications and Information Administration*, Communications and Technology subcommittee hearing (May 2023), [https://d1dth6e84htgma.cloudfront.net/5\\_23\\_23\\_C\\_and\\_T\\_Hearing\\_Memo\\_b55090c246.pdf?updated\\_at=2023-05-19T15:25:30.833Z](https://d1dth6e84htgma.cloudfront.net/5_23_23_C_and_T_Hearing_Memo_b55090c246.pdf?updated_at=2023-05-19T15:25:30.833Z); Hearing memo, *Oversight of the National Telecommunications and Information Administration*, Communications and Technology subcommittee hearing (Dec. 2023), [https://d1dth6e84htgma.cloudfront.net/12\\_05\\_23\\_C\\_and\\_T\\_Hearing\\_Memo\\_82df3911b5.pdf](https://d1dth6e84htgma.cloudfront.net/12_05_23_C_and_T_Hearing_Memo_82df3911b5.pdf); Hearing memo, *The Fiscal Year 2025 National Telecommunications and Information Administration Budget*, Communications and Technology subcommittee hearing (May. 2024), [https://d1dth6e84htgma.cloudfront.net/05\\_15\\_24\\_NTIA\\_Oversight\\_C\\_and\\_T\\_Hearing\\_Memo\\_1\\_35fdce3741.pdf](https://d1dth6e84htgma.cloudfront.net/05_15_24_NTIA_Oversight_C_and_T_Hearing_Memo_1_35fdce3741.pdf).

<sup>5</sup> IIJA §60102(h)(5)(D).

<sup>6</sup> IIJA §60102(h)(5).

<sup>7</sup> Letter from Chair Cathy McMorris Rodgers, Chair H. Morgan Griffith, and Chair Robert E. Latta to Assistant Secretary Alan Davidson (July 9, 2024), [https://d1dth6e84htgma.cloudfront.net/07\\_09\\_24\\_Letter\\_to\\_NTIA\\_on\\_BEAD\\_Approvals\\_1a9ef45737.pdf](https://d1dth6e84htgma.cloudfront.net/07_09_24_Letter_to_NTIA_on_BEAD_Approvals_1a9ef45737.pdf).

<sup>8</sup> Jonathan Kim, *Fiber Optic Networks Construction: Process and Build Costs*, Dgtl Infra (Jan. 14, 2024), <https://dgtlinfra.com/fiber-optic-network-construction-process-costs/#:~:text=aerial%20fiber%20installation,-.How%20Much%20Does%20it%20Cost%20to%20Lay%20Fiber%3F,or%20bury%20fiber%20optic%20cable>.

<sup>9</sup> Terilyn Whipple, *WISPA Says BEAD Fiber Prioritization to Increase Cost and Deployment*, BroadbandBreakfast (Feb. 10, 2023), <https://broadbandbreakfast.com/wispa-says-bead-fiber-prioritization-to-increase-cost-and-deployment/>.

unlicensed fixed-wireless and low-earth-orbit satellite broadband act as excellent solutions in some scenarios, however the BEAD program currently only allows for these technologies to be deployed in certain high-cost areas.

### 3. Permitting

The BEAD NOFO requires all broadband buildout by the subgrantees to be completed not later than four years after receiving the grant. This timeline, while typical for broadband programs, may overwhelm federal and state agencies responsible for conducting permitting reviews of potential projects. With 56 different states and territories all attempting to build roughly within the same four-year time period, speed in the permitting process will be a key to success. Many permitting requirements, such as the *National Environmental Policy Act* (NEPA) and *National Historic Preservation Act of 1966* (NHPA), create unnecessary barriers to infrastructure deployment by requiring environmental and historical review before deploying, even in previously disturbed areas. Additionally, state and local permitting authorities will be similarly inundated with requests from across their jurisdictions all arriving at the same time. Without permitting reform to reduce these burdens, these delays will lead to rising costs and wasted government funding.

### 4. Other Requirements & Topics

The BEAD NOFO contains several other requirements that have raised questions about implementation feasibility. Labor requirements, including a heavy-handed suggestion to pay “prevailing wages”, can create confusion in uncertainty as providers are unable to ensure the future profitability of projects. A letter of credit requirement can put small and medium size providers in a compromising position by tying up capital that could be invested into broadband networks. Build America, Buy America requirements promote American manufacturing of telecom network equipment, but may lead to higher prices for equipment with long lead time. Closing the digital divide requires flexibility by all parties, including the federal agencies implementing the program. Ensuring that Congress keeps an open line of communication with states, providers, and executive branch agencies is key to ensuring the success of the BEAD program.

## V. KEY QUESTIONS

- What will be the biggest barriers to deployment as BEAD funding becomes available to states?
- Is NTIA allowing states to deploy the best technologies to stretch BEAD funding as far as possible?
- Which program rules do you see being the largest barrier to deployment, both in speed and in breadth of coverage?
- Do you believe NTIA is dutifully carrying out its commitment to transparently run this program?

**VI. STAFF CONTACTS**

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