

Written Testimony of  
Blair Levin

Before the  
House Subcommittee on Communications and Technology

On

From Introduction to Implementation: A BEAD Program Progress Report  
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## Summary of Key Points

The principal causes of the time the BEAD program has taken to be able to fund deployments stem from Congress' desire to avoid the problems of waste, fraud and abuse that plagued the 2020 RDOF auction and other deployment programs.

- Requiring a new map, after the disastrous RDOF map, took more than half the time to date of the BEAD implementation.
- Requiring plans to end the digital divide as BEAD is designed to do, rather than simply narrow it as prior programs were designed to do, is more difficult and time consuming.

The criticism of BEAD implementation that characterizes implementing the Congressional directive to assure that the broadband service is affordable as price regulation is wrong as a matter of law and history.

- As a matter of law, the correct interpretation is that the states cannot use BEAD to impose general price regulation on an ISP. But the states can, as part of the terms of the grant, require the service to be affordable.
- As a matter of history, that is exactly what every FCC, under both Republican and Democratic leadership, has done when providing subsidies for high-cost area deployments.
- It is necessary to condition the government subsidy on an affordability requirement as the subsidy creates a monopoly. Monopolies price in ways that would make the service unaffordable to many, which would be contrary to Congressional intent.

Further, the affordability issue would not be a problem if Congress had extended the Affordable Connectivity Program.

- Congress would be wise to clearly authorize the FCC to make the National Verifier available to ISPs offering low-income programs, as that would serve the affordability goal and improve the economics of BEAD.

There are other issues that will have a large impact on BEAD's success that have been largely overlooked.

- These include, for example, workforce and supply chain issues.
- The biggest challenge for BEAD will ultimately be compliance with the grant terms, an issue that has afflicted all such programs.
- But the biggest concern in terms of the long-term commitment to make broadband universally available and affordable, for which BEAD plays a critical role, is the legal and economic threat to the current Universal Service Fund framework.

## Written Testimony

Chair Rogers, Committee Chair Latta, Ranking Member Pallone and other members of the Subcommittee on Communications and Technology, thank you for inviting me to testify in today's hearing, From Introduction to Implementation: A BEAD Program Progress Report."

My name is Blair Levin. I am the policy analyst with New Street Research, an equity research firm, and a Senior Non-Residential Fellow at the Metropolitan Policy Project of the Brookings Institution. In 2009-2010 I led the team that wrote the United States National Broadband Plan. From 1993-1997 I served as Chief of Staff to FCC Chairman Reed Hundt. I am here speaking on behalf of myself, and my views are not intended to represent the views of any organization with which I am affiliated.

I want to congratulate the Subcommittee for holding this hearing, as oversight of such large and important programs is a critical Congressional function. I hope I can provide helpful historical and analytic perspectives that assist that effort.

For nearly a century, our country has been committed to the principle that basic communications services should be universally accessible and affordable.

Sometimes we have done it well. Sometimes not as well.

Hopefully, we continually learn so that current efforts can be improved, and future efforts can be better designed to achieve the intended outcome more efficiently.

That learning process should consider a range of programs in evaluating what is going right and what might be going wrong the BEAD program.

For example, we should look at another federal broadband program, the U.S. Department of Treasury's Capital Projects Fund, a \$10 billion program that was also established in 2021. Like BEAD, Capital Projects was designed to fund broadband networks where private market dynamics on their own would not.

It has already awarded over 98% of its funds.<sup>1</sup> So, in addition to congratulating Treasury for doing what I hope we would all agree was an excellent job, we should ask **why did the Capital Projects fund succeed in getting the money out the door quickly while the BEAD program has not yet done so?**

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<sup>1</sup> For a thorough and excellent analysis about how those funds have been spent, including its focus on rural and the diversity of providers receiving funds, please see this analysis from Pew: <https://www.pewtrusts.org/en/research-and-analysis/articles/2024/08/06/federal-pandemic-rules-enhance-state-flexibility-in-deploying-broadband-funds>

There are two big reasons.

**First, with Capital Projects, Congress did not require the allocations to be based on a new FCC map. With BEAD, Congress did.** While the map is an ongoing project, there were a lot of planning processes at the states and at NTIA that could not move forward without the initial map and challenge process being completed, which took more than half the time between the signing of the legislation and today.

But I don't want to blame the current FCC.

The sad truth is that the prior Trump Administration FCC did not do its job in creating an up-to-date map. Chairman Pai blamed Congress for not providing him the funding necessary to develop an accurate map<sup>2</sup> though Congress did eventually pass the DATA Act to enable that mapping.<sup>3</sup>

Why did Congress require the FCC to do a new map? It was due to the problems of having a bad map that became obvious with the FCC's 2020 problematic RDOF auction.

As Congress discovered when the RDOF auction was over, the FCC used a map that included as unserved locations where there was obviously already broadband coverage, such as in Fisherman's Wharf in San Francisco, Apple headquarters, the Massachusetts Institute of Technology campus and several large airports including international hubs in Dallas-Fort Worth and San Francisco.<sup>4</sup>

Broadband expert Doug Dawson summarized it this way: "The crappy data in the maps created the disaster of the RDOF serving areas, which in many counties is best compared to Swiss cheese."<sup>5</sup>

So, Congress made a reasonable judgement that as to the smaller Capital Projects program, Congress would use population to set a simple formula to determine how much each state would receive in funds. But providers, advocates, and members of Congress were clear that the much larger BEAD program – with its intent to close the digital divide once and for all – needed to set allocations differently, including by using the new map.

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<sup>2</sup> <https://docs.fcc.gov/public/attachments/DOC-363267A1.pdf>.

<sup>3</sup> <https://www.congress.gov/bill/116th-congress/senate-bill/1822#:~:text=This%20bill%20requires%20the%20Federal,satellite%2C%20and%20mobile%20broadband%20providers.>

<sup>4</sup> <https://www.fierce-network.com/financial/cca-warns-up-to-1b-rdof-funds-could-be-wasted>

<sup>5</sup> <https://potsandpansbyccg.com/2024/06/11/fcc-maps-versus-broadband-labels/>. He was far from alone in his criticism. the head of the Competitive Carriers Association noted "We knew the data was not accurate," he said. "The FCC told Congress that 'no, we're absolutely certain that the first phase of this that we do, there won't be any areas that have broadband coverage.' Well, they were absolutely wrong. And now we've shown that not only were they wrong, but they were seriously wrong." <https://www.fierce-network.com/financial/cca-warns-up-to-1b-rdof-funds-could-be-wasted>

The FCC met its timeline obligations, but that process took more than a year and included several iterations.<sup>6</sup> The FCC released the initial map that would inform the state allocation process on November 18, 2021. As required by the statute, states, ISPs, and the public had the opportunity to challenge the data. The FCC adjudicated challenges and NTIA used the resulting data to finally determine state BEAD allocations, which were announced in June 2023. It was then that states could begin their highly detailed, location-specific programmatic design in earnest.

It is a mistake to think that states did nothing between November 2021, when the Infrastructure Bill was signed into law, and June 2023. In fact, the BEAD statute reflects several distinct phases of implementation: planning, program design and review; implementation, and evaluation. These time-limited phases came with clear requirements that were based on research of state programs and historic federal programs, as well as significant input from the telecommunications industry, to avoid mistakes of past federal programs and ensure that deployment strategies reflected the precision that was necessary to untangle the “Swiss cheese effect” that Dawson referred to.

In the year since the NTIA has finalized the allocation, lots has happened. NTIA opened the window for states to file their plans for approval and has now approved the initial proposals of 34 states and territories. About a dozen states are taking BEAD applications or about to in the coming months. Louisiana's process will end in the next 6 weeks, and Montana's not long after, a tribute to the work of my fellow panelist from that state. So, while the mapping effort caused nearly a 23-month delay, in the last 12 months things have been moving apace.

**The second reason Capital Projects could move more quickly than BEAD is that Congress only required Capital Projects to make progress while Congress asked the BEAD program to finish the job of connecting all Americans to broadband.**

Something BEAD critics do not appear to understand, but I know that everyone working in a state broadband office understands, is that it is much, much harder to have a plan that finishes the job than a plan designed to simply make progress.

Capital Projects, like prior and other deployment programs such as RDOF and USDA's ReConnect, allocates funding that everyone agrees is insufficient, and then makes incremental progress in connecting unserved areas. BEAD does the opposite. It puts a huge amount of money on the table but requires states to color in the entire map. It's a totally different, and much more difficult, policy problem.

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<sup>6</sup> <https://www.pewtrusts.org/en/research-and-analysis/articles/2022/11/18/what-is-the-fccs-new-broadband-map-and-why-does-it-matter>

There have been many attempts to narrow the digital access divide, including Capital Projects and several other programs in the last few years. But BEAD is the only program designed to end the digital access divide. That is a much more difficult problem, and it takes more time.

**In short, while many of the criticisms the of BEAD implementation has focused on issues that take weeks or months to resolve, the same critics has ignored the structural issues that have added many months if not years to the process.**

This Committee should also ask itself, why, after decades of trusting the FCC to spend the Lion's Share of government funds for rural deployments, did Congress suddenly decide not to give any funding to the FCC for the biggest deployment program ever?

The answer is that Congress did not trust the FCC due to its perception of the RDOF auction. As broadband expert Carol Matthey noted "the fact that Congress chose to provide more than \$40 billion to NTIA and \$10 billion to Treasury for broadband demonstrates that Congress was not happy with the outcome of RDOF."<sup>7</sup>

Further, the Committee and its colleagues should consider the other requirements Congress charged states with, such as addressing permitting barriers and the shortage in the construction workforce. These requirements weren't just based on past performance of state programs and a desire for accountability in spending: they were implemented in response to shortcomings and challenges with other federal broadband programs.

My point is not to provide a detailed analysis of the RDOF<sup>8</sup> or other prior deployment programs. It is to point out that Congress, upset with a process that resulted in not just bad maps but winners who no one believed could deliver on their promises, wanted a process that would be much more deliberate.<sup>9</sup>

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<sup>7</sup> <https://medium.com/@CarolMatthey/lessons-learned-from-rdof-some-advice-for-the-states-as-they-embark-on-bead-7b6d324155bf>

<sup>8</sup> I did provide such an analysis for institutional investors on Wall Street, that can be found here: <https://www.newstreetresearch.com/research/nsr-policy-implications-of-rdof-plus-quick-hits-on-simington-musical-chairs-broadband-covid-relief-antitrust-moves-against-facebook-and-our-favorite-covid-casualty/>

<sup>9</sup> For example, Senator Capito (R. WV) was clearly unhappy with the result due to Frontier winning a significant amount in her state. She sent [a letter](#) to the FCC detailing similar concerns about one of the incumbents, Frontier. [https://www.capito.senate.gov/imo/media/doc/120920\\_FCC%20Letter%20Post%20RDOF.pdf?utm\\_source=sendgrid&utm\\_medium=email&utm\\_campaign=Newsletters](https://www.capito.senate.gov/imo/media/doc/120920_FCC%20Letter%20Post%20RDOF.pdf?utm_source=sendgrid&utm_medium=email&utm_campaign=Newsletters). As she noted, "Frontier has a documented pattern of history demonstrating an inability to meet FCC deadlines for completion in the Connect America Phase II support in West Virginia." As she further wrote, "the company's failure to meet deadlines for a 10/1 network should raise questions about its ability to complete a network at hundred times that level. The Senator also advised the FCC to carefully scrutinize the company's financial position. But the problem was not just a function of Frontier. For a study discussing how the problems of non-performance have plagued FCC programs that preceded BEAD, see for example, this study: <https://sites.cs.ucsb.edu/~arpitgupta/pdfs/caf-sigcomm24.pdf>

**That is, Congress wanted requirements that would assure that problematic results of the RDOF auction would not be repeated in BEAD. It wanted to make sure that the waste, fraud and abuse that arose in the RDOF process would not arise with BEAD.** I am not questioning that judgement. I am simply noting honoring that Congressional intent resulted in a longer process.

And, as I hope this Committee recognizes, members of Congress have complained that in sometimes, NTIA was acting too quickly.<sup>10</sup>

In short, Congress decided it was willing to sacrifice speed in BEAD implementation to avoid the many problems RDOF created.

**Another criticism of BEAD implementation involves the Congressional directive to assure that the broadband service is affordable, characterizing such efforts as price regulation.**

This is wrong both as a matter of law and history.

**As a matter of law, the correct interpretation is that the states cannot use BEAD to impose general price regulation on an ISP. But the states can, as part of the terms of the grant, require the service to be affordable.**

**As a matter of history, that is exactly what every FCC, under both Republican and Democratic leadership, has done when providing subsidies for high-cost area deployments.**

There is a good reason for this. The BEAD subsidy creates a monopoly.<sup>11</sup> Private enterprises do not price to maximize the number of customers. They set prices to maximize the return on invested capital.<sup>12</sup> In a monopoly situation, this will lead to the product being unaffordable to many customers. Therefore, the government has a right to say—and again, it has said so in both Republican and Democratic Administrations—if we are providing funding that enables you to build a service that will be a monopoly, we have a right to set terms in the grant agreement that places some constraints on how you price the service.

There are legitimate disagreements about the nature of those contractual terms. But do not engage in the inaccurate fantasy that such price constraints are a new thing.

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<sup>10</sup> For example, Sen. Roger Marshall of Kansas described the FCC and NTIA's timeline as "too aggressive" in a letter to the NTIA and requested that NTIA delay a deadline for submissions to the FCC's broadband map for consideration in the BEAD allocation process and allow broadband providers, community leaders and residents an additional 90 days to submit challenges to the map. <https://www.marshall.senate.gov/wp-content/uploads/NTIA-Broadband-Map-Delay.pdf>

<sup>11</sup> Certainly, this is true for the highest priority areas, classified as currently "unserved." It is also likely to be true in the second-tier areas, classified as "underserved" as the BEAD subsidized network will either be a monopoly broadband provider or have such a performance advantage over others that a competitive analysis would classify the network as having pricing power like a monopoly.

<sup>12</sup> To be clear, I state this not as criticism of any ISPs but simply as the way private enterprise works, something well understood and respected among the institutional investors with whom I work.

And if I can offer a personal observation, in my first week of work as FCC Chief of Staff, Chairman Hundt received bipartisan letters<sup>13</sup> asking him to redo the rate regulation on the cable industry, required by the 1992 Cable Act. I spent a huge amount of my first three months in the job working on that project. Based on that experience, I offer three observations:

- The FCC team did a brilliant job creating a rate regulation regime;
- Despite the brilliance in execution, the idea of rate regulating a dynamic product like cable programming was flawed, did not work, and was one of the two biggest mistakes of my first stint at the FCC<sup>14</sup>; and
- We were all glad when Congress repealed the rate regulation provisions in the 1996 Telecommunications Act.

So, to those who think the affordability directive is price regulation, let me say this: I know price regulation, price regulation was no friend of mine, and the affordability directive is no price regulation.

**There is another historical error critics make in attacking the affordability requirements.**

**The affordability issue was not a problem until it became clear that the Affordable Connectivity Program (ACP) would expire. When that program was in place, everyone agreed on what would be affordable and not one was protesting the requirement.**

That expiration was a huge setback for the BEAD program.

As an economic matter, it will reduce the value of the BEAD expenditures. As the consulting group BCG found, ACP reduces the subsidy needed to incentivize providers to build in rural areas by 25% per household, writing “the existence of ACP, which subsidizes subscriber service fees up to \$360 per year, reduces the per-household subsidy required to incentive ISP

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<sup>13</sup> My memory is that they were signed by 34 Senators and 128 Members of the House of Representatives. The letters were a response to news reports, which were accurate, that in the wake of the first round of FCC rate regulation, done by the interim chair in the spring of 1993, cable rates went up, not down.

<sup>14</sup> The other big mistake was the way we ran the C Block spectrum auction in 1996. We were attempting to fulfill the Congressional mandate to enable small businesses and other designated groups enter the mobile services business. We erred in making the terms too favorable. This is related to this hearing in the following way. When we realized that the C Block auction was flawed, Chairman Hundt immediately and publicly admitted the error and took full responsibility. He did so to make sure that Congress (and the world) understood that the problem was not using auctions to allocate spectrum but rather, the specifics of our execution in that auction. The auction program continued and is the most successful innovation in communications policy ever. ( See <https://www.ctia.org/news/30-years-of-spectrum-auctions-and-wireless-leadership>.) By contrast, Chairman Pai said the RDOF auction was a huge success and while Congress was considering the broadband provisions of the Infrastructure Act, staff I talked to told me that Congress no longer trusted the FCC or reverse auctions, as it was clear to them that the FCC leadership did not understand the error of their ways.



investment by \$500, generating benefit for the government and increasing the market attractiveness for new entrants and incumbent providers.”<sup>15</sup>

But of course, if ACP goes away, those savings will also go away. To put a fine point on it, it is a mathematical certainty that there will be communities in, for example, Ohio, that instead of getting fiber will end up with fixed wireless or even satellite.<sup>16</sup>

Some argue that using the money for those less expensive services is the right outcome. I will let my fellow panelists, who have more expertise on the subject than I, address it in detail. I will simply say that every public official I have talked to prefers that their constituents obtain fiber. That may not be financially feasible to every location, and I think Congress was right to put the critical capital allocation decisions on that issue in the hands of the Governors. But it is a shame that the Governors now must make tougher decisions due to greater financial constraints. As a bi-partisan letter from 26 Governors to Speaker Johnson urging him to allow a House vote on an ACP extension noted, a failure to extend the program would reduce the value of the BEAD expenditures<sup>17</sup> which is exactly what has happened.

As an administrative matter, the expiration of ACP has caused untold additional hours of state and ISP resources, as they spent 2023 and much of 2024 having to develop plans for how to allocate funds with an ACP and without one. And since the expiration of ACP, they had to spend significant resources figuring out how to address the affordability issue.

To be candid, the fault lies in this building. A majority of the House signed on to legislation that would have extended the ACP. But House leadership, ignoring the economic and policy arguments<sup>18</sup> that a majority agreed with, as well as the wisdom of Leviticus, Luke and Matthew,<sup>19</sup> never brought the legislation up for a vote.

**Fortunately, many ISPs have stepped up and offered low-income programs.**

**Unfortunately, the FCC has made such efforts more difficult by refusing to continue to make available the national verifier, forcing the ISPs to bear the cost of verifying the income levels to determine eligibility.**

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<sup>15</sup> [https://www.common sense media.org/sites/default/files/research/report/2022-cs-bcg-closing-digital-divide\\_final-release-3-for-web.pdf](https://www.common sense media.org/sites/default/files/research/report/2022-cs-bcg-closing-digital-divide_final-release-3-for-web.pdf)

<sup>16</sup> For anyone interested in how the math works, I would refer you to my answer to Senator Cruz on the impact on Texas following up on a hearing in May on the ACP. <https://www.benton.org/blog/ten-things-about-acp-ted-cruz-cares-about-7-acp-and-bead>

<sup>17</sup> <https://governor.nc.gov/governors-acp-letter/open>

<sup>18</sup> I summarized those in a speech that can be found here: <https://www.benton.org/blog/economic-political-historic-and-even-theological-case-acp>

<sup>19</sup> <https://dcjournal.com/speaker-johnson-should-heed-the-theological-case-for-broadband/>

To help BEAD become more effective, we should encourage ISP affordability efforts. Congress should encourage having the FCC take on the task—which it is better positioned than ISPs to do—of clarifying that the agency is authorized to operate the verifier for determining eligibility for ISP low-income programs.<sup>20</sup>

Finally, let me note that there are other critical issues that we are unlikely to get to today but that will play a big role in determining the fate of the BEAD program. For example, when my fellow panelist from Montana was asked what Montana’s biggest broadband challenge beyond geography was, she “referred to workforce and supply chain issues.”<sup>21</sup> Based on my Wall Street research and conversations with state broadband offices, I know she speaks for many states in highlighting those issues.

**Further, this hearing is not likely to touch on what I predict will be the most important and difficult issue facing BEAD; enforcing the commitments of the grant winners.**

I can safely predict this because no matter how the money is awarded, there are always enforcement problems.

I spent a decade as a commercial lawyer working on the financing of large construction projects. Enforcement was always a thorny part of those contract negotiations. I have also observed years of the FCC grabbling with the problem that, as is true in many realms, a promise made is not a promise kept.<sup>22</sup> Compliance is a problem with multiple trade-offs; if you mitigate one problem you likely expand another.

I don’t want to go down that rabbit hole here, nor do I have a silver bullet, but I raise it to suggest that it would be a good thing to have an oversight hearing in which government and private officials can explain how they intend to address compliance problems and what the history of the last 20 years of FCC network subsidies has taught us about how to deal with them. If this committee wants to stay ahead of the problems, it will start asking questions about the compliance framework now.

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<sup>20</sup> This is not a novel idea. It is done by Canada with its Connecting Families program. <https://ised-isde.canada.ca/site/connecting-families/en>. In that program The Canadian government verifies one’s eligibility and gives eligible persons a code, so ISPs know the person is eligible. In my opinion, the current law authorizes the FCC to offer a similar service. But the legal staff at the FCC has apparently told various stakeholders that the law does not provide that authority. I have tremendous respect for the FCC’s legal team, even when I disagree with them. So clearly, the right thing to do is for Congress to provide a short, and I believe non-controversial, law that address the FCC’s legal concern.

<sup>21</sup> <https://www.telecompetitor.com/the-broadband-director-who-made-montana-first-to-open-a-bead-application-portal/>

<sup>22</sup> For example, in [the Mobility Fund Phase 1 auction](#), which ended in 2012, there were a running series of defaults, so that, for example, a year later the FCC authorized support for 222 Winning Bids but also noted that 94 Auction Winning Bids had defaulted. In 2016, the FCC authorized support for 11 additional bids while also announcing 35 more defaults. Similarly, one can look at [the record of the FCC](#) with the winning bidders in the CAF II auctions and see many defaults.

If we can go beyond BEAD and remember the ultimate mission of universal access and affordability, it would also be a good thing to have an oversight hearing on the greatest threat to the goal of universal service that our country has faced in the last century; that is, the recent Fifth Circuit decision that the current framework for Universal Service, which has been in place nearly three decades, is suddenly unconstitutional.

As my fellow panelist from NTCA recently noted, if that decision is upheld, rural Americans' broadband rates could skyrocket, and there is substantial potential for default on outstanding network construction loans, including many held by the federal government.<sup>23</sup>

The gathering storm about the future of USF, both from the legal perspective and the economic perspective,<sup>24</sup> is another element making the BEAD planning process more problematic and cries out for this committee's involvement.

To be clear, I am not suggesting that the implementation of the BEAD program has been perfect. Nothing ever is.

But I hope that this Committee attempts in good faith to understand the history that preceded the program and many trade-offs in making sure this effort succeeds.

**Because at the end of the day, the most important thing is to keep our country's critical, century long commitment to communications being universally accessible and affordable to all.**

Thank you.

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<sup>23</sup> <https://www.ntca.org/ruralischool/newsroom/press-releases/2024/4/ntca-survey-highlights-significant-risks-skyrocketing>

<sup>24</sup> As an indication of the economic thin ice on which the current system resides, at the end of August, USAC projected that USF revenues for 4Q2024 to be approximately \$329 million less than the previous quarter and the lowest quarterly revenue in the history of the USF. As a result, contribution factor for 4Q24 will rise from 34.4% to 36.5%, the highest quarterly contribution factor ever.