



MEMORANDUM

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

I. INTRODUCTION

On Tuesday, May 23, 2023, at 10:00 a.m. (ET), the Subcommittee on Communications and Technology will hold a hearing in 2123 Rayburn House Office Building titled “Oversight and Reauthorization 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.¹ 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.² 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.³

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 total NTIA budget request for Fiscal Year (FY) 2024 is \$109.665 million, which is \$47.665 million more than the amount appropriated for FY23.⁴

For the NTIA’s core programs, the FY24 budget requests \$17 million for domestic and international policies, which work to preserve an open, interconnected global internet through

¹ 47 U.S.C. 902(b)(2)(D).

² See, <https://ntia.gov/page/about-ntia>.

³ See, <https://ntia.gov/office/office-international-affairs-oia>.

⁴ Consolidated Appropriations Act, 2023 (P.L. 117-328).

domestic interagency coordination as well as working with other governments and international organizations to reach consensus on relevant issues.

The FY24 budget requests \$25 million for spectrum management to balance demand for commercial mobile broadband with spectrum needs of federal agencies in support of national defense, homeland security, law enforcement, and public safety.⁵ This request is an increase of approximately \$15 million over the FY23 enacted level.⁶

The FY24 budget also requests \$8 million to upgrade facilities at the Institute for Telecommunication Sciences, the NTIA's field testing site that studies how to use spectrum more efficiently.⁷ For advanced communications research, the FY24 budget requests \$21 million to support scientific knowledge of radio spectrum to develop, test, and evaluate innovative approaches to spectrum access and efficiency.

Lastly, the FY24 budget requests \$42 million for broadband programs to provide technical assistance and guidance to bring broadband to communities across America.⁸

According to its request, the NTIA's budget would fund initiatives to 1) develop and implement a mechanism for dynamically sharing spectrum in a given band that would enable managing interference between incumbent Federal users and new entrants; 2) improve the interagency coordination process and accelerate deployment of commercial wireless technologies by proactively performing engineering studies and analyses; 3) increase administrative oversight of grants funded under the Infrastructure Investment and Jobs Act (IIJA); and 4) continue to provide the technical expertise and coordination support necessary to enable the Nation's 911 systems to upgrade from analog to Internet Protocol-based systems, commonly referred to as Next Generation 9-1-1.⁹

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

The Consolidated Appropriations Act, 2023

The Consolidated Appropriations Act, 2023, appropriated to NTIA \$62 million.¹⁰ The NTIA currently employs 154 full-time equivalents for 157 positions. IIJA tasked the NTIA with

⁵ Fiscal Year 2024 Budget Appendix, available at: <https://www.govinfo.gov/content/pkg/BUDGET-2024-APP/pdf/BUDGET-2024-APP.pdf>

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022), <https://www.congress.gov/bill/117th-congress/house-bill/2617>.

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.¹¹

Oversight of the NTIA's administration of these programs will be a key priority this Congress, but the BEAD program will require the closest 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. Each state will receive \$100 million, and an additional allocation of money based on the number of unserved and underserved locations, and the number of unserved high-cost locations within its borders, based on the Federal Communications Commission's (FCC) broadband maps.

In May 2022, the NTIA released its Notice of Funding Opportunity (NOFO) outlining requirements for the BEAD program. The NTIA anticipates making state allocations by June 30. The NTIA set this date in coordination with the FCC based on when the FCC could adjudicate challenges to its broadband map. An updated version of the FCC's map will be released on May 30.

The Consolidated Appropriations Act, 2021

The NTIA has also received significant money from other legislation to deploy broadband. The Consolidated Appropriations Act, 2021, included COVID-19 stimulus funding, and provided NTIA \$1.3 billion for broadband grants: \$1 billion for Tribal areas and \$300 million for broadband deployment in unserved areas.¹² The Tribal grants may be used by Tribal governments to be used not only for broadband deployment on Tribal lands, but also 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 support to expand broadband capacity and use in communities surrounding Historically Black Colleges and Universities, Tribal colleges and universities, and minority-serving education institutions.¹³

¹¹ 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>.

¹² Consolidated Appropriations Act, 2021, P.L. 116-260, div. N, tit. V, § 905 (2020).

¹³ Consolidated Appropriations Act, 2021, § 902.

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 these projects funded with this money overbuilt existing broadband networks.¹⁴ 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.¹⁵ 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.¹⁶

2. Spectrum

Demand continues to grow for more radio frequency spectrum (spectrum) to be available for commercial users on both a licensed and unlicensed basis. At the same time, federal users depend on spectrum 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,¹⁷ and is actively pursuing innovative approaches to protect federal interests, while also granting greater access to spectrum for commercial purposes. NTIA is also responsible for communicating the Executive Branch's position on issues related to federal spectrum to the FCC.¹⁸

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 policymaking, 3) and investigate the most pressing telecommunications challenges.¹⁹ ITS works with other Federal agencies through Interagency Agreements (IAAs) and engages directly with

¹⁴ 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.wvgazettemail.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).

¹⁵ 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>.

¹⁶ 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.

¹⁷ 47 U.S.C. 902(b)(2)(A).

¹⁸ 47 U.S.C. 902(b)(2)(J).

¹⁹ See, <https://its.ntia.gov/about-its/its-the-nation-s-spectrum-and-communications-lab/>

industry and academia through Cooperative Research and Development Agreements (CRADAs).²⁰

Recently, the NTIA has taken steps to highlight their ongoing coordination with the FCC regarding potential spectrum actions, including by updating a Memorandum of Understanding (MOU) between the agencies.²¹ Additionally, the NTIA has undertaken efforts to develop a National Spectrum Strategy by seeking comments from the public on three proposed pillars of the strategy: 1) Developing a spectrum pipeline; 2) Long-term spectrum planning; and 3) Spectrum access and management through technology development.²²

3. First Responder Network Authority (FirstNet)

The First Responder Network Authority (FirstNet) was created in 2012 as an independent authority within 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.²³ 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.²⁴ FirstNet will provide AT&T \$6.5 billion over the first five years and access to the 20 MHz of spectrum.²⁵ FirstNet's authority sunsets on February 22, 2027.²⁶ 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.²⁷

4. Public Safety/Next-Generation 9-1-1

The Next Generation 9-1-1 Advancement Act of 2012 established the National 9-1-1 program in the Implementation Coordination Office (ICO) which was jointly administered by NTIA and the National Highway Traffic Safety Administration (NHTSA). These two agencies received \$115 million in funds to provide grants to states for developing next generation 9-1-1 systems. As of September 30, 2022, the authority for the ICO has expired.²⁸

²⁰ *Id.*

²¹ See, https://www.ntia.gov/sites/default/files/publications/ntia-fcc-spectrum_mou-8.2022.pdf

²² <https://ntia.gov/issues/national-spectrum-strategy>; Request For Comments, Federal Register Vol. 88, No. 51, 16244. March 16, 2023.

²³ 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>.

²⁴ See, <https://2014-2018.firstnet.gov/news/firstnet-partners-att-build-wireless-broadband-network-americas-first-responders>

²⁵ 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>.

²⁶ Middle Class Tax Relief and Job Creation Act of 2012, § 6206(f).

²⁷ 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>.

²⁸ 47 U.S.C. 942(d)(2).

Last Congress, the House passed H.R. 7624, which included provisions led by Representatives Anna Eshoo (D-CA) and Richard Hudson (R-NC) to authorize Next-Generation 9-1-1. On March 24, 2023, Representatives Hudson and Eshoo introduced the Next-Generation 9-1-1 Act of 2023, which would establish a grant program at NTIA to facilitate a nationwide transition to next-generation 9-1-1.

5. Internet Governance

The NTIA remains central to the Executive Branch's involvement in internet governance and works through an international multistakeholder process to reach consensus on a wide range of internet policy issues, including the domain name system (DNS), cybersecurity, digital copyrights, and protecting internet openness and freedom. This includes the NTIA's participation in the Governmental Advisory Committee (GAC) within the Internet Corporation for Assigned Names and Numbers (ICANN).

V. LEGISLATION

On Tuesday, the Subcommittee on Communications and Technology will review the following legislation.

1. **H.R. 1677, the Simplifying Management, Access, Reallocation, and Transfer of Spectrum (SMART Spectrum) Act (Representative Guthrie)**

H.R. 1677 was introduced by Chairman Brett Guthrie (R-KY) and Ranking Member Doris Matsui (D-CA) on March 21, 2023. The bill would require the NTIA to establish an Incumbent Informing Capability (IIC) to enable sharing of Federal spectrum with non-Federal entities that securely manages harmful interference.

2. **H.R. 1784, the Next Generation 9-1-1 Act of 2023 (Representative Hudson)**

H.R. 1784 was introduced by Representative Richard Hudson (R-NC) and Representative Anna Eshoo (D-CA) on March 24, 2023. The bill would establish a Next-Generation 9-1-1 (NG911) grant program at NTIA to facilitate a nationwide transition to NG911.

3. **H.R. ____, the National Telecommunication and Information Administration Reauthorization Act of 2023 (Representative Latta)**

The discussion draft is led by Chairman Latta. The discussion draft would reauthorize the NTIA, promote the Assistant Secretary of Commerce for Communications and Information to the Under Secretary of Commerce for Communications and Information, and make changes to the agency's statutory mission, functions, and policy.

4. **H.R. ____, the Commerce Spectrum Coordination Act of 2023 (Representative Griffith)**

The discussion draft is led by Representative H. Morgan Griffith (R-VA). The discussion draft would codify the existing Commerce Spectrum Management Advisory Council (CSMAC), which advises the Assistant Secretary on a broad range of spectrum policy issues, including to offer expertise on reforms to enable new technologies and services.

5. H.R.____, the Novel, Advanced Spectrum and Communications Technology Networks Promotion Act (Representative Guthrie)

The discussion draft is led by Representative Brett Guthrie (R-KY). The discussion draft would direct NTIA to support the establishment, prototyping, and implementation of common models, common methodologies, and common inputs to inform spectrum management decisions.

6. H.R.____, the Public Safety Communications Act (Representative Cammack)

The discussion draft is led by Representative Kat Cammack (R-FL). The discussion draft would codify the existing Office of Public Safety Communications within NTIA and direct NTIA to carry out certain oversight activities related to the First Responder Network Authority (FirstNet).

7. H.R.____, the NTIA Consolidated Reporting Act (Representative Allen)

The discussion draft is led by Representative Rick Allen (R-GA). The discussion draft would repeal outdated or unnecessary reporting requirements and establish an annual, consolidated report, which would include many existing statutory reporting requirements.

8. H.R.____, the Timely Evaluation of Acquisitions, Mergers, or Transactions with External Lawful Entities to Clear Owners and Management (TEAM TELECOM) Act (Representative Johnson)

The discussion draft is led by Representative Bill Johnson (R-OH). The discussion draft would direct NTIA to develop procedures to consider the law enforcement and national security policy implications of an application for a license to provide communications services within the United States referred to NTIA by the Federal Communications Commission.

9. H.Res.____, To express the sense of Congress with respect to WHOIS information accessibility, and for other purposes. (Representative Fulcher)

The discussion draft is led by Representative Russ Fulcher (R-ID). The discussion draft provides a sense of Congress that WHOIS information is critical to the national security, economic security, and cybersecurity of the United States and that it should remain open and accessible.

10. H.R.____, the Digital Economy Cybersecurity Advisory Act of 2023 (Representative Pfluger)

The discussion draft is led by Representative August Pfluger (R-TX). The discussion draft would establish a digital economy and cybersecurity board of advisors to provide recommendations on cybersecurity matters to the Assistant Secretary of Commerce for Communications and Information for implementation by NTIA or that NTIA could recommend for implementation by other appropriate entities.

11. H.R.____, the Proper Leadership to Align Networks (PLAN) for Broadband Act (Representative Walberg)

The discussion draft is led by Representative Tim Walberg (R-MI). The discussion draft would require NTIA to develop and submit to Congress a national strategy to close the digital divide that would support better management of broadband funding programs, synchronize interagency coordination among agencies that provide broadband funding, and reduce barriers to broadband permitting processes.

12. H.R.____, the Spectrum Relocation Enhancement Act (Ranking Member Matsui)

The discussion draft is led by Ranking Member Doris Matsui (D-CA). The discussion draft would make changes to what relocation or sharing costs are eligible for reimbursement from the Spectrum Relocation Fund (SRF), how federal agencies receive payments from the SRF, and increasing oversight by NTIA of activities carried out using a payment from the SRF.

13. H.R.____, the Spectrum Coexistence Act (Ranking Member Matsui)

The discussion draft is led by Ranking Member Matsui (D-CA). The discussion draft would require NTIA to establish a working group to develop and periodically update criteria, ratings, and other measures for radio receivers operating in Federal systems.

14. H.R.____, the Artificial Intelligence Accountability (AI Accountability) Act (Representative Harder)

The discussion draft is led by Representative Josh Harder (D-CA). The discussion draft would direct NTIA to conduct a study on accountability measures for artificial intelligence (AI) systems used by communications networks. It would also direct the Assistant Secretary to hold public meeting with relevant stakeholders to solicit feedback on the information that should be available to consumers who interact with AI systems and the most effective way to make that information available to consumers.

15. H.R.____, the Diaspora Link Act (Delegate Plaskett)

The discussion draft is led by Delegate Stacey E. Plaskett. The discussion draft would direct NTIA to submit a report to Congress assessing the value, cost, and feasibility of developing a trans-Atlantic submarine fiber optic cable connecting the contiguous United States, the United States Virgin Islands, Ghana, and Nigeria.

16. H.R.____, the FirstNet Reauthorization Act (Representative Fletcher)

The discussion draft is led by Representative Fletcher (D-TX). The discussion draft would permanently reauthorize the First Responder Network Authority (FirstNet).

17. H.R. ___, To direct the Assistant Secretary of Commerce for Communications and Information to publish data from the Broadband Equity, Access, and Deployment Program, and for other purposes (Representative Clarke)

The discussion draft is led by Representative Yvette D. Clarke (D-NY). The discussion draft would direct NTIA to post on its website data collected from recipients and subrecipients of an award from the Broadband, Equity, Access, and Deployment (BEAD) grant program on subgrantee ownership demographics. The discussion draft would also direct NTIA to collect and post data on the demographics of the workforce used for activities assisted with BEAD funding, and the number and amount of contracts and subcontracts awarded under BEAD to minority business enterprises and to women's business enterprises.

18. H.R. ___, the Improving Broadband Mapping Act (Representative Cardenas)

The discussion draft is led by Representative Tony Cardenas (D-CA). The discussion draft would direct NTIA to submit an annual report to Congress on the state of the digital divide. It would also require NTIA to update its Indicators of Broadband Need mapping application every six months with new data, including data collected from the FCC's Broadband Data Collection, third-party speed tests, and Affordable Connectivity Program eligibility and enrollment.

VI. KEY QUESTIONS

- Why is the NTIA's proposed budget increase necessary to fulfill its statutory duties?
- What steps is the NTIA taking to prevent waste, fraud, and abuse in its broadband grant programs?
- What steps is the NTIA taking to improve the coordination and management of Federal spectrum?
- What steps is the NTIA taking to provide oversight of public safety activities, including the First Responder Network Authority?

VII. 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.