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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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LILA HARPER HELMS, MAJORITY STAFF DIRECTOR
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August 13, 2024

The Honorable Alan Davidson
Assistant Secretary of Commerce for Communications and Information
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, D.C. 20230

Dear Mr. Davidson:

I write to request a detailed update on the major administrative delays in the Broadband Equity, Access, and Deployment (BEAD) program that have resulted from unlawful red tape imposed by your agency.

In 2021, Congress enacted the Infrastructure Investment and Jobs Act, establishing and funding the \$42.45 billion BEAD program to bring internet access to all Americans—an unprecedented expense of taxpayer dollars for internet connectivity. Despite the National Telecommunications and Information Administration’s (NTIA) three-year-old clear statutory mandate to bring the internet to the unserved, your agency has failed to connect a single American.

What NTIA *has* done with the money so far is create a nearly billion-dollar slush fund to “administer” the program.¹ Specifically, NTIA has withheld \$849 million in BEAD funding for its own budget. This appears to have enabled NTIA to impose excessive administrative burdens and pursue the Biden-Harris administration’s extreme left-wing social policies, without legal authority.

NTIA has sought to misuse its BEAD authorities to impose rate regulation, unionized labor requirements, climate change regulations, technology mandates, and other extralegal policies on the States. This has continued despite Congress repeatedly reminding NTIA that Congress gave it no statutory authority to use BEAD for any of these social goals.² NTIA has also begun

¹ Senator Ted Cruz, Ranking Member, U.S. Senate Committee on Commerce, Science, and Transportation, *Red Light Report: Stop Waste, Fraud, and Abuse in Federal Broadband Funding* at 2 (Sept. 2023), https://www.commerce.senate.gov/index.cfm?a=files.serve&File_id=0B6D8C56-7DFD-440F-8BCC-F448579964A3 (*Red Light Report*).

² See, e.g., Letter from J. Thune, T. Cruz et al., U.S. Senators, to Alan Davidson, Assistant Secretary of Commerce, Nat’l Telecomm. & Info. Admin. (Apr. 20, 2023), https://www.thune.senate.gov/public/_cache/files/d4e51503-

enforcing these left-wing priorities on States through a convoluted bureaucratic process requiring States to submit two different sets of detailed proposals for BEAD funding review and approval.³ This protracted process all but guarantees there will be no BEAD-funded infrastructure development this year. Indeed, as of the writing of this letter, almost 30 states—including Texas—have not received final approval of their second proposal.

As I warned in my Red Light Report last year, NTIA also created unnecessary delays and inflated the costs of expanding internet access by insisting that only a narrow set of technologies for connecting American households was permissible.⁴ While NTIA appears to have changed course and adopted my recommendation that BEAD be more technology neutral, no doubt a significant improvement, NTIA now claims BEAD isn't a connectivity program.⁵ Instead, it's a "jobs program."⁶ It appears, however, that the only "jobs" created by BEAD are for government bureaucrats.

The hard-earned taxpayer dollars appropriated to BEAD should be spent as Congress authorized—to bring internet access to all Americans—not held hostage to central planning edicts or left-wing priorities.

As the Ranking Member of the Committee on Commerce, Science, and Transportation, which has jurisdiction over NTIA and BEAD, I seek the following information concerning the administrative functioning of the BEAD program.

1. A breakdown of administrative funding allocated and utilized by the NTIA, including for staffing (both state-based, and Washington, D.C.-based), operational costs, costs paid to the National Institute for Standards and Technology, costs paid for contract work outside of the federal government, and any other relevant expenditures.
2. A list of each BEAD proposal submitted by a state to NTIA. In identifying each proposal, please provide:
 - a. The date on which the state submitted the proposal to NTIA;
 - b. Whether NTIA approved the proposal;
 - c. Whether NTIA requested changes to be made to the proposal;

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³ U.S. Dep't of Com., Nat'l Telecomm. and Info. Admin., Broadband Equity, Access, and Development Program, Notice of Funding Opportunity (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

⁴ *Red Light Report* at 8-13.

⁵ Linda Hardesty, *NTIA: New BEAD Guideline could let states use unlicensed spectrum*, FIERCE NETWORK (July 29, 2024), <https://www.fierce-network.com/broadband/alan-davidson-says-ntia-will-release-bead-technologies-guidelines-soon>.

⁶ Will Arbuckle, *Demonstrating Compliance with the Buy America Requirement*, INTERNET FOR ALL: BLOG (Jul. 30, 2024, 6:52 PM), <https://www.internetforall.gov/blog/demonstrating-compliance-buy-america-requirement>.

- d. For those proposals where NTIA requested changes to be made, the date NTIA requested those changes;
- e. For those proposals NTIA requested changes to be made, indicate which of the following categories those changes concerned and provide a detailed description of the requested changes:
 - i. Labor Standards;
 - ii. Utilization of Minority Business Enterprises/Women's Business Enterprises/Labor Surplus Area Firms;
 - iii. Equitable Workforce Development;
 - iv. Climate Assessment;
 - v. Low-Cost Broadband Service Plan;
 - vi. Middle Class Affordability Plan;
 - vii. Open Access Prioritization;
 - viii. Participation by Public Sector Providers;
 - ix. Extremely High Cost Location Threshold; and
 - x. Other (please indicate the reason).
- f. For those proposals NTIA approved, the date on which NTIA approved the proposal;
- g. For those proposals NTIA approved 90 or more days after NTIA received the proposal, the specific key factors that prevented NTIA from approving the proposal as originally submitted; and
- h. For those proposals NTIA has not approved, the reason(s) why NTIA has not approved the proposal.

This information is necessary for Congress to understand how the BEAD program is progressing and to ensure that the funds are being used appropriately to achieve the program's goal of universal connectivity. It is imperative to improve transparency and accountability in the administration of these funds to build and maintain public trust.

Please provide this information by August 27, 2024. Thank you for your attention to this matter.

Sincerely,



Ted Cruz
Ranking Member