

January 4, 2023

Senator John Thune
United States Senate SD-511
Washington, DC 20510

Dear Senator Thune,

On behalf of the millions of taxpayers represented by the Taxpayers Protection Alliance (TPA), thank you for your letter dated December 6, 2022, regarding improvements to oversight of federal broadband funding and regulation. We are enthused by your engagement with external partners and experts to ensure that taxpayer dollars are being effectively used to bring broadband access to truly unserved communities.

Please find TPA's responses to your questions below.

Infrastructure Investment and Jobs Act-specific Issues:

- 1. As part of the IIJA, Congress established a technology-neutral approach for the BEAD program. Do you believe NTIA followed Congress' intent in establishing a technology-neutral approach? If not, should Congress consider amending the IIJA statute to make it more explicit that all technologies are allowed to participate? If so, how?**

No, NTIA did not follow the spirit of Congress' intent with the notice of funding order, which strongly prioritizes fiber. It also completely excludes such solutions as fixed wireless, which has been a useful approach in the most rural regions. Congress should reiterate and insist that NTIA take a technology-neutral approach.

- 2. In the BEAD Notice of Funding Opportunity (NOFO), there are detailed reporting requirements on subgrantees who do not use a unionized workforce or a project labor agreement. As a practice matter, do you think this favors certain providers over others? Does Congress or NTIA need to take further action to remove this requirement?**

The question is whether the funds should be used to deploy broadband or subsidize unions. Any provision requiring the use of a unionized workforce presents a couple of big problems: 1) it ignores the fact that many providers already offer high-paying jobs without union labor, and 2) only about 10 percent of skilled labor in the industry is unionized, which means such requirements would result in a lack of qualified workers.

- 3. The BEAD NOFO promotes government-owned networks. Do you believe government-owned networks are an effective entity to deploy broadband networks? If yes, please explain.**

TPA has reported extensively on the failures of government owned networks (GONs). Local governments usually run these networks through their local utility. Among the many problems with this approach is that the staff at these facilities may lack the know-how on how to operate a broadband system. Often networks are created in locations where residents are dissatisfied with the incumbent provider(s), but after those competitors respond to the new competition, the GON doesn't get the take rates it anticipates and requires a bailout from taxpayers or electric ratepayers who subsidize the broadband division. TPA has more research available upon request.

- 4. One of the provisions of the IIJA requires products and materials used for broadband projects to be produced in the United States. Given the current supply chain issues, should Congress consider modifying this obligation or otherwise clarify this provision?**

The IIJA's "Buy America" mandates would exacerbate current supply chain issues. Providers often must buy equipment and materials from foreign companies to quickly build out broadband infrastructure. Requiring them to only buy from domestic manufacturers will only create delays in closing the digital divide.

5. The Broadband Buildout Accountability Act, S.3617, would remove the Freedom of Information Act exemption in the BEAD program. Should Congress enact this legislative proposal? If not, why?

Yes, transparency is always important when taxpayer dollars are being spent. TPA's research on GONs has found that cities like to hide behind laws that shield them from opening their books to the public. There is no accountability for how that money is spent if taxpayers have no way of accessing the information.

General Broadband Issues:

- 1. As noted above, there are over 130 programs supporting broadband access across 15 agencies.**
 - a. To date, which of these programs do you believe has had the most success in delivering broadband services to truly unserved areas?**
 - b. Should Congress consider eliminating any of these programs? If so, which ones?**
 - c. Should Congress merge and combine any of these programs? If so, which programs would be best suited to be merged?**

This question is hard to answer due to the sheer number of programs involved. While TPA can't speak specifically to each program, it is safe to say that there is too much federal bureaucracy involved when that many programs are used to deploy broadband in this country, so clearly some programs need to be combined or eliminated.

- 2. What specific reforms and constraints should Congress consider to ensure federal funds are not being awarded where providers are receiving other federal or state broadband funding support?**

This ties into the previous question, as the number of outlets for broadband funding can make this difficult to track. It's important to note that some programs have long-term building requirements that could make an area appear unserved when it's in the process of being served. For example, the Rural Digital Opportunity Fund allows providers six years to complete projects. If a carrier is in the process of completing a project through RDOF, then states shouldn't consider those areas as unserved and allocate yet more taxpayer money toward broadband there.

- 3. Should Congress take additional action in response to concerns that broadband funding may be used to overbuild existing service? If so, what reforms and constraints should be implemented?**

Overbuilding is a major concern with the large amount of money being allocated toward this effort. A robust challenge process needs to be mandated at the state level. Plenty of time must be allowed for carriers to challenge whether an area is really unserved if money is intended to be allocated toward broadband in that particular area.

- 4. Should Congress take additional action in response to concerns that broadband funding may be conditioned upon recipients imposing some form of rate regulation of broadband services, whether or not such requirements are explicitly denominated "rate regulation?" If so, what reforms and constraints should be implemented?**

Unfortunately, NTIA opened the door to this possibility by suggesting a price point of \$30 per month for states' required low-cost options in BEAD. While this is not a requirement, surely some states will use this suggestion and implement this effective rate regulation. The notice of funding opportunity also forbids any date usage-based pricing, which many providers currently utilize with difference service tiers.

- 5. Should Congress take additional action in response to concerns that broadband funding may be conditioned upon recipients imposing some form of "net neutrality" mandates upon broadband services, whether or not such mandated are explicitly denominated "net neutrality?" If so, what reforms and constraints should be implemented?**

NTIA requires in the notice of funding opportunity for BEAD that recipients require that subgrantees do not "impose unjust or unreasonable network management practices." The unclear requirement will likely result in a

patchwork of laws in different states around the country. Congress should make clear that net neutrality regulations must not be imposed under BEAD

6. How effective have the Memoranda of Understanding between (1) the FCC, USDA, and NTIA, and (2) the FCC, USDA, NTIA and Treasury been with respect to broadband coordination efforts? Are there additional reforms federal agencies should implement to better coordinate on broadband deployment efforts?

A key issue is helping states prepare for this unprecedented influx of funds. It could be helpful to create a broadband czar that states could turn to for information both as a federal point of contact for all of the BEAD efforts and to learn about best practices in other states.

7. Should Congress take steps to increase the transparency of agencies when allocating and disbursing broadband funds? If so, what steps should Congress take?

Congress should require that the federal agencies provide information about how much money is going into which programs and into which states so taxpayers know how their money is being spent.

8. Does the FCC presently possess sufficient authority to preempt state and local requirements that may unreasonably impede the deployment of broadband networks? If not, what steps should Congress consider to address the unreasonable impediments?

While the Communications Act gives the FCC fairly wide latitude in regulating communications, the line between the FCC's authority and the rights of states has come under great dispute. Federal courts have ruled both for and against the FCC in lawsuits against states over such issues as net neutrality and Voice over Internet Protocol. The FCC was unsuccessful in preempting states' rights governing municipal networks, but courts ruled in its favor in establishing "shot clocks" to help accelerate 5G wireless deployment. Courts have generally ruled that the FCC cannot preempt state laws that would upset the balance of power between the federal government and states, unless Congress authorizes that preemption. So, any state or local requirements that Congress might consider impediments would need to be addressed in the halls of the Capitol to better enable the FCC to avoid court battles that could slow down broadband deployment.

9. What specific steps can Congress take to reduce the costs to broadband providers when deploying new networks?

Fortunately, NTIA is making positive strides in requiring BEAD recipients to streamline permitting and allowing some of the money to pay for the costs of permits. As previously mentioned, Congress can amend the IIJA to not require purchase of equipment from only American companies. This can both reduce costs and speed up the process.

10. Would updating pole attachment regulations spur more rural broadband deployment? If so, what actions should be taken?

Timely access to poles is critical in speedy broadband deployment, and delayed access is currently one of the greatest challenges to providers. Congress should examine how many municipalities and cooperatives are exempt from existing pole attachment laws in some jurisdictions and work to close this loophole. Pole owners also can often delay attachment requests for lengthy periods of time, forcing recipients of federal broadband funds to default on their grants and allowing the pole owners to bid on funding from another government program. "Shot clocks" for pole attachment requests should also be considered.

11. How are federal broadband programs addressing cybersecurity challenges? Should Congress consider reforms to improve cybersecurity?

As Shane Tews (nonresident fellow at the American Enterprise Institute) pointed out last year, GONs have proven to be a weak link when it comes to cybersecurity. Given the Biden Administration's emphasis on promoting such networks through the various funding mechanisms for broadband, there should be a requirement that GONs maintain networks that can more easily repel cyberattacks.

12. Are there other broadband policy issues that Congress should consider reforming during the 118th Congress?

The extension of the FCC's spectrum auction authority should be a priority for the next Congress. Currently slated to expire on March 9, this authority has been a boon for broadband growth (as well as radio, mobile and satellite services) by allowing the FCC to sell unused spectrum to providers for use in wireless applications. Congress should extend this authority either in a standalone bill or as part of an appropriations bill.

Again, thank you for your diligence on broadband oversight. We look forward to continuing to work with you and your office to ensure federal broadband disbursements are effectively utilized and being used to aid unserved communities.

Sincerely,



David Williams
President