

# United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <https://commerce.senate.gov>

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November 21, 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,

Under your leadership, the National Telecommunications and Information Administration (NTIA) has repeatedly ignored the text of the Infrastructure Investment and Jobs Act in administering the \$42.45 billion Broadband Equity, Access, and Deployment (BEAD) program. This past August, I sent you an inquiry regarding NTIA's decision to hoard nearly \$1 billion in BEAD funding to build a central planning bureaucracy that proceeded to impose extraneous mandates on the states and prevent the expeditious delivery of internet access to unserved communities.<sup>1</sup> Instead of working to reverse course on the botched BEAD program, your agency responded by doubling down on its extralegal requirements and evading congressional inquiries.

The only substantive response in NTIA's letter revealed that since the program's inception, you have spent—or rather, wasted—over \$250 million hiring government employees and contractors to “administer” a program that, in practical terms, hasn't even launched.<sup>2</sup> This pattern of withholding actionable information and misusing taxpayer resources must end.

Fortunately, as President-elect Trump has already signaled, substantial changes are on the horizon for this program.<sup>3</sup> With anticipated new leadership at both NTIA and in Congress, the

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<sup>1</sup> Letter from Sen. Cruz, Ranking Member, S. Comm. on Com., Sci., & Transp., to Alan Davidson, Asst. Sec'y of Com., Nat'l Telecomm. & Info. Admin. (Aug. 13, 2024), [https://www.commerce.senate.gov/index.cfm?a=files.serve&File\\_id=7D0C6730-F4AE-4F87-A5FB-97DDFD503D61](https://www.commerce.senate.gov/index.cfm?a=files.serve&File_id=7D0C6730-F4AE-4F87-A5FB-97DDFD503D61).

<sup>2</sup> Letter from Bennett Butler, Dir. of Cong. Affairs, Nat'l Telecomm. & Info. Admin., to Sen. Cruz, Ranking Member, S. Comm. on Com., Sci., & Transp. (Oct. 18, 2024) (on file with committee staff); *see also* Nat'l Telecomm. & Info. Admin., *Connecting Communities, Protecting Wildlife*, INTERNET FOR ALL BLOG (Nov. 14, 2024), <https://www.internetforall.gov/blog/connecting-communities-protecting-wildlife>.

<sup>3</sup> Diana Goovaerts & Masha Abarinova, *What the Trump win means for the FCC and telecom policy*, FIERCE NETWORK (Nov. 6, 2024), <https://www.fierce-network.com/broadband/what-trump-win-means-fcc-and-telecom-policy>.

BEAD program will soon be ‘unburdened by what has been’ and states will no longer be subject to the unlawful and onerous bureaucratic obstacles imposed by the Biden-Harris NTIA.

As Chairman, I will monitor this matter, as I did during my tenure as ranking member.<sup>4</sup> Congress will review the BEAD program early next year, with specific attention to NTIA’s extreme technology bias in defining “priority broadband projects” and “reliable broadband service”; imposition of statutorily-prohibited rate regulation; unionized workforce and DEI labor requirements; climate change assessments; excessive per-location costs; and other central planning mandates. In turn, states will be able to expand connectivity on terms that meet the real needs of their communities, without irrelevant requirements that tie up resources, create confusion, and slow deployment.

It is incumbent on you to bear these upcoming changes in mind during this transition term. I therefore urge the NTIA to pause unlawful, extraneous BEAD activities and avoid locking states into in any final actions until you provide a detailed, transparent response to my original inquiry and take immediate, measurable steps to address these issues. I am enclosing a copy of NTIA’s letter to ensure full accountability for decisions that impact American connectivity.

Sincerely,



Ted Cruz  
Ranking Member

Enclosure: Response from Director Bennett Butler, NTIA Office of Congressional Affairs, to Senator Ted Cruz (October 18, 2024)

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<sup>4</sup> See, e.g., MINORITY STAFF, SENATE COMMITTEE ON COMMERCE, SCIENCE, & TRANSPORTATION, RED LIGHT REPORT: STOP WASTE, FRAUD, AND ABUSE IN FEDERAL BROADBAND FUNDING, at 2 (2023); Letter from Sens. Thune & Cruz et al., to Alan Davidson, Asst. Sec’y of Com., Nat’l Telecomm. & Info. Admin. (Apr. 20, 2023), [https://www.thune.senate.gov/public/\\_cache/files/d4e51503-5d28-4744-9033-18c9e38da22d/C3ACEFE761F313B6ABBD99AC63692025.as4.20.2023-bead-nofo-letter-to-ntia-1-.pdf](https://www.thune.senate.gov/public/_cache/files/d4e51503-5d28-4744-9033-18c9e38da22d/C3ACEFE761F313B6ABBD99AC63692025.as4.20.2023-bead-nofo-letter-to-ntia-1-.pdf).



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

October 18, 2024

The Honorable Ted Cruz  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate  
Washington, DC 20510

Dear Ranking Member Cruz:

I write in response to your August 13, 2024, letter regarding the National Telecommunications and Information Administration's (NTIA) implementation of the Broadband Equity, Access, and Deployment (BEAD) Program. BEAD is a multi-year effort with the bold goal of connecting everyone in America to affordable, reliable high-speed Internet service. In partnership with NTIA, states and territories have been hard at work and have made considerable progress. To date, NTIA has obligated over \$28 billion to states and territories, all of whom also received planning grants through the program. NTIA has approved nearly all of the states and territories' Initial Proposals for BEAD funding—only one state (Texas) has not yet had its full Initial Proposal approved.

NTIA's Internet For All initiative is delivering results across the country:

- The Broadband Infrastructure Program has made Internet service available to over 40,000 previously unserved households, nearly 3,000 businesses, and over 130 community anchor institutions.
- The same program has also laid over 2,700 miles of new or upgraded fiber—more than the distance between Washington, D.C. and Los Angeles.
- The Tribal Broadband Connectivity Program has also delivered new or newly subsidized Internet service subscriptions to over 4,000 Tribal households.
- For the first time in history, all 56 states and territories have plans to ensure all people and communities have the skills, technology, and capacity needed to reap the full benefits of our digital economy. NTIA has begun awarding funds for states and territories to implement those plans, which will help maximize investments in broadband infrastructure, including BEAD Program investments.
- NTIA has made all awards under the Enabling Middle Mile Broadband Infrastructure Program, with multiple awardees already breaking ground.

NTIA is committed to building on this progress and serving as a responsible steward of taxpayer dollars in the process.

**Initial Proposal Review and Approval:**

NTIA has nearly completed its review and approval of states and territories' Initial Proposals. With support and technical assistance from NTIA, all states and territories submitted their BEAD Program Initial Proposals to NTIA before December 27, 2023. All of those Initial Proposals are available to view on NTIA's Broadband USA [website](#),<sup>1</sup> and the associated BEAD Program allocations for each state or territory are also available [online](#).<sup>2</sup> By design, NTIA split this required document into two volumes. Doing so has allowed states and territories to begin their implementation work (e.g., conducting the "challenge process" to determine what locations are eligible for BEAD Program funding), without having to wait for review and approval of the Initial Proposal in its entirety. NTIA reviews each Initial Proposal volume in its totality for compliance with the Infrastructure Investment and Jobs Act (IIJA) and the BEAD Program Notice of Funding Opportunity (NOFO). When NTIA has identified instances of non-compliance, it worked closely with the relevant state or territory to correct the issue. To date, NTIA has approved 55 of the 56 Initial Proposals, as shown on its BEAD Initial Proposal Project Dashboard [here](#).<sup>3</sup>

### **BEAD Program NOFO Requirements:**

The BEAD Program NOFO requirements referenced in your letter are consistent with Congress' directive in IIJA and are designed to overcome obstacles to achieving Internet for All.

#### Workforce:

Workforce development must be a key component of the BEAD Program's success. As contemplated in the NOFO, states and territories must have programs that will promote equitable training, development, and deployment of a qualified workforce. The NOFO lists certain criteria states and territories must consider when selecting subgrantees, including the use of fair labor practices, fair wage practices, project labor agreements, and proper classification of workers. This is not a list of requirements, but a list of considerations NTIA urges states and territories to think through as they consider how their state's or territory's workforce will build out high-speed Internet infrastructure.

As NTIA implements the BEAD program, demand for fiber optic cable, broadband electronics, and other network equipment is growing, and that surging demand is creating jobs. NTIA is enforcing "Build America, Buy America" (BABA) requirements outlined in IIJA and the Internet for All Notices of Funding Opportunity, while delivering affordable, reliable, high-speed Internet service to everyone in America, creating jobs across the country. On February 23, 2024, the Department of Commerce (DOC) released a BABA waiver for the BEAD Program. This waiver takes into account comments received during the 30-day public comment period for the proposed draft waiver and provides specificity and certainty on how the Buy America preference

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<sup>1</sup> National Telecommunication and Information Administration. Public Notice Posting of State and Territory BEAD and Digital Equity Plan, Initial Proposals, and Challenge Process Portals, available at <https://broadbandusa.ntia.gov/public-notice-posting-state-and-territory-bead-digital-equity>.

<sup>2</sup> National Telecommunication and Information Administration. Funding by State/Territory, available at <https://www.internetforall.gov/state-allocation-totals>.

<sup>3</sup> National Telecommunication and Information Administration. BEAD Initial Proposal Project Dashboard, available at <https://www.internetforall.gov/bead-initial-proposal-progress-dashboard>.

applies to optical fiber, fiber optic cable, electronics, enclosures, and other products that will be used to build broadband networks. DOC released this waiver following over a year of careful research and extensive engagement with stakeholders across the country. Already, over a dozen companies have announced new domestic investments in response to NTIA's implementation of the BEAD Program, creating over 2,000 new jobs.

Technology Neutrality:

There is no "one-size-fits-all" approach to broadband deployment given each state's and territory's unique challenges, and NTIA will ensure that the states and territories have flexibility in identifying the technical solutions that meet the needs of their communities. In many cases, the best solution will be building out high-speed Internet using fiber networks. The BEAD Program NOFO recognizes that the unique characteristics of fiber meet the statutory requirement to "ensure that the network built by the project can easily scale speeds over time to ... meet the evolving connectivity needs of households and businesses" and "support the deployment of 5G, successor wireless technologies, and other advanced services."<sup>4</sup>

The BEAD Program NOFO also creates room for all strategies, and NTIA expects states and territories will use a mix of technologies to connect their unserved and underserved locations. The BEAD Program NOFO allows applicants to propose to provide service over any form of Reliable Broadband Service.<sup>5</sup> It also permits funding of alternative qualifying broadband technologies, such as certain satellite and unlicensed fixed service, for the locations that each state identifies as the most expensive to serve. NTIA recently released for public comment proposed guidance regarding the use of alternative broadband technology.<sup>6</sup>

Affordability and Rate Regulation:

The IJJA states that "[t]he persistent 'digital divide' in the United States is a barrier to" the nation's "economic competitiveness [and the] equitable distribution of essential public services, including health care and education."<sup>7</sup> Accordingly, it is essential that networks constructed using BEAD Program funds be accessible and affordable to all Americans.

Consistent with the IJJA, NTIA is not setting rates, and nothing in BEAD Program NOFO regulates rates. The requirement that subgrantees offer an affordable service tier for qualifying low-income subscribers is not rate regulation. Rather, it is a grant condition, as required by the statute, for participants of the BEAD Program to receive these federal funds.<sup>8</sup>

The Assistant Secretary and prospective subgrantees must be able to determine the impact of a state or territory's "low-cost broadband service option" at the Initial Proposal stage, and NTIA

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<sup>4</sup> Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. IJJA at § 60102(a)(2)(I) (herein "IJJA").

<sup>5</sup> See National Telecommunication and Information Administration; Notice of Funding Opportunity; Broadband Equity, Access, and Deployment Program at 15, available at <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>. (adopting a definition of "Reliable Broadband Service," pursuant to Section (a)(2)(L) of IJJA).

<sup>6</sup> National Telecommunication and Information Administration. Proposed BEAD Alternative Broadband Technology Guidance, available at <https://www.ntia.gov/sites/default/files/publications/bead-alternative-broadband-technology-policy-notice-for-public-comment-final.pdf>.

<sup>7</sup> IJJA at § 60101(2).

<sup>8</sup> *Id.* at § 60102(h)(4)(B)

worked with each state and territory, as it crafted a definition that best-suits its needs. NTIA has already approved 55 Initial Proposals for states and territories with a variety of approaches to the “low-cost broadband service option” definition. For example, NTIA has approved proposals that identify a range of expected costs to low-income households and permit providers to request waivers to account for areas where the costs to deploy are higher. This waiver model recognizes the geographic and economic diversity of states and territories, while ensuring affordable options are available. NTIA understands that the various approaches states and territories have proposed, and NTIA has approved, reflect states’ and territories’ balancing of a variety of interests, including affordability and robust provider participation.

#### Climate Change:

The climate is changing, and as the nation makes these historic investments to deploy new broadband infrastructure, it is critical that we build in climate resiliency to projects supported by federal funds. Further, communities that lack broadband are also often the most vulnerable to extreme weather and climate events. To ensure taxpayers get long-lasting value for their investment and to help strengthen the longevity of broadband projects funded by the BEAD Program, the BEAD Program NOFO requires that states, “demonstrate that they have sufficiently accounted for current and future weather and climate related risks to new infrastructure projects.”<sup>9</sup> Essentially, states and territories must take into account the likelihood that this infrastructure, funded by the taxpayers, will be impacted by increased storm, fire, or other hazards. Rather than using federal funds to build networks that cannot withstand foreseeable climate events, NTIA is striving and encouraging the states and territories to build networks that are secure and resilient to ensure taxpayer dollars are maximized for the long-term.

#### Administrative Expenses:

Congress determined the percentage of BEAD funding that should be used to administer the program and ensure that it is implemented effectively. NTIA is focused on utilizing this administrative funding responsibly. NTIA is strategically staffing the BEAD Program to achieve our shared goal of connecting everyone in America to affordable, reliable, high-speed Internet service. This funding has also been used to support oversight of the program through the Office of Inspector General of the Commerce Department, to obtain services from other federal agencies, and to procure resources and support from outside the federal government.

BEAD administrative funding has supported federal personnel who are vital to the success of the program. For example, NTIA’s Federal Program Officers are located across the United States and provide on-the-ground support in their communities, assist states and territories, and educate local partners. They play a key role in both facilitating the success of their respective state or territory, and providing oversight to mitigate risk of waste, fraud, and abuse. Federal personnel also staff NTIA’s Technical Assistance operation. Since the beginning of FY 2022, NTIA has provided over 400 one-on-one technical assistance sessions with states and territories and published nearly 150 public-facing technical assistance materials. NTIA has also held over 80 informational webinars and approximately 100 State Broadband Leadership Networks meetings

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<sup>9</sup> National Telecommunication and Information Administration; Notice of Funding Opportunity; Broadband Equity, Access, and Deployment Program at 62, available <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

during the same period to facilitate information-sharing and ensure the success of the Internet for All programs. Over the last three fiscal years, NTIA has spent approximately \$50 million of BEAD administrative funding on personnel costs to support these and other vital efforts.

NTIA also uses its administrative funds to develop, utilize, and provide to states and territories important data analytics, mapping tools, and resources that are essential to BEAD Program implementation. For example, the NTIA Fabric License, available through a contractual partnership between CostQuest and NTIA, leverages the Federal Communications Commission's (FCC) Broadband Data Fabric. NTIA makes this data set available to states and territories for implementation of their BEAD Program funds. The IIA required NTIA to use the FCC's Broadband Data Fabric and Broadband Data Collection (BDC) program in its administration of BEAD, thus requiring NTIA to enter into an agreement for access to that data. This resource also serves as a foundation for NTIA-developed analytical tools, which NTIA provides to states and territories for their own BEAD Program implementation activities. NTIA has also procured resources to support the coordinated and efficient implementation of BEAD program by states and territories. Over the last three fiscal years, NTIA has spent approximately \$21.3 million on services from other federal agencies and approximately \$194.2 million on contract resources and services like the NTIA Fabric License. NTIA has spent, over the last three fiscal years, approximately \$24.1 million on other administrative costs.

Finally, as directed by Congress, NTIA also transferred \$12 million in BEAD administrative funding to the Commerce Department's Office of Inspector General to support oversight of the BEAD program.

Thank you for your letter and support for the successful and efficient implementation of the BEAD Program. We share a commitment to meeting the challenge of bringing high-speed Internet service to all corners of our country. Should you have any questions or need any additional information, please contact me at [bbutler@ntia.gov](mailto:bbutler@ntia.gov).

Sincerely,

*Bennett Butler*

Bennett Butler  
Director, Office of Congressional Affairs