

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 22-251
Facilitating Interagency Coordination)	
of Broadband Deployment Funding)	DA 22-712
)	

**COMMENTS OF
THE FREE STATE FOUNDATION***

I. Introduction and Summary

On matters of communications policy, it is usually important, if not imperative, that the federal government, writ large, speak with one voice. Recent high-profile internal disagreements among agencies and departments – most notably, those involving use of the L and C spectrum bands – illustrate the harms that result when government entities work at cross purposes. Innovative services able to improve consumers' lives face launch delays, deferring the realization of those benefits and discouraging investment. Auction winners are denied the timely use of costly spectrum licenses, shrouding future proceedings in bid-suppressing uncertainty. High-value spectrum remains unused or underused, generating dead-weight economic loss and waste. In these and other ways, the failure of agencies and departments to coordinate as Congress intended constrains unnecessarily consumer welfare – and therefore should be avoided.

With that in mind, we welcome the opportunity to submit these comments regarding the Interagency Broadband Coordination Agreement (Coordination

* These comments express the views of Randolph J. May, President of the Free State Foundation, and Andrew Long, Senior Fellow. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is a nonpartisan, non-profit free market-oriented think tank.

Agreement) between the Federal Communications Commission (FCC or Commission), the National Information & Technology Administration (NTIA), and the Department of Agriculture (USDA).¹ With hundreds of billions in taxpayer dollars spread across a multitude of broadband subsidy programs and supervising agencies, there is a pressing need for transparency and oversight. The Coordination Agreement is an important piece of that larger puzzle.

Congress mandated the establishment of the Coordination Agreement through the Broadband Interagency Coordination Act of 2020, which was passed as part of the Consolidated Appropriations Act, 2021.² Pursuant to that legislation, the Commission must solicit public input on, and submit to Congress a report regarding, the Coordination Agreement (Report).³ Accordingly, the Wireline Competition Bureau issued a Public Notice on July 1, 2022, seeking comment on "the effectiveness and possible improvements to the agreement."⁴

These comments address not only the Coordination Agreement, but also the separate agreement negotiated by the FCC, NTIA, USDA, and the Department of Treasury (Treasury) (Four-Agency Agreement).⁵ Given the massive amount of money for

¹ See FCC News Release, "FCC, NTIA and USDA Announce Interagency Agreement to Coordinate Broadband Funding Deployment" (June 25, 2021), available at <https://docs.fcc.gov/public/attachments/DOC-373592A1.pdf>.

² The Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, Div. FF, tit. IX, § 904 (2020), codified at 47 U.S.C. § 1308, available at <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>.

³ See 47 U.S.C. § 1308(b)(4).

⁴ FCC Public Notice, "Wireline Competition Bureau Seeks Comment on the Interagency Broadband Coordination Agreement," WC Docket No. 22-251, DA 22-712 (July 1, 2022), available at <https://www.fcc.gov/document/wcb-seeks-comment-interagency-broadband-coordination-agreement> (*Public Notice*).

⁵ See FCC News Release, "FCC, NTIA, USDA and Treasury Announce Interagency Agreement to Collaborate on Federal Broadband Funding" (May 12, 2022), available at <https://docs.fcc.gov/public/attachments/DOC-383280A1.pdf>. See also *Public Notice* at 2 (describing how efforts pursuant to the Coordination Agreement "have increased and expanded to encompass additional

which Treasury is responsible that potentially could be used to construct broadband infrastructure – \$350 billion from the State and Local Fiscal Recovery Funds (SLFRF) and \$10 billion from the Coronavirus Capital Projects Fund (CCPF) – the Four-Agency Agreement will play an even greater coordinating role than the one upon which the Commission by statute is required to prepare a Report. It is therefore appropriate to inform Congress on its status, as well.

As an initial matter, we contend that it is too early to know whether, or to what extent, either agreement has been – or will be – effective. That fact is belied by the one-sentence summary in the Public Notice regarding the Coordination Agreement's achievements thus far.⁶ Ultimately, the agreements' success will be determined by the degree to which they further the goal of universal broadband connectivity in a manner that prioritizes efficiency. Do they ensure that limited federal resources are allocated only to areas not yet served by privately funded providers? Do they safeguard against overlapping subsidies from multiple federal sources – and, when they do occur, prevent redundant grants through careful accounting and oversight? Do they help minimize waste, fraud, and abuse? Given that NTIA's \$42.45 billion Broadband Equity, Access, and Deployment (BEAD) Program has yet to begin to distribute funding,⁷ the degree to

issues and other federal funding agencies" and pointing specifically to the creation of the Four-Agency Agreement as one example).

⁶ See *Public Notice* at 2 ("The agreement has established a formal channel for information sharing and coordination among the Agencies, bolstering the Agencies' existing dialogue, and has contributed to an expanded awareness of the details of funding programs.") That the Coordination Agreement was necessary to "expand[] awareness of the details of funding programs" speaks volumes regarding the potential for duplication, waste, fraud, and abuse directly attributable to the unwieldy number of programs and agencies tasked with distributing broadband subsidies.

⁷ See NTIA Press Release, "All 50 States, U.S. Territories, and the District of Columbia Join Biden-Harris Administration's Internet for All Initiative" (July 13, 2022), available at <https://www.internetforall.gov/sites/default/files/2022-07/BEAD-DE-Announcement-Press-Release-July-2022.pdf> (noting that "[i]nitial planning fund applications for the BEAD program are due August 15, 2022").

which the agreements will assure the efficient use of broadband subsidies cannot be measured accurately at this time.

Nevertheless, if approached with the seriousness warranted, this proceeding, and the Report that will result, should serve an essential purpose at a critical time. There exists today a pressing need not just for careful coordination between *all* agencies responsible for distributing broadband subsidies, but a comprehensive national broadband strategy. With respect to the former, Congress is to be commended for requiring the FCC, NTIA, and the USDA to work together. Likewise, those three agencies, along with Treasury, deserve praise for successfully negotiating a separate interagency coordination agreement – that is, the Four-Agency Agreement – covering the lion's share of broadband infrastructure funding. And regarding the latter, the details and recommendations set forth in the Report hopefully will inform any forthcoming Biden Administration efforts to develop that desperately needed national strategy.

As detailed below, two measures will determine in large part whether these agreements succeed. First, do they ensure that taxpayer dollars target truly unserved areas? Second, do they prevent, or at least properly account for, duplicative funding? The Report can advance these goals by drawing attention to the importance of the following: (1) common and exclusive reliance upon the FCC's Broadband Data Collection (BDC) maps to determine which locations truly are unserved, and (2) subsidy program eligibility requirements that safeguard against unwarranted grants in areas to which government funding already has been allocated.

Absent uniform policy approaches to these issues across agencies, along with continuing oversight regarding implementation, it is all but certain that federal dollars

will be wasted, that private investment will be discouraged, and that, after billions in expenditures, some Americans will remain unserved. The attention that a well-drafted Report can bring to these concerns, on the other hand, has the potential to identify and prompt needed remedial interagency action, additional legislation, or both.

II. Interagency Disputes Delay New Services and Defer Benefits to Consumers

To appreciate the potential utility of closer interagency coordination, one need only consider recent high-profile instances where disagreements between federal agencies and departments played out in public. As the following examples illustrate, eleventh-hour protests by other federal entities serve to undermine the finality of FCC decisions, create uncertainty for investors, and threaten to suppress the auction value of repurposed spectrum.

The L-Band. After years of technical analysis, public comment, compromise, careful deliberation, debate, and delay, the Commission in April 2020 approved Ligado Networks' application for a mixed mobile-satellite network operating in idle L-band spectrum.⁸ Although the FCC concluded, after exhaustive engineering studies, that Ligado Networks would not cause harmful interference to federal GPS operations in adjacent frequency bands, the Department of Defense, other agencies, and their proxies continued to push their case publicly, before the Commission, and on Capitol Hill. As recently as June 30th of this year, Ligado Networks flagged the disappointing degree of cooperation it has received from NTIA regarding evidence of interference,

⁸ See, e.g., Seth L. Cooper, "FCC's Order Approving Ligado's Next-Gen Wireless Network: A Deliberative Process That Protects Against Signal Interference," *Perspectives from FSF Scholars*, Vol. 15, No. 25 (May 21, 2020), available at <https://freestatefoundation.org/wp-content/uploads/2020/05/FCCs-Order-Approving-Ligados-Next-Gen-Wireless-Network-052120.pdf>.

notwithstanding the Spectrum Coordination Initiative announced in March between FCC Chairwoman Jessica Rosenworcel and NTIA Administrator Alan Davidson.⁹

While Ligado Networks has announced plans to commence operations later this year,¹⁰ the fact remains that better interagency coordination, as well as greater deference to the Commission on matters within its area of expertise and authority, would have allowed Ligado Networks to put its L-band spectrum to beneficial use far sooner.

C-Band. To make available more high-value mid-band spectrum for 5G mobile broadband services, and after conducting a rigorous technical analysis, the Commission in March 2020 voted to repurpose 280 MHz of C-band for flexible use.¹¹ Auction 107, which commenced in December of that year, ultimately generated over \$82 billion in revenues for the U.S. Treasury. Verizon Wireless, at \$45.45 billion, was the top bidder. AT&T came in second, at \$23.4 billion.¹²

Days before both carriers planned to put those licenses to use for 5G, a longstanding dispute with the Federal Aviation Administration (FAA) regarding potential harmful interference to airplane altimeters spilled over into public view. Multiple delays and operational compromises ensued. Consequently, 5G service in the C-band was not launched until mid-January of this year, with technical modifications put in place near

⁹ See Seth L. Cooper, "NTIA and Executive Agencies No-Show on Federal GPS Devices and L-Band," *FSF Blog* (July 13, 2022), available at https://freestatefoundation.blogspot.com/2022/07/ntia-and-executive-agencies-no-show-on_12.html.

¹⁰ See Seth L. Cooper, "Ligado Announces Plans to Commence Next-Gen Wireless Operations This Year," *FSF Blog* (April 5, 2022), available at <https://freestatefoundation.blogspot.com/search?q=ligado&max-results=20&by-date=true>.

¹¹ See generally *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, FCC 20-22 (March 3, 2020), available at <https://www.fcc.gov/document/fcc-expands-flexible-use-c-band-5g-0>.

¹² See FCC News Release, "FCC Announces Winning Bidders in C-band Auction" (February 24, 2021), available at <https://www.fcc.gov/document/fcc-announces-winning-bidders-c-band-auction>.

certain airports.¹³ On June 17, 2022, Verizon Communications and AT&T announced that they would extend their voluntary mitigation efforts near airports until July 2023.¹⁴

As FCC Commissioner Brendan Carr asserted in a January 2022 letter to Secretary of Transportation Pete Buttigieg:

Your request for delay is not backed up by the science, engineering, or law. Indeed, your arguments are predicated on the claim that there are unresolved concerns about harmful interference from C-Band operations into radio altimeters. That is not correct. The FCC – the expert agency charged by Congress with addressing precisely those types of concerns about harmful interference – resolved these issues all the way back in March 2020.... After detailed analysis, the FCC determined that the comprehensive rules and regulations it adopted for C-Band operations will protect aeronautical operations from harmful interference.¹⁵

Here again, an "end run" around "the process that Congress has established for reaching sound decisions about spectrum policy and for adjudicating concerns about harmful interference"¹⁶ led to an inefficient consumer outcome – specifically, delayed and still-reduced 5G service. It also cast doubt on future spectrum auctions.

By contrast, better interagency working relationships, such as the one required by Congress here, hold the potential to assure that government efforts to achieve universal broadband connectivity proceed efficiently.

III. Efficiency Should Drive Agency Coordination

Congress passed the Broadband Interagency Coordination Act of 2020, legislation "requiring coordination between [these three] agencies for the distribution of funds for

¹³ See generally Marguerite Reardon, "How the FAA went to war against 5G," *CNET* (January 28, 2022), available at <https://www.cnet.com/tech/mobile/how-the-faa-went-to-war-against-5g/>.

¹⁴ See David Koenig, "Verizon, AT&T delay some 5G service over airlines' concerns," *AP News* (June 18, 2022), available at https://apnews.com/article/technology-politics-federal-aviation-administration-airlines-e3f66c3ba0af22f261de653ce6027042?utm_medium=AP&utm_campaign=SocialFlow&utm_source=Twitter.

¹⁵ Letter from FCC Commissioner Brendan Carr to Department of Transportation Secretary Pete Buttigieg (January 1, 2022), available at <https://www.fcc.gov/document/carr-letter-response-sec-buttigieg>.

¹⁶ *Id.*

broadband deployment" and directing the Commission to prepare a Report that, in relevant part, assesses "the effectiveness of the interagency agreement in facilitating *efficient* use of funds for broadband deployment" (emphasis added).¹⁷

There is no question that "efficiency" should guide the myriad federal efforts to connect every American to broadband infrastructure. Hundreds of billions of taxpayer dollars have been allocated to the achievement of this policy goal and – particularly given the current economic climate – it is essential that that money be spent wisely.

In this context, "efficiency" encompasses several concepts. These comments focus primarily on two. The first is that subsidies should target exclusively those locations not yet served by commercial Internet service providers (ISPs). The second is that, absent adequate safeguards against duplication, waste, fraud, and abuse, subsidies from more than one source should be avoided.

The reason that our comments prioritize these two values derives directly from the haphazard way Congress has chosen to distribute broadband dollars – and the subsequent likelihood of inefficient outcomes. Early and often, Free State Foundation scholars have raised the alarm regarding the risks for overbuilding, waste, fraud, and abuse inherently associated with the numerous appropriations made to multiple agencies.¹⁸ Those risks are exacerbated by the inconsistent rules that those agencies have put in place.

¹⁷ 47 U.S.C. § 1308(b)(2), (b)(4)(A)(i).

¹⁸ See, e.g., Andrew Long, "GAO, FCC's Carr Echo Broadband Funding Coordination Concerns," *FSF Blog* (June 14, 2022), available at <https://freestatefoundation.blogspot.com/2022/06/gao-fccs-carr-echo-broadband-funding.html>; Andrew Long, "Overlapping Broadband Appropriations Demand Agency Coordination: New FCC Maps Can Track Grants, Avert Waste," *Perspectives from FSF Scholars*, Vol. 17, No. 12 (March 2, 2022), available at <https://freestatefoundation.org/wp-content/uploads/2022/03/Overlapping-Broadband-Appropriations-Demand-Agency-Coordination-030222.pdf>; *Comments of the Free State Foundation*, In the Matter of Infrastructure Investment and Jobs Act Implementation, NTIA Docket No. 220105-0002 (February 3, 2022), available at https://freestatefoundation.org/wp-content/uploads/2022/02/NTIA-BEAD-Program-comments.FINAL_020322.pdf; Randolph J. May and Andrew Long, "Self-Defeating Treasury Subsidy

A recent GAO report validated these concerns, identifying 133 broadband funding programs administered by 15 different agencies and concluding that "[t]his patchwork of programs could lead to wasteful duplication of funding and effort."¹⁹ As that GAO report recommended and Commissioner Carr urged, not for the first time, in response,²⁰ it is incumbent upon the Biden Administration to craft a national broadband strategy out of the current chaos. And while the establishment of such a roadmap is beyond the scope of this proceeding, the fact remains that the Report that the Commission produces can and should inform and illuminate that effort, as well as identify opportunities for broadband agencies to improve their coordination and Congress to intervene.

A. Broadband Funding Agencies Should Rely Exclusively on the FCC's Maps to Identify Locations Still Unserved

Throughout much of this nation, a vibrant marketplace exists in which privately funded ISPs aggressively vie for customers. Where present, competitive forces, free from government interference, produce optimal results. By contrast, subsidized entry in highly competitive areas distorts the marketplace and discourages further private investment.

Rule Wrongly Champions Broadband Overbuilds," *Perspectives from FSF Scholars*, Vol. 17, No. 4 (January 19, 2022), available at <https://freestatefoundation.org/wp-content/uploads/2022/01/Self-Defeating-Treasury-Subsidy-Rule-Wrongly-Champions-Broadband-Overbuilds-011922.pdf>; Andrew Long, "The Department of Agriculture (Obviously) Is Not the FCC: Why, Then, Is It Dictating Communications Policy?," *Perspectives from FSF Scholars*, Vol. 16, No. 62 (November 29, 2021), available at <https://freestatefoundation.org/wp-content/uploads/2021/11/The-Department-of-Agriculture-Obviously-Is-Not-the-FCC-112921.pdf>; Andrew Long, "Treasury Department Resurrects the Scary Biden Broadband Plan," *Perspectives from FSF Scholars*, Vol. 16, No. 56 (October 20, 2021), available at <https://freestatefoundation.org/wp-content/uploads/2021/10/Treasury-Department-Resurrects-the-Scary-Biden-Broadband-Plan.102121.pdf>.

¹⁹ United States Government Accountability Office Report to Congressional Requesters, "Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide" (May 2022), available at <https://www.gao.gov/assets/gao-22-104611.pdf>, at 11-12.

²⁰ See Andrew Long, "GAO, FCC's Carr Echo Broadband Funding Coordination Concerns," *FSF Blog* (June 14, 2022), available at <https://freestatefoundation.blogspot.com/2022/06/gao-fccs-carr-echo-broadband-funding.html> ("Contending that 'it appears that the Administration has turned the spigot on full blast and then walked away from the hose,' Commissioner Carr called for the creation of a national strategy.").

The efficient allocation of broadband funding, therefore, demands that only those projects in truly unserved areas receive subsidies.

To do that, of course, the agencies that dole out those dollars must have access to, and rely upon, a single, authoritative, and accurate source of broadband availability data. Fortunately, Congress addressed this issue via 2020's Broadband Deployment Accuracy and Technological Availability (DATA) Act,²¹ which directed the FCC to create more accurate service availability maps.²² As the Public Notice reminds us, Chairwoman Rosenworcel testified before Congress that BDC maps will be ready this fall.²³

Pursuant to the language of the Broadband DATA Act itself, the Commission is obligated to rely upon the BDC maps "when making any new award of funding with respect to the deployment of broadband internet access service intended for use by residential and mobile customers."²⁴ Similarly, the Infrastructure Investment and Jobs

²¹ Broadband Deployment Accuracy and Technological Availability (DATA) Act, Pub. L. No. 116-130 (March 23, 2020), codified at 47 U.S.C. § 642, available at <https://www.congress.gov/116/plaws/publ130/PLAW-116publ130.pdf>.

²² The Broadband DATA Act directs the Commission to "develop a process through which the Commission can collect verified data for use in the coverage maps from ... State, local, and Tribal governmental entities that are primarily responsible for mapping or tracking broadband internet access service coverage. 47 U.S.C. § 642(a)(2)(A). As such, while the Broadband Interagency Coordination Act of 2020 identifies "the availability of Tribal, State, and local data regarding broadband deployment and the inclusion of that data in interagency coordination" as a question which the FCC must address in the Report, 47 U.S.C. § 1308(b)(4)(A)(ii), it would seem that inclusion of such information in the BDC maps is a statutory certainty. *See also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Third Report and Order, FCC 21-20 (January 19, 2021), available at <https://www.fcc.gov/document/fcc-takes-next-step-collect-more-precise-broadband-mapping-data>, at ¶ 70 ("The Broadband DATA Act requires the Commission to adopt a user-friendly challenge process through which consumers, State, local, and Tribal governmental entities, and other entities or individuals may submit challenges to the accuracy of the coverage maps, broadband availability information submitted by providers, or information included in the Fabric.").

²³ *See Public Notice* at 2 ("The Commission has initiated the Broadband Data Collection, which will yield highly granular data on broadband deployment nationwide, including on Tribal lands, when the initial maps are published later this year.") (citation omitted). *See also* Nicole Ferraro, "Rosenworcel promises broadband map this fall," *Light Reading* (April 5, 2022), available at https://www.lightreading.com/cable-tech/rosenworcel-promises-broadband-map-this-fall/a/d-id/776574?_mc=RSS_LR_EDT (reporting that "FCC Chairwoman Jessica Rosenworcel told a House subcommittee that the new map will "absolutely" be ready by the fall").

²⁴ 47 U.S.C. § 642(c)(2)(B).

Act (IIJA),²⁵ which established NTIA's BEAD Program, defines an "unserved location" in relevant part as "a broadband-serviceable location, as *determined with the broadband DATA maps*, that has no access to broadband service" (emphasis added).²⁶

However, not all agencies are required to rely exclusively on the BDC maps when making subsidies available. For example, the USDA's ReConnect Program utilizes its own service area map.²⁷ Treasury's Final Rule for the SLFRF Program, meanwhile, expressly, and problematically, refuses to limit eligibility to areas that lack access to broadband, however defined, instead concluding "that allowing recipients greater flexibility to determine locations to serve in their jurisdictions – including considering affordability and competition barriers – will lead to greater long-term public benefits."²⁸

Of even greater concern, Treasury's Guidance for the CCPF Program states that "Recipients may choose to consider *any available data* including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, interviews with community members

²⁵ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (November 15, 2021), available at <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>.

²⁶ 47 U.S.C. § 1702(a)(1)(A).

²⁷ See USDA ReConnect Program Service Area Map, available at <https://ruraldevelopment.maps.arcgis.com/apps/webappviewer/index.html?id=e0876d9cc9ef458ea00c199b9680c59b>.

²⁸ Department of the Treasury Final Rule, Coronavirus State and Local Fiscal Recovery Funds (effective April 1, 2022), available at <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf>, at 395. See also *id.* ("Further, given that many federal broadband grant programs are focused solely on unserved and underserved areas, Treasury believes that the final rule's flexibility enables these funds to fill an important role in the overall federal broadband landscape."); Randolph J. May and Andrew Long, "Self-Defeating Treasury Subsidy Rule Wrongly Champions Broadband Overbuilds," *Perspectives from FSF Scholars*, Vol. 17, No. 4 (January 19, 2022), available at <https://freestatefoundation.org/wp-content/uploads/2022/01/Self-Defeating-Treasury-Subsidy-Rule-Wrongly-Champions-Broadband-Overbuilds-011922.pdf> ("Troublingly, and contrary to congressional intent, Treasury's Final Rule opens the door wide to subsidized overbuilds of existing, privately funded broadband networks by, in Treasury's highly subjective and practically unbounded words, 'expand[ing] eligible areas for investment in broadband infrastructure to include locations where the recipient has identified need for additional broadband investment' (emphasis added).").

and business owners, reports from community organizations, *and any other information they deem relevant*" (emphasis added).²⁹

The Commission should seize this opportunity to highlight for Congress the need for additional legislation requiring that *all* agencies rely exclusively upon the BDC maps. In addition, it should leverage the communications channels opened by the agreements to persuade USDA and Treasury to treat the BDC maps as the sole authoritative source of accurate service availability information. Only with those guardrails in place will the possibility of unjustified overbuilds be foreclosed.

B. Coordinating Broadband Funding Agencies Should Prioritize Efforts to Avoid Duplicative Subsidies

In any unserved location where one ISP will construct broadband infrastructure using public money, a second ISP's project ought not to be subsidized. Further, absent close coordination and accounting, a single project should not receive funding from multiple government sources. The Public Notice emphasizes that, as part of the Broadband Data Collection effort, the " the Commission will be establishing the Broadband Deployment Locations Map, which will provide comprehensive data about federally funded broadband infrastructure."³⁰ Accurate information as to where government subsidies already have been directed, in the form of that promised Broadband Deployment Locations Map, is one half of the solution. The other – consistent eligibility requirements across programs and agencies that specifically address

²⁹ Department of the Treasury, "Guidance for the Coronavirus Capital Projects Fund for States, Territories & Freely Associated States" (September 2021), available at <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf>, at 5.

³⁰ *Public Notice* at 2.

redundancy concerns – ought to be a top focus of the open interagency dialogues created by the agreements as well as the Report itself.

As NTIA's Notice of Funding Opportunity (NOFO) for the BEAD Program acknowledges, "funds from other Federal programs (including funds from the Commission's Universal Service Fund programs) may not be used as matching funds."³¹ However, the IJIA permits the use of other federal subsidies, including those from USDA's ReConnect Program and Treasury's SLFRF and CCPF programs, for matching purposes.

The NOFO does caution that "Eligible Entities that use funds from the Coronavirus State and Local Fiscal Recovery Funds or Coronavirus Capital Projects Fund as the source of matching funds for the BEAD Program must comply with the requirements of both the BEAD Program and the relevant Treasury program," but this quoted language begs the question: where those requirements intersect and diverge, as they frequently do, which entity will be responsible for reconciling the resulting tensions?

Given this uncertainty, the use of multiple federal funding sources creates an unacceptably high risk that duplication, as well as waste, fraud, and abuse, will occur. Accordingly, the Commission should highlight in the Report specific ways the agreements might be expanded/revised to better account for overlapping subsidies and protect against such unwanted inefficiencies. The Commission also should identify areas where additional federal legislation might be appropriate.

³¹ NTIA Notice of Funding Opportunity, Broadband Equity, Access, and Deployment Program, available at <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>, at 21.

IV. Conclusion

For the foregoing reasons, the Commission should act in accordance with the views expressed herein.

Respectfully submitted,

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