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Senator Cruz Proposes Fixes to Flawed BEAD Program

by

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I. Introduction and Summary

On September 15, 2023, Senator Ted Cruz (R-TX), Ranking Member of the Senate Commerce Committee, released a [Report](#) identifying foundational shortcomings in the \$42.45 billion Broadband Equity, Access, and Deployment (BEAD) Program as established by Congress and administered by the Biden Administration's National Telecommunications and Information Administration (NTIA). The Report concludes that heightened oversight, greater interagency coordination, and a renewed commitment to the principle of technological neutrality are essential in order to (1) prevent duplicate grants as well as waste, fraud, abuse, and (2) ensure that taxpayer dollars prioritize connecting truly unserved locations – points that Free State Foundation scholars have been making since the [Biden Broadband Plan](#) first was announced.

Senator Cruz's "[Red Light Report: Stop Waste, Fraud, and Abuse in Federal Broadband Funding](#)" (the Report) lays out the following three findings: (1) that the state-by-state allocation of BEAD Program money wastes taxpayer dollars – and ultimately could strand some Americans on the wrong side of the digital divide; (2) that that allocation fails to take into account construction projects that have been awarded federal subsidies but are not yet operational and,

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consequently, could lead to duplicate grants; and (3) that the Biden Administration's "fiber-first" agenda is inconsistent with congressional intent and guarantees higher price tags.

In response, the Report recommends that (1) states return funds not used to connect truly unserved locations in the most cost-efficient manner, and (2) NTIA revise its BEAD Programs so that providers may utilize all viable distribution platforms (including satellite and unlicensed fixed wireless) as Congress intended.

As the Report makes plain, the BEAD Program in its current form threatens duplicate funding and waste, fraud, and abuse. And it also threatens an end-point scenario in which, despite the expenditure of more than enough money overall, residents of some states enjoy inefficiently costly fiber-based networks while residents of other states remain without access to a high-speed Internet connection. The changes proposed by Senator Cruz in this Report would address both concerns.

II. Senator Cruz's Report Identifies Several BEAD Program Shortcomings

The [Infrastructure Investment and Jobs Act](#) (IIJA), which created the BEAD Program, sets forth two requirements that largely are responsible for the problems the Report identifies regarding how NTIA has divvied up the \$42.45 billion. The first is that it specified that each state (as well as the District of Columbia) would receive a minimum of \$100 million in subsidies before detailed information regarding the number of unserved locations per state, namely the FCC's [National Broadband Map](#), was made available.

As it turns out, not all states have a \$100-million connectivity problem. With the release of the initial version of the National Broadband Map in November 2022, and updates in May of this year, we now have access to granular, location-specific data regarding the number of homes that lack access to high-speed Internet service – information that obviously would have been useful prior to the legislative decisions that were made regarding how money should be distributed. And as the Report illustrates, there are states that have a relatively small number of unserved locations. Consequently, \$100 million, divided by the number of unserved locations, produces a disturbingly high per-location dollar value. Specifically, ten states/territories were allocated over \$10,000 per unserved location, "including a galling \$547,254 per unserved location in Washington, D.C."

To be clear, each state is responsible for evaluating submitted proposals and making final decisions regarding subgrants that are consistent with both the IIJA and NTIA's rules as set forth in the BEAD Program [Notice of Funding Opportunity](#) (NOFO). Thus, the fact that each state is allocated a minimum of \$100 million does not necessarily mean that every unserved location will be connected using federal network infrastructure construction subsidies or each state will put all that money to use. Moreover, the NOFO does contemplate that excess funds may be reallocated to other states.

But as the Report notes, "[a]lthough states are required to prioritize BEAD projects that will connect unserved locations, they may use their funding for other purposes if they certify to NTIA that all unserved locations in the state will be served." Those other purposes include subsidizing

the construction of network infrastructure where "broadband" (defined by the FCC as service at speeds of at least 25 Megabits per second (Mbps) downstream and 3 Mbps upstream (25/3 Mbps)) – indeed, even service at speeds approaching 100/20 Mbps – already exists (that is, in so-called "underserved" areas), as well as efforts designed to promote adoption and other policy objectives.

More broadly, and as we know, it is far easier to limit the amount of money initially allocated than it is to claw back excess amounts after the fact. Those who are committed to ensuring that taxpayer dollars are used wisely must now train our focus on decisionmakers in 50 states, the District of Columbia, and U.S. territories.

The second problem with the IJA is that it identified the National Broadband Map, which depicts only where high-speed Internet access *currently* is available, as the exclusive and definitive source of broadband-availability information – even though another provision in the IJA required the FCC to create a second map, the [Broadband Funding Map](#), which "provide[s] a locations overview of the overall geographic footprint of each broadband infrastructure deployment project funded by the Federal Government."

Free State Foundation scholars repeatedly have sounded the alarm that greater interagency coordination is absolutely essential to avoid duplicate funding, as evidenced by the lengthy *Further Readings* section below. The Government Accountability Office shares this concern, identifying "more than 130 federal broadband programs that are administered by 15 federal agencies" and warning that "[t]his patchwork of programs could lead to wasteful duplication of funding and effort" in a [May 2022 Report](#).

The Report prepared by Senator Cruz focuses on just three of those 130+ federal subsidy programs: the FCC's Rural Digital Opportunity Fund, the Department of Treasury's Capital Projects Fund, and the Department of Agriculture's ReConnect Program. Factoring in the \$17 billion that those programs have allocated, it concludes that "over five million locations that are already being funded" were counted as unserved for purposes of the BEAD Program because, as indicated by the National Broadband Map, those projects have not yet been completed (and so service is not currently being provided via that funded infrastructure).

But as Free State Foundation Senior Fellow Andrew Long wrote in "[Wasteful Duplication by Design: A Case Study on Overlapping Federal Broadband Subsidies](#)," a May 2023 *Perspectives from FSF Scholars*, Congress intended that the Broadband Funding Map "serve as 'the centralized, authoritative source of information on funding made available by the Federal Government for broadband infrastructure in the United States.'" Congress also specifically required that it include subsidies provided by the FCC, Treasury, and Agriculture. Curiously, however, and as stated above, the IJA directed NTIA to base BEAD Program state-by-state allocations solely on the National Broadband Map.

To be sure, there remains an opportunity for the Broadband Funding Map to serve its intended purpose – that is, to help prevent duplicate funding and, more broadly, waste, fraud, and abuse – at the state level, where broadband offices will make final subgrant decisions. Again, though, it would have been far more efficient to consider those existing grants in the first instance.

Whereas the Report's first two findings implicate the IIA, the blame for finding number three falls solely on the shoulders of the Biden Administration.

As early as June 2021, in "[Biden Broadband Plan: 'Future Proofing' Is Likely 'Fool's Proofing'](#)," Mr. Long and I raised concerns regarding the Biden Broadband Plan's biased preference for fiber-based networks. In response to the White House's stated desire, in a [March 2021 Fact Sheet](#), to "prioritize[] building 'future proof' broadband infrastructure" – which we surmised was nothing more than a short-hand reference to fiber-based networks – we wrote the following:

In the real-world consumer-driven broadband marketplace, privately funded providers of high-speed Internet access increasingly utilize a variety of transmission media to deliver service: fiber, hybrid fiber-coax (HFC) cable networks, digital subscriber line (DSL) technology, mobile and fixed 5G wireless, satellite, fixed licensed and unlicensed wireless, and more. Different technologies offer unique combinations of advantages and disadvantages: some, like fiber and HFC, may be better suited to areas with a high population density, while others, such as 5G, satellite, and fixed wireless, may make more economic sense in rural settings.

As the Report emphasizes, Congress rejected the Biden Administration's "fiber-first" bias in favor of a technologically neutral approach:

In drafting the BEAD provisions of the IIA, Congress pursued a policy of tech neutrality, allowing any provider to participate if it could meet the statute's performance requirements. Congress pursued this policy for good reason: technology neutrality has been a guiding principle for broadband innovation over the last two decades. Consumers benefit the most when the market—not the government—picks winning and losing technologies. In contrast, tilting rules to favor specific types of providers harms innovation and drives up costs for taxpayers.

However, and as Mr. Long detailed in "[Future Guidance Can Fix NTIA's Flawed 'Fiber-First Approach'](#)," a May 2022 *Perspectives*, the BEAD Program rules promulgated by NTIA defy the clear intent of Congress and place a heavy hand on the fiber-at-all-cost side of the scale – for example, by defining "Priority Broadband Projects" explicitly as only "those that use end-to-end fiber-optic architecture."

Recognizing that a blind fiber preference will unjustifiably raise the costs of broadband infrastructure construction, Senator Cruz's Report urges NTIA to "revise BEAD rules so less costly technologies that are capable of meeting the IIA broadband standard, like satellite and fixed wireless, are subject to a level playing field."

III. Conclusion

The Report recommends that NTIA revise the BEAD Program rules so that subsidy recipients can utilize the most cost-efficient distribution platform for a given area. As it stands, those rules further the Biden Administration's "fiber-first" agenda – and defy the clear intent of Congress to embrace the principle of technological neutrality – in a manner that will drive up construction costs substantially and unnecessarily.

Relatedly, and appropriately, the Report also urges states to return excess BEAD Program funds so that they can be "reallocated to states that did not get enough to service all their unserved areas or to pay down the federal debt." Congress appropriated \$42.45 billion to NTIA for one express purpose: making a broadband connection available to every location in the United States. As such, the Report makes the case that those precious taxpayer resources should not be spent in one state to subsidize so-called "gold-plated" networks, or to pursue tangentially related Biden Administration policy priorities, when another state lacks sufficient funds to connect truly unserved locations using cost-efficient, viable distribution technologies (satellite, fixed wireless, cable broadband, and so on). I agree.

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Further Readings

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