Perspectives from FSF Scholars
September 9, 2024
Vol. 19, No. 35

Government Price Controls Jeopardize the BEAD Program's Success

by

Randolph J. May *

I. Introduction and Summary

Vice President Kamala Harris certainly stirred up lots of controversy when – announcing one of her very first concrete campaign promises – she proposed imposing price controls on groceries, certain drugs, and rents to combat what she called "price gouging." Consistent with the way in which Vice President Harris offered her proposal, a price control is a requirement that a seller charge a government-mandated price for a good or service instead of allowing the price to be determined by supply and demand.

Simply put, price controls never work. This is because prices set artificially low (below market) reduce the supply of the product or service subject to the price constraint. Beyond any claimed short-term ephemeral benefit, this reduced supply is harmful.

While Kamala Harris didn't mention broadband in her campaign announcement regarding price controls, the Biden-Harris Administration certainly hasn't been shy about advocating forms of rate regulation and price controls in the communications policy context. Here I want to focus solely on the Broadband Equity, Access, and Deployment (BEAD) Program intended to fund the build-out of broadband networks in those locations that remain unserved.

If you follow FCC Commissioner Brendan Carr on X, then certainly you're aware that over the 1,000+ days and counting since the BEAD Program was created, not a single location has been connected. Paperwork-related progress proceeds at a glacial pace, though a small handful of states in the last few weeks have opened application-filing windows.

So, the $42.45 billion question is this: given the looming specter of more stringent price controls, will Internet service providers (ISPs) with proven track records essential to successfully deploy and operate broadband networks even elect to apply?

Early reactions are in, and they raise serious red flags. In July 2024, a group of over 30 trade associations warned that the National Telecommunications and Information Administration (NTIA) and the states "must not risk undermining this critical program by making it economically impossible for the many experienced providers we need most to participate, or by awarding funds to less experienced providers who promise rock-bottom rates but cannot deliver over the long haul." And in June 2024, the head of one state telecom association, meanwhile, was far more direct, declaring that "zero" of its members would apply for BEAD Program grants.

The Infrastructure Investment and Jobs Act (IIJA) requires that every ISP that receives BEAD Program funding must offer at least one "low-cost broadband service option." Congress left it to each of the 56 states and territories ("eligible entities") to define, and the NTIA to approve, exactly what "low-cost" means for their residents. Unfortunately, there is real concern – and growing evidence – that some states, "strongly encouraged" by NTIA, have set prices at levels either below actual cost or so low as to deny ISPs any opportunity to receive a reasonable return on their investment. In other words, by implementing price controls regarding the price for a particular broadband service offering.

As a matter of basic economics, BEAD price controls will deter supply and lead to shortages – in this case, shortages of experienced, capable ISPs willing to participate in the government's $42 billion program to build out broadband infrastructure in locations, mostly rural, that remain unserved. This is not at all an acceptable outcome.

II. NTIA Repeatedly Has Displayed Disregard for Essential Economic Incentives

Congress, in Section 60102 of the IIJA, specified that "[a]n entity that receives a subgrant … for the deployment of a broadband network … shall offer not less than 1 low-cost broadband service option for eligible subscribers." And it directed each eligible entity to define, in a manner acceptable to NTIA, what a "low-cost broadband service option" looks like inside its boundaries with respect to speed, price, and so on.

From the outset, however, NTIA has shown little to no interest in the real-world relationship between "low-cost" and actual cost. The BEAD Program Notice of Funding Opportunity (NOFO), issued in May 2022, encouraged eligible entities to define "low-cost" as free to those participating in the since-discontinued Affordable Connectivity Program (ACP), which provided a $30 per month voucher ($75 per month on Tribal Lands):

> For example, a definition of low-cost broadband service option could … cost[] $30 per month or less, inclusive of all taxes, fees, and charges if the subscriber does not reside on Tribal Lands, or $75 per month or less, inclusive of all taxes, fees, and charges if the subscriber resides on Tribal Lands, with no additional costs or fees to the consumer … [and] [a]llows the end user to apply the Affordable Connectivity Benefit subsidy to the service price….

However, and as the National Rural Electric Cooperative Association (NRECA) CEO Jim Matheson emphasized in a December 2023 letter to NTIA Administrator Alan Davidson:

> The ACP subsidy level was arbitrarily set by Congress … and is not based on any analysis of affordability or the costs to build, operate and maintain a broadband network and was not meant to be a rate ceiling. While this may appear attractive from Washington, D.C., or a state capitol, setting a rate ceiling at which subgrantees must offer a service plan at the arbitrarily set, one size fits all ACP subsidy rate is problematic, and does not acknowledge the unique local circumstances in sparsely populated areas of rural America.

More recently, NTIA objected – for months – when Virginia sought to define "low-cost" based upon an ISP-performed market analysis that "ties the low-cost broadband service option to market conditions across a subgrantee's entire service territory." Before eventually relenting in the face of widespread public and congressional scrutiny, including a highly critical *Perspectives from FSF Scholars*, NTIA insisted upon "an exact price or formula." This rigid position regarding price unquestionably is at odds with the IIJA's admonishment that "[n]othing in this title may be construed to authorize the Assistant Secretary or the National Telecommunications and Information Administration to regulate the rates charged for broadband service."

III. Prices Set Too Low Will Cap the Supply of Viable Broadband Networks

The "sweet spot" that government actors must target when engaging in price setting is one that covers costs plus a reasonable rate of return on investment. The government-mandated prices should neither be too high, which would suppress demand, nor too low, which would suppress supply. In other words, the elusive goal – admittedly difficult if not impossible to achieve – is to try to approximate the equilibrium point to which an optimally operating marketplace would gravitate. Anything else, by definition, constitutes problematic price controls. In the words of Hugh Rockoff:

> The reason most economists are skeptical about price controls is that they distort the allocation of resources. To paraphrase a remark by Milton Friedman, economists may not know much, but they do know how to produce a shortage or surplus. Price ceilings, which prevent prices from exceeding a certain maximum, cause shortages. Price floors, which prohibit prices below a certain minimum, cause surpluses, at least for a time. Suppose that the supply and demand for wheat flour are balanced at the current price, and that the government then fixes a lower maximum price. The supply of flour will decrease, but the demand for it will increase. The result will be excess demand and empty shelves. Although some

> consumers will be lucky enough to purchase flour at the lower price, others will be forced to do without.

In the context of the BEAD Program, the supply that is threatened is additional broadband infrastructure constructed using subsidies that already come with substantial strings attached – and the shortage that will result is high-cost areas that continue to lack broadband access. When rational ISPs consider project economics regarding the cost to connect unserved locations at the price-controlled "low cost" option, they will choose not to participate. Consequently, the goal of universal broadband service will not be realized. Or worse, inexperienced providers, including municipalities, lacking the capabilities associated with building-out and operating broadband networks, may make commitments, only to ultimately and inevitably fail at great taxpayer expense.

Numerous parties already have raised concerns that eligible entities are defining "low-cost" in a manner that will discourage fiscally sustainable participation in the BEAD Program:

- In 2023, Charter President and CEO Christopher Winfrey reportedly declared to a group of Wall Street analysts that "I want to reiterate and be very clear that where state BEAD rules are not conducive to private investment, we will not participate in those states." More recently, Charter CFO Jessica Fischer made similar comments at a J.P. Morgan conference: "there could be some limitation to the total amount we invest that's related to our lack of willingness to bid in states where we won't be able to get the returns because the rules aren't conducive to it."
- In a May 21, 2024, letter to NTIA Administrator Davidson, NTCA – The Rural Broadband Association Chief Executive Officer Shirley Bloomfield argued that "neither the States nor NTIA through review of initial proposals should prescribe an artificially low and arbitrary rate. Compelling providers to charge such a controlled rate could be unsustainable in many cases (especially across far-reaching rural areas) and thus more likely to discourage BEAD participation by small rural broadband providers – to the detriment of rural consumers most in need of service from committed providers with a vested interest and long-standing track record of performance in rural communities."
- In a May 30, 2024, letter to NTIA Administrator Davidson, ACA Connects President and CEO Grant Spellmeyer wrote that his members "will be deterred if they must comply with overly restrictive or burdensome requirements to offer and administer the 'low-cost service option….' A provider will undertake a broadband service project only if it expects a sufficient return on its investment. Prescriptive requirements to offer service at an unreasonably low price can destroy the business case for a deployment by artificially capping the revenue a provider could expect to generate."
- In June of this year, President and CEO of the Minnesota Telecom Alliance Brent Christensen announced that "zero" of his association's members would participate in the BEAD Program "because of the regulations that would come with it – especially the requirement to provide low-cost services."

More recently, a July 23, 2024, letter to Commerce Secretary Gina Raimondo signed by executives at 32 trade associations, including USTelecom – The Broadband Association, ACA

Connects, and NTCA, warned that state-specific prices set at the $30 per month rate NTIA "strongly encouraged" – and possibly rendered non-negotiable lest the eligible entity "face[] the prospect of political pressure" – are "completely unmoored from the economic realities of deploying and operating networks in the highest cost, hardest-to-reach areas that BEAD funding is precisely designed to reach." In addition, the letter asserted that even some "low-cost" prices above $30, such the $48.60 rate set by Pennsylvania, "are also unrelated to the actual cost of deployment and approach operational impossibility."

The signatories set forth several action items necessary for the BEAD Program to succeed, including that NTIA "[r]equire each State to revise the low-cost service option rate proposed or approved in its Initial Proposal so that the rate is more reasonably tied to providers' realistic costs, such as by using the FCC's Urban Rate Survey benchmark."

IV. Conclusion

As a fundamental economic principle, price caps lead to suboptimal levels of supply. Here, the product to be supplied is subsidized broadband network infrastructure in prohibitively high-cost areas. Unfortunately, and without regard to actual construction, operational, or maintenance costs, NTIA has "strongly encouraged" states and territories to set the "low-cost" price at an arbitrary, non-market-based rate – one tied to the discontinued Affordable Connectivity Program. If the government imposes price controls divorced from economic realities, the BEAD Program will fail to realize its policy goal of achieving universal broadband access because experienced ISPs will be discouraged from participating.

* Randolph J. May is President of the Free State Foundation, a free market-oriented think tank in Rockville, MD. The views expressed in this *Perspectives* do not necessarily reflect the views of others on the staff of the Free State Foundation or those affiliated with it.

Further Readings

Andrew Long, "BEAD Program Technological Neutrality 'Fix' Falls Short," *Perspectives from FSF Scholars*, Vol. 19, No. 29 (August 13, 2024).

Andrew Long, "House Commerce, Commissioner Carr Target BEAD Program," *FSF Blog* (July 11, 2024).

Andrew Long, "The Fate of the BEAD Program Rests on 'Devilish Details'," *Perspectives from FSF Scholars*, Vol. 19, No. 20 (June 10, 2024).

Andrew Long, "Virginia Flags NTIA's Impermissible Pressure to Regulate Broadband Rates," *Perspectives from FSF Scholars*, Vol. 19, No. 6 (February 15, 2024).

Andrew Long, "Senator Thune Spearheads Call to Revise BEAD Program Rules," *FSF Blog* (April 20, 2023).

Andrew Long, "New Report Puts a $60B Price Tag on NTIA's Fiber-Broadband Bias," *FSF Blog* (February 10, 2023).

Andrew Long, "[Senators Urge NTIA to Acknowledge Role of Broadband via Unlicensed Spectrum]," *FSF Blog* (December 1, 2022).

Michelle P. Connolly, "[NTIA's BEAD Program Needs Revisions to Succeed]," *Perspectives from FSF Scholars*, Vol. 17, No. 50 (October 3, 2022).

Seth L. Cooper, "[Senators Urge Fixes to NTIA's NOFO for Broadband Subsidies]," *FSF Blog* (August 25, 2022).

Andrew Long, "[Future Guidance Can Fix NTIA's Flawed 'Fiber-First' Approach]," *Perspectives from FSF Scholars*, Vol. 17, No. 27 (May 24, 2022).