



January 24, 2023

The Honorable John Thune  
Ranking Member  
Subcommittee on Communications,  
Media, and Broadband  
United States Senate  
Washington, DC 20515

Dear Ranking Member Thune:

The U.S. Chamber of Commerce appreciates your leadership and strong interest in broadband policy issues, and we appreciate this opportunity to address issues regarding current broadband regulatory structure and other broadband policy priorities.

America's communications networks play an essential role in connecting Americans and are revolutionizing the way people work, learn, seek medical care, and communicate with friends and family. Throughout the COVID-19 pandemic, the private sector played a critical role in keeping the "digital lights" on for the economy. Broadband adoption, access, and affordability serve as crucial building blocks to connect all Americans and enable the internet economy to flourish.

The United States has made significant strides in the last few years to close the digital divide by investing nearly \$80 billion in broadband programs, primarily through the historic investments made by the bipartisan Infrastructure Investment and Jobs Act (IIJA). However, we share your view that federal broadband programs are not guided by a national strategy and policymakers must provide a more effective path forward to successfully close the digital divide.

Moving forward, Congress's primary focus should be effectively implementing federal broadband programs and maximizing the use of taxpayer dollars. This includes pursuing robust oversight of federal broadband programs and ensuring effective interagency coordination. Congress must also bolster America's strength through building. As I outlined in the 2023 State of American Business remarks, Congress must take action to pass meaningful permitting reform for America's infrastructure, including for broadband. Furthermore, Congress and policymakers must prevent overregulation of the broadband marketplace to preserve innovation and to effectively close the digital divide.

The Chamber again appreciates the opportunity to provide our perspectives

on broadband policy. We look forward to working with you and your colleagues to pursue meaningful policies to address the digital divide and strengthen America's economy. If you have any questions, please do not hesitate to reach out to Matt Furlow, Director of Policy at the Chamber Technology Engagement Center, at [mfurlow@uschamber.com](mailto:mfurlow@uschamber.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long horizontal flourish.

Tom Quadman  
Executive Vice President  
Chamber Technology Engagement Center  
U.S. Chamber of Commerce

## 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?*

Federal broadband funds should be distributed in a technologically neutral manner, which applies to the BEAD program so long as the technology meets the program's other statutory requirements, such as the 100/20 Mbps speed thresholds. Technology neutrality is important to give states and territories the flexibility to select among all technologies to enable market competition, address the wide range of local geographic conditions and topographies, and provide for rapid deployment. The Chamber believes that NTIA's notice of funding opportunity (NOFO) is not technologically neutral, because it prioritizes fiber over other connectivity solutions and effectively excludes some types of technology, such as satellite and fixed wireless (using exclusively unlicensed spectrum). Additionally, the NOFO requires a complex, unnecessary waiver process for a state or territory to utilize non-fiber broadband technologies. NTIA has sufficient authority to remedy this policy to align more closely with Congressional intent and the IIJA's statutory requirements to provide states and territories sufficient flexibility to utilize the appropriate technologies for their area.

*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 practical matter, do you think this favors certain providers over others? Does Congress or NTIA need to take further action to remove this requirement?*

The Chamber is concerned that the NOFO's preferences for union labor would undermine IIJA objectives through likely increases in the costs of building and upgrading broadband networks. In addition to the costs of a unionized labor force, the requirement is unduly burdensome in a tight labor market where full crews are scarce already and heightens the barrier to entry for certain subgrantees that do not utilize unionized workforces. The NOFO's union preferences have no statutory basis and only seek to advance unrelated Administration labor priorities on worker misclassification, preferences against non-union subcontractors, prevailing wage requirements, and project labor agreements. NTIA has the authority to remove these preferences, but if NTIA declines to address this issue Congress should explicitly direct NTIA to do so.

*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.*

The Chamber strongly opposes any federal funding for government-owned broadband networks. Over the last twenty years, the private sector has invested more than \$2 trillion in America's broadband and connectivity infrastructure. Government-owned networks have a poor track record of investing taxpayer dollars, continuously innovating to provide better service, and often lack the expertise to sufficiently maintain broadband networks. Moreover, government-owned networks can distort competition, especially considering that the same state and local governments that are in part responsible for granting permits to broadband providers may also be building or maintaining their own competing network. The Chamber agrees that the BEAD NOFO promotes government-owned networks by imposing burdensome requirements on funding recipients as well as unduly pressuring states to waive laws placing restrictions on government-owned networks, even if they predate the enactment of the IIJA. NTIA has sufficient authority to remedy these unnecessary preferences, which Congress should encourage them to do.

*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 imposed novel "Buy America" (BABA) requirements on a wide range of infrastructure projects and programs, including broadband. While the Chamber supports efforts to incentivize private sector investment in the United States, these requirements [exacerbate](#) existing supply chain challenges in the broadband marketplace and will make it [more difficult](#) to achieve the IIJA's broadband objectives including closing the digital divide. This challenge is particularly acute in the broadband space considering significant swathes of broadband equipment and components are not produced in the United States which is likely to lead to higher costs and longer wait times for equipment and components. For example, current fiber order lead times can be as long as 12-18 months due to supply chain issues.

Moreover, the Chamber is concerned that the implementation of BABA requirements lacks clarity and may be confusing for eligible entities and the private sector. The Chamber, in conjunction with other stakeholders, sent several letters to OMB with [specific questions](#) on implementation, none of which have been answered. Congressional attention to the issues and questions raised in the letter will help provide certainty to relevant stakeholders as implementation continues.

Congress wisely included a waiver process in the BABA requirements. We urge Congress to encourage OMB to use the waiver process flexibly to account for

marketplace and supply chain realities and the public policy objective of expeditiously connecting all Americans.

Finally, the Chamber recommends that Congress make several clarifications to BABA requirements. One, to better conform with existing trade agreement obligations, Congress should ensure products produced in countries covered by trade agreements with the United States are not subject to BABA requirements. Two, Congress should clarify that Department of Transportation's existing de minimis threshold be applicable to all programs and projects covered by BABA requirements.

*5. The Broadband Buildout Accountability Act, S. 3671, would remove the Freedom of Information Act exemption in the BEAD program. Should Congress enact this legislative proposal? If not, why?*

The Chamber supports the enactment of S. 3671 (introduced in the 117<sup>th</sup> Congress) to increase transparency of the administration of federal broadband programs while protecting confidential and commercially sensitive information.

*6. Are there other technical issues in the BEAD program that Congress should address before NTIA announces funding allocations by June 30, 2023?*

The Chamber recommends that Congress address several technical issues in advance of funding allocations. First, Congress or NTIA should provide clear guidance to the states to prevent confusion regarding the application of 2 CFR Part 200 ("Uniform Guidance") to BEAD-funded projects, either waiving the majority of the guidance or defining internet service providers (ISPs) as contractors for the purposes of the Uniform Guidance.

Second, there are several provisions in the BEAD NOFO pertaining to affordability that could be interpreted as giving states the authority to regulate rates for all broadband services provided over subsidized networks. This is contrary to Congress's clear prohibition against rate regulation for projects funded through BEAD. Rather than rate regulation, Congress or NTIA should clarify that the overall intent should be to ensure that all consumers, including low- and middle-income consumers, gain the benefits of BEAD-funded deployment.

Third, Congress should clarify that the IIJA did not intend to impose open access, interconnection, or unjust or unreasonable network management requirements on BEAD-funded networks.

Fourth, Congress can reiterate its intent to encourage any and all participation in the BEAD program without any preference for government-owned networks

("GONs") and/or other non-traditional broadband providers.

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?*

While the Chamber does not have a comprehensive view of the most successful broadband programs, policymakers should apply the following principles to assess the effectiveness of broadband programs.

First, deployment should be the highest priority with successful programs focusing on achieving universal broadband availability.

Second, broadband service requirements should be simple and uniform to lower barriers to participation, expedite deployment, and result in the most efficient use of funds.

Third, programs should use an open and competitive process that is simple to administer to allocate funds and be technology-neutral to accommodate the wide range of connectivity technologies.

Fourth, policymakers should support a holistic approach to evaluating broadband deployment proposals. This approach allows applicants to submit proposals that utilize efficient network design principles, thus maximizing the number of unserved locations that will be covered by program funding.

Fifth, policymakers should leverage participation in existing (or commensurate) federal affordability programs. This allows providers to quickly offer a low-cost option to eligible subscribers, effectively address broadband affordability, and significantly reduce the administrative burden.

Sixth, data-driven decisions are critical to maximize the number of unserved locations that will be covered by federal funding. In addition to using the FCC's broadband data maps to identify eligible areas, broadband programs should require states and any awardees of federal broadband funding to provide additional information about locations or areas that are the subject of existing broadband deployment awards and/or any enforceable commitment to deploy broadband to a specific and clearly identified geographic area or location regardless of their

construction status. An enforceable commitment to the federal government to deploy broadband to a specific and clearly identified geographic area or location may be a merger commitment as well as a commitment to deploy broadband service in exchange for federal or state government support or some governmental regulatory relief.

Seventh, funds should be prioritized on last-mile infrastructure deployments which are often the highest cost portion of a network to deploy.

Eighth, regulatory policies should be light touch. This will allow for a public-private partnership that works with the market, not against it, and marshals private resources and government support to close the remaining gaps in network coverage.

Ninth, an emphasis on unsupported and adjacent policy concerns will distract from the real challenges that stand in the way of closing the digital divide and thus should be avoided.

Tenth, programs should be funded through the general appropriations process to allow for ongoing congressional oversight, and if needed, reform.

*b. Should Congress consider eliminating any of these programs? If so, which ones?*

Congress should assess each program according to the principles outlined in (a) and determine whether a program remains necessary considering the program's conformity with those principles. Moreover, Congress should refrain from creating any new deployment programs until the BEAD program is implemented and its results have been fully evaluated to identify specifically what, if any, and where additional funding is needed.

*c. Should Congress merge and combine any of these programs? If so, which programs would be best suited to be merged?*

Congress should conduct a comprehensive evaluation on whether and to what extent any federal broadband programs should be merged. The evaluation should account for the principles outlined in (a).

*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?*

Non-duplication of federal and state broadband dollars is an important principle to efficiently utilize federal funds. The Chamber believes that state governments should be responsible for verifying that funding is non-duplicative given that a state likely has the broadest understanding of federal and state broadband funding in their state. Moreover, many states are setting up or retooling their broadband offices to implement broadband funding to comply with BEAD program requirements. In addition, states should be required to submit this information to relevant federal agencies to ensure it is reflected in future iterations of broadband maps.

*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?*

Congress should evaluate which, if any, federal broadband programs contribute to overbuilding while also ensuring that no American remains unserved, and all receive reliable broadband service. In determining unserved areas, policymakers must consider a framework that would allow for the inclusion of areas where there are enforceable commitments to the federal government to deploy broadband to a specific and clearly identified geographic location, regardless of their construction status. Consequently, maps must be updated to reflect areas that are targeted for deployment.

*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?*

The IJJA established a clear prohibition on rate regulation, which the Chamber strongly endorses. Congress should ensure this prohibition is expanded to all broadband funding to ensure consistency across programs so that no state or federal agency directly or indirectly regulates rates. Additionally, we are concerned that the BEAD program's directive that states establish a "middle-class affordability program" may implicate rate regulation. Congress should ensure that the NOFO, through the middle-class affordability program or other means, does not directly or indirectly promote rate regulation. Finally, we urge Congress to pay close attention to the outcome of *New York State Telecommunications Association v. James*, which may have significant impacts on the broadband industry and state rate regulation.

*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 mandates are explicitly denominated "net neutrality?" If so, what reforms and constraints should be implemented?*

Several federal agencies, including NTIA and the U.S. Department of Agriculture, have pursued net neutrality-like requirements for some of their federal broadband programs. The Chamber supports the codification of net neutrality principles, but the proper avenue is through Congress and the FCC – not through federal grant programs or by states. Doing so would create a patchwork of rules inconsistent with the interstate nature of broadband networks and the internet. As discussed further in Question 13, Congress should enact legislation that codifies net neutrality principles outside of Title II reclassification. Congress should also exercise proper oversight over federal agencies to ensure they are not pursuing net neutrality policies in their grant programs.

*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?*

The Chamber believes it is too early to evaluate the success of the Memoranda of Understanding (MOU) but recommends that Congress maintain robust and continuous oversight of federal broadband agencies and programs, including implementation of the MOU.

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

In general, the Chamber strongly encourages Congress to conduct robust oversight over all federal broadband programs. Specifically, the Chamber supports the enactment of Broadband Buildout Accountability Act, S. 3671 (introduced in the 117<sup>th</sup> Congress), which would help increase the transparency of federal broadband programs.

*8. What, if any, permitting regulations at the federal level are impeding broadband deployment?*

Broadband permitting improvements will be critical to reduce the cost of broadband deployment and stretch the use of taxpayer funds and should be a high priority for the 118<sup>th</sup> Congress. The Chamber believes that Congress should take steps to modernize permitting processes for deploying broadband infrastructure, including

imposing permitting time limits, as appropriate. Uncertainty and delays in the broadband permitting processes will increase the cost of deployment and limit the impact of federal broadband investments. The United States needs these improvements to remain competitive and to support long-term economic growth as well as address the digital divide.

First, Congress should examine how to best effectuate deployment on lands managed by federal agencies (e.g., Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, U.S. Forest Service). These updates will be particularly important in the coming months and years as projects financed by the IJJA and other broadband programs may be located on federal lands.

Second, the Chamber fully supports the goals of the National Environmental Policy Act (NEPA) to better inform agency decisions and the public's understanding of the potential environmental impacts of federal actions. A federal permitting system that is focused and aligned with these goals is needed for timely investment in new and more resilient infrastructure. However, infrastructure projects of all kinds are often subject to endless delays and litigation. The permitting process suffers from multiple agency roadblocks, lack of transparency and timely reviews, and numerous bites at the apple for project opponents seeking to kill projects through costly delays. As a result, many in the private sector are reluctant to tie up capital in projects, costing us jobs and the public benefits associated with better infrastructure. Timely, transparent NEPA processes are needed to encourage investment that is needed to sustain and grow our economy. Moreover, Congress should seek to exclude certain broadband infrastructure project approvals and siting decisions from NEPA review processes entirely, such as expanding and clarifying where NEPA is not required for temporary uses, or where new licensing would not substantially alter existing facilities.

Third, Congress should consider solutions to addressing other federal barriers to deployment such This includes expanding and clarifying where the National Historic Preservation Act is not required for temporary uses, or where new licensing would not substantially alter existing facilities.

Fourth, Congress should also consider the impact of state and local permitting requirements on the deployment of broadband infrastructure. Specifically, these include cable system transfers, franchise terms and termination, notification of road changes, street restoration fees not reasonably related to the size of the cut in the roadway, municipal and cooperative pole attachment, requests for access, required franchises agreements or similar approvals as a prerequisite for permitting, mandatory "in-kind" compensation to municipalities, onerous liability provisions, and excessive and arbitrary fees. Reforms should not only focus on streamlining procedures for new sites but also streamlining procedures for colocation, modifications, and upgrades on

existing facilities. Congress should leverage existing and future federal broadband dollars to incentivize states to pursue state and local-level permitting reforms. Also, state and local permitting requirements often hinder the deployment of broadband and thus may require federal action through preemption, shot clocks, and other policies.

*9. 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?*

The Chamber is concerned that there may be some gaps in the FCC's authority to preempt state and local laws that unreasonably inhibit broadband deployment. For example, the increasing inclusion of new infrastructure in modern network architecture, and the increased reliance on the advanced services that this infrastructure can provide, has already created difficulties for the application of laws designed to facilitate the deployment of infrastructure. As such, Congress should clarify by amending Sections 253 and 332(c)(7) to ensure that mobile data services continue to retain the protections of these important statutes.

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

Congress has invested tens of billions in broadband deployment programs over the last few years. The Chamber believes it is imperative that Congress prioritize reducing the cost of deployment.

First, Congress should enact permitting reform legislation for wireline and wireless broadband deployment.

Second, Congress should ensure the broadband industry has a sufficient workforce.

Third, Congress should seek to mitigate the impact of policies that increase the cost of deployment, such as Buy America requirements and extraneous state-level requirements. The inclusion of extraneous requirements disincentivizes participation from many experienced providers.

Fourth, Congress should address several tax barriers that inhibit the effective deployment of broadband infrastructure. This includes enacting legislation similar to the Broadband Grant Tax Treatment Act, S. 5021, 117th Cong. (2022), which would exempt certain federal broadband grants from taxable income, and the Accelerate

Long-term Investment Growth Now (ALIGN) Act, S. 1166, 117th Cong. (2021), which would make permanent the expensing of certain new business equipment, to maximize private sector investment in broadband networks. In addition, policymakers should amend the corporate alternative minimum tax to properly adjust for post-enactment date acquisitions of wireless spectrum that is used in the trade or business of a wireless carrier to continue to allow for the amortization of prior spectrum license purchases as a credit against the book profits minimum tax calculation. Failing to make such a change disproportionately punishes American wireless carriers and consumers.

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

While the Chamber did not participate in the FCC's recent proceeding on pole replacements, the Chamber urges Congress to act on pole attachment practices for municipalities, cooperatives, or other types of non-investor-owned utilities. Providers often face significant challenges pertaining to attachment rates, terms (e.g. unreasonable access standards and unreasonable long lead times), and excessive fees for pole replacement and attachments costs. Specifically, we recommend that Congress close loopholes in existing federal pole attachment law which currently excludes poles owned by municipalities and cooperatives to further encourage accelerated and cost-efficient broadband deployment. In doing so, Congress would direct the FCC to establish a reasonable and standardized rental rate formula for utility poles owned by municipalities and cooperatives and ensure that the terms of access and cost allocation for those entities' poles are fair and reasonable.

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

NTIA's BEAD NOFO requires network operators to attest that they have a cybersecurity program in place modeled after the NIST cybersecurity framework and also requires operators to indicate their plan reflects the items required for Federal agencies in EO 14028 from 2021.

The Chamber believes the NOFO adequately addresses cybersecurity and strongly supports the use of NIST's cybersecurity framework. However, as for the requirements in EO14028, they were written for Federal agencies and may not be easily translated to critical infrastructure. The Chamber seeks clarity on effective compliance with those provisions and we recommend that Congress direct NTIA to revisit that aspect of the NOFO and engage in stakeholder discussions on how best to apply those requirements to broadband projects.

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

The Chamber believes that Congress could address several other issues in the 118<sup>th</sup> Congress, specifically net neutrality, the Affordable Connectivity Program, the retirement of legacy networks, and spectrum auction authority.

First, the Chamber supports the enactment of legislation that codifies key neutrality principles without imposing an onerous Title II legal regime on broadband. Federal legislation would also help address a growing patchwork of state net neutrality legislation that risks fragmenting internet regulation.

Second, Congress should act to ensure that the Affordable Connectivity Program possesses sufficient appropriated funding after the funding from the IIJA is exhausted.

Third, Congress should establish a uniform and streamlined national process for replacing legacy networks and technologies with new broadband networks.

Fourth, auction authority is an important tool to ensure that, where spectrum is auctioned for licensed use, the FCC has an objective means of doing so, and also has the requisite authority to conduct ancillary licensing activities, and to craft suitable auction rules as needed.