BRETT GUTHRIE, KENTUCKY
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED NINETEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-3641
Minority (202) 225-2927

March 3, 2025

MEMORANDUM

To: Members, Energy and Commerce Committee
From: Majority Staff
Re: Communications and Technology Subcommittee Hearing

I. INTRODUCTION

On Wednesday, March 5, 2025, at 2:00 p.m., the Subcommittee on Communications and Technology will hold a hearing in 2123 Rayburn House Office Building titled, "Fixing Biden's Broadband Blunder." The following witnesses are expected to testify:

II. WITNESSES

- Grant Spellmeyer, President and CEO, ACA Connects
- Tim Donovan, President and CEO, Competitive Carriers Association
- Greg Hale, CEO, LTC Connect
- Sarah Morris, Former Deputy Administrator, National Telecommunications and Information Administration (Acting)

III. BACKGROUND

The United States faces a persistent digital divide. The Federal Communications Commission (FCC) estimates that 6.1 million households lack access to fixed terrestrial broadband (wired or fixed wireless) at download speeds of 25 megabits per second (Mbps) and 3 Mbps upload speeds.[1] The majority of unserved Americans are in rural and Tribal areas.

1. Broadband Technologies

Fixed broadband, which is provided to a fixed location like a home, can be provided by a variety of technologies. Fiber and cable are the most typical, as they can reliably deliver high

[1] FCC National Broadband Map, FEDERAL COMMUNICATIONS COMMISSION, (Feb. 4, 2025), https://broadbandmap.fcc.gov/area-summary.

speeds with low latency and are easily upgradable. They are, however, expensive to deploy in certain terrains. Fixed wireless and satellite broadband are newer technologies that can be used as alternatives, particularly in areas that are more remote or have terrain that makes deploying fiber or cable more difficult.

Mobile broadband is provided to non-stationary locations, such as cellular phones, using wireless spectrum. Mobile broadband speeds are not always comparable to fixed speeds. For example, the FCC once considered an area as served with 4G LTE if it had minimum service of 5/1 Mbps, even though at higher speeds 4G LTE was also the technology that made mobile video streaming possible, unlocking an explosion in new online video content. Next generation mobile technology such as 5G is making it possible not only to increase mobile broadband speeds, but to increase the amount of data that can be sent across those streams.

2. Overview of Federal Programs

a. Infrastructure Investment and Jobs Act (IIJA) Programs

Congress provided $65 billion through the IIJA to support broadband activities.[2] Most of this funding ($48.2 billion) went to the Department of Commerce's National Telecommunications and Information Administration (NTIA) for various grant programs:

- $42.45 billion for the Broadband Equity, Access, and Deployment (BEAD) Program, which was intended to provide grants for last-mile deployment in unserved and underserved areas;
- $2.75 billion for the State Digital Equity Capacity Grant Program and the Digital Equity Competitive Grant Program, which were intended to provide funding for broadband adjacent priorities such as buying smart devices and creating educational programs to teach consumers how to use connected devices;
- $1 billion for the Middle Mile Grant Program, to support the deployment of middle-mile infrastructure; and
- $2 billion for the Tribal Connectivity Program, which supports connectivity-related activities for Tribal communities.

The BEAD Program was designed to provide grants to states and territories (eligible entities) to then distribute to broadband providers to deploy last-mile broadband at speeds of at least 100/20 Mbps to unserved and underserved homes and businesses. NTIA has approved every eligible entity's initial proposal, and three entities' final proposals, while 23 others have begun selecting providers.[3]

Some eligible entities and broadband providers have raised concerns about NTIA's administration of the BEAD program. Complaints include pressure from NTIA to regulate the price of low-income broadband plans, NTIA's preference for certain broadband technologies over others, and extraneous and costly labor and climate requirements. Complying with these

[2] Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, div. F, tit. I et seq. (2021); *id*., div. J.
[3] BEAD Progress Dashboard, NTIA (last updated Jan. 7, 2025), https://www.ntia.gov/funding-programs/internet-all/broadband-equity-access-and-deployment-bead-program/progress-dashboardprogress-dashboard.

burdensome requirements likely led to NTIA's delay in approving some initial proposals. Notably, no BEAD funding has been distributed to date.

b. Covid-era Programs

Emergency Broadband Benefit/Affordable Connectivity Program. The Consolidated Appropriations Act, 2021 established a temporary $3.2 billion Emergency Broadband Benefit program at the Federal Communications Commission (FCC), which provided a $50 broadband subsidy to low-income households and those economically impacted by the Covid-19 pandemic.[4] The IIJA extended the program and renamed it the Affordable Connectivity Program. Congress also changed certain program requirements to expand eligibility, reduced the subsidy to $30 per month, and appropriated an additional $14.2 billion to the program.[5] Approximately 23 million households enrolled in the program, which ran out of money on May 31, 2024.[6]

Other Covid Programs. The need for connectivity during the Covid-19 pandemic led to increased Congressional spending to support broadband deployment, telehealth, and distance learning through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Consolidated Appropriations Act, 2021, and American Rescue Plan Act (ARPA). This included:

- $450 million for the FCC's Covid-19 Telehealth Program to enable telehealth services;[7]
- $1.3 billion to NTIA for broadband deployments grants: $1 billion for Tribal areas and $300 million for unserved rural areas;[8]
- $285 million to NTIA's Connecting Minority Communities Pilot Program support to expand broadband capacity and use in communities surrounding Historically Black Colleges and Universities, Tribal colleges and universities, and minority-serving education institutions;[9]
- $7.171 billion to the FCC's Emergency Connectivity Fund to support distance learning through schools and libraries;[10]
- $350 billion to the Department of the Treasury for grants to states, territories, local, and Tribal governments to "make necessary investments in…broadband infrastructure";[11] and
- $10 billion to the Department of the Treasury for the Coronavirus Capital Projects Fund, which allowed states, territories, and Tribal governments to "carry out critical capital projects directly enabling work, education, and health monitoring, including remote options."[12]

---

[4] Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit, IX, § 904 (2020) (Consolidated Appropriations Act, 2021).
[5] IIJA § 60502.
[6] Universal Serv. Admin. Co., ACP Enrollment and Claims Tracker (last accessed Mar. 2, 2025), https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/#total-enrolled
[7] Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136 (2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit, IX, § 903 (2020) (Consolidated Appropriations Act, 2021).
[8] *Id*., § 905.
[9] *Id*., § 902.
[10] American Rescue Plan Act of 2021 (ARPA), Pub. L. No. 117-2, tit. IX, sub. M, § 7402 (2021).
[11] *Id*. § 9901.
[12] *Id*.

c. Universal Service Fund

The FCC's Universal Service Fund (USF) program is a user-fee-based support program that subsidizes broadband and telephone services in high-cost—typically rural—areas (High-Cost Program), for low-income households (Lifeline Program), in schools and libraries (E-Rate Program), and at rural health-care facilities (Rural Health Care Program).

The Universal Service Administrative Company (USAC), an independent, non-profit entity, administers the USF. In 2023, USAC disbursed more than $8.1 billion for the four USF programs: $4.3 billion for the High-Cost Program, $2.5 billion for E-Rate, $870 million for Lifeline, and $468 million for the Rural Health Care program.[13]

The USF is funded through assessments from telecommunications providers based on a percentage of their interstate voice-service revenues.[14] The percentage, known as the contribution factor, is adjusted each quarter based on what the USF needs to distribute. The contribution factor for the first quarter of 2025 is a record 36.3 percent.[15] This cost is normally passed on to consumers as a USF fee line item on a phone bill, meaning that the typical subscriber to phone service today would see a staggering 36 percent fee on top of other service charges.

The increase in the contribution factor from 5.5 percent in 2000 to where it stands today has led to proposals to broaden the contribution base to include broadband and edge providers, such as streamers and Big Tech companies.[16] At the same time, the need for the USF has come into question considering recent Congressional spending on broadband deployment, affordability, and distance learning—functions duplicative of the USF. During the 118th Congress, a bipartisan, bicameral working group formed to reform the USF.[17]

The constitutionality of the USF is under review. Consumers' Research, an advocacy organization, filed lawsuits in multiple courts arguing that Congress's delegation of authority to the FCC to provide universal service violates the nondelegation doctrine, and that the FCC cannot rely on a private company (USAC) to administer the USF. The U.S. Courts of Appeal of the Sixth[18] and Eleventh Circuits[19] ruled in favor of the FCC, while a Fifth Circuit panel initially ruled in favor of the FCC[20] before the full court found the USF unconstitutional.[21] The Supreme

---

[13] Universal Serv. Admin. Co., 2023 Annual Report at 3 (2024), https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2023/2023_USAC_Annual_Report.pdfhttps://www.usac.org/wp-content/uploads/about/documents/annual-reports/2019/USAC-2019-Annual-Report.pdf.
[14] Providers usually pass this cost on to their customers.
[15] *Proposed First Quarter 2025 Universal Service Contribution Factor*, Public Notice, CC Docket No. 96-45, DA 24-1245 (rel. Dec. 12, 2024).
[16] *See, e.g.*, Brendan Carr, *Ending Big Tech's Free Ride*, NEWSWEEK (May 24, 2021 at 7:30am), https://www.newsweek.com/ending-big-techs-free-ride-opinion-1593696.
[17] Press Release, Latta, Matsui Join Bicameral Effort to Evaluate Universal Service Fund, Rep. Bob Latta (Sept. 21, 2023), https://latta.house.gov/news/documentsingle.aspx?DocumentID=404070.
[18] *Consumers' Rsch. v. FCC*, 67 F.4th 773 (6th Cir. 2023).
[19] *Consumers' Rsch. v. FCC*, 88 F.4th 917 (11th Cir. 2023).
[20] *Consumers' Rsch. v. FCC*, 63 F.4th 441 (5th Cir. 2023).
[21] *Consumers' Rsch. v. FCC*, 109 F.4th 743 (5th Cir. 2024).

Court will now take up this case, with oral argument scheduled for March 26 and a decision expected by the end of this term. If the Court finds the USF unconstitutional, Congress will need to address the delegation issue or rural broadband providers may no longer receive USF funding, meaning millions of Americans could lose service if they live in areas served by USF-supported providers.

3. Interagency Coordination and Mapping

In May 2022, the Government Accountability Office (GAO) released a study analyzing Federal broadband programs. It identified over 130 federal programs—administered by 15 agencies—that could be used to expand broadband access.[22] Given the number of programs, interagency coordination is critical. Historically, federal agencies have not coordinated their funding decisions. As a result, they have awarded funds that overbuilt areas that already have broadband service from a private sector provider or are served by a project funded by another agency. Further, navigating the myriad federal broadband support programs can be challenging, as these programs often have different qualifications and applications, address different needs, and may not be well promoted.

Congress has worked to improve interagency coordination. The Consolidated Appropriations Act, 2021 established the Office of Internet Connectivity and Growth at NTIA,[23] which is tasked with tracking broadband support programs within the Executive Branch and streamlining and standardizing the process for applying for federal broadband support. Congress also directed the FCC, NTIA, and the Department of Agriculture to enter into an interagency agreement to coordinate the distribution of federal funds for broadband programs, to prevent duplication of support, and ensure stewardship of taxpayer dollars.[24] The agencies have since added Treasury to this agreement.[25]

Increased federal broadband spending also highlights the importance of broadband mapping to identify which areas have broadband and which do not. In 2020, Congress enacted the Broadband DATA Act to reform the FCC's mapping process,[26] which previously overstated broadband availability. The law directed the FCC to identify every broadband-serviceable location in the country, collect location-based broadband availability data from providers every six months, establish a challenge process to verify the accuracy of that data, and develop a process for state and local governments and third parties to submit availability data. The FCC released the first edition of this map in November 2022 and has released updates every six months since then.[27] In addition, the IIJA directed the FCC to establish a map showing where the

---

[22] U.S. Gov't Accountability Off., GAO-22-104611, National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide (2022), https://www.gao.gov/products/gao-22-104611.
[23] Consolidated Appropriations Act, 2021, § 903.
[24] *Id.*, § 904; Press Release, NTIA, NTIA, FCC and USDA Announce Interagency Agreement to Coordinate Broadband Funding Deployment (June 25, 2021), https://www.ntia.doc.gov/press-release/2021/ntia-fcc-and-usda-announce-interagency-agreement-coordinate-broadband-funding.
[25] Memorandum of Understanding Regarding Information Sharing dated as of May 9, 2022, between the FCC, USDA, NTIA, and Treasury, https://www.ntia.doc.gov/files/ntia/publications/interagency_broadband_mou.pdf
[26] Broadband Deployment Accuracy and Technological Availability (DATA) Act, P.L. 116-130 (2020), *codified at* 47 U.S.C. 641, et seq.
[27] FCC National Broadband Map, FCC, https://broadbandmap.fcc.gov/home.

Federal government (FCC, NTIA, USDA, and Treasury) is funding broadband deployment to ensure better interagency coordination to avoid overbuilding and duplication of funding.[28]

4. Permitting

Before a broadband provider can begin construction for new or modified broadband infrastructure, it must secure zoning and construction permits, pay application fees, and conduct environmental and historic preservation reviews. This process often requires cooperation among federal agencies and state and local governments. But the unpredictable timelines for permit approvals and high fees for processing applications have made it more expensive and burdensome to deploy broadband infrastructure.

a. Federal Barriers

The federal government manages a significant amount of land, particularly through the Department of the Interior and the Department of Agriculture. As a result, these agencies are responsible for reviewing and approving applications to deploy broadband on federal property. Federal agencies often take significant time to review these applications, which results in project delays.[29] To address this, Congress directed federal agencies to develop one or more master contracts to govern the placement of broadband infrastructure on property owned by the federal government, use a common application form, and established a 270-day shot clock for federal agencies to process applications to place communications facilities on federal property.[30] Nonetheless, reviews often last beyond 270 days, and there is currently no penalty when federal agencies miss this deadline.

Other federal laws complicate broadband infrastructure deployment. The National Historic Preservation Act (NHPA) and the National Environmental Policy Act of 1969 (NEPA) have reportedly created obstacles to deployment projects due to permitting application costs and lengthy reviews.[31] The FCC tried streamlining these processes for small-cell construction—a critical element of 5G deployment, but the U.S. Court of Appeals for the District of Columbia circuit vacated that action in August 2019,[32] which further emphasizes the need for Congressional action.

b. State and Local Government Obstacles

---

[28] Broadband Funding Map, FCC, https://fundingmap fcc.gov/home.
[29] *See* Linda Hardesty, *Whoa – The Fiber Permitting Process Could Crush Digital Divide Dreams, Fierce Telecom* (Dec. 9, 2021), https://www.fiercetelecom.com/broadband/whoa-fiber-permitting-process-could-crush-digital-divide-dreams (describing federal approvals needed to deploy broadband).
[30] 47 U.S.C. § 1455(b)(3)(A).
[31] *Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment, Hearing before the Sub. on Commc'n. and Tech., H. Comm. on Energy and Commerce*, 118th Cong. (2023)(Permitting Hearing)(Written Testimony of Michael Romano at 5; Written Testimony of Louis Finkel at 1).
[32] *United Keetoowah Band of Cherokee Indians in Oklahoma v. FCC*, 933 F.3d 728 (D.C. Cir. 2019)(vacating an FCC order eliminating NEPA and NHPA requirements as arbitrary and capricious for failing to justify that public interest did not require review of small cell deployments).

State and local governments play a key role in facilitating or hindering broadband infrastructure deployment. They regulate land use, review permit applications, and issue relevant permits. State and local governments' review processes can be inconsistent with each other and costly, which can delay or even prohibit broadband deployment. For example, some state and local governments charge excessive fees for applications or to access the public rights-of-way for construction and impose no deadlines to review applications.[33]

Federal law preempts state and local authority to regulate communications facilities. Under Section 253 of the Communications Act of 1934, "no State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[34] Section 253 requires the Commission to preempt the enforcement of any such law.[35] Similarly, Section 332(c)(7) of the Communications Act states that "[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof […] shall not prohibit or have the effect of prohibiting the provision of personal wireless services."[36]

The FCC has used its authority to address state and local barriers to broadband infrastructure deployment by:

- Streamlining state and local government review of wireless small-cell siting applications by limiting application fees state and local governments could charge an applicant, establishing new shot clocks for small wireless facilities, codifying existing shot clocks for non-small cell wireless facility deployments, and adopting a new remedy for failing to act within the shot-clock;[37]
- Declaring that state and local moratoria on the deployment of telecommunications services or facilities prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service;[38] and
- Clarifying when state and local government review of modifications to existing wireless infrastructure to facilitate 5G deployment begin for purposes of a 60-day shot clock, how certain aspects of proposed modifications affect eligibility for streamlined review, and when FCC applicants need to submit environmental assessments based only on potential impacts to historic properties.[39]

---

[33] Permitting Hearing (Written Testimony of Michael O'Rielly at 5).
[34] 47 U.S.C. § 253(a).
[35] *Id.* § 253(d).
[36] 47 U.S.C. § 332(c)(7)(B)(i).
[37] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088 (2018) affirmed in pertinent part, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).
[38] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd. 7705 (2018); 47 U.S.C. § 253.
[39] *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 20-75, 35 FCC Rcd. 5977 (2020), affirmed in part by *League of California Cities v. FCC*, 118 F.4th 995 (9th Cir. 2024).

IV. KEY QUESTIONS

- How can we fix the BEAD program to remove burdens and expedite deployment?
- What short-term and long-term reforms are needed to preserve access to the Universal Service Fund and update its purpose?
- How would you evaluate and improve the FCC's broadband mapping process?
- What are ways to streamline the permitting process at the Federal, state, and local levels?

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Kate Harper or John Lin of the Committee Staff at (202) 225-2927.