

May 12, 2022

President Joe Biden  
Vice President Kamala Harris  
U.S. Commerce Secretary Gina Raimondo  
NTIA Administrator Alan Davidson  
1401 Constitution Ave NW  
Washington, DC 20230

Dear President Biden, Vice President Harris, Secretary Raimondo, and Administrator Davidson,

Congress has given the National Telecommunications and Information Administration (NTIA) an opportunity to significantly and equitably narrow the digital divide. The NTIA can only realize this opportunity and achieve equitable, universal connectivity if it focuses on consumers' needs over the desires of industry. While the Infrastructure Investment and Jobs Act (IIJA) envisions a role for states in planning and implementation, it also clearly intends for the NTIA to set minimum standards, prescribe best practices, exercise oversight over the states' proposals, and determine who can access a low-cost broadband plan.

Universal equitable connectivity could be imperiled if the NTIA fails to use its congressional authority. While each state has unique needs, enabling states to use IIJA money however they wish could eliminate the digital divide in some states, while leaving it wide open in others that have less broadband expertise or are more susceptible to industry lobbying efforts. Had Congress intended for each state to do exactly what it wanted to, Congress would have created a block grant program. Instead, it gave the NTIA the explicit authority to prescribe mandatory best practices to ensure network reliability, authorized the NTIA to provide guidance to states on how to prioritize deployment projects, and required the NTIA to approve state plans for both use of the money and for the contours of a low-cost option.<sup>1</sup>

The NTIA should appropriately exercise this authority in its Notice of Funding Opportunity by setting minimum standards for proposed projects. For example, the NTIA should require states to prioritize scalable, symmetrical projects. This will ensure that every state has networks that meet consumer needs well into the future (and won't need more government funding to upgrade). The NTIA can also promote equitable access to broadband competition by requiring states to prioritize open-access projects.

Additionally, the NTIA should exercise its oversight authority by working with states to develop and revise their state plans for the Broadband Equity, Access, & Deployment program (BEAD), the digital equity grant program, and the low-cost option. By explicitly requiring states to create plans, subject to the NTIA advice and approval, Congress clearly intended for the NTIA to impart its expertise upon states that have traditionally had fewer resources to close the digital divide. If the NTIA were to instead merely rubber stamp state plans, it could eviscerate

---

<sup>1</sup> See 47 USC 1702 Secs. 60102(b)(4); (c)(4); (c)(4)(e)(D)(ii); (h)(5)(B)(iii).

Congress's intent that consumers across the nation have access to affordable, reliable broadband.

For example, US Telecom has proposed letting BEAD recipients fulfill their obligation to create a low-cost option by merely participating in the Federal Communications Commission's (FCC's) Affordable Connectivity Program (ACP).<sup>2</sup> Not only does this proposal violate canons of statutory interpretation by conflating two separate programs, but it also would allow internet service providers to completely avoid the public interest obligations that justify their use of IIJA funds. BEAD funds are intended to bring infrastructure where no infrastructure (or inadequate infrastructure) exists today. ACP, by contrast, provides eligible households with access to infrastructure with a subsidy to make broadband affordable. Mandating an affordable plan for BEAD recipients is intended by Congress as a separate public interest obligation on those who take federal money to build their infrastructure.

Allowing carriers to satisfy the low-cost plan obligation simply by participating in ACP would also leave customers in the lurch after just a few years when the ACP runs out of funding, enabling providers to effectively avoid offering any new low-cost service at all.<sup>3</sup> As Secretary Raimondo noted in her testimony before the Senate Commerce Committee: "We are crystal clear that every provider who accepts even a penny of federal money must provide a low-cost option."<sup>4</sup> The only way to ensure this is for the NTIA to work with states to retool plans that don't adhere to the law and which don't offer consumers an affordable, reliable internet connection.

While we hope that most states would not implement bad faith proposals that favor industry over consumers, we cannot underestimate the power of corporate lobbying to exploit states without the resources to develop their own broadband expertise. In 2018, telecom companies spent a combined \$4.7 million just in California, just to lobby against net neutrality.<sup>5</sup> To directly compare corporate and public interest lobbying power: AT&T alone spent more than \$1.6 million on campaign contributions and ballot measures in 2018.<sup>6</sup> By contrast, the consumer

---

<sup>2</sup> *Memo from America's Broadband Providers*, US Telecom (Feb 10, 2022), available at <https://ustelecom.org/research/memo-from-americas-broadband-providers/>.

<sup>3</sup> It is worth noting that merely approving or denying state plans is not "rate regulation" as prohibited by the legislation. As the Supreme Court held in *FERC v Elec. Power Supply Ass'n*, 577 U.S. 260, 284 (2016) "The standard dictionary definition of the term "rate" (as used with reference to prices) is "[a]n amount paid or charged for a good or service." Black's Law Dictionary 1452 (10th ed. 2014); see, e.g., 13 Oxford English Dictionary 208–209 (2d ed. 1989) ("rate" means "price," "cost," or "sum paid or asked for a ... thing"). To set a retail electricity rate is thus to establish the amount of money a consumer will hand over in exchange for power. Nothing in § 824(b) or any other part of the FPA suggests a more expansive notion, in which FERC sets a rate for electricity merely by altering consumers' incentives to purchase that product."

<sup>4</sup> Remarks of U.S Secretary of Commerce Gina Raimondo, U.S Senate Committee on Commerce, Science & Transportation, Department of Commerce Fiscal Year 2023 Budget (April 27, 2022).

<sup>5</sup> Patrick McGreevy, *Wildfire liability, net neutrality bills help spur record spending on California lobbying in 2018*, Los Angeles Times (Feb 1, 2019, ), <https://www.latimes.com/politics/la-pol-cal-record-california-lobbying-spending-20190201-story.html>.

<sup>6</sup> Advanced Search, Shirley D. Weber, Ph.D., California Secretary of State (last accessed May 8, 2022) <http://powersearch.sos.ca.gov/advanced.php>.

group Electronic Frontier Foundation spent just \$56,000 on all of its California lobbying.<sup>7</sup> Given the incredible disparity in lobbying power, the public interest community relies on the NTIA to protect communities across the country from undue influence.

The public also relies upon the NTIA to fulfill President Biden's promise to "lower the cost of high-speed internet for all Americans."<sup>8</sup> Currently, broadband prices in the United States are amongst the highest in the world – making it challenging for many people, and not just the lowest income people, to afford.<sup>9</sup> The NTIA cannot fulfill the President's promise unless it enables every customer of BEAD recipients to purchase a low-cost option. As Vice President Harris said, "Every person in our nation, no matter how much they earn, should be able to afford high-speed internet."<sup>10</sup> Congress explicitly required the NTIA to determine who should have access to the low cost option – the answer should be everyone.

Thank you for your leadership at this time. Please feel free to reach out with any additional questions.

Sincerely,

Access Humboldt  
Alaska Public Interest Research Group  
Asian Americans Advancing Justice - AAJC  
Benton Institute for Broadband & Society  
Buckeye Hills Regional Council  
Byte Back  
Center for Rural Strategies  
Citizens Fiber Initiative Group  
Common Cause  
Common Sense  
Consumer Reports  
Cyberspan Digital Alliance  
Digital Inclusion Practitioners of New Jersey (DIPNJ)  
Electronic Frontier Foundation  
Engine  
EveryLibrary Institute, NFP

---

<sup>7</sup> Patrick McGreevy, *Wildfire liability, net neutrality bills help spur record spending on California lobbying in 2018*, Los Angeles Times (Feb 1, 2019, ), <https://www.latimes.com/politics/la-pol-cal-record-california-lobbying-spending-20190201-story.html>.

<sup>8</sup> The White House, *Fact Sheet: President Biden and Vice President Harris Reduce High-Speed Internet Costs for Millions of Americans* (May 9, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/09/fact-sheet-president-biden-and-vice-president-harris-reduce-high-speed-internet-costs-for-millions-of-americans/>.

<sup>9</sup> Becky Chao et al., *The Cost of Connectivity 2020*, Open Technology Institute (Jul 15, 2020), <https://www.newamerica.org/oti/reports/cost-connectivity-2020/>.

<sup>10</sup> The White House, *President Biden and Vice President Harris Deliver Remarks on the Affordable Connectivity Program*, (Youtube May 9, 2022), <https://www.youtube.com/watch?v=tWN16Lqokt4&feature=youtu.be>.

EveryoneOn  
Hawaii Broadband & Digital Equity Office  
Jersey City Housing Authority  
Libraries Without Borders US  
Maribel Martinez Consulting, LLC  
Media Alliance  
Media King Communications  
MediaJustice  
mohuman  
New America's Open Technology Institute  
NTEN  
Public Knowledge  
Southern Rural Black Women's Initiative for Economic and Social Justice  
The Marconi Society  
Together for Hope  
Town of Bedford NH  
X-Lab