

June 6, 2024

The Honorable Gina Raimondo
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Raimondo:

We write to express our deep concern regarding the Biden administration's actions that appear to contradict the legal prohibition against rate regulation of broadband internet access services. Despite clear legislative intent, we have observed a troubling trend where pressure is being placed on states to impose such regulations. That not only undermines the law, but also disrupts the established regulatory framework intended by Congress.

Many of us previously sent you [a letter](#) in October 2023 raising these concerns, but we have yet to receive any response. As mentioned in our prior correspondence, the actions described above demonstrate an alarming pattern in which the administration's behavior contradicts its public statements.

In the Infrastructure Investment and Jobs Act (IIJA), Congress specifically stipulated that there shall be no rate regulation of broadband.¹ It is therefore disturbing that, despite the act's explicit prohibition and reassurance from administration officials — including sworn statements — the National Telecommunications and Information Administration (NTIA) continues to impose price-setting measures through the Broadband Equity, Access, and Deployment (BEAD) program.² The NTIA has approved plans for eight states thus far, all of which have included a specific price point or formula to set rates.

During a Congressional hearing on May 15, 2024, several Members of Congress raised concerns about NTIA engaging in rate regulation. Those Members included, but were not limited to, Representatives Latta, Griffith, and Joyce, as well as Senators Fischer, Moran, and Kennedy. Representative Latta specifically questioned Administrator Davidson, "You're also pressuring states to regulate broadband rates in their state plans despite the law clearly stating that NTIA does not, shall not regulate rates. Aren't you violating the law by pressuring states to do so?"³

¹ S.Amdt.2137 to H.R.3684, The Infrastructure Investment and Jobs Act of 2021 (Pub.L. 117-58; 135 Stat. 429), <https://www.congress.gov/amendment/117th-congress/senate-amendment/2137>. The provision appears at Sec.60102(h)(5)(D)

² CFIF Leads Coalition Letter Opposing Biden Administration Push for Broadband Rate Regulation, *Center for Individual Freedom (CFIF)*, (October, 23rd, 2023), [CFIF Leads Coalition Letter Opposing Biden Administration Push for Broadband Rate Regulation](#)

³ "Question of Representative Latta, Communications and Technology Subcommittee Hearing: FY25 NTIA Budget Request", *U.S. House of Representatives Committee on Energy and Commerce*, (May 15, 2024),

Administrator Davidson responded, “Well, we believe we were acting with fidelity to the statute. The statute requires that there be a low-cost service option. And we have given States a lot of flexibility about how they define it. We do not believe that the states are regulating rates here, we believe that this is a condition to get a federal grant, nobody’s requiring a service provider to follow these rates.”⁴

If states truly had the flexibility to define low-cost options as claimed, however, and if no specific rates are enforced, states that have not provided a rate or formula should not face delays in approval based solely on rate issues.

Senator Fischer asked you, Secretary Raimondo, about how Nebraska could satisfy the requirement for a low-cost option. Specifically, she asked, “Do you have alternative that would qualify for that, that would meet that requirement?”⁵ You responded, “They have to prove to us that everyone will have affordable access to high-speed internet.”⁶ That inability to give states an alternative to setting a rate is by definition rate regulation.

Senator Moran asked you, Secretary Raimondo, “How do you match the prohibition with the insistence that it’d be affordable?”⁷ You responded, “We are doing the best to meet the intent of the law. Rate regulation would be, in my judgement, ‘Kansas, you’re not going to get approved unless you show us a \$30 plan,’ we are not doing that. We are decidedly not engaging in rate regulation.”⁸ Curiously, however, the majority of the plans approved thus far set a \$30 rate.

You and Administrator Davidson have repeatedly emphasized that these plans are about affordability. Congress directed states to ensure that subgrantees had a low-cost plan, however, not to address an affordability problem through rate regulation. If Congress had intended to give NTIA the authority to attach rate-setting as a voluntary condition, it would not have included an express prohibition.

In another instance, Representative Joyce inquired whether NTIA is pressuring states or threatening to withhold funds from states that do not comply with NTIA’s rate regulation demands. He specifically mentioned Virginia, stating, “In NTIA’s redline version of the Virginia State Plan, you provided feedback and again, I’m going to quote, ‘the Assistant Secretary must be able to determine the impact to a customer at the initial proposal stage. It isn’t enough to

<https://energycommerce.house.gov/events/communications-and-technology-subcommittee-hearing-the-fiscal-year-2025-national-telecommunications-and-information-administration-budget> at 41:27

⁴ Ibid at 41:54

⁵ “Question of Senator Fischer, Commerce, Justice, Science Subcommittee Hearing: FY25 Budget Request for the Department of Commerce, *Senate Appropriations Committee*, (May 15, 2024), [Hearing | Hearings | United States Senate Committee on Appropriations](#) at 1:36:25

⁶ Ibid at 1:36:33

⁷ “Question of Senator Moran, Commerce, Justice, Science Subcommittee Hearing: FY25 Budget Request for the Department of Commerce, *Senate Appropriations Committee*, (May 15, 2024), [Hearing | Hearings | United States Senate Committee on Appropriations](#) at 43:32

⁸ Ibid at 43:43

know as a final proposal, thus the low-cost option must be established an initial proposal as an exact price or formula.’ Those are your words. Yes or no, is that NTIA forcing states to adopt rate regulation? The answer seems clear to me.”⁹ In response, Administrator Davidson said, “I don't know the communication that you are speaking of.”¹⁰

Representative Griffith followed up on that question by inquiring, “What did they not meet in regard to the law?”¹¹ Administrator Davidson responded, “I would welcome a chance to review the communication you're talking about. I haven't seen it. I don't know.”¹²

That ambiguity is troubling. Is NTIA engaging in rate regulation or not? It is unacceptable that \$42.45 billion of taxpayer dollars for the BEAD program is being administered by an agency unable to provide a straight answer.

While we welcome the public commitments from you and Administrator Davidson, the true message lies in the actions taken. Despite Administrator Davidson repeatedly emphasizing that states will have flexibility in implementing BEAD, that has not been reflected in the state plans that have yet to be approved.

NTIA's requirement for a low-cost option is indirectly pressuring states to establish specific internet prices. As a result, even though the NTIA claims not to be engaging in rate regulation, their mandate effectively forces states into setting rates.

It is disingenuous to respond, as Administrator Davidson said during the Congressional hearing, that “People do not have to participate in the program. And if they do participate in the program, there are a lot of requirements via paper that you have to file things they have to do, and one of them is to offer a low-cost service option the way the state defines it.”¹³ The BEAD funding was intended to help close the digital divide by expanding internet access to underserved and unserved areas. You cannot close that digital divide if well-qualified, experienced providers decline to participate due to those requirements. Inexperienced providers may take on commitments they cannot afford and for which they are unprepared,

⁹ “Question of Representative Joyce, Communications and Technology Subcommittee Hearing: FY25 NTIA Budget Request”, *U.S. House of Representatives Committee on Energy and Commerce*, (May 15, 2024), <https://energycommerce.house.gov/events/communications-and-technology-subcommittee-hearing-the-fiscal-year-2025-national-telecommunications-and-information-administration-budget> at 2:15:27

¹⁰ *Ibid* at 2:16:00

¹¹ Question of Representative Griffith, Communications and Technology Subcommittee Hearing: FY25 NTIA Budget Request”, *U.S. House of Representatives Committee on Energy and Commerce*, (May 15, 2024), <https://energycommerce.house.gov/events/communications-and-technology-subcommittee-hearing-the-fiscal-year-2025-national-telecommunications-and-information-administration-budget> at 2:39:56

¹² *Ibid* at 2:40:47

¹³ “Statement of Administrator Davidson, Communications and Technology Subcommittee Hearing: FY25 NTIA Budget Request”, *U.S. House of Representatives Committee on Energy and Commerce*, (May 15, 2024), <https://energycommerce.house.gov/events/communications-and-technology-subcommittee-hearing-the-fiscal-year-2025-national-telecommunications-and-information-administration-budget> at 42:19

which means either the divide will remain, or they will return seeking additional government funding.

Accordingly, we urge you to take the necessary steps to undo any form of rate regulation and approve BEAD plans that do not include any price setting, which will ensure that providers remain viable and capable of delivering the needed services to bridge the digital divide.

We appreciate your consideration.

Sincerely,

Jeffrey Mazzella
President
Center for Individual Freedom

Phil Kerpen
President
American Commitment

Grover G. Norquist
President
Americans for Tax Reform

Justin Owen
President & CEO
Beacon Center of Tennessee

Ryan Ellis
President
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