DIGITAL FIRST
PROJECT

January 30, 2023

Senator John Thune
United States Senate SD-511
Washington, DC 20510

Dear Senator Thune:

Thank you again for the opportunity to participate in this important broadband oversight process. As we noted in an earlier <u>post</u> when this endeavor was announced, the painstaking process of accountability and oversight often doesn't grab headlines or make politicians friends; but is essential for functional government nonetheless.

It is true that in recent years Congress has authorized an unprecedented amount of federal money to support the deployment of broadband in areas that don't have connectivity on a bipartisan basis. Both Republicans and Democrats acknowledge there is a need for federal dollars to be utilized toward closing America's digital divide. This is truly a noble goal, but with these decisions come the necessary steps to make sure these resources are wisely allocated. There is a responsibility on every stakeholder in this process to ensure that the funding is indeed going to those in need while not falling into the trap of waste, fraud, and abuse that is so common with government endeavors.

Before getting into the details of these answers, I wanted to share some background about our team. Founded in 2022, the Digital First Project is a non-partisan grassroots advocacy organization. Our community of supporters and advocates is dedicated to empowering Americans with access to next-generation technologies and promoting innovation. We look forward to addressing your questions, convening other advocates to develop good recommendations, and even meeting with his team to discuss their approach to these pressing issues.

We want to use our platform as a helpful resource. To advocate for policies that ensure proper stewardship of taxpayer dollars and promote a market-based approach that will allow our nation to actually close the digital divide once and for all. This is a noble effort and we are eager to be part of it.

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?**

   Congress clearly intended the BEAD Program to follow a tech-neutral approach. However, in its implementation of the program it has become clear the National Telecommunications and Information Administration (NTIA) hasn't followed all of the above approaches for the Broadband Equity, Access, and Deployment (BEAD) Program. Congress has not authorized a preference for one broadband technology over another but has definitely taken a tech-neutral approach. Therefore, NTIA's preference for some technologies over others and preference for municipal or government-owned broadband is particularly disappointing and will undermine the efficacy of the overall program.

   In order to prevent the inefficient use of these resources and to improve the number of rural households connected by the BEAD Program, it would be beneficial for Congress to consider establishing limits on the assistant secretary's broad authority in defining "priority broadband projects" as well as taking other measures to ensure that Congress's express intent of a tech neutral approach is followed by the NTIA.

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 BEAD Program's authorizing language does not distinguish between unionized and nonunionized workplaces. The mandated reports make NTIA's lengthy and complex requirements longer and more complex. This could make it particularly difficult for smaller and upstart providers.

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.**

   It seems pretty clear from the data and real-world experience that GONs have failed to deliver on their promise. I would recommend reports by both Taxpayers Protection Alliance

and <u>Citizens Against Government Waste</u> who have both written extensively, explaining the many policy concerns with these often foolhardy endeavors.

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?**

While this provision is well intended, policymakers should evaluate the logistics of its implementation. There may need to be leeway to mitigate current supply chain concerns, the reality is there are real cybersecurity concerns, especially as we learn more revelations about entities such as Huawei. We should not be rushing into a situation that will require unnecessary backtracking, ripping, and replacing of networks. This is not an easy solution, but one that policymakers and regulators should be vigilantly discerning.

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?**

Sunlight is the best disinfectant. In light of the concern over politicization, waste, fraud or even abuse, there is certainly a need for more oversight especially when thinking through the BEAD Program.

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

Congress should consider working with states, municipalities, and even tribal governments to utilize eligible BEAD Program funding to develop and disperse broadband vouchers to high-cost and rural households. This <u>voucher approach</u> to fund disbursement has been shown to be far more effective and efficient in allocating resources to those that need them while minimizing waste and abuse.

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

A. To date, the Affordable Connectivity Program extending broadband access to those who could not otherwise afford broadband service has shown great promise. Initially part of the Infrastructure Investment and Jobs Act passed by Congress on a bipartisan basis, this $14.2 billion fund has already seen success getting over 14 million users online. Unlike other government programs, the ACP is based on market-based dynamics and targets those on the other side of the digital divide, dramatically reducing waste and fraud while also actually delivering for the many individuals and families signing up. With that said, there are still areas for improvement. A new Government Accountability Office report recommends a series of policy improvements to the program, specifically around solutions to expand efforts to reach consumers and improve management to mitigate the risk of fraud and abuse.

B. Related to accountability within a broad band deployment is the evaluation of the efficacy of various programs used to allocate federal subsidies, including the Universal Service Fund, the aforementioned BEAD Program and the Affordable Connectivity Program. However, outstanding questions about the future stability of these programs still exist. Evaluation processes need to be put in place to determine whether these programs are effectively working toward their goal of improved connectivity and appropriately funded going forward while identifying wasteful duplication or wasted resources.

One item of particular note, on its current trajectory, the USF has major budget concerns relating to the sustainability of the program. There have been a number of proposals laid out that could mitigate these concerns. If Congress believes the USF program is working and useful to the cause of closing the digital divide, it is imperative policymakers debate potential options to fund the program.

C. It may be valuable to merge programs. There certainly is an opportunity to evaluate each program to see which are most efficient and which are duplicitous or ineffective.

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?**

In addition to enacting reforms to prevent overbuilding, both policymakers and other stakeholders should be using the best tools available to ensure the resources are best allocated.

One such tool essential to that conversation is broadband mapping, which should provide the best picture available of where Internet access is and is not available across the country. As the ongoing conversation around the FCC's updated broadband map continues, it is imperative to point out the accuracy (or lack thereof) of other maps and datasets that have been informing the conversation around served, underserved and unserved areas.

This is especially the case with certain trendy map tools that have been allowed to play an integral part in the overall mapping dialogue. Both the M-Lab Map (funded in part by Google) and Microsoft's Digital Equity Data Dashboard have garnered attention in the press and among certain consumer advocacy groups. However, when you go beyond the headlines, it is clear these tools are far less accurate than advertised. As network engineer Richard Bennett noted in a Detroit News column, for example, "M-Labs design flaws are widely known and mostly technical: They test one TCP connection at a time when most users have anywhere from 30-100 open at one time, all optimizing speeds by exchanging data over the ISPs' network in parallel. That's like measuring the throughput of a firehose through a thin cocktail straw."

Microsoft's highly touted tool is frequently offered as an alternative way to measure deployment. But using speed tests in this way makes a fundamental mistake. A speed test can only measure to which a household subscribes, and most households do not subscribe to the fastest tier available. The FCC map data reports the maximum available speed. Therefore, any study measuring home connections will find speeds well below the FCC's deployment map. This issue of mis-using speed tests to measure deployment is explained by Tech Policy Institute's Scott Wallsten. This is another misusing data to identify where deployment is and is not will harm the effectual use of federal funds. also suffers similar problems.

As the public discourse continues around overbuilding, it's essential for these tools to be based on accurate data that informs the public interest. All parties in the conversation should be encouraged to share their best research, datasets, and tools to best accomplish the shared goal of closing the digital divide.

3. **Should Congress take additional action in response to concerns that broadband funding may be used to overbuild existing services? If so, what reforms and constraints should be implemented?**

Absolutely. Congress has an explicit responsibility to taxpayers to conduct vigilant oversight, evaluating various legislative reforms to prevent the misuse of public dollars and subsidies that could lead to overbuilding. Efficacy and efficiency should be the name of the game. Too often there has been a convoluted approach to the disbursement of public money to close the digital divide with too many agencies and offices– too many cooks in the proverbial kitchen.

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 language as passed by Congress precludes the assistant secretary from engaging in rate regulation. Yet NTIA's approach appears to allow rate regulation by state and local officials. These confusing guidelines and administrative interpretations about "low-cost broadband service" should prompt Congress to utilize more efficient consumer voucher programs like the FCC's Affordable Connectivity Program.

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?**

The short answer is no. The debate over Title II and so-called net neutrality rules have been a distraction for too long in the tech policy debate. In fact, maybe it should be illegal for NTIA or other officials at the state and local level from tying BEAD funding to adherence to this problematic regulatory principle.

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 broadband deployment efforts?**

This is an area where there is more need for discussion and transparency. It is often unclear to the public how these agencies and efforts are actually working together. It would be beneficial for more structure and understanding as to how these processes actually play out. MOUs are one thing, but actually seeing how these memorandums play out in real life is also essential.

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

Congress should legislatively require the Office of Management and Budget to establish a spending transparency tool or website for federal broadband spending programs. This could be updated monthly or quarterly to better inform the public about these resources. We need to think about what happens after the ribbon-cutting ceremony. After all the pomp and ceremony the policymaker's attention moves on to the next thing. Rarely do we have the discourse to look back to see if that project went well or if the organizers are continuing to execute the plan properly to best accomplish the project's stated mission. It's just on to the next legislative fight, next speech, next committee debate, and next story in the paper.

This is the central problem for any government project or initiative. Looking back is harder to do and it has less upside, politically. The painstaking process of accountability and oversight often doesn't get headlines or make politicians friends. Instead, it can often cause headaches and uncomfortable questions. Establishing transparency requirements would help redirect attention to these important questions.

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

Federal land is still a large amount of the country's territory, meaning any entrepreneurs or Internet providers who want to offer service through much of the US still have to navigate cumbersome rules and regulations that hinder effective deployment. Strides must be taken such as reducing the burden to access.

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?**

Congress has granted the FCC the authority to preempt specific state and local regulations that hinder broadband deployment. For example, under former Chairman Ajit Pai the commission approved an important wireless infrastructure order which primarily dealt with cumbersome local fees for the authorizations necessary to deploy small wireless facilities. Without this effort, local red tape would continue to hinder the deployment of small cells and 5G technology in many cities and municipalities.

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

It would be beneficial for consumers and providers if Congress would address outstanding concerns around rights-of-way ownership and related infrastructure such as poles which can be a real barrier to broadband deployment. There are a number of helpful resources on potential policy fixes to this outstanding problem

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

(See above in answer 10)

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

It is essential for Congress to work with the administration and other relevant agencies on this shared concern. Vigilantly on the lookout for potential cybersecurity weaknesses in our nation's networks. The recent order by the FCC to prohibit communications equipment deemed to pose an unacceptable risk to national security from being authorized for importation or sale in the United States are examples of the types of strong decisions relevant policymakers should be measuring and evaluating on all entities up and down the Internet stack.

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

Over the past several years, the FCC has taken immense strides to promote innovation, allocating spectrum for new and emerging use cases that will enable entrepreneurship and help consumers. These uses include telemedicine, driverless vehicles, precision agriculture or augmented reality.

Unfortunately, on too many occasions different federal agencies have slowed this spectrum allocation process. Blocking this process with dubious claims that have often borne to be false or exaggerated. This interagency intransigence only delays the deployment of new innovations. Additionally, this lack of direction creates a void that enables bad policy ideas like 5G Nationalization, which would reverse the innovative strides this nation has fostered, to percolate and infect the public discourse around next-generation connectivity.

Instead of allowing this interagency intransigence that only hurts the American public to continue, Congress has an opportunity to take ownership of this interagency process and follow an approach that enables improvements that benefit consumers.

We greatly appreciate the opportunity to share our perspective on these pressing policy discussions. As you continue this process please feel free to reach out to our team to be a resource both to you and your staff.

Sincerely,

Nathan Leamer
Executive Director
Digital First Project

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