



BROADBAND
WITHOUT
BOUNDARIES

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August 24, 2023

The Honorable Ben Ray Lujan
The Honorable John Thune
The Honorable Amy Klobuchar
The Honorable Shelley Moore Capito
The Honorable Gary Peters
The Honorable Jerry Moran
Universal Service Fund Working Group
United States Senate
Washington, DC 20510

Dear Senators:

WISPA – *Broadband Without Boundaries* appreciates the Universal Service Fund Working Group’s invitation to submit the attached Comments regarding the current state of universal service and its future. Your bipartisan interest and leadership are essential to apply lessons learned over the past 27 years to future deployment, access, and adoption of broadband for all Americans regardless of where they live or income level. We greatly appreciate and look forward to collaborating with the Working Group and Senate staff to ensure existing and future broadband deployment programs are executed in the most effective and efficient way possible.

For decades, WISPA’s approximately 1,000 members have been on the front lines of the effort to bridge the digital divide by working to deliver fast, reliable broadband to millions of Americans in the toughest to serve areas of the country. They are closing the digital divide with affordable, future proof, reliable broadband service via a range of technology and business solutions that best fit each community’s unique needs and situation and meet consumer demand.

Our Comments reflect the experience of our members in participating in the FCC’s universal service programs, primarily the high-cost programs the FCC has initiated over the past seven years. The success of these programs has resulted in large part from the FCC’s expanded eligibility for high-cost support that has triggered deployment of and accessibility to quickly and efficiently deployed reliable broadband service and substantial investment in broadband companies at lower cost to universal service fund contributors. The Affordable Connectivity Program, which Congress, authorized has enabled 20 million households to access the internet at affordable rates, and should be continued.

Congress has the opportunity to build on the success of the universal service programs and also learn from some of the shortcomings that can hamper rapid and affordable broadband deployment. In particular, the Broadband Equity, Access, and Deployment (BEAD) Program that NTIA is implementing has imposed unnecessary and inexplicable restrictions on who can

Reliable Broadband Service Today and Tomorrow



August 24, 2023
Page 2 of 2

participate and where funds will be available. With NTIA unwilling to change its BEAD requirements, Congress should take immediate action directing NTIA to issue a supplemental NOFO that eliminates these restrictions, allows more broadband providers to qualify for BEAD funding, and protects private investment from government-funded overbuilding of existing broadband networks that are today serving millions of American consumers, as well as businesses and first responders.

As discussed in the accompanying Comments, any legislation reforming USF should ensure that the FCC adopts implementing rules pursuant to the requirements of the Administrative Procedure Act (APA). The IJJA included language that exempted the BEAD program requirements from both the APA and the Freedom of Information Act, immunizing NTIA from potential litigation that could call out instances of waste, fraud and abuse, allege inconsistencies with the IJJA, and demonstrate that NTIA's actions are arbitrary and capricious. Congress should enact legislation removing these exemptions from NTIA's BEAD NOFO and correcting other NTIA actions or decisions in implementing the BEAD program that are inconsistent with the clearly-stated technology-neutral intent of the IJJA. The FCC should remain accountable to Congress, stakeholders, and the public through adherence to the APA and FOIA.

WISPA and its members stand ready to work with you and your colleagues in Congress to ensure the goal of universal broadband coverage will finally be achieved.

Respectfully submitted,

/s/ David M. Zumwalt

David M. Zumwalt

President & CEO

WISPA – *Broadband Without Boundaries*

UNIVERSAL SERVICE FUND COMMENTS

1. How should Congress and the Commission evaluate the effectiveness of the existing USF programs in achieving universal service goals for broadband?

It is important to establish clear goals and metrics to determine the effectiveness and success of USF programs. As discussed below, the Commission's annual Section 706 inquiries do not establish clear deployment, access, and adoption goals, but rather evaluate broadband speed and use that as the primary, if not sole, determinant of whether advanced telecommunications capability is being provided to all Americans in a reasonable and timely fashion. Without clear goals and targets, progress can be difficult to measure.

The National Broadband Map is proving to be very helpful in determining broadband availability. Although it remains a work in progress – and always will be – it is much more granular, accurate, and reliable than previous efforts. Coupled with challenge processes, and as explained below, an important change to the BEAD NOFO's definitions of "reliable broadband service," going forward support for broadband deployment can be more carefully targeted to truly unserved and underserved areas, and duplicate funding can be avoided.

2. To what extent have the existing USF programs been effective in carrying out section 254 of the Communications Act of 1994?

The Commission's high-cost programs have been a qualified success. The Rural Broadband Experiment, Connect America Fund (CAF), Uniendo a Puerto Rico Fund, Connect USVI Fund, and Rural Digital Opportunity Fund (RDOF) programs have succeeded in supporting universal broadband deployment by expanding the universe of eligible recipients beyond traditional telecommunications providers and making support available through competitive processes such as reverse auctions and defined scoring criteria. Dozens of WISPA members have participated in these programs and, where they have been authorized to receive funding, are deploying broadband networks in rural unserved areas. By leveraging the lower cost of fixed wireless access (FWA) technology in both fixed wireless and hybrid fiber-FWA networks, deployment is proceeding expeditiously.

WISPA notes three ways in which the high-cost programs have been hampered by Section 254. First, Section 254 is focused on universal deployment of telecommunications services. As a result, eligible entities are required to obtain eligible telecommunications carrier (ETC) designation from states and territories even though they are not seeking to provide telecommunications services, as broadband and Voice over Internet Protocol (VoIP) are not considered to be telecommunications services. With nearly 100% of the country having access to voice services with competitive choice from multiple carriers, the statutory language creates an unnecessary impediment to broadband deployment.

Second, there is no policy reason to provide billions of dollars of support to legacy providers in rural areas when and where there are other broadband providers, such as WISPA’s members, that are ready, willing and able to deploy affordable broadband service. Any new legislation should be provider-neutral as well as technology-neutral instead of funding a single subset of broadband providers because of historical statutory distinctions that do not apply.

Third, the Commission’s universal service programs are funded through ratepayer contributions, which impose budgetary limitations on the Commission. Congressional appropriations may be a better funding mechanism, so long as the appropriations are sustainable and do not suffer from funding lapses.

- a. Has the Commission adequately evaluated the effectiveness of each program against concrete goals and metrics?

Under Section 706(b) of the Telecommunications Act of 1996, the Commission is required to assess annually whether “advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” If the Commission determines that is not the case, “it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.” The Commission’s Section 706 proceedings typically become an opportunity for the Commission to justify new regulations rather than removing barriers to broadband deployment, access, and adoption. The Commission’s reporting measures progress against previous years.

With respect to measuring the effectiveness of the USF programs against concrete program goals and metrics, WISPA does not believe that the Commission has undertaken this task, nor has it been required to do so.

3. Is the FCC’s administration of the USF and its four programs sufficiently transparency and accountable? If not, what reforms are necessary and appropriate within the four existing USF programs to improve transparency, accountability, and cost-effectiveness, and does the Commission have the authority to make such reforms?
 - a. High-Cost Support

The Commission took important steps in RDOF Phase I to reduce the letter of credit burdens that continue to hamper CAF Phase II auction recipients. Letters of credit have a three-pronged negative impact on beneficiaries: (1) the upfront and monthly carrying costs that the beneficiary must pay the bank, (2) the requirement by some banks that beneficiaries establish cash collateral equal to the value of the letter of credit (i.e., depositing cash in the bank’s account to cover the entire amount of the letter of credit), and

(3) the letter of credit is a contingent liability that limits the beneficiaries' borrowing power. Together, these burdens have discouraged participation in the high-cost programs and make them less cost-effective as Commission support is diverted from deployment to banks. It is likely these same challenges will arise in the Broadband Equity, Access, and Deployment (BEAD) program, which also requires subgrantees to obtain and maintain letters of credit.¹ Both the Commission and NTIA have authority to change the letter of credit of requirements without Congressional legislation.

With respect to transparency, WISPA commends Congress, the Commission and NTIA for establishing robust challenge processes – both with the Commission in connection with the semi-annual Broadband Data Collection submissions and at the state level in connection with the BEAD program – that will help ensure that broadband funds are not wasted in areas that already have access to broadband services, either through privately funded companies or “enforceable commitments” to deploy broadband service pursuant to state or federal obligations.

b. Low-Income Support

WISPA recommends that that Congress take action to fund the Affordable Connectivity Program. With 20 million households enrolled, the program has succeeded in connecting low-income Americans to the internet, diminishing one aspect (affordability) of the digital divide.

c. Schools and Libraries Support

WISPA offers no comments on this program at this time.

d. Rural Health Care Support

WISPA offers no comments on this program at this time.

4. What reforms are necessary to address inefficiencies and waste, fraud, and abuse in each of the four programs and duplication with other government programs?

WISPA is extremely concerned about the waste of public funds that is inherent in the Notice of Funding Opportunity (NOFO) for the BEAD program. Contrary to the technology neutral approach envisioned by the bipartisan Infrastructure Investment and Jobs Act (IIJA), the BEAD NOFO makes two flawed decisions that are inconsistent with technological neutrality. First, in defining “reliable broadband service,” NTIA improperly excluded certain broadband deployment

¹ A more detailed explanation of the challenges the letter of credit requirement places on funding recipients is described in these Comments that WISPA filed with the California Public Utilities Commission, *available at* <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=506523503>.

technologies, such as broadband networks that use entirely unlicensed spectrum to serve last mile locations, for reasons neither grounded in technical suitability nor shared by the Commission (as further explained below). Second, NTIA defined a priority broadband project to be “a project that will provision service via end-to-end fiber-optic facilities to each end-user premises.” Although the IJA gives NTIA authority to define the terms “reliable broadband service” and “priority broadband project,” it did not require NTIA to favor any broadband deployment technologies over others. NTIA’s definition of “reliable broadband service” means that last mile locations currently served only with unlicensed spectrum and receiving speeds of 100/20 Mbps will be considered unserved and eligible to be funded and overbuilt by BEAD funded networks. It also means that broadband networks using entirely unlicensed spectrum to serve last mile locations will only be eligible for BEAD funds in a small subset of locations that States and Territories determine to be extremely high-cost per location threshold areas.

For both of these reasons, NTIA’s definition of “reliable broadband service” threatens the existence of WISPA’s smaller members, that have deployed unlicensed spectrum networks in rural areas where other technologies, such as fiber, were too expensive and too time-consuming to deploy. Risking their own capital, WISPA’s members have consistently met consumer demand and built cost-effective and affordable broadband networks where none otherwise existed, serving their local communities with service that is now regarded as essential. To make matters worse, because the BEAD program heavily prioritizes fiber for funded deployment, spectrum-based fixed wireless broadband access solutions will have only a minor role in BEAD deployments – a decision that will delay broadband access and cost taxpayers significantly more.² NTIA can and should correct the NOFO in two respects: (1) change the definition of “reliable broadband service” so that locations served entirely by unlicensed spectrum with 100/20 speeds are treated as “served,” and (2) remove the fiber priority for subgrantees.

NTIA’s decision, required by the IJA to made “in coordination” with the Commission, could not have been based on concerns about the sufficiency and adequacy of unlicensed spectrum. In fact, in both the CAF Phase II and RDOF Phase I Auction Procedures Public Notices, the Commission allowed support recipients to apply for and deploy broadband service entirely over unlicensed spectrum to meet their performance obligations. The Commission stated in its RDOF Auction Procedures Public Notice: “Moreover, concerns about congestion and interference may further be alleviated by the fact that many of the areas that are eligible for Auction 904 are rural and unserved.” The Commission adopted case-by-case review for fixed wireless proposals for the Gigabit Tier (1 Gbps/500 Mbps), but established no such condition for proposals at lower speed tiers, including the 100/20 Mbps minimum speeds required for BEAD. Notably, the

² These twin defects are discussed extensively in a paper from MIT economist William Lehr, *available at https://www.wispa.org/docs/Lehr_White_Paper_Final.pdf*.

Commission rejected arguments that broadband networks using entirely unlicensed spectrum could not apply to bid in the Gigabit Tier.

NTIA's BEAD NOFO adopts three criteria for "reliable broadband service:" it must be (1) a fixed broadband service that (2) is available with a high degree of certainty, (3) both at present and for the foreseeable future. The BEAD NOFO also explains that, "after coordination with the Commission, that the definition of Reliable Broadband Service set forth in this NOFO best meets those criteria." But the BEAD NOFO does not explain how, for example, networks using entirely unlicensed spectrum do not meet those three criteria. Moreover, what NTIA fails to recognize is that by excluding particular broadband network deployment technologies, its definition of "reliable broadband service" is inconsistent with the Commission's precedent in the CAF Phase II and RDOF Phase I proceedings.

To be sure, reliability is a function of network design, not whether spectrum is licensed or unlicensed. Low churn rates in FWA networks illustrate reliability, and is a key performance indicator for the unprecedented amount of private capital that has fueled FWA expansion in the last two years. Moreover, rural areas are less "noisy" and thus less susceptible to harmful interference because there are fewer devices and networks that can create harmful interference and congestion. The Commission has made, and is continuing to make, unlicensed spectrum available for fixed wireless service, creating more "clean" spectrum to meet present and future demand. For example, in the FCC's April 2020 6 GHz Order, the FCC allocated 850 megahertz of spectrum for standard power, outdoor operations, controlled by an automated frequency coordination system.

Interference to and from unlicensed networks is much more navigable and there is a toolbox of solutions for management including:

- **Frequency agility** across a large amount of spectrum enables providers to find "clean" open channels; not possible with licensed channels that have more limited channels bounded by specified upper and lower frequency edges
- **Antenna use and directionality**
 - Directional antennas are normally used and enable the signal to focus the beam in a particular direction on specific frequencies
 - Beamforming (electronically guided) antennas can further mitigate interference potential by dynamically steering the beam to its intended destination while ruling out potential interference
- **Timing techniques**
 - Locational GPS with timing allows automated coordination at the transmit antenna (i.e., alternate transmit/receive based on local environment and activity)
 - Timing schemes (e.g., near and far TDD)
 - Duty cycle compatibility
 - Listen-before-talk
- **Frequency re-use and channel agility**
 - Channel re-use enables more "clean" channels for interference avoidance

- Channel agility and diversity enables providers to simply re-tune the equipment so it operates on “clean” channels that will not cause or suffer harmful interference
- **Noise cancellation technologies** in new generation of equipment
- FWA providers **voluntarily coordinate** operations using a variety of different mitigation techniques
- Effective network planning and management; and coexistence planning techniques
- Service outages often caused by external events
 - Natural disasters (though the FCC has determined that FWA (licensed or unlicensed) is more reliable than aerial fiber on wood poles)
 - Fiber cuts upstream
- Unlicensed spectrum is now and will in the future be available with a high degree of certainty
- Fixed wireless technology, and unlicensed spectrum in particular, has always kept pace with consumer demand (i.e., “adaptability to changing end-user requirements”)

WISPA has presented NTIA with two letters containing these and other detailed technical details to NTIA staff. NTIA has not yet responded to those letters.

NTIA’s definition of “reliable broadband service,” is not only inconsistent with FCC precedent, it is also inconsistent with how NTIA is currently implementing the Tribal Broadband Connectivity Program (TBCP). In the TBCP, NTIA did not define the term “qualifying broadband service” to exclude any broadband deployment technologies. In fact, WISPA’s research reveals that NTIA awarded about \$87 million in 12 TBCP grants to broadband networks using entirely unlicensed spectrum. The NTIA announcements for some of those 12 TBCP grant awards actually described the TBCP funded networks as providing “reliable” broadband service. WISPA agrees with NTIA that those networks should be considered reliable broadband service. If those networks are considered “reliable” for the purposes of TBCP grants, then they should be “reliable” enough for the purposes of the BEAD program. If NTIA is allowed to continue using its flawed definition of “reliable broadband service” to implement the BEAD program, then there is a high likelihood that hundreds of millions of BEAD dollars will be used to overbuild networks that are already being funded by millions of dollars in TBCP grants. This wasteful spending is particularly alarming when considering that States are already finding that the BEAD allocations, which NTIA formally announced on June 29, 2023, are insufficient to support deployment of fiber optic broadband networks to their unserved citizens.³

Section 60102(n) of the IIJA limits judicial review to only claims of partiality or corruption on the part of NTIA and Section 60102(o) of the IIJA exempts NTIA’s decisions to implement the BEAD program from requirements in the

³ For more details, *see, infra*, at p.7.

Administrative Procedure Act (APA) that the decisions not be arbitrary and capricious and be supported by substantial evidence. As noted above, NTIA’s flawed definition of “reliable broadband service” in the BEAD NOFO will create wasteful duplication with other government programs, in particular the FCC’s high-cost programs that have authorized unlicensed spectrum for supported voice and broadband deployment. To remedy this error and to mitigate wasteful duplication, Congress should enact legislation requiring NTIA to issue a supplemental NOFO that does not exclude any particular broadband deployment technology that the FCC has previously determined high-cost recipients can use to meet their performance obligations.

5. What additional policies beyond existing programs are necessary for the preservation and advancement of universal service?

As discussed above, to determine where reliable broadband access of at least 100/20 Mbps speeds is available, Congress should maintain a technology neutral approach and should ensure that any agencies entrusted with providing financial support adhere to that policy. The focus of reliability should be grounded in the customer experience, performance metrics, and whether the network is properly engineered and designed, not on the technology or technologies that the network uses. The cost of “future-proofed” fiber networks must be weighed against the costs of other technologies and the time it takes to deploy other technologies.

This is especially critical, as many states are acknowledging that their BEAD allocations will be insufficient to connect all unserved locations to fiber. For example, NTIA allocated \$1.864 billion of BEAD funds to California. But the California Public Utilities Commission estimates that it will cost \$9.78 billion to deploy fiber to all California citizens. North Carolina estimates it will take \$3.08 billion to connect all their citizens to broadband service; NTIA allocated only about \$1.532 billion of BEAD funds to that state. The Oregon Broadband Office published a draft five-year plan that estimates it would cost \$2.9 billion to connect its unserved citizens to broadband; NTIA allocated only \$689 million in BEAD funds to Oregon. Similarly, the Executive Director of Minnesota’s Office of Broadband Development Executive Bree Maki was quoted as saying that the allocated amount is “not going to be enough” to connect all Minnesotans to broadband. To help compensate for this shortfall, NTIA should allow BEAD grants to support broadband deployment with any technology that can meet or exceed 100/20 Mbps service, including unlicensed spectrum, to lower the per-location cost and enable more truly unserved and underserved locations to be funded now.

6. Should Congress eliminate the requirement that a provider must be an “Eligible Telecommunications Carrier” to receive USF subsidies?

Yes, this requirement is outdated and creates a disconnect between state laws for common carriers providing telecommunications services and federal laws treating broadband and VoIP services as information services. In addition, in some cases,

state commissions have used the authority granted to them under Section 214 of the Communications Act to make predictive judgments on whether an ETC applicant has the ability to meet federal requirements. The ETC process also adds unnecessary time and expense to the process of authorizing funding and layer of regulatory compliance that is not conducive to efficient administration.

If the two-layer regulatory structure of Section 214 is eliminated, states will continue to have enforcement authority via their consumer protection laws and can monitor providers' practices and activities through those means.

7. Currently, telecommunications companies must pay a contribution factor to the Universal Service Fund proportional to interstate end-user revenues. What reforms are necessary to ensure that the contribution factor is sufficient to preserve and advance universal service?

In considering changes to its contribution methodology, the Commission should be mindful of two significant aspects of the contribution base. First, WISPA members that provide interconnected VoIP must file Form 499-A and, if their interstate and international revenues are above the de minimis level, must contribute to USF and pass those costs on to their subscribers. But they do not receive any USF support – it is a one-way street in which a smaller provider that chooses to offer voice, or is required to as a consequence of receiving CAF or RDOF support, may be contributing to a large carrier's bottom line. Second, as the USForward Report observes, “[w]hile there are more than 2,000 USF contributors today, ten companies (and their affiliates) collectively report close to 80% of the billed interstate and international retail revenues reported on Form 499-A.”⁴ These two facts lead to WISPA's recommendation: if the Commission decides to expand the contribution base to include providers offering only broadband service, it should raise the de minimis contribution threshold so that smaller providers – many of which have never filed Form 499-A – are not required to contribute unless their assessable revenues exceed a certain floor. The Commission also should permit de minimis filers to elect to contribute to USF as an alternative to covering USF pass-throughs to upstream providers.

- a. Some have advocated for assessing USF contributions on broadband service and edge providers. What would the impact of such reforms on ratepayers and the marketplace?

As a threshold concern, Congress should consider whether a contribution-based system is the best policy going forward. As discussed above, it may be more equitable to fund the Commission's USF programs through appropriations, so long as appropriations are sustainable and give the

⁴ See Carol Matthey, *FCC Must Reform Contributions Now: An Analysis of the Options* (Sept. 2021) (“USForward Report”), available at [https://www.shlb.org/uploads/Policy/Policy%20Research/SHLB%20Research/FINAL%20USForward%20Report%202021%20for%20Release%20\(1\).pdf](https://www.shlb.org/uploads/Policy/Policy%20Research/SHLB%20Research/FINAL%20USForward%20Report%202021%20for%20Release%20(1).pdf).

Commission sufficient flexibility. Congress should not micro-manage the process, but – as it does with the bi-annual Farm Bill – re-visit and update program requirements (e.g., broadband speeds) on a regular basis.

In addition, for so long as a contribution system remains in place, Congress should consider phasing out USF contributions for voice service and, over time, replace it with a broadband support system.

Congress and the Commission should ensure that any changes to the contribution system do not create inequities that disproportionately burden smaller broadband providers. As noted above, WISPA’s members that provide interconnected VoIP may contribute to USF, but they do not receive any funds unless they are recipients of high-cost support.

- b. Some have advocated the funding for the USF to an appropriations model. What impact would that have the USF?

In general, as long as Congress continues to authorize the FCC to implement USF programs, switching to an appropriations model could have a positive impact, as Congress can assess deployment, access, and adoption process on a regular basis and target legislation to address short-term and long-term goals. The potential negative impact is that Congress fails to appropriate funds (for whatever reason), and consumers do not receive the benefits of broadband funding.

- 8. What actions are necessary and appropriate to improve coordination between USF programs and other programs at the Federal Communications Commission, the National Telecommunications and Information Administration, USDA Rural Development, the Department of Treasury, and other federal agencies?

WISPA appreciates the coordination between and among federal agencies in developing the National Broadband Map and taking steps to ensure that federal dollars are not used to overbuild existing networks. However, despite this coordination, NTIA still adopted a flawed definition for “reliable broadband service” that is inconsistent with that of the Commission and its own Tribal Broadband Connectivity Program. This will result in BEAD funding broadband deployment to last mile locations where millions of consumers are accessing broadband over networks using unlicensed spectrum. A necessary and appropriate action would be for Congress to immediately adopt legislation that supersedes NTIA’s flawed definition of “reliable broadband service” to ensure against the wastefulness of funding over these established networks.

- 9. Is the USF administrator, USAC, sufficiently accountable and transparent? Is USAC’s role in need of reform?

WISPA has no comments on this question at this time.

10. Is Congressional guidance needed to ensure future high-cost program rollouts, such as RDOF phase II, are improved? Would a thorough and upfront vetting process be more efficient for federal dollars and recipient ISPs?

In adopting auction procedures for the CAF Phase II and RDOF Phase I auctions, the Commission established a two-step application process. To be eligible to participate in the auction, applicants were required to submit a pre-auction “short-form” application that was subject to review by Commission staff but not made available for public comment or review. Winning bidders were required to submit post-auction “long-form” applications that were subject to much more rigorous review to determine the applicant’s technical, operational, financial and managerial qualifications to meet program requirements. Some have suggested that the Commission take a more rigorous pre-auction review and/or permit other applicants to review and object to applications at either the “short-form” or “long-form” stage. WISPA believes that more rigorous review at the “short-form” application stage would have slowed funding authorization process as the Commission resolved petitions, acted on long-form applications, and made funding available. Further, an adverse decision would be subject to further agency and court review, tying up funding and placing a cloud over broadband investment. Moreover, as part of the “long-form” review process, the Commission adopted letter of credit requirements, performance obligations as confirmed by quarterly testing, and enforcement mechanisms are adequate to prevent against waste, fraud and abuse. Although WISPA favors transparency, federal agencies should be mindful of the delays and costs resulting from a public review process. WISPA notes, however, that the Commission’s criteria for assessing winning bidders’ qualifications could have been more objective and precise, e.g., articulating that size, scope, and scale can be the basis for its determination of whether applicants are qualified to receive high-cost support.

Any legislation reforming USF should ensure that the Commission adopts implementing rules pursuant to the requirements of the APA. The IIJA included language that exempted BEAD program requirements from both the APA and the Freedom of Information Act, immunizing NTIA from potential litigation that could call out instances of waste, fraud and abuse, allege inconsistencies with the IIJA, and demonstrate that NTIA’s actions are arbitrary and capricious. As discussed above, Congress should enact legislation to remove these exemptions from NTIA’s BEAD NOFO and correct other NTIA actions or decisions in implementing the BEAD program that are inconsistent with the clearly stated technology-neutral intent of the IIJA. The Commission should remain accountable to Congress, stakeholders, and the public through adherence to the APA and FOIA.