

RURAL BROADBAND INSIGHTS FOR CLOSING THE DIGITAL DIVIDE



WITH PARTNER JONATHAN CHAMBERS

Co-ops Connect FYI

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Smart Brevity® count: 3.5 mins...878 words

Will NTIA's Rate Regulation Derail or Merely Delay BEAD?

The Infrastructure Investment and Jobs Act that created BEAD was signed into law 2 years and 4 months ago.

- Of the \$42.45 billion appropriated by Congress for rural broadband, **not a penny has yet been spent on broadband infrastructure.**

- **As many predicted**, the FCC and NTIA have moved glacially on maps, models, and implementing new rules.

In 2022, I wrote:

“At the current pace, BEAD funds won’t create new broadband service until 2025 at the earliest...If Congress had been informed that NTIA’s activities would delay funding rural broadband construction until 2025, I don’t think Congress would have given NTIA the job. Instead, like CARES, Congress would have made funding directly available to states and counties.”

Congress gave NTIA two straightforward jobs:

1. **A little arithmetic:** *Divide \$42.45B by the number of unserved locations in the country, according to a formula.*
2. **A little administration:** *Review states’ broadband plans.*

How it’s going:

By the time NTIA had completed its arithmetic, most states already had experience administering large-scale rural broadband programs, courtesy of the CARES Act and two phases of the American Rescue Plan Act.

- These programs followed rules set by the Treasury Department.
- **One might have hoped** NTIA, relying on the well-trodden paths, would execute its tasks quickly.

While Congress decided that \$42.45 billion should be spent by state governments, not federal agencies, **it is difficult for any bureaucracy to let go.**

I expected NTIA would delay funding over various policy differences – Davis-Bacon, environmental assessments, new Buy America provisions.

I did not anticipate a fight between NTIA and states over rate regulation.

I didn't anticipate a fight because the Act that created BEAD plainly states: "*Nothing in this title may be construed to authorize the Assistant Secretary or the National Telecommunications and Information Administration to regulate the rates charged for broadband service.*" (emphasis added)

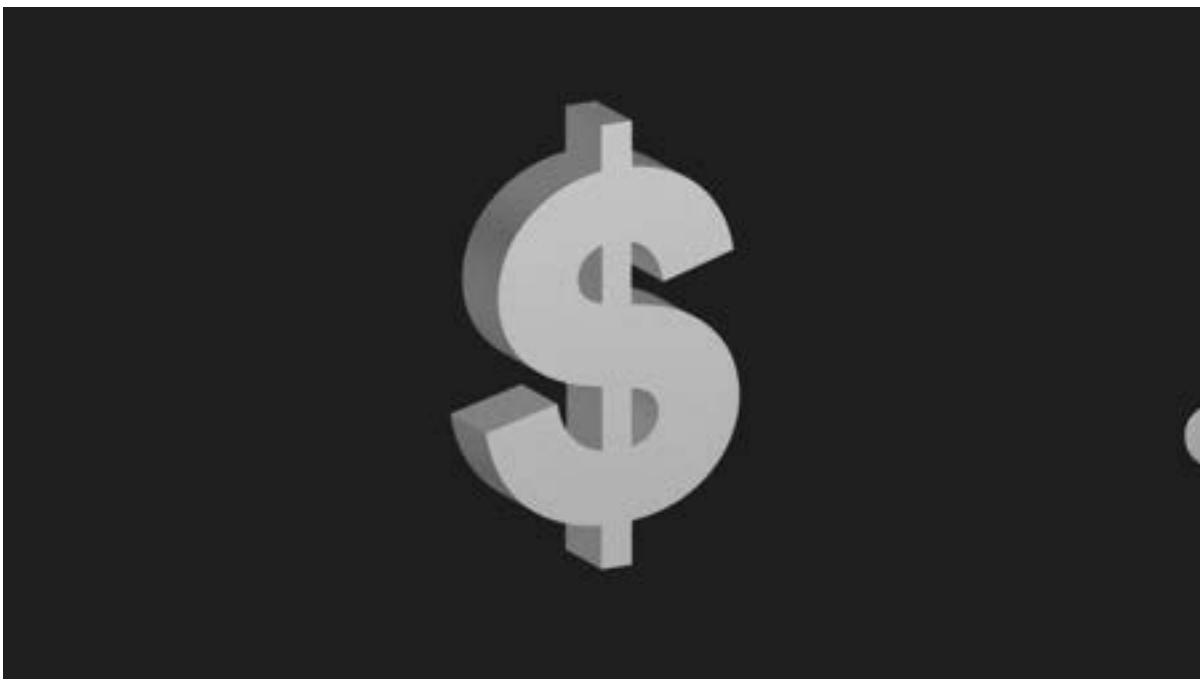
Congress had required that states adopt a low-cost option for broadband in BEAD-funded areas. Congress also determined that NTIA should not use BEAD to set rates.

- Setting internet access rates has been a prohibited third rail of public policy since the dial-up internet days.

To read those provisions consistently, a state could have made a determination about affordability, used the FCC's benchmarks and cost models, required participation in low-income programs or adopted any number of policies. ***Anything except set rates.***

NTIA required states to set a rate for the low-cost option.

The Case in Virginia



Recently, NTIA rejected Virginia's application for BEAD funds because "*the low-cost option must be established in the Initial proposal as an exact price or formula.*"

When asked by a Congressional Committee to clarify its position on rate regulation, the NTIA Administrator responded: ***“It depends on what you mean by rate regulation.”***

Virginia, under both Democratic and Republican governors, has deployed over \$700 million in state funds on rural broadband networks.

- Like most states, its prior broadband plans required new legislation.
- **In short**, Virginia has ample experience in administering a rural broadband plan.

Why it matters:

Virginia was ready to move quickly on the BEAD program.

- **It was the first** state in the country to submit its BEAD application.
- **But now, Virginia must wait** to receive its \$1.5 billion allocation for BEAD. It may need to adopt new legislation in order to move forward.
- **The delay** may be months — and a standoff could last well beyond the November election.

Politics At Play



This has now become a political issue, and politics often hardens positions.

Last week, over 20 conservative free-market organizations wrote the House Energy and Commerce Committee urging it “**to hold NTIA accountable for its lawlessness.**” (emphasis in the original; [read in full here](#))

The House Energy and Commerce Committee had already written NTIA, stating that “NTIA is administering this program in violation of the law.” ([read in full here](#))

For its part, NTIA has taken the view that establishing an exact price for broadband is necessary to make service affordable.

- There is often a trade-off between rate regulation and quality.
- **In this case, NTIA’s proposed low-cost option will hamper the deployment of fiber networks in BEAD eligible areas.** ([see Feb 2 Co-ops Connect FYI](#))

The Final Word



I don't expect NTIA to listen to substantive arguments.

- The Biden Administration has been touting infrastructure since 2021.
- NTIA will claim that it is sticking up for low- and middle-income households.

It is possible that both sides will drop the politics and finally deliver the promised BEAD funding.

It is more likely that this will become a red state/blue state divide.

Because I am in the solutions business for the delivery of broadband to more rural Americans, I would offer this additional prospect; that perhaps Congress will grow tired of NTIA's delays and put a rider on an appropriations bill that says something like:

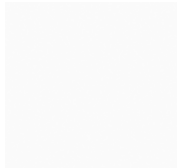
Within 30 days of any state's application for BEAD funds, NTIA shall grant requests for the allocated amounts to any state that presents a broadband plan certified by the governor. NTIA shall have no authority to deny funds for state-certified broadband plans.

To be clear, Conexon isn't waiting for BEAD. **We're building.**

Feel free to forward this **Co-ops Connect FYI** to colleagues who want to stay in the know on all things broadband! Subscribe to Conexon's weekly newsletter [here](#).

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