

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-3641

Minority (202) 225-2927

December 15, 2023

The Honorable Alan Davidson
Assistant Secretary of Commerce for Communications and Information
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Dear Assistant Secretary Davidson,

We write in response to your testimony at the December 5, 2023, hearing held by the House Subcommittee on Communications and Technology titled, “Oversight of the National Telecommunications and Information Administration (NTIA).” Throughout the hearing, you provided troubling answers that suggested that the NTIA would permit rate regulation by States participating in the Broadband, Equity, Access, and Deployment (BEAD) Program. These answers are concerning, as they suggest that the NTIA is administering this program in violation of the law.

The Infrastructure Investment and Jobs Act (IIJA), which created the BEAD Program, explicitly prohibits the Assistant Secretary of Commerce for Communications and Information and the NTIA from “regulat[ing] the rates charged for broadband service.”¹ During Senate floor debate on this legislation, members of Congress agreed that this language meant that “no rate regulation of broadband services would be authorized or *permitted* by NTIA or the Assistant Secretary who leads NTIA as part of the state broadband grant program.”²

Based on your testimony, it appears that you are planning to ignore this Congressional direction. Although your testimony reaffirmed that NTIA itself would not engage in rate regulation, you did not foreclose approval of state plans that regulated rates of broadband service.³ Indeed, when directly asked, “Will NTIA permit a state to rate regulate, yes or no,” you did not provide a yes or no answer and instead stated that NTIA would give states flexibility on

¹ Infrastructure Investment and Jobs Act (IIJA), P.L. 117-158 § 60102(h)(5)(D) (2021).

² 167 Cong.Rec. S5921-22 (2021) (emphasis added).

³ Oversight of the National Telecommunications and Information Administration: Hearing Before the Subcomm on Comm’n & Tech. of the H. Comm. on Energy & Com., 118th Cong. (Dec. 5, 2023) (“NTIA Oversight Hearing”) (exchange between Asst. Sec. Alan Davidson to Rep. John Joyce).

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how to approach this issue.⁴ This “flexibility” to pursue rate regulation is not only concerning, but is strictly prohibited.

Your responses to this Committee on this topic are extremely problematic, particularly because some states have submitted initial proposals to NTIA that include some form of rate regulation. For example, California will award points applicants that make “a clear and unambiguous commitment to offer a symmetrical 1 Gbps service at \$50 per month to BEAD-funded locations through Priority Broadband Projects, or 100/20 Mbps at \$30 per month” for other projects.⁵ As we have said before, NTIA’s approval of state plans that include rate regulation is NTIA regulating rates in violation of the IIJA.⁶

Because there appears to be confusion about the definition of rate regulation,⁷ we define rate regulation as regulating the rate of broadband services in any way, including setting a rate, freezing rates, or placing a cap on rates.

NTIA has been a valuable partner to Congress in closing the digital divide. The Administration has rejected state plans that disregarded Congress’ goal of delivering connectivity to unserved and underserved communities across the United States. It would be a shame for NTIA to diverge from the clear and direct intent of Congress in this case.

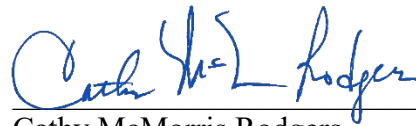
We ask that you confirm whether NTIA will approve state plans that include rate regulation, as defined in this letter. If NTIA plans to approve these plans, we also ask that you provide an explanation of why you and the Biden Administration are ignoring the IIJA. We look forward to your response no later than January 12, 2024.

Thank you for your attention to this important matter.

Sincerely,



Robert E. Latta
Chair
Subcommittee on Communications and
Technology



Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce

⁴ *Id.* (exchange between of Asst. Sec. Alan Davidson to Rep. Rick Allen).

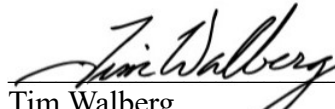
⁵ California Public Utilities Commission, Draft BEAD Initial Proposal Volume II at 198 (Nov. 2023), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M520/K763/520763574.PDF>.

⁶ See Letter from the Cathy McMorris Rodgers, Chair, H. Comm. on Energy & Com. & Robert E. Latta, Chairman, Subcomm on Comm’n & Tech., to the Hon. Alan Davidson, Asst. Sec. of Com. for Comm’n & Info. (Oct.3, 2023).

⁷ NTIA Oversight Hearing (response of Asst. Sec. Alan Davidson to Rep. Rick Allen) (“It depends on what you mean by rate regulation.”)



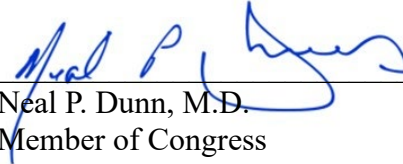
Gus M. Bilirakis
Member of Congress



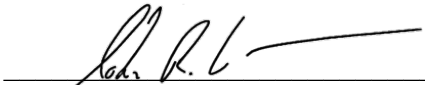
Tim Walberg
Member of Congress



Earl L. "Buddy" Carter
Member of Congress



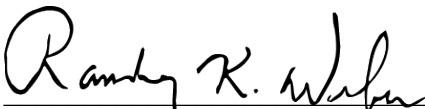
Neal P. Dunn, M.D.
Member of Congress



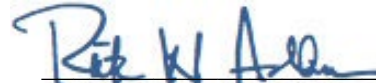
John R. Curtis
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Randy K. Weber
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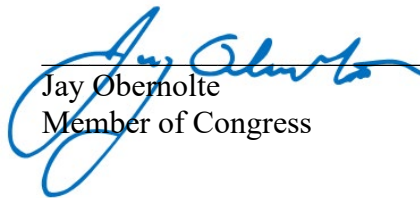
August Pfluger
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Diana Harshbarger
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Jay Obermolte
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