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January 13, 2023

The Honorable John Thune
511 Dirksen Senate Office Building
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Dear Senator Thune,

Thank you for your December 6, 2022, letter asking Citizens Against Government Waste (CAGW) to provide comments on the current broadband regulatory structure, our priorities, and responses to several questions. As you noted, federal dollars for broadband services should be properly implemented, and CAGW believes that to bridge the digital divide, funding should be directed first to those communities that are unserved and underserved, and policies must be in place to prevent waste, fraud, abuse, and mismanagement, which has unfortunately occurred in the past with federal broadband funding.

The federal government's role in broadband deployment should be complimentary, not obstructive, to the private sector's ability to provide next generation internet services and maintain the United States' leading global role in telecommunications. According to the US Telecom 2021 Broadband Capex Report, broadband providers invested $86 billion in 2021, the largest amount in 20 years, bringing total investment since 1996 to $2 trillion.[1] And during a time of the highest inflation in 20 years, between 2021-2022, the broadband pricing index (BPI) for the most popular speed tiers dropped by 14.7 percent, and the BPI for the highest speed in each tier dropped by 11.6 percent.[2] From 2015-2022, the two BPI measures dropped by 44.6 percent and 52.7 percent, respectively.[3] At the same time broadband access was becoming more affordable, the quality of products and availability of services increased substantially.

The success of private sector investment has occurred even though the current federal regulatory structure gives too many federal agencies a part in broadband deployment funding, which could cause resources being devoted toward certain projects at the expense of other broadband deployments being delayed or not initiated. While one of your questions addresses this issue, it is worth noting here that a May 31, 2022, Government Accountability Office (GAO) report on broadband programs found that there are at least 133 such programs across 15 agencies and there is no national strategy for broadband deployment.[4] Despite the expenditure of $44 billion between 2015 and 2020 within those programs, millions of American still do not have access to broadband, which has disproportionately impacted communities with limited resources.

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[1] US Telecom, "2021 Broadband Capex Report," July 18, 2022, https://ustelecom.org/research/2021-broadband-capex-report/..
[2] 3 US Telecom, "2022 Broadband Pricing Index Report," June 29, 2022, https://www.ustelecom.org/research/2022-bpi/.
[3] Ibid.
[4] Government Accountability Office, "Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide," GAO-22-104611, May 31, 2022, https://www.gao.gov/assets/gao-22-104611.pdf.

With up to $800 billion available for federal broadband programs, according to Federal Communications Commissioner Brendan Carr, there is far too much opportunity to squander billions of dollars in precious taxpayer resources unless there is greater coordination of deployment efforts. Congress should immediately hold joint hearings among committees of jurisdiction in the Senate and House, as well as bicameral hearings, to determine how the responsibility and funding for broadband should be consolidated and wasteful spending avoided. The two most prominent and experienced agencies are the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration (NTIA), and they should be given the most significant responsibility and funding for broadband programs.

CAGW's broadband deployment policies and priorities have always been based on a technology and vendor neutral approach to government funding of broadband programs. As the senior senator from South Dakota, you are more aware than most of your colleagues that there are regions of the country where certain technologies will achieve connectivity better than others. Fiber is often perceived and required as the only technology that can achieve broadband connectivity in federal legislation and agency regulations, to the exclusion of cable, mobile broadband, satellite, and wireless broadband using TV white space. States and local governments should be given the flexibility to determine which technology is the most cost-effective and efficient to reach areas where it is difficult to provide broadband access either due to terrain or distance to connect.

Federal agencies must be held accountable by Congress for issuing grant funding guidance that encourages the use of one technology or vendor type over others for funding opportunities. Federal funding also should not be used to overbuild in areas where broadband access exists, as it reduces funding to unserved and underserved areas of the country. While tens of billions of dollars have been directed by Congress toward broadband deployment, federal agencies with funding oversight have conditioned funding requests with a preference through application guidance the use of one technology over others and encouraged the development of government-owned networks (GONs) as a priority when accessing these funds. Unfortunately, this means that without legislation that requires agencies to provide technology and vendor neutral regulations and guidance that will provide broadband funding for regionally appropriate technology and vendors to areas of the country where broadband is non-existent due to either difficult terrain or distance, there will continue to be millions of Americans without access to broadband, and the taxpayers' money will be wasted.

CAGW is also concerned that the funding Congress directed for connecting unserved and underserved communities will be wasted on creating duplicative networks that overbuild existing private sector broadband services, as the laws relating to the Broadband Equity, Access, and Development (BEAD), ReConnect, and other federal broadband funding programs have few if any guardrails against the development of networks where broadband access already exists. We are concerned that areas that already have high-speed broadband, but not necessarily at the specified 100/20 Mbps buildout ratio, may apply for funding as "unserved" or "underserved" even though the community already has broadband connectivity or be granted funding because of a planned buildout of a GON. CAGW strongly encourages the implementation and use of guardrails to prevent the buildout of duplicative broadband networks, so that unserved communities move to the front of the line when broadband dollars are doled out, rather than

federal agencies sending funding first to those communities that qualify for funding due to regulations or guidance that request a specific technology or a requirement or preference for GONs.

CAGW's responses to your questions are as follows:

Infrastructure Investment and Jobs Act – specific Issues:

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?

CAGW does not believe that NTIA has followed Congress's intent for a technology-neutral approach for funding opportunities under the BEAD program. Rather than following the statutory language, the BEAD notice of funding opportunity (NOFO) encourages the use of a specific technology and municipal or government-owned broadband deployment. These restrictions will make it difficult for many communities to choose the best option for their residents to obtain broadband access, and result in overbuilding in communities that already have access.

Restrictions on technology and vendors for broadband deployment have also been including in other grant and loan programs, including the Phase 3 ReConnect loan program issued by the Department of Agriculture's Rural Utilities Service (RUS),[5] and the $350 billion in American Rescue Plan Act funding for states and local governments being distributed by the Department of the Treasury.[6]

The conflicting parameters for broadband spending being issued from various federal agencies have already caused waste and mismanagement of broadband projects. A September 2022 Wisconsin Legislative Audit Bureau report noted that the state's Public Service Commission (PSC) had allocated $105.6 million of its CARES Act and ARPA funding for broadband expansion with limited guidance and oversight, opening the door to waste, fraud, and abuse.[7] Even though the 12 projects funding by CARES Act grants provided or improved internet services to 20,535 businesses and residences, the PSC failed to provide written policies to administer the funds, and grant recipients failed to provide information on what was spent to complete the broadband projects. In addition, only six of the grant recipients provided a portion of the proposed build out speeds required by the application, five failed to list any build out speeds, and only one applicant provided all the required build out speeds on their application, demonstrating that the PSC did not thoroughly vet the applicants prior to issuing federal funds.[8]

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[5] U.S. Department of Agriculture, "ReConnect Program, Phase 3 Evaluation Criteria," https://www.usda.gov/reconnect/evaluation-criteria.
[6] U.S. Department of the Treasury, "Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule," January 2022, https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf.
[7] Ryan Lanier, "Broadband Waste Detailed in Wisconsin Legislative Audit Bureau Report," Citizens Against Government Waste, October 14, 2022, https://www.cagw.org/thewastewatcher/broadband-waste-detailed-wisconsin-legislative-audit-bureau-report.
[8] Ibid.

While agencies may (or many not) note that guidance is not equivalent to a statutory or mandatory requirement, many states and local governments that are applying for the grants or loans will consider these recommendations as requirements, and push for fiber deployment, even when such deployments will not serve the needs of their communities. Although the IIJA language appeared to be clear, Congress must unfortunately reiterate in legislation that it meant what it said in the IIJA about funds being issued in a technology-neutral manner, perhaps listing, but not limiting, the technologies that are available for funding through the BEAD program. Otherwise, agencies will continue to make their own decisions and determine what technology and vendor should be used across every region of the country, regardless of whether that technology or vendor type is the right solution for that location.

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?

Imposing burdensome reporting requirements on one set of grantees or subgrantees that are not imposed similarly on others will end up excluding, or at least make it far more difficult, for one type of provider to participate in the BEAD program. If the objective of Congress is to provide broadband access to as many Americans as possible in an equitable manner, there should not be such a restriction. As the GAO noted, the large number of programs and agencies involved in broadband deployment has had the greatest negative impact on communities with limited resources.[9] Those are also the communities that are likely to have a smaller number of providers, some or all of which may not be unionized, which will again leave them behind the rest of the country regarding getting access to broadband. This requirement is not relevant to whether a particular company can connect a home, business, or individual to the internet, and CAGW believes it should be removed from the IIJA.

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?

As noted in CAGW's May 2021 report, *The Folly of Government-Owned Networks*, government-owned networks (GONs) are not an effective use of taxpayer resources.[10] These networks have been deployed in the past without a mechanism in place for ongoing improvements or repairs to the networks, and while they may have been considered high-speed deployments when initially deployed, they are left behind technologically with miles of dark fiber for many reasons, including lack of funding and the continuous innovation that is provided private sector networks or networks deployed using public-private partnerships.

The report further noted that "GONs are typically created in communities with existing internet service providers (ISPs), rather than in areas not served by an ISP. This makes the

[9] Ibid., Government Accountability Office, "Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide," GAO-22-104611.

[10] Deborah Collier and Tom Schatz, "The Folly of Government-Owned Networks," Citizens Against Government Waste, May 2021, https://www.cagw.org/sites/default/files/pdf/TheFollyofGovernmentOwnedNetworks.pdf.

government both a competitor and regulator, creating an unfair situation where rules can be written to benefit the GON and there are no limits on overbuilding broadband capacity." Because the purpose of the BEAD funding is to deploy broadband to unserved communities, the promotion of GONs in the NOFO creates incentives for state and local governments to prefer these types of networks out of fear that they may lose out of the NOFO grant opportunities should they not comply with the NTIA guidance. Indeed, some communities are banking on this guidance to fund new GONs where there are already one or more existing high-speed broadband providers servicing their community.

For example, in Lenoir City, Tennessee, even though 95 percent of consumers were already served by one of the 18 broadband providers in the area, the local utility board and city council approved the construction of a new broadband network operated by the Lenoir City Utilities Board (LCUB).[11] To pay for this new government-owned network, the city approved taking on a debt of $110 million in bond funding, and another $22 million loan from the electric division of the LCUB to fund the utility's newly formed fiber division. It can be expected that the city will leverage federal broadband funding to reduce the debt it is incurring for this GON.

If there is no prohibition on building GONs, local governments should partner with private companies that have the tools and expertise to build and maintain broadband infrastructure where it does not exist, rather than spending taxpayer resources overbuilding GONs where broadband is already provisioned to the majority of a community.

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?

The inclusion of this provision was intended to both bolster U.S. manufacturing and prevent equipment manufactured by foreign adversaries from entering networks in the U.S., which can cause a cybersecurity risk to the nation's infrastructure. However, with ongoing supply chain issues, as currently written, the language also unnecessarily prevents equipment from non-adversarial nations from being used for broadband projects.

Until the U.S. becomes technology manufacturing independent, some flexibility needs to be provided. The FCC has developed a list of companies whose products cannot be used in U.S. networks due to national security concerns and this list is continually updated. The U.S. Court of Appeals for the District of Columbia Circuit upheld the FCC's authority to exclude such companies in its December 22, 2022, decision in the China Telecom case.[12]
Several U.S. companies are building manufacturing facilities to help ease supply chain issue for components that are critical to network deployment in the U.S. Intel announced last year that it

[11] Deborah Collier, "Commentary: Lenoir City Taxpayers Can Stop a Wasteful Broadband Network," *The Tennessee Star*, February 16, 2022, https://tennesseestar.com/2022/02/16/commentary-lenoir-city-taxpayers-can-stop-a-wasteful-broadband-network/.
[12] United States Court of Appeals, District of Columbia Circuit, *China Telecom (Americas) Corporation v. Federal Communications Commission*, No. 21-2133, December 22, 2022, https://www.cadc.uscourts.gov/internet/opinions.nsf/FBB08E95839F2EB885258935005B6EE0/$file/21-1233-1981233.pdf.

would be building a new semiconductor chip manufacturing plant in Ohio.[13] Similarly, Qualcomm and GlobalFoundries will be expanding their semiconductor chip manufacturing capacity in Malta, New York.[14] However, until these new plants are fully operational, there will likely be a continued shortage of required components for network communications that are made in the U.S. Should Congress decide to modify or clarify this provision, CAGW recommends adding the words "where feasible" when encouraging the use of U.S.-made products and ensuring that the FCC continues to have the authority to exclude companies that pose a threat to national security.

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?

Congress should enact the Broadband Buildout Accountability Act, introduced during the 117th Congress as S. 3671. This legislation would provide accountability for BEAD funding and help ensure that the program will not be subject to waste, fraud, abuse, or duplication in its funding opportunities program. Given the wasteful spending that occurred in the American Reinvestment and Recovery Act, which provided $2.5 billion in broadband funding for the Rural Utilities Services and $4.7 billion in broadband funding for the NTIA (more than 13 times less than the $65 billion in the IIJA), every possible opportunity to uncover wasteful spending should be allowed, including the use of the Freedom of Information Act.[15]

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

It is essential for Congress to address the BEAD program guidance by making it clear that priority must be given to unserved and underserved communities without any restrictions on technology or vendors. The BEAD funding guidance also imposes rate-regulation on broadband services that receive funding, not only for low-income households, but also middle-income households. Internet service providers (ISPs) already offer services through the Affordable Connectivity Program (ACP), which is available to low-income households at less than 200 percent of the poverty level, but with the large number of applicants to the program, there are concerns that the $14 billion in funding for the program could run out unless more money is provided by Congress. With respect to providing a "middle-class affordability plan," the NOFO promotes rate regulation across the spectrum of income levels and imposes a requirement that was not part of the law. I urge you to review and consider the comments made in the letter sent by 13 of your colleagues on August 18, 2022, which cites several areas in which the NOFO "undermines or conflicts with congressional intent and the plain language of the law," including rate regulation, technology neutrality, provider preferences, and workforce preferences.[16]

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[13] David Shepardson and Jane Lanhee Lee, "Intel's $20 bln Ohio factory could become world's largest chip plant," Reuters, January 21, 2022, https://www.reuters.com/technology/intel-plans-new-chip-manufacturing-site-ohio-report-2022-01-21/.
[14] Reuters, "Qualcomm, GlobalFoundries Sign Pact to Expand U.S. Chip Manufacturing," *Times of San Diego*, August 8, 2022, https://timesofsandiego.com/business/2022/08/08/qualcomm-globalfoundries-sign-pact-to-expand-u-s-chip-manufacturing/.
[15] Deborah Collier, "Recovery Act Broadband Funds: Boon or Bust?" Citizens Against Government Waste, November 12, 2012, https://www.cagw.org/thewastewatcher/recovery-act-broadband-funds-boon-or-bust.
[16] Letter to Secretary Raimondo regarding the BEAD Notice of Funding Opportunity, August 18, 2022, Members of the U.S. Senate, https://www.romney.senate.gov/wp-content/uploads/2022/08/letter_to_secraimondobeadnofoaug182022.pdf.

General Broadband Issues:

As noted above, there are over 130 programs supporting broadband access across 15 agencies.
To date, which of these programs do you believe has had the most success in delivering broadband services to truly unserved areas?
Should Congress consider eliminating any of these programs? If so, which ones?
Should Congress merge and combine any of these programs? If so, which programs would be best suited to be merged?

CAGW is very concerned about the number of broadband programs and agencies involved in broadband deployment programs. With this many programs across the federal government, waste, fraud, duplication, and overreach are far more likely, leading to less taxpayer resources being devoted to reducing the digital divide, and more being allocated to pay for the administration of each program, including offices, equipment, and staffing.

CAGW would like to reiterate its recommendation on page one of this letter that each of the committees with oversight of these programs hold joint hearings, including bicameral hearings, to determine the effectiveness of each of the more than 130 programs cited in the GAO report, whether these programs are supporting the mission for which they were created, and if not, whether another existing agency program may be better suited to meeting that mission. Among the tools Congress could use to determine whether a program is meeting its mission to deploy broadband is to review them under parameters like those used in the Office of Management and Budget's Program Assessment Rating Tool (PART), which was instituted in 2002 by President George W. Bush, or create a similar program to assess programmatic strengths and weaknesses.[17]
Reducing and merging duplicative programs will help Congress save money over the long run, while at the same time helping to meet the underlying congressional intent of the laws that created the programs in the first place. In addition, Congress should review existing programs with an eye toward improvement before creating new programs that seek to achieve the same goals.

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 the federal programs identified by GAO, there are state broadband programs available across the country, as well as those managed by tribal entities. A detailed inventory of all the federal, state, local, and tribal broadband programs is essential to determine all potential funding sources for a given project. Congress has the ability through the GAO and the Congressional Research Service to determine where federal funding has been allocated for broadband deployment.

[17] Office of Management and Budget, "Assessing Program Performance," White House Archives, 2008, https://georgewbush-whitehouse.archives.gov/omb/performance/index.html.

CAGW strongly recommends that once this inventory is achieved, the committees of jurisdiction over each agency broadband program hold joint bicameral hearings to learn how this funding is being spent, if there are any duplication of funding opportunities, whether the funding is being allocated toward areas that already are receiving broadband funding from another program, and whether there are already existing broadband providers that offer high-speed connectivity.

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

The Rural Electrification Administration (REA) was established in 1935 to bring electricity to America's rural communities. By 1981, 98.7 percent electrification and 95 percent telephone service coverage were achieved. Rather than declaring victory and shutting down the REA, the agency was transformed into the Rural Utilities Service (RUS) in 1994 and then expanded to provide loans and grants for other utilities including telephone service to underserved areas of the country. That mission was further expanded under the 2002 Farm Bill to provide broadband services to unserved or underserved rural areas, which are generally defined as communities with populations of less than 20,000. These services are provided in part through the Rural Broadband Access Loan and Loan Guarantee Program (BAP).

During debate on the 2018 Farm Bill, the Senate included provisions to rein in wasteful and duplicative spending on rural infrastructure, by including broadband reforms that sought to correct persistent programmatic weakness by ensuring that RUS grants and loans would not be used to overbuild in areas of the country where broadband already existed. The Senate also sought to restrict loans to areas with two or fewer existing broadband providers, where 90 percent of households were defined as unserved.[18] During the 118th Congress, similar measures should be implemented to restrict taxpayer resources from being used to overbuild existing broadband networks.

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?

CAGW is concerned that federal agencies are imposing low-income and middle-income rate regulation as a condition of approval for use of federal funds to build-out broadband services. While the legislation in the IIJA required a low-income option for entities receiving BEAD funding, the Affordable Connectivity Program more than meets that need, and has proven to be a successful option that has expanded broadband services to many low-income families. However, the BEAD funding program also encourages grant applications to include a middle-income rate option as part of the guidance provided for eligible entities. Such rate regulation

[18] Council for Citizens Against Government Waste, "CCAGW Urges Conferees to Support Rural Broadband Reforms in Farm Bill," August 8, 2018, https://www.ccagw.org/legislative-affairs/letters-officials/ccagw-urges-conferees-support-rural-broadband-reforms-farm.

should be avoided, as it will decrease innovation and increase costs for future broadband deployment.

In addition, CAGW is concerned that the FCC will again try to implement net neutrality regulations over the internet. The strict government mandates that net neutrality rules, like the Open Internet Order would have imposed, would have made it difficult for ISPs to conduct proper and necessary traffic management during the coronavirus epidemic for telehealth and emergency services. There also would have been far less investment in innovations in technology that enable mobile broadband and the use of TV white space and satellite broadband.[19]

Another potential issue with the FCC renewing its efforts to impose net neutrality rules over the internet would be the implementation of rate regulation should ISPs be reclassified as common carriers under Title II of the Communications Act of 1934. Such action by the FCC could be avoided if Congress updated the outdated communications laws and clarified that ISPs are not common carriers.

Should Congress take additional action in response to concerns that broadband funding may be conditioned on 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?

If a federal agency is conditioning recipients of broadband funding to adhere to some form of net neutrality mandates, that is the same as the federal agency circumventing Congress to impose their own mandates on a company. Congress must be more stringent in detailing to agencies the parameters of funding for services like broadband. This is not only a problem with agencies that oversee broadband funding but also extends to other agencies that are usurping congressional authority through misinterpretation of the law, or by administrative fiat.

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 on broadband deployment efforts?

The two MOUs between the FCC, USDA, and NTIA, and now the Department of Treasury is a start for the avoidance of duplication in spending on identical broadband deployment projects. However, the GAO's broadband program report reiterates the crucial need for Congress to review all programs engaged in broadband deployment and determine which are effective and which are not achieving their objectives. There should be a limited number of agencies involved in broadband, with the FCC and the NTIA, which have the technical expertise to understand the needs and requirements for broadband deployments across the country, taking the leading roles.

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[19] Dr. George S. Ford, "Infrastructure Investment After Title II," Phoenix Center for Advanced Legal and Economic Public Policy Studies, November 1, 2017, p. 1, noting "about $24-$30 billion in investment has been lost to the Title II drama since 2015," https://phoenix-center.org/perspectives/Perspective18-09Final.pdf.

In addition, to ensure that funding is not duplicated, Congress must ensure that there is strict language in the laws it enacts to avoid duplication of federal or state funding for broadband buildout, so that funding can be directed to deployment in truly unserved or underserved areas of the country. Success in that effort also depends on accurate mapping.

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

Congress must require the Office of Management and Budget to implement a spending transparency website for broadband (and for that matter, all federal funding), like Recovery.gov. That website listed all programs receiving federal stimulus funding and was updated quarterly to reflect the amount obligated, the amount spent, and the progress of each funding recipient. This enabled federal agencies and taxpayers to better understand how their tax dollars were being spent, and whether duplication or wasteful spending was occurring.

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

According to the Congressional Research Service, the "federal government owns roughly 640 million acres, about 28% of the 2.27 billion acres of land in the United States."[20] Entities wishing to build network infrastructure that must cross federal lands, particularly in western states, where the federal government owns larger parcels of land, must apply for permitting to construct and maintain infrastructure using standard form 299.[21] However, as noted in a December 5, 2022 press release issued by Sens. Michael Bennet (D-Colo.) and John Hickenlooper (D-Colo.), "providers face extensive delays in the permitting process."[22] Calling on the administration to streamline the permitting process for use of federal lands, the senators further noted that, "Many of our communities rely on rights of way and service corridors through federal lands for transportation and essential utilities."

On January 23-24, 2018, the FCC issued its "Broadband Deployment Advisory Committee: Streamlining Siting Working Group" report detailing issues relating to siting infrastructure on federal lands.[23] The impediments to deploying broadband infrastructure on federal lands included unpredictable fees and rates; lengthy application review times; unharmonized and unpredictable application processes across agencies; cumbersome historic and environmental review processes; lease and renewal terms that fail to incentivize investments; unclear points of contact for local, state and federal leads for agencies; difficulty in obtaining updates on application status and lack of transparency in agency-deployment application process history; lack of re-evaluation of processes and fees as technologies evolve; costly and time-

[20] Congressional Research Service, "Federal Land Ownership: Overview and Data," Updated February 21, 2020, https://sgp.fas.org/crs/misc/R42346.pdf.
[21] BroadbandUSA, "Federal Permitting," National Telecommunications and Information Administration, U.S. Department of Commerce, https://broadbandusa.ntia.doc.gov/resources/federal/federal-permitting.
[22] Office of Michael Bennet, U.S. Senator for Colorado, "Bennet, Hickenlooper, Bipartisan Colleagues Urge Expansion of High-Speed Internet Access in Rural Communities," December 5, 2022, https://www.bennet.senate.gov/public/index.cfm/press-releases?id=43E2333D-9668-4892-99DA-5AE030E52267.
[23] Federal Communications Commission, "Broadband Deployment Advisory Committee: Streamlining Federal Siting Working Group Final Report," January 23-24, 2018, https://www.fcc.gov/sites/default/files/bdac-federalsiting-01232018.pdf.

consuming Department of Defense siting processes; and, siting barriers cause by federal funding clauses.[24]

CAGW agrees with Sens. Bennet and Hickenlooper that the administration must continue the work to streamline permitting processes, particularly on federal property, to expedite the deployment of broadband in rural areas. Given the large amount of federal funding now targeted toward broadband infrastructure investment and deployment, the federal government must take the lead in streamlining the application processes and work toward reducing the red tape required for permitting. Without an expedited and transparent federal permitting process, bridging the digital divide will continue to be delayed.

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?

On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order on accelerating wireless and wireline broadband deployment by removing barriers to infrastructure investment.[25] The rule included exemptions from environmental impact and historic preservation reviews, which often imposed undue delays to deployment. On August 9, 2019, this ruling was in part vacated by the U.S. District Court of Appeals for the District of Columbia in *United Keetoowah Band of Cherokee Indians in Oklahoma, et. al., v. the FCC* (No. 18-1129).[26]

The petition was granted in part because the court determined that "the *Order* does not justify the Commission's determination that it was not in the public interest to require review of small cell deployments. In particular, the Commission failed to justify its confidence that small cell deployments pose little to no cognizable religious, cultural, or environmental risk, particularly given the vast number of proposed deployments and the reality that the *Order* will principally affect small cells that require new construction."

We recommend that Congress review the impact of laws like the National Environmental Protection Act and the National Historic Preservation Act on broadband deployment and where feasible, amend the laws so that the siting of new broadband infrastructure will not endanger sites of cultural or religious significance, while still promoting the public good. In addition, Congress should review how federal laws affect state broadband deployment efforts and seek to allow states to streamline their own processes to further enable broadband deployment. This should be part of the process of reviewing the guidance issued by various agencies, including the Department of Agriculture's RUS program, the BEAD NOFO, and the Department of Treasury's broadband infrastructure funding guidance, which include provisions that are

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[24] Ibid.

[25] Federal Communications Commission, "FCC Facilitates Wireless Infrastructure Deployment for 5G," September 26, 2018, https://www.fcc.gov/document/fcc-facilitates-wireless-infrastructure-deployment-5g.

[26] United States Court of Appeals for the District of Columbia Circuit, *United Keetoowah Band of Cherokee Indians in Oklahoma, Individually and on Behalf of All Other Native American Indian Tribes and Tribal Organizations, et al., v. the Federal Communications Commission and United States of America*, No. 18-1129, Decided August 9, 2019, https://www.cadc.uscourts.gov/internet/opinions.nsf/4001BED4E8A6A29685258451005085C7/$file/18-1129-1801375.pdf.

contradictory to the goal of deploying broadband to unserved and underserved communities across the nation.

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

One of the most direct efforts Congress can take to reduce costs to broadband providers is to streamline the application process for permitting and siting on federal lands. In addition, by reducing and consolidating the number of programs across the federal government, Congress can engage in improved oversight of the remaining programs, including the FCC's broadband mapping project, to ensure they are offering the best services to providers who are working toward bridging the digital divide across the country, and aiding state and local governments in streamlining their own permitting and siting processes. In addition, Congress must ensure that the federal broadband maps being developed by the FCC under the Broadband Data Act, are accurate and reflect the most current picture of broadband deployment, so that deployment programs are not funded in areas where high-speed broadband already exists.[27]

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

CAGW believes that updating pole attachment regulations, particularly for government-owned or cooperative-owned utility poles may help to prevent delays in the permitting process for new pole attachments.

On September 2, 2020, CAGW provided comments to the FCC regarding its open proceeding on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment (WC Docket No. 17-84). The comments stated, "The Pole Attachment Act of 1978 allowed the FCC to set 'just and reasonable' pole attachment rates charged by Investor-Owned Utilities (IOUs) for pole attachments necessary for telephone and cable distribution."[28] In addition, the Telecommunications Act of 1996 permits states to certify that they regulate pole attachments in place of FCC regulations. To date, 23 states and the District of Columbia have certified that they impose regulatory authority over pole attachments.[29]

As noted in CAGW's comments, "The technical advisory issued by NRECA demonstrates why cooperation between the attacher and pole owner are critical due to safety considerations in placing new technology on existing power lines. However, given the often-cumbersome application process for permitting imposed by several utility and state regulators, it is understandable that many of the attachments noted in the advisory were not 'permitted' prior to installation if the permitting process is unreasonably delayed and harms deployment of

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[27] Deborah Collier, "The New FCC Maps Are a Critical Component to Broadband Funding," Citizens Against Government Waste, December 5, 2022, https://www.cagw.org/thewastewatcher/new-fcc-maps-are-critical-component-broadband-funding.
[28] Citizens Against Government Waste, "CAGW Comments to FCC on Declaratory Petition on Pole Attachments," September 2, 2020, https://www.cagw.org/legislative-affairs/agency-comments/cagw-comments-fcc-declaratory-petition-pole-attachments.
[29] Leslie Stimson, "These States Regulate Pole Attachments," Inside Towers, June 27, 2022, https://insidetowers.com/these-states-regulate-pole-attachments/#:~:text=The%20following%20states%20have%20certified,%2C%20New%20Jersey%2C%20New%20York%2C.

broadband services to areas of the country that need even the most minimum broadband available."[30]

CAGW encouraged the FCC to work with stakeholders to ensure that pole attachments are not unduly delayed due to bureaucratic red tape.

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

Ensuring the nation's critical infrastructure is secure from cybersecurity threats is an important aspect of broadband deployment. On January 10, 2022, the House of Representatives passed H. Res. 11 in a bipartisan vote of 365-65, which established a Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party to investigate and submit economic, technological, and security policy recommendations to protect U.S. national and cybersecurity structure.[31] The Senate should consider the creation of a similar select committee to better coordinate this effort.

Congress should also review and evaluate the measures being taken to prevent cyber incidents from occurring across the entire infrastructure, not just broadband. As more cities across the country adopt the technology needed to become a smart city, where even trash pickup schedules are monitored remotely, it is more important than ever to ensure that new infrastructure is developed and built with cybersecurity in mind at the front end, rather than as an afterthought.

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

The USF is funded through fees on consumer telephone bills to support four programs: the Schools and Libraries program (also known as E-Rate); the High Cost program, which has since been transformed into the Connect American Fund or CAF, which provides grants to build out telecommunications infrastructure in underserved or unserved areas of the country; the Rural Healthcare program, which provides telecommunications services, including broadband, to eligible health care providers; and, the Low-Income Support program, which includes the Lifeline and Link-Up programs. Over the past five years, efforts have been made to reform, revitalize and improve the program, with the FCC transforming the USF's High-Cost program into the Connect America Fund, and implementing improvements to the verification process for Lifeline eligibility. However, because of problems related to the program's funding mechanism, it needs to be reformed.

On February 16, 2022, CAGW submitted comments to the FCC in response to the agency's notice of inquiry on the "Report on the Future of the Universal Service Fund, WC Docket No. 21-476," which outlines our views in greater detail on the current problems facing

[30] Ibid., "CAGW Comments to the FCC Declaratory Petition on Pole Attachments."
[31] Establishing the Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, H. Res. 11, 118th Congress (2023), https://congress.gov/bill/118th-congress/house-resolution/11.

the universal service fund.[32] In brief, the USF is currently funded through required "contributions" from telecommunications service providers, based on a percentage of their interstate and international end-user telecommunications revenues.[33] A quarterly assessment and calculation of each new contribution factor is approved by the FCC Commissioners, and is typically passed on to consumers as a hidden tax or fee on their communications bills. Because the number of interstate and international end-user revenues are in decline with new methods of communications, the percentage calculation for the contribution factor has steadily increased, with fewer customers bearing a higher percentage of the cost of the program.

At a time when an increasing number of Americans are giving up their land lines in favor of mobile only or digital only services, the current funding mechanism for the USF is unsustainable. It is past time for Congress to reevaluate the funding mechanism used to supply universal service and ensure that if this program is to continue it can do so in the most cost-effective way possible without additional financial burdens on consumers and taxpayers. Given the hundreds of billions of dollars now available to build broadband infrastructure through ARPA, the CARES Act, and the IIJA, Congress should reconsider the role of the CAF program. The question remains as to how to provide funding for the remaining three programs, should Congress decide that those programs should be continued.

Again, I appreciate the opportunity you have afforded CAGW to weigh in on these important broadband issues. If you have additional questions, please feel free to reach out to me or Deborah Collier, CAGW vice president for policy and government affairs and executive director of CAGW's Innovation and Technology Policy Center.

Sincerely,

Tom Schatz

[32] Citizens Against Government Waste, "The FCC's Future of the Universal Service Fund Report," Agency Comments, February 16, 2022, https://www.cagw.org/legislative-affairs/agency-comments/fccs-future-universal-service-fund-report.
[33] Federal Communications Commission, "Universal Service Support Mechanisms," https://www.fcc.gov/consumers/guides/universal-service-support-mechanisms.