Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Facilitating Interagency Coordination of	)	WC Docket No. 22-251
Broadband Deployment Funding	)	
	)	

Reply Comments of TechFreedom

TechFreedom hereby files these Reply Comments in response to the Commission's Public Notice[1] requesting comment on the interagency agreement entered into among the Federal Communications Commission, the U.S. Department of Agriculture (USDA) and the National Telecommunications and Information Administration (NTIA) pursuant to the Broadband Interagency Coordination Act of 2020 (BICA) (the "BICA Agreement").[2] In these Reply Comments, we focus on the need to: (1) include the U.S. Department of Treasury in interagency coordination; (2) recognize the rapidly increasing costs of broadband deployment, including the need to "rip and replace"; (3) produce a single map of broadband deployment that can't be gamed by states and municipalities wishing to spend taxpayer dollars to overbuild existing broadband deployment; and (4) remain technology-neutral in all aspects of broadband deployment.

---

[1] Wireline Competition Bureau Seeks Comment on the Interagency Broadband Coordination Agreement, Public Notice, WC Docket No. 22-251, DA 22-712 (July 1, 2022) (Public Notice). The Public Notice set the comment date as August 1, 2022, and the reply comment date as August 16, 2022. These Reply Comments are timely filed.

[2] The Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, 134 Stat. 3214, Div. FF, tit. IX, § 904 (2020), codified at 47 U.S.C § 1308 (BICA). *See* Press Release, FCC, FCC, NTIA and USDA Announce Interagency Agreement to Coordinate Broadband Funding Deployment (June 25, 2021), https://docs.fcc.gov/public/attachments/DOC-373592A1.pdf.

I.   Interagency Coordination Must Include the Treasury Department

TechFreedom applauds the FCC's attempt to make the historic push to close the digital divide a "whole of government" enterprise.[3] If the remaining Americans without access to broadband are to be served, all government agencies must work together to maximize the reach of the unprecedented federal dollars now allocated for broadband deployment. Interagency sharing of data regarding current, planned, funded, and future broadband deployment is a must to avoid wasting taxpayer dollars.

Several commenters note the absence of a key player: the Department of Treasury.[4]

---

[3] *See, e.g.,* Press Release, NTIA, FCC, NTIA Sign New Memorandum of Understanding on Spectrum Coordination (Aug. 2, 2022), https://ntia.doc.gov/press-release/2022/fcc-ntia-sign-new-memorandum-understanding-spectrum-coordination (FCC Chairwoman Rosenworcel: "We need a whole of government approach—one that draws on the strengths in our national DNA: our hard-wired belief in the creative possibilities of the future, the power of coordination, and the rule of law."); Press Release, NTIA, Biden-Harris Administration Launches $45 Billion "Internet for All" Initiative to Bring Affordable, Reliable High-Speed Internet to Everyone in America (May 13, 2022), https://www.ntia.doc.gov/press-release/2022/biden-harris-administration-launches-45-billion-internet-all-initiative-bring (Deputy Secretary of Commerce Don Graves: "we need a whole-of-government and whole-of-nation approach—everyone who has a stake in our connected future should get involved now."); Press Release, U.S. Department of Interior, Federal Coalition Announces Summit to Improve Broadband (Aug. 16, 2021), https://www.doi.gov/pressreleases/federal-coalition-announces-summit-improve-broadband (Secretary of Commerce Gina M. Raimondo: "The Biden-Harris administration is committed to a whole-of-government effort to close this divide and fully connect Indian Country to the Internet.").

[4] *See* USTelecom—The Broadband Association, Comments on Facilitating Interagency Coordination of Broadband Deployment Funding at 4-5 (Aug. 1, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/1080111663793 ("Treasury is administering significant funding that can be and is being used for broadband deployment projects through the Coronavirus State and Local Fiscal 5 Relief Fund Program and the Capital Projects Fund"); Free State Foundation, Comments on Facilitating Interagency Coordination of Broadband Deployment Funding at 2-3 (Aug. 1, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/10801952012365 ("Given the massive amount of money for which Treasury is responsible that potentially could be used to construct broadband infrastructure—$350 billion from the State and Local Fiscal Recovery Funds (SLFRF) and $10 billion from the Coronavirus Capital Projects Fund (CCPF)—the Four-Agency Agreement will play an even greater coordinating role than the one upon which the Commission by statute is required to prepare a Report.").

We urge the FCC to leverage both the BICA Agreement and the Four-Agency Agreement[5] to ensure that all broadband deployment efforts are captured within the "fabric" being created by the FCC, and to ensure that the multiple programs being administered do not allocate money to the same areas.

II.   "Rip and Replace" Must Be Factored into Broadband Deployment Costs

In other proceedings, we've warned that the costs to deploy broadband are skyrocketing.[6] Another new cost is now looming: "rip and replace."[7] In a letter sent to Congress on July 15, 2022,[8] Chairwoman Rosenworcel admitted that replacing the relevant equipment (from providers Huawei Technologies Company and ZTE Corporation) will

---

[5] *See* Press Release, FCC, FCC, NTIA, USDA and Treasury Announce Interagency Agreement to Collaborate on Federal Broadband Funding (May 12, 2022), https://docs.fcc.gov/public/attachments/DOC-383280A1.pdf.

[6] *See, e.g.,* TechFreedom, Comments on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment at 4-5 (June 27, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/1062786367104 ("But before NTIA has sent a dollar to the states to spend, there are clear signs that the costs of broadband deployment are skyrocketing. First, there is general inflation. As a rough proxy for cost, if inflation remains at current levels during the majority of the five-year period of the BEAD program, the $42.5 billion allocated will have the buying power of barely $31 billion by the end of the program. Given that most unserved and underserved are rural, the cost of diesel fuel to transport materials to remote locations and to fuel generators for construction will be a key factor, and diesel fuel has increased more than $2.00 a gallon just since the BIL was signed into law. Many industry experts are also warning of severe supply chain and labor shortages that could increase the cost of deployment significantly over the next few years. The cost of both raw materials, such as fiber, and networking equipment is increasing rapidly. Then there are labor force issues, again exacerbated by the fact that companies have to deploy and support the labor force in rural areas.").

[7] "Rip and replace" references the requirement of U.S. telecommunications and broadband providers to remove certain Chinese-built equipment from their networks because of the security risks that equipment provides. *See* Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284 (2020) ("2020 Supply Chain Order").

[8] Letter from Chairwoman Rosenworcel to the Honorable Maria Cantwell, Chair, Committee on Commerce, Science, and Transportation (July 15, 2022), https://docs.fcc.gov/public/attachments/DOC-385335A1.pdf.

require an additional $3.08 billion from the amount allocated by Congress for the program. Given that the program was designed "to help small and rural communications providers," this means that, before rural providers can continue to build out further, they will have to backtrack and replace equipment in rural areas, much of which may be between their current hub facilities and areas to be served for the first time. This is yet another impediment to getting broadband to those most in need. We urge the Commission to integrate these "rip and replace" areas into the maps being developed, to make clear the true cost of future deployment.

III. The Federal Government Should Not Allow States to Game the System by Producing Their Own Maps

There are emerging distressing reports that many states are creating their own maps ("fabrics") which they intend to use to challenge the FCC's maps.[9] While states and tribes will play a critical role in assisting the FCC in developing accurate maps, we are aware of a number of instances in the past where NTIA and some states have used questionable data and analysis to claim broadband is not available in places where it clearly is.[10] This has been

---

[9] Teralyn Whipple, *States are Making Their Own Broadband Maps to Challenge the FCC's Data*, BROADBAND BREAKFAST (Aug. 8, 2022), https://broadbandbreakfast.com/2022/08/states-are-making-their-own-broadband-maps-to-challenge-the-fccs-data/.

[10] *See* Press Release, Senate Committee on Commerce, Science, and Transportation, Wicker Asks NTIA to Reassess Data Collection Processes (July 9, 2021), https://www.commerce.senate.gov/2021/7/wicker-asks-ntia-to-reassess-data-collection processes ("NTIA's map suffers from several major flaws. First, the data used in the map is outdated. The map includes data from the Census Bureau's American Community Survey, which the Census last compiled in 2019—two years ago . . . Finally, the map uses speed-test and usage data that can be affected by a number of variables, including the end-user's equipment."). *See also* John Eggerton, *NCTA: New NTIA Broadband Needs Map Is 'Often Inaccurate' Mashup*, NEXTTV (June 21, 2021), https://www.nexttv.com/news/ncta-new-ntia-broadband-needs-map-is-often-inaccurate-mashup ("Unfortunately NTIA has obscured, rather than clarified, the true state of broadband with

done in some instances where the goal of the state or local government is to compete with existing carriers by overbuilding their facilities.[11] The FCC should use its power, as specifically delegated by Congress,[12] to ensure that the challenge process is not used as a ruse to circumvent the will of Congress that all Americans have access to broadband before any federal money is spent to overbuild existing networks.

The federal government should require states to rapidly place into the fabric all available information about where states are funding broadband deployment.[13] Doing so as quickly as feasible will ensure that no area receives funding from different sources to deploy the same (or competing) broadband.

---

this mashup of disparate, and often inaccurate, data sources. In particular, any suggestion that data from M-Lab or Microsoft accurately represents the speeds delivered by cable operators is demonstrably false.").

[11] *See* TechFreedom, Comments on Infrastructure Investment and Jobs Act Implementation (Feb. 4, 2022), https://techfreedom.org/wp-content/uploads/2022/02/TechFreedom-Comments-2-4-22.pdf.

[12] *See* Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020), Section 802 (placing the FCC in charge of creating and maintaining a national broadband deployment map).

[13] USTelecom—The Broadband Association, Comments on Facilitating Interagency Coordination of Broadband Deployment Funding at 2 (Aug. 1, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/1080111663793 ("USTelecom urges the participating agencies to require early reporting by states that administer broadband funding programs (particularly those funded by NTIA) of the areas that will be served by their funded projects to avoid duplication or overbuilding. This information should be included in the Commission's Broadband Data Collection ('BDC') maps.").

IV. Interagency Coordination Should Ensure Technical Neutrality

Most experts,[14] and many officials,[15] agree that when it comes to broadband deployment, no one technology can solve the problem. The digital divide is not a single chasm over which you can build a single bridge. Rather, it is much more like a huge, sparsely populated mountain range; to reach each inhabitant, a variety of technologies is necessary. To that end, all federal agencies involved in this process need to remain technology-neutral.

Yet each of the agencies involved in carrying out its congressional mandate has decided to place its thumb on the scales in favor of its preferred technologies and deployment practices. The NTIA BEAD program prioritizes fiber projects[16] and contains a

---

[14] *See, e.g.*, Peters Suh & Ryan Oakes*, Data-Centric Approach Key to State Broadband Expansion*, GOVERNMENT TECHNOLOGY (Dec. 17, 2021), https://www.govtech.com/opinion/data-centric-approach-key-to-state-broadband-expansion ("Business and government leaders are grappling with tough questions on how to move forward. They need to consider everything from which solutions to choose—fiber-to-the-home, fixed wireless access, Wi-Fi 6 or another technology (e.g., satellite)—to the right strategy around prioritization of areas. There's no one-size-fits-all answer, but data can provide the clarity to answer many of these questions.").

[15] *See* FCC, Statement of Commissioner Rosenworcel on Connect America Fund, WC Docket No. 10-90, ETC Annual Reports and Certifications, WC Docket No. 14-58, Rural Broadband Experiments, WC Docket No. 14-259, https://docs.fcc.gov/public/attachments/DOC-339550A4.pdf ("We need broad participation because there is no one-size-fits-all solution when it comes to getting service in rural communities. So we are open to any provider and technology that meets essential broadband performance and financial criteria."); John Eggerton, *NTIA Chief Alan Davidson: State Broadband Grants Aren't One Size Fits All, Multichannel News*, NEXTTV MULTICHANNEL NEWS (Apr. 13, 2022), https://www.nexttv.com/news/ntia-chief-alan-davidson-state-broadband-grants-arent-one-size-fits-all (NTIA Chief Alan Davidson: "We expect there will be flexibility," regarding technologies to be used to close the digital divide).

[16] *See* NTIA, Notice of Funding Opportunity for Broadband Equity, Access, and Deployment Program at 7 (May 13, 2022), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf ("With respect to the deployment of last-mile broadband infrastructure, the Program prioritizes projects designed to provide fiber connectivity directly to the end user.").

number of other provisions related to "middle-class affordability" and labor practices that have little to do with actually closing the digital divide.[17]

The FCC now appears to be tipping the scales in denying RDOF funding for NGSO broadband operator Starlink.[18] The Public Notice announcing this decision describes Starlink as "relying upon a nascent LEO satellite technology and the ability to timely deploy future satellites to manage recognized capacity constraints while maintaining broadband speeds to both RDOF and non-RDOF customers."[19] Nascent? The Starlink constellation currently consists of over 2,500 individual, currently deployed satellites. To put that into perspective, all countries of the world launched just over 3,000 satellites in the first 30 years of the space age.[20] SpaceX, Starlink's parent company, has conducted 32 launches so far in 2022, on the way to eclipsing its record of 32 launches in 2021.[21] Each Starlink launch delivers approximately 50 additional satellites to the constellation; over 200 new satellites were delivered via July launches alone. Six launches are slated for August 2022, with the last

---

[17] *See Oversight of the National Telecommunications and Information Administration: Hearing Before the S. Subcomm. on Commc'ns, Media, and Broadband*, 117th Cong. (2022), https://www.commerce.senate.gov/2022/6/oversight-of-the-national-telecommunications-and-information-administration (several Senators questioning NTIA Chief Alan Davidson as to whether certain provisions of the BEAD NOFO exceed the language of the statute as they relate to such issues as preferences for union labor and middle-class affordability tiers).

[18] *See* Press Release, FCC, FCC Rejects LTD Broadband, Starlink Bids for Broadband Subsidies (Aug. 10, 2022), https://www.fcc.gov/document/fcc-rejects-ltd-broadband-starlink-bids-broadband-subsidies.

[19] Public Notice, Rural Digital Opportunity Fund Support for 80 Winners Ready to be Authorized; Bid Defaults Announced at 6, DA 22-848 (Aug. 10, 2022), https://www.fcc.gov/document/11th-rdof-ready-authorize-public-noticebid-defaults ("Starlink Public Notice").

[20] *See Number of satellites launched from 1957 to 2019*, STATISTA (2020), https://www.statista.com/statistics/896699/number-of-satellites-launched-by-year/.

[21] Loren Grush, *SpaceX just broke its annual launch record—and it's only July*, THE VERGE (July 22, 2022), https://www.theverge.com/2022/7/22/23273077/spacex-falcon-9-launch-record-2022-32-high-cadence.

successful launch on August 9, 2022.[22] Yes, the Starlink constellation is not fully deployed (about half of the first generation of satellites have been deployed, with an ultimate goal of as many as 42,000 satellites).[23] But to label it as "nascent" reflects a lack of understanding of the suite of technologies involved in deploying such a revolutionary system, in which mass-produced satellites, launched at a fraction of the traditional costs, use varying frequency bands to drive down costs. The further finding in the Public Notice that "Ookla data reported as of July 31, 2022 indicate that Starlink's speeds have been declining from the last quarter of 2021 to the second quarter of 2022, including upload speeds that are falling well below 20 Mbps," is a total *non-sequitur.*[24] How can the FCC pull all funding for Starlink based on current speed tests for a system that's not yet fully built? Moreover, a recent Ookla report indicates that download speeds of Starlink have increased 38% in the past year, while acknowledging that upload speeds have dipped slightly.[25] As more satellites are deployed, *on nearly a weekly basis*, both download and upload numbers will increase. Axing RDOF funding for Starlink is exactly the kind of technological bias that Congress explicitly forbade.[26]

---

[22] *See SpaceX Manifest*, NEXT SPACEFLIGHT,
https://nextspaceflight.com/launches/agency/upcoming/1/ (last visited Aug. 15, 2022).

[23] Stephen Clark, *SpaceX passes 2,500 satellites launched for Starlink internet network*, SPACEFLIGHT NOW (May 13, 2022), https://spaceflightnow.com/2022/05/13/spacex-passes-2500-satellites-launched-for-companys-starlink-network/.

[24] Starlink Public Notice at 6.

[25] Josh Fomon, Here's How Fast Starlink Has Gotten Over the Past Year, OOKLA (June 28, 2022), https://www.ookla.com/articles/starlink-hughesnet-viasat-performance-q1-2022 ("Starlink speeds increased nearly 58% in Canada and 38% in the U.S. over the past year").

[26] Section 60307 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. No. 117-58, 135 Stat. 429 requires: "(b) Technological Neutrality.--The Assistant Secretary shall, to the extent practicable, carry out this title in a technologically neutral manner."

Preferencing fiber and other wired technologies will have a devastating impact on the most rural Americans, who have no real hope of fiber reaching their homes. It is as if the government is now admitting that they will never get access to broadband, because they're just too far off the beaten path.

V.   Conclusion

We are experiencing not a "once in a lifetime" moment regarding federal funding of broadband deployment, but a "once in a once" opportunity to close the digital divide. Unfortunately, it seems clear that when the dust settles in a few years, we'll find that the last two or three percent of Americans will still lack access to broadband, because the multiple federal agencies tasked with this endeavor have allowed the money to be squandered. There is still time to rein in the spending stampede, but only if all agencies involved, led by the FCC, focus on getting the best currently available broadband to all Americans now, not on bureaucrats' favored technologies or political goals.

Respectfully submitted,

_____/s/_____
James E. Dunstan
General Counsel
TechFreedom
jdunstan@techfreedom.org
110 Maryland Ave. NE
Suite 205
Washington, DC 20002

August 16, 2022