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ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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July 18, 2024

The Honorable Alan Davidson
Assistant Secretary of Commerce for Communications and Information and Administrator
National Telecommunications and Information Administration
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Assistant Secretary Davidson,

We write concerning the timeliness of your response to the additional questions for the record (QFRs) submitted to you following Energy and Commerce Committee hearings. Specifically, you have still not responded to the QFRs sent to you after the May 15, 2024, oversight hearing.

We expect NTIA to take seriously our oversight efforts and respond to QFRs and letters promptly. After the hearing on December 5, 2023, it took you 107 days to submit your answers to the QFRs, far exceeding the 2-week deadline. We received answers to QFRs from the December oversight hearing on the same day that we announced the May NTIA oversight hearing. It is unacceptable that in order to receive responses to QFRs from an oversight hearing, we must introduce more oversight activity. However, as this seems to be the only method of effective motivation, the NTIA will continue to receive additional congressional inquiries until the QFRs from the May hearing are received. To better understand the delay, we request detailed responses from the NTIA on the following questions provided below by no later than July 31, 2024:

1. During our May 15, 2024, oversight hearing, when questioned about the untimeliness of NTIA's responses, you said, "I don't know all the details about why each of those took so long, and I would be happy to get back to you. I think the process of writing the QFRs were quite lengthy." Please describe the process of drafting QFR responses.
2. During that same hearing, you also said "We have to get them [(responses to QFRs)] all cleared through a complex internal interagency process, and that often slows us down."

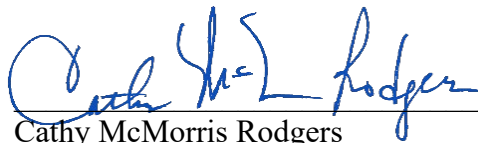
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3. Please explain each of the steps in this process.
4. How can this interagency process be adjusted to ensure that NTIA responds promptly to the Committee's requests?

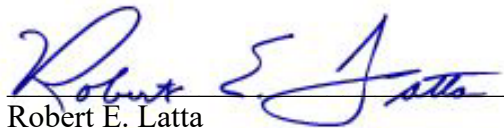
In the May oversight hearing, you did promise a more punctual response to future QFRs, saying “. . . I think we should do better, and we can do better, and I promise to work to do better in the future.”

As a reminder and further illustration of the above tardiness, it has been 30 days since June 18, the deadline for responses to the May oversight hearing. For your convenience, the QFRs from the May hearing are attached.

Sincerely,



Cathy McMorris Rodgers
Chair
House Energy and Commerce Committee



Robert E. Latta
Chairman
Subcommittee on Communications
and Technology

Attachment —Additional Questions for the Record

Chairman Latta

1. NTIA further reduced the scope of the BABA waiver for optical transceiver between the proposed to the final waiver in spite of several comments stating that a sufficient supply existed within the United States. Will NTIA consider revising the NTIA BEAD BABA waiver to comply with the requirements and intentions of Congress set forth in law?
2. Does NTIA plan to allow the BEAD program to cover the cost to locate currently existing infrastructure services (fiber optic cables, gas lines) associated with broadband expansion?
3. There have been concerns around the process for developing the most recent NOFO for the Public Wireless Supply Chain Innovation Fund, namely that there was not significant industry engagement prior to the release of the document. While there was a Request for Comment that took place more than a year ago, there does not seem to have been any substantial consultation with industry since that time. Given the changes in technology and the ecosystem, as well as the opportunity to learn from the experience with the previous NOFO, it seems that the process was lacking.
 - a. Can you please share detailed information around the industry engagement that took place specific to the second NOFO?
 - b. Can you commit to more robust consultation with industry stakeholders during the drafting of NOFO 3 and any future NOFOs?
4. Accelerating the deployment of trusted ORAN equipment into the US market is a critical goal for NTIA as part of the Public Wireless Supply Chain Innovation Fund grants. While the recently announced second Notice of Funding Opportunity states that it prioritizes commercialization of ORAN technology, the fund is still focused on early-stage R&D rather than promoting actual deployment and adoption of commercially ready ORAN solutions. Given the national security implications of a secure supply chain for ORAN, how can NTIA better prioritize the use of federal funding to focus on real word deployments?
5. The latest Notice of Funding Opportunity would restrict radio vendors from submitting more than one application in many cases. During the hearing, in response to a question about the limitation on radio vendor applications, you committed to following up with additional details. Can you explain how this restriction fulfills Congress' intent to create diverse supply chains and multi-vendor, interoperable networks if an RU vendor can only partner with one MNO?

The Honorable John Joyce

Based on your testimony, NTIA is reviewing each and every state's low-cost broadband proposal to determine whether the proposed prices are "affordable" in the different states. NTIA is then conditioning its approval of the states' BEAD plans on the states changing their proposals to accommodate what NTIA considers "affordable." Yet, according to your testimony, you and others at Commerce and NTIA don't consider that to be prohibited rate regulation.

1. Did you or others in Commerce or at NTIA seek the advice of your legal counsel on whether NTIA's review of each proposal and determination of affordability itself was rate regulation?
2. Did you or others at Commerce or at NTIA seek the advice of counsel on whether NTIA's conditioning its approval of state plans, and effectively the states' receipt of BEAD monies, on states agreeing to change their proposals to accommodate NTIA's assessment of what is affordable is rate regulation?

The Honorable Russ Fulcher

1. Can you give me or my staff a status on how your office is working with land management agencies and historic preservation agencies when it comes to helping on the permitting of broadband buildouts and upgrades, particularly when it comes to lines across federal land? My staff is still hearing about the backlog and other issues at these agencies and since you raised the issue of streamlining the permitting process, I wonder if there is any way we can help you by removing obstacles to coordination with other agencies?
2. I recall last year your desire to have a dedicated "federal lands desk" to help address the time and cumbersome permitting process. Any progress? Anything we can do further on our end?
3. You noted in your testimony trying to streamline the process for building on government land. I have tried to streamline the NEPA and historic preservation processes for rural broadband installation upgrades on previously disturbed federal land by eliminating the need to go through another NEPA process and obtaining a "right of way" when these projects had already gone through and met all the environmental and historic preservation requirements. This Committee passed the American Broadband Deployment Act, which would remove many of these permitting barriers which could allow this money to stretch further and projects to be built in the required timeframe. Do you support this legislation and will you work with us to enact it into law?
4. You noted in your testimony new mapping tools to help grantees identify permit requirements early in their project planning. Can you expand on that?
5. Can you provide me with an assessment of the BEAD program both at the national level and state levels? What's your read on the level of cooperation when it comes to federal agencies working with state Broadband offices to ensure obstacles are removed to help local broadband providers?
6. In May of last year, NTIA released a data-driven report demonstrating the successes of the shared licensed model called the Citizens Broadband Radio Service, or CBRS. The report notes that shared licensed approaches akin to CBRS can make spectrum even more valuable for both current and future applications. In your view, why are approaches to promoting spectrum through shared licensed policies that promote coexistence so important to the future of spectrum policy? Where do you see CBRS in future bands?
7. Why is it so important that our federal agencies like NTIA, the FCC, and DOD continue to work together, as well as involve a wide and diverse range of non-Federal stakeholders?

The Honorable August Pfluger

Subsea cables are a critical part of our global telecommunications infrastructure and carry the vast majority of international traffic. They have received increased attention as they have become

attractive targets for foreign adversaries and terrorist groups seeking to disrupt, intercept, or manipulate communications networks.

NOAA plans to designate a 134-mile stretch of the California coastline as a national marine sanctuary. In the selected area is a subsea cable landing with eight existing cables. Without an exemption for undersea cables, any planned additions or maintenance would come with significant bureaucratic red tape and cost.

1. What is NTIA doing to ensure subsea cables are recognized as the critical infrastructure they are? Did the NTIA communicate to NOAA about potential economic or national security concerns of not providing an exemption for undersea cables?
 - a. NOAA excluded a section of the sanctuary for possible future offshore wind infrastructure. Why did possible future infrastructure get carved out and not existing critical infrastructure?
 - b. On the topic of subsea cables, can you elaborate on NTIA's role within the Supply Chain Resiliency Center that DHS has established regarding subsea cables?
2. Following up on my line of questioning in the hearing, as the head of the NTIA and tasked with solving interagency conflicts, and since there are severe disagreements between DoD and FAA over self-certification of Link-16 technologies in this band, what will NTIA do to comply with new FY24 laws on Link-16 to resolve this issue?

In your written testimony you mention that NTIA will be co-leading another study on the lower 3 gigahertz band with DoD about the development of a Dynamic Spectrum Sharing pilot.

I agree that more research is needed on Dynamic Spectrum Sharing, however my understanding is that Dynamic Spectrum Sharing is still 5-10 years away from primetime.

3. When do you think we can see the dynamic spectrum sharing system NTIA is developing put into use?
 - a. If it's going to take 5-10 years, then it seems as though we are doing nothing to address the critical mid-band spectrum deficit between the United States and China in the near term. What guarantee is there that your spectrum strategy will result in a single megahertz of mid-band spectrum being reallocated for full-power commercial licensed use in the near term?

Mr. Davidson, the IJA required states to collaborate and coordinate with local and regional entities as they created their BEAD plan. States complied in good faith. After accepting public input on draft plans, they submitted a BEAD plan to NTIA, which provided feedback to "cure" the state's plan. In the hearing, a major topic was the NTIA requiring rate regulation by for state plans and a lack of transparency in the BEAD plan process. The federal government is spending 42 billion dollars on the BEAD program, but the IJA explicitly exempted NTIA BEAD decisions from transparency requirements under the Freedom of Information Act (FOIA).

4. If someone wants to see what the NTIA has asked a state to change on their BEAD plan, where can they find that? Will you commit to (a) publishing all of the curing comments that NTIA has made to states; and (b) publicly posting all future curing comments?

In 2002, a GAO report analyzing the WRC process concluded that the United States preparatory process for WRCs has raised concerns that the U.S. delegation may not be in the best position to promote U.S. positions as effectively as possible.

In 2023, another report by GAO analyzing the WRC process came to a similar conclusion: the inability to reach an agreement affected the U.S.'s ability to present a unified position for the WRC. It is clear that we need to take immediate action to improve our coordination and preparation for future WRCs.

Over the past twenty years, the WRC process has not seen significant improvements. The lessons we learned from WRC 23 are clear: the U.S. must engage and coordinate early in these international standard-setting bodies to effectively counter China's influence.

5. Planning for WRC 27 is already underway, and your staff recently attended the CITEL meeting. How did you coordinate with stakeholders and other agencies before this CITEL meeting, and how will you coordinate preparation for WRC items in the future?
 - a. What are you doing to improve the WRC process, and what tools can Congress give the NTIA to succeed at WRCs in the future?

The NTIA's most important roles are as the sole spectrum manager for federal agencies and acting as the sole advisor to the President on spectrum matters. Both are clearly stated in current law.

6. While federal agencies may have competing interests in spectrum use and their own assessment of how spectrum should be managed, how can NTIA do its job if any agency thinks its mission is more important or its voice should be heard above others?
 - a. Wouldn't NTIA effectively cede its congressionally directed role to others if it allowed any one federal agency to direct or unduly influence what NTIA did?
 - b. Worse, wouldn't it undermine NTIA's role and authority if any federal agency were permitted to act as a free agent and advocate for a particular spectrum-related outcome separate from NTIA?
7. As the nation considers how to meet the ever-expanding need for spectrum-powered connectivity, NTIA will be tasked to evaluate whether federal spectrum can be reallocated or shared for commercial use. Indeed, NTIA has already committed to doing that for some spectrum bands and may be asked to do more of that in the future. As it does that work, I expect that NTIA's constituents – federal agencies – will try to convince NTIA that their particular use of spectrum is the most important – that the spectrum they use, the people's spectrum – should not be shared or reallocated.
 - a. Can you assure us that NTIA will perform as we think it should – as a neutral, honest broker for the American people and that it will not be unduly influenced by those agencies that speak the most or the loudest?

The Honorable Jay Obernolte

1. What steps has NTIA taken to consider the potential downstream impacts on individuals, academics, researchers, and small businesses of restricting AI models that provide access to their model weights?
2. How does NTIA intend to monitor developments in the field of open-source AI and ensure efforts to mitigate risk do not jeopardize innovation and entrepreneurialism?

The Honorable Debbie Dingell

Approximately 30% of Michigan households are impacted by the digital divide. In March, NTIA awarded Michigan over \$20 million from the Digital Equity Capacity Grant Program — a critical investment that will support efforts to bridge this gap. This funding will empower communities by providing the necessary tools, skills, and opportunities for equitable access to high-speed internet.

1. Can you share some specifics about the kinds of initiatives that you anticipate from this program? What more can we expect from it this year?

Earlier this year, NTIA released the National Spectrum Strategy implementation plan. The implementation plan sets out timeline milestones and responsible agencies for the study of 2,786 megahertz of spectrum.

2. Can you provide us with an update on where NTIA is with its spectrum studies?

With each new generation of wireless technology, network speeds have significantly improved, and the number of connected devices has significantly increased. As Co-Chair of the 5G and Beyond Caucus, I am a strong supporter of innovative technologies and the need to strengthen network security.

3. Could increased investment in domestic and allied wireless equipment enhance our supply chain resilience and minimize network vulnerabilities? And would fostering competition and domestic development in this sector increase industry standards for network security?

The Honorable Tony Cárdenas

1. What concrete actions is NTIA taking to make clear that the Administration will not permit its BEAD-related broadband deployment goals to be impeded by barriers to efficient pole and permit access procedures?

The Honorable H. Morgan Griffith

During my oral questioning I inquired about what I understand to be NTIA's second set of curing comments which are posted publicly on the Commonwealth of Virginia's Department of Housing and Community Development website as part of Virginia's unapproved Broadband Equity, Access, and Deployment (BEAD) Program Initial Proposal Volume 2 document. Specifically, I asked you about NTIA's comments:

2.12.1a As a response to the letter to the Assistant Secretary: The Assistant Secretary must be able to determine the impact to a customer at the Initial Proposal stage – it isn't enough to know as of the Final Proposal. Thus the low-cost option must be established in the Initial proposal as an exact price or formula.

And Virginia's Response:

This feedback requests that Virginia include one of two things in its required definition of its lowcost option in its Volume 2:

1. An exact price for what will be the only acceptable low-cost option for BEAD-funded broadband service regardless of provider or location in Virginia, or
2. A formula which one could apply and thereby derive an exact price for what will be the only acceptable low-cost option for BEAD-funded broadband service regardless of provider or location in Virginia.

Both of the above can be found on pages 52-56 which are attached.

1. Is Virginia correct in its assessment of the above that Virginia's BEAD proposal will not be approved unless NTIA unless a specific rate, or specific rate derived from a formula is set?
2. If the answer to question one is no, then how many days will it take NTIA to approve the Virginia BEAD proposal?
3. If the proposal is not approved, is NTIA in compliance with:
 - a. The letter of the Bipartisan Infrastructure Law? or
 - b. The spirit of the Bipartisan Infrastructure Law?