



Written by [Michael Tennant](#) on April 22, 2024

Biden Draws BEAD on Broadband Program's Price-control Ban

The Biden administration appears to be trying to circumvent the law creating a federal broadband-expansion program by forcing states to impose broadband price controls.

The [Infrastructure Investment and Jobs Act](#) (IIJA) created the [Broadband Equity, Access, and Deployment \(BEAD\) Program](#), giving it a \$42.5 billion budget to be used "to support the expansion of broadband" in underserved areas. The Commerce Department's National Telecommunications and Information Administration (NTIA) was put in charge of the program.



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"With these allocations and other Biden administration investments, all 50 states, DC, and the territories now have the resources to connect every resident and small business to reliable, affordable high-speed internet by 2030," a [White House "fact sheet"](#) claimed.

The IIJA requires states receiving BEAD grants to ensure that each internet service provider receiving a subgrant "offer not less than 1 low-cost broadband service option for eligible subscribers."

However, it also explicitly states: "Nothing in this title may be construed to authorize ... the National Telecommunications and Information Administration to regulate the rates charged for broadband service."

The NTIA seems to have taken the former to heart, but not the latter. The BEAD [notice of funding opportunity \(NOFO\)](#), which details the program's rules to states applying for funding, restates the IIJA's "low-cost broadband service option" mandate. Then it provides a sample proposal stating that the service option should cost "\$30 per month or less, inclusive of all taxes, fees, and charges." (Proving that Uncle Sam's relationship with American Indian tribes hasn't changed much, the NTIA proposal suggests that those living on "Tribal Lands" pay as much as \$75 a month.)

That sample proposal appears to be more than just a hypothetical example. "The NTIA," reported the [Daily Caller](#), "is approving grants to states that impose price controls on broadband networks constructed using BEAD funds and rejecting funding to states that decline to include specific price controls."

"The NOFO left open for states to decide whether they want rate regulation or not and then turns out it really wasn't a suggestion, it was more of an order," Washington-based technology and telecommunications attorney Joel Thayer told the Daily Caller.

"There is clearly a concerted effort within the NTIA to essentially buck the statute and say, 'We are the ones deciding that rate regulation is going to be part of these fund allocations and we are going to force the hand of all these states to adopt them,'" he added.



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For example, the NTIA approved a [California plan](#) that prioritizes subgrantees who give “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 to BEAD-funded locations through other last-mile projects.”

But the agency rejected [Virginia’s proposal](#) that, according to [Broadband Breakfast](#), would “require that grant applicants outline and justify their own low-cost options as part of the application process.” Dissatisfied with this less-specific mandate, the NTIA declared, “The low-cost option must be established in the Initial Proposal as an exact price or formula.”

In its [response](#), Virginia wrote that it “is concerned that it is being asked by the funding agency, NTIA, to take an action that NTIA is expressly prohibited from taking,” i.e., regulating broadband rates.

“If Virginia submits a plan that does not include specific price points for broadband, and NTIA rejects the plan and tells them they must regulate specific prices, then how is that not rate regulation?” Foundation for American Innovation senior fellow Evan Swarztrauber told the Daily Caller. “It strikes me as a clear violation of the law.”

During a House Energy and Commerce Committee hearing in December, NTIA Administrator Alan Davidson tried to parry Republican committee members’ questions about the matter by saying, “We are not setting a price at the NTIA. We are not setting a national price for broadband. We are not setting rates. It seems quite reasonable to say that in return for receiving these federal funds ... providers need to have a low-cost option.”

The GOPers were not convinced. In a [follow-up letter](#) to Davidson, they called his responses “extremely problematic.”

“NTIA’s approval of state plans that include rate regulation is NTIA regulating rates in violation of the IIJA,” they wrote, citing both the text of the IIJA and remarks made during Senate debate of the legislation.

David Ditch, a senior policy analyst at The Heritage Foundation, told the Daily Caller “that the NTIA’s maneuvers are part of a broader strategy employed by the Biden administration to tie left-of-center agenda items to federal dollars.”

Ditch, who authored a detailed [report](#) on this strategy, said the NTIA’s mandate “is unfortunately symptomatic of the administration’s approach of oftentimes using congressionally authorized funds for inserting a wide range of left-leaning mandates.”

Congress, however, is far from blameless. In the first place, it should never have passed the unconstitutional IIJA. In the second place, it created a program with two seemingly conflicting provisions: the low-cost option mandate and the ban on rate regulation. As former Federal Communications Commissioner Harold Furchtgott-Roth told the Daily Caller, the provisions are “at the very least in tension with one another, if not outright contradicting one another.”

Lawmakers, it seems, wanted credit for bringing inexpensive broadband to their constituents without getting blamed for the shortages the practically inevitable price controls would cause. Had they instead sought credit for upholding their oaths to the Constitution, they would have nothing to fear.



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