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FCC's National Broadband Map: Implications for the Broadband Equity, Access, and Deployment (BEAD) Program

Access to high-speed internet (i.e., broadband) has been a focus of congressional interest for decades as a significant—and growing—number of daily activities are conducted online. Some areas of the United States—particularly rural and tribal areas, but also some urban and suburban areas—have limited or no access to broadband service. Consumer advocates often refer to this connectivity gap as the *digital divide*. As classrooms, workplaces, and social activities migrated online during the Coronavirus Disease 2019 (COVID-19) pandemic, the digital divide became increasingly apparent and a pressing equity issue.

Many in Congress have shown sustained interest in increasing the accuracy of federal broadband data and maps in order to make informed decisions about how to best direct federal funds and target programs designed to increase broadband connectivity and address the digital divide. Without accurate data, broadband maps may not reliably indicate need, and federal assistance may be provided to areas that already have sufficient service, leaving other areas unserved or underserved.

This In Focus provides brief background on Federal Communications Commission (FCC) broadband mapping activities. It describes the FCC's newly released National Broadband Map and its implications for the Broadband Equity, Access, and Deployment (BEAD) program, which was created at the National Telecommunications and Information Administration (NTIA) by the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58) to provide broadband service to unserved locations. Potential considerations for Congress are also briefly discussed.

Background on FCC Broadband Mapping and the Broadband DATA Act

Since 2018, the FCC has had responsibility for developing a comprehensive map of broadband availability in the United States—the Fixed Broadband Deployment Map. While the initial map developed by the FCC provided a snapshot of broadband availability, some stakeholder groups identified data granularity issues. For example, the FCC's methodology considered an entire census tract as served by broadband if at least one home or business in that tract was reported as being served by an Internet Service Provider (ISP)—potentially overstating availability. Additionally, the FCC lacked a challenge process for consumers or other entities to identify tracts that they believed were not served.

In March 2020, the Broadband Deployment Accuracy and Technological Availability Act (Broadband DATA Act; P.L. 116-130) was enacted, which required the FCC to—among other requirements—collect and display (on the map) specific location-level information about broadband

services available throughout the country and implement a public challenges process. On November 18, 2022, the FCC released the preproduction draft of the map—referred to as the National Broadband Map. According to the FCC, the preproduction draft begins an “ongoing, iterative process that will improve the data submitted by providers by incorporating challenges from individuals and other stakeholders.”

National Broadband Map and the BEAD Program

The IIJA established the \$42.45 billion BEAD Program to be administered by NTIA. In addition to a minimal initial amount allocated to each eligible state and territory, the IIJA provided NTIA a formula to calculate the distribution of BEAD funding based on the share of unserved locations in an eligible state or territory. These unserved locations are “determined in accordance with the broadband DATA maps” that the FCC was mandated to create by the Broadband DATA Act.

According to the IIJA, a location is considered unserved if the National Broadband Map shows that (1) it is a broadband-serviceable location (defined by the FCC as any business or residential location where broadband service is available or can be installed) and (2) it either has no access to broadband service or lacks reliable broadband service. According to NTIA's BEAD Program Notice of Funding Opportunity, reliable broadband service should be provided via fiber, cable, digital subscriber line (DSL), or terrestrial fixed wireless technology using licensed or a hybrid of licensed and unlicensed spectrum. On November 10, 2022, NTIA released an estimated date of June 30, 2023, to announce BEAD grant allocations to eligible states and territories based on data in the National Broadband Map.

Potential Implications of the National Broadband Map Challenge Process for the BEAD Program

Inaccurate broadband deployment data in the National Broadband Map could affect the share of BEAD Program funding an eligible state or territory receives.

As required by the Broadband DATA Act and the IIJA, consumers, state, local, and tribal governments, and other stakeholders (e.g., ISPs) can submit challenges to the FCC if they believe the National Broadband Map contains inaccurate data (e.g., missing locations, over- or understated broadband service availability at a specific location). The FCC will notify the ISP of the challenge. If the parties (e.g., consumer and ISP) are unable to resolve a challenge between themselves, the IIJA requires the FCC to resolve it (i.e., review evidence and make a determination) within 90

days after the final response from the ISP that provided the original information to develop the initial National Broadband Map. States and other entities, such as smaller ISPs, may encounter difficulty challenging or responding to challenges of National Broadband Map data, described below.

Contractual Obligations

Agreements with data vendors (for example, data used for state broadband mapping) may hinder state broadband offices from challenging National Broadband Map data. For example, according to Chief Data Officer of the Montana Department of Administration Adam Carpenter, who spoke on an October 26, 2022, panel, some states may lease data from private entities that could be used to challenge the National Broadband Map. Contractual obligations may restrict data sharing with another entity. Thus, states may not end up challenging the National Broadband Map—or if they do challenge, they may violate their contract and face legal jeopardy. Some state third-party data vendors may also be concerned that the FCC's third-party vendor that developed the underlying data structure of the National Broadband Map could use data submitted from states in the challenge process for its own commercial use.

Resources

States differ in access to resources needed to file timely challenges to the National Broadband Map. NTIA has encouraged states and territories to submit challenges by January 13, 2023, for the FCC to incorporate corrections into the National Broadband Map in time to be used to announce BEAD funding awards by June 30, 2023.

According to an October 31, 2022, press release, New York submitted more than 31,000 missing unserved or underserved address locations to the FCC, demonstrating the potential magnitude of the data collection effort facing some states. Some states and municipalities may lack the resources and expertise to file challenges of this size. For example, according to a local news article, New Mexico State Broadband Director Kelly Schlegel stated, “the broadband division has found a number of errors in the FCC map of New Mexico detailing broadband access,” and “the division, right now, probably doesn’t have enough staff to fix it by the program’s mid-January [2023] target date,” which “could cause New Mexico to miss out on hundreds of millions of dollars.”

Other Concerns

Following the challenge process and release of the next iteration of the National Broadband Map in mid-January 2023, some existing ISPs may dispute the determination of whether some locations are served or not. This could lead to legal action, which could lengthen the time needed to resolve some challenges. Additionally, the volume of filed map challenges may make it difficult for the FCC to resolve them in a timely manner, which could delay NTIA's planned announcement of BEAD allocations by June 30, 2023. This planned date is contingent on the development of a settled version of the National Broadband Map. Additionally, according to FCC Chairwoman Jessica Rosenworcel, the FCC has received thousands of

challenges—from individual users alone—and expects more to be filed by mid-January.

The IIJA provides an additional challenge mechanism before states and territories can distribute the BEAD funding they receive from NTIA to sub-grantees for the deployment of broadband networks. Local governments, nonprofit organizations, and ISPs can challenge a determination made by the state or territory as to whether a particular location is eligible for the grant funds, including whether the location is unserved or underserved. The time to resolve these challenges may vary by state.

Considerations for Congress

The accuracy of the National Broadband Map is a key concern for many in Congress. On December 21, 2022, a group of 26 Senators wrote a letter to the FCC Chairwoman “to ensure the FCC’s national broadband maps satisfy the goals of the Broadband DATA Act and provide an accurate and reliable depiction of broadband availability across the nation, which plays a major role in decisions about the distribution of broadband infrastructure funding.”

Since the FCC's National Broadband Map plays a key role in determining how much BEAD funding NTIA allocates to each eligible state and territory, the map's accuracy, and timeliness and fairness of the allocation of BEAD awards, may be of continued concern to the 118th Congress. Several important agency actions are anticipated in 2023. The FCC expects to resolve the challenges to the map early in 2023, and the NTIA anticipates starting allocation of a substantial amount of BEAD funding by June 30, 2023.

With the release of the preproduction draft National Broadband Map, Congress has a variety of options for oversight and legislation, including hearings on the concerns noted above. For example, Congress could mandate an extension of the challenge process timeline for BEAD allocations if it finds that necessary to ensure all stakeholder concerns could be addressed before funds are awarded and distributed. Congress could also consider requiring the FCC to initiate a proceeding to gather public input on the resolution of challenges.

Additional CRS Resources

CRS Report R45962, *Broadband Data and Mapping: Background and Issues for the 117th Congress*, by Colby Leigh Rachfal

CRS Report R46967, *The Infrastructure Investment and Jobs Act (P.L. 117-58): Summary of the Broadband Provisions in Division F*, coordinated by Patricia Moloney Figliola

CRS Report R47075, *The National Telecommunications and Information Administration (NTIA): Current Roles and Programs*, by Ling Zhu

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