



September 10, 2024

Hon. Alan Davidson
NTIA Administrator and Assistant Secretary
of Commerce for Communications and Information
Herbert C. Hoover Building
U.S. Department of Commerce National Telecommunications and
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VIA EMAIL

**Re: Comments of the California Public Utilities Commission to the
National Telecommunications and Information Administration on
Proposed BEAD Alternative Broadband Technology Guidance**

Dear Assistant Secretary Davidson:

Thank you for the opportunity to submit these Comments of the California Public Utilities Commission (“Commission”) to the National Telecommunications and Information Administration’s (“NTIA”) in response to the “Proposed BEAD Alternative Broadband Technology Guidance” (the proposed policy, hereunder) issued by your agency on August 26, 2024.¹

The Commission’s comments focus on the following primary concerns:

1. NTIA proposes new processes and requirements that create both timeline and budgetary risks that were not previously contemplated.
2. NTIA proposes a new technical standard that requires clarification.
3. NTIA’s proposed policy with regard to LEO satellite raises questions regarding competition, contractual arrangements, and enforcement of BEAD obligations.

¹ “Proposed BEAD Alternative Broadband Technology Guidance,” NTIA, August 26, 2024, <https://www.ntia.gov/other-publication/2024/proposed-bead-alternative-broadband-technology-guidance>.

4. Given the broad impacts of this proposal and the limited time to comment, the NTIA should make comments received publicly available and provide an opportunity for reply comments.

Commission Comment 1: Possible Schedule Delays and Additional Unplanned Costs

The Commission notes concern that the proposed policy creates a new and previously unanticipated process 26 months after NTIA released the BEAD Program NOFO. That process will involve outreach to Alternative Technologies providers, research, solicitation of data, and review and validation of the data.

The process will impact the BEAD Program timeline and cause significant delays. The new process adds substantially to an already tight BEAD subgrantee selection timeline because it will involve not only the addition of a combination of seven and then 30 days for Alternative Technology ISP data responses,² but will also require adequate time for the Commission to review, evaluate, and vet the ISP data.

This review and validation will require substantial effort, given the challenges of analyzing and fully understanding the operations of low-earth orbit satellite networks and unlicensed fixed wireless networks to meet NTIA's new technical standards under the new process.

This new requirement—that the state vet and validate the actual speeds currently provided or promised by Alternative Technologies providers—has been proposed after California has already launched its Challenge Process. As a result, the Alternative Technology validation cannot be included in the Commission's Challenge Process. Rather, under the proposed policy, the Commission will be required to do the technology validation as a separate process during subgrantee selection to provide the new verification NTIA seeks, thus delaying completion of subgrantee selection and building needed broadband infrastructure in California.

² “Proposed BEAD Alternative Broadband Technology Guidance,” page 9 (“Eligible Entities must give the Alternative Technology providers currently serving some or all of the project area at least seven days to indicate an interest in qualifying under Case 2. Eligible Entities can either post a public notice or contact all existing providers listed in the National Broadband Map that offer services that do not qualify as Reliable Broadband Service. If no provider responds within that period for some or all locations, an Eligible Entity can proceed to Case 3. If a provider wants to be considered for Case 2, the Eligible Entity shall allow the provider at least thirty days to submit the necessary documentation”).

The proposed policy involves new costs and efforts for the Commission that were not contemplated in the planning done under the NOFO over the past two years. The process, and the new requirement for active grant management of LEO satellite subgrants for 10 years,³ raises concerns related to resources and budgeting for grants management. These new items were not anticipated based on the NOFO, were not included in the Commission's plans, and were not included as a line-item in the IPFR (which governs how states may use BEAD funds, including for grants management and administration). The new costs are not accounted for in current budgets, given that the IPFR was submitted, per NTIA requirements, in December of last year.

Commission Comment 2: "Alternative Technology" Definition Needs Clarification

The Commission notes that the proposed policy includes an entirely new technical standard for Alternative Technologies and this new standard requires clarification.

The policy notice proposes that Alternative Technology providers, whether existing or funded with BEAD dollars, must operate networks that can deliver at least 5 Mbps of capacity or 2 TB of data per month to each broadband serviceable location. These standards require clarification.

This new capacity standard is not consistent with the FCC's definition of "broadband." It requires a minimum rather than a projected "up-to" or advertised capacity, and there are challenges with evaluating this new requirement, such as whether 5 Mbps is upstream or downstream or both, and where this should be measured within a given network.

Further, the new 5 Mbps capacity reservation does not align with the BEAD Program's 100/20 Mbps requirement. In its lack of specificity, it seems to assume average usage across a network—but the NOFO requires the ability to deliver 100/20 Mbps to all locations, which depends on the wireless signal at specific locations, in addition to capacity in the network.

Having 5 Mbps of capacity is inadequate for scaling to future speed needs, especially over a 10-year period, the length of BEAD subgrant that NTIA anticipates for LEO satellite. And from a compliance standpoint, it will be difficult for the state to validate that a subgrantee meets this requirement without the subgrantee providing technical

³ Under the new policy proposed for LEO satellite "reservation" subgrants, states will have to maintain an active grant management role for 10 years for LEO satellite as opposed to the four-year period of performance for terrestrial infrastructure deployment projects (that is, all other BEAD subgrants).

details of both current and future network topologies; many, if not most, subgrantees will be reluctant to share such proprietary information. We particularly are concerned about whether LEO satellite subgrantees will be willing to share such data.

The Commission also seeks clarification on whether the 5 Mbps capacity test is an alternative standard for Alternative Technologies, or if it is intended to be in addition to other technical requirements the Commission has set out in its IPv2 under NTIA's guidance.

Commission Comment 3: Lack of LEO Satellite Competitors and Effect on BEAD Funds

NTIA's proposed policy regarding LEO satellite raises questions regarding competition, obligations of the subgrantee, and enforcement.

The Commission is concerned about lack of competition in the LEO satellite market and believes that robust performance terms and enforcement strategies are critical, given the single provider currently in that market and given NTIA's proposed policy of allowing funding of "reservation" of capacity (as opposed to construction of new infrastructure), with no potential for the Commission to test or inspect the infrastructure that would be funded with its BEAD grant.

Nearly all of California is purportedly served by LEO satellite service on the FCC National Broadband Map. Yet, validating these availability claims is best left to external parties – as with the Challenge Process – not the providers themselves. Unfortunately, these claims were not validated as part of the CPUC's Challenge Process currently underway. Further, the Proposed Policy turns the purpose of the "challenge process" on its head by allowing providers to decide whether to provide data that validates their claims of service are accurate. This creates an incentive to provide fabricated data that invalidates their existing claims of service, thereby enabling the provider to be the only entity eligible to receive public funds. To the extent that the NTIA requires validation of these claims of service, the NTIA should require third-party auditing and verification and not self-attestation of service claims.

Alternative technologies will be necessary to achieve complete coverage, especially for the most remote and hardest to reach locations. However, states must be able to rely on provider claims of service made to the FCC for alternative technologies – subject to reasonable third-party auditing and verification – as they do for providers of reliable services. For example, if this Proposed Policy were adopted for all services, it would undermine the program by enabling providers to dispute their own claims of service to receive additional public funds without actually deploying new infrastructure. The

Commission further notes that a payment of public funds to a LEO satellite company for “reservation” of capacity on an already existing network must necessarily include both robust protections for consumers and means of ensuring that the key public policy elements of the BEAD program, such as the low-cost service offering, are respected.

As NTIA knows, there is only one commercial LEO satellite provider in the market, with no likelihood of a competitor emerging during the BEAD subgrantee selection process. As a result, states that use LEO satellite as an Alternative Technology provider under the new policy will have a single option only, Starlink, with no competition to constrain the prices proposed or enable effective negotiations.

In California, the lack of competition for LEO satellite may have significant impact to the state’s BEAD budget.

As a result, California may be required to spend many of its finite BEAD dollars for each eligible location that does not receive an affordable Reliable Broadband Service bid to reserve capacity—on a network that already exists and for a service that already purports to be available across most of the state.

Compounding the concerns about lack of competition is the reality that states will be hard-pressed to test or inspect Starlink facilities that are funded by BEAD.

NTIA should articulate a clear framework for Starlink’s BEAD obligations and for enforcement of those obligations throughout that time period. Those obligations should include the following:

- **Commitment to the low-cost service offering for the entirety of the 10-year reservation term.** This represents the single most important obligation for a LEO satellite provider given the high cost of LEO service relative to most terrestrial broadband solutions. As Starlink service is already available throughout California and is currently priced at \$120 per month, the low-cost service offering must be available, or the BEAD funding will fail to make an appreciable difference to low-income Californians at BEAD-funded locations.
- **Commitment to the requirement that the low-cost service offering speeds will be increased as the market changes and commercial speeds increase in response.** The requirement that the low-cost service offering be

scaled up to match market offerings over time is fundamental to the way NTIA designed the low-cost service offering part of the BEAD program. LEO satellite should be treated no differently. As consumer products evolve to higher speeds, so should the one available at low cost to qualifying households at eligible locations.

- **An obligation to replace satellite equipment at the consumer location as necessary.** This obligation is another element that is required to address the fact that LEO satellite subgrants will not result in construction of infrastructure to an eligible location. It is necessary in light of the BEAD goal of providing a broadband solution *to the location* as opposed to an individual consumer. Satellite dishes have a brief life of just a few years and require replacement as they age and as the technology is upgraded. In addition, satellite dishes may require replacement at consumer locations when old occupants depart and new ones arrive.
- **An obligation to provide parity of speeds and pricing to BEAD-funded locations as are offered to non-subsidized locations.** The Commission notes that NTIA's proposed Mbps standard is lower than most Starlink customers currently experience. This low technical standard and the fact that a location is BEAD-funded should not create risk of provision of lower-speed services to BEAD-funded locations, including those where the consumer uses the low-cost service offering, than to other locations served by the LEO provider.

Commission Comment 4: Opportunity to Submit Reply Comments

Given the broad impacts of this proposal and the limited time to comment, the NTIA should make comments received publicly available, and provide an opportunity for reply comments.

Thank you again for this opportunity.

Sincerely,

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/s/ Ian P. Culver

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