

September 10, 2024

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

**Re: Comments in the matter of the Broadband Equity, Access, and Deployment (BEAD)
Program: Alternative Broadband Technology Policy Notice**

Dear Administrator Davidson:

We, a coalition of public interest stakeholders, write to commend the release of NTIA's guidance for using alternative broadband technology under the Broadband, Equity Access and Deployment (BEAD) program.¹ We also offer the following considerations to ensure that this change is implemented seamlessly and states can leverage the innovative techniques created by low-earth-orbit (LEO) satellite technology and fixed wireless technologies.

Over the past several years, we have advocated for a tech neutral approach that enables states to leverage different technologies that are better suited to close the digital divide given some regional and topographical challenges faced by states like West Virginia, Colorado, or Kentucky. After years of uncertainty about the BEAD program, it is clear that these alternative technologies are the only way for NTIA to make real progress on its stated endeavors of connecting more Americans. We believe that this Draft Guidance overall is a step in the right direction to accomplish that goal and is consistent with the bipartisan approach passed in the Infrastructure Investment and Jobs Act (IIJA).

The Department of Commerce at large has long realized that it would have to extend its gaze beyond traditional deployment schemes to ensure we get the most out of this historic \$42.5 billion investment aimed at closing the digital divide. Indeed, the Department's Office of the Inspector General (OIG) highlighted how the BEAD program must be technology neutral to fit the broadband needs of the different states and territories. The OIG acknowledged that NTIA's fiber preference and Extremely High-Cost threshold would make this bipartisan objective near-impossible to achieve. In fact, the OIG even noted the BEAD's limited resources did not support a fiber preference.

The data demonstrates exactly that. Last year, *The Wall Street Journal* posted an article explaining how alternative technologies hold great promise to provide connectivity cost-effectively in hard to reach areas. As the report noted, in a rural Nebraskan community it could

¹ Proposed BEAD Alternative Broadband Technology Guidance, NTIA (2024), available at https://broadbandusa.ntia.doc.gov/sites/default/files/2024-08/Draft_BEAD_Alternative_Broadband_Technology_Policy_Notice_for_Public_Comment.pdf (Draft Guidance).

cost \$53,000 for a fiber connection to a single home.² In Montana, it was estimated a connection could be upwards of \$300,000, while alternative technologies could provide high speed Internet access for a miniscule fraction of the cost.³

Ignoring innovations, such as LEO satellite technologies, will make the BEAD program a “deploy as much fiber as possible” program instead of the “connect every American” program that Congress directed.⁴

A key reason why the IIJA passed with bipartisan support is because legislators on both sides of the aisle recognize that a tech neutral approach is best. Congress did not hide the ball here; the IIJA literally defines a “covered broadband project” as “a competitively and *technologically neutral project* for the deployment of fixed broadband service that provides qualifying broadband service in an eligible service area.”⁵ What is more, thousands of pages of congressional findings and numerous congressional hearings drew Congress to one conclusion: Tying BEAD funds to one technology, like fiber, would be untenable if we want to connect the otherwise unreachable.

It is why the Draft Guidance identifying how LEO broadband can assist in the BEAD’s goal of universal broadband is a welcome development. Emerging satellite companies, such as Space X’s Starlink and Amazon’s Project Kuiper, are already picking up more slack to expand the reach of traditional internet access providers. LEO broadband should be a tool in every state’s toolkit and the BEAD should support states’ use of those technologies, full stop.

LEOs offer significant potential in delivering high-speed, low-latency connectivity, addressing gaps where traditional wired and wireless networks may be lacking. LEO broadband providers’ current partnership with legacy providers offer consumers in rural and underserved areas a combination of cable and satellite internet services, which ensures connectivity and more broadband options to consumers that were originally viewed as unreachable.⁶

LEO-satellite broadband and advanced fixed wireless providers are not only delivering results and servicing customers in hard to reach areas, but they are also exceeding BEAD speed and latency requirements. LEO broadband providers are even exhibiting speeds and latency that far exceed current BEAD standard “of not less than 100 megabits per second (Mbps) for downloads

² Ryan Tracy, *The \$53,000 Connection: The High Cost of High-Speed Internet for Everyone*, Wall Street Journal (Sep. 5, 2023, 5:03 AM), <https://www.wsj.com/us-news/the-53-000-connection-the-high-cost-of-high-speed-internet-for-everyone-c903163f>.

³ *Id.*

⁴ Dept. of Commerce, *Management Alert: Challenges Industry Stakeholders Face with Broadband Deployment*, Report (2024), <https://www.oversight.gov/report/DOC/Management-Alert-Challenges-Industry-Stakeholders-Face-Broadband-Deployment>

⁵ 47 U.S.C. § 1705(a)(4) (emphasis added).

⁶ Reuters, *Comcast, Starlink Sign Deal to Provide Satellite-Based Connectivity to Businesses*, Reuters (Jun. 21, 2024), [https://www.reuters.com/technology/comcast-starlink-sign-deal-provide-satellite-based-connectivity-businesses-2024-06-21/#:~:text=The%20deal%20is%20the%20first,from%20Amazon.com's%20\(AMZN](https://www.reuters.com/technology/comcast-starlink-sign-deal-provide-satellite-based-connectivity-businesses-2024-06-21/#:~:text=The%20deal%20is%20the%20first,from%20Amazon.com's%20(AMZN).

and 20 Mbps for uploads and latency less than or equal to 100 milliseconds.”⁷ Starlink reported “download speeds reaching a maximum of 265 Mbps...”⁸ Those speeds are already comparable alternatives to traditional wireless carriers and even some fiber providers. And the technology only continues to improve.

Frankly, we need this holistic approach if we want to reach rural Americans and assure the bipartisan goal of ubiquitous broadband in general.

While we are excited to see this Draft Guidance released, we also want to take the opportunity to share some of the concerns we have with aspects of the guidance that could hinder the success of NTIA’s plan and, more importantly, state ability to connect rural Americans.

First, NTIA’s framework, in its current form, creates far too narrow a path for alternative technology providers to participate in the BEAD. Many of the scenarios within the various “Cases” will make it nearly impossible for states to leverage the innovation to serve the most vulnerable and disparately situated American families. Similar to the FCC’s application of its novel standard in the Rural Digital Opportunity Fund (RDOF) to Starlink, NTIA, too, creates an “entirely new standard of review that no entity could ever pass and then applies that novel standard to only one [type of] entity: [LEO-enabled broadband providers].”⁹

To be sure, the Draft Guidance creates arduous and even contradictory considerations that lead states to one decision: choose fiber over LEOs. Take Case 2, for example. It states that an Alternative Technology must demonstrate a capability “*to prevent competition with a potential BEAD-funded provider.*”¹⁰ This seems to mean that states should disqualify an Alternative Technology provider if another NTIA-preferred BEAD recipient can potentially compete in the same area—even if that outcome is unlikely. As implemented, this could very well prevent individual states from being able to even get to Case 3 and give the impression that they are unable to consider other Alternative Technology providers altogether.

Even more concerning is that the Draft Guidance takes key decisions on broadband deployment right out of a state’s hands. Its requirement for Alternative Technology providers to dedicate 5 Mbps of capacity (or 2 TBs of usage per month) to each subscribing broadband serviceable location is a prime example.¹¹ As NTIA is clearly aware, all technologies vary in their performance. It is why NTIA needs to afford states, in tandem with Alternative Technology providers, the flexibility to determine what level of capacity is sufficient to ensure compliance with the BEAD service standards and ongoing performance measurement testing. NTIA creating this incredibly high standard with no substantiation is highly inappropriate, because the statute

⁷ IIJA § 60102(h)(4).

⁸ Brian Westover, *2024 Starlink Tests: Space X’s Satellite Internet Keeps Getting Better*, PC Magazine (Mar. 6, 2024), <https://www.pcmag.com/articles/2024-starlink-speed-tests-spacex-satellite-internet>.

⁹ *Application for Review of Starlink Services, LLC, Rural Digital Opportunity Fund, Rural Digital Opportunity Fund (Auction 904), Viasat Auction 904 Application for Review*, WC Docket No. 19126, OEA Docket No. 20-34, GN Docket No. 21-231, Order on Review (Commissioner Carr Dissent).

¹⁰ Draft Guidance, p. 8.

¹¹ *Id.*

clearly provides the states with the discretion to set standards based on their unique needs given that they (not NTIA) are the “covered partner” with those providers.¹²

Another area where we see federal overreach is the Proposed Guidance’s Volume II as the deciding criteria. Candidly, states should be empowered to run a separate application round for Alternative Technology providers when Eligible Locations and expectations for such providers are more clearly defined. Again, states, not NTIA, bear the ultimate burden to ensure the success of their respective programs; tying state agencies to a one-size-fits-all deciding criteria can hamstring them. Instead, the NTIA should empower states to run their own programs that help them find cost-effective solutions to close the digital divide within their borders.

Another thing to consider here is that states like Florida, Louisiana, and Virginia are already implementing tech neutral policies. This Draft Guidance can not only force them to go back to the drawing board in the immediate term, but also effectively (and ironically) take LEO-satellite and fixed wireless technologies off the table.

Second, the Draft Guidance’s failure to provide any justification or real explanation as to why these metrics are necessary serves only to promote more administrative challenges for a state using Alternative Technology providers at the subgrantee level. For instance, in Case 2, the Draft Guidance asks states to “give an Alternative Technology provider that is currently offering services the opportunity to demonstrate to the Eligible Entity its capability to offer BEAD qualifying services to all locations in the project area.” But NTIA provides no objective standard on which these states can rely to assess claims from Alternative Technology providers who assert that the area is already served. In other words, state agencies would have no guidance to verify the validity of the challenger’s claims, which requires state agencies to take a competitor of a subgrantee at their word alone. This requirement without an objective standard can only disincentivize states from evaluating an Alternative Technology entirely. This further pushes states away from alternative broadband technologies and toward fiber builds because their decisions to incorporate alternative broadband would almost certainly be challenged by other stakeholders.

Even worse is that no analogous consideration is present in any other technology, especially fiber. NTIA is arbitrarily singling LEO-based and fixed wireless broadband out with almost no justification. The requirements as written only add to the backlog and ongoing delays BEAD is experiencing because they create new administrative grounds for stakeholders to challenge a subgrant.

* * *

Moving forward with Alternative Technology guidance could be the lifeline needed for the BEAD Program to successfully fulfill its stated goals of increased connectivity across the nation. However, failure to develop coherent rules and procedures for Alternative Technology providers

¹² 47 U.S.C. § 1705(a)(5)(A).

and the states will undermine its effectiveness. It is imperative for NTIA to get this guidance right to make sure taxpayer resources are used correctly to close the digital divide.

In sum, the Draft Guidance as currently written would have the same effect as the FCC's decision to disallow Starlink's participation in RDOF: it will "leave[] rural communities stuck on the wrong side of the digital divide."¹³ Worse, the Draft Guidance will further encumber BEAD's already burdensome fund distribution with new grounds to challenge subgrants. Instead, it should allow states more flexibility to manage their programs as Congress intended.

Sincerely,

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*Signing in an individual capacity

¹³ Commissioner Carr Dissent.