

September 10, 2024

The Texas Broadband Development Office (BDO) appreciates the opportunity to submit questions and feedback on the National Telecommunications and Information Administration's (NTIA) proposed guidance regarding the selection of Alternative Technologies for the Broadband Equity Access and Deployment (BEAD) Program.

It is important that NTIA remembers that Texas is an expansive and incredibly diverse state, both geographically and demographically, and the BDO is working to expand reliable broadband access to every corner of Texas. To achieve the goals set forth by Congress' bipartisan legislation we need increased flexibility and simplicity on an already complex program, not more bureaucracy and administrative "red tape". NTIA should avoid implementing new rules that restrict the BDO's ability to expand internet access to the populations that need it most. The BDO's questions and comments provided below are intended to add greater clarity to NTIA's newly published guidance on Alternative Technology are to help the BDO's successfully implement the BEAD program in Texas.

Overall comments/questions:

1. As our office has previously communicated, Texas is an expansive and incredibly diverse state, both geographically and demographically, necessitating increased flexibility in the evaluation and use of technology to address Texas' unique challenges and to counter-balance supply chain issues; however, NTIA has instead written guidance that restrict our ability to expand internet access to the populations that need it the most. While we appreciate that NTIA is considering alternative technologies, it needs to do so without unnecessary restrictions and limitations.
2. The guidance contains many statements that "Eligible Entity must..." do X, suggesting that this guidance is not meant to be optional. Will NTIA allow Eligible Entities to adopt elements of the guidance or make necessary adjustments to better serve the state?
3. Will NTIA require Eligible Entities to update their drafted Initial Proposal Volume II (IPV2) to demonstrate compliance with NTIA's forthcoming final alternative technology guidance? If NTIA will not require the update, will NTIA give an Eligible Entity the opportunity and time to amend the approved IPV2?

Section 2: Definitions

1. The proposed guidance uses the term "served" in a way that does not align with the definitions currently outlined in the BEAD NOFO. Under the BEAD NOFO, an "unserved location" is a broadband serviceable location (BSL) that lacks access at 25/3 Mbps using reliable broadband service and is eligible to receive BEAD funding. However, under the proposed guidance, a location that would be otherwise be considered unserved under the BEAD NOFO would nevertheless be ineligible to receive BEAD funding if the location has access to alternative technology service as contemplated under Case 2.
 - a. Does this proposed guidance effectively create a new category of BSLs?
 - i. Served location
 - ii. Underserved location
 - iii. Unserved location
 - iv. Unserved location that is ineligible (new)
 - b. If it does not create a new category, can NTIA amend the definition of an "unserved location" in the BEAD NOFO to address this conflict?
 - c. If NTIA does not update the definition for a "unserved location" to incorporate in the proposed guidance, how will that affect the ability of an Eligible Entity to fulfill its obligation to provide service to every unserved location in their jurisdiction? Will Eligible Entities be allowed to award funding for underserved locations once all unserved locations other than the now ineligible locations are served? Asked differently, in what order of priority must an Eligible Entity award BEAD funding?

2. Will NTIA issue an update to the definition of “served” to account for locations serviced by alternative technology projects and ensure Eligible Entities remains compliant with the BEAD NOFO?

Section 3.2 Case 2: Provider Can Demonstrate that It Currently Meets BEAD Requirements for alternative Technology Deployments

1. In Section 3.2, page 8, the proposed guidance requires the Eligible Entity to “consider factors relevant to financial, managerial, technical, and operational capacity that affect the ability of the provider to adequately serve the locations in question” of a provider that will NOT receive any BEAD funding for those locations.
 - a. Does an Eligible Entity need to receive NTIA approval of how it intends to consider these factors for a provider before starting the competitive subgrantee selection process?
2. In Section 3.2, page 8, the proposed guidance indicates that NTIA tacitly accepts that Alternative Technology providers “presumably have an interest in demonstrating such a capability to prevent competition with a potential BEAD-funded provider.” Can NTIA clarify how allowing providers that are able to demonstrate it currently meets BEAD Requirements to make otherwise eligible locations ineligible before a competitive subgrantee selection process maintains the competitive requirement outlined in the BEAD NOFO?
3. In Section 3.2, page 9, the guidance requires an Eligible Entity to provide “at least seven days” for Alternative Technology Providers to indicate an interest in qualifying under Case 2.
 - a. Does NTIA consider the seven days a minimum number of days with Eligible Entities allowing a longer period of time to indicate interest?
 - b. In this instance, does NTIA expect an Eligible Entity to provide at least seven calendar days or business days?
4. The requirement to give existing providers seven days to indicate interest, followed by a 30-day window for documentation, adds further pressure to the already constrained timeline. Will NTIA allow Eligible Entities to shorten the 30-day window to better align with other program timelines or allow Eligible Entities to set their own timeline that could help mitigate delays and allow Eligible Entities to meet the deadline while ensuring thorough evaluation and compliance?
5. Will NTIA extend the project timeline to allow the Eligible Entity to meet the new requirements? If not, will NTIA clarify that the proposed 7-day/30-day period can be executed concurrently with other direct negotiation activities after the end of an Eligible Entity's primary subgrantee selection rounds.
6. Will NTIA provide a definition for “reasonable and necessary” regarding the additional information needed to determine the sufficiency of the existing service explained on page 8 of the draft guidance?
7. In Section 3.2, page 8, the guidance notes that “to show technical capacity, existing Alternative Technology providers must demonstrate that they can provide a capacity of at least 5 Mbps or a usage allowance of 2 Terabytes (TBs) per month for each broadband serviceable location (BSL) in the project area within four years. Will NTIA clarify that the proposed “capacity” metrics are permissible but not mandatory standards? Will Eligible Entities have the flexibility to assess whether an alternative technology provider meets or could meet BEAD performance standards within four years?

Section 3.3 Case 3: BEAD Investments in Alternative Technology

1. Section 3.3 states that Alternative Technology providers that were identified as serving locations under Case 2 but did not respond to the Eligible Entity in a timely manner may be determined to be “incapable of ‘carrying out activities funded by the subgrant in a competent manner’ and lack the ‘managerial capacity’ to ‘meet... such as other requirements as have been prescribed by the Assistant Secretary.’” The proposed guidance states such providers are ineligible to become BEAD subgrantees for these locations. Are Eligible Entities required to make such a determination or, as

the language suggests, is making such a determination permissive? That is, notwithstanding that an alternative technology provider did not respond, may an Eligible Entity consider evidence of technical and managerial capacity of such an applicant or is the alternative technology provider automatically disqualified from receiving BEAD funding for those locations?

Section 4: Awarding Alternative Broadband Technology Subgrants

1. NTIA's BEAD NOFO prioritizes the connection of end user locations using fiber or other reliable broadband service technologies but permits the use of alternative technologies where a competitive proposal is not received for an "unserved location" or the location exceeds the EHCPLT and the alternative technology can be deployed to the location at a less expensively. However, the proposed guidance upends that published guidance by prohibiting the use of BEAD funding for alternative technologies if the location is already served with alternative technologies that meet the BEAD performance requirements and an alternative technology provider certifies that they can meet the BEAD performance requirements. At the same time, the proposed guidance acknowledges that acquisition and installation costs associated with alternative technologies can be substantially higher than costs associated with other last-mile broadband technologies. For that reason, the proposed guidance requires Eligible Entities to include in any subgrant agreement the cost of eligible, non-recurring fees charged to new subscribers where an alternative technology firm does not already provide service to a location. Will NTIA consider limiting the prohibition of the use of BEAD funding in Case 2 to infrastructure or network capacity grants and allow Eligible Entities to use BEAD funding for the acquisition and installation of end-user equipment to support deployment of broadband service to locations currently identified as unserved regardless of whether an alternative technology company provides access to qualifying service in the area?

Section 4.1: Selection Mechanism

1. On page 10 the proposed guidance outlines two methods an Eligible Entity may award subgrants for Alternative Technology projects including:
 - a. A competitive subgrantee selection rounds open to all types of eligible providers and technologies, or,
 - b. Following a subgrantee selection process open to Priority Broadband Service and Reliable Broadband Service projects, a competitive subgrantee selection round seeking only Alternative Technology proposals
2. Is NTIA requiring Eligible Entities to run two separate subgrantee selection rounds to accommodate the "unique nature of these solutions" mentioned in Section 4.2, page 11 of the proposed guidance?
3. If NTIA anticipates two separate rounds of competitive subgrantee selection, will NTIA provide an extension from the initial 365-day period of performance (see Section II.B of the BEAD NOFO) to complete all necessary administrative tasks now being required by NTIA?

Section 4.3: Subgrantee Obligations

1. For any potential BEAD funded project that includes wireless or satellite service to end users, does the end-user terminal hardware become part of the location's infrastructure, similar to a fiber connection becoming part of the infrastructure of the location, preventing individuals from moving the terminal from their location? Or will NTIA require the BEAD funded provider to provide service to the same individual upon moving from the BEAD covered location as well as the new location? How does NTIA expect BEAD funded subgrantees to manage end-user terminal hardware?

Section 4.4: Additional Flexibility for Subgrants for Last Mile LEO Deployments

1. In Section 4.4, page 15, the proposed guidance indicates that Eligible Entities are required to estimate the amount of BEAD funding that will be needed during the period of performance to reimburse recipients of LEO Capacity Subgrants. Can NTIA clarify that LEO Capacity Subgrantees will be subsidized for up to ten years post-award to continue to offer BEAD qualifying service?

Given that LEO services do not present state/local specific questions, a clear national framework for how to assess reasonableness of costs will provide efficiency and certainty in the BEAD subgrant selection process.

2. In Section 4.4, page 15, the proposed guidance states Eligible Entities must estimate the amount of BEAD funding that will be needed during the period of performance to reimburse recipients of LEO Capacity Subgrants. Would NTIA be able to provide Eligible Entities the flexibility to structure reimbursements so they are tied to certain deployment milestones that would better allow Eligible Entities to ensure accountability, progress tracking, and providing a structured approach to the use of funds instead?
3. In Section 4.4, page 15, the proposed guidance indicates that Eligible Entities must estimate the amount of BEAD funding that will be needed during the period of performance to reimburse recipients of LEO Capacity Subgrants. NTIA states that an acceptable estimate would be 50 percent of the covered locations within a project area subscribing to broadband service from the date upon which service is available and continuing through the conclusion of the period of performance. Will the NTIA allow Eligible Entities to set their own adoption threshold? This flexibility will ensure Eligible Entities can determine an appropriate rate that reflects estimated adoption for the local context. Every state and region of the country will be different based on economics, accessibility of other options, and existing and planned adoption programs.

Appendix 1: Additional Areas for Input

Question 1: Reimbursement should be tied to certain deployment milestones, like the BEAD program's recommended fixed amount subaward approach for reliable broadband deployments. This ensures accountability and progress tracking, providing a structured approach to the use of funds.

1. Question 2: No response.
2. Question 3: No response.
3. Question 4: NTIA should provide additional guidance on the anticipated requirements regarding the low-cost service option for Alternative Technology providers funded through the BEAD program.
4. Question 4: NTIA should provide additional guidance on the anticipated requirements regarding the low-cost service option for Alternative Technology providers funded through the BEAD program.
5. Question 5: NTIA should establish a singular, standardized criteria for reviewing technical capability so that the burden of evaluating LEO Capacity Subgrantees' delivery of adequate service to BEAD locations would not fall on each Eligible Entity and create an inconsistent patchwork for LEO providers that claim to serve all 56 states and territories. NTIA should develop other opt-in modules and templates that Eligible Entities could use in dealing with LEO Capacity Subgrantees, without precluding distinctive approaches.
NTIA should also provide specific guidance on reasonable subgrant costs for LEO services, possibly based on the "capacity reservation" approach outlined in the drafted guidance. Given that LEO services do not present state/local specific questions, a clear national framework for how to assess reasonableness of costs will provide efficiency and certainty in the BEAD subgrant selection process.
NTIA should expedite and quickly approve any extension waivers it receives for the 365-day timeline for Eligible Entities to run their subgrantee process given the significant additional time required to consider alternative technologies as laid out in the draft guidance.
6. Question 6: No response.