

**Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration**

Broadband Equity, Access, and Deployment (BEAD)
Program: Alternative Broadband Technology Policy

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) commends NTIA for drafting guidance regarding the use of Alternative Technologies in the BEAD program.¹ NTIA previously has identified fiber-to-the-home (FTTH) and other “reliable broadband” technologies that should be used for BEAD projects whenever feasible. We recognize that, in some states, the goal of reaching all Americans with broadband cannot be achieved without the use of less robust Alternative Technologies, such as low earth orbit (LEO) satellites, in certain defined circumstances. As NTIA has made clear, however – and as the Draft Guidance reflects – Eligible Entities should work to ensure maximum feasible deployment of FTTH within their jurisdictions, followed by maximum feasible deployment of Reliable Broadband Services, as that term is defined by the Notice of Funding Opportunity (NOFO), before resorting to Alternative Technologies. Given the extensive federal and state work that has gone into developing the BEAD Program, and all the work still to come, it is important that NTIA remain firm in implementing this vision. NCTA offers these brief comments to help ensure that the final Alternative Technologies Guidance is not misinterpreted as providing license for the selection of

¹ Proposed BEAD Alternative Broadband Technology Guidance, National Telecommunications and Information Administration (NTIA) (Aug. 26, 2024) (Draft Guidance).

second- or third-best technologies where more reliable, sustainable, and scalable deployments are feasible.²

As the NOFO makes clear, BEAD funds should be used wherever feasible to deploy FTTH to guarantee that BEAD networks can deliver the broadband speeds consumers need now and in the future.³ Short of that, the program should focus on networks using hybrid fiber-coax (HFC) and other robust and scalable technologies defined in the NOFO as “Reliable Broadband Service.”⁴ Only where the use of such technologies is genuinely too costly to bring all locations online should an Eligible Entity (i.e., a state broadband office) be permitted to consider alternatives such as LEO satellites.

NCTA appreciates that the Draft Guidance is largely consistent with these principles. However, it also recognizes that providers of Alternative Technologies have campaigned to dilute or reverse the BEAD Program’s technology-choice mandates. Given the complexities of the BEAD program requirements, NCTA respectfully asks NTIA to ensure that the following six points remain clear as it finalizes the Guidance, and to articulate them in one place for the avoidance of any doubt by Eligible Entities or potential subgrantees:

Eligible Entities Must Effectuate the NOFO’s Technology Hierarchy. First, NTIA should remain firm in stating that the BEAD Program “establishes a clear hierarchy for awarding Unserved and Underserved Service Projects: (1) Priority Broadband Projects (end-to-end fiber); (2) other Reliable Broadband Service Projects; and then (3) alternative technology projects” only

² To this end, NTIA is correct to emphasize that the Alternative Technology Guidance “elaborates on, but does not replace, [the] requirements outlined in the [BEAD Notice of Funding Opportunity].” Draft Guidance at 1.

³ NTIA, Notice of Funding Opportunity, Broadband Equity, Access, and Deployment Program, at 35-46 (2022) (NOFO).

⁴ NOFO at 15.

in cases where all proposed Reliable Broadband Service Projects exceed the Extremely High Cost Per Location Threshold (EHCPLT).⁵ While many technologies have roles to play in achieving the goal of extending broadband networks to all Americans, NTIA correctly distinguished among different types of technologies based on their long-term robustness and scalability. NTIA should leave no doubt that its Alternative Technology Guidance is meant to inform and reinforce – not erode or reverse – its prior determinations on this front.

Eligible Entities Must Set Appropriate EHCPLTs. Second, NTIA should reiterate that “[e]ach Eligible Entity must establish its Extremely High Cost Per Location Threshold in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements set out [in the NOFO],” and “expects Eligible Entities to set the [EHCPLT] as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible.”⁶ While NCTA understands that there may be situations where a state has concerns about stretching its allocated BEAD funding to cover all unserved and underserved homes, NTIA is correct that the best result for American consumers is to encourage states to maximize deployment of fiber and other Reliable Broadband Services rather than compromise by funding alternative technologies, when setting the EHCPLT. Setting the EHCPLT too low could result in Eligible Entities choosing Alternative Technologies that cannot scale to faster speeds and that will have a short shelf-life, meaning that five to ten years from now, those same areas could be unserved or underserved again. Such a result would be

⁵ Draft Guidance at 4; *see* Selecting the Most Robust, Affordable Scalable Technology Guidance at 3, 4 (“As Eligible Entities conduct their subgrantee selection processes, they must seek the highest-priority technology feasible at each location.”).

⁶ NOFO at 13 n.6; *id.* at 31; *see also* NTIA, BEAD Selecting the Most Robust, Affordable Scalable Technology Policy Notice, at 6 (2024).

antithetical to the very purpose of the BEAD program. Thus, NTIA should clarify that it stands ready to reject the Final Proposal of any Eligible Entity that sets an artificially low EHCPLT.

Assistant Secretary Approval Required for Rejecting FTTH. Third, along the same lines, NTIA should reiterate that an Eligible Entity may only reject a proposed FTTH deployment “with the approval of the Assistant Secretary,” whether on the basis “that the location surpasses the [EHCPLT], or for other valid reasons approved by the Assistant Secretary.”⁷ Where a provider is willing and able to deploy FTTH service subject to the requirements of the BEAD program, the bar for rejecting that bid should be extremely high.

Alternative Technologies Are Only Fundable Where No Reliable Broadband Service Proposed at (or below) the EHCPLT and They Must Meet the Program’s Technical Requirements. Fourth, NTIA should reaffirm that an Eligible Entity may only select an Alternative Technology for BEAD funding “[i]f no Reliable Broadband Service technology meeting the BEAD Program’s technical requirements would be deployable for a subsidy of less than [the EHCPLT],” and that even in this case, the technology chosen must “otherwise satisf[y] the Program’s technical requirements,” including the requirement to deploy service with speeds of at least 100 Mbps down/20 Mbps up and latency less than or equal to 100 ms.⁸

Significantly, we ask NTIA to make clear that, in furtherance of the BEAD Program’s goals, where a potential subgrantee submits a proposal for a Reliable Broadband Service at a per-location cost in excess of the EHCPLT, the Eligible Entity is required to work with that would-be subgrantee to determine whether it is possible to reduce the proposed offering’s per-location cost

⁷ NOFO at 14; *see also id.* at 42.

⁸ NOFO at 38; *see also* Draft Guidance at 4 (“Alternative Technology” permitted only “where the cost to deploy Reliable Broadband Service exceeds the [EHCPLT] and where the use of an alternative technology would be less expensive”); *id.* at 10.

before “carefully consider[ing] the capabilities of existing Alternative Technology network services and existing enforceable commitments to deploy such technologies” or resorting to an Alternative Technology.⁹ Requiring this additional step where there is a bid from a Reliable Broadband Service provider is far preferable to simply determining that “BEAD investments to those locations will not be considered necessary” based on an enforceable commitment or existing service from an Alternative Technology provider.¹⁰

In addition, NTIA should continue to be clear that, before an Alternative Technology provider is selected, it “must demonstrate that [it] 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.”¹¹ An Alternative Technology that cannot meet these standards should be ineligible for BEAD funding.

NCTA applauds NTIA for proposing to adopt this network capacity demonstration, and requests that NTIA clarify this technical demonstration is required for *any* wireless service to be eligible for BEAD funding, whether it is considered a “Reliable Broadband Service” or an Alternative Technology. Notably, in several other programs, NTIA has previously defined “qualifying broadband service” to require a wireless provider to offer the speed performance standard “simultaneously to every household in the eligible service area.”¹² Indeed, the Draft

⁹ Draft Guidance at 7. We expect that, to the extent such negotiations take time, NTIA would be favorably inclined toward limited waiver requests of the one-year Final Proposal deadline.

¹⁰ Indeed, NTIA proposes that if “Alternative Technology service is already meeting BEAD program requirements, then BEAD funds are not necessary for those locations and will not be allowed.” Draft Guidance at 8. Removing these *eligible* locations from BEAD funding when there has been a bid from a Reliable Broadband Service without first requiring a negotiation between the Eligible Entity and the bidder risks undermining the goal of ensuring universal high-speed Internet coverage in the United States.

¹¹ Draft Guidance at 8-9.

¹² See, e.g., Broadband Infrastructure Program, Third Set of Frequently Asked Questions (June 23, 2021), <https://broadbandusa.ntia.gov/funding-programs/broadband-infrastructure-program/program-archive>;

Guidance observes that this requirement “reflects industry network dimensioning practices” for *all* fixed wireless services, not just Alternative Technologies.¹³ Given that all wireless services will need to reserve network capacity to ensure that they can simultaneously serve *each* awarded BSL with, at a minimum, the BEAD definition of “qualifying broadband” service,¹⁴ it would make no sense to require this capacity demonstration of Alternative Technologies but *not* technologies that NTIA has deemed to be “reliable.” To the degree that NTIA were to consider an alternative demonstration for “reliable” wireless services, it should nonetheless incorporate the standard that the provider demonstrate that it will reserve sufficient capacity to simultaneously serve each awarded BSL.

Existing Alternative Technologies Are Only Sufficient Where No Reliable Broadband Service Proposed at (or below) the EHCPLT and Provider Makes Required Commitments.

Fifth, NTIA should reiterate that an Eligible Entity may only choose to rely on an existing (i.e., already deployed or committed-to) Alternative Technology solution in lieu of a new BEAD-funded deployment in eligible locations where no prospective subgrantee has submitted an offer to deploy Reliable Broadband Service facilities at costs equal to or below the NTIA-approved EHCPLT and where various other requirements are met.¹⁵ Consistent with the points noted above, where a provider is willing and able to deploy a Reliable Broadband Service, there generally is no reason for an Eligible Entity to relegate consumers to an Alternative Technology. Furthermore, BEAD funds should not be used to overbuild existing “Reliable Broadband

Tribal Broadband Connectivity Program, Frequently Asked Questions (FAQ), <https://broadbandusa.ntia.gov/round-one-awardee-applicant-resource-archive>.

¹³ Draft Guidance at 8 n.25.

¹⁴ NOFO at 37.

¹⁵ Draft Guidance at 6-8.

Service” that has been incorrectly labeled as unreliable due to state challenge processes based on flawed data.¹⁶

Alternative Technologies Are Subject to the Same Obligations as Other BEAD

Deployments. Sixth, NTIA should remain clear that in any circumstance where an Alternative Technology receives BEAD funding for a location, it is subject to all the same requirements that apply to other BEAD deployments, including “network outage limitations, low-cost broadband service option and other service obligations, network management practices, and cybersecurity and supply chain risk management.”¹⁷ In addition, as proposed, NTIA should apply additional requirements necessary to ensure that the Eligible Entity is considering all relevant costs (including, for example, costs for any initial non-recurring fees),¹⁸ and that the selected provider is not recovering more of its costs than warranted.¹⁹

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As the BEAD program enters the critical phase of project selection by Eligible Entities, NTIA should strive to be as clear as possible about the framework that applies. For all the reasons explained above, it is critical that any additional guidance regarding the use of Alternative Technologies conforms to the existing policy decisions NTIA has made, rather than creating new ambiguities or questions that will slow the selection process and risk depriving

¹⁶ For example, the State of Rhode Island, using Ookla speed test that is up to 12 months old, reclassified more than 30,000 locations as underserved, even though 1gig/35 Mbps service is available at 100% of those locations. *See In re Cox Communications*, Rhode Island Comm. Comm., D.O. No. 2024-01 (Sept. 8, 2024). Should Rhode Island’s reclassification stand, BEAD funding could be awarded in these areas, inconsistent with the guidance in this proceeding that BEAD funding not go to areas where Reliable Broadband Service is available.

¹⁷ Draft Guidance. at 9, 11.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 14.

American consumers of the opportunity to receive robust, sustainable, and scalable broadband service.

Respectfully submitted,

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