

September 10, 2024

**VIA E-MAIL: [BEAD@NTIA.gov](mailto:BEAD@NTIA.gov)**

Mr. Evan Feinman  
Director of BEAD  
Office of Internet Connectivity and Growth  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

**Re: Draft BEAD Alternative Broadband Technology Policy Notice for Public Comment**

Dear Director Feinman:

The West Virginia Department of Economic Development, Office of Broadband (WVDED), appreciates the opportunity to provide these comments concerning NTIA's Proposed BEAD Alternative Broadband Technology Guidance. While WVDED recommends changes to the Draft Guidance, it believes that NTIA offering guidance on the role of Alternative Technologies in the BEAD program can help both Eligible Entities administering this program at the state level and potential subgrantees seeking funding. For this reason, WVDED supports efforts to provide guidance while offering the following recommendations on the specific draft offered for comment.

**I. NTIA's Proposed BEAD Alternative Broadband Technology Guidance should not be mandatory for all Eligible Entities.**

The following language in the summary of NTIA's Alternative Technology Guidance implies that this guidance may be optional for Eligible Entities that have an approved IPV2: "Any Eligible Entity that received NTIA approval of Volume II of its BEAD Initial Proposal prior to the publication of this updated guidance and that wishes to modify its Volume II or Initial Proposal Funding Request to reflect this updated guidance should contact its Federal Program Officer for direction."<sup>1</sup>

NTIA should allow Eligible Entities that already have IPV2 approval to use the guidance in a manner that best facilitates or complements the implementation of their approved subgrantee selection process, as Eligible Entities like West Virginia are well into their 12-month window between Initial Proposal approval and Final Proposal Submission. Eligible Entities require flexibility to meet the BEAD schedule requirements.

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<sup>1</sup> Proposed BEAD Alternative Broadband Technology Guidance, "NTIA.gov", August 26, 2024, p. 2, "<https://www.ntia.gov/sites/default/files/publications/bead-alternative-broadband-technology-policy-notice-for-public-comment-final.pdf>"

WVDED has significant concerns that introducing additional mandatory procedural steps that Eligible Entities must complete prior to funding projects from Alternative Technology Providers would endanger the ability of West Virginia and other Eligible Entities to meet the Final Proposal deadlines. Furthermore, these steps are not contemplated in Eligible Entities' Initial Proposal Funding Requests and WVDED is concerned that the process of amending proposed budgets, if required, would not be able to proceed apace with the proposed additional procedural steps.

West Virginia is approximately five months into its 12-month Final Proposal timeline, and the remaining seven-month schedule for subgrantee selection and Final Proposal preparation is already planned out with essentially no extra time to spare.

WVDED has already begun the process of soliciting Alternative Technology subgrant requests as part of its general solicitation of deployment subgrant proposals. Adding to this process more rounds of preparing requests to Alternative Technology Providers with existing service and enforceable commitments, waiting for responses, and evaluating them would not be feasible if required in the time remaining.

**II. If the Alternative Technology Guidance is deemed mandatory for all Eligible Entities, NTIA should assist Eligible Entities to validate Alternative Technology Providers that have enforceable commitments in a timely manner (Section 3.1).**

If NTIA deems this guidance mandatory for all Eligible Entities, including those that already have an approved IPV2, NTIA should assist Eligible Entities by identifying the Alternative Technology Provider projects with enforceable commitment that meet NTIA's threshold for excluding funding of Alternative Technology Projects through BEAD.

Similar to the set of enforceable commitments that NTIA required Eligible Entities use in their own challenge processes, an NTIA-published list of areas excluded from Alternative Technology awards due to enforceable commitments would make it much easier for Eligible Entities like West Virginia to expedite the process and hit their Final Proposal deadlines.

If Eligible Entities must send questions out to the Alternative Technology Providers, NTIA should provide a template of required questions to ask to better support Eligible Entities in this effort. Furthermore, NTIA should allow Eligible Entities to limit inquiries to projects that have enforceable commitments as of the date of submitted state challenge results, with updates beyond this being optional.

**III. NTIA should eliminate the requirement for Eligible Entities to validate that existing service from Alternative Technology Providers meets BEAD requirements prior to making Alternative Provider BEAD subawards. (Section 3.2).**

WVDED believes this process, if required, would increase the difficulty Eligible Entities face to complete prior to their Final Proposal deadlines, will likely not work as described in the Draft Guidance, and is unnecessary as a step separate from soliciting subgrant proposals from Alternative Technology Providers.

The following requirement is detailed in Section 3.2 of the Alternative Technology Guidance: “Case 2 requires the Eligible Entity to determine whether an Alternative Technology provider serving some or all locations in the project area can demonstrate that it currently meets the BEAD Program requirements.” It then requires Eligible Entities to provide two notice periods, which together equal 37 days.<sup>2</sup> This period alone represents 10% of the time allotted to Eligible Entities between the approval of the Initial Proposal and the Final Proposal, and a much greater percentage of the time remaining to West Virginia before its Final Proposal is due. This does not include time needed to prepare the notices and to evaluate responses, which will further extend the time needed to perform this process. This process, if required, would be challenging for Eligible Entities to execute within the time allotted, in addition to all the other procedural requirements of BEAD.

WVDED also submits that the Draft Guidance’s statement, “Alternative Technology providers presumably have an interest in demonstrating such a capability [to offer BEAD qualifying services] to prevent competition with a potential BEAD-funded provider,”<sup>3</sup> does not fully capture the complexity of the dynamic of this proposed process and the tightrope it presents to some respondents and to Eligible Entities. WVDED believes it is very likely that some respondents to this would be Alternative Technology Providers who wish to be eligible for BEAD funding (especially but not necessarily limited to LEO satellite providers). Failure to respond would disqualify these providers under the Draft Guidance.<sup>4</sup> Such a respondent must seek to *not* successfully demonstrate that it meets BEAD requirements currently while not foreclosing the possibility it *could* meet them if funded. WVDED submits that evaluating such respondents is best and most efficiently done by making a proposal for BEAD funding to the Eligible Entity, at which time Eligible Entities can evaluate both that the proposed funding provides a necessary improvement in service and that it would meet BEAD requirements.

If NTIA does not forego requiring this process, it should allow the validation process to happen concurrently with solicitation of funding requests from Alternative Technology Providers. In this case Alternative Technology Providers would have the opportunity to propose that existing service meets BEAD requirements without requesting BEAD funding.

#### **IV. NTIA should streamline the Alternative Technology selection mechanism for areas with only one Alternative Technology provider. (Section 4.1)**

In areas where an Eligible Entity has already solicited applications or pre-applications under a process described in an approved IPv2 and received a response from only one Alternative Technology Provider, the Eligible Entity should be able to directly engage with Alternative Technology Providers without necessarily undertaking additional solicitation of proposals from Alternative Technology Providers. Eligible Entities should be allowed to directly engage with such an Alternative Technology Provider in any area in which it is unable to fund a Reliable Broadband Service project for a subsidy of less than the EHCPLT. Such an application or pre-application process, if it is open to all Alternative Technology Providers and consistent with the approved IPv2, meets the requirements of a fair, open, competitive and transparent process. Conducting a fair, open, competitive, and transparent process does not

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<sup>2</sup> Ibid., p. 9

<sup>3</sup> Ibid., p.8.

<sup>4</sup> Ibid., p.9

guarantee multiple responses. Considering the compressed timelines for Eligible Entities under BEAD, time is of the essence. If an Eligible Entity is faced with limited responses in an area, NTIA should permit it to deal with that situation without delay so that the Eligible Entity can meet its Final Proposal deadline.

**V. NTIA’s proposal to provide Eligible Entities additional flexibility to use BEAD funds for the reservation of network capacity is helpful. (Section 4.4)**

Section 4.4 states: “For the limited purposes of last-mile deployment projects that rely upon LEO technology to deliver last-mile service to the BSL, NTIA will provide Eligible Entities additional flexibility to use BEAD funds for the reservation of network capacity to meet the capacity requirement previously addressed.”<sup>5</sup>

WVDED supports NTIA’s proposal, which addresses some of the challenges WVDED has encountered when attempting to develop an evaluation framework appropriate for LEO satellite applications. This proposal will help LEO service providers and Eligible Entities better understand what type of investments that BEAD funding can support. NTIA has identified that LEO satellite networks are a different kind of investment than terrestrial networks that may require an adjusted framework.

**VI. NTIA should help clarify other baseline requirements for LEO providers, including those for assessment of their financial and operational capabilities, in addition to their technical capabilities. (Section 4.2 and 4.3)**

WVDED agrees with the statement in the Draft Guidance, “The showings submitted by prospective subgrantees seeking to deploy Alternative Technologies may reflect the unique nature of those solutions. Eligible Entities should keep such differences in mind when evaluating the capabilities of subgrantees.”<sup>6</sup> Although NTIA’s proposal clarifies certain technical requirements for funding LEO satellite providers, there are other non-technical ambiguities regarding what makes a LEO eligible to be an approved Alternative Technology Provider. BEAD requires thresholds for organizational competence, managerial commitments and financial standing. There is a limited set of LEO service providers, and generally these providers offer similar services beyond the state level, at a national (and international) scale. WVDED seeks more specific guidance from NTIA on whether it believes that known LEO providers can meet its requirements for organizational competence, managerial commitments and financial standing. Whether a LEO service provider meets the standards NTIA has established for BEAD is unlikely to vary state-by-state. Ambiguity about whether LEO providers meet these standards creates uncertainty for Eligible Entities. Providing more specific guidance will allow Eligible Entities to focus limited time and resources on engagement with providers able to be a part of a Final Proposal NTIA can accept.

WVDED has submitted questions to NTIA regarding some of these issues previously which are not addressed by the Draft Guidance, on topics including:

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<sup>5</sup> Ibid., p. 13

<sup>6</sup> Ibid., p.11

- Standards for audited financial statements and alternatives
- Application of workplace health and safety standards when funded infrastructure is not located within the boundaries of the Eligible Entity
- Applicability of the Professional Engineer certification requirements to space-based networks

**VII. NTIA should provide Eligible Entities with greater certainty regarding the structure of out-year LEO Capacity Subgrant requirements and give Eligible Entities flexibility for budgeting and staffing plans (Appendix A).**

In Appendix A of the Draft Guidance NTIA states, “For Eligible Entities that elect to make LEO Capacity Subgrants, NTIA will issue a no-cost extension of the period of performance for the Eligible Entity’s grant...What actions can NTIA take to reduce the administrative burden associated with BEAD grants after an Eligible Entity has closed out all of the subgrants other than LEO Capacity Subgrants?”<sup>7</sup>

As the required period of performance for an LEO Capacity Subgrant will be 10 years from the date upon which the subgrantee certifies to the Eligible Entity that it began providing broadband service to each customer in the project area that desires broadband service, the Eligible Entity will need to forecast and retain staff and/or contract support for a longer period to monitor the project and report to NTIA. To better facilitate planning so far out into the future, NTIA should provide additional detail and certainty regarding the structure of these late-year requirements and give Eligible Entities budget flexibility to ensure they can staff the program with a longer timeline.

Thank you for the opportunity to provide comments on NTIA’s Proposed BEAD Alternative Broadband Technology Guidance. As always, we appreciate the important state-federal partnership that the BEAD program represents, and we thank you for your careful consideration of these comments.

Sincerely,



Kelly Workman  
Director, West Virginia Office of Broadband

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<sup>7</sup> Ibid., pp. 17-18