

**Before the  
National Telecommunications and Information Administration  
Washington, D.C. 20230**

In the Matter of )  
 )  
BEAD Challenge Process Policy Notice )

**COMMENTS  
OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

**I. INTRODUCTION AND SUMMARY**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these comments in response to the Request for Comment<sup>2</sup> released by the National Telecommunications and Information Administration (“NTIA”) related to implementation of the Broadband Equity, Access, and Deployment (“BEAD”) Program. NTIA seeks comment on a BEAD Challenge Process Policy Notice (“*Draft Policy Notice*”) that outlines a draft of the process by which various entities can “challenge a determination made by the Eligible Entity...as to whether a particular location or community anchor institution is eligible for BEAD funds, including whether a particular location is unserved or underserved.”<sup>3</sup> Among other things, the *Draft Policy Notice* proposes to offer states (Eligible Entities) guidance on how to conduct availability/speed/latency challenges,<sup>4</sup> as well as how these should utilize the Federal Communications Commission’s (“FCC”) Broadband Serviceable Location Fabric (“Fabric”) and its National Broadband Map (“NBM”).

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<sup>1</sup> NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

<sup>2</sup> BEAD Challenge Process Policy, National Telecommunications and Information Administration, Request for Comment (rel. Apr. 25, 2023) (“*Draft Policy Notice*”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at § 7.2.

As a general matter, NTCA supports NTIA’s issuance of the *Draft Policy Notice*. In particular, the “Allowable Challenges” provisions found in Section 7.2 will be a critical part of pursuing the Internet for All goals of the BEAD program. Eligible Entities should have the ability to confirm that coverage claims found on the NBM are accurate such that every consumer within a given area can in fact receive broadband service that meets or exceeds the relevant minimum speed thresholds of 25/3 Mbps (for areas that would otherwise be deemed unserved) or 100/20 Mbps (for areas that would be considered underserved otherwise). Absent this kind of verification, BEAD funds could be denied in areas where they are truly needed, leaving unserved and underserved consumers stranded once again by the failure of the program to address their very real needs. NTCA thus supports the *Draft Policy Notice* and includes suggested modifications to strengthen the processes found therein.

**II. ELIGIBLE ENTITIES’ BEAD CHALLENGE PROCESSES SHOULD ENSURE THAT PROGRAM FUNDS ACHIEVE THE INTERNET FOR ALL GOALS FOUND IN THE IIJA AND ARE UTILIZED TO MAKE AVAILABLE ROBUST NETWORKS THAT CAN KEEP UP WITH CONSUMER DEMAND OVER THE LONG RUN.**

**A. The “Allowable Challenges” found in the *Draft Policy Notice*, with minor modifications, will be an important step in ensuring that the BEAD program is a success.**

NTCA supports the main contours of the “Allowable Challenges” section of the *Draft Policy Notice*,<sup>5</sup> even as certain minor additions/amendments would strengthen the process as discussed further below. The approximately \$42 billion that will be made available to states to pursue the IIJA’s “Internet for All” goals is unprecedented for broadband access; it is unlikely that such a massive one-time influx of capital funding from the federal government for

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<sup>5</sup> *Id.*

broadband deployment will be forthcoming for perhaps decades to come. As such, all stakeholders must work together to avoid squandering this incredible opportunity by ensuring it gets to where it is needed most. This funding will be directed to millions of American consumers that today lack access to even 25/3 service at a time when most other Americans have access to service levels many times in excess of this. While the amount of funding is significant, so is the challenge before us – many of these unserved consumers are unserved for a reason, as no provider has been able to make the business case to reach them. The opportunity to reach these consumers could be missed if the data used to drive decision-making are not thoroughly vetted. The “Allowable Challenges” process provisions in the *Draft Policy Notice* strike a balance by leveraging the NBM as the best possible resource for a starting point, but then taking reasonable steps to ensure that inaccurate coverage and/or service quality claims found on the NBM do not divert BEAD funding away from areas that truly need it.

The “Allowable Challenges” contemplated by the *Draft Policy Notice* should be an important part of ensuring that those claiming certain levels of coverage and service quality can truly deliver service as required and promised to every consumer that seeks service within a given area. By way of example, as NTCA recently noted in a different context:

in a program where the stated objective is ‘Internet for All, a network that is capable in theory of serving anyone at a required level of performance only as long as everyone does not subscribe to service at that desired level cannot credibly be said to represent “Internet for All.” It would fly in the face of a stated mission of universal connectivity if the theoretical capability to deliver service to a single location were to override the demonstrated and confirmed ability to serve all locations.<sup>6</sup>

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<sup>6</sup> NTCA–The Rural Broadband Association letter to The Honorable Alan Davidson, Assistant Secretary of Commerce, National Telecommunications and Information Administration (fil. Apr. 12, 2023), available at: <https://www.ntca.org/sites/default/files/federal-filing/2023-04/4.12.23%20NTCA%20letter%20and%20VPS%20Paper%20to%20NTIA%20response%20to%20WISPA%20FI%20NAL.pdf>

With this in mind, it is critical that Eligible Entities be empowered to consider, and act upon, challenges asserting that a provider claiming coverage cannot in fact deliver on the promised level of performance for all locations that are purportedly served in a given area. For example, claims on the NBM that a fixed wireless provider can provide at least 100/20 to every single location in a given area should be disregarded where it can be established through reasonable technical and engineering showings that the provider would be unable to provide the claimed level of service to every customer if each such customer in that area were to subscribe to that level of service. Absent such a thorough review of actual capability, when presented as part of a challenge, an Eligible Entity could direct BEAD funding away from an area where a provider claims a certain level of service – and consumers that subsequently look to that provider for robust service may find that the limitations of the operator in question leave them without the level of broadband service BEAD was meant to deliver. A properly designed process that allows for presentation of such challenges as to technical capability, based upon well-established and accepted engineering standards, can and should be an important part of ensuring that consumers are not stranded and without the service Congress intended for them to have.

Thus, NTCA was pleased to see the inclusion of the “Allowable Challenges” in the *Draft Policy Notice* – if adopted (and with certain amendments proposed herein), Eligible Entities will have the capability to confirm that NBM coverage data captures the true nature of service available to communities and can direct funds to address needs where they are identified. Such presentations of serious questions as to the technical capability and capacity of a network in a given area, based upon well-grounded engineering data and analysis, should be permitted as examples of allowable challenges with respect to availability (if service is unavailable altogether

in such areas) or speed (if service is available, although likely at a lower level based upon the technical evidence presented).<sup>7</sup>

NTCA encourages NTIA to make other minor modifications to the “Allowable Challenges” and “Evidentiary Requirements”<sup>8</sup> portions of the *Draft Policy Notice*. As an initial matter, the “location eligibility determination” should incorporate an availability scenario not currently contemplated. NTCA member feedback indicates that some consumers’ attempts to subscribe to a service level depicted on the FCC’s NBM have been unsuccessful, with the provider in question offering to provide a lower level of service instead. For example, one member reported that, while the NBM indicated that gigabit symmetrical service was available at a given location, attempts to subscribe to such a service from the provider were met with an offer to provide a materially lower level of service. However, because such a scenario does not appear to fall within the “service request was refused within the last 180 days” evidentiary example,<sup>9</sup> it is unclear whether and to what degree this would be considered a proper basis upon which to register and dispose of a challenge. It should be rightly considered and actionable, however, and the final challenge rules should be modified or clarified to accommodate such circumstances. No location should be denied the benefit of BEAD funds simply when a provider’s own ordering system indicates that only a lower speed of service is available there.

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<sup>7</sup> To be clear, any such challenge should turn upon a detailed network analysis based upon established engineering practices. and not the presentation of, for example, crowdsourced speed test data; the results presented in the latter can often be attributed to factors beyond the provider’s control and/or outside of the provider’s network – including internal conditions at the location in question, configuration of user equipment, etc. – and are thus unreliable as a measure of performance.

<sup>8</sup> *Draft Policy Notice* at § 7.4.

<sup>9</sup> *Id.*

In addition, the “Planned Service” class of challenge<sup>10</sup> and the evidentiary standard a challenger must meet to prevail in such a challenge<sup>11</sup> miss the mark. For one thing, that a provider has merely *applied* for a permit is of little value as an indicator of an intent to build – in many cases, the cost and effort that go into *applying* for a permit are substantially less burdensome than the steps the provider must take to *obtain* the permit. In some cases, the work and expenses associated with engineering, environmental, and historic preservation reviews come only *after* a permit application has been filed. Similarly, construction contracts – unless irrevocable or already at a late stage of performance – are similarly not indicative of a firm intent to undertake broadband deployment. There must be some greater indicator of evidence that the provider in question is on a clear trajectory to completion of a project than permit applications or signed-but-easily-exited contracts for construction, or else the “Planned Service” challenge category risks becoming an exercise in “claim-staking” gamesmanship by providers.

**B. Eligible Entities’ challenge processes should not overly burden participating stakeholders.**

Even as NTCA believes in a thorough review of NBM coverage claims to confirm that what is advertised matches what is available, it is important as well that NTIA guide Eligible Entities in establishing challenge processes such that these do not place undue or excessive burden on the stakeholders participating in these processes (or upon the states themselves). As one example of a measure that would help facilitate sorting and review of challenges, NTIA should require challengers to include the Fabric location ID of any location subject to an “Allowable Challenge.” NTCA members participating in challenge processes with respect to

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<sup>10</sup> *Id.* at § 7.2.

<sup>11</sup> *Id.* at § 7.4.

state grant programs have reported receiving lists of addresses as part of a challenge, thus requiring significant effort to match these to location IDs in billing and/or mapping systems. In addition, a 30-day rebuttal period<sup>12</sup> would be more reasonable than a 14-day timeframe to allow providers of all sizes (and especially smaller providers with fewer staff) to conduct a meaningful review of any challenges raised and present an effective rebuttal. Finally, Eligible Entities' should be required to notify a provider that they are the subject of a challenge<sup>13</sup> – providers should not be expected to monitor the portal on a daily basis when a simple email can alert them as to their responsibility to respond to a challenge.

### III. CONCLUSION

For the reasons set forth above, NTIA should adopt the *Draft Policy Notice*, with modifications proposed herein.

Respectfully submitted,



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<sup>12</sup> *Id.* at § 7.7.

<sup>13</sup> *Id.* at fn 24 states that “[t]he portal may, but does not have to, notify the provider of the challenge by email or API call.”).