May 21, 2024

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

Dear Assistant Secretary Davidson,

This letter is sent on behalf of NTCA–The Rural Broadband Association (NTCA) to follow up on our recent conversation onstage at NTCA's Legislative & Policy Conference, as well as a further discussion in which representatives from Secretary Raimondo's office met with women leaders from NTCA member companies across rural America regarding development and implementation of the Broadband, Equity, Access, and Deployment Program (BEAD). We appreciate your commitment to the success of this program, and the agency's efforts to encourage smaller broadband providers with a track record of successful deployment in rural communities to seek to participate in it.

As you are aware, and as our members shared in their recent meeting, small community-based providers have a longstanding commitment to deploying the best possible networks and delivering the best possible services in rural areas considered economically unfeasible by most other providers. They have participated consistently in prior grant programs overseen by other agencies, and they remain eager to help close the digital divide in unserved areas – much as they already have in the deeply rural areas they serve today. For example, hundreds of NTCA members have participated in various U.S. Department of Agriculture (USDA) loan and grant programs over many decades, as well as the various universal service fund (USF) initiatives overseen by the Federal Communications Commission (FCC) and various State grant programs.

Our members have similarly expressed great hope for the promise of the BEAD program. NTCA continues to hear several concerns, however, with respect to development and implementation of the program that could deter or even preclude participation by smaller providers. More specifically, we believe several critical factors could have a disproportionate material impact upon small rural provider participation: **(1) the size of project service areas; (2) the potentially rigid prescription of rates under the guise of affordability measures; (3) excessive weighting of matching funds; and (4) persistently incorrect broadband maps that may not be corrected in the limited time and through the limited vehicles available to correct them.** We offer further explanation below as to each of these issues, along with suggestions to inform the National Telecommunications and Information Administration (NTIA) as it works with States to finalize policies on these matters and conducts stakeholder outreach and education.

Issue 1: Project Service Area Sizing – Implications for Small Provider Participation and Fiber Deployment

How States, subject to NTIA approval, define the minimum area for service under the BEAD program represents a substantial concern for smaller providers. Experience with prior grant programs confirms that the structuring of project areas directly affects small company participation and ultimately buildout of rural areas. For example, Iowa's September 2021 Notice of Funding Availability (NOFA) 6 was highly successful. Thirty-nine awards, totaling $97.5 million went to 28 small rural providers to offer 100 Mbps symmetrical broadband service. By contrast, Iowa's January 2023 NOFA 7 was marred by systemic problems that failed to adequately address competing applications in the same area, and the available service areas were disjointed in a "checkerboard" pattern. Eighty percent of applicants received reduced awards, and several then rejected the awards because the adjusted service territories could not match rational business or network design plans. Learning from this mistake, Iowa pivoted for NOFA 8 in September 2023 to create Broadband Intervention Zones deemed to be most in need of broadband access. Small rural providers received 35 of 39 awards for more than $127 million in that round. Similarly, in Georgia's first round of grants leveraging American Rescue Plan Act funding, the State permitted providers to select from all unserved locations, and applications were scored based on the applications and any overlaps in locations. Providers determined which areas should be grouped together based on location, their resources, and other legitimate business considerations. However, in its next round, Georgia required providers to serve all unserved eligible locations across a county, regardless of logical tether or distance. This approach drove up the cost per location and only a few providers applied. Only one small provider was successful in winning to serve a county.

The BEAD program should draw upon this experience. Although a State is permitted in BEAD to "solicit proposals . . . at the geographic level of its choosing," it would appear that at least some states are prioritizing administrative efficiency in review of applications at the expense of enabling the creation of service areas that would result in more widespread fiber deployment and promote smaller provider participation. If potential project service areas are drawn too widely – such as across entire rural counties that may span hundreds of square miles or more – this could preclude smaller providers from "edging out" and leveraging existing network assets, instead contemplating sweeping new deployments that demand resources far beyond the wherewithal of many smaller operators. Scoping project service areas in such a manner all but guarantees that the vast majority of projects will be sought – and won – by the largest providers, many of whom lack a track record of meaningful past commitment to rural deployment and service delivery. Moreover, the larger the project area, the less likely consumers are to receive lasting investment in the form of fiber deployment, as the averaging of costs over a vast geography affects the extremely high-cost threshold for locations that otherwise could likely have received proposals for deployment of fiber.[1]

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[1] *See* Cartesian, BEAD Threshold Financial Model, at 13-16 (available at: https://fiberbroadband.org/wp-content/uploads/2023/08/FBA-and-Cartesian_BEAD_High-Cost-Threshold_Webinar.pdf).

By contrast, opportunities to bid on and serve smaller and more cohesive geographic areas maximizes the likelihood of efficient participation by both large and small providers and promotes efficient buildout.[2] Fiber can be economically deployed where feasible, while facilitating the delivery of broadband using alternate technologies specifically for those outlying locations that are more difficult to serve. And, providers who are interested in serving large swaths of territory can always bid upon and aggregate locations into larger project areas. This process would not only encourage small company participation, but also better localize choices for network deployment in a more efficient manner.

Unfortunately, in at least some cases, we may be poised to repeat history when it comes to "over-sizing" project service areas in the context of the BEAD program. As one example, NTCA members situated in West Virginia have expressed concern regarding the State's NTIA-approved Initial Proposal, Volume II.[3] To define where projects will be built, West Virginia plans to publish a list of pre-defined Target Areas that contain Target Locations eligible for BEAD funding; these will then be grouped into Target Regions. Applicants will create a Proposed Project by combining one or more Target Areas. If no proposals to serve a location or group of locations are received, however, the State will impose "Mandatory Line Extension Areas." In other words, even if they attempt to define with specificity those areas that they can serve in first applying, successful applicants could be required to accept up to 20% additional grant funding to build line extensions at the State's discretion. To compound matters, the awardee must then provide the additional matching funds necessary to ensure that additional awarded areas do not cause the overall award to fall below the minimum required match. In short, this process could result in successful applicants being required to assume an additional burden for which they did not apply and may not be able to bear – without any ability whatsoever to know the bounds of that additional burden until after they have "won." This kind of "we will tell you later where you have won" approach is likely to discourage community-based broadband provider participation in West Virginia, meaning that the field of BEAD participants there may consist mostly of larger companies or unproven new entrants unfamiliar with the challenges of serving rural West Virginia.

NTCA therefore urges NTIA, as it reviews State initial proposals, to carefully consider: (a) how defined project service areas can discourage or encourage small rural broadband providers from participating in the BEAD program; and (b) how to maximize the potential for deployment of lasting fiber connectivity as widely as possible even as outlying areas may need to be connected using alternate technologies. We look forward in particular to reviewing upcoming guidance from the agency regarding the use of such technologies and hope that it will incorporate and advance these objectives.

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[2] *See*, *e.g.,* Lehr, William, and Musey, Armand, "Right-sizing Spectrum Auction Licenses: The Case for Smaller Geographic License Areas in the TV Broadcast Incentive Auction" Hasting Communications and Entertainment Law Journal, Vol 37, 2014-15 (Sept. 5, 2014).

[3] It is noteworthy that the only provider cited as one of the "Organizations that Provided Guidance to the Core Planning Committee" is Comcast, *See* West Virginia Volume II, p. 24.

Issue 2: Low-Cost Option and Potential Rate Mandates

The BEAD low-cost option should be structured in a manner to enable sustainable business plans. Affordability is an essential component of the BEAD program, and recipients of funding should be required to provide affordable options to qualifying low-income consumers. But if providers are compelled to offer service to customers at pre-determined artificially low prices without support such as the Affordable Connectivity Program (ACP), this is almost certain to deter participation – especially from among smaller rural providers who, unlike larger providers that serve substantial customer bases in more profitable areas, lack the capability to cross-subsidize such offerings. Even community-based providers and cooperatives committed to rural areas cannot offer services at unsustainable prices.[4]

Many of the rural locations that lack access to reliable broadband service today are unserved or underserved precisely because the costs of serving them – both initially *and* on an ongoing basis – exceed the amount that consumers could afford to pay for service. It is therefore harder in rural areas to keep rates affordable, regardless of any given consumer's income. Consider, for example, a provider that invests $1,000,000 and has 100,000 customers to serve in an urban area; the provider would need only $10 per customer to recover its investment. By contrast, if it takes $1,000,000 to serve only 100 customers, the provider must recover $10,000 per customer. Moreover, the costs of serving a customer of course do not end once the network is built. There are ongoing costs for internet transit as well as operations and maintenance – many of which are higher in rural areas where distances are measured in dozens or hundreds of miles and "truck rolls" consume hours of drivetime – that must be factored into the price per subscriber.

Rather than set an arbitrary and artificially low price as the low-cost option, NTCA recommends that NTIA look to the FCC's long-standing high-cost universal service programs for guidance on affordability issues. The FCC's high-cost USF programs do not subsidize rural rates at a set price, but rather aim for reasonable comparability in prices between urban and rural areas. As a result, the FCC's methodology caps rural rates at "two standard deviations" (often about $20 to $30 per month) higher than they are in urban areas.[5] Many of the FCC's high-cost USF programs also contemplate recovery of *at least* $50 to $60 per month (or slightly more) from rural subscribers,[6] highlighting again the concerns posed by setting arbitrary uniform rates across rural and urban areas alike – even where subsidies aimed at keeping rural rates more affordable are provided. NTCA recommends that NTIA and the States keep such factors in mind in structuring low-cost options and provide greater flexibility as to the contours of such plans in light of the unique challenges presented in serving rural areas.

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[4] Letter from Jim Matheson, CEO, National Rural Electric Cooperative Association, to Alan Davidson, Administrator, NTIA (Dec. 22, 2023), at 1-2 (expressing concerns on the part of electric cooperatives regarding a requirement to offer a $30 service plan in high-cost, low-density areas).

[5] *See* https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources.

[6] *See, e.g., Connect America Fund*, *et al*., WC Docket No. 10-90, *et al*. (rel. July 24, 2023), at ⁋ 70 (establishing a presumption in calculating "enhanced" high-cost USF support that recipients of such support will recover at least $63.69 per month from each rural subscriber).

Moreover, NTCA agrees that BEAD recipients should be required to participate in the ACP, should it be revived, or any successor program thereto. But neither the States nor NTIA through review of initial proposals should prescribe an artificially low and arbitrary rate. Compelling providers to charge such a rate could be unsustainable in many cases (especially across far-reaching rural areas) and thus more likely to discourage BEAD participation by small rural broadband providers – to the detriment of rural consumers most in need of service from committed providers with a vested interest and long-standing track record of performance in rural communities.

Issue 3: Weighting of Matching Funds in BEAD Scoring

Based upon prior experience with various rounds of State grant programs, NTCA members have expressed concern about the impact of excessive weighting on the provision of matching funds in BEAD scoring. NTIA expects States to award grants to applicants that seek the lowest "BEAD program outlay." Taken literally, this appears to favor applicants who can supply more matching funds. It is true that program rules allow matching to be satisfied in other ways such as through state or local grants or in-kind contributions, but this creates an additional level of work to locate and negotiate over such elements that larger organizations with much larger war chests need not address. Moreover, while matching funds are not required in "high cost" areas, States are incented to minimize those areas considered "high cost" and to draw their eligible areas accordingly.

In lieu of a system that empowers larger operators "to buy the business" – which effectively could result in BEAD becoming a "reverse auction" mechanism not unlike the much-derided Rural Digital Opportunity Fund (RDOF) – NTIA should look to programs like the USDA's ReConnect Loan and Grant Program for guidance on finalizing selection rubrics.[7] The ReConnect program generally emphasizes quality over simple prioritization of the lowest bidder, and it has resulted in the distribution of funds to mostly local community-based providers who are delivering broadband.

Indeed, experiences in the Connect America Fund II (CAF Phase II) and the RDOF auctions should sound a cautionary note about the risks of rewarding the lowest bidders as the highest priority. Even as these initiatives clearly helped in closing the digital divide (or will do so in coming years) in some places, there were far too many winners who were ill-suited to meet their obligations upon more qualitative review or who have shown little progress on their commitments as time has passed (or who are actively seeking "amnesty" from defaulting after realizing that "buying the business" was not viable in many deeply rural areas after all). NTIA, in working with the States, should draw upon the lessons learned from these auctions, and place greater scoring emphasis on *a mix* of matching funds and other more qualitative factors that recognize the willingness and proven capability of the winning applicant to perform as promised.

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7 *See* https://www.usda.gov/reconnect.

Issue 4: Mapping

Small rural broadband providers continue to express concern over the state of the national broadband map.[8] Funding decisions are being made based upon unreliable data, and small providers and other stakeholders such as communities are unfairly tasked with addressing chronic and systemic issues at the federal and State level. Case studies across multiple broadband data collection submissions demonstrate repeated repackaging or recasting of challenged coverage claims that demonstrate a lack of any meaningful indication of actual performance. NTCA members express concern that there is insufficient time in the process for sufficient challenges to be presented or addressed. Challenging consistent overreporting of coverage and location errors is not only costing small providers significant time and expense, but it is also undermining confidence in the funding programs that rely on the national broadband map. NTCA urges NTIA to work with the FCC to develop reliable maps and consider enforcement measures in the case of chronic overreporting of coverage, and to ensure the States are empowered to make the corrections needed to the national broadband map to more accurately reflect conditions on the ground.

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In closing, NTCA and its members appreciate NTIA's engagement and openness to communication with stakeholders throughout the process of developing and implementing the BEAD program. The long and winding history of funding programs designed to provide advanced telecommunications services to rural areas can and should be instructive to NTIA and to the States as they complete this process. In identifying the four areas described and discussed in this letter, NTCA is hopeful that changes in direction on them will overcome potential deterrents or even barriers to participation in the BEAD program by small rural providers.

Thank you for your consideration of this letter, and we look forward to continuing to work with NTIA and the States to realize the promise of the BEAD program for the benefit of every American.

Respectfully,

Shirley Bloomfield
Chief Executive Officer

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[8] *See Ex Parte* Letter from Michael R. Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, *Establishing the Digital Opportunity Data Collection, et. al.,* WC Docket No 19-195, *et. al.* (May 2, 2024).