

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

In the Matter of )  
Broadband Equity, Access, and Deployment )  
(BEAD) Program: Alternative Broadband )  
Technology Policy Notice )  
)

**COMMENTS OF COX COMMUNICATIONS, INC.**

Curt Stamp  
Stephen Boggs

Barry Ohlson  
Jennifer Prime

Cox Communications, Inc.  
6205-B Peachtree Dunwoody Road  
Atlanta, GA 30328  
678-645-0260

Cox Enterprises, Inc.  
975 F Street, NW, Suite  
Washington, DC 20004  
202-637-1346

September 10, 2024

## TABLE OF CONTENTS

<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. NTIA’S DRAFT GUIDANCE ILLUMINATES INCONSISTENCIES IN THE STANDARDS THAT ELIGIBLE ENTITIES ARE APPLYING TO DESIGNATE UNSERVED AND UNDERSERVED BROADBAND SERVICEABLE LOCATIONS.... .....</b>	<b>2</b>
<b>III. NTIA SHOULD UTILIZE THE OPPORTUNITY OF THE DRAFT GUIDANCE TO RE-ESTABLISH A CONSISTENT STANDARD FOR DETERMINING UNDERSERVED AND UNSERVED LOCATIONS ACROSS THE BEAD PROGRAM .....</b>	<b>6</b>
<b>IV. CONCLUSION .....</b>	<b>7</b>

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

In the Matter of )  
Broadband Equity, Access, and Deployment )  
(BEAD) Program: Alternative Broadband )  
Technology Policy Notice )  
)

**COMMENTS OF COX COMMUNICATIONS, INC.**

**I. INTRODUCTION**

Cox Communications, Inc. (“Cox”) hereby submits these comments in response to the National Telecommunications and Information Administration (“NTIA”) draft Policy Notice regarding the Broadband, Equity, Access, and Deployment (“BEAD”) Program’s Alternative Broadband Technology guidance.<sup>1</sup> Cox is the fifth largest internet service provider and the largest private broadband company in America, proudly serving nearly seven million homes and businesses across 18 states.<sup>2</sup> Cox supports NTIA’s goal of Internet for All as demonstrated through its \$400 million investment to bring symmetrical gigabit broadband connectivity to more than 100,000 unserved and underserved households across the United States.<sup>3</sup> Cox commends NTIA for seeking to clarify guidance to Eligible Entities on the use of Alternative Technologies as a component of the BEAD program. In accordance with this process, Cox encourages NTIA to

---

<sup>1</sup> NTIA, *Proposed BEAD Alternative Broadband Technology Guidance* (Aug., 26, 2004) (“Draft Guidance”), <https://www.ntia.gov/sites/default/files/publications/bead-alternative-broadband-technology-policy-notice-for-public-comment-final.pdf>.

<sup>2</sup> Cox, Newsroom, Company Overview, Cox Communications Fact Sheet, <https://newsroom.cox.com/-company-overview> (last visited Sept. 9, 2024).

<sup>3</sup> See News Release, Cox, *Cox investing millions in nationwide broadband network expansion projects to reach underserved communities* (June, 02, 2022), <https://newsroom.cox.com/2022-06-02-Cox-investing-millions-in-nationwide-broadband-network-expansion-projects-to-reach-underserved-communities>.

affirm its commitment to consistent requirements across the BEAD program for determining served and unserved locations eligible for BEAD support. NTIA appears to go out of its way in the Draft Guidance to ensure Eligible Entities avoid using BEAD dollars to fund unreliable Alternative Technology projects that would overbuild locations currently served by Alternative Technologies that meet BEAD program requirements. For consistency, this guidance should also be applied to locations currently served by Reliable Technologies per the principle focus of the BEAD program since some Eligible Entities, such as Rhode Island, are disregarding BEAD requirements and categorizing areas currently served by Reliable Broadband Service technologies as unserved or underserved. In response to these inconsistencies, Cox asks NTIA to clarify that (1) Eligible Entities must adhere to consistent and reasonable standards and methodologies in classifying locations as served, unserved, or underserved; and (2) NTIA will disapprove proposals from Eligible Entities that do not adhere to these consistent and reasonable standards.

## **II. NTIA’S DRAFT GUIDANCE ILLUMINATES INCONSISTENCIES IN THE STANDARDS THAT ELIGIBLE ENTITIES ARE APPLYING TO DESIGNATE UNSERVED AND UNDERSERVED BROADBAND SERVICEABLE LOCATIONS**

NTIA’s Draft Guidance rightfully reiterates that BEAD funding should only be applied to “necessary” unserved and underserved project areas<sup>4</sup> by emphasizing that, “[t]he principal focus

---

<sup>4</sup> The Infrastructure Investment and Jobs Act (IIJA), NTIA’s BEAD Notice of Funding Opportunity (“NOFO”) and the Draft Guidance define unserved and underserved locations as:

- *Unserved Location*—A broadband-serviceable location that the Broadband DATA Maps show as (a) having no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 25 Mbps for downloads; (ii) a speed of not less than 3 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds.
- *Underserved Location*—A broadband-serviceable location that is (a) not an unserved location, and (b) that the Broadband DATA Maps show as lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 100 Mbps for downloads; (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds.

of the BEAD Program is to deploy broadband service to all unserved and underserved locations.”<sup>5</sup> In adhering to this principal focus, NTIA makes clear that BEAD funding can only be applied when funding is “necessary,” and BEAD funding is not considered “necessary” where a project area is already served or subject to an enforceable broadband deployment commitment.<sup>6</sup>

Although NTIA makes clear in its Draft Guidance that only project areas designated as unserved and underserved should be funded under the BEAD program, the standards NTIA provides and that Eligible Entities are employing for determining the status of a project are, in practice, inconsistent and contradictory. In its Draft Guidance, NTIA states that, “[i]f [an] Alternative Technology service is already meeting BEAD program requirements, then BEAD funds are not necessary for those locations and will not be allowed.”<sup>7</sup> To make the determination of whether “an Alternative Technology service is already meeting BEAD requirements,” NTIA offers two options:

- “Case 1” requires two steps: (1) the National Broadband Map must indicate an enforceable commitment to deploy an Alternative Technology to some or all locations in the project area; and (2) the enforceable commitment must include “network performance monitoring that verifies that the service is provided at or above the BEAD Program’s benchmark for at least four years.”<sup>8</sup> In terms of a standard of evidence, Eligible Entities must “collect documentation that supports th[e] determination.”<sup>9</sup>
- “Case 2” requires Alternative Technology providers to demonstrate that they can provide a capacity of at least 5 Mbps or a usage allowance of 2 terabytes per month for each broadband serviceable location (“BSL”) in the project area within four years. Here, Eligible Entities are required to gather information about the sufficiency of the existing service by offering Alternative Technology providers the opportunity to demonstrate the

---

See NTIA, BEAD NOFO, at 16, 17 (May 12, 2022) (“BEAD NOFO”), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>; Draft Guidance at 5.

<sup>5</sup> Draft Guidance at 4.

<sup>6</sup> Draft Guidance at 6 7.

<sup>7</sup> *Id.* at 8.

<sup>8</sup> *See id.* at 7.

<sup>9</sup> *See id.* at 8.

capability.<sup>10</sup> The Eligible Entity may also require evidence consistent with their Challenge Process standards.

The Draft Guidance's standard for determining whether an area is served is less rigorous than the standard that NTIA provides in its Model Challenge Process,<sup>11</sup> as well as the standard that many Eligible Entities are employing in their States to determine BEAD eligible locations. As a result, the Draft Guidance provides Alternative Technologies with additional and unique consideration and prominence over Reliable Broadband Service technologies, which is contrary to the BEAD program's priority schema.<sup>12</sup> NTIA appears to go out of its way in the Draft Guidance to ensure Eligible Entities avoid using BEAD dollars to fund unreliable Alternative Technology projects that would overbuild locations currently served by Alternative Technologies that meet BEAD program requirements. On the other hand, some Eligible Entities are disregarding BEAD requirements and categorizing areas currently served by Reliable Broadband Service technologies as unserved and underserved locations, disregarding any concern for funding "necessary" projects.

As an example, in Rhode Island, approximately 30,000 locations in 238 Census Block Groups ("CBGs") served by Cox have been improperly reclassified as underserved based on purported deficiencies of download speed, latency, or a combination of the two. These reclassifications have occurred in areas where Cox has deployed technologies that qualify per NTIA's BEAD definition as Reliable Broadband Service that offer at least 1 Gbps/35 Mbps service and in many instances 2 Gbps/100 Mbps service. These available speeds far exceed the

---

<sup>10</sup> *See id.*

<sup>11</sup> NTIA, Internet for All BEAD Model Challenge Process, Version No. 1.2 (Nov. 1, 2023) ("BEAD Model Challenge Process")

<sup>12</sup> *See id.* at 4 (stating "[t]he BEAD NOFO 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").

definition of Reliable Broadband Service in the BEAD NOFO. If Rhode Island utilized a consistent standard, such as the standard set forth in NTIA’s Draft Guidance, there would be a de minimis number of unserved or underserved locations in those CBGs. Indeed, the current Federal Communications Commission (“FCC”) map lists Rhode Island as 99.3 percent served by broadband.<sup>13</sup>

Rhode Island is also failing to apply a consistent standard for determining served, underserved, and unserved areas in its challenge process. Whereas the NTIA BEAD Model Challenge Process presents a standard that would allow a service provider to rebut an area speed test challenge by providing speed tests for at least 10 percent of the customers in a challenged area,<sup>14</sup> Rhode Island is requiring Internet Service Providers (“ISPs”) to provide speed tests for 75 percent of customers in a challenged area.<sup>15</sup> Based on Cox’s review of multiple Eligible Entity evaluation processes, Rhode Island is the only jurisdiction requiring a 75 percent threshold.<sup>16</sup>

Cox tested all of the Cox-provided modems in all of the impacted CBGs, however, due to the variability of the number of overall customers in each impacted CBG as well as the variability of the number of these customers using the Cox-provided modem in each impacted

---

<sup>13</sup> See Rhode Island Commerce Corporation, *BEAD Initial Proposal*, Volume I, at 20 (May 1, 2024) (“Rhode Island Approved Initial Proposal”). In March of 2022, Cox announced a \$120 million private investment into its infrastructure in Rhode Island including fiber to the home. Matt Paddock, *Cox investing \$120M in bringing high-speed internet access to all of RI*, WPRI.com (Mar. 15, 2022), <https://www.wpri.com/news/local-news/east-bay/cox-investing-120m-in-bringing-high-speed-internet-access-to-all-of-ri/>. Many of the locations designated are either built with fiber today or will be by December of 2025.

<sup>14</sup> See BEAD Model Challenge Process at 20.

<sup>15</sup> See Rhode Island Approved Initial Proposal at 45-46 (stating “[a]n ISP may rebut an Area Challenge lodged with download or upload speed tests as evidence or an Area Speed Test Reclassification lodged with download speed tests by providing speed tests, in the manner described above, for at least 75 percent of the ISP’s customers in the challenged area. The customers must be randomly selected.”).

<sup>16</sup> Cox reviewed the Volume I proposals of multiple Eligible Entities. Of those sampled, Arizona, Arkansas, California, Connecticut, Georgia, Idaho, Iowa, Kansas, Massachusetts, Nebraska, Nevada, North Carolina, Ohio, Delaware, Maine, New York, New Jersey, Pennsylvania, Vermont, and Virginia all applied the 10 percent standard set forth in NTIA’s BEAD Model Challenge Process.

CBG this resulted in testing, on average, approximately 41 percent of its customers in each of the CBGs that required testing. To meet the State's 75 percent threshold for each impacted CBG, Cox would have to run manual tests on the additional customers who do not use Cox-provided modems. This would require a median of 92 field technicians, and as high as approximately 280 field technicians, conducting tests *simultaneously* in each CBG for three straight days. This would result in adverse customer impact during peak hours for three days across hundreds of CBGs throughout the state.

Based on this methodology, it is simply impossible for the speed tests to occur simultaneously as required by Rhode Island approved challenge process. Rhode Island may be but one example of Eligible Entities disregarding BEAD requirements, but it serves as a cautionary tale regarding the concrete impact that such conduct can have on the funding process and the corresponding undercutting of NTIA's goals.

### **III. NTIA SHOULD UTILIZE THE OPPORTUNITY OF THE DRAFT GUIDANCE TO RE-ESTABLISH A CONSISTENT STANDARD FOR DETERMINING UNDERSERVED AND UNSERVED LOCATIONS ACROSS THE BEAD PROGRAM**

The inconsistencies in designating unserved and underserved locations, and the misapplication of the BEAD requirements by the States, risks misuse of taxpayer dollars, overbuilding, and the potential to leave Americans on the wrong side of the digital divide. Under the BEAD program, Alternate Technologies should not deem a location served if Reliable Broadband Service technologies meeting or exceeding the same standard deem a location unserved or underserved. NTIA should reiterate its commitment to a technology-neutral program and utilize a consistent standard across the program to ensure equity and cohesion. Any other approach risks wasting finite federal dollars to overbuild existing networks that currently use Reliable Broadband Service technologies. Assigning valuable funding dollars to overbuild



violates the goal of the BEAD program, which is to connect all Americans regardless of location or circumstance, and risks leaving certain Americans behind through the diversion of funds to projects deemed unnecessary.

Consistent with both NTIA's Draft Guidance and BEAD Model Challenge Process, locations that are served by Reliable Broadband Service technologies, as shown on the FCC's National Broadband Map, should be deemed "served" and removed from consideration for BEAD or other federal broadband deployment program funding. This is especially true if the Reliable Broadband Service provider is able to demonstrate that at least 10 percent of the locations within a census block group meet the 100 Gbps/20 Gbps standard. This corresponds to the threshold used for rebutting area speed test challenges set forth in the BEAD Model Challenge Process and would ensure that performance is measured across all geographic areas in a coherent and consistent manner.

To ensure an equitable and cohesive Internet for All program, NTIA should establish a consistent standard across all Eligible Entities for determining BEAD eligible locations. The standard should be reasonable, technology neutral, and require consistent and reasonable evidence for veering from the Broadband Data Maps and demonstrating available service. NTIA should also disapprove any Eligible Entity proposals that fail to adhere to the common standard. This will ensure that BEAD's limited resources are directed toward communities that truly lack adequate broadband infrastructure, rather than duplicating efforts in areas already receiving investment, which is the purpose of the BEAD program.

#### **IV. CONCLUSION**

Cox remains committed to enhancing broadband connectivity across the nation and believes that prioritizing communities with genuine need will maximize the impact of the BEAD investments. As noted above, NTIA appears to go out of its way in the Draft Guidance to ensure

