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Office of Broadband Access & Expansion

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New Mexico Governor

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Acting Broadband Director

September 10, 2024

Mr. Alan Davidson

Assistant Secretary of Commerce for Communication and Information

National Telecommunications and Information Administration

1401 Constitution Ave., N.W.

Washington, D.C. 20230

RE: Comments in Response to Proposed BEAD Alternative Broadband Technology Guidance

Dear Mr. Davidson,

The New Mexico Office of Broadband Access and Expansion (“OBAE”) hereby submits this letter in response to NTIA’s request for comment regarding the Proposed BEAD Alternative Broadband Technology Guidance (“Proposed Guidance”).

OBAE appreciates NTIA’s reliance of feedback from state broadband offices, given their crucial role in the BEAD program’s implementation and the degree to which any changes in the program rules or structure could impact their ability to be successful.

While OBAE has made significant progress in bridging the digital divide in New Mexico, significant challenges remain to deploy reliable broadband to the state’s remaining unserved and underserved locations. New Mexico constitutes one of the least densely populated states with a high poverty level. We also have many unserved rural and Tribal communities living in high-cost, difficult-to-serve areas. For these and other reasons, OBAE has long said that alternative technologies must play a part in closing the digital divide in New Mexico. In fact, we are developing a new proposed state program to accelerate service connections to unserved New Mexicans by expanding access to Low Earth Orbit (LEO) satellite in the near-term while BEAD-funded projects proceed in the coming years.

On that note, OBAE would like to express general support for this Proposed Guidance, although we do have several concerns and recommendations outlined in the enclosed comments. Thank you for your consideration of this feedback. We look forward to continuing to partner with NTIA to deliver Internet for All.

Sincerely,

Drew Lovelace

Acting Director, Office of Broadband
Access and Expansion

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Comments from the New Mexico Office of Broadband Access and Expansion

➤ **General Comments:**

- OBAB supports NTIA's premise that Eligible Entities should not fund deployment projects to locations that are subject to an enforceable commitment, with ongoing network performance monitoring, to provide Alternative Technology service that meets the BEAD performance requirements or are already served with Alternative Technologies that meet the BEAD performance requirements. However, OBAB has concerns about the administrative burdens that this requirement places on Eligible Entities, especially with regard to the one-year timeline to submit the Final Proposal. In order to properly deduplicate locations that should not be eligible for BEAD-funded Alternative Technology projects, and to adequately run a competitive selection process for Alternative Technology providers, **OBAB suggests NTIA provide Eligible Entities additional time to submit the Alternative Technology portions of their Final Proposals, while maintaining the one-year timeline for Priority and other Reliable Broadband Technology projects.**
- Given the locations that will be eligible for BEAD-funded Alternative Technology projects will be those locations that received no bids for Priority and other Reliable Broadband Technologies—and can therefore be presumed to be too costly or difficult to serve with these technologies—**OBAB suggests NTIA give more latitude to Eligible Entities to waive the matching requirement for any such locations.**
- OBAB notes that "NTIA will require Eligible Entities to explain in their Final Proposal how the Eligible Entity calculated the cost of the network capacity per BSL to the recipient of an LEO Capacity Subgrant," and has concerns about our ability to calculate this cost. **OBAB recommends NTIA undertake an effort to calculate the cost to reserve LEO network capacity at the national level, thereby ensuring that the cost is empirically derived and fair.**

Alternately, OBAB suggests that NTIA undertake a national procurement program for the reservation of LEO capacity. This approach recognizes the federal government's expertise in driving negotiations with technology vendors, and the reality that a LEO constellation design is global in nature and that an investment by any state (or region) would benefit other states. Other distinct advantages of this approach would include: the potential for volume discounts due to economies of scale; streamlined negotiation between providers and the government; the ability to ensure the price for reserved capacity is empirically derived and fair; providing centralized post-award management; and inviting other emerging LEO providers to apply.

- **Question 1: "Should NTIA allow Eligible Entities to make a supplemental reimbursement payment to recipients of LEO Capacity Subgrants early in the period of performance? Alternatively, should NTIA allow Eligible**

Entities to compensate a recipient of a LEO Capacity Subgrant for all BSLs in a project area—regardless of subscription rates—in the early years of the period of performance?”

- OBAAE supports making a supplemental reimbursement payment to recipients of LEO Capacity Subgrants early in the period of performance.
- **Question 2: “Should NTIA allow Eligible Entities to employ a tiered subscription reimbursement structure? For example, in a subscription reimbursement structure based on tiers of 25 BSLs, an Eligible Entity would reimburse a recipient for 25 BSLs if 1-25 of the BSLs in the project area were subscribing, for 50 subscribers if 26-50 of the BSLs in the project area were subscribers, and so on.”**
 - OBAAE has no comment on this question.
- **Question 3: “Is there another proxy or measurement that NTIA should use to ensure that subscribers in LEO Capacity Subgrants project areas receive services that meet the speed and latency requirements established by Congress?”**
 - OBAAE is satisfied that capacity is a sufficient proxy to ensure LEO providers can meet the statutory speed and latency requirements of the BEAD program. However, OBAAE suggests that 5 Mbps or 2 TB of capacity may not be sufficient for the entire 10-year period of performance, since digital applications will continue to advance in functionality and demand more bandwidth. **OBAAE suggests that NTIA should apply an average growth rate to the capacity requirement over time (e.g. 2 TB up to Year 4, then a small growth rate thereafter).**
- **Question 4: “Are there issues not addressed in this guidance that might dampen participation in the BEAD program by Alternative Technology providers?”**
 - The 20-year interest period may dampen participation by LEO providers.
- **Question 5: “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?”**
 - OBAAE has serious concerns about the administrative burdens caused by the federal period of interest extending for 10 years beyond the close out of LEO Capacity Subgrants, which would essentially require ongoing post-award management for 20 years (10-year period of performance + 10-year period of federal interest). Specifically, OBAAE is concerned about the burden of tracking the real property and equipment acquired or improved with BEAD Program funds for LEO Capacity Subgrants. Would customer premise equipment or

even satellites put into orbit be considered real property in this case? If so, tracking these types of items would be burdensome. What if the CPE is lost, stolen, breaks, or becomes obsolete after funds have already been expended and/or the LEO Capacity Subgrant has been closed out? OBAE therefore recommends NTIA either waive the federal interest in **this case or require that any real property or equipment acquired or improved with BEAD Program funds that is lost, stolen, breaks, or becomes obsolete during the period of federal interest be required to be replaced at no cost by the LEO Capacity Subgrantee.**

- **Question 6: “Should NTIA consider alternative LEO reimbursement models where LEO subgrantees may begin providing service and receive corresponding grant funds through LEO Capacity Subgrants before certifying the completion of network build out?”**
- Given that LEO providers may be able to deploy service more quickly than terrestrial providers, OBAE supports alternative reimbursement models where LEO subgrantees may begin providing service and receive corresponding grant funds through LEO Capacity Subgrants before certifying the completion of network build out.