

DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Broadband Equity, Access, and Deployment (BEAD) Program:
Alternative Broadband Technology Policy Notice

WISPA – *The Association for Broadband Without Boundaries* (“WISPA”) hereby responds to the August 26, 2024 Notice (“Notice”) inviting comment on proposed guidance to Eligible Entities “regarding the use of alternative technologies to serve unserved and underserved locations in their jurisdictions.”¹

Introduction

WISPA represents the interests of hundreds of broadband internet service providers that use a variety of technologies to deploy and provide service to approximately 10 million people across the country, many of whom live and work in rural and remote areas that lack choice of broadband providers. Many of WISPA’s members began providing service using unlicensed spectrum, at a time when it was the only affordable means to provide reliable broadband service to these communities. WISPA’s members have consistently and successfully provided reliable and competitive broadband service using unlicensed fixed wireless (“ULFW”) technologies that have continued to evolve to meet consumer demand for faster speeds and a high level of service quality without causing or incurring harmful interference. In fact, the equipment and technologies for networks that use entirely ULFW spectrum in the following spectrum bands have evolved to now offer broadband speeds that can greatly exceed 100/20 Mbps: 6 GHz, 57-71 GHz and 80-90 GHz.² Moreover, as explained below, Free-Space Optics (“FSO”) also can overcome some of the deployment challenges inherent in fiber deployment.

¹ Notice at 4.

² See, e.g., <https://www.taranawireless.com/introducing-tarana-g1-6-ghz/> (article about 6 GHz technologies); <https://www.cambiumnetworks.com/blog/nextlink-drives-gigabit-service-expansion-with-6-ghz-fixed-wireless-technology-from-cambium-networks> (article about Cambium Networks equipment

Over time, many of WISPA’s members have incorporated licensed and shared spectrum and fiber technologies into their networks. The choice of technology to use to serve a given location depends on a number of factors, with the ultimate goal being to find the “right tool for the right job.” In some cases, ULFW may be best; in others, licensed or licensed-by-rule spectrum may best; in others, it may be fiber; and in many cases, the right tool may be a combination of these and other technologies.

The Notice illustrates the understood need to recognize ULFW both to prevent funding to locations where existing broadband networks serve consumers with low-latency, 100/20 Mbps service and to permit Eligible Entities to allow greater participation by providers of Alternative Technologies to seek BEAD funding. WISPA very much appreciates NTIA’s acknowledgement of these realities. NTIA should adopt the proposed guidance with changes and clarifications WISPA recommends in these Comments. In particular, and in furtherance of the goal to deploy finite BEAD funds efficiently and responsibly, Eligible Entities should draw or re-draw project areas to eliminate from subgrants locations where one or more Alternative Technologies are providing eligible service, even where the Alternative Technologies cover some, but not all, of the location in the project area. In addition, NTIA should provide more specific guidance to Eligible Entities to ensure that they do not adopt requirements that make it difficult, if not impossible, for providers of Alternative Technologies to qualify for BEAD funding, a practice that would defeat the purpose of the BEAD program in making “Internet for All” a reality.

using unlicensed 6 GHz technologies); <https://voneus.com/blog/voneus-brings-broadband-to-walney-island> (article about Cambium Networks 60 GHz unlicensed providing Gigabit solution); <https://www.siklu.com/products/> (link to products offering Gigabit download speeds using the unlicensed 57-71 GHz and 80-90 GHz bands).

Discussion

Section 2. Definitions

WISPA believes that the definition of “Alternative Technologies”³ should be expanded to include FSO), which uses light to transmit data through the air, offering fiber-like speeds and high-capacity connections over short to long distances without the requirements of traditional wireline infrastructure.⁴ Given the ongoing evolution of broadband technologies, NTIA should allow Eligible Entities to consider FSO on its merits and suitability for specific deployment scenarios alongside other Alternative Technologies such as ULFW and low earth orbit satellites. This holistic approach aligns with BEAD’s goals of ensuring reliable, affordable, and high-speed internet access for all Americans, particularly in areas where traditional methods may fall short or be unfeasible. Allowing more technologies to be considered for BEAD will help ensure that the BEAD program remains adaptable and inclusive, leveraging the full scope of available technologies to bridge the digital divide effectively.

Section 3. Locations Where Alternative Technologies Already Exist

As a general matter, WISPA agrees that BEAD investments to locations subject to an enforceable commitment (Case 1) or where Alternative Technologies meet the BEAD performance standards (Case 2) should not be available for BEAD subgrants.⁵ In addition, Eligible Entities should have additional flexibility to identify additional locations that should be off-limits (Case 3). However, as explained in more detail below, Eligible Entities should have

³ Notice at 5.

⁴ See, e.g., <https://x-lumin.com/> (last visited Sept. 10, 2024) (stating that “[f]or years, experts have agreed that laser communications is the inevitable future of telecommunications, providing superior bandwidth, range, latency, mobility and expandability”); <https://spectrum.ieee.org/free-space-optics> (last visited Sept. 10, 2024) (explaining that IEEE has been studying the development of FSO for years); <https://x.company/projects/taara/#technology> (discussing Taara’s FSO technology).

⁵ Notice at 7.

the obligation to draw or, as the case may be, re-draw project areas if a portion, but not all, locations in a project area are within Case 1, Case 2 and/or Case 3. Further, Case 1, Case 2 and Case 3 should not be independent; rather, Eligible Entities should have the flexibility to combine Case 1, Case 2 and Case 3 within a project area in order to ensure that any location meeting those cases are not subject to BEAD funding.

Section 3.1 Case 1: Enforceable Commitments for Alternative Technologies

The Notice proposes to expand the locations where BEAD funding will not be available to locations subject to an enforceable commitment to deploy broadband with ULFW and other Alternative Technologies.⁶ WISPA strongly supports this modification to the NOFO, as it will include locations for which recipients of Connect America Fund Phase II (“CAF”) and Rural Digital Opportunity Fund (“RDOF”) have agreed to deploy without specifically identifying, on a location-by-location basis, what technology they plan to deploy. Unlike BEAD, the FCC’s CAF and RDOF programs do not require a particular technology to be deployed at a particular location. Rather, the recipient can deploy whatever technology it believes is right for the job so long as it meets its speed and latency requirements and meets the buildout milestones. For this reason alone, it is reasonable and appropriate for NTIA to exclude areas subject to an enforceable commitment regardless of the technology that may be deployed to a particular location.

However, NTIA should clarify that an enforceable commitment “is present” such that Case 1 applies for *all* locations in the funded area, even if those locations are a subset of the locations in a given project area. As an example, if 75% of locations in a BEAD project area are subject to an enforceable commitment, those locations should be removed from the project area and the project area should be re-drawn accordingly to include only the 25% of locations that are

⁶ *Id.*

not subject to an enforceable commitment (assuming Case 2 and Case 3 do not apply to the 25% of remaining locations). It is illogical for an entire project area to be eligible for BEAD funding when portions, perhaps substantial portions, of the project are subject to an enforceable commitment.

NTIA's final guidance also should make clear that the FCC's CAF and RDOF performance testing and reporting requirements satisfy the network performance monitoring condition for Case 1.

Section 3.2 – Provider Can Demonstrate that It Currently Meets BEAD Requirements for Alternative Technology Deployments

WISPA strongly agrees that existing deployments using ULFW should be treated as “served” and be unavailable for BEAD funding where a provider has deployed qualifying broadband service.⁷ Locations capable of receiving service from one or more Alternative Technologies should not be subject to BEAD funding upon providing certain evidence demonstrating such capabilities. Adopting this guidance will remove locations from unnecessary BEAD funding, thereby enabling taxpayer dollars to be used where they are most needed – the truly “unserved.” By recognizing locations served with Alternative Technologies as “served,” NTIA would hew more closely to Congress' technology-neutral statutory intent.

As with Case 1 above, NTIA should clarify that Case 2 applies for “some or all” of the locations in the project area,⁸ and that any locations meeting the incumbency conditions are off-limits for BEAD funding. In some cases, project areas will need to be smaller or re-drawn to

⁷ *Id.* at 8.

⁸ *Id.* See also *id.* at 9.

remove locations served with Alternative Technologies from funding, but that is necessary to meet the full intent of the proposed guidance.⁹

The Notice proposes to establish two components that Eligible Entities must consider:

(1) whether the existing Alternative Technology provider possesses the financial and managerial capacity to deliver service meeting the BEAD Program’s technical requirements to all locations in the project area, and (2) whether the existing Alternative Technology provider has the technical and operational capacity to deliver service meeting the BEAD Program’s technical requirements to all locations in the project area.¹⁰

While WISPA believes that the capacity demonstration is reasonable,¹¹ WISPA is concerned that some Eligible Entities may be pre-disposed to rejecting existing deployments and will make it difficult, if not impossible, for Alternative Technologies to meet the two components.¹² The Notice states that “the existing Alternative Technology provider seeking to meet the requirements of Case 2 does not have to comply with the qualifications for BEAD subgrantees.”¹³ WISPA agrees that the costs to providers to submit detailed information to protect their service areas from competitive BEAD funding and the time and effort for Eligible Entities to review and evaluate that information outweigh any benefits that might accrue from an “application-style” review and may discourage participation, leaving Eligible Entities to make

⁹ The language of the Proposed Guidance is inconsistent – in some places, the Proposed Guidance refers to “some or all” locations and “those locations,” and elsewhere the Proposed Guidance suggests that the provider must be able to meet the two components at “all locations.”

¹⁰ Notice at 8.

¹¹ The Notice states that the provider must demonstrate that it can “provide a capacity of at least 5 Mbps or a usage allowance of 2 terabytes (TBs) per month for each broadband serviceable location (BSL) in the project area within four years.” Notice at 8.

¹² Section 3.2 of the Proposed Guidance appears to use the terms “capacity” and “capability” interchangeably. “Capacity” would appear to correspond to size, scope and scale whereas “capability,” is generally understood to reflect a certain level of skill and experience. NTIA’s final guidance should use one or the other term, not both, in order to avoid ambiguity and provide Eligible Entities and stakeholders with clear guidance.

¹³ *Id.*

their own Case 3 determinations. Further, such a detailed review would apply only to providers of Alternative Technologies who are not submitting information to apply for BEAD funding, and would be unfairly prejudicial to that certain class of existing providers.

The Notice suggests, but does not require, that Eligible Entities can use other criteria for reviewing technical capability, “such as requiring evidence consistent with the Eligible Entity Challenge Process.”¹⁴ This suggestion is helpful but only to a degree, as the Notice offers no guidance on how Eligible Entities should consider financial and managerial capacity. As a general proposition, Eligible Entities should review information submitted by providers of Alternative Technologies as a means to *exclude* “served” locations from BEAD funding. To that end, Eligible Entities should require the submission of the minimum information necessary to determine whether the provider meets the two components; they should not make the process so difficult and paper-intensive that it becomes a vehicle for rejecting submissions in order to maximize the number of locations and, in so doing, award subgrants to areas served by Alternative Technologies. For example, providers of alternative technologies should not be required to submit financial information, much less audited financial statements, in order to have locations deemed “served.” Rather, a location served by an Alternative Technology provider should be unavailable for BEAD funding where the provider either (1) demonstrates that it has been providing broadband service meeting the capacity condition for at least two years, or (2) submits a broadband label for a service tier of at least 100/20 Mbps. NTIA should make clear that evidence submitted to an Eligible Entity showing that the Alternative Technology provider offers 100/20 Mbps broadband service will not be subject to challenge.

¹⁴ *Id.* at 9.

Finally, while WISPA recognizes the need to make the Case 2 process efficient, seven days to submit information to the Eligible Entity may in some cases be too short of a time frame.¹⁵ Ten business days would be more appropriate and ensure greater and more complete participation from existing providers. In addition, in order to promote greater awareness. Eligible Entities should both post a public notice *and* contact all existing providers listed in their state or territory on the National Broadband Map that offer services with Alternative Technologies.

Section 3.3 – Case 3: BEAD Investment in Alternative Technologies

WISPA agrees that Eligible Entities should have the additional flexibility offered by Case 3 to include other locations.¹⁶

Section 4. Awarding Alternative Broadband Technology Subgrants

Section 4.1 – Selection Mechanism

The Notice states that “Eligible Entities may conduct such engagement with existing providers of Alternative Technology broadband service and prospective subgrantees of Alternative Technology projects only when the Eligible Entity previously solicited proposals for Alternative Technology projects.”¹⁷ To this end, NTIA should direct that in cases where Eligible Entities finds themselves “with project areas for which no prospective subgrantee has submitted an offer to deploy Reliable Broadband Service or project areas for which prospective subgrantees have submitted proposals to deploy Reliable Broadband Service only at subsidy amounts that exceed the EHCPLT,”¹⁸ these areas are to be considered as being above the EHCPLT. Where

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 6.

Eligible Entities propose multiple BEAD grant rounds with a fiber-only first round, scoring would move to consider any applications proposing alternative technologies; where Eligible Entities conduct only one large subgrant round with all technologies submitting applications, alternative technology applications would also be evaluated at this stage – effectively moving all Eligible Entities to a position in which they have “previously solicited proposals for Alternative Technologies.”¹⁹

In this same spirit, WISPA suggests that NTIA should apply this principle to an additional scenario that is not considered in the Notice. Eligible Entities may find cases where they receive only one bid for a project area, proposing a “priority” fiber network, and no other non-priority project bids (i.e., ULFW or LEO). If the submitted priority project bid is above the EHCPLT, Eligible Entities should be able to apply the Case 2 framework and canvass existing Alternative Technology providers that are then providing qualifying service in the project area. Should an existing Alternative Technology provider meet the relevant standards, the Eligible Entity should be allowed to reject the priority project application as being too costly, and award BEAD funding to the Alternative Technology provider.

Section 4.2 – Subgrantee Qualifications

The Notice states that “[t]o meet the minimum technical qualification, a proposed BEAD deployment project relying on Alternative Technologies for the delivery of last-mile service must include a certification and/or documentation that the subgrantee is able to provide at least 5 Mbps of capacity (or 2 TBs of usage per month) to each BSL in the project area where a subscriber requests and is provisioned service.”²⁰ WISPA suggests that Eligible Entities should

¹⁹ *Id.* at 10.

²⁰ *Id.* at 11 (footnote omitted).

rely solely on the provider's certification and should not require an undefined "demonstration." To the extent that the Eligible Entity desires to verify the certification, it can review information on the National Broadband Map or seek further information from the provider.

Section 4.3 – Subgrantee Obligations

The Notice proposes that "Eligible Entities must include in any subgrant agreement the cost of any eligible, initial non-recurring fees charged to new subscribers necessary to connect the BSL, such as costs for installation or customer premises equipment."²¹ WISPA agrees that "[o]ne-time initial costs such as installation and customer premises equipment are eligible uses of BEAD funds, and including these costs in the subgrant will help ensure installation and equipment costs are not a barrier to adoption for those Americans residing in BSLs served by Alternative Technologies funded through the BEAD program."²²

²¹ *Id.* at 12.

²² *Id.*

Conclusion

WISPA greatly appreciates NTIA's acknowledgement that Alternative Technologies such as ULFW will be necessary to both protect existing networks from government funding and to create greater opportunities for Eligible Entities to meet the goal of "Internet for all" by requiring them to allow providers of Alternative Technologies to have a greater opportunity to seek BEAD subgrants. At the same time, adjustments and clarifications to the Notice should be made to achieve greater granularity for locations where BEAD funds are allocated and ease administrative burdens on both providers and Eligible Entities.

Respectfully submitted,

**WISPA –
THE ASSOCIATION FOR
BROADBAND WITHOUT BOUNDARIES**

September 10, 2024

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