

**Before the  
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION  
Washington, D.C. 20230**

In the Matter of )  
 )  
**Proposed BEAD Challenge Process Guidance** )

**COMMENTS  
OF  
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) submits its comments with respect to the draft Policy Notice regarding the Broadband Equity, Access, and Deployment (“BEAD”) Challenge Process that has been made available by the Administration (“NTIA”). WTA’s primary proposal is for a robust and mandatory Deduplication Process that can produce more effective targeting of BEAD funds to areas that will otherwise remain unserved or underserved and that can both reduce and improve the accuracy of the challenges that will need to be conducted and resolved. WTA also proposes several refinements to the draft BEAD Challenge Process itself, including increases in the geographic scope of challenges (network service areas rather than individual locations) and in the time periods for challenges and rebuttals (30 days rather than 14 days).

**WTA**

WTA is a national trade association that represents more than 370 rural local exchange carriers (“RLECs”) that provide voice and broadband services to some of the most rural, remote, rugged, sparsely populated and expensive-to-serve areas of the United States.

WTA’s RLEC membership is currently far down the transition path from the former copper-based voice-centric telephone network to the evolving high-speed broadband telecommunications network. Typically, this transition is accomplished incrementally as most

RLECs extend fiber optic trunks in stages further and further into their networks, initially using fiber-copper facilities to enable remote customers to receive higher and higher broadband speeds, until the fiber extensions enable most or all of their rural customers to receive scalable high-speed broadband services via fiber-to-the home (“FTTH”) or fiber-to-the-premises (“FTTP”) connections. WTA members worked very hard during the recent COVID-19 pandemic to accelerate their broadband transitions and upgrades in order to accommodate the work-from-home, distance learning, remote medical consultation, and other broadband needs of their customers. At this time, many WTA members have deployed sufficient fiber optic and other facilities to provide 100/20 Mbps and higher services to substantial portions (in some cases, all) of their rural service areas, while others are at earlier stages of their fiber trunk extensions and network upgrades.

All WTA RLEC members have received and used federal funds for their broadband upgrades and transitions. Approximately 55 percent of WTA’s RLEC members receive support from the Connect America Fund – Broadband Loop Support (“CAF-BLS”) and/or High-Cost Loop Support (“HCLS”) mechanisms of the Federal Communications Commission’s (“FCC’s”) Universal Service Fund (“USF”), while the remaining 45 percent or so receive support from one of the FCC’s model-based Alternative Connect America Cost Model (“ACAM”) mechanisms. Some WTA members have received loans or grants from Rural Utilities Service (“RUS”) programs to upgrade their networks to provide higher broadband speeds, and some have received funding for similar purposes from state broadband programs.

### **Deduplication Process**

The ultimate success of the BEAD program will depend, in major part, upon its ability to focus the distribution of its funding on those areas that otherwise are likely to remain unserved or

underserved. Its proposed Deduplication Process constitutes an important and potentially very efficient and effective targeting mechanism for accomplishing this goal.

Many WTA members and other RLECs already have enforceable commitments to deploy and operate 25/3 Mbps or greater broadband facilities pursuant to their service obligations as recipients of the FCC's ACAM II and CAF-BLS support programs. Other WTA members and RLECs have enforceable commitments to deploy 100/20 Mbps or greater broadband facilities as recipients of RUS ReConnect and other funding, as grantees of FCC Rural Digital Opportunities Fund ("RDOF") support, and as participants in other federal and state broadband grant programs. If it is adopted and implemented in timely fashion (FCC RM-11868), some WTA members and other RLECs will voluntarily elect to participate in an FCC Enhanced ACAM support mechanism which will entail an enforceable commitment on their part to deploy and operate 100/20 Mbps broadband facilities throughout most or all of their rural service areas.

Many WTA members and other RLECs that have served their rural communities for decades and that have used their own resources and USF and RUS funds to make significant progress in the transition of their voice-centric networks to broadband are willing to make enforceable commitments to complete deployment of the FTTH/FTTP extensions and upgrades that will enable them to provide 100/20 Mbps and higher speeds to their customers that do not currently have access to such high-speed services. However, at this time, these RLECs do not have access to the ultimate Enhanced ACAM support amounts and service obligations that the FCC may adopt, and there is virtually no likelihood that CAF-BLS program modifications involving 100/20 Mbps or higher service obligations will be adopted by the FCC prior to BEAD grant distribution.

NTIA's BEAD Notice of Funding Opportunity ("NOFO") removes from eligibility as "unfunded" or "underserved" any location that is already subject to an enforceable federal, state or local commitment to deploy qualifying broadband as of the date that the challenge process is concluded. NOFO, at p. 36. Also, the draft Policy Notice indicates that state and territorial Eligible Entities "may, but are not required to" consider proposals by service providers to deploy higher speed broadband service in specified areas and to enter into binding agreements with such providers that reflect the higher speed commitment and consider the locations in the specified areas to be served with the higher speed (such that they are no longer deemed eligible for BEAD grants as "unserved" or "underserved"). Draft Policy, at p. 12.

NTIA should make it mandatory (rather than voluntary or permissible) for states and territories to consider proposals by established service providers to enter into enforceable commitments to upgrade to 100/20 Mbps or higher speeds their existing and operational broadband networks that have been constructed in whole or substantial part with USF or other federal or state funding and to enter into such enforceable commitments where there is reasonable and credible evidence that the service provider can and will meet its service commitment.

Removing areas subject to reliable and enforceable 100/20 Mbps service commitments from BEAD eligibility has the major advantage of allowing BEAD funds to be targeted to unserved and underserved areas which otherwise would not receive at an early date the high-speed broadband service their residents need. And to the extent that such enforceable commitments can be entered into before state and territorial challenge processes commence, they will reduce the number of such challenges and allow state and territorial agencies and NTIA to focus their administrative and decisional resources upon more immediate and relevant disputes. Even where

such enforceable commitments are not finalized until after challenge processes commence, they can contribute to the simplification and earlier resolution of such challenges.

WTA has limited its mandatory enforceable commitment proposal to existing service providers and their existing and operational broadband networks. Such service providers have an established record of investment, network upgrades and service that will enable states and territories to make reasonable and accurate estimations of their capability and likelihood to fully comply with their broadband service commitments. Moreover, the existing operational networks and assets ensure that the subject service providers cannot walk away from their service commitments and that the state and territorial parties have tangible property against which they can enforce their rights under the commitment agreements.

The WTA proposal also protects against the stranding of existing broadband network investment that has been financed with federal or state funds. It is a far more economical use of federal dollars to allow continuation of the ongoing extension and upgrade of existing broadband networks than to overbuild them with wholly new networks. WTA members and other RLECs already have their central office, maintenance and administrative facilities, and interconnection arrangements in place, and already have extended fiber optic trunks into portions of their networks. They can complete the fiber optic trunk extensions and customer drops necessary to offer 100/20 Mbps and higher speeds to their more distant customers at incremental costs (which are substantial in many remote and rugged rural areas, but still much less than building wholly new networks). Moreover, given that FTTH/FTTP is necessary in most cases to provide 100/20 Mbps and better service, the contemplated upgrades are scalable and relatively future-proof since they can be modified to offer higher and symmetrical speeds as bandwidth demands increase by replacing electronics rather than constructing wholly new transmission facilities.

WTA hopes that many states and territories will see the benefit of better targeting the distribution of the BEAD funds allocated to them by NTIA by entering into enforceable commitments with existing service providers that they can rely upon to upgrade their existing broadband networks to provide and sustain 100/20 Mbps and better service on a long-term basis. However, to create certainty and uniformity throughout the nation, WTA urges NTIA to make mandatory as part of the Deduplication Process and as a condition of its BEAD allocation process the consideration by states and territories of such proposals for enforceable commitments from existing service providers with respect to their existing networks that have been constructed in whole or part with federal and/or state funding.

### **Challenge Process Timing Requirements**

WTA proposes that the minimum challenge submission window and the allowed time period for rebuttals (Draft Policy, p. 20) be revised from a minimum of at least 14 days to 30 days. Fourteen-day periods are insufficient to permit accurate and sufficient challenges or rebuttals both by large service providers that may need to deal with substantial numbers of challenges and by small service providers that have limited numbers of employees with the time to deal with challenges. WTA notes that many local and tribal governments and nonprofit organizations may have similar difficulties with 14-day deadlines.

WTA believes that 30 days is a reasonable period for researching, preparing and filing complete, accurate and understandable challenges and rebuttals. Short 14-day periods are likely to entail mistakes, omissions, typographical errors and ambiguities that will result in amendments, irrelevant arguments and appeals that can significantly complicate and delay resolution.

Thirty-day challenge and rebuttal periods still give the states, territories and NTIA 30 days to complete the desired 90-day challenge process. Even if the review and decision processes

ultimately need to be extended somewhat beyond the desired 90 days, they are likely to be completed in a more timely and equitable fashion than if they are plagued by the complications of hastily prepared and filed 14-day challenges and rebuttals.

### **Broadband Serviceable Locations**

The proposed Challenge Process will not allow the addition or removal of locations from the set of broadband serviceable locations the FCC has identified on its National Broadband Map. However, a significant number of WTA's members continue to report that there remain substantial discrepancies between the actual physical locations in their rural service areas and those reported in the current version of the National Broadband Map.

Further, a Challenge Process focused upon actual rural service areas rather than locations would be much more efficient and effective. Broadband networks are designed and constructed predominately to serve *areas*. If a broadband network is structured efficiently to serve a specific area, the individual locations therein should be able to be reached and served without a substantial additional grant. On the other hand, if a significant number of locations in an area cannot be reached and served by an existing network, a new or modified or extended network would appear to be necessary. In both cases, it is the coverage of the service area that is important rather than the individual location or locations.

### **Conclusion**

NTIA should adopt a mandatory BEAD funding condition and Deduplication Process provision that requires states and territories to consider proposals by established service providers to enter into enforceable commitments to upgrade to 100/20 Mbps or higher speeds their existing and operational broadband networks that have been constructed in whole or substantial part with USF or other federal or state funding and to enter into such enforceable commitments where there

is reasonable and credible evidence that the service provider will meet its service commitment so that such areas will no longer be deemed to be “unserved” or “underserved” for BEAD eligibility purposes. The minimum Challenge Process submission window and the allowed time period for rebuttals should each be increased from a minimum of at least 14 days to 30 days, and the Challenge Process be focused upon actual rural service areas rather than individual locations.

Respectfully submitted,  
**WTA – ADVOCATES FOR RURAL BROADBAND**

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