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May 5, 2023

National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Ave. N.W.  
Washington, DC 20220

VIA EMAIL  
[BEAD@NTIA.gov](mailto:BEAD@NTIA.gov)

**RE: Proposed BEAD Challenge Process Guidance**

**COMMENTS OF THE**  
**NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

The National Rural Electric Cooperative Association (“NRECA”) appreciates the opportunity to provide the following comments in response to the Proposed BEAD Challenge Process Guidance (“Proposed Guidance”) issued by NTIA on April 25, 2023.

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electric power to 56% of the nation’s landmass, approximately 42 million people in 48 states, or approximately 12 percent of electric customers. Rural electric cooperatives serve 88% of the counties of the United States, including 327 of the nation’s 353 persistent poverty counties, which is 92% of these persistent poverty counties. All of NRECA’s distribution members are small businesses as defined by the U.S. Small Business Administration.

The nation’s rural electric cooperatives are deeply committed to promoting the deployment of advanced telecommunications capabilities within the rural communities and areas in which they serve and are expected to play a crucial role in the development of broadband infrastructure to serve rural unserved and underserved locations. Over 200 rural electric cooperative broadband projects are already underway across the country, and NRECA estimates that another 100 or so are currently exploring the feasibility of providing broadband. NRECA members are providing (or will provide) these broadband services either by themselves or through partnerships of some kind with affiliated or unaffiliated ISPs.

NRECA is keenly interested in the BEAD challenge process. We anticipate that many NRECA member cooperatives will seek BEAD funding support for rural broadband projects, and many NRECA members also currently receive broadband support from other federal and/or state funding sources. Other NRECA members do not provide broadband infrastructure or services and may have no plans to do so, but nevertheless wish to ensure that BEAD funding adequately supports the broadband needs of their constituents. Virtually all NRECA members are nonprofit organizations.

NRECA commends NTIA for issuing the Proposed Guidance. In general, it is well-reasoned and thorough, and provides much-needed clarity as to Eligible Entities' BEAD challenge process obligations. NRECA also especially commends NTIA for determining that speed tests are a category of acceptable evidence for BEAD challenges and urges this be retained in the final guidance.

However, while NRECA supports and agrees with much of the Proposed Guidance, NRECA requests that NTIA consider several adjustments, as explained below. As will be seen, NRECA's comments largely relate to concerns about the needs and capabilities of smaller, less-capitalized service providers. The Proposed Guidance does not adequately account for the unique challenges facing smaller service providers, many of which may not have sufficient resources to doggedly monitor the challenge process, nor rapidly address challenge-related situations that may arise.

Our comments include five main suggestions, summarized as follows:

1. **Affirmative notice to affected service providers:** The Proposed Guidance states that an Eligible Entity "may" implement a process involving actual notice to a service provider affected by a challenge. Instead, NTIA should *require* that an Eligible Entity's challenge process provides affirmative notice of the challenge to the affected service provider.
2. **The role of individual consumers, specifically with respect to availability challenges:** NTIA should clarify the role of individuals in the challenge process generally and should explicitly permit written attestations to be submitted as evidence in support of availability challenges.
3. **Extension of minimum timeframes for challenges and rebuttals:** While NRECA acknowledges the need for an "expeditious process," including prompt resolution of challenges, the proposed 14-day minimum timeframes are too short. NRECA suggests that NTIA should require a minimum of 30 days for challenges and 30 days for rebuttals.
4. **More robust requirements for technical and procedural assistance:** The challenge process promises to be technically and procedurally demanding. Eligible Entities should be required to commit and explain how they will provide educational materials and technical support for resource-constrained organizations.
5. **Concerns about deduplication must not foreclose actual service:** NRECA acknowledges the need to allocate scarce federal funds where they are most needed, and the inherent fairness issues relating to federally supported overbuilding. However, concerns about deduplication should not override the need to ensure that areas receive necessary support and are, in fact, served with reliable, high-speed broadband.

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# **1. NTIA should require Eligible Entities to ensure that service providers receive actual notice of challenges affecting them.**

The Proposed Guidance requires Eligible Entities to establish an "online portal" to receive challenges, and states that "challenges must be visible to the service provider whose service availability is being contested." (pp. 13-14). It goes on to say that "[t]he portal *may*, but does not have to, notify the provider of the challenge by email or API call." (fn. 24, emphasis in original).

NTIA should *require* – not merely permit – affirmative notice to service providers affected by a challenge. In light of the aggressive timeframes for response set forth in the Proposed Guidance, it is crucial that affected service providers receive immediate notice of relevant challenges, and the issue is simply too important to be left to the vagaries of each state. Expecting service providers to periodically check a portal is unrealistic and untenable, particularly for smaller service providers that may be thinly staffed and that may not possess the resources or expertise to proactively monitor the challenge process.

Moreover, an affirmative notice requirement would impose little or no additional administrative burden upon Eligible Entities. An automated email to the service provider contact would suffice, as well as, perhaps, an affirmation by the challenger that they have notified the service provider.

NRECA urges NTIA to ensure that service providers will receive immediate notice of challenges that affect them. While NTIA need not specify exactly how Eligible Entities will do so, NTIA should require Eligible Entities to describe how they will implement an affirmative notice process.

## **2. NTIA should clarify the role of individuals in the challenge process and should explicitly permit written attestations to be submitted as evidence in support of availability challenges.**

NTIA should clarify and explicitly permit the use of individual written attestations in support of challenges and rebuttals, particularly for availability challenges.

NRECA understands that challenges may only be submitted by “units of local government,” nonprofit organizations, and broadband service providers. But the Proposed Guidance is wholly unclear as to the permissible role of individuals in the challenge process, even as a constituent part of one of the permissible challenging entities. For example, can a “unit of local government” submit a batch of evidence from its individual citizens? What if it refuses to do so, or fails to submit the information in a timely fashion? While the Proposed Guidance states that “citizen surveys do not constitute acceptable evidence for either challenges or rebuttals,” can citizens directly provide information, either individually or in bulk, that substantiates an availability challenge? Must such information be submitted only through a unit of local government or nonprofit organization?<sup>1</sup>

NTIA should explicitly address these issues. The questions will certainly be asked, and the Proposed Guidance provides no reasonably clear answers.

To take a specific example relating to availability challenges, Table 3 of the Proposed Guidance<sup>2</sup> states that permitted evidence in the case of an availability challenge includes a screenshot of the provider’s webpage, or emails or letters from the service provider demonstrating that the service provider refused a service request or failed to complete a service request. NRECA suggests that this category of presumptively acceptable evidence needs further review and should be broadened to better accommodate the real-world experience of individuals.

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<sup>1</sup> Assuming so, the 14-day minimum timeframe becomes even more unrealistic.

<sup>2</sup> While Eligible Entities are permitted to accept other forms of evidence, they apparently must undertake an additional procedure step to justify its acceptance: “If an Eligible Entity proposes to accept a data source other than those described in Table 3 below, that proposal is subject to NTIA’s review and approval, and the Eligible Entity must provide sufficient explanation of the circumstances under which it will be accepted (e.g., when combined with another accepted data source).” (p. 16).

In practice, meaningful exchanges with a service provider about service availability are very likely to occur over the phone. If the service provider verbally informs the prospective customer that they cannot or will not provide service to the customer's location, how can the customer submit that fact as evidence in the context of a location challenge? Requiring the customer to produce an email, let alone a letter, places an unrealistic burden on the customer. (And to reiterate, even if the customer obtains this evidence, they apparently can submit it only through the channel of a "unit of local government" or a nonprofit organization.)

In addition, NRECA has become aware of anecdotal reports that some service providers are not making available service availability information on their webpages, with some apparently removing service availability information that was once there. It may become increasingly difficult over time to rely on the service provider webpage to substantiate an availability challenge.

While a letter, email or screen shot should certainly be allowed as evidence in support of an availability challenge (as the Proposed Guidance suggests), NTIA should permit Eligible Entities to accept other evidence as well, including written attestations describing the circumstances of the denied service request. The risk of adverse consequences for accepting attestations as evidence is low: the individual will (apparently) need to submit the evidence through a local government, nonprofit organization or service provider, which will involve some level of initial vetting. And of course, the challenged service provider will have ample opportunity to rebut the evidence by clarifying that service is in fact available at the individual's location.

In short, NRECA urges NTIA to provide additional clarity as to the role of individual citizens in the challenge process. These questions are likely to be of extraordinary interest to the general public, and the Proposed Guidance provides very little in the way of suitable options for individuals, or even explanations that can be shared with individuals who may ask about it.

### **3. NTIA should extend the proposed timeframes for challenges and for rebuttals.**

Under the section entitled "Fairness Requirements," the Proposed Guidance requires Eligible Entities to "detail ... an approach that ensures that sufficient opportunity and time is given to all relevant parties to initiate, rebut, and substantiate challenges." (Section 7.5, p. 19). But the Proposed Guidance then requires Eligible Entities to describe how they will complete the entire challenge process within 90 days, including a minimum challenge submission window of 14 days and a minimum rebuttal period of at least 14 days. (Section 7.7, p. 20).

NRECA submits that a 14-day challenge and rebuttal period would *per se* provide insufficient opportunity and time to initiate, rebut and substantiate challenges, *especially if individuals' information must be gathered and presented through a local government, nonprofit organization, or service provider*. This issue is particularly acute for small entities, such as electric cooperatives.

While the Proposed Guidance "encourage[s]" Eligible Entities to "consider adopting longer submission and rebuttal windows," NTIA should go further than simply "encouraging" adoption of a longer window. NTIA should require it.

NRECA recognizes that Eligible Entities must ensure that their challenge process is "expeditious." But NTIA must recognize that the outcome of a given challenge could be absolutely crucial to a service provider, or to a region. Many challenges will present complicated questions of evidence and process.

Allowing only 14 days to decide whether and how to respond, and then marshal the evidence to support a response, is manifestly unfair to those that may be detrimentally affected by the challenge. The importance of the challenge process for a given area, or to a service provider, cannot be overstated, but if a service provider, nonprofit organization or local government is unable to meet an aggressive timeline, they would presumably be forever time-barred from contesting the outcome.

To effectuate a challenge, a unit of local government, nonprofit organization, or broadband service provider will have to educate its local population on the process, have them take action, and then provide the supporting evidence to the challenging entity. The challenging entity would then have to organize and compile the evidence and submit it to the eligible entity. Each of these steps takes time.

To be sure, the Proposed Guidance “encourages” Eligible Entities to adopt longer time periods. But it is wholly unclear how many, if any, will do so. This matter is too important to merely “encourage” a fair opportunity to initiate and respond to challenges. NTIA should ensure a fair opportunity by requiring a period of at least 30 days in which to initiate and rebut challenges. NTIA could also require that Eligible Entities have a process to allow a reasonable extension of time, should additional time be required to initiate or rebut a challenge.

#### **4. NTIA should require Eligible Entities to describe how they will provide technical and procedural support for affected organizations.**

The Proposed Guidance seems to generally assume that affected service providers, nonprofit organizations and service providers are, or will be, somewhat knowledgeable about the challenge process in general, and the Eligible Entity’s challenge process in particular. The Proposed Guidance requires that Eligible Entities “publicly post documentation explaining their challenge process” and “actively inform” local governments, nonprofit organizations and broadband providers of the challenge process and its deadlines, but NRECA suggests that more is needed on this point.

Eligible Entities may reasonably be expected to provide background information and instructions for their particular challenge process, but NTIA should require Eligible Entities to explain their plans to provide affirmative technical and procedural support for those affected by the challenge process. Specifically, NTIA should require Eligible Entities to commit dedicated resources to ongoing technical and procedural support, including, for example, ensuring that stakeholders can readily speak with a knowledgeable human about it.

The FCC’s Broadband Data Collection challenge process can be instructive. While not perfect, the FCC provided numerous webinars, instructional materials and videos, as well as technical support to those seeking to submit bulk challenges. NRECA itself assisted several member cooperatives that submitted bulk availability challenges for over 260,000 locations. During this process, NRECA relied upon the FCC’s technical assistance team to address issues that arose, and found it extremely helpful.

Again, NRECA is concerned that smaller service providers and organizations will not have the tools they need to protect their interests, particularly compared to large, well-capitalized service providers who likely have the resources to master and influence a challenge process in their favor.

## **5. Concerns about deduplication must not foreclose actual service.**

NRECA understands that scarce federal funds must be directed where they are most needed, and that NTIA is subject to statutory requirements relating to deduplication of government support for broadband projects. NRECA also acknowledges the fundamental fairness issues related to federally supported overbuilding.

As a general matter, though, NRECA urges NTIA, within the bounds of its statutory mandate, to err on the side of ensuring that unserved and underserved locations actually are served with reliable, high-speed broadband in a timely manner, even if some overbuilding may occur as a result. Concerns about deduplication and overbuilding should not override the need to ensure that areas receive necessary support and are, in fact, served. For example, unserved areas by their nature are surrounded by areas with adequate service, and often facilities will need to be built through the surrounding served areas to bring service to the unserved communities. If development of facilities through the surrounding served area is not eligible for support, it may be very difficult to ensure that the unserved area is served.

To take a more specific and limited scenario, NRECA suggests that, with respect to a challenge based on “Planned Service” (Table 3), Eligible Entities should be required to strictly construe evidence supporting the contention that broadband will be deployed at the location by June 30, 2024. NRECA supports NTIA’s statement that such claims require evidence of construction contracts and evidence of permits obtained. NTIA should guard against the prospect that promises of future activity could foreclose immediate support for broadband deployment.

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NRECA appreciates the opportunity to offer our perspectives, and we hope our comments prove useful as NTIA develops the Final Guidance. If you have any questions about the above or if we can be of further assistance, please do not hesitate to contact me.

Respectfully submitted,

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