

December 22, 2023

Alan Davidson  
Administrator  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

Dear Administrator Davidson:

As NTIA begins to review state Initial Proposals Volume I and Volume II, and Five-Year Action Plans required for participation in the \$42.5 billion Broadband, Equity, Access and Deployment (BEAD) program, I write on behalf of America's Electric Cooperatives to share concerns about some provisions being considered or proposed in these state plans.

Nationally, more than 200 electric co-ops are working toward meaningful and diverse solutions to provide broadband services to their rural communities, and more are exploring opportunities. Rural electric cooperatives were formed to bring electricity to the highest cost, hardest to reach communities when no other utilities would. Today, cooperatives are again uniquely positioned to bring high-speed broadband to these same communities. However, implementation of rules that would either deter participation in or complicate the long-term viability of an awarded project could jeopardize their participation, the success of the BEAD program, and our shared goal of bridging the digital divide. Electric cooperatives are concerned about the following provisions:

**Requiring awardees to offer low-cost service plans at the \$30 ACP subsidy rate:** In the BEAD Notice of Funding Opportunity, NTIA suggests broadband offices define the low-cost option as a service plan at the Affordable Connectivity Program (ACP) level of \$30 per month or less, or \$75 per month on Tribal Lands (inclusive of all taxes, fees and charges). The ACP subsidy level was arbitrarily set by Congress in the Infrastructure Investment and Jobs Act (IIJA) and is not based on any analysis of affordability or the costs to build, operate and maintain a broadband network and was not meant to be a rate ceiling. While this may appear attractive from Washington, D.C., or a state capitol, setting a rate ceiling at which subgrantees must offer a service plan at the arbitrarily set, one size fits all ACP subsidy rate is problematic, and does not acknowledge the unique local circumstances in sparsely populated areas of rural America. At least three state plans that have been formally submitted to NTIA as of this letter set a rate ceiling at no more than \$30 a month for low-income households. Other states are also moving in this direction.<sup>1</sup>

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<sup>1</sup> *Should states be allowed to cap low-income broadband plan prices, and if so, how much?*, Broadband.IO, posted December 13, 2023, available at <https://www.broadband.io/c/get-broadband-grant-alerts-news/should-states-be-allowed-to-cap-low-income-broadband-plan-prices-and-if-so-how-much>.

- **Why flexibility is necessary in establishing affordability:** In many cases, the monthly \$30 ACP subsidy will not cover the monthly operating cost to serve rural, sparsely populated areas. Requiring a BEAD subgrantee to charge customers below their cost of provisioning service would not only deter program participation but would threaten the long-term viability of the subgrantee, and broadband service to the community. NRECA members have decades of experience providing service to low-income communities, including 92% of the nation's persistent poverty counties. The vast majority of cooperatives offering broadband participate in ACP and support its continuation. However, the economics of serving high-cost, low-density areas often make offering a high-speed service plan at the \$30 subsidy rate infeasible, even when grant funding is awarded.
- **Remedy:** NTIA guidance to states on affordable service plans must urge that they not just address affordability but also ensure the long-term economic viability of projects. In addition, plans with rigid rate ceilings should be rejected.

**Implementation of punitive, discriminatory pole attachment rules:** In some states, provisions have been suggested that would apply FCC pole attachment rates, regulations, and timelines to entities currently exempt from them if they apply for or participate in BEAD. Proposals have also been pushed to require pole owners to sublicense private easement rights to broadband providers.

- **Why discriminatory rules should be rejected:** Provisions such as these are punitive and discriminatory, and run counter to the congressional exemption provided to cooperative and municipal entities under Sec. 224 of the Communications Act and the BEAD NOFO. Cooperatives charge cost-based rates for pole attachments, which can vary from state to state and co-op to co-op based on local factors such as geography and population density. There are two scenarios of how this FCC pole regulation provision would play out in the BEAD.

If a nonprofit electric cooperative applies for the highly competitive BEAD and does not win, this provision penalizes them by subjecting them to FCC pole regulations from which they were explicitly exempted by Congress. It would also force them to charge a pole attachment rate likely below their cost, further subsidizing a federally funded subgrantee. If a nonprofit electric cooperative submits a BEAD application and wins, it will deploy a state-of-the-art fiber network to the entire community. It is extremely unlikely that any ISP would overbuild a federally subsidized fiber network in a high-cost, rural area so the provision would provide no benefit nor impact broadband in the community.

Further, requiring applicants to sublicense their private easements is fraught with legal jeopardy. Cooperatives negotiate easements from private landowners for the distribution of electricity, but in many instances those agreements only cover electric service. Cooperatives often lack the legal authority to grant access to their easements, which run on land owned by another entity, to a third-party. Such a requirement may be contrary to state law or prohibited by the easement contract. Rather than speeding deployment, this would potentially lead to litigation, increase costs, and delay projects for months if not years.

- **Remedy:** NTIA should reject any state plan that includes such discriminatory provisions. They are only intended to deter participation in BEAD by electric cooperatives, and similarly situated entities, to reduce competition for funding.

The BEAD NOFO specifically requires states to conduct outreach to, and urge participation by, nontraditional providers, such as electric cooperatives. Provisions such as these are in clear and direct contradiction since they would only discriminatorily deter participation by entities NTIA wants, and has required states to encourage, to participate.

NRECA appreciates the hard work of NTIA and state broadband offices across the country to implement the BEAD program. NRECA and its members want the BEAD program to succeed and offer these recommendations with that aim. Each of the concerns raised herein would have the effect of deterring participation, or undermining our members' efforts to succeed, in the BEAD program. We urge NTIA to reject any Initial Proposals Volume I and Volume II, and Five-Year Action Plans, with such provisions. If you have any questions or wish to discuss this, or other issues, please contact Brian O'Hara, Senior Director, Regulatory Affairs, at 703-907-5798 or [brian.ohara@nreca.coop](mailto:brian.ohara@nreca.coop).

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Matheson", with a long horizontal flourish extending to the right.

Jim Matheson  
CEO  
NRECA

Cc: Evan Feinman