HOW TO FREE BEAD FROM ITS BUREAUCRATIC SHACKLES

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The Trump administration has an opportunity to unshackle the $42.5 billion BEAD program from bureaucratic micromanagement and turbocharge investment of these funds in new broadband networks. Doing so will help to efficiently and quickly close the United States's digital divide, which has lingered for decades and disproportionately impacted rural households. It will also empower millions of Americans with more robust broadband connectivity and spark enormous economic growth due to the clear multiplier effect of enhanced broadband investment on GDP and jobs.[1] To accomplish this goal, the ACLP proposes the following action items that the NTIA should act on as soon as possible.

BEAD Acceleration Checklist

1. Bring Program Rules into Closer Fidelity with the BEAD Statute [p. 2-3] Limit BEAD rules and regulations to those explicitly referenced in the BEAD statute; all other rules should be scrapped or significantly curtailed via updated guidance documents.	☐
2. Issue Updated Guidance Prohibiting Any Form of Rate Regulation [p. 3-5] a. Prohibit enforcement of a low-cost option at a specific price-point set by a state; b. Require states to rely on marketplace rates and/or allow applicants to propose their own framework for the low-cost option; c. Eliminate the middle-class option requirement, which has no basis in the IIJA; and d. Require states to change their Affordability scoring to reflect the FCC's URS or be reasonably comparable to an applicant's existing offerings.	☐
3. Provide Clearer Guidance About the Role of LEO Satellite in BEAD [p. 5-6] a. Specify how states should set their extremely high-cost per location threshold before bidding begins to permit greater use of LEO satellite for more remote locations while continuing to prioritize fiber deployments where economically feasible; and b. For project areas that can be predominantly served by fiber, but have pockets of more remote locations, enable LEO applicants to fill-in those gaps to assure 100% coverage.	☐
4. Revise the BEAD Terms and Conditions to Remove Extraneous Requirements [p. 6] a. Eliminate extraneous requirements from NTIA's Terms and Conditions model agreement, including requirements related to NEPA, prevailing wage and labor, climate resilience, and limitations on business model experimentation (*e.g.*, usage-based billing); and b. Prohibit states from adding terms and conditions to their grant agreements and instead require them to adhere to the more streamlined NTIA Terms and Conditions.	☐
5. Eliminate Burdensome Requirements From State BEAD Program Rules [p. 7] Issue guidance to address burdensome rules that will delay completion of and/or increase the costs associated with grant-funded projects. Examples include outage credit requirements in Kansas; mandatory line extensions in West Virginia; burdensome reimbursement requirements in Tennessee; and scoring in Massachusetts that seeks to incentivize the provision of low-cost broadband at below $10/month.	☐
6. Adjust Federal & State Program Rules to Maximize the Impact of BEAD Allocations [p. 7-8] a. Prioritize partnerships with established ISPs to prevent waste, fraud, and abuse; and b. Roll back artificial advantages extended to non-traditional ISPs.	☐
7. Provide States With Flexibility to Adjust the Size of Their Project Areas [p. 8-9] Allow states to reduce the size of their project areas, or allow applicants to define their own project areas, to better reflect the realities of broadband network deployment.	☐

Context: Bureaucracy Snarls BEAD

The Broadband Equity, Access and Deployment (BEAD) Program was launched in November 2021 to help close the United States's digital divide once and for all.[2] To accomplish this goal, Congress allocated $42.5 billion and charged the National Telecommunications and Information Administration (NTIA) with administering BEAD in partnership with the states. Unfortunately, since being signed into law on November 15, 2021, no BEAD-funded broadband networks have been built.

What has caused this delay? An all-too-common occurrence: bureaucratic micromanagement.

The Biden NTIA slowed BEAD to a crawl by layering on arbitrary rules, regulations, and processes far beyond those included in the law that created the program.[3] Indeed, the Biden NTIA abused the considerable authority granted to it by Congress to oversee implementation of the program. The result was micromanagement of every phase of the program.[4]

Even so, there is broad agreement across the political spectrum that BEAD remains worthwhile because of the amount of funding ready to be invested in new broadband deployment.[5] These funds are needed to finally achieve universal availability of broadband infrastructure, which will spark economic growth and continued innovation across the broader technology ecosystem. Moreover, even though it took over three years to accomplish, the programmatic infrastructure for administering BEAD is largely in place, with each state having completed its planning and staffing to begin allocating funding.

What is Needed: Quick and decisive action by the Trump NTIA is needed to remove the layers of unnecessary bureaucracy that have slowed BEAD to a crawl so that the funding can finally start supporting shovels in the ground. The following builds on critical feedback of BEAD implementation efforts by the Biden NTIA and proposes immediate action items that could help ensure that BEAD funds are being put to work by ISPs within months, rather than years.[6]

Proposed Action Items for Accelerating BEAD

1. Bring Program Rules into Closer Fidelity with the BEAD Statute

Turbocharging BEAD requires bringing program rules into closer fidelity with the statute that created the program. Comparing the text of the BEAD statute with the array of documents (*e.g.,* Notice of Funding Opportunity (NOFO) and related guidance) authored by the Biden NTIA reveals a vast array of requirements far beyond those articulated by Congress. Indeed, even though Congress provided NTIA with significant latitude to interpret the statute and implement BEAD, it also exempted the executive agency from a variety of procedural rules to hasten implementation.[7] The Biden NTIA used this discretion to load BEAD with progressive policy preferences rather than streamline the provision of broadband access to unserved and underserved Americans.

Proposed Action Item: Efforts by the Trump NTIA to get BEAD on track should be informed by a simple framework: to the greatest extent possible, limit rules and regulations for BEAD imposed by NTIA and the states to those explicitly referenced in the statute; all other rules should be scrapped or significantly curtailed via updated guidance documents issued by the NTIA administrator pursuant to the same source of authority (47 U.S.C. § 1702(i)) that was previously used to bury the program in bureaucracy. A streamlined BEAD program will result in simpler administration and faster, more cost-effective deployments.

For example, the BEAD statute is silent with respect to requirements around paying contractors and subcontractors a prevailing wage, and even the U.S. Department of Labor found the "broadband assistance programs under Division F of the BIL [aka BEAD] do not generally require the payment of Davis-Bacon prevailing wages."[8] NTIA, however, has stated that BEAD subgrantees must provide a certification that they pay prevailing wages set forth in the federal Davis-Bacon Act or provide detailed, project-level employment and local impact reports.[9] NTIA has also permitted and encouraged states to give weight to prevailing wage commitments by prospective subgrantees in their applications (these are evident primarily in states' Fair Labor scoring criteria).

Similarly, NTIA and some state rules would impose labor mandates and/or preferences on subgrantees (*e.g.,* hiring only local workers, using a directly hired workforce, committing to labor peace agreements, and enforcing union neutrality) that Congress neither intended nor authorized when creating BEAD. NTIA should revisit and consider removing requirements where there is compelling legal analysis indicating that a certain statute or aspect of related regulations, including the Part 200 rules, can be removed from the BEAD program.

Another relevant example is the extent to which environmental rules apply to BEAD projects. Per the Biden NTIA's interpretation, certain aspects of the National Environmental Protection Act (NEPA) apply to BEAD,[10] and subgrantees may not "initiate any grant funded implementation activities" until those requirements are met.[11] To accelerate BEAD, NTIA could issue updated guidance that declares that BEAD projects are exempt from NEPA because the broadband projects to be funded will not "significantly affect the quality of the human environment."[12] Alternatively, NTIA could increase the number and broaden the scope of categorical exclusions from NEPA applicable to BEAD projects.[13]

2. Issue Updated Guidance Prohibiting Any Form of Rate Regulation

One of the most egregious examples of regulatory overreach by the Biden NTIA was its encouragement and facilitation of broadband rate regulation. This must be corrected immediately.

The BEAD statute clearly states that the law does not "authorize [NTIA] to regulate the rates charged for broadband service."[14] Nevertheless, the Biden NTIA engaged in several actions tantamount to rate regulation.

First, rather than surveying what the marketplace currently provides to low-income customers in served markets, the Biden NTIA instead coerced states[15] to adopt specific price caps for the statutorily required low-cost broadband service option.[16] Several states, including Florida, Georgia, Missouri, Montana, South Carolina, and Virginia, resisted setting a specific price for the option and instead sought permission to establish more flexible pricing standards. Several of these states documented their disagreements with NTIA, indicating that they only agreed to set a specific price so that their proposals would be approved.[17] Florida went so far as to state it "philosophically disagrees with the NTIA's position that rate requirements are not rate setting," but ultimately relented to receive approval for its BEAD program.[18]

Second, the Biden NTIA encouraged and permitted states to create scoring rubrics that reward applicants for committing to provide broadband at artificially low prices. This stemmed from an NTIA requirement focused on "affordability," which, per NTIA guidance, revolved around a "prospective subgrantee's commitment to provide the most affordable total price to the customer for 1 Gbps/1 Gbps service in the project area" (a similar requirement was detailed for lower-priority 100/20 Mbps connections).[19]

Many states received approval for an approach that will score affordability components of BEAD proposals on a sliding scale, with the most points available to applicants who commit to providing service at a certain price-point (*e.g.,* $70/month for 1/1 Gbps). In many cases, those arbitrary price-points are far below the market-based benchmark price for similar services, a metric closely tracked and annually updated by the FCC in its Urban Rate Survey (URS), which tracks actual rates available in the marketplace, not rates divined by regulation. Some states, like Indiana, pegged their preferred price-point for BEAD projects to the URS.[20] Others required commitments to provide the service at no more than the price of the same service provided elsewhere in the state.[21] Most states, however, set their price-points much lower. For example, Oklahoma set its top-scoring price-point for 1/1 Gbps service at $30/month;[22] in 2025, the URS benchmark rate for that service is $116.85/month.[23]

Third, even though there is nothing in the IIJA that instructs NTIA to do so, the Biden NTIA required states to adopt middle-class affordability plans. Some states went further and would require subgrantees to provide a standalone middle-class plan at a specific price-point. For example, California received approval from NTIA to require subgrantees to offer a middle-class option to all locations in BEAD areas, irrespective of household income, at a cost of "no more than $84 per month, inclusive of all fees and charges, for a plan offering speeds of 100/20 Mbps and meeting the other technical requirements specified of the Low-Cost Broadband Service Option."[24] NTIA approved this requirement even though it previously made clear that the NTIA-created middle-class broadband criteria only required states to detail a strategy for addressing middle-class affordability.[25] Indeed, NTIA underscored the distinction between the low-cost option, a "required service offering," and the middle-class plan, which only required a strategy from the state.[26]

Proposed Action Items: Issue guidance that amends the NOFO and all related NTIA documents to eliminate extra-statutory guidance that involves rates and make clear that rate regulation in any form is prohibited in the BEAD program. Specifically, the guidance should: (1) prohibit enforcement of a requirement to offer of a low-cost option at a specific price-point set by a state; (2) require states to rely on marketplace rates and/or allow applicants to propose their own framework for the low-cost option; (3) eliminate the middle-class plan requirement altogether; and (4) require states to change their affordability scoring rubrics to reflect the URS benchmark or be reasonably comparable to an applicant's existing offerings rather than an arbitrary below-cost price-point.

3. Provide Clearer Guidance About the Role of LEO Satellite in BEAD

There has been much discussion about the appropriate role for "alternative technologies" in the BEAD program. Initially, unlicensed fixed wireless access (FWA) platforms and low earth orbit (LEO) satellite service were not viewed favorably by NTIA and were, for all practical purposes, excluded from BEAD. Over time, though, NTIA expanded BEAD criteria to allow for some participation by these platforms if certain criteria were met.

In a guidance document released in December 2024, the Biden NTIA attempted to provide additional clarity for when states could award funds to "alternative technologies" like unlicensed FWA and LEO satellite.[27] Nevertheless, the Biden NTIA persisted in labelling these "alternative" platforms as "unreliable" even though they are technically capable of "meet[ing] the BEAD Program's minimum technical requirements of speeds of not less than 100 Mbps for downloads and 20 Mbps for uploads and latency less than or equal to 100 millisecond."[28] Moreover, the Biden NTIA continued to limit these offerings to areas where "no service provider has offered to deploy [reliable broadband service] at or below the EHCPLT and an Alternative Technology would be less expensive."[29]

With the robustness of unlicensed FWA varying from provider to provider, LEO satellite appears to be the more viable and cost-efficient platform among the "alternative technology" platforms. As such, while fiber remains the most robust broadband technology and should be prioritized where economically feasible, LEO satellite could offer some states a more affordable means of delivering broadband connectivity to a broader range of high-cost locations than contemplated by the Biden NTIA, particularly in the most remote, expensive-to-serve areas.

Proposed Action Item: Update the Biden NTIA's Alternative Technology guidance to provide states with clearer direction for setting their extremely high-cost per location threshold (EHCPLT) in a manner that opens the door to greater use of LEO satellite in more remote locations.

First, NTIA should require states to set their EHCPLT before bidding begins, at a level that maximizes the deployment of fiber where fiber is financially feasible. And rather than selecting an EHCPLT at random or setting it artificially low, the Trump NTIA should seek to ground a more modest threshold in data and objective analysis of that data. To that end, the Trump NTIA should consider leveraging the EHCPLT model developed and regularly updated by Cartesian, a reputable firm to which many stakeholders across the broadband space have turned for guidance during the BEAD process. Per Cartesian's latest analysis, to achieve 100% coverage with upwards of 90% of BEAD locations served by fiber, the EHCPLT should not be set lower than $9,000.[30] This would provide states with a reasonable benchmark for setting their EHCPLT while also permitting greater use of LEO to reach remote locations.

Second, the Trump NTIA should also allow states to consider partnerships between fiber and LEO providers to ensure that every location in a project area is served with broadband.

The different technologies' complementary strengths could be compelling to states that want to maximize the availability of fiber in denser areas while ensuring reliable LEO broadband service is available in harder-to-reach areas.

At the same time, the Trump NTIA should ensure that fiber remains the priority for BEAD funding because, as confirmed by the BEAD allocations made by Delaware, Louisiana, and Nevada, most states remain eager to prioritize funding to these networks given fiber's relative cost-effectiveness and technological longevity. Each state was able to fund deployment to 100% of eligible BEAD locations. In Delaware, 100% of BEAD connections will be fiber; in Louisiana, 95% will be fiber, 3% will be FWA, and 2% will be via satellite; and in Nevada, 80% of BEAD connections will be fiber, 11% will be FWA, and 9% will be satellite.[31]

It is notable that Nevada was able to use its BEAD allocation to reach 100% of eligible locations because, of the three initial states to award funding, it was the only one that was unsure of whether its allocation would be sufficient for that purpose.[32] Given this dynamic, it is unsurprising to see alternative technologies play a somewhat more prominent role in stretching available BEAD funds to connect every location. This dynamic will likely be evident in the 20+ other states that have indicated that they do not expect their BEAD allocations to be sufficient to reach 100% availability.[33] Several states, including Maine, New Mexico, and Texas have already indicated that they will look to LEO to achieve their connectivity goals, underscoring the need for clearer NTIA guidance on this point.

4. Revise the BEAD Terms and Conditions to Remove Extraneous Requirements

The primary means by which NTIA and the states will enforce BEAD requirements is via the Terms and Conditions attached to each award. The Biden NTIA released an initial version of its model Terms and Conditions agreement in April 2024.[34] That document encompassed the range of obligations to which subgrantees must agree before an award can be finalized and funding formally allocated for a project. States can also add Terms and Conditions to their agreements with subgrantees.

Like the BEAD NOFO, the Biden NTIA's Terms and Conditions include a host of requirements that go far beyond the core BEAD criteria included in the enabling statute. In addition to clauses that memorialize the NEPA, prevailing wage, and low-cost option requirements discussed above, the Terms and Conditions also include provisions dedicated to labor requirements, climate resilience, and "consumer protections" like a prohibition on the imposition of "data usage caps on any plans offered over a Funded Network."[35] None of these requirements are included in the BEAD statute.

Proposed Action Item: Via a guidance document, NTIA should eliminate from its model Terms and Conditions all requirements not included in the BEAD statute. These would include, among other things, provisions related to NEPA, prevailing wage and labor requirements, climate resilience, unnecessary limitations or prohibitions on business model experimentation (*e.g.,* usage-based billing), and burdensome Part 200 requirements. In addition, NTIA should prohibit states from exceeding these requirements and instead require them to adhere to the streamlined parameters of the model agreement.

5. Eliminate Burdensome Requirements From State BEAD Program Rules

The Biden NTIA micromanaged every aspect of the BEAD process, pushing states to adopt its preferred approach on everything from the challenge process[36] to regulating the rates of broadband services delivered over grant-funded networks.[37] The Biden NTIA also permitted states to adopt a range of additional BEAD requirements that, in practice, will add significant burdens to subgrantees.

Illustrative examples abound and include, among others:

- Kansas requiring subgrantees, as part of their low-cost option, to "provide service outage credits, measured at 1/30 of the monthly rate per day for an outage of over 12 hours."[38]
- West Virginia mandating line extensions into areas that received no BEAD bids by subgrantees with network infrastructure in areas adjacent to those no-bid areas.[39]
- Massachusetts setting aside 10% of the points available in its scoring rubric for commitments by applicants to offer a low-cost option for less than $10/month.[40]
- Tennessee, along with several other states, requiring subgrantees to submit "each budget line item (identified under the correct allowable category) against each contractor invoice or make-ready/material charge-out/in-house labor expenses" for review and approval before they will be reimbursed for their expenses in building a BEAD-funded network.[41]

Proposed Action Item: NTIA should issue updated guidance that amends the BEAD NOFO to make clear that the inclusion of extraneous requirements by states in their BEAD programs will not be enforceable because they will unnecessarily delay the completion of and/or increase the costs associated with BEAD projects. This would be consistent with a laudable goal for BEAD, which is to minimize, as much as possible, the outlay of funds to ensure that there is enough money available to close the digital divide.

Some states, like Colorado, are already doing this themselves to attract applicants. Colorado launched a second BEAD round because many unserved and underserved households remained after its first round of bidding.[42] Colorado made several changes to its program rules, including providing applicants with more flexibility to price the low-cost option and create project areas.[43] NTIA could coordinate similar adjustments across the 50 states to free BEAD programs of unnecessary rules and speed the allocation of funds.

6. Adjust Federal and State Program Rules to Maximize the Impact of BEAD Allocations

There is ample data demonstrating that the most impactful way to invest public funds for broadband expansion is to use them as the basis for forging public-private partnerships (PPPs) with established ISPs.[44] These expert firms have an impressive track-record of success in using public dollars to extend their networks into previously unserved and underserved areas in an efficient and timely manner. Moreover, these firms are often in a better position to provide higher levels of matching funds, which will help stretch BEAD funds even further and increase the number of unserved and underserved locations served by grant-funded projects.

The BEAD statute is structured primarily as a means of forging these kinds of PPPs. However, the statute makes clear that any entity that wishes to apply for grant funding must be allowed to do so. Indeed, the statute prohibits states from excluding any entity, including municipalities, utilities, and other non-traditional ISPs, from "eligibility for…grant funds."[45] The statute is silent, though, regarding the extent to which NTIA might or should attempt to artificially bolster the chances of non-traditional ISPs vis-à-vis securing grant funding when competing against more established providers. Nevertheless, the Biden NTIA required states to adopt a slew of criteria aimed at leveling the playing field between established ISPs and non-traditional ISPs in their pursuit of grant funding.[46]

Even though established ISPs remain well positioned to secure BEAD funding, program criteria undermine much of the valuable expertise that these firms have over firms without any demonstrable track-record in the broadband market. The result is a two-tiered application system that, in many instances, requires established ISPs to provide significantly more documentation to demonstrate their bona fides than what is required of non-traditional ISPs or new entrants.[47] This occurred because of Biden NTIA engineering of state-level BEAD criteria.[48] For example, whereas established ISPs are required to submit evidence showing their competence with cybersecurity, supply chain management, and fair labor practices, new entrants and non-traditional ISPs must only provide pro forma plans stating how they will protect their networks or address supply chain disruptions.

Proposed Action Item: Via updated guidance documents and direct conversations with states, the Trump NTIA should strongly encourage a preference for BEAD funds to go to established ISPs, particularly those proposing matching funds above the 25% minimum. This will reduce the risk that funds are squandered and will ensure the speedy deployment of broadband networks. A useful point of comparison here is the speed with which broadband networks have been built with ARPA funding. Established ISPs have built new networks with ARPA funding within a year or two,[49] whereas municipal broadband projects using the same funding have languished or failed outright.[50]

A preference for PPPs with established ISPs could be effectuated by, among other things, rolling back the array of artificial advantages extended to non-traditional ISPs by the Biden NTIA. This would be permissible under the BEAD statute, which only states that non-traditional ISPs have the same opportunity to apply for funding; it says nothing about NTIA or states acting to improve their odds. This is yet another example of bureaucratic overreach by the Biden NTIA that must be corrected by the Trump administration.

7. Provide States With Flexibility to Adjust the Size of Their Project Areas

As discussed in a separate ACLP analysis, smaller BEAD project areas (PAs) are best vis-à-vis attracting applicants and increasing the chances of a state bringing connectivity to remaining unserved and underserved households.[51] Unfortunately, several states have gone in the opposite direction and embraced very large PAs, the contours of which do not align with the realities of broadband network deployment. For example, a handful of states (*e.g.*, Alabama, Georgia, Hawaii, Washington) have linked their PAs to county boundaries; others (*e.g.,* Kansas; Oregon) have aligned them with school districts.[52] These larger PAs are more likely to have unserved and underserved locations that are spread too diffusely, making it economically infeasible for an applicant to leverage economies of scale in serving these areas.

At the same time, Texas was pushed by the Biden NTIA to embrace an entirely different approach to setting PAs than the one it initially proposed:

> "The Texas BDO originally planned to allow BEAD applicants to define their own project areas on a per-BSL basis. This approach garnered significant support from the industry during the public comment period in November-December 2023. However, following the submission of the state's Initial Proposal, NTIA expressed significant concerns, citing the potential complexity of managing applicant-defined areas, and advocated for the use of predefined project areas to streamline the process. By late summer 2024, NTIA also indicated that no other state was using applicant-defined project areas at the BSL level and continued to advocate for a change in the project area structure.
>
> "In the interest of moving the BEAD Program forward and receiving approval, the Texas BDO issued a Request for Information (RFI) seeking stakeholder input on how project areas should be designed…As a result, the BDO will allow BEAD applicants to design project areas using census tracts as the minimum size building block."[53]

In short, larger PAs seem to have been preferred by the Biden NTIA even though expert ISPs have indicated that smaller, or applicant-defined, PAs are more efficient.

Proposed Action Item: The Trump NTIA should issue guidance requiring states that have not yet awarded projects to reduce the size of their PAs or allow applicants to remove a small number of "outlier" high-cost locations (as determined by the state's EHCPLT) from the state-defined PAs in their bids. The outlier locations can then be served by a less expensive technology, such as LEO satellite. This approach will facilitate the most efficient use of taxpayer funds while also ensuring that the greatest number of locations will be served by the fastest and most reliable technology.

Notes

[1] The broadband investment multiplier effect has been consistently observed for decades. *See, e.g.,* Robert Crandall W. Crandall and Hal J. Singer, *The Economic Impact of Broadband Investment* (2010), https://www.researchgate.net/publication/265631048_C_The_Effect_of_Ubiquitous_Broadband_Adoption_on_Investment_Jobs_and_the_US_Economy; Matthew Sprintson and Edward Oughton, *The Contribution of US Broadband Infrastructure Subsidy and Investment Programs to GDP Using Input-Output Modeling* (2024), https://arxiv.org/ftp/arxiv/papers/2311/2311.02431.pdf.

[2] 47 U.S.C. § 1702(b)(1).

[3] *Letter from Senator Ted Cruz, Chairman of the Senate Commerce Committee, to NTIA Administrator Alan Davidson*, Nov. 21, 2024, https://www.commerce.senate.gov/services/files/C32B6A16-3088-437E-A227-6F72650A081C ("*Sen. Cruz Letter*").

[4] The law that created BEAD includes an open-ended provision that empowers the NTIA administrator with seemingly limitless authority to do as they wish vis-à-vis BEAD. *See* 47 U.S.C. § 1702(i). The law also includes an equally broad clause limiting judicial review of NTIA's BEAD actions, leaving aggrieved stakeholders with little recourse to accelerate the pace of program execution. *See* 47 U.S.C. § 1702(n).

[5] *See, e.g., Letter from Louisiana Governor Jeff Landry to Acting Secretary of Commerce Howard Lutnick re Louisiana's Broadband BEAD Program and Proposed Reforms for Success under President Trump,* Jan. 22, 2025, https://www.benton.org/sites/default/files/Landry%20BEAD%20Letter.pdf; Ian Doescher, *BEAD and Beyond: New York's Broadband Director Has a Holistic Vision to Fulfill,* Jan. 28, 2025, Telecompetitor, https://www.telecompetitor.com/bead-and-beyond-new-yorks-broadband-director-has-a-holistic-vision-to-fulfill/.

[6] *See, e.g., Sen. Cruz Letter.*

[7] 47 U.S.C. § 1702(o).

[8] *Fact Sheet #66A: Bipartisan Infrastructure Law*, U.S. Department of Labor Wage and Hour Division, https://www.dol.gov/agencies/whd/fact-sheets/66a.

[9] *See, e.g., BEAD Notice of Funding Opportunity*, p. 91, NTIA (May 2022) ("*BEAD NOFO*").

[10] *BEAD NOFO* at p. 86-87.

[11] *General Terms and Conditions of the BEAD Program*, p. 7, NTIA (April 2024), https://broadbandusa.ntia.gov/sites/default/files/2024-05/BEAD_IPFR_GTC_04_2024.pdf ("*BEAD T&C*").

[12] 42 U.S.C. § 4336e (1).

[13] The Biden NTIA adopted several dozen categorical exclusions from NEPA for BEAD. *See, e.g., Overview of NEPA, Categorical Exclusions, and Extraordinary Circumstances,* NTIA (July 2024), https://broadbandusa.ntia.doc.gov/sites/default/files/2024-08/NTIA_NEPA_Categorical_Exclusion_Extraordinary_Circumstances_NTIA-BLM_Permitting_Summit_Slides.pdf.

[14] 47 U.S.C. § 1702(h)(5)(D).

[15] *See, e.g.,* Michael Santorelli, *A Different Take on the Great BEAD Rate Regulation Debate: Is NTIA Coercing the States?*, Broadband Expanded Blog, June 19, 2024, https://broadbandexpanded.com/posts/beadrateregulation ("*A Different Take*").

[16] 47 U.S.C. § 1702(h)(5).

[17] For example, South Carolina, in the approved version of its Initial Proposal Volume 2, noted that, "Without the establishment of an approved low-cost broadband service option, the NTIA will not open to the State of

South Carolina its additional allocation of $546,535,983.05 in BEAD funds." *See* BEAD Initial Proposal Volume 2 (approved), p. 29, South Carolina, https://broadbandexpanded.com/files/iija_plans/SC%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.

[18] *Florida BEAD Initial Proposal Volume 2 (approved)*, p. 74, https://broadbandexpanded.com/files/iija_plans/FL%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.

[19] *BEAD NOFO* at p. 43.

[20] *Indiana BEAD Initial Proposal Volume 2 (approved)*, p. 77, https://broadbandexpanded.com/files/iija_plans/IN%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.

[21] *See, e.g., Connecticut BEAD Initial Proposal Volume 2 (approved)*, p. 43, https://broadbandexpanded.com/files/iija_plans/CT%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.

[22] *Oklahoma BEAD Initial Proposal Volume 2 (approved)*, p. 36, https://broadbandexpanded.com/files/iija_plans/OK%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.

[23] *2025 Urban Rate Survey – Fixed Broadband Service*, p. 8, FCC, https://www.fcc.gov/sites/default/files/2025%20Urban%20Rate%20Survey%20Broadband%20Methodology%20Report%20Final.pdf.

[24] This requirement would be in place for 10 years. The state also "strongly encourage[s]" BEAD recipients to offer this $84/month option across their footprints, even in areas not funded by BEAD, that providers have deployed with their own private risk capital. *California BEAD Initial Proposal Volume 2 (approved)*, p. 210, https://broadbandexpanded.com/files/iija_plans/CA%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.

[25] *See, e.g., Tricky Topics to Watch Out For in the Initial Proposal,* at p. 22, NTIA (Nov. 2023), https://broadbandusa.ntia.gov/sites/default/files/2023-11/IP_Tricky_Topics_11-21-2023.pdf.

[26] *Id.*

[27] *Alternative Broadband Technology Public Notice,* NTIA (Dec. 2024), https://www.ntia.gov/sites/default/files/publications/ntia_bead_alternative_broadband_technology_policy_notice.pdf.

[28] *Id*. at p. 5.

[29] *Id*. at p. 6.

[30] *BEAD Program: A Framework to Allocate Funding for Broadband Availability – National Overview,* at 12, Cartesian (July 2024), https://acaconnects.org/index.php?checkfileaccess=/wp-content/uploads/2024/07/BEAD_Funding_National_Overview_5.0.pdf.

[31] Based on calculations by New Street Research (on file).

[32] *See, e.g., Nevada BEAD Initial Proposal Volume 2 (approved)*, p. 47-48, https://broadbandexpanded.com/files/iija_plans/NV%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.

[33] ACLP Review of States' Initial Proposals (on file).

[34] *Available at* https://broadbandusa.ntia.gov/sites/default/files/2024-05/BEAD_IPFR_GTC_04_2024.pdf.

[35] *Id.*

[36] Michael Santorelli, *BEAD Volume 1 – Trends & Observations,* Broadband Expanded Blog, June 4, 2024, https://broadbandexpanded.com/posts/beadv1trends.

[37] *A Different Take.*

[38] *Kansas BEAD Initial Proposal Volume 2 (approved)*, p. 85, https://broadbandexpanded.com/files/iija_plans/KS%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.

[39] *West Virginia BEAD Initial Proposal Volume 2 (approved)*, p. 34, https://broadbandexpanded.com/files/iija_plans/WV%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.

[40] *Massachusetts BEAD Initial Proposal Volume 2 (approved)*, p. 32, https://broadbandexpanded.com/files/iija_plans/MA%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.

[41] *Tennessee BEAD Application Guide*, p. 55, https://www.tn.gov/content/dam/tn/ecd/documents/broadband/infrastructure/bead/program-materials/updated-docs---10-16-24/BEAD%20Guidebook%201.3.pdf.

[42] *Colorado BEAD Round 2 Addendum* (Jan. 2025), https://docs.google.com/document/d/1WxSTSA5wxpjWauIdZO0oJYT3We5omx33607lIW-V47k/edit?tab=t.0#heading=h.mil3jpk780re.

[43] *Id.*

[44] *See, e.g.*, Michael Santorelli & Alex Karras, *Broadband Deployment Models: Public-Private Partnerships,* ACLP at New York Law School (Jan. 2025), https://broadbandexpanded.com/files/resources/Broadband%20Deployment%20Model%20Case%20Studies%20-%20PPP%20-%20January%202025.pdf ("*PPPs*").

[45] 47 U.S.C. § 1702 (h)(1)(A)(iii).

[46] *See, e.g.*, Michael Santorelli & Alex Karras, *Navigating the BEAD Weeds: Vetting Subgrantees,* ACLP at New York Law School (March 2024), https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1022&context=reports_resources.

[47] *Id.*

[48] *Id.*

[49] *See, e.g., PPPs* (for examples of ISPs using ARPA funds to complete builds within a few years).

[50] There are several relevant examples here, which are on file with the ACLP, like a failed municipal Wi-Fi network in Tucson, AZ. Ultimately, though, data submitted by municipalities to the U.S. Treasury Department as part of their ARPA reporting underscore that the vast majority of municipal broadband-related projects being funded with this money are not close to being fully built.

[51] Michael Santorelli and Alex Karras, *Navigating the BEAD Weeds: Project Areas,* ACLP at New York Law School (Nov. 2023), https://broadbandexpanded.com/files/resources/ACLP%20-%20BEAD%20Weeds%20-%20Project%20Areas%20-%20November%202023.pdf.

[52] ACLP Review of States' Initial Proposals (on file).

[53] *Texas BEAD Initial Proposal Volume 2 (approved)*, p. 25, https://broadbandexpanded.com/files/iija_plans/TX%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf.