Title

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by **Pamela Sherwood** in **Kansas BEAD Volume 2 Public comment**

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Are you filing a comment on behalf of an organization?	Yes
Which organization are filing on behalf of?	Connect Holding II LLC d/b/a Brightspeed
Please indicate which sections of volume 2 you are responding to:	Requirement 8: Subgrantee Selection process Requirement 16: Low Cost Broadband Service Option Requirement 20: Middle Class Affordability
Please provide your response to Requirement 8: Subgrantee Selection Process	As the nation’s fifth largest incumbent local exchange carrier (ILEC) focused on empowering more homes with ultrafast, reliable internet, Brightspeed greatly appreciates the substantial efforts of the KOBD in preparing one of the first subgrantee selection process proposals, outlined in its Broadband Equity Access and Deployment (BEAD) Initial Proposal – Volume 2. Through the collaborative approach with policymakers, industry and key stakeholders, Kansas has outlined a process that will further the state goal

of attaining reliable, affordable internet service for every resident, school and businesses. While there may be different views on how to best accomplish those goals, especially in rural areas where the high cost of fiber deployment is a challenge, all involved in the process are working to accomplish similar objectives. With assets and associated operations in 20 states, as well as a leading rural telecommunications provider since the 1930s and a broadband provider in Kansas, Brightspeed is uniquely positioned to offer these comments on the Initial Proposal Volume 2, specifically addressing the subgrantee selection process.

Comments on Requirement 8: Subgrantee Selection Process

Streamlining Application Process: Brightspeed applauds the KOBD for considering ways to streamline the application process. As a provider who submits multiple applications in grant funding rounds, the duplication of core/basis information that applies consistently to every application is time-consuming and duplicative. The pre-qualification window will allow us to provide this basic information, including financial, operations, managerial and technical qualifications one time. This will reduce the burden on the KOBD staff as well as the providers. We suggest, however, that additional information that is consistent across the company also be submitted during this one-time window, such as the core narratives on company policies, pricing and compliance requirements. The documentation required can be broken into two groups: (1) anything that is consistent/companywide be submitted once, including the operation, technical, financial and managerial experience as well as all certifications, including fair labor information and pricing/affordability details and (2) project-related materials – including the project plan, timing, budget proformas, local support and grant request. We suggest dividing it up into company requirements and project requirements will streamline the application process.

Project Area Definition: One of the most challenging aspects of designing a program that will achieve 100% coverage for unserved areas, while also ensuring effective use of grant funding to cover underserved locations as well, must certainly be the definition of the application areas. Brightspeed commends KOBD for process design to ensure unserved coverage first with flexibility in its process, including possibly 2-3 rounds and perhaps switching to negotiations or RFPs to address areas that have not received applications.

We encourage KOBD to allow for a flexible definition of project areas, defined in part by the indications of areas of intent from ISPs. For example, Mississippi proposes having ISPs submit letters of intent for areas. This is similar to the proposal of Virginia to have ISPs submit lists of addresses they intend to serve. By gathering this data from ISPs, the broadband office can then design project areas that will maximize participation, minimize overlap/conflict and construct project areas in a way to maximize the reach of grant funding to cover unserved and underserved areas by leveraging locations with lower cost locations to offset higher cost locations to create attractive opportunities for deployment.

Large Project Area Coupled with a Must Serve All Requirement. As an incumbent legacy telephone provider operating since the 1930s in Kansas, Brightspeed has a well-defined operating area that is not bound by and does not track county or city borders or even Unified School District (USD) borders. As we endeavor to upgrade our network from DSL to fiber to better serve our customers, Brightspeed seeks to align grant opportunities with those well-established geographic boundaries, enabling us to leverage existing network, right of way access and poles to achieve a more efficient use of grant funds. If Kansas creates too large of an application area, it could result in having few or no grant applicants. We urge Kansas to reconsider and instead follow the lead of states like Louisiana that propose to use smaller geographic boundaries, like Census Blocks, and allow providers to aggregate them to create larger geographic boundaries if that makes sense for their network deployment plans. Or to follow the model described above, proposed by Mississippi and Virginia, to gather information from ISPs before establishing project areas.

Brightspeed is likewise concerned that coupled with a large geographic area, the proposal also requires applicants to serve all locations within an application area. This requirement fails to account for Extreme High-Cost Threshold (EHCT) locations and High-Cost locations and how those locations could result in a very high project cost or lead providers to not bid on the area at all. There are locations in Kansas that are excessively expensive to serve with fiber, and should an applicant be required to submit a proposal costing out fiber to that location, along with all others, it will skew the average funding requested by location much higher than it would be if the EHCT location was set aside (with the expectation that wireless or satellite would better serve that location).

Brightspeed is also concerned that residents that could reasonably be served with fiber will not get the opportunity if the EHCT locations are included in a way that results in the entire area being served by a non-priority technology. If the process fails to set aside the EHCT locations, and instead rejects the entire FTTH application and considers alternative applications for all, even those locations that could effectively be served by a FTTH application, residents in that area will be denied the opportunity for FTTH just because their project area is included with other EHCT locations. Brightspeed recommends, that instead of the entirety of the project area being considered for a technology other than FTTH, DHCD consider setting aside just the EHCT locations.
To identify those EHCT locations, Brightspeed suggests that KOBD allow alternative options to be submitted – one proposal with the cost to "serve all" and then one proposal that identifies the EHCT locations and excludes them from the funding request/budget calculation. This better aligns with the goal of achieving ubiquitous fiber, except for EHCT locations, and could limit the number of project areas with no bids, if a bid can be submitted that is less than all (EHCT omitted). On page 19, the KOBD seems to consider this type of approach when it explains: "KOBD recognizes the combined cost in any Project Funding Area proposal may combine these costs for service locations as an additional presentation layer. This allows KOBD, in the case of a funding shortfall, to prioritize awards based on unserved locations without revisiting proposals." We recommend that KOBD require confidential disclosure of the 10% highest cost premises in each project area and the cost to those locations, as a way to better understand the

funding request and determine if those locations should be served via FTTH.

Large Project Areas and Consortiums. If project area continues to be defined at the USD level, KOBD has set forth some general guidelines to allow consortiums to submit applications. We urge KOBD to provide additional guidance to navigate through the added complexity of this type of partnership, or in the alternative, allow consortiums to define their project areas and permit the awarding of sub-project areas to each provider. If the grant is awarded to one provider/designated recipient, how will the letter of credit, reporting, reimbursement and other requirements be allocated and addressed. Requiring the development and response by a consortium, including all the community engagement and outreach, in the 45-day window allowed for application submissions, is simply not sufficient time.

And if one provider fails to complete the construction, but the other provider has completed its portion of the build, the reference to void/default and claw back provisions in 2.16.2 penalize the good actor who completed the build and all the requirements.

We suggest that as an alternative, the KOBD revise these provisions to clarify that the USD can be subdivided, with an award going individually to each provider, who is then responsible for its portion. If one provider fails, that provider should be subject to 2.16.2 and then that portion of the project rebid.

Another approach is to have providers loosely partner but each submit a bid/application only covering their portion of the project. South Carolina has proposed this approach in its Volume 2, stating:

Each ISP partnering will submit an individual application detailing their prospective specific project area(s) and proposed BSLs within the county and make reference to the other project(s) and ISP(s) working to serve remaining locations in such a way that a comprehensive plan is formulated to solve broadband for the county in which they applied.

This approach avoids having to deal with issues of joint and several liability if one provider fails to complete the build, or which ISP must submit the letter of credit.
As an alternative, the KOBD could simply allow providers to indicate proposed coverage areas that are less than an entire USD. ISPs could be required to indicate, in their prequalification phase, the limits of any geographic areas they are proposing to serve. In doing so, Kansas will have additional information as it endeavors to find the right balance between application area sizes, and perhaps divide large USDs into smaller subproject areas.

Defining Extreme High-Cost Threshold (EHCT): In explaining what is expected in the Initial Proposal, the NOFO stated on page 31 that “NTIA expects Eligible Entities to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible.” Brightspeed, and other ISPs with experience in deploying FTTH, can certainly help with identifying EHCT locations in our footprint. We urge KOBD to provide additional guidance on its process for identifying these areas, and then how they would be addressed during the application process. For example, prior to applications, ISPs could identify any locations that are extremely high-cost locations, assisting KOBD in its determination of what addresses are the EHCT locations. Providing additional guidance on how this will be implemented is essential as ISPs assess how to evaluate opportunities and risks of submitting an application to cover all required areas in a USD.

Defining Application Areas – Core Buildout Locations. As a legacy network provider, we leverage existing network in our deployment plans. We support the proposal to allow providers to designate "Must-include Project Area Units" ones that contain the core buildout necessary to make the project area viable. This concept specially recognizes that providers have core network that is being leveraged to make these deployment projects more cost-effective.

Affordability Requirements and Guidance: NTIA just released guidance on scoring criteria, affordability and middle income which need to be incorporated into Kansas' Volume 2 Plan. The "Tricky Topics to Watch Out for in the Initial Proposal" explains that the primary scoring criteria related to affordability is about the "most affordable total price for the customer." Volume 2's proposed scoring for affordability goes beyond what is "most affordable total price" and instead focuses on the price for the 1 Gbps speed tier, targeting scoring to a required price along with a locked-in five-year commitment. This scoring criteria isn't consistent with the guidance provided by NTIA.

The five-year price commitment is also a complicating factor in today's environment of escalating inflation, supply chain and other factors outside a provider's control. While some state grant programs under ARPA sought commitments to retain pricing, those durations were for a much shorter two-year time span. Given the extended application and approval process, coupled with the 4-year deployment, this 5-year price commitment stretches to a 7-10 year commitment when we are asked to lock in prices based on today's economics. We urge KOBD to reframe this particular section of the scoring criteria to eliminate this locked in price or at the very least shorten the duration and allow flexibility to adjust given changing economic conditions, inflation and other cost pressures.

While Kansas is aware, no doubt, of the legal issues around any attempt to regulate prices for broadband, and that Congress included a provision in the IIJA titled "No Regulation of Rates Permitted" making clear that nothing was authorizing the regulation of rates to be charged for broadband service. There are other ways to address the affordability scoring criteria without mandating or setting rates, such as the proposal recommended by Ohio to rank applications based on average statewide prices. Hence, we suggest that the scoring criteria be revised to remove references to particular prices accordingly.

Community Engagement and Local Letters of Support: While Brightspeed agrees that local support is an important consideration, in our experience, getting support from a locality, particularly in the short timeframe allowed for the application, can be challenging. We applaud KOBD for allowing points for engagement as well as additional appoints for letters of support. However, the requirement to hold local meetings with residents and businesses, and requiring an ISP to provide evidence of minutes, attendee lists and discussion items is excessive, particularly given the short time for the application submission and that similar processes are happening in other states at the same time. Often, Brightspeed works directly with county and local leadership to present a proposal and then the county addresses it at meetings. Documentation from the County, including a letter explaining their engagement, should be sufficient to demonstrate community engagement.

Other issues:

Low-Cost Broadband Service Issue: Brightspeed suggests additional clarification is needed on the low-cost service option. Again, so as to not run afoul of legal limitations, we recommend clarification that participation in ACP is required as a gating factor, but that KOBD's recommendation of a low-cost service option of $30 for ACP-qualified customers (not all low-income customers – but only qualified ones) is a recommendation, not a mandatory requirement. Moreover, while the proposal expects participation in any ACP or successor program, it should also be clear that, should ACP not continue to be funded, ISPs are not expected to design and implement their own standard income verification tool but should be permitted to access a standard verifier, such as that used in lifeline and ACP, to determine the eligibility of customers to receive a low-income program offer.

Evidence of Other Broadband Projects: While Brightspeed agrees that evidence of past broadband deployment projects is relevant and helpful to determine the experience of an ISP with grant projects, the level of disclosure proposed in response to 2.4.17.a is overly broad and may result in Kansas receiving more material than would be helpful for its evaluation. For example, Brightspeed operates in 20 states and has applied for multiple grants. It has won over 35 grants and is executing on 10 grants under state programs from 2021 and 2022. We will gladly provide documentation on grants won and projects we are executing. However, the request seeks disclosure, for our Kansas operating company and all other companies, of every application submitted or planned to be submitted. The volume of applications we have submitted under various state and federal programs over the last few years is extensive and we continue to plan or submit more applications. We recommend that this disclosure requirement be narrowly tailored to the information essential to evaluate an ISP's experience and technical ability to deploy broadband and comply with grant reporting requirements so as to not overwhelm your office with material that is not relevant.

Flexibility to Address Changes in NTIA Guidance: While the NOFO set out various requirements, NTIA has been providing additional clarification and guidance and there are a number of issues and concerns stakeholders are still addressing with NTIA. The Volume 2 sets forth the current requirements around the letter of credit, however, there are still significant discussions on this issue as well as the final guidance on the waiver for Buy America requirements. Brightspeed commends KOBD for allowing itself some flexibility in the rules and requirements to adjust those set forth in Volume 2 as additional guidance is provided for the letter of credit. We also recommend the approaches taken by Ohio and Virginia in their Volume 2 proposals that seek specific waivers related to the letter of credit. Those proposals are described below.

Suggested Waivers

Letter of Credit: The BEAD requirement of a Letter of Credit raises substantial concerns due to its up-front demand for capital. Under the current BEAD program requirements, applicants must obtain a letter of credit valued at no less than 25% of the award amount, on top of requirements to contribute a minimum 25% of their total build cost and to receive the remaining 75% of grant funds on a reimbursement basis. This means that award recipients will be required to commit, at the beginning, capital amounts over 100% and up to 120% of the project cost.

As we've raised with NTIA, the letter of credit requirements is not consistent with the Rural Digital Opportunity Fund (RDOF) requirements. Under RDOF, payment is in advance rather than using a reimbursement model, yet the FCC generally requires just 10% of funding, and the letter of credit is retired with deployment. Contrasted with the NTIA's BEAD letter of credit requirements of 25% which do not retire as deployment is completed, BEAD grant payments are made on a Reimbursement Basis, meaning that under BEAD, providers will be required to deploy network using their own capital and demonstrate deployment before they receive BEAD funds (without interest). If a provider doesn't deliver, they will not get reimbursed. There is no BEAD funding at risk and this reimbursement process alone should be sufficient to ensure a provider follows through on its commitments.

Just last week, NTIA issued a Notice of Programmatic Waiver providing details for the BEAD Letter of Credit Waiver. In that document, it offered a few options, including:
1. Ability to obtain a letter of credit from a credit union.
2. Ability to submit a performance bond for 100% of the grant amount.
3. Ability to decrease the 25% letter of credit over time as build milestones are met.
4. Reduction of the letter of the credit to 10% instead of 25% if reimbursement is limited to 6-month periods of time with the letter of credit retired upon build completion.

In its press release, NTIA invited states to seek waivers that make sense for their programs, saying:

States and territories are also free to request waivers for additional circumstances not covered by this programmatic waiver where prospective subgrantees are able to meet the requirements under the NOFO by other means.

To truly make BEAD a success in the state, we ask Kansas for flexibility in its Volume 2 and BEAD program and guidelines to allow for alternative mechanisms to assure projects are complete. Ohio, South Carolina and Virginia recently filed proposals in their Volume 2's to allow for alternatives.

Virginia noted in its Volume 2, it has options for securing performance, including recovery/claw back as necessary to protect BEAD funds in the event of non-performance. It specifically requested a waiver from NTIA of the requirement to unilaterally require a 25% letter of credit, and instead proposes, on pages 19-20 of its Volume 2 that it implemented additional flexibility to demonstrate creditworthiness under the BEAD program, outlining three options: (1) compliance with the Letter of Credit Requirements as outlined under the BEAD NOFO, (2) alternative requirements to the letter of credit based on specific conditions and other requirements, and (3) the allowance of performance bonds to suffice for this requirement." Virginia's approach offering various alternatives to the letter of credit or performance bond to mitigate financial risk based on 4 different tiers.

• No letter of credit required if the applicant can that show A, B and C:
o A – It has 2 years of audited financials, either at applicant or parent company level, and audit did not identify any issues.
o B – It has existing assets in state and a certificate of good standing from the secretary of state.
o C –It has a bank reference letter showing the length of relationship, the line-of-credit and that exceeds the amount of the anticipated grant, that it has met all requirements with the bank on time.
• If the applicant can't meet one of the above, but can provide D and E, then no letter of credit required.
o D – A parent company provides a comfort letter stating that the parent company is aware of grant and regularly monitors the subsidiary.
o E – A binding parent guarantee – if size of grant does not exceed 25% of parent company revenues, or more than 25% of current locations passed, parent can provide a guarantee.
• If the applicant can meet one of the A, B, or C but can't provide D &E, then the letter of credit required is only 10%. A letter of credit at the full 25% is required if an applicant can't meet the other requirements.

Importantly, under the Virginia approach, the letter of credit is retired with deployment of the required broadband network. One addition we suggest to the Viriginia approach is to also recognize that any letter of credit is not needed until such time as the grant funds are distributed, which would be the first submission of a request for reimbursement. A letter of credit should not be required when the grant is executed and the build begins, because at that time the provider is using its own capital for the entirety of the network build.

Ohio's Volume 2 also seeks a waiver from the letter of requirement, proposing alternatives. Ohio explained that the waiver is necessary to ensure that smaller providers are not barred from participating in BEAD if they can otherwise prove financial stability. Ohio expects that a waiver for letter of credit requirements will help ensure wider participation from ISPs, increase competition, and thereby improve the quality of bids, which combined may ultimately help bolster effective BEAD outlay to reach universal service.

Instead of a blanket requirement for letters of credit, Ohio will assess the financial, technical and operational qualifications of the applicant to evaluate whether the applicant has sufficient financial stability to undertake the proposed project. Ohio proposes that it may require a performance bond, letter of credit, or other financial assurance if it determines that the completion of the project requires additional security based on its assessment of the complete application. Furthermore, Ohio intends to use its ability to rescind an award of funds to a broadband provider for failure to execute a program grant agreement within 90 days of the determination of the authority to approve the provider's complete application.
South Carolina also requested a waiver of the letter of credit requirement, developing two alternatives depending on the size of the project:
1. Large Existing SC Company 1) Subrecipient parent company has $100 million telecommunications or electric plant in production in the State of South Carolina; and, 2) Subrecipient agrees to get paid at the end of the project.
2. Smaller Project, Proven Company 1) Subrecipient agrees to get paid at the end of the project; and, 2) Proposed project is less than $5M total BEAD funds with no Davis-Bacon requirements; and, 3) SCBBO has a proven track record with the subrecipient of completing projects on time/budget.

South Carolina explains the reason for the waiver, pointing out that the state is adequately protecting the federal interest by not paying until project verification/closeout. South Carolina leverages its extensive experience in managing ARPA investments in the same proven approach.

We encourage Kansas to consider its particular program needs and ensure the program requirements are applied in a way to balance the need to protect the grant funds while not thwarting participation and locking up capital that could otherwise be used to deploy networks. The waivers suggested by Virginia, South Carolina and Ohio achieve that by allowing flexibility and a balanced approach.

Professional Engineer Certification: While NOFO 2.4.13 asks the state to explain how it will determine the technical abilities of an applicant and suggests that a Professional Engineer (PE) Certification is required, Brightspeed encourages KOBD to consider whether a PE is necessary in all circumstances. Brightspeed has been deploying broadband networks and operating in Kansas since the 1930s. While it has a PE on its engineering staff, our experienced team has decades of experience and not all of them are licensed engineers. If a PE is required, we suggest that KOBD accept a certification from any state, not just for Kansas. The review and determination by a professional engineer on the proposed design and expected performance characteristics of a FTTH deployment are not state-specific. Given that, we propose that if a certification is required, any state licensed PE is acceptable.

Other states have recognized that this PE requirement can impose an unnecessary burden. Ohio has specifically requested a waiver, stating that given “the anticipated scale of the BEAD deployment efforts and the timeline for subgrantee selection process, BroadbandOhio anticipates significant difficulties for potential subgrantees to obtain a certification prior

	to application submission, which could bottleneck the application process if certification is required at the time of application as a subgrantee qualification." We suggest Kansas consider whether this PE certification is required, and if so, broaden it to allow submission from any state licensed PE.
Please provide your response to Requirement 16: Low Cost Broadband Service Option	Low-Cost Broadband Service Issue: Brightspeed suggests additional clarification is needed on the low-cost service option. Again, so as to not run afoul of legal limitations, we recommend clarification that participation in ACP is required as a gating factor, but that KOBD's recommendation of a low-cost service option of $30 for ACP-qualified customers (not all low-income customers – but only qualified ones) is a recommendation, not a mandatory requirement. Moreover, while the proposal expects participation in any ACP or successor program, it should also be clear that, should ACP not continue to be funded, ISPs are not expected to design and implement their own standard income verification tool but should be permitted to access a standard verifier, such as that used in lifeline and ACP, to determine the eligibility of customers to receive a low-income program offer.
Please provide your response to Requirement 20: Middle Class Affordability	Affordability Requirements and Guidance: NTIA just released guidance on scoring criteria, affordability and middle income which need to be incorporated into KOBD's Volume 2 Plan. The "Tricky Topics to Watch Out for in the Initial Proposal" explains that the primary scoring criteria related to affordability is about the "most affordable total price for the customer." Vol 2's proposed scoring for affordability goes beyond what is the "most affordable total price" and instead focuses on the price for the 1 Gbps speed tier, targeting scoring to a required price along with a locked-in five-year commitment. This scoring criteria isn't consistent with the guidance provided by NTIA. In further explaining the affordability plans, NTIA explains that the low-cost service option is an offering by the ISP and must be "available to those who qualify for ACP and are using BEAD-funded infrastructure." The Middle-Class Affordability Plan is a strategy adopted by the eligible entity, not the ISP. Therefore, KOBA should revisit its responses on page 92, in answer to Section 2.13 and in Requirement 8. While KOBA is aware, no doubt, of the legal issues around any attempt to regulate prices for broadband, and the terms and conditions of broadband such as imposing automatic outage credits, we suggest that the detail on these pages be reframed as guidance or recommendations or reporting on outages, not a requirement with financial penalties and revenue implications that might implicate the project's potential viability.
By submitting the Public Comment Form (the "Form") and any supporting evidence, you attest	pamela.sherwood@brightspeed.com

that all information furnished is true and accurate to the best of your knowledge and that any attachments are free of malware or viruses. You also acknowledge that falsifying any information could result in legal action against you and will bar you from submitting public comments to this web site in the future. You authorize the Kansas Office of Broadband Development, Kansas Department of Commerce (KOBD) to contact you if further information is needed. You expressly acknowledge and consent to some personal information, including your name, address, phone, e-mail, organization you represent, and comments, being posted for public view on the Kansas Department of Commerce web site at www.kansascommerce.gov. The KOBD will use its best efforts to redact any personal identifiable information outside of the above that is not considered in the public domain. By typing your name and date and by submitting the Form,

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