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by **Benjamin Aron** in **Kansas BEAD Volume 2** id. 44673718

Public comment

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Are you filing a comment on behalf of an organization? Yes

Which organization are filing on behalf of? CTIA - The Wireless Association

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 November 12, 2023

VIA ELECTRONIC FILING

Jade Piros de Carvalho, Director
Kansas Office of Broadband Development
1000 SW Jackson St, Suite 100
Topeka, KS 66612

Re: Comments on BEAD Initial Proposal Volume 2

Dear Ms. Piros de Carvalho:

CTIA respectfully submits these comments in response to the Kansas Office of Broadband Development's ("KOBD's") Initial Proposal Volume 2 ("Volume 2") in the Broadband Equity, Access, and Deployment ("BEAD") program, which will be submitted to the National Telecommunications and Information Administration ("NTIA"). Volume 2 reflects a great deal of work by KOBD, and CTIA looks forward to engaging with KOBD to optimize Kansas's approach to promoting broadband deployment with its BEAD funding. To help ensure the achievement of the BEAD program's goals in Kansas, CTIA recommends that KOBD:

- Define how it will set the Extremely High Cost Per Location Threshold ("EHCPLT");
- Clarify how the EHCPLT will be used in the selection process consistent with NTIA's Notice of Funding Opportunity ("NOFO");
- Clarify Volume 2's requirements regarding contacting Affordable Connectivity Program ("ACP") eligible consumers for its low-cost affordability program;
- Revise the middle-class affordability proposal to adopt a strategy rather than a specific plan;
- Adjust its approach to application scoring to align with legal limitations, and;
- Allow subgrantee applicants to define the unserved, underserved, and community anchor institutions ("CAIs") served by their proposals, rather than using arbitrary school district boundaries.

I. VOLUME 2 MUST DEFINE MORE CLEARLY HOW KOBD WILL SET AND APPLY THE EXTREMELY HIGH COST PER LOCATION THRESHOLD (2.4.9-10. Deployment Subgrantee Selection (Requirement 8))

The NOFO requires states' Initial Proposals to include "a detailed plan to competitively award subgrants consistent with Section IV.B.7.a of this NOFO," which must include "identification of, or a detailed process for identifying, an Extremely High Cost Per Location Threshold to be utilized during the subgrantee selection process."

KOBD's Volume 2 neither identifies an EHCPLT for Kansas nor sets out a detailed process for identifying one. KOBD states that it "has performed location-based Cost Analysis" based on prior grant programs it has administered, and "examined" the EHCPLT tool provided by NTIA. Although Volume 2 observes that all of these tools indicate that Kansas faces a funding shortfall, which is precisely the challenge that the EHCPLT is intended to help the state address, Volume 2 does not indicate with any clarity how Kansas expects to set the threshold in order to meet its universal service requirements.

Volume 2 also fails to specify how KOBD proposes to use the EHCPLT in its selection process. Indeed, Volume 2 seems to suggest that KOBD will avoid applying the EHCPLT at all, by funding all-fiber projects above the threshold "if BEAD funding remains available" and requesting that bidders above the threshold modify their bids—including by incorporating non-fiber technology—to bring them below the threshold. Failing to specify how the EHCPLT will be identified or used may make it less likely that Kansas will enjoy robust participation by a diverse set of subgrantees in the BEAD

program, which would diminish the benefits of the program for all the residents and businesses of Kansas. This is a particularly significant concern given KOBD's projected shortfall in BEAD funding to achieve universal service.

However, while the NOFO clearly obligates states to set the EHCPLT or share a detailed process for setting it, if KOBD's deferral of this task is part of a holistic, technology-neutral approach that embraces the use of non-fiber Reliable Broadband Service technologies to achieve broadband deployment as prioritized by the Infrastructure Investment and Jobs Act ("IIJA") and NOFO, then the approach could prove a useful tool in pursuit of programmatic goals.

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IV. SUBGRANTEE APPLICANTS SHOULD BE PERMITTED TO DEFINE PROJECT BID AREAS (2.4 Subgrantee Selection Process (Requirement 8))

KOBD should also amend Volume 2 to give prospective subgrantees flexibility regarding the geographic level for proposals. Volume 2 proposes to define Project Funding Areas based on Unified School District (USD) boundaries, requiring each applicant to "propose to serve all BSLs within at least one USD." Although the BEAD NOFO gives states flexibility to solicit proposals from prospective subgrantees at the geographic level of their choosing, allowing bidders to define the project areas on which they wish to bid will result in the best outcome for Kansas because it will allow bidders to (i) define project areas to make proposals more cost-effective by maximizing network efficiency and effectively leveraging existing infrastructure; and (ii) account for considerations such as topography, terrain, environmental factors, and right-of-way considerations that would otherwise become barriers if project areas are not defined by actual bidders, and without regard to these factors. The proposal to define Project Funding Areas based on USDs does not account for either of these factors.

KOBD's proposal is particularly problematic because it also proposes that bidders should be required to offer a mandatory middle-class affordability plan throughout the project area. Thus, Kansas should allow bidders to define project areas that logically may be served rather than using arbitrary USD boundaries.

Please provide your response to Requirement 16: Low Cost Broadband Service Option

II. KOBD SHOULD CLARIFY THE NOTICE REQUIREMENTS FOR ITS LOW-COST AFFORDABILITY PROGRAM (2.12. Low-Cost Broadband Service Option (Requirement 16))

CTIA and its members strongly support efforts to ensure that broadband service is affordable. The wireless industry has long been at the forefront of pioneering affordable options for consumers, such as the first prepaid wireless plans requiring no contract, credit check, or deposit. Wireless providers currently offer a variety of affordable plans in Kansas, including plans supported by the ACP and the Federal Communications Commission's ("FCC's") Lifeline program. The majority of ACP customers choose wireless broadband service, demonstrating a strong consumer preference for the benefits of wireless broadband. In Section 2.12 of Volume 2, KOBD appropriately proposes to require BEAD subgrantees to participate in ACP. However, CTIA requests that KOBD clarify that the proposed requirement that the "low-cost option and ACP subsidy description and subscriber application must be offered in all contacts with potential subscribers" is intended to align with the existing requirements on ACP participating providers per the FCC's rules to notify new customers about the availability of ACP during enrollment inform existing customers that are not enrolled in ACP at their renewal time, or at least annually.

Please provide your response to Requirement 20: Middle Class Affordability

III. KOBD SHOULD REVISE ITS APPROACH TO MIDDLE-CLASS AFFORDABILITY (2.13. Middle-Class Affordability Plans (Requirement 20))

NTIA has directed states to "adopt diverse strategies" to ensure middle class affordability, and clarified that the middle-class affordability requirement is a "strategy," not a specific service plan. Volume 2 indicates that the "points assigned to affordability in the scoring criteria in the Subgrantee Selection Scoring are the primary means to ensure high-quality broadband services will be made available to all middle-class families." To receive maximum points for affordability, bidders must provide a "recommended service plan" at a prescribed rate of \$90 (for 1 Gbps symmetrical service) or \$60 (for 100/20 Mbps service). KOBD's proposal assigns more points for lower-cost plans by tiers, up to a maximum of 15 points for affordability in total, to create an incentive for subgrantees to provide more affordable plans.

Nothing in the IIJA nor NTIA's BEAD guidance authorizes KOBD to specify particular rates or rate caps for broadband service. Indeed, in the process of enacting the IIJA, lawmakers negotiated and agreed upon programs like the ACP and the low-cost option for eligible low-income consumers, while specifically barring broadband rate regulation in a subsection entitled "No Regulation of Rates Permitted." As a result, NTIA is barred from regulating rates, and it cannot impose conditions on or provide incentives to Eligible Entities to accomplish that goal indirectly. Approving proposals like KOBD's that contain a rate plan or otherwise engage in ratemaking would violate this prohibition.

Moreover, broadband service is an interstate information service and, as such, may not be subjected to common carrier regulations. Rate regulation is a classic form of common carrier regulation. Consequently, KOBD's authority to address affordability is cabined and circumscribed and may not include prescribing or otherwise regulating rates.

CTIA urges KOBD to revise Volume 2 to remove the prescribed rate plans and tiers from the scoring process (and from other sections where the

same tiers are employed) and eliminate the requirement that bidders offer the prescribed plans to “all prospective customers anywhere within the Project Funding Area.” There is no reason for Kansas to take such an approach and CTIA suggests two alternatives for KOBD to consider. First, CTIA urges the KOBD to take a market-based approach to assessing affordability. As an example, the State of Ohio’s draft Initial Proposal, Volume 2, proposes to calculate an average of applicant-proposed rates from all applications and award points for proposed prices below the average. Other market-based approaches that encourage and reward lower prices without engaging in rate-setting can be found in the Initial Proposal, Volume 2, of South Carolina and South Dakota.

Another approach is for KOBD to analyze whether a subgrantee’s broadband pricing is comparable between urban and rural areas of the state and/or across the provider’s entire service territory, an approach used by Georgia in its Initial Proposal, Volume 2. Given the nationwide nature of much broadband pricing (particularly among wireless providers), and the wide adoption of broadband services, there is a strong basis to conclude that rate comparability is a strong indicator of middle-class affordability.

Alternately, if KOBD finds it necessary to use an existing rate or rate structure as a reference point to award application points for affordability, CTIA suggests that KOBD use the FCC’s reasonable comparability benchmark. That benchmark is based upon the FCC’s urban rate survey of broadband pricing applicable to recipients of support through similar broadband deployment programs, such as the Connect America Fund Phase II and Rural Digital Opportunity Fund. It shows that an unlimited data plan offering 100/20 Mbps would cost an average of \$105.03 per month. The FCC’s benchmark is at least based on rates in the competitive marketplace, and using an existing federal benchmark provides a rational basis for KOBD’s scoring, notwithstanding the IIJA’s prohibition against ratemaking. Such an approach will also help ensure that rate plans available on networks built in Kansas using federal deployment subsidies are similar, which will help avoid consumer confusion that could arise from companies potentially charging neighbors different rates depending on the federal subsidy program used to deploy the different network segments from which they receive service.

CTIA and its member companies are proud of their record of making service more affordable for all Americans and support the BEAD program’s emphasis on ensuring affordable service offerings on BEAD-subsidized networks. But Volume 2’s approach to affordability fails to lay out an effective, legally sustainable strategy to ensure that middle class households in Kansas can afford service from the providers funded by BEAD. These affordability requirements could also discourage qualified providers from bidding on areas at all, decreasing the likelihood of drawing competitive bids.

By submitting the Public Comment Form (the "Form") and any supporting evidence, you attest that all information furnished is true and

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