

Title	<b>0023</b>	11/12/2023
	by <b>Andrew Mincheff</b> in <b>Kansas BEAD Volume 2</b>	id. 44678982
	<b>Public comment</b>	
	1100 G Street NW, Suite 800 Washington, District of Columbia 20005 United States 843-409-1338 amincheff@incompas.org	

## Original Submission 11/12/2023

Please provide your first and last name	Andrew Mincheff
Please provide an email that we can contact you through	amincheff@incompas.org
Please provide your address (not required)	1100 G Street NW, Suite 800 Washington, DC District of Columbia 20005 US
Are you filing a comment on behalf of an organization?	Yes
Which organization are filing on behalf of?	INCOMPAS
Please indicate which sections of volume 2 you are responding to:	Requirement 20: Middle Class Affordability Requirement 14: Cost and Barrier Reduction Requirement 8: Subgrantee Selection process
Please provide your response to Requirement 8: Subgrantee Selection Process	<p>MULTIPLE TECHNOLOGIES FOR BROADBAND SERVICE</p> <p>Deploying for the future so that the networks can serve both high-speed fixed and 5G networks is critical, and INCOMPAS is a proponent that fiber serves as the foundation. Every technology in the broadband ecosystem needs access to fiber—including fixed broadband, cable, cellular (mobile &amp; 5G), and satellite. Building more fiber helps all, and fiber densification throughout the U.S. is critical for winning the race to 5G.</p> <p>INCOMPAS also acknowledges that fiber may not be technically and geographically possible in certain unserved and underserved locations in</p>

Kansas. Therefore, INCOMPAS believes that the U.S. Treasury's final guidance on the American Rescue Plan struck the right balance by encouraging recipients to prioritize investments in fiber infrastructure wherever feasible and also requiring recipients "to design projects to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds" in the last mile. In those situations where it is not practicable to do so because of the extremely high cost of the project or geography or topography of the area to be served by the project, projects must reliably meet or exceed 100/20 Mbps as the standard and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds.

In defining the "Extremely High Cost Per Location Threshold" for project funding areas, the Kansas Office of Broadband Development should follow Treasury's example and continue to set speeds at a level that spurs competition, by retaining the standard set of at least 100/20 Mbps while also encouraging scalability up to 100/100 Mbps to help deliver reliable home broadband in a time-efficient way that does not leave thousands of Kansans on the wrong side of the digital divide. This funding represents an historic opportunity to provide every American with reliable, affordable broadband, so states should set their scoring of applications judiciously in order to guarantee that the allotted BEAD funds are going towards the appropriate mix of fiber and other hybrid, cost-effective alternative technologies—such as next generation Fixed Wireless Access solutions—to ensure that all the unserved and underserved families and communities are granted access to high quality broadband. To award scalability and promote other future-proof technologies, INCOMPAS encourages that the Kansas Office of Broadband Development also consider possible speed tiers of service for wireless to ensure the bids selected are most able to provide a competitive or fiber-equivalent service. Specifically, in those circumstances where the subgrantee's alternative technology such as Fixed Wireless Access has proven it can exceed 100/100 Mbps for serving high-cost areas, the state could award applications with added points for going beyond the speed of service requirements and reaching certain speed levels (ex. 200/50 Mbps, 400/100 Mbps, etc.), as well as for attaining a lower cost per location within the applied-for project funding area(s).

#### SELECTION AMONG PRIORITY BROADBAND PROJECTS

INCOMPAS believes it is critical that this infrastructure investment be made in robust and reliable networks that can offer greater connectivity today and higher speeds in the future, and projects must be able to scale to meet consumer and business demand over time. Indeed, it is important to deploy for today and the future so that the networks can serve both high-speed fixed and 5G networks.

The Kansas Office of Broadband Development should also consider those subgrantees who can continue to scale and have proven experience meeting their community's needs. This should include successful experience offering broadband internet access service or partnering with entities who do so, serving other businesses, community anchor institutions, and residences, and a demonstrated willingness to hire within the community and support the local economy with the BEAD program. Such entities must also be able to deliver on the project both financially and

technically in a timely fashion.

Regarding additional prioritization factors to evaluate in the awarding of broadband projects, the BEAD program will not achieve the objective of ensuring the availability of affordable, high-quality broadband service in unserved and underserved areas unless the Kansas Office of Broadband Development exercises its authority to adopt rules promoting competition. The networks funded by the BEAD Program will likely be the only broadband facilities in the unserved and underserved areas targeted by that program, and the high entry barriers in those areas make it unlikely that another service provider will deploy network facilities. Customers served by networks funded by the BEAD Program will therefore have no choice of providers. This absence of competition poses a serious threat to ensuring affordable and high-quality services. It is therefore critically important that Kansas adopt Open Access as a Secondary Criterion for selecting among Priority Broadband Projects.

#### COMPETITIVE BID PROCESS

To further enable and promote increased competition in both unserved and underserved areas, Kansas must ensure a competitive, open bid process as required by the IIJA. We urge the Kansas Office of Broadband Development to clearly set forth that the BEAD Program be awarded through a competitive process and must permit competitive broadband and infrastructure providers, as well as others, to participate and that does not tilt the playing-field in a way that discourages participation by private sector entities. A competitive process should also be publicly available, with clear rules from the beginning that are published and in compliance with NTIA's requirements.

INCOMPAS' members have successfully entered the market in many different types of communities and situations. They have built rural areas where no providers were offering service with no public sector support or funding. They have partnered with towns and cities to deliver fiber-based connectivity for the first time which has transformed communities. INCOMPAS believes that there is no need to preference certain types of entities in the grant process. Rather, transparent deployment and service requirements stated in the grant process will allow all entities that could deliver such service to compete, and taxpayers benefit from a more efficient program when there is competition for it.

INCOMPAS supports the Kansas Office of Broadband Development in thoroughly vetting and reviewing subrecipients to ensure that they have the technical and financial experience to deliver on the grant projects. INCOMPAS also believes that potential recipients should not be discriminated against for being a private sector company. Prioritizing one class of recipient over others is not in the public interest and prevents all applicants from having meaningful and robust opportunities to compete for funding. Recipients should be judged on their ability to meet the grant requirements and their proposals. Prioritizing certain types of entities (i.e., non-profits and co-ops) should be strictly forbidden.

---

Please provide your response to

Speeding up broadband deployment is critical for families and small businesses who need internet access, and they need it now. INCOMPAS'

Requirement 14:  
Cost and Barrier  
Reduction

members consistently face delays in permitting and gaining access to the public rights-of-way. Speed to market is critical to meet needs as quickly as possible for the BEAD Program, and INCOMPAS believes it is necessary to have the Kansas Office of Broadband Development review its guidelines in place that enable faster processing that will allow the deployment of broadband infrastructure more quickly, including small cells and other wireless equipment and fiber that is used by both fixed and mobile providers to connect their networks.

As part of allocating the BEAD Program funds, the Kansas Office of Broadband Development should encourage local authorities to begin reviewing their permitting processes and determine whether they have the resources they need to issue permits quickly. The processes currently followed in certain States create a significant impediment to deployment efforts, and these existing processes constitute a barrier to entry so the Kansas Office of Broadband Development should encourage local jurisdictions to expedite permitting, allow for batch permitting, and keep permitting and all other fees low. The Kansas Office of Broadband Development should also require that these fees be publicly disclosed, competitively and technology neutral, and non-discriminatory based on actual and direct costs.

And where cities and towns need financial assistance to purchase and implement technology upgrades for speeding permitting processes, such as offering batch permit processing, or they need to hire temporary staff to handle the number of requests, the Kansas Office of Broadband Development should evaluate these needs and allow for such reasonable costs to be covered by the BEAD Program funding.

It is also critical for the Kansas Office of Broadband Development to encourage cities to evaluate their processes and fees for reasonableness so that project dollars are used efficiently and effectively and will enable more fiber miles to be built. Requiring competitive providers to construct their network entirely underground in areas where existing overhead facilities are available and populated not only elongates any kind of schedule, it also guarantees less fiber miles will be built. INCOMPAS' members also mention the locates process, and the burden this creates for deploying networks. Recognizing the costly delays associated with locates including inaccurate markings, lack of coordination and late work completion, INCOMPAS suggests that the Kansas Office of Broadband Development work with their state 811 One Call Center local authorities to evaluate their locates process to address this barrier to deployment and to help optimize projects for speed and efficiency as part of this new funding.

Another challenge our members often face is accessing the public rights-of-way. Increasing broadband providers' access to public rights-of-way will help spur faster and more efficient deployments to unserved areas-benefiting consumers and businesses waiting for access to next-generation networks. The Kansas Office of Broadband Development must work with those entities that own and/or manage the rights-of-way to extend fair and transparent protections to providers who need access to build out their networks. This includes those entities that own or manage poles, highways, and railroads. INCOMPAS' members have repeatedly

faced prohibitions for accessing the pole infrastructure of utility cooperatives who use their monopoly position to deny access to competitors which has disadvantaged rural areas from receiving broadband from a competitive provider.

The Kansas Office of Broadband Development should make clear that any grants awarded for projects are conditioned upon those entities not denying competitors reasonable, fair, and non-discriminatory access to their owned and managed utility poles and conduit. Entities receiving federal grants should not be permitted to engage in anti-competitive activity by excluding competitors from their service territories by denying them access to their poles and conduit that competitors must access in order to provide a competitive alternative.

Finally, the BEAD Program and other broadband investment programs present a historic opportunity for communities large and small, urban and rural, to right the wrongs of the past and build a better future for all Americans. It is not hyperbolic to suggest BEAD projects may be for communities the most important infrastructure activity this century. To help ensure projects are done right and deployed with all deliberate speed, INCOMPAS proposes the Kansas Office of Broadband Development implement a “Broadband Ready City” Checklist to help guide cities, counties, and all local municipalities. This checklist for broadband success will promote smart, fast, and cost-effective deployment as part of the BEAD Program and demonstrate a willingness to enhance competition and choice.

Suggestions for developing broadband deployment ready guidelines for cities, towns, counties, and local entities include:

- Broadband Money for Broadband Projects: Limit application fees to the actual, objectively reasonable costs incurred by the jurisdiction to process an application. Limit rights-of-way access fees to actual objectively reasonable cost.
- Streamlined for Speed: Implement expedited or streamlined review of zoning and permitting applications that facilitate wireless and fiber deployment, including those that make efficient use of existing infrastructure pursuant to federal law.
- Transparent Review: Establish procedures to allow all forms, applications and documentation related to a project to be reviewed and either approved or denied within 30 days after the application is submitted. Adopt efficient intake procedures, such as batch permitting and electronic submission.
- Pro Innovation: New innovative deployment processes and construction techniques, such as micro-trenching, speed deployment and cut construction time. Investing in faster, future-proof networks that are built to last and enable an “all of the above” deployment strategy.
- Smart Restoration: Working together to ensure broadband money is dedicated to internet access, smart street restoration obligations that are in scope with deployment construction projects set at the time of the application, will help communities maximize the benefits of their broadband dollars.

INCOMPAS urges the Kansas Office of Broadband Development to begin the process of including these deployment issues into its discussions on its

rules with the implementation process. INCOMPAS' members are seeing significant delays and increases in costs prior to the public sector financing that's now available, and they are concerned that with the additional financial boost afforded by Congress, further delays are likely as those who manage/own the rights-of-way are ill-prepared for the increased demand for requests to access the rights-of-way.

Agencies at the Federal, State, and Local levels all need to prepare now and begin discussions of how to avoid costly delays. INCOMPAS recommends identifying where there are current gaps, including training employees, reviewing processes that can be expedited by investing in technological upgrades, and coordinating between agencies/managers of rights-of-way as soon as possible. Better, faster internet will bring more educational opportunities, healthcare options, and attract greater investment to fuel local economic growth. More competition brings consumers and businesses more choice and lower prices.

---

Please provide your response to Requirement 20: Middle Class Affordability

The BEAD NOFO requires that Eligible Entities include a “middle-class affordability plan” in their Initial and Final Proposals. INCOMPAS believes prioritizing BEAD last-mile broadband projects that comply with Open Access would enable Kansas to bridge the digital divide and to establish an efficient and effective middle-class affordability plan. INCOMPAS is submitting these comments to emphasize the benefits your state's consumers would experience if the Kansas Office of Broadband Development prioritized last-mile broadband projects that commit to complying with Open Access in the BEAD Program.

One of the most serious risks associated with the BEAD Program is that it will produce new local broadband monopolies across Kansas and across the nation. The program will appropriately subsidize the deployment of broadband facilities in areas where new network investment has not occurred and is unlikely to occur in the future, but once BEAD-funded networks are deployed, they will face no competition from existing or potential facilities-based entrants. The result will be entrenched monopolies with essentially no incentive to provide reasonable wholesale access to competitors who can offer better service, lower prices, and more innovation and investment in the marketplace. There can be no dispute that a monopoly market structure will harm consumers and businesses in BEAD-funded areas. Over time, the newly minted broadband monopolists will provide lower quality of service and higher prices than would be possible in a competitive market, and broadband customers will suffer as a result of the lack of choice. Taxpayers are paying for the BEAD Program, and they deserve better. They have a right to broadband AND broadband competition.

There are two ways in which to promote this objective. First, the Kansas Office of Broadband Development could seek to replicate the effects of competition by regulating the service quality and even the prices of the broadband service that BEAD sub-grantees offer. This could require that the low-cost, high-speed plans are offered to essentially all consumers or it could take the form of service quality regulations, or both. However, these forms of direct regulation are often less effective than actual competition in delivering better service and lower costs for consumers.

Second, the Kansas Office of Broadband Development could choose the option that NTIA specifically designed to address this problem and that it encourages Eligible Entities to adopt – prioritizing last-mile broadband projects that commit to complying with Open Access. Open Access allows Kansas to rely on competition rather than regulation to ensure that consumers receive better service and potentially even lower prices than would otherwise be available under the BEAD Program.

Among the many benefits of Open Access, one worth special emphasis is the way it helps to bridge the digital divide. By tailoring their service offerings to the specific needs of unserved and underserved communities, resale competitors are likely to find ways to make broadband useful and helpful to those communities. This can be done, for example, by offering complementary services, such as VoIP, cloud storage, simple billing and usage-tracking options, equipment repair, educational support, training, and other services designed for the specific needs of consumers, small businesses, and community anchor institutions in unserved and underserved communities. Monopolists have little or no incentive to innovate in these ways. By offering products and services tailored to the needs of the target communities, competitors relying on Open Access will ensure that the broadband made available via BEAD-funded networks will be more relevant and beneficial to consumers, that more consumers will subscribe to the service, and that those who do so will benefit more from it. In short, the digital divide will be more effectively bridged.

Another critical area worth mentioning, the benefits of Open Access would accrue at virtually no cost. Open Access is easy to administer because Kansas can rely on the pre-existing framework established for the avoided-cost discount developed pursuant to Sections 251(c)(4) and 251(d)(3) of the Communications Act. Implementing the Open Access criterion requires virtually no expenditure of administrative resources. No ratemaking proceedings are required. No complex consideration of potential implementation issues is required. Indeed, NTIA likely chose the avoided-cost definition of Open Access for this reason. NTIA was well-aware that adopting the avoided-cost discount approach to Open Access offered Eligible Entities an off-the-shelf discount framework that is easy to design and administer.

Finally, there is no basis for the concern expressed by broadband providers in that Open Access would undermine investment incentives. Those opponents do not analyze the specific terms of Open Access as defined in the BEAD NOFO. If they did, they would be obligated to recognize that the Open Access discount reflects the costs that the network owner avoids when selling service at wholesale rather than retail (e.g., marketing, billing, and collection-related costs), so network owners incur no meaningful costs when selling to wholesale customers as opposed to retail customers.

evidence, you attest 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](http://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,  
you acknowledge,  
authorize, and  
consent to this Public  
Comment Privacy &  
Acknowledgments.

---