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November 10, 2023

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

Dear Ms. Piros de Carvalho:

AT&T Kansas offers the following comments for consideration on the Broadband Equity, Access, and Deployment Program ("BEAD") Initial Proposal Volume 2 ("BEAD-IP-Vol2") proposed by the Kansas Office of Broadband Development ("KOBD").

AT&T is an established broadband internet access provider in Kansas and is leading the nation's largest fiber build to home and business locations, and our fiber customer satisfaction scores consistently rank among the industry's best. We've added more than one (1) million consumer AT&T Fiber subscribers for five (5) years in a row, and our 100 percent fiber network has the ability to serve 24 million consumer and business locations. AT&T is thus keenly aware of the importance of broadband access to the economy, education, healthcare, and more. We share the State's interest in developing a program that fairly and rationally allocates the state's BEAD funding to maximize broadband connectivity throughout the State. To that end, AT&T Kansas recognizes the considerable effort expended by the KOBD to develop its BEAD-IP-Vol2.

The BEAD program presents a once-in-a-generation opportunity to ensure that all Kansans have access to the broadband networks that drive the information economy. That said, BEAD dollars are finite. The program will only be successful in driving fiber to the premise ("FTTP") enabled broadband internet access service to as many Kansas homes as possible, to ensure that the people of this state have the robust broadband capability they need not only today, but for years to come, if the program is successful in attracting private capital to act as a multiplier of the program's federal dollars. In considering the rules implementing the BEAD program in Kansas, therefore, we urge the KOBD to be mindful of the impact that program requirements can have on provider participation in the program and therefore, how far BEAD dollars can go.

AT&T Kansas offers the following comments in furtherance of our common goal to reduce the digital divide in Kansas.

## Summary of Recommendations

The following summarizes AT&T's recommendations, discussed in detail below.

- Kansas should enable funding applicants to propose project areas consisting of combinations of smaller geographic building blocks – such as Census Blocks - rather than mandating the use of than the much larger school district boundaries as mandatory minimum Project Funding Areas. Large minimum project areas like school districts will create unworkably large project areas resulting in providers not being able to efficiently utilize existing infrastructure, may discourage provider participation, and ultimately deprioritize fiber deployments.
- Requiring providers to offer a low-cost broadband option at the same rate for a period of five years without considering broader economic trends may result in customers missing out on opportunities for increased speeds as networks are upgraded and requiring pro-rated service credits for outages constitutes impermissible rate regulation.
- KOBD should adopt strategies that encourage maximum participation by providers that incentivize them to offer multiple speed tiers at different price points without regulating or locking in rates.
- KOBD should score and rank applications' affordability by comparing the applicable rates to the appropriate FCC urban benchmark rate, which provides a simple, objective, fact-based competitive price reference against which to evaluate applicants' prices.
- The State's scoring rubric should provide sufficient detail on specifically what an application must reflect to reflect full, partial, or no points in each scoring category, to enable applicants to develop project proposals that are uniquely tailored to meet the State's needs and expectations.
- KOBD should modify its matching funds waivers criteria to more clearly focus on incentivizing deployments to expensive to serve areas.
- KOBD should consider clear standards to identify qualified and capable applicants; ensure that applicants have experience with the technology they propose to deploy, which is the best predictor that they will deliver on their BEAD commitments.
- KOBD should consider seeking a waiver from NTIA to modify the letter of credit requirements to focus on easy-to-apply, objective measures of individual subgrantees' creditworthiness and financial risk.

## Recommendations

### A. Project Funding Areas

The KODB can best promote broad participation in the program by allowing network providers as much flexibility as possible to design the project areas included in their grant applications. Providers are in the best position to design their project areas in a manner that makes the most cost-effective use of existing infrastructure, minimizes the new permits and rights of way needed, and thus, in a manner that speeds deployment, enabling them to get robust broadband service to the people of Kansas as quickly and efficiently as possible.[1] The comments and recommendations below are designed to further the providers flexibility in designing projects, which also will benefit Kansans by ensuring the most efficient use of the finite BEAD funding.

#### 1. Minimum Project Area Unit

The KOBD has proposed to define the mandatory minimum Project Funding Areas "by Unified School District (USD) borders in place June 1, 2023." *See* BEAD-IP-Vol2, p. 18. Further, KOBD makes clear the State will not consider an application "if it does not provide qualified broadband service to all unserved and underserved BLSs with at least one entire USD." *Id.*

The geographic size and make-up of Project Funding Areas will be critical to maximizing an applicant's flexibility to design Project Areas that leverage existing network capabilities, rights of way, and permits, and which thereby enable the most cost-effective and efficient infrastructure deployments as possible, helping to ensure that the program gets broadband service to as many Kansans in unserved and underserved locations as possible.

To this end, AT&T Kansas believes that Project Area Units should be as geographically small as possible – in fact, NTIA guidance recognizes individual locations are an option – and in no case larger than a Census Block. Census Blocks are a relatively small common geographic unit,[2] so enabling applicants to combine Census Blocks into project areas thus still enables providers to design efficient deployments that maximize use of existing infrastructure. Using larger minimum geographic units like Census Block Groups (which on average, consist of approximately 33 Census Blocks),[3] USDs or counties, could force applicants to have to consider building far beyond their current footprint in order to apply, and thus eliminate synergies and therefore increase

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[1] NTIA recognized the importance of leveraging existing assets in attaining speed to deployment and reducing BEAD program outlays, thus requiring each State to specify in its Initial Proposals the steps that the State will take to promote the use of existing infrastructure and cost-effective access to poles, conduits, easements, and rights of way. BEAD NOFO, § IV.B.5.b, ¶ 14; § IV.B.9.b, ¶ 11.a.

[2] U.S. Census Bureau, What are census blocks? (as of 8/1/23)

[3] U.S. Census Bureau, Tallies (census.gov).

costs.[4] This means higher bids to serve the addresses and could lead some providers to avoid bidding on the project areas all together. In contrast, enabling applicants to propose project areas comprised of smaller "building block" units, like Census Blocks, will maximize efficiencies and enable greater participation by a variety of broadband providers. Using Census Blocks will also help extend the reach of the State's BEAD allocation to enable end-to-end fiber deployments to as many locations as possible.[5]

AT&T Kansas recommends that KOBD not mandate Project Funding Areas based upon USDs or other large geographic units such as Census Tracts, or counties, whose boundaries bear no relationship to real world network infrastructure deployments. There are more than 250 Kansas USDs of widely varying sizes and shapes. Providers, in many (maybe all) instances, will not have existing infrastructure that covers an entire USD (or Census Tract, or county).

Requiring deployment to 100 percent of the eligible locations in such large areas could limit participation by some providers Moreover, requiring that every provider serve every eligible location in such a large area would necessitate that providers deploy – potentially significantly – beyond their existing footprints, leading to a higher average amount of BEAD funding per location. Suggesting that ISPs join to apply or form consortia does not cure this problem. Developing binding agreements among multiple entities to seek Federal grant funding, with all the obligations that implies, is a complex and time-consuming legal undertaking.[6] In addition, encouraging ISPs, who may otherwise be competitors, to discuss bidding strategies raises potential antitrust concerns.

Furthermore, the larger the Project Area, the more likely it is that a small number of locations with very high deployment costs will skew the average costs per location for the whole project. This could result in a few locations in an area driving up the average cost per location for the area above the Extremely High Cost per Location Threshold ("EHCT"), which could well result in depriving the remaining locations in the USD from getting Priority Broadband Service, i.e., FTTP, even in areas where fiber would be the most cost-effective and economical solution.

Consequently, if the KOBD nonetheless decides to require that applicants use USDs as minimum Project Area units, or other areas larger than a Census Block, the

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[4] U.S. Census Bureau, What are census blocks? (as of 8/1/23). In remote areas, even Census Blocks can encompass hundreds of square miles.

[5] Enabling applicants to define their proposed project areas comprised of units like Census Blocks may result in applicants proposing project areas that overlap. Successive BEAD funding award rounds can serve as the mechanism to resolve overlaps, in a manner that maximizes the number of Unserved and Underserved locations that receive FTTP deployments in the most economical and efficient manner possible. *See* Attachment A.

[6] For example, prudent business practices would require very close legal attention and thorough guidance regarding antitrust concerns to just approach a competing provider, much less engage in the discussions and negotiations regarding a possible joint proposal, creating a consortium with appropriate governance, on-going monitoring to ensure compliance, and more. These concerns are further heightened given commitments applicants must make regarding terms of service, such as pricing for low-cost offer as outlined by KOBD, especially to the extent providers in any such consortium continue to provide service independently.

KOBD should at least enable applicants to identify and remove outlier locations that are so costly to serve with fiber that they put the rest of the project at risk of losing out on end-to-end fiber Priority Broadband Service. The KOBD should offer BEAD funding for these costly locations in a non-fiber round or should address them on a case-by-case basis.

Second, if the KOBD does not see the proposals it hoped for or expected in using the larger, USD geographic unit as its minimum BEAD building block in the initial funding round, the KOBD should consider shifting to a smaller unit like Census Blocks, or preferably locations, in subsequent round(s). A second round of proposals using a smaller minimum geographic Project Area Unit could both increase provider participation and help to extend BEAD dollars further by encouraging private sector dollars, and therefore, help meet BEAD goals.

### 2. Holistic Deployments

Finally, AT&T Kansas believes KOBD also should revise the BEAD-IP-Vol2 to follow the IIJA text and BEAD NOFO instruction that Project Areas may include *any* combination of locations such that at least 80 percent of the locations in a project are unserved or underserved locations. Stated another way, KOBD should clarify BEAD-IP-Vol2 to allow up to 20% of a project's locations to be *served locations*.[7] KOBD may still require a provider to provide qualified broadband service to all unserved and underserved in an entire USD (or otherwise defined Project Area), but a provider also may include served locations in its project.

Providing this clarification is not only consistent with the IIJA text and BEAD funding guidelines but will also allow providers more flexibility to design project areas that can better leverage their existing network facilities and infrastructure resulting in more cost-effective proposals.

## B. Affordability Issues

### 1. Low-Cost Broadband Service Option

Kansas' BEAD-IP-Vol2 indicates that the state intends to adopt the low-cost broadband service option outlined in the BEAD Notice of Funding Opportunity (NOFO), with additional requirements that include mandatory service outage credits and an enforceable commitment not to raise the price of the low-cost offer for five years. *See* p. 79-80.

While AT&T Kansas does not oppose the adoption of the $30 low-cost option outlined in the BEAD NOFO, AT&T Kansas does object to the attempt by KOBD to require service outage credits and a 5-year price freeze, as these proposals constitute

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[7]The IIJA defines ***"Unserved service project"*** as one in which not less than 80% of broadband-serviceable locations are Unserved locations and an ***"Underserved service project"*** as one in which not less than 80% of broadband-serviceable locations are Unserved or Underserved locations. 47 U.S.C. § 1702(a)(1)(B), (D).

impermissible rate regulation.[8] The IIJA does not permit broadband service rate regulation,[9] nor does the IIJA otherwise provide an independent grant of authority to states to regulate broadband rates. Indeed, Kansas state law preempts a state agency from regulating broadband rates and, more generally under current federal law, states are preempted from regulated broadband rates.[10]

The KOBD should recognize providers' need for flexibility for future price changes and avoid locking in rates to offer the low-cost broadband service option for a period of 5 years as is proposed. Over such a period, providers are likely, and should be encouraged, to increase speeds and would otherwise be expected to make price changes in the normal course of business.

In implementing NTIA's guidance, therefore, Kansas should confirm that (1) future increases to the speed offered in the low-cost broadband service option are not prohibited, nor are any accompanying modifications to the rates of the low-cost broadband service option; and (2) nothing prohibits a subgrantee from making price changes expected in the normal course of business to account for issues such as increased costs due to inflation, labor, equipment costs, increases in taxes, or other economic factors.

Kansas should be careful to avoid inflexibly locking in prices without accommodating changes in costs and broader economic conditions. In fact, in the recently released Frequently Asked Questions (FAQ) guidance, NTIA has made it clear that states are permitted to allow for reasonable cost adjustments over time. This could be tied to any number of reasonable metrics including CPI, the Urban Rate Survey, or others as preferred by the states.[11] Price locks for extended periods are unprecedented and would clearly be a form of unnecessary and intrusive rate regulation, as well as disincentivize investment and enhancements to the services provided.

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[8] *Cf. Altice USA, Inc. v. N.J. Bd. of Pub. Utils.*, 2020 U.S. Dist. LEXIS 10433 (D. N.J. Jan. 22, 2020). Similarly, KOBD should eliminate the proposed requirements that providers offer services plans that ensure repairs within 24 hours and include a customer complaint process requiring responses within 5 days and resolutions within 30 days. (BEAD-IP-vol2 at page 41.) These prescriptive service requirements also arguably constitute rate regulation, which is forbidden by the IIJA and is pre-empted, and certainly are common carrier style regulation that do not apply to an information service such as broadband. Additionally, requiring these conditions is bad policy and will discourage provider participation in the program and limit the build out by providers who do participate, as to meet the requirements providers will, among other things, need to build in redundancies and other network reliability and hardening measures that will increase the cost of providing service.

[9] IIJA § 60102(h)(5)(D) (codified at 47 U.S.C. § 1702(h)(5)(D)).

[10] *See* K.S.A. § 66-2017 (2023); *Charter Advanced Servs. v. Lange*, 903 F.3d 715, 719 (8th Cir. 2018) ("'[A]ny state regulation of an information service conflicts with the federal policy of nonregulation,' so such regulation is preempted by federal law." (quoting *Minn. PUC v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007))); *N.Y. State Telecomms. Ass'ns v. James*, 544 F. Supp. 3d 269, 280-83 (E.D.N.Y. 2021) appeal docketed, 21-1975 (2d Cir. 2021) (finding that conflict preemption and field preemption each bar New York state from regulating broadband service pricing).

[11] Frequently Asked Questions and Answers, Version 4.0 at 61.

### 2. Middle Class Affordability & Affordability Scoring

In its BEAD-IP-Vol2, KOBD has indicated that middle-class affordability is a "priority" for the State and refers to the broadband speed and pricing tiers used to score applications. *See* p. 92. Further, BEAD-IP-Vol2 states that affordability plan scoring will reward prospective subgrantees offering symmetrical gigabit service at a target price of $90 or less, while other applications will receive only a percentage of points reflective of their distance from the target price. *Id*.

NTIA has made clear that the middle-class affordability plan and affordability scoring are separate issues requiring different approaches.

#### a. Middle Class Affordability

NTIA has made clear that the Middle-Class Affordability Plan is a *strategy or strategies* adopted and implemented by the *state*, to meet the program's goal of ensuring that every resident, including middle-class residents, have access to reliable and affordable high-speed internet offerings. *NTIA has specifically made clear that this is not a mandated ISP service offering*.[12] NTIA has thus contrasted the Middle-Class Affordability Plan – which does not require an ISP offer – with the IIJA's Low-Cost Broadband Service Option BEAD obligation which does require a provider to have a specific offer.[13]

Rather than heavily weighting arbitrary, static price points to meet the middle-class affordability requirement, AT&T Kansas recommends adopting strategies that encourage maximum participation by providers. Robust competition in the BEAD funding process *will* help to ensure that all consumers in BEAD-funded areas gain access to high-quality, high-speed internet service at affordable prices while also helping to ensure that BEAD dollars get improved broadband service to as many people who need it as possible.

To this end, the middle-class affordability requirement should state that a BEAD subgrantee satisfies the State's middle-class affordability targets if it offers multiple high-speed internet service tiers at different price points in BEAD-funded areas, enabling middle-class consumers to select the internet service tier and price point that best meets their needs.

Ensuring that all consumers (including middle-class consumers) have choices is the best strategy to ensure that they have access to affordable rate options for high-speed broadband.

Assigning a scoring weight to applicants and their proposed pricing plans to implement the middle-class affordability requirement is contrary to NTIA's express

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[12] NTIA, Tricky Topics to Watch Out for in the Initial Proposal (Sept. 2023) ("IP September 2023 Guidance") at 22.
[13] *Id.*

guidance that a state's middle class affordability strategy focuses on state's strategies and not any particular ISP offer. By doing so, the KOBD effectively engages in a form of rate regulation by rewarding providers that set their prices at or below the target price mandated by the State.

### b. Affordability Scoring

The BEAD NOFO requires that, in scoring applications for end-to-end fiber Priority Broadband Projects, States score and rank applications' Affordability, among other things, based on the most affordable total price for symmetrical Gigabit service with unlimited monthly usage (the "Gigabit Tier") in the project area. Affordability for non-FTTP Last-Mile Broadband Deployment Projects must be scored based on the most affordable total price to the customer for 100/20 Mbps service with unlimited monthly usage ("100/20 Mbps Tier").

In light of the IIJA's prohibition against rate regulation, KOBD should score and rank applicants' rates for the Gigabit Tier or the 100/20 Mbps Tier, as applicable, compared to the FCC's benchmark urban rate for that service tier then in effect:

- An application proposing a rate below the FCC's benchmark urban rate should receive ***full*** Affordability points;
- An application proposing a rate ***at*** the FCC's benchmark urban rate should receive partial Affordability points; and
- An application proposing a rate that is ***above*** the FCC's benchmark urban rate should receive no Affordability points.

KOBD should use this scoring rubric because the FCC's urban rate benchmark provides a simple and objective, fact-based, competitive price reference and provides an administratively simple way to ensure that lower prices receive more weight.

The purpose of the FCC's urban benchmark rates is to ensure that rates in rural areas are not significantly higher than in urban areas.[14] The FCC's benchmark rates also reflect up-to-date pricing data because the FCC adjusts them each year based on an annual survey of the fixed broadband service rates offered to consumers in urban areas nationwide.[15] The urban rate benchmarks thus reflect competitive rates in competitive urban areas. The FCC's urban rate benchmark is thus a more appropriate price reference than the $90 per month reference price proposed, which lacks factual basis.

Using the applicable benchmark rates to score and rank the relative affordability of applicants' Gigabit Tier prices (or 100/20 Mbps Tier prices, as applicable) will ensure that applications proposing lower rates – in fact, rates that are lower in BEAD-areas

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[14] FCC WCB Order, Urban Rate Survey Form & Content, DA 13-598, FN43 (4/13/13).

[15] FCC, United States 2023 Broadband Benchmark Calculator available at https://us-fcc.box.com/v/URSUSBenchmarkCalculator. Additional information regarding the urban rate survey and broadband benchmarks are available at Urban Rate Survey Data & Resources | Federal Communications Commission (fcc.gov).

than the *urban* rate benchmark – will score higher than applications proposing rates that are on par with or above those in urban areas.

This scoring methodology will thus help to ensure that consumers in BEAD-supported areas have access to Gigabit Tier service (or 100/20 Mbps service) at rates that are reasonably comparable to rates charged for similar services in urban areas – that are, in other words, affordable.

## C. Scoring

Kansas' BEAD application scoring rubric should provide sufficient detail on specifically what an application must reflect to earn full, partial, or no points in each scoring category, to enable applicants to develop project proposals that are uniquely tailored to meet the State's needs and expectations.

### 1. Minimal BEAD Program Outlay

From this perspective, AT&T recommends that KOBD more clearly describe how the significant points for BEAD Outlay will be allocated. The current draft contains inconsistencies in the use of terms that make it difficult to discern whether total amount of funding by project or cost per location will be dispositive. Regarding cost per location, it is not clear whether more points will go to projects with lower costs per location or whether KOBD will award "some points to higher cost locations."

In finalizing its scoring rubric, AT&T Kansas recommends that it considers scoring several subcategories within the Minimum BEAD Program Outlay Primary Scoring Criteria to ensure that more expensive to serve areas are not disadvantaged. Awarding the most points to the highest match and the lowest cost per location could result in only the easiest to serve USDs getting end-to-end fiber.

For example, KOBD could award up to 20 points based on the percentage of matching funds the applicant offers and also award up to 30 points based on the percentage of totally unserved locations in the proposed project. More points would be awarded to applications that have a higher percentage of totally unserved locations, which are often higher cost. Alternatively, based on all the applications KOBD receives, KOBD could calculate a "Cost per Eligible Location" for each project (calculated by dividing amount of BEAD funding the application requests by the number of Eligible Locations the project would serve) and rank them from the highest Cost per Eligible Location cost to the lowest Cost per Eligible Location. Applications whose Cost per Eligible Location are lowest (e.g., in the bottom quartile) could be awarded 30 points; those in the middle two quartiles would be awarded 20 points; and those with the highest Cost per Eligible Location (e.g., in the top quartile) would be awarded 15 points. The remaining 20 points could be awarded based on the percentage of "high cost" Eligible Locations a project includes, awarding more points to projects that have a higher percentage of high-cost locations. (KOBD would need to identify the higher cost

Eligible Locations on its BEAD map before the BEAD competitive funding process begins.)

If KOBD decides to allow applicants to combine smaller units as AT&T recommends, such as Census Blocks or Census Block Groups, into project areas it can use scoring to promote applications that help meet the state's deployment goals. For example, KOBD should consider awarding at least 10 out of the 50 points assigned to Minimal BEAD Program Outlay based on the number of eligible locations to be served. For example, in its draft IP-Vol2, Ohio proposes to award a total of up to 10% of the total points available based on the number of locations that an application proposes to serve.[16] Rewarding ISPs willing to serve a large number of locations via project areas of their own design, is preferable and more efficient than forcing ISPs to serve every location in a large USD.

Likewise, assigning points based on the percentage of Unserved or Underserved locations in an ISP-defined project area encourages inclusion of more locations that may be harder or higher-cost to serve. Using these scoring techniques in combination with cost per location metrics better balances the scoring equation with the realities of network design and costs. Awarding a subset of Minimal BEAD Program Outlay points based on the number of eligible locations will achieve better results at a lower cost than mandating the coverage of every location in a USD. BEAD program goal of bringing broadband to all Unserved and Underserved locations will only be met if the State *encourages and rewards* projects willing and capable of deploying to large numbers of locations, enabling efficient and cost-effective deployments and stretching BEAD dollars to as many locations as possible.

### 2. Speed to Deployment

All subgrantees have four (4) years from the date they receive their subgrant from a state to complete deployment.[17]

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[16] Ohio specifically proposes to award --

- 10 points for applications that have 500-999 eligible locations;
- 20 points for applications that have 1,000-1,499 eligible locations;
- 30 points for applications that have 1,500-1,999 eligible locations;
- 40 points for applications that have 2,000-2,499 eligible locations;
- 50 points for applications that have 2,500-2,999 eligible locations;
- 60 points for applications that have 3,000-3,499 eligible locations;
- 70 points for applications that have 3,500-3,999 eligible locations;
- 80 points for applications that have 4,000-4,499 eligible locations;
- 90 points for applications that have 4,500-4,999 eligible locations; and
- 100 points for applications that have 5000 or more eligible locations.

202310-DRAFT_Ohio-BEAD-Initial-Proposal-Volume-II_vShare.pdf ("Ohio IP-Vol2") at 73.

[17] 47 U.S.C. § 1702(h)(4)(C). "Speed to deployment" should clearly be defined to commence on the date that the grant agreement is signed, the date that any NEPA (National Environmental Policy Act) review is complete, or upon grant of required permits, whichever is later.

KOBD should not assign significant points to this element for the following reasons:

- Quality of deployment and the qualifications of providers are more important than how quickly they promise to deploy. Deployment timelines are dependent on many variables outside of the control of applicants such as permitting, labor supply, weather, and supply chain issues. It would be unfortunate to have these points decide an award and then have an applicant default on the commitment a year later.
- Large projects covering more locations are inherently disadvantaged by speed to deployment metrics, because they will always take longer to complete than smaller projects that cover few locations. However, large projects that deploy to more locations may be the best way for states to use their BEAD funds efficiently and to get service to the most people as expeditiously and economically as possible.

For these reasons, KOBD should adopt an approach similar to that taken by states like Montana and Nevada[18] and only award minimal points for speed to deployment. Or at a minimum, these points should be weighted to take the size of the project into account.

In addition, providers' speed to deployment commitments should also be enforceable and include penalties for non-performance, to serve as disincentives against unrealistic speed to deployment "commitments."

### 3. Additional Secondary Scoring Criteria

*Speed of Network & Other Technical Capabilities.* KOBD may have included this criterion in the FTTP Priority Broadband section in error because this scoring category applies only to non-fiber deployments. Allend-to-end fiber deployments have essentially the same network speeds and technical capabilities.

*Other Secondary Scoring Categories.* AT&T recommends that KOBD consider including the following additional Secondary Scoring categories and redistribute the available points to ensure that the total Secondary points stay within the maximum of 25% of total points:

- *Priority Locations.* If KOBD enables applicants to combine project area building block units such as Census Blocks or Census Block Groups to form a project or projects, as recommended, KOBD should consider awarding points for applications that include "Priority Locations", such as those in high poverty areas,[19] persistent poverty counties,[20] communities defined to be in "economic need" by the U.S. Census Bureau for the Bureau's Small Area Income & Poverty

[18] In their draft Initial Proposals Volume 2 ("IPV2") issued for public comment Montana has proposed a maximum of 4 out of 100 points for speed to deployment and Nevada has proposed a maximum of 1 point for speed to deployment.

[19] *See* BEAD NOFO § IV.B.7.b. ¶ 1.

[20] *See id.*

Estimates (SAIPE) Program; or in a community that has a "Socially Vulnerable Index" (SVI) of 0.75% or higher as determined by the U.S. Centers for Disease Control.

  - KOBD would need to publicly identify the Priority Locations before it begins to accept BEAD applications; the maximum points assigned to the Priority Location scoring category; and the number of such locations an application would need to include to earn full, partial, or no points in the category.[21]

- *Applicant Qualifications.* To help to ensure that Kansas selects applicants for funding who are highly qualified and committed to the state of Kansas, AT&T recommends that Kansas consider including the following additional scoring criteria modeled on proposed Ohio Secondary Criteria:[22] :
  - *General experience and technical/financial ability*, prioritizing points to applicants with demonstrated general experience and technical and financial ability; and
  - *Years providing service in Kansas*, identifying the specific number of points an applicant will be awarded based on its years of service providing wireline broadband service in Kansas.

## D. Matching Funds Waivers

First, KOBD proposes to consider waivers of matching funds requirements for applications in which more than 80% of the Broadband Serviceable Locations (BSLs) in the project are in High-Cost Areas defined by NTIA. If KOBD requires that applications use USDs as the mandatory project area, all applications for a USD would be required to cover every eligible BSL in the USD. The applicants would have no ability to vary the proportion of BSLs that are high-cost or not, such that applicants would have no ability to design an application that covers more than 80% of the high-cost BSDs, and thus would not be in a position to request a waiver of the matching funds requirement.

On the other hand, if KOBD enables applicants to combine project area building block units like Census Blocks or Census Block Groups into a project area or project areas, as recommended, AT&T recommends that KOBD refrain from adopting the 80% high-cost threshold for a waiver. Instead KOBD should seek NTIA approval to waive the matching funds requirement for each High-Cost Location included in a proposed project, regardless of the proportion of high-cost locations the application proposes to cover, up to 100% of the project's locations, if the project consists entirely of High-Cost Locations.

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[21] For example:

- 501+ Priority Locations: Full points
- 251-500 Priority Locations: More partial points
- 101-250 Priority Locations: Partial Points
- 26-100 Priority Locations: Fewer partial points
- 0-25 Priority Locations: Fewest or 0 points

[22] *See id. at 76.*

Second, it is unclear whether the affordability offering criteria for potential matching funds waivers is intended to be a second category of matching funds waivers, separate from the high-cost matching funds waivers, or if it is intended to be a wholly separate category of matching funds waivers. In either case, however, a waiver on this basis undercuts the very reasons matching funds waivers should potentially be available to begin with: to help to improve the business case for deployment in areas that are relatively expensive to serve. "Affordability improvements" presumably means lower rates in project areas, but lower rates would worsen a provider's business case (not to mention raise potential rate regulation concerns.) For these reasons, KOBD should not adopt the proposed affordability criterion for matching funds waivers.

## E. Applicant Prequalification Requirements

In the NOFO, NTIA has largely identified the issues states should consider in evaluating prospective subgrantees' minimum qualifications but has not provided sufficient guidance regarding the specific qualifications providers should have, nor the documentation that providers must submit to demonstrate that they are qualified. The recommended approach addresses these issues.

KOBD should establish clear standards for what it considers "capable" within the required qualification categories so that assessments can be made fairly and efficiently. On the other hand, KOBD should also avoid imposing unnecessary, overly administratively burdensome requirements that could unintentionally deter broad participation by experienced, reliable, well-financed providers.

After a round or two of BEAD funding, the state could consider adjusting these standards if it determines that allowing additional participants into the program will help the state to meets its 100% deployment goals.

### 1. Experience With the Technology Proposed

The best measure of a provider's operational, managerial, and technical capability is its prior experience deploying and providing broadband service either as company investment or with government deployment funding, *with the technology it proposes to use in its BEAD application*. Experience providing voice or electric transmission service does *not* indicate that an entity can design and accurately estimate costs for an FTTP project.

The minimum qualifications NTIA has identified do not sufficiently differentiate between proven providers and start-ups with little to no experience in deploying the broadband service the applicant proposes to deploy. For example, nothing in the NOFO requires that a provider seeking to deploy and offer FTTP-enabled broadband service have any track record whatsoever of deploying and offering FTTP-based internet service. In fact, an electric transmission or distribution service provider is not required to have any experience offering broadband service at all. NTIA's minimum applicant qualifications and information requirements effectively equate all voice, broadband and electric transmission service experience.

KOBD should require that applicants have experience *with the technology they propose to deploy*, the best predictor that they will deliver on their BEAD commitments.

### 2. Risk-Based Documentation Requirements

Well-capitalized, experienced providers, especially publicly traded commercial entities with a proven track record of deploying and offering end-to-end fiber-enabled broadband service to thousands of customers, present a significantly lower risk of default than newly established companies who have little financial and operational experience deploying and offering broadband service. [23]

Imposing overly administratively burdensome documentation requirements on experienced, reliable, well-financed providers, is not only unnecessary, but could also unintentionally deter broad participation by the very providers who are most capable of (1) meeting BEAD deployment commitments on time and on budget; (2) providing the private capital needed to serve as a multiplier of BEAD dollars, to help get service to as many unserved and underserved locations as possible; and (3) supporting their BEAD service commitments over the long term.[24]

Conversely, newly established companies, who have (1) little experience deploying and offering broadband service; (2) relatively few, if any broadband customers; and (3) limited financial, managerial, and operational resources present

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[23] For example, the Sarbanes-Oxley Act of 2002, Pub. Law 107-204 codified at 15 U.S.C. § 7201 et seq., obligates covered entities to maintain corporate auditing and other financial record keeping and reporting practices in place and the law includes robust enforcement and oversight provisions that ensure adequate internal controls and procedures are followed. Moreover, given how market forces generally reward entities that deliver on commitments and punish those that fail to deliver, it is reasonable to associate a longer track record of delivering results with a lower level of potential risk of default.

[24] Jonathan Chaplin, Lead Analyst, New Street Research, recently offered similar advice to the states in a panel discussion regarding the BEAD program:

> *[States should] [g]ive [funding] to companies that have scale, a demonstrated track record, know what they're doing. . . . these are companies that can't afford not to fulfill the mandate that they commit themselves to, because of the operations they have across the rest of the country.*
>
> *. . .*
> *This is critical infrastructure for every household in America. . . .[C]ertainty of execution has to be at the very top of the agenda of the states. We want to come out of this program in six or seven years and have accomplished the goal of getting broadband to every home in America.*
>
> *. . .*
>
> *If you give the funds to a company whose only business is serving this sort of pocket of unserved homes, once you've distributed the money, you've got very little recourse to make sure that it's . . . spent effectively, that consumers are being well served, that they're not being price gouged. If you give it to companies that are serving households on a national basis, you've got a much higher chance that the job is going to get done, that those communities and households are going to get served, and that they're not going to engage in price gouging. Because the consequences across their entire business is way too large for them to take on that risk.*

American Enterprise Institute Panel Discussion, Will Broadband Be Affordable? Assessing Regulations for Broadband Subsidies (Oct. 2, 2023) (summary, video, and transcript available at hyperlink).

greater risks. They may be less capable of meeting their BEAD commitments; have limited ability to meet matching funds requirements without other government funding; and have less operational and technical capability to maintain broadband service in BEAD-funded areas over the long term.

The recommended documentary requirements contained in Attachment B thus differentiate the evidence of qualifications and financial capability an applicant must submit commensurate with the risk of delay or default the applicant presents. The recommended approach would enable the state to quickly and easily identify the documentation each applicant would need to submit to demonstrate it is qualified.

### 3. Technical capability

KOBD proposes to require states to require all subgrantees to submit detailed network plans certified by a Professional Engineer (PE) confirming the project can deliver broadband as promised. Because certified Pes can only certify network designs they produce themselves, this requirement adds significant cost for work that often can be performed in-house. As reflected in Attachment B, AT&T thus recommends that KOBD utilize a risk-based scale of review tailored to the specific applicant's experience and/or qualifications of in-house engineers.

### 4. Letter of Credit Requirements

The BEAD Notice of Funding Opportunity requires the State to establish a model Letter of Credit patterned after the letter of credit the FCC required for grantees of the Rural Digital Opportunity Fund (RDOF). NTIA specified that each BEAD subgrantee would be required to submit an irrevocable standby letter of credit in a value of at least 25% of the BEAD grant award.[25] The Kansas BEAD-IP-Vol2 adopts this requirement. *See* p. 40. However, as many industry segments and public interest groups have pointed out, this "one size fits all" Letter of Credit requirement would divert significant BEAD funding away from deployments and to financial institutions in the form of collateral to guarantee the 25% credit amount plus bank charges, to obtain and maintain the required Letters of Credit. Indeed, NTIA recently issued a "programmatic waiver" with alternatives to the Letter of Credit requirement.

KOBD should nonetheless consider seeking a waiver from NTIA (in the absence of updated guidance from NTIA) adopting the approach used by the Commonwealth of Virginia [26] which would enable the KOBD to customize the Letter of Credit requirements applicable to each subgrantee based on easy-to-apply, objective measures of the individual subgrantee's creditworthiness and financial risk. AT&T Kansas proposes model language in Attachment C, hereto.

In a deployment program like BEAD, funding is distributed based on reimbursing grant recipients for funds expended. A State's primary concern, therefore, should be to

[25] *See* BEAD NOFO, § IV.D.2.a.ii.
[26] *See* Virginia Final Initial Proposal Volume 2 at 19-21.

ensure that the applicant has the financial capability or solvency to begin and sustain the project prior to being reimbursed. The BEAD program thus presents a fundamentally different financial risk profile compared to broadband deployment projects funded by the RDOF program administered by the FCC in which funding recipients began to receive regular monthly payments *immediately* upon authorization of funding, irrespective of the funds they expended or their deployment progress, and in which funding recipients were not obligated to report deployment progress until the third year.

Consequently, requiring that BEAD funding recipients furnish assurances of creditworthiness in the form of Letter of Credit requirements that are too costly compared to the risks they are intended to mitigate would unnecessarily and inappropriately increase the cost of BEAD deployments, as well as divert substantial portions of limited capital funds to financial institutions in the form of fees and charges to maintain the Letters of Credit.

KBOD should thus seek a waiver from NTIA[27] to allow the state to apply the 2-Step "financial health" decision creditworthiness evaluation framework described in the model language provided in Attachment C, hereto, mirroring the Letter of Credit evaluation framework that the Commonwealth of Virginia has proposed in its Initial Proposal, Volume 2, and for which it has requested a waiver. This 2-Step framework would enable KOBD to easily and objectively customize the Letter of Credit requirement that each applicant must meet based on a series of defined financial health criteria, and to dispense with a Letter of Credit requirement all together for highly creditworthy applicants.

## Conclusion

AT&T Kansas recognizes the importance and complexity of the work the KOBD is undertaking to implement the BEAD Program. We appreciate the opportunity to offer comments and recommendations and we look forward to continued opportunities to work collaboratively with the KOBD to implement this critically important program to bring broadband to unserved and underserved Kansas residents.

Sincerely,

Jas. D. Jansone

[27] NTIA may issue updated guidance regarding the letter of requirement that might obviate the need to seek a waiver from NTIA.

# Attachment A

# Model State Language:  De-conflicting Overlapping Project Areas

## Section 1.  Definitions

A. “**Project”** means an undertaking by an eligible grant recipient to construct and deploy infrastructure for the provision of broadband service to broadband serviceable locations. A project may consist of a single Eligible CB or a grouping of Eligible CBs.

B. **“Underserved location”** means an Underserved location as defined in the Infrastructure Investment & Jobs Act of 2021, 47 U.S.C. § 1702(a)(1)(C), that has access to broadband service at speeds faster than 25/3 Mbps but less than 100 Mbps download and 20 Mbps upload; and a latency sufficient to support real-time, interactive applications.

C. **“Unserved location”** means an Unserved location as defined in the Infrastructure Investment & Jobs Act of 2021, § 1702(a)(1)(A), that has no access to broadband service or with service at speeds of less than 25 Mbps download and 3 Mbps upload; and a latency sufficient to support real-time, interactive applications.

D. **“Eligible location”** means an Unserved location or Underserved location as defined in this chapter.

E. **“Eligible CB”** means a Census Block identified by the Office of Broadband that contains Eligible location(s).

## Section 2.  De-conflicting overlapping BEAD proposals

A. **Round 1.**

1. Each applicant may identify any Eligible CB(s) included in each of its proposed Project area(s) that are “separable,” meaning that the applicant is willing to be awarded BEAD funds for a smaller collection of Eligible CBs than it applied for, if the separable Eligible CBs are overlapped by another application and are not awarded to applicant.  Designating Eligible CBs as separable is optional.

> ***Illustrative example***
>
> *Application A covers a total of 100 Eligible CBs, Eligible CBs #1-100. The applicant identifies Eligible CBs #1-25 as separable but Eligible CBs #26-100 as not separable.*

2. If 2 or more applications propose end-to-end fiber Priority Broadband Projects requesting BEAD funding in amounts below the Extremely High-Cost Per Location Threshold for overlapping Eligible CBs, the Office shall score and rank those applications by score, award funding, and de-conflict applications as follows:

   a. The Office shall award funding to the application that earns a “decisively higher score" of at least X% more points than the next highest scoring application. If no application earns a decisively higher score, the Office of Broadband shall award funding to the application that covers the most Eligible locations.

b. The Office of Broadband shall make additional awards using same award priorities identified in the previous paragraph (1) and using the "separable" Eligible CBs applicants have identified to de-conflict overlapping applications and still award funding covering as many Eligible locations as possible.

3. After Round 1 awards have been made, before commencing Round 2, the Office of Broadband shall publicly identify all of the Eligible CBs awarded funding in Round 1 and the remaining Eligible CBs that may be awarded funding in Round 2.

4. There shall be a minimum of [X] days between the publication of the Round 2 Eligible CBs and the commencement of Round 2.

***<u>Illustrative example</u>***

*Application A covers a total of 100 Eligible CBs (Eligible CBs #1-100) that have a total of 500 Eligible locations. Application B also covers a total of 100 Eligible CBs (Eligible CBs #50-149) that have a total of 1000 Eligible locations. Application A and Application B overlap with respect to Eligible CBs #50-100 that have a total of 100 Eligible locations.*

*Funding Round 1:*

- *If Application A receives a "decisively higher score" (at least X% more points than Application B), Application A will receive funding for all of the 100 Eligible CBs (Eligible CBs #1-100) it applied for. Application B may still receive funding for any of the Eligible CBs #101-149 it identified as "separable," but will not receive an award in Round 1 for any of those Eligible CBs it did not identify as separable (nor will Application B receive an award for Eligible CBs #50-100).*
- *If neither application receives a "decisively higher score," Application B will receive funding for all 100 Eligible CBs it applied for, Eligible CBs #50-149, because its application serves more Eligible locations than Application A. Application A may still receive funding for any of the Eligible CBs #1-49 it identified "separable," but will not receive an award if it did not identify any of those Eligible CBs as separable (nor will Application A receive an award for Eligible CBs #50-100).*
- *Before commencing Round 2, the Office of Broadband shall publicly identify all of the Eligible CBs awarded funding in Round 1 to identify the remaining Eligible CBs that may be awarded funding in Round 2.*

B. **Round 2**.

1. Applicants may modify applications not selected in Round 1 by revising their BEAD funding requests to eliminate Eligible CB(s) awarded funding in Round 1 and/or add new Eligible CB(s). Applicants may also modify their BEAD funding requests.
2. Applicants will be asked to identify any Eligible CB(s) included in their proposed Round 2 Project areas that are "separable," meaning that the applicant is willing to be awarded BEAD funds for a smaller collection of Eligible CB(s), if the separable Eligible CB(s) are overlapped by another application. Designating Eligible CB(s) as separable is optional.
3. After receiving Round 2 submissions, the Office of Broadband shall first score and rank all of the end-to-end fiber Priority Broadband Projects, award funding, and de-conflict applications as described in Subsection A.2 above using the "separable" Eligible CBs to de-conflict overlapping applications. The objective shall be to award funding for as many Eligible Locations as possible.
4. When there are no further end-to-end fiber Priority Broadband projects seeking BEAD funding per location in amounts below the Extremely High-Cost Threshold, applications for non-end-to-end fiber Reliable Broadband Service projects may also be considered together with any end-to-end fiber Priority Broadband projects requesting BEAD funding per location above the Extremely High-Cost threshold.

C. **Round 3 and Subsequent Rounds (if applicable)**

If the number of Eligible locations that remain unawarded after Round 2 is small, Round 3 may consist of a case-by-case negotiation process conducted by the Office. If there are enough Eligible locations remaining to justify additional open rounds, they shall be conducted using the same award and de-confliction process in Subsections A.2 and B.

# Attachment B

## Recommended State Approach:
## Applicant Prequalification Requirements

### A. Prequalify Applicants *Before* Competition for BEAD Funding Begins

1. All BEAD applicants' qualifications should be fully evaluated and found to be satisfactory *before* the competitive process to award BEAD funding begins.
2. An applicant who does not meet the State's minimum qualifications should not be permitted to participate in the BEAD competitive funding process.

### B. Operational, Managerial, and Technical Capability

#### 1. Require Experience with the Technology Proposed

a. Each applicant should be required to have experience deploying and providing broadband service *with the technology the applicant proposes to deploy in its BEAD application(s).*

b. Specifically, an applicant seeking BEAD funding for fiber to the premises (FTTP) Priority Broadband Projects must have experience deploying and offering FTTP-enabled broadband service to end-user customers.

c. Applicants who lack experience deploying and offering broadband service using the technology they propose in their BEAD application should not be permitted to participate in the competitive process to award BEAD funding.

#### 2. Risk-Based Documentation Requirements

a. To streamline the prequalification process, a multi-level risk-based approach that seeks more information from companies with less experience will be used.

b. For applicants seeking BEAD funding for FTTP Priority Broadband Projects:

| | |
|---|---|
| Applicants that have **10+ years** of experience deploying FTTP networks ***and*** **10,000 or more active FTTP broadband customers** | No managerial resumes<br>No professional engineer (PE) certifications<br>No other information required |
| Applicants that have **5 or more but less than 10 years** of experience deploying FTTP networks ***and*** **more than 1,000 active fiber broadband customers** | **Not required:**<br>• Managerial resumes<br>• PE certifications required for proposed network design<br>**Required:** |

| | |
|---|---|
| | • Proof of FCC Form 477/Broadband Data Collection (BDC) (national broadband map) submission |
| Applicants that have **2 or more but less than 5 years** of experience deploying FTTP networks **and/or fewer than 1,000 active fiber broadband customers** | **Required:**<br>• Managerial resumes<br>• PE certifications for proposed network design<br>• Proof of FCC Form 477/BDC submissions |
| Applicants that have **no experience deploying FTTP networks** | **Not qualified for FTTP Priority Broadband Projects** |

c. An applicant's current customer and/or employee count information may also be used to balance the number or size of the projects an applicant may be awarded. A company capable of managing a 1,000-customer operation may not be able to scale to serve 10,000 customer locations despite receiving BEAD grant funding.

## C. Financial Capability

Except in the case of applicants that have 10+ years of experience deploying FTTP networks <u>and</u> 10,000 or more active FTTP broadband customers, all applicants should be required to submit the following:

1. Certification of financial resources necessary to complete a build valued up to an identified dollar amount with supporting banking or financial documents. This dollar amount would establish reasonable limits on applicants and control irresponsible participation. An entity may be able to *apply* for grants that exceed its qualified dollar amount but should not be *awarded* more than they have qualified for.
2. Information on pre-existing broadband deployment commitments that could impact an applicant's ability to have adequate financial and human resources to complete milestones prior to reimbursement.
3. If business plans "to substantiate sustainability" are to be assessed, the applicant's existing broadband business should be evaluated, not just in the individual funded area.
4. Specific Financial Capability Documentation Requirements

   As part of the prequalification process, every applicant should be required to submit the following financial Information at the parent, affiliate, or subsidiary level:

a. <u>Audited Financial Statements.</u> Two years of audited financial statements. Subsidiaries may submit financial statements at the parent level.

b. <u>Legal Presence in State & Asset Report</u>. All applicants must provide evidence that they are registered to do business in the state; provide a state-issued certificate of good standing; and list in their application the value of their existing assets in the state as they reported for tax purposes in their most recent tax filings.

c. <u>Bank Reference Letter</u>. All applicants must provide a bank reference letter which includes the length of the banking relationship; the line of credit or credit facility limits, if applicable; and an indication of the applicant's record of meeting commitments on time. The line of credit or credit facility should exceed the amount of the BEAD grant.

d. <u>Comfort Letter</u>. When the applicant is a wholly or majority-owned subsidiary, the parent or managing affiliate should be required to provide a "comfort letter." A comfort letter is not a guarantee of any kind but acknowledges that the parent/affiliate is aware of the BEAD grant application and regularly monitors the subsidiary.

e. <u>Binding Parent Financial Guarantee</u>. The parent company of a wholly/majority-owned subsidiary may provide a binding guarantee if the size of the grant being sought by the subsidiary does not (i) exceed 25% of the parent company revenues or (ii) seek to provide service to locations representing more than 25% of their current locations passed.

***Note: These are the same financial documents that should be required to establish subgrantee Letter of Credit requirements (Attachment C).*

2. Each applicant must commit to furnish to the State a Letter of Credit, Binding Guarantee, or Performance Bond if the applicant is awarded BEAD funds as a condition of the BEAD grant and as required under the accompanying Creditworthiness & Letter of Credit requirements.

## Attachment C

## Model State Language: Creditworthiness & Letter of Credit (LOC) Requirements[28]

1. Each prospective subgrantee shall be required to submit the financial documentation in Subsection 2 of this section and, if awarded BEAD funds, shall be required to satisfy the Letter of Credit (LOC) requirements identified in Subsection 3.

2. **Step 1. Financial Information Requirements**. The following financial documentation shall be submitted at the parent, affiliate, or subsidiary level. All applicants must submit Items A through C of this subsection. All applicants that are subsidiaries must also submit Item D.

   A. Audited Financial Statements. All applicants must submit two years of audited financial statements. Subsidiaries may provide financial statements at the parent level.

   B. Legal Presence in State & Asset Report. All applicants must provide evidence that they are registered to do business in the state; provide a state-issued certificate of good standing; and list in their application the value of their existing assets in the state as they reported for tax purposes in their most recent tax filings.

   C. Bank Reference Letter. All applicants must provide a bank reference letter which includes the length of the banking relationship; the line of credit or credit facility limits, if applicable; and an indication of the applicant's record of meeting commitments on time. The line of credit or credit facility should exceed the amount of the BEAD grant.

   D. Comfort Letter. When the applicant is a wholly or majority-owned subsidiary, the parent or managing affiliate should be required to provide a "comfort letter." A comfort letter is not a guarantee of any kind but acknowledges that the parent/affiliate is aware of the BEAD grant application and regularly monitors the subsidiary.

   E. Binding Parent Financial Guarantee. The parent company of a wholly/majority-owned subsidiary may provide a binding guarantee if the size of the grant being sought by the subsidiary does not (i) exceed 25% of the parent company revenues or (ii) seek to provide service to locations representing more than 25% of their current locations passed.

[28] In the absence of updated guidance from NTIA, these Letter of Credit requirements would require a waiver from NTIA. The Commonwealth of Virginia has already requested a waiver to enable it to use the Letter of Credit evaluation framework and requirements recommended.

3. **Step 2. Assessment of Creditworthiness – Letter of Credit Requirements**

| | |
|---|---|
| **Level 1:**<br><br>**No Letter of Credit required** | Applicant must meet a, b, and c:<br><br>a. Most recent audit is clean with no material findings.<br>b. Assets in the State are greater than the value of the BEAD grant requested.<br>c. The bank reference letter demonstrates the applicant has funds under its line of credit or credit facility sufficient to cover 50% of BEAD project cost. |
| **Level 2:**<br><br>**No Letter of Credit required; must provide Item E, Binding Guarantee** | If Applicant cannot meet **one** of a, b, **or** c, but can provide –<br><br>d. Line of credit or credit facility at least equal to BEAD grant amount |
| **Level 3:**<br><br>**Letter of Credit for 10% of BEAD grant amount required; retired with deployment** | If applicant cannot meet **one** of a, b, or c **and** cannot provide d. |
| **Level 4:**<br><br>**Letter of Credit for 25% of grant amount required; retired with deployment** | If applicant cannot meet **two or more** of a, b, **or** c, **and** cannot provide d. |

a. Applicants may also elect to secure performance bonds in lieu of the 2 options for demonstration of creditworthiness outlined above. Performance bonds must equal 100% of the total BEAD funding requested.