

February 6, 2025

The Honorable Ted Cruz
Chairman, U.S. Senate Committee on Commerce, Science and Transportation
Dirksen Senate Office Building 554
Washington, DC, 20510

Dear Chairman Cruz:

In 2021, the Texas Legislature enacted House Bill 5 (87R), establishing the Broadband Development Office (BDO) within the Texas Comptroller of Public Accounts' (CPA) office. The BDO was tasked with bridging the digital divide in Texas by ensuring all residents have access to reliable, high-speed internet and the skills to effectively utilize it.

To achieve this, the BDO developed a comprehensive plan to provide universal broadband access across the state, balancing the needs of both Texans and industry. This process, initiated in 2022, included the necessary activities outlined by the National Telecommunications and Information Administration (NTIA) for the implementation of the Broadband Equity, Access, and Deployment (BEAD) Program. As part of this process, the BDO submitted its Initial Proposal outlining the subgrantee selection process for the \$3.3 billion allocated to Texas. Regrettably, NTIA's approval process was unnecessarily protracted, requiring numerous revisions over an 11-month period.

As the BDO now embarks on the subgrantee selection process, I offer the following recommendations to streamline and improve the BEAD Program. I believe certain "nonessential" requirements exceed the program's original intent and unnecessarily complicate its implementation.

Drawing from our experience in administering similar grant programs and interacting with federal officials throughout the planning process, I propose the following reforms as they apply to State Broadband Offices (SBOs) to expedite the deployment of broadband infrastructure in Texas related to the BEAD Program:

- **Top Priority Nonessentials**
 - **Relax or eliminate guidelines regarding deployment of alternative technology in additional hard-to-reach areas.**
 - Relaxing or eliminating unclear guidelines regarding the use of alternative technologies or expanding the use of alternative technology for additional high-cost areas may decrease time to deployment, increase locations served and reduce costs:
 - Deploying alternative technology may lower cost per location.
 - Increase funded locations.
 - Decrease time to negotiate the proposed costs of higher-priced fiber options in un-proposed locations even after two rounds of funding.



- **Loosen or eliminate National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) review requirements.**
 - These requirements often are seen as outdated, redundant and politicized. Removing requirements may significantly decrease time to deployment and reduce administrative complexity:
 - NEPA did not apply under the American Rescue Plan Act (ARPA)/Capital Projects Fund (CPF), and providers have previously been responsible for executing NEPA and NHPA requirements.
 - Currently, BEAD awardees need all permits before they start construction. These permits may take a year to obtain, which will cause significant delays.
- **Eliminate the Low-Cost Broadband Service Option requirement.**
 - This requirement is viewed as running counter to legislative mandate against rate regulation.
 - Removing this requirement may increase overall provider participation and support efficient deployment of funds:
 - Providing price restrictions may decrease viability of projects and reduce quality of service over time.
 - Removing the low-cost service option would also reduce the administrative burden placed on SBOs to identify “eligible households” and monitor subgrantee’s compliance with the requirement.
 - ARPA/CPF does not require SBOs to set a low-cost dollar amount for eligible households.
- **Secondary Priority Nonessentials**
 - **Loosen overburdensome federal oversight and eliminate the exhaustiveness of remaining planning documents required of eligible entities.**
 - Reducing the exhaustiveness of remaining documents (e.g., challenge process reporting, Final Proposal) may reduce administrative complexity and time to deployment.
 - An SOP is required for every step in the programming processes. This is meant for internal auditing.
 - Based on the Initial Proposal process, there were several rounds of curing that delayed forward movement.
 - **Eliminate the 12-month timeline expectation for subgrantee process completion.**
 - Relaxing this requirement may reduce administrative complexity and procedural complexity.
 - A majority of states are unlikely to meet this timeline considering current restraints and will require extensions.
 - States should be allowed to request waivers sooner with justification based on the experience and understanding of the state of the program from the office.
 - **Loosen overburdensome cycles of federal review of submitted documents (e.g., challenge data, Final Proposal)**



- Reduction of the number of federal review cycles (e.g., two) may reduce administrative complexity and time from selection to deployment. Several rounds of review and curing have delayed states in kicking off subgrantee selection.
- Currently, NTIA staff are required to conduct a monitoring review every six weeks once the BDO begins making preliminary awards. NTIA may question the subgrantee selection process after reviewing the planned awards. Additionally, NTIA does not have a set timeline for processing the challenge data, because each state has been given a different timeline.
- A requirement example to eliminate from the Final Proposal: the 30-day comment period. Instead, use CPA's standard five-day comment period.
- **Eliminate the Middle-Class Affordability requirement.**
 - Providers have protested that inclusion of this requirement is impermissible rate regulation. Removing this requirement may increase overall provider participation and support efficient deployment of funds. The definition of "reasonable prices" is vague, and providers may be reluctant to apply for BEAD funding if "reasonable" prices lead to minimal or no profit.
 - Eliminating the Low-Cost Broadband Service Option requirement may impact the Middle-Class Affordability requirement because both may end up being eliminated.
- **Loosen the frequency of data submission requirements for key steps of the process, including challenge process and Final Proposal.**
 - Fewer data submission requirements may reduce administrative and procedural complexity and time to deployment.
- **Eliminate the letter of credit (LOC) requirement.**
 - Removing this requirement may increase overall provider participation, thus increasing location coverage and helping ensure efficient deployment of funds. Obtaining a letter of credit can be burdensome and may disproportionately affect smaller providers.
 - NTIA issued a programmatic waiver modifying the LOC requirement in 2023, but applicants are still required to submit an LOC during the process.
 - The BDO adopted a performance bond letter for the state-operated BOOT Program to maintain financial accountability.
- **Loosen the Build America, Buy America (BABA) Act requirement.**
 - Adding a waver option may increase overall provider participation and support efficient deployment of funds. BABA requirements can complicate providers' regulatory obligations, leading to cost increases, resource strain, project delays and deferrals.
 - This requirement has the potential to create supply chain challenges that will cause further delays on project construction.
 - There is a general lack of guidance from the federal government on how to fulfill this requirement.



- The realities of assessing compliance, applying for waivers, sourcing materials and developing supply chains are just a handful of the tasks that will eat into resources.
- **Eliminate or reduce the 25 percent match requirement.**
 - Removing or reducing the match requirement may increase overall provider participation.
 - The 25 percent match requirement may not be financially viable for certain locations, and increased competition can incentivize providers to request lower funding amounts.
 - Currently, a waiver of match requirement must be approved by NTIA, and no guidance has been issued on either the requirements for submitting a waiver or how waiver requests will be evaluated.
 - States are better positioned to review and approve waiver requests at the application stage and should be allowed to make decisions related to waiver requests without federal oversight.
- **Loosen financial reporting submission requirements.**
 - Relaxing financial reporting requirements may reduce administrative complexity and procedural complexity specifically related to fixed amount subawards. The BEAD Program grants fixed amount subawards, and payments are made once targets are met.
- **Eliminate Davis-Bacon and prevailing wage requirements.**
 - For broadband projects funded by BEAD funding, awardees are required to adhere to Davis-Bacon standards. Ensuring consistent prevailing wage compliance across multiple work sites and subcontractors is extremely challenging and may impact profitability and future competitiveness for builders.
 - Complex regulations like Davis-Bacon may prohibit participants, especially smaller internet service providers (ISPs), from applying to the state's BEAD Program.
- **Eliminate unnecessary cybersecurity requirements.**
 - Recipients are required to develop and implement cybersecurity plans to safeguard networks and infrastructure. This includes compliance with best practices and regular reporting of security risks and incidents.
 - These requirements will:
 - Increase administrative burden due to additional compliance and reporting.
 - Delay construction project implementation.
 - Increase costs for ISPs, which is a bigger impact for smaller ISPs.
 - SBOs are better equipped to handle cybersecurity issues tailored to their specific needs. By removing federal oversight, states can make more agile decisions, applying security measures based on local risks and conditions, reducing redundancy and allowing more flexibility.



- **Eliminate unnecessary workforce requirements.**
 - SBOs and awardees are required to provide updates on workforce development efforts, including training and hiring initiatives.
 - These requirements will:
 - Give states and ISPs less flexibility in addressing state, local and regional workforce needs, including training and hiring, that align with specific community needs and economic conditions.
 - Require more resources that should be invested into broadband infrastructure deployment be spent on tracking and complying with overburdensome workforce-related regulations.
 - Texas does not put many legal limits on employment relationships because they are typically very individualistic and value-based focused on mutual benefits for the employer and employee. ISPs should be given the flexibility to naturally invest in their workforce. State governments and ISPs understand regional job markets and skills gaps better than the federal government.

Thank you for your time and consideration of the recommendations outlined in this letter. I believe these proposed reforms will significantly improve the BEAD Program and expedite broadband deployment across the nation. Should you require any additional information or have any questions regarding our proposals, please do not hesitate to contact me or Greg Conte, BDO director, at Gregory.Conte@cpa.texas.gov. I welcome the opportunity to discuss these matters further and collaborate in achieving the shared goal of bridging the digital divide.

Sincerely,



Glenn Hegar
Texas Comptroller of Public Accounts

