

BEAD Reform Raises a Number of Policy Issues and Potentially Adds Delay

Article By:

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Even before taking office, incoming members of the Trump Administration and some Republican members of Congress criticized various regulatory requirements in the \$42.5 billion BEAD program as being unnecessarily burdensome and contributing to a perceived slow rollout of BEAD funding. The Commerce Department and Congress have now begun efforts to streamline and reform the BEAD program. The changes raise a number of questions, and if implemented as expected, will significantly impact and may delay the program.

Commerce Department Reviewing BEAD Program Rules

Last week, newly appointed Commerce Secretary Howard Lutnick [announced](#) that he has directed NTIA to launch a “rigorous review” of the BEAD program. According to Secretary Lutnick, NTIA “is ripping out the Biden Administration’s pointless requirements” and “revamping the BEAD program to take a tech-neutral approach,” which is clearly intended to eliminate the current funding preference for end-to-end fiber optic projects and pave the way for much more of the BEAD funding going to low-earth orbit (LEO) satellite or unlicensed fixed wireless broadband. NTIA is expected to release details of such rule changes in the coming days.

House Introduces “SPEED for BEAD Act”

Also last week, Congressman Richard Hudson (R-NC), Chairman of the House Communications and Technology Subcommittee, [introduced legislation](#) to revise and expedite the deployment of the BEAD program to get “shovels into the ground as soon as possible.”[1] H.R. 1870, The Streamlining Program Efficiency and Expanding Deployment (“SPEED”) for BEAD Act would eliminate certain BEAD requirements that are viewed by the bill’s supporters as being politically driven, overly bureaucratic, and not tied to the underlying goals of deploying broadband infrastructure.

1. Certain BEAD Requirements Removed

Among other things, the SPEED for BEAD Act would prohibit NTIA and eligible entities (e.g., states) from conditioning or scoring BEAD subrecipient awards based on:

- Prevailing wage laws;

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- Labor agreements;
 - Local hiring;
 - Climate change;
 - Regulation of network management practices, including data caps;
 - Open access; and
 - Diversity, equity, and inclusion.

2. Amend Definition of Reliable Broadband Service

Under the BEAD statute, funding will be made available for projects serving “unserved locations” and “underserved locations”[2] lacking access to “reliable broadband service.” The legislation would amend and broaden the definition of “reliable broadband service” to include “any broadband service that meets the applicable performance criteria without regard to the type of technology by which service is provided.” This would reverse the current NTIA requirements, which exclude locations “served exclusively by satellite, services using entirely unlicensed spectrum, or a technology not specified by the Commission for purposes of the Broadband DATA Maps.”[3] This will enable LEO and unlicensed fixed wireless providers to participate more broadly in the BEAD program as providers of “reliable broadband service,” if they meet certain performance requirements to be set by NTIA. It may also exclude from BEAD eligibility locations already served by such services.

3. Prohibition on Rate Regulation

The legislation would prohibit the imposition of rate regulation of broadband services provided over BEAD-funded network facilities. This includes prohibiting NTIA or any state or territory from regulating, setting, capping, or otherwise mandating the rates charged for broadband service by BEAD subrecipients, or the use of rates as part of an application scoring process. The Act does *not* remove the low-cost service option requirement from the BEAD statute, but instead prohibits eligibility entities from imposing specific low-cost service requirements.

4. Ability to Remove High Cost Locations From a Project Area

The legislation would provide a mechanism for subrecipients to remove locations from a project area that the subrecipient “determines would unreasonably increase costs or is otherwise necessary to remove.” The provision raises several questions as to how and when such determinations can be made by the subrecipient. States and territories would apparently award a separate subgrant to address such removed locations, presumably creating additional opportunities for BEAD-funded LEO service.

5. Elimination of LOC Requirement

The legislation would also eliminate the requirement for a BEAD subrecipient to provide a letter of credit (“LOC”) if the provider has commercially deployed a similar network using similar technologies and is either: (a) seeking funding that is less than 25% of the provider’s annual gross revenues; or (b) seeking to serve a number of locations that is less than 25% of the provider’s total number of existing service locations. These revisions would tend to benefit larger service providers, and would likely be of less benefit to new entrants or smaller providers, for whom LOC requirements often present a greater challenge.

Questions Raised by Impact of Reform Effort

While some stakeholders have already embraced a streamlining of the BEAD program rules, it must be noted that the proposed reforms are coming at a time when funding is about to be disbursed. NTIA has already approved Initial Proposal for all states and territories, and most of them have either already selected subrecipients, or are in the later stages of doing so. While the reform efforts at Commerce and in Congress are aimed at getting “shovels in the ground” as soon as possible, the reform initiatives – and resulting policy and legal questions – may well impose additional delay.

Introducing sweeping changes to BEAD at this stage raises thorny questions on whether some of the new rules can and should be applied mid-way through the award selection process, and after the application windows have closed. It should also be noted that despite concerns that the existing rules would result in low participation, many states are reporting strong bidder participation. Applicants around the country spent millions of dollars developing business plans, forging partnerships, locking down inventory, mapping out participation strategies, and developing detailed applications, all in reliance on the existing rules. Many other entities elected not to participate in BEAD based on the existing rules. Will they have any recourse to participate based on the new rules?

Finally, the broadband ecosystem is in a constant state of flux, with new privately funded networks coming online all of the time. Many state broadband offices, at the direction of NTIA, have been hesitant to revise their BEAD maps to remove locations after the “challenge” period. If there are now going to be additional delays in BEAD awards, what will be the impact on the existing maps? Will NTIA allow states to revise eligible locations to account for new deployments based on new updated data reported in the next Broadband Data Collection?

While targeted reforms aimed at enabling BEAD to better meet its underlying goal of providing all Americans with robust broadband connectivity make sense, care must be taken to ensure that such reforms do not themselves cause undue delays or undermine state processes that are working reasonably well.

[1] [Chairman Hudson’s Opening Statement at Subcommittee on Communications and Technology Hearing on Rural Broadband](#)

[2] Defined respectively as, a location lacking access to “reliable broadband service” of 25/3Mbps, with latency of less than 100ms, and a location lacking access to reliable broadband service of 100/20 Mbps, with latency of less than 100ms.

[3] NTIA BEAD Notice of Funding Opportunity

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