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## ACLP - Comments to the FCC re RDOF Amnesty - March 2024

New York Law School

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March 26, 2024

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

**RE: Comments Regarding Letter Seeking RDOF and CAF II Amnesty from 69 Internet Service Providers, Trade Associations, State and Local Officials, School Districts, Unions, and Civil Society Organization, WC Docket Nos. 10-90, 19-126, AU Docket No. 20-34**

Dear Ms. Dortch,

The ACLP at New York Law School respectfully submits the following comments and attachment in the above-referenced proceedings.

\* \* \* \* \*

On March 5, 2024, the Commission issued a Public Notice seeking comment on “a letter from 69 Internet Service Providers, Trade Associations, State and Local Officials, School Districts, Unions, and Civil Society Organizations” that requested “the Commission provide RDOF and CAF awardees who cannot or do not intend to build their networks a very short and expedited amnesty period of no more than a month that allows them to relinquish all or part of their winning areas without being penalized to the full extent that the Commission’s rules provide.”<sup>1</sup> The letter amplified emergency relief previously sought by a “coalition of RDOF winners” that was filed with the Commission in August 2023.<sup>2</sup>

There are three reasons why the Commission should reject this plea for amnesty.

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on Letter Seeking RDOF and CAF II Amnesty from 69 Internet Service Providers, Trade Associations, State and Local Officials, School Districts, Unions, and Civil Society Organization*, Public Notice, WC Docket Nos. 10-90, 19-126, AU Docket No. 20-34 (March 5, 2024), <https://docs.fcc.gov/public/attachments/DA-24-202A1.pdf>. See also *Letter Seeking RDOF and CAF II Amnesty from 69 Internet Service Providers, Trade Associations, State and Local Officials, School Districts, Unions, and Civil Society Organization*, Public Notice, WC Docket Nos. 10-90, 19-126, AU Docket No. 20-34 (Feb. 28, 2024), <https://www.fcc.gov/ecfs/document/1022830318048/1> (“RDOF Amnesty Letter”).

<sup>2</sup> *Rural Digital Opportunity Fund Auction (Auction 904); Rural Digital Opportunity Fund; Connect America Fund, Emergency Petition*, WC Docket Nos. 10-90, 19-126, AU Docket No. 20-34 (Aug. 16, 2023), <https://www.fcc.gov/ecfs/document/10817612010662/1> (“Emergency Petition”).

First, granting amnesty would set a worrying precedent for all current and future broadband funding programs. Ample notice was provided to all participants regarding the penalties associated with defaulting on an award. Indeed, by submitting paperwork and bids to the FCC during the CAF II and RDOF auctions, entities affirmed that they were willing to assume all terms and conditions associated with the program, including those related to defaulting. Participation in these programs was not compulsory. Numerous ISPs chose not to participate, likely owing, to some extent, to their unwillingness to abide by certain parameters of the programs. The entities seeking amnesty could have chosen not to participate.

If the Commission grants amnesty now, then it will open the door to entities making similar pleas for relief in other programs, including subsequent RDOF rounds and in the emerging BEAD program. As the ACLP detailed in a recent analysis of the criteria for evaluating the capabilities of prospective BEAD subgrantees (appended as Attachment #1), NTIA, for better and for worse, has modeled many aspects of this framework on the Commission's rules for RDOF.<sup>3</sup> However, NTIA has already loosened key criteria in response to advocacy from smaller and inexperienced ISPs, who argue that, without these concessions, they might not participate in BEAD<sup>4</sup> (it should be noted that the letter at issue here and advocacy aimed at loosening BEAD vetting criteria appears to have been spearheaded by the same organization). These changes have increased the chances that unqualified entities will receive BEAD grants. Even though the BEAD program includes mechanisms for addressing under- and non-performance, they do not go far enough vis-à-vis discouraging unqualified entities from seeking funds in the first place.<sup>5</sup> Moreover, FCC action to grant amnesty for CAF II and RDOF awardees would set a precedent that BEAD subgrantees might cite if they no longer wish to proceed with their project, providing them with a similar "get out of jail free card" that some RDOF winners are currently seeking.<sup>6</sup>

This dynamic of citing FCC actions when devising and altering BEAD policies has already occurred (e.g., in the context of letters of credit) and will likely continue. In short, each action by the Commission in the allocation of broadband funding sets a precedent that will inform subsequent programs. Accordingly, the Commission should opt to preserve the integrity of the rules it established for these programs – and the integrity of BEAD and other federal funding programs that might someday emerge – rather than accede to the frenzied pleas of entities with bidder's remorse.

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<sup>3</sup> *Navigating the BEAD Weeds: Vetting Subgrantees*, ACLP at New York Law School (March 2024), [https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1022&context=reports\\_resources](https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1022&context=reports_resources) ("Navigating the BEAD Weeds").

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Letter Seeking RDOF and CAF II Amnesty from 69 Internet Service Providers, Trade Associations, State and Local Officials, School Districts, Unions, and Civil Society Organization*, Ex Parte Letter of NTCA, WC Docket Nos. 10-90, 19-126, AU Docket No. 20-34 (March 8, 2024), <https://www.fcc.gov/ecfs/document/10308762312167/1>.

*Second*, it is fundamentally unfair – and legally murky – to adopt *post hoc* changes to program rules years after the completion of the CAF II and RDOF auctions.

Since RDOF ended, dozens of winners have voluntarily defaulted on their awards.<sup>7</sup> Indeed, on the same day that the letter at issue in the instant proceeding was filed with the FCC, the Commission announced that it had accepted the default of dozens of CBGs by two entities that had participated in RDOF and CAF II.<sup>8</sup> In its announcement, the Commission, in addition to stating that the defaulting entities would be subject to the penalties outlined in the RDOF and CAF II program rules, underscored that it “takes compliance with the terms and conditions of the CAF Phase II auction and RDOF programs seriously and imposes non-compliance measures if the requirements are not met.”<sup>9</sup> Less than a month later, the Commission is contemplating whether it should walk back that worthy stance and extend amnesty to defaulters. It should not.

If the Commission opts for amnesty, it will have to address a range of questions about fairness, equity, and due process.

Will the Commission grant amnesty retroactively? Those entities that voluntarily defaulted on their obligations and paid the requisite penalties would have strong legal and policy arguments to make for availing themselves of amnesty and having applied to them the same conditions that would be extended to defaulters during the amnesty period.

Will the FCC undo the enforcement actions and remit the penalties it collected from entities that defaulted previously and that the Commission deemed to be in violation of the program rules? This is particularly relevant in the case of LTD Broadband, the top RDOF winner that the Commission subsequently deemed incapable of following through on its promises to serve 450,000+ locations across 11 states. Even though LTD has filed suit against the Commission, challenging its decision to rescind its award, it could plausibly still seek retroactive amnesty – and the elimination of the fines levied on it by the Commission – if the FCC grants the amnesty request at issue here.<sup>10</sup> If that occurs, then the credibility of RDOF and the FCC will suffer significantly.

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<sup>7</sup> See, e.g., Masha Abarinova, *Altice USA Files RDOF Default in Louisiana, Joining Line of RDOD Defaulters*, March 21, 2024, Fierce Telecom, <https://www.fiercetelecom.com/broadband/altice-usa-joins-line-rdof-defaulters> (“Altice Files”).

<sup>8</sup> *Public Notice: Wireline Competition Bureau Announces Certain RDOF and CAF II Auction Census Block Groups are Eligible for Other Funding Programs*, WC Docket Nos. 10-90, 19-126, AU Docket Nos. 20-34, 17-182 (Feb. 28, 2024), <https://docs.fcc.gov/public/attachments/DA-24-181A1.pdf>.

<sup>9</sup> *Id.* at p. 3.

<sup>10</sup> Jericho Casper, *LTD Broadband Challenges Denial of RDOF Funds in Court*, Feb. 20, 2024, Broadband Breakfast, <https://broadbandbreakfast.com/ltd-broadband-challenges-fcc-denial-of-rdof-funds-in-court/>.

*Third*, it is misleading to argue that amnesty must be granted now to ensure that the locations orphaned by RDOF defaulters are eligible for BEAD. Moreover, there is no guarantee that, even if the locations are eligible for BEAD, they will receive funding.

As of mid-March 2024, 28 states had received approval from NTIA to begin the process of identifying unserved and underserved locations that will qualify for BEAD funding.<sup>11</sup> Eight of those states have already completed the challenge portion of that process; at least 8 others are currently in the challenge phase; and the remaining states will soon open the challenge process.<sup>12</sup> It is unclear whether and how the states that have already completed their challenge process could reopen it to account for these new locations. In addition, injecting numerous new locations into these processes would be administratively burdensome for state broadband offices (SBOs) that are already overwhelmed by the complexity of BEAD.<sup>13</sup> Indeed, many are already struggling to accommodate new locations made by previous RDOF defaulters; inundating SBOs with even more locations could grind the BEAD process to a halt in some states.<sup>14</sup>

Even if defaulted locations are included in the BEAD program, there is no guarantee that they will receive funding. According to a review of draft BEAD Initial Proposals by the ACLP, about half the states have indicated they are uncertain whether available funding will be sufficient to achieve universal broadband availability in their states.<sup>15</sup> These initial determinations were based on internal SBO analyses that omitted RDOF commitments because they are considered “enforceable commitments” that do not qualify for BEAD funding.<sup>16</sup> Increasing the total number of unserved and underserved locations in a state will only further dilute available BEAD funding, increasing the odds that, in many states, a digital divide will remain after BEAD. Moreover, with many RDOF and CAF II locations among the most “uneconomic” to serve, these locations and the consumers who live in them may be left unserved for years to come.

Finally, it must be noted that, regardless of whether a short window of amnesty is granted, RDOF and CAF II defaults will still be possible – and will likely continue to occur – for many

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<sup>11</sup> NTIA, BEAD Initial Proposal Progress Dashboard, <https://www.internetforall.gov/bead-initial-proposal-progress-dashboard> (as of March 19, 2024).

<sup>12</sup> NTIA, State and Territory Challenge Process Tracker, <https://www.internetforall.gov/state-and-territory-challenge-process-tracker>.

<sup>13</sup> See, e.g., *Navigating the BEAD Weeds*.

<sup>14</sup> See, e.g., Linda Hardesty, *RDOF Defaulters Hinder State BEAD Programs*, March 15, 2024, Fierce Telecom, <https://www.fiercetelecom.com/broadband/rdof-defaulters-hinder-state-bead-programs> (“Defaulters Hinder”).

<sup>15</sup> ACLP Research (on file).

<sup>16</sup> See, e.g., *Notice of Funding Opportunity*, at p. 36-37, NTIA (May 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

more years.<sup>17</sup> Consequently, the urgency evident in the amnesty request letter must be tempered to reflect reality.

If the Commission elects to grant amnesty, then it should:

- Publicize the list of defaulters, the locations that have been abandoned by the entities, and as much information about their bids as possible to inform the business models of the entities that ultimately choose to serve these areas.
- Annotate the federal broadband map and related state maps to indicate locations impacted by RDOF defaults. Among other things, this would provide stakeholders with notice about locations that have proven especially challenging to serve.
- Develop rules to assure greater follow-through on commitments during future funding programs administered by the Commission. These might include more robust pre-application vetting procedures to weed out unqualified firms and more stringent penalties for default to deter similar amnesty requests in the future.
- Strongly encourage NTIA to require states to prohibit defaulters from bidding on the locations that they abandoned. One of the primary arguments in favor of amnesty and that has been driving many defaults is the rising costs of building broadband networks.<sup>18</sup> In theory, an RDOF winner facing rising costs could take advantage of an amnesty period to default without penalty and then seek more funding to cover increased costs for a particular project via the BEAD program. This should not be allowed because it would constitute permission to engage in arbitrage, the outcome of which will likely be the continued absence of broadband in some areas.

\* \* \* \* \*

In conclusion, the undersigned respectfully recommend that the Commission deny the amnesty request. If the Commission grants the request, then it must do everything in its power to ensure that the entities that avail themselves of amnesty are not allowed to seek more funding for the locations on which they defaulted via BEAD.

Kind regards,

\_\_\_\_\_  
/s/  
Michael J. Santorelli, Director

\_\_\_\_\_  
/s/  
Alex Karras, Senior Fellow

<sup>17</sup> *Altice Files; Defaulters Hinder*.

<sup>18</sup> *See, e.g., Emergency Petition*.

**Attachment #1**  
***Navigating the BEAD Weeds: Vetting Subgrantees***

# Navigating the BEAD Weeds

## VETTING SUBGRANTEES

**March 2024**







The Advanced Communications Law and Policy Institute ([ACL P](#)) at New York Law School is an interdisciplinary law and public policy program focused on identifying and examining the key legal, regulatory, and public policy issues impacting – and impacted by – more robust broadband connectivity across the United States. The ACL P pursues and promotes a holistic approach to the study of broadband. Its focus includes the examination of: supply-side issues like infrastructure availability; demand-side issues like the myriad barriers hindering greater, more meaningful, and more equitable adoption and utilization of broadband across key demographics and sectors; state, local, and federal funding of broadband initiatives; and the intersectionality of broadband and other key public policy goals and objectives. The ACL P's research and writing is grounded in data relating to broadband connectivity and focuses on the development of practical, solution-oriented recommendations for policymakers at all levels of government and other stakeholders across the broadband ecosystem.

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For more information, please contact: [ACL P@nyls.edu](mailto:ACL P@nyls.edu)

# **Navigating the BEAD Weeds**

## **VETTING SUBGRANTEES**

**March 2024**

**Michael J. Santorelli, Director**  
**Alexander Karras, Senior Fellow**

The Advanced Communications Law & Policy Institute  
New York Law School

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## EXECUTIVE SUMMARY

- BEAD grants are available to any entity that wishes to apply. NTIA, which oversees BEAD, has acted on several fronts to ensure that as many entities as possible, including non-traditional ISPs (municipalities, electric utilities, cooperatives, private equity-backed new entrants, etc.) participate in the program.
- NTIA's efforts have resulted in the creation of a tiered approach to vetting prospective BEAD subgrantees. On the one hand, NTIA guidance details rigorous vetting procedures for established ISPs – *i.e.*, those entities with established networks and track-records in leveraging grant funds for network expansion. On the other hand, NTIA has carved out numerous exceptions to this framework for smaller and inexperienced ISPs.
- NTIA has justified this tiered approach as necessary to facilitating participation in BEAD for those entities that might be discouraged by having to comply with rigorous vetting criteria. In reality, however, NTIA has enshrined a vetting framework for inexperienced ISPs that is eerily familiar to the lax standards applied to participants in previous federal funding programs.
- The ongoing fallout of the flawed RDOF program illustrates the dangers that lie ahead. The FCC's failure to rigorously vet RDOF participants led to the two biggest winners of funding having their awards rescinded because, after looking more closely at their capabilities, it became clear that these entities were incapable of meeting their obligations. Since then, numerous other RDOF winners have defaulted on their awards, and more are seeking amnesty to do the same.
- NTIA risks leading BEAD down a similar path if it maintains its tiered approach to vetting prospective subgrantees. Fortunately, there is still time for NTIA to work with states to prevent waste, fraud, and abuse in BEAD. This analysis offers the following recommendations to avoid this fate:
  1. NTIA must level the playing field vis-à-vis vetting all participants in a similarly rigorous manner.
  2. NTIA must encourage states to assign greater weight to past performance in past federal funding programs when scoring applications.
  3. NTIA must encourage states to reward experience in the broadband sector and develop additional safeguards when reviewing applications from inexperienced ISPs.
  4. NTIA and the states must develop more robust accountability procedures and criteria for clawing back funds for under- and non-performance.
  5. NTIA and the states must do more to maximize transparency in the award and deployment of BEAD funds.

## 1. INTRODUCTION

BEAD grants are available to any entity that wishes to apply. Per the Infrastructure Investment & Jobs Act (IIJA), states, which are responsible for doling out grants, cannot “exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility” for funding.<sup>1</sup>

To date, NTIA, which is overseeing the implementation of BEAD, has acted on several fronts to ensure that as many smaller and less experienced ISPs as possible participate in the program. For example, NTIA has “strongly encourage[d]” states to waive any law that “exclude[s] or has the effect of excluding any potential providers from eligibility for its subgrant competition.”<sup>2</sup> In addition, NTIA has eased a range of requirements aimed at gauging the financial, technical, managerial, and operational capabilities of prospective subgrantees. In general, BEAD applicants must make “specific showings” of their ability to “carry[] out activities funded by the subgrant in a competent manner and in compliance with all applicable federal, State, Territorial, and local laws.”<sup>3</sup> However, for non-traditional ISPs that lack experience in the broadband space, NTIA has strongly encouraged states to adopt BEAD program criteria that “accommodate these differences” in experience and in how they demonstrate their capabilities.<sup>4</sup>

In practice, NTIA has allowed for the creation of a tiered system for vetting prospective BEAD subgrantees. Entities with substantial experience in the broadband space, notably established ISPs, will be required to comply with the full array of requirements detailed by NTIA in its guidance documents. Taken together, these vetting criteria are onerous and exacting. At the same time, entities with little or no experience in the broadband space, notably non-traditional ISPs like municipalities, utilities, and new entrants, including those backed by foreign investment and private equity funding, will have a much lower bar to clear vis-à-vis demonstrating their financial, operational, managerial, and technical capabilities.

As discussed below, this unbalanced approach to vetting prospective subgrantees appears to be contrary to the spirit, if not the letter, of the IIJA, which requires robust vetting of *all* BEAD applicants. It also increases the chances that BEAD funding could be wasted on projects spearheaded by unqualified entities. Indeed, past experiences with waste, fraud, and abuse during previous federal broadband funding programs underscore the importance of subjecting untested applicants to rigorous screening. Consequently, the burden of proof in the BEAD context should be reversed, with new entrants and other entities without experience as an ISP subject to thorough scrutiny. Those able to offer substantial evidence of competency in building networks and administering grant funding should be recognized for their expertise (e.g., in the form of additional points on their applications) and subject to a more streamlined vetting process. These and other recommendations for more robust and equitable vetting of BEAD applicants are discussed below.

## 2. THE IMPORTANCE OF CAREFULLY VETTING GRANT APPLICANTS

BEAD is being rolled out in the shadow of a long history of waste, fraud, and abuse in the allocation of federal funding for broadband expansion. In many cases, funds were squandered because they were allocated to firms that proved incapable of building, operating, and maintaining promised networks.

### 2.1. THE PAST IS PROLOGUE: WASTE, FRAUD, AND ABUSE IN BTOP AND USF

A close analog to BEAD is the Broadband Technology Opportunities Program (BTOP). BTOP was created by the 2009 American Recovery and Reinvestment Act (ARRA), which, like the IJJA, was forged in response to a national emergency (*i.e.*, the 2008 Financial Crisis).<sup>5</sup> Unlike BEAD, which will be administered by the states and overseen by NTIA, BTOP was administered entirely by NTIA. Some \$4B in BTOP funding was available for broadband infrastructure projects, public computing centers, and supporting sustainable broadband adoption programs.<sup>6</sup>

A core failing of BTOP was its inability to precisely target investments. The grant-giving process established by NTIA was haphazard, prioritizing speed over deliberation, resulting in a program that failed to weed out unnecessary projects and untested applicants. Indeed, subsequent analyses of BTOP concluded that the program was poorly run and subsidized inefficient and wasteful overbuilding of middle-mile networks in many rural areas, resulting in numerous failed projects that squandered funds.<sup>7</sup> Ultimately, there is little evidence that BTOP moved the needle in a meaningful way *vis-à-vis* closing the digital divide.

Similar shortcomings long bedeviled administration of the federal Universal Service Fund (USF), which was created by Congress in 1996 to subsidize the delivery of telecommunications services in high-cost rural areas and to schools, libraries, and other areas via the imposition of a USF fee on telecom customers. For years, the USF was the target of widespread criticism that it was the victim of considerable waste, fraud, and abuse by USF recipients.<sup>8</sup> One common practice by unscrupulous beneficiaries was “gold-plating,” which involved the artificial inflation of the costs of network components to receive more funding, only some of which was ever used on building networks.

Eventually the FCC transitioned the high-cost portion of the USF to support rural broadband deployment. When this shift occurred, the FCC and others were optimistic that this new focus would result in less waste because funds would be allocated via an auction system, theoretically reducing the incentive to engage in fraudulent behavior by funding recipients.<sup>9</sup> Though helpful in streamlining the allocation of funding, the FCC failed to adopt robust vetting criteria for auction participants and winners. This resulted in significant turbulence in the deployment of rural broadband funding.

## 2.2. THE ONGOING FALLOUT OF POOR RDOF VETTING: LEARNING FROM THE LTD DEBACLE

The track record of some auction winners in the Connect America Fund (CAF) program and its successor, the Rural Digital Opportunity Fund (RDOF), has been subpar. For example, several firms that were experiencing financial difficulties when they received millions in CAF funds eventually missed key deployment deadlines.<sup>10</sup> More recently, a growing number of RDOF winners have asked or been forced to withdraw from the program due to an inability or unwillingness to deploy the funds in a timely manner.

The RDOF experience of LTD Broadband is illustrative of the long-term trend of inadequately vetting untested firms that are seeking federal broadband funding. LTD was the biggest winner of RDOF, successfully securing \$1.3B in funds in 2020 (out of \$9.2B in total available funding).<sup>11</sup> Like all participants, LTD submitted paperwork ahead of the auction to demonstrate its qualifications.<sup>12</sup> The information included in this initial paperwork, however, was "high level" and provided regulators with little real insight into the technical or financial capabilities of the firm vis-à-vis scaling out its network.<sup>13</sup> At the time, LTD delivered primarily fixed wireless broadband service to about 18,000 customers across 8 states.<sup>14</sup> It bid on and eventually won \$1.3B in RDOF funds to serve 528,000 locations with a mix of fixed wireless and fiber across 15 states.<sup>15</sup>

LTD and other RDOF recipients were required to provide the FCC with significantly more information about their capacity to complete the proposed projects only *after* they had won their bids. Over the next several months, it quickly became clear that LTD was not qualified for such a massive undertaking. Among other things, several states denied LTD's applications to be designated as an eligible telecommunications carrier, which is required for recipients of USF funding.<sup>16</sup> In addition, a review of LTD's more detailed filings by the FCC yielded a range of "financial and technical deficiencies."<sup>17</sup> LTD opted to not take advantage of numerous opportunities to address these concerns offered by the FCC.<sup>18</sup> In the end, the Commission denied LTD's application, found the ISP to be in default vis-à-vis its RDOF bids, and fined it a total of \$23M.<sup>19</sup>

The LTD debacle stemmed directly from FCC actions that sought to "encourage broad participation" in RDOF.<sup>20</sup> Even though the Commission succeeded in attracting new bidders like LTD and Starlink, among others, its efforts ultimately "backfired" because the FCC failed to impose "any mechanism to prevent bidders from bidding speculatively all over the country, without regard to their ability to perform."<sup>21</sup> As a result, the Commission now finds itself with a number of other winning RDOF bidders that are seeking amnesty to get out of their commitments without being penalized like LTD.<sup>22</sup>

A major argument in favor of RDOF amnesty is that, by encouraging the quick withdrawal of firms that are having second thoughts about moving forward with their projects, the areas that they will abandon could be eligible for BEAD subsidies (otherwise, they will be considered "enforceable commitments" and thus ineligible for BEAD funding).<sup>23</sup> If the FCC offers amnesty, it will (1) set a worrying precedent for all future broadband funding programs, including BEAD; (2) put a financial strain on these other funding programs in an

effort to connect former RDOF locations; and (3) further delay closing the digital divide in many parts of the country.

In addition, left unaddressed in these ongoing discussions is whether the BEAD process has adequately addressed the shortcomings of the RDOF program and other previous grant initiatives vis-à-vis assuring a robust vetting process for prospective subgrantees. As discussed below, it does not appear that this is the case.

### 3. NTIA'S TIERED APPROACH TO VETTING SUBGRANTEES

As noted above, the BEAD program shares RDOF's mission to attract as many participants as possible. At first glance, NTIA appears to have learned from the FCC's failings in vetting prospective applicants by detailing what some have said is among the most onerous set of grant requirements ever.<sup>24</sup> Nevertheless, since NTIA began framing out BEAD and issuing guidance to the states, smaller and non-traditional ISPs have criticized the program for its complexity and argued that, without relief from some of the requirements, many might elect to not participate.<sup>25</sup> In response, NTIA has released guidance that allows for and ultimately encourages the creation of a tiered system for vetting BEAD applicants.

As discussed below, NTIA's tiered approach to vetting prospective BEAD subgrantees indicates that it has not learned the painful lessons of past grant program failures. Moreover, by providing smaller and inexperienced ISPs with a lower bar to clear vis-à-vis demonstrating their qualifications, NTIA has enshrined a vetting framework eerily like the one that led to the LTD failure and the squandering of RDOF funds.

#### 3.1. EXPLORING THE TWO-TIERED VETTING FRAMEWORK DEVELOPED BY NTIA

**Table 1** provides a high-level summary of this tiered system. As discussed below, most states have adopted this system with minimal changes.



**Table 1 - Comparison of BEAD Vetting Criteria for Experienced and Inexperienced ISPs**

Vetting Criterion	NTIA Vetting Recommendation for Experienced ISP	NTIA Vetting Recommendation for Inexperienced ISPs
Operational Capability <sup>26</sup>	<ul style="list-style-type: none"> <li>▪ Must certify that it has timely filed FCC Form 477 and otherwise complied with FCC rules and regs</li> </ul>	<ul style="list-style-type: none"> <li>▪ Evidence that demonstrates the entity “has obtained, through internal or external resources [e.g., contractors or subcontractors], sufficient operational capabilities.”<sup>27</sup></li> </ul>
Financial Capability <sup>28</sup>	<ul style="list-style-type: none"> <li>▪ Certification that it has enough funds to cover the project</li> <li>▪ Letter of Credit (LOC) from a bank for at least 25% of the BEAD project cost</li> <li>▪ Audited financials</li> <li>▪ Project pro forma</li> </ul>	<p>NTIA allows for:</p> <ul style="list-style-type: none"> <li>▪ LOC from a credit union, with less stringent terms and conditions<sup>29</sup></li> <li>▪ Issuance of Performance Bonds in lieu of an LOC, with less stringent terms and conditions<sup>30</sup></li> <li>▪ Any alternatives that “perform the same function” as an LOC (e.g., depositing funds in escrow)<sup>31</sup></li> <li>▪ “Any other financial documentation sufficient to allow evaluation of the financial capacity and viability of the prospective subgrantee.”<sup>32</sup></li> </ul>
Managerial Capability <sup>33</sup>	<ul style="list-style-type: none"> <li>▪ Management resumes</li> <li>▪ Narrative describing managerial readiness</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same</li> </ul>
Technical Capability <sup>34</sup>	<ul style="list-style-type: none"> <li>▪ Certified network design, project costs, build timeline, milestones and capital plan to finish project in 4 years</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same</li> </ul>
Other Public Funding <sup>35</sup>	<ul style="list-style-type: none"> <li>▪ Documentation of all current and planned uses of public funding for broadband deployment</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same but inapplicable to entities without a track record in the broadband sector</li> </ul>
Match Requirement <sup>36</sup>	<ul style="list-style-type: none"> <li>▪ Must match at least 25% of project cost; can include in-kind contributions</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same but ability to offset with in-kind contributions favors public entities</li> <li>▪ Waiver of match more likely for small and non-traditional ISPs<sup>37</sup></li> </ul>

Cybersecurity <sup>38</sup>	<ul style="list-style-type: none"> <li>▪ Operational cybersecurity risk management plan</li> </ul>	<ul style="list-style-type: none"> <li>▪ A plan that is ready to be operationalized</li> </ul>
Supply Chain Risk Management (SCRM) <sup>39</sup>	<ul style="list-style-type: none"> <li>▪ Operational SCRM plan</li> </ul>	<ul style="list-style-type: none"> <li>▪ A plan that is ready to be operationalized</li> </ul>

NTIA has acted in several other ways to make it easier for non-traditional ISPs to participate in BEAD without recommending or requiring states to engage in similarly helpful actions for established ISPs. For example:

- *State Laws Impacting Non-Traditional ISPs.* NTIA has “strongly encourage[d]” states to waive any law that “seeks to exclude or has the effect of excluding any potential providers from eligibility for its subgrant competition.”<sup>40</sup> Only a small minority of states have such laws on their books, and most state broadband offices have stated that, as executive entities, they are powerless to waive any law.<sup>41</sup> Even so, NTIA requires states that do not waive these laws to document “each unsuccessful application affected by such laws and describe how those laws impacted the decision to deny the application.”<sup>42</sup>

There is a corresponding requirement for states to “[i]dentify steps [they] will take to reduce costs and barriers to deployment, promote the use of existing infrastructure, promote and adopt dig-once policies, streamline permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements.”<sup>43</sup> Though a noble call to action for states to engage in long overdue regulatory reforms that would benefit all ISPs, NTIA stopped short of requiring states to document their efforts to proactively undertake such actions or to identify how failure to reform certain laws or regulations negatively impacted the BEAD process. Consequently, most state BEAD proposals have offered only perfunctory high-level narratives about actions taken pre-BEAD to remove these barriers; few states have acted to amend laws and regulations since BEAD was announced.<sup>44</sup>

- *In-Kind Matching.* As noted in Table 1, NTIA allows for the use of in-kind contributions to offset the 25% minimum match requirement. Whether certain contributions count as in-kind is governed by a complex series of federal rules identified by NTIA in its guidance materials.<sup>45</sup> In general, however, many of the potential in-kind contributions identified by NTIA appear more likely to stem from the contributions of public entities, especially municipalities, than private entities. These include contributions like “volunteer services,” “use of facilities,” and “waiver of fees associated with access to rights of way, pole attachments, conduits, easements, or access to other types of infrastructure.”<sup>46</sup> Private ISPs lack the authority to engage in many of these actions.

In addition, given the limitations on using municipal bond proceeds to satisfy their matching requirement, municipalities and other public entities have significant incentive to aggressively explore and leverage the expansive array of in-kind contributions at their disposal. NTIA rules make it difficult for public entities to rely

on revenue bonds – an increasingly popular funding source for public broadband projects – for their match. NTIA requires special approval for public entities to use revenues stemming from BEAD projects to pay the principal on a revenue bond and federal law prohibits the use of those proceeds to pay the interest expenses on those bonds.<sup>47</sup>

- *Open Access Preference.* NTIA explicitly “encourage[d] [states] to adopt selection criteria promoting subgrantees’ provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers.”<sup>48</sup> In response, about a dozen states included extra points for BEAD proposals that included open access commitments.<sup>49</sup> Given that most open access network arrangements undermine network investment and innovation and eliminate the ability of a single entity to secure a network end to end, most established ISPs have made clear that they have no intention of building or providing service over these networks. In some states, this stance will result in fewer points on ISPs’ BEAD applications. Non-traditional ISPs, including municipalities, new entrants, and electric utilities, on the other hand, are much more likely to pursue open access projects.

Taken together, experienced ISPs are subject to significantly more exacting and onerous vetting criteria than prospective subgrantees without a track-record in the broadband space.

### **3.2. STATE PRE-QUALIFICATION PROCESSES WILL LIKELY BE INADEQUATE TO ROOT OUT UNQUALIFIED BIDDERS**

In an apparent attempt to protect against an LTD-like debacle, many states will require BEAD applicants to submit materials addressing the vetting requirements described in Table 1 during a pre-qualification process. According to the ACLP’s estimate, at least 35 states will engage in some form of pre-qualification process. In some instances, the outcome of this process will determine whether an entity is permitted to submit a formal BEAD application. In others, however, pre-qualification is optional.

For example, Louisiana, the only state to have its full BEAD proposal approved as of March 2024, will require prospective subgrantees to submit “BEAD-required financial, operational, managerial and technical qualifications as well as...required certifications and authorizations.”<sup>50</sup> After a 30-day review, the state will determine whether the entity is qualified to submit a BEAD application.<sup>51</sup> In Kansas, however, its pre-BEAD process is framed as “pre-registration,” a period during which the state “may accept preregistration information from entities interested in applying for subgrantee selection to advance administrative tasks that are common to all applications to help streamline processing time once applications are submitted.”<sup>52</sup> Several large states, notably California, Florida, Georgia, Texas, and Washington, will not have any pre-BEAD process for vetting applicants.

Even though many states have pledged to deploy robust pre-qualification processes, the condensed timeline for completing BEAD allocations (states will have one year from NTIA approval of their plans to complete their Challenge Processes, finalize their maps, and then solicit, review, and approve applications), coupled with the fact that state broadband offices are often understaffed and under-resourced, may render these ambitions moot.<sup>53</sup> Moreover, the patchwork approach to pre-qualifying applicants will allow opportunities for un- and under-qualified entities to still apply for funding. In short, it is likely that, across the country, there will be a significant number of un- and under-qualified entities applying for and potentially winning BEAD funds. Considering the continuing fallout of RDOF, NTIA and the states must do more to prevent further waste, fraud, and abuse of federal funding for broadband.

## **4. RECOMMENDATIONS FOR A ROBUST AND CONSISTENT VETTING PROCESS**

The following recommendations are offered to NTIA as it continues to work with states to finalize their BEAD plans. These recommendations are focused on assuring a robust, consistent, and equitable vetting process, one that does not discourage participation by any entity but that holds each applicant to a level of scrutiny that reflects its track-record in the broadband space.

### **4.1. ELIMINATE THE TIERED APPROACH TO VETTING BEAD APPLICANTS**

As a first step, NTIA should recognize that its actions, intended or not, have created a tiered vetting system that could result in un- and under-qualified entities applying for and receiving BEAD funding. Once it appreciates how its guidance and waivers will likely translate when applied during the BEAD process, NTIA must do everything it can to recalibrate this bifurcated framework.

One response could be for NTIA, as part of its review of state BEAD plans, to encourage states to raise the “floor” of minimum subgrantee qualifications as high as possible so that prospective new entrants and other firms with little or no track-record in the broadband market are held to similarly robust standards for technical, operational, management, and financial capability as established ISPs.

Another potential response could be for NTIA to encourage states to develop an alternative framework that flips the burden of proof for prospective subgrantees. For example, NTIA could devise criteria that, if met by an applicant, would create a rebuttable presumption that it is qualified to participate in BEAD (e.g., serving a minimum number of customers; successful deployment of state and federal grant funds; etc.). Those entities that do not meet that standard would have to proceed through the regular vetting process.

Ultimately, ISPs with a demonstrable track-record of success in building and operating networks and participating in federal funding programs should be offered a more streamlined process for demonstrating their bona fides than the process available for entities that have no track-record. The myriad defaults stemming from RDOF illustrate the need for a much higher bar for vetting unknown and inexperienced applicants. Culling the applicant pool in this manner will increase the chances that funds are not squandered and free up state broadband office resources to focus solely on applications from viable candidates.

#### **4.2. ENCOURAGE STATES TO ASSIGN GREATER WEIGHT TO PAST PERFORMANCE IN BROADBAND FUNDING PROGRAMS**

Either as part of the response recommended in Section 4.1 or as a new criterion for scoring applications, NTIA should encourage states to more carefully review and account for how applicants performed in other broadband funding programs. As noted in Table 1, NTIA guidance requires states to ask applicants for information regarding their use of “other public funding” for broadband projects.<sup>54</sup> The required disclosures, however, only encompass high-level project metrics like how much funding is being used, how many locations will be served, and how fast the service will be. Absent from these disclosures is any information regarding an entity’s performance in those programs, *i.e.*, whether the entity has defaulted, is behind schedule, over-budget, or encountering other issues in meeting its obligations.

Given the possibility of the FCC granting amnesty to awardees for defaulting on their RDOF obligations, NTIA should strongly encourage states to require applicants to disclose whether they have availed themselves of amnesty and then prohibit them from seeking BEAD funding for areas covered by the RDOF project on which they chose to default. States should also require applicants to disclose whether they have defaulted on any deployment obligations even if they did not benefit from amnesty. In addition, NTIA could encourage states to update their scoring rubrics to include points for successfully meeting past deployment obligations, an approach that Delaware<sup>55</sup> and Florida,<sup>56</sup> among others, have already embraced.

#### **4.3. ENCOURAGE STATES TO REWARD APPLICANTS FOR EXPERIENCE AND DEVELOP ADDITIONAL SAFEGUARDS FOR INEXPERIENCED ISPS**

NTIA should encourage states to reconceive scoring rubrics to account for and reward applicants with substantial track-records in the broadband space. Several states have already proposed similar approaches in their BEAD proposals and could serve as a model for others. For example:

- Several states have proposed awarding points to firms that have operated in the state for a minimum number of years. Michigan, for example, will award 5

- points to applicants with operations in the state.<sup>57</sup> Montana has proposed a similar approach.<sup>58</sup>
- Montana will award points to applicants that apply for funding in project areas that are immediately adjacent to existing broadband network infrastructure.<sup>59</sup> This approach recognizes that, in many cases, established ISPs will be able to expand into unserved areas more efficiently by edging out existing networks. North Dakota has proposed a similar approach wherein it will award 10 points to applicants with a history of successful deployment in the state.<sup>60</sup>
  - Ohio's proposed scoring rubric reflects several of these approaches. It will award 38 points to applicants with demonstrated experience in the broadband space and 37 points to applicants with 10+ years of experience operating in Ohio.<sup>61</sup>

NTIA could delay approval of a state's BEAD proposal until it makes these changes.

If NTIA allows states to move forward with a tiered approach to vetting subgrantees, then NTIA might explore ways of minimizing the risks stemming from networks built by untested firms. For example, NTIA could encourage states to require new entrants to provide a much higher match (e.g., 50%+) for BEAD-funded projects to maximize the new entrant's "buy in."

NITA could also permit states to limit the number of locations on which smaller ISPs and new entrants can bid. In hindsight, permitting LTD Broadband to bid on 500,000+ locations – more than 27 times its footprint pre-RDOF – was unwise. To avoid similar outcomes in BEAD, states could limit ISPs to bidding on a certain multiple of locations relative to their current footprint. For example, a large ISP with 100,000 customers in a state should be permitted to bid on a similarly large number of locations if it wishes. However, permitting a smaller ISP with 1,000 customers, or a new entrant with zero customers, to bid on 100,000 locations vastly increases the risk of default. Accordingly, NTIA and the states should explore capping the number of locations on which certain ISPs can bid. In the alternative, states could forego bid limits and apply even more rigorous review and vetting of entities that are seeking to use BEAD to significantly grow their footprint by several multiples.

#### **4.4. DEVELOP ROBUST ACCOUNTABILITY MECHANISMS**

As part of their BEAD program development, states are required to include "clawback provisions (*i.e.*, provisions allowing recoupment of funds previously disbursed) in agreements between the Eligible Entity and any subgrantee."<sup>62</sup> To theoretically minimize the need for applying these provisions, NTIA also requires states to disburse BEAD funds on a reimbursable basis, "which would allow the [state] to withhold funds if the subgrantee fails to take the actions the funds are meant to subsidize."<sup>63</sup> Together, these mechanisms constitute robust protections against underperformance.

To incentivize the participation of qualified firms and discourage inexperienced entities, NTIA might encourage states to bolster these mechanisms by adding penalties for under- or non-performance. Being able to withhold or claw back funds is critical if a subgrantee fails to carry out its project as promised. Consumers in the areas impacted by these delays or defaults, however, will be significantly impacted and will have to wait even longer for broadband. Moreover, in the absence of penalties, the offending subgrantee will be free to seek funding elsewhere for broadband projects without repercussion.

As discussed at length above, the fallout of subpar vetting processes during RDOF underscores the need for greater accountability in the BEAD program. Otherwise, funds will continue to be wasted and consumers in some areas will remain unserved for the foreseeable future. NTIA might encourage states to explore financial and programmatic penalties for BEAD subgrantees that have their funds withheld or clawed back. For example, NTIA might encourage states to study the approach developed by West Virginia, which has stated that failure to meet BEAD “performance measures may result in suspension of reimbursement payment, termination of the Grant Agreement...and/or prohibit the subgrantee from being eligible to submit an application for future allocations until such time as the failures are resolved.”<sup>64</sup>

#### **4.5. MAXIMIZE TRANSPARENCY TO ASSURE ADEQUATE MONITORING OF BEAD PROJECTS**

NTIA must ensure that BEAD is the most transparent federal broadband funding program in history. NTIA’s record on this front is mixed. Some information regarding BTOP awards was made available by NTIA on a dedicated website, but much of that information and data came from high-level progress reports submitted by grantees on a quarterly basis. BTOP applications and the contracts governing awards were not made available.

Given the high stakes of BEAD, which has been billed as the largest broadband grant program ever, NTIA must do better. At a minimum, NTIA should require states to post all BEAD applications online while allowing for adequate redaction to protect proprietary information. Thereafter, NTIA, in partnership with the states, should launch interactive dashboards that house all information related to each application (e.g., its status, how many points it received, issues addressed during curing, etc.) and to each award (e.g., timelines, terms and conditions governing the award, etc.).

NTIA might also encourage states to subject new entrants and other subgrantees with little or no experience in the broadband space to more stringent reporting requirements, especially with respect to the implementation of cybersecurity protocols.

NTIA should also work with state broadband offices to develop robust administrative processes to guide interactions with BEAD applicants. Except for a handful of states that elected to locate their BEAD program at a regulatory commission, most state broadband offices are housed within executive branch agencies that deal primarily with economic development matters. Outside of procurement rules, these agencies typically lack formal regulations on issues that will likely arise during the administration of BEAD. For example,

most state broadband offices appear to lack guidance vis-à-vis appealing decisions related to and impacting BEAD award decisions. NTIA should develop model procedures that states can implement for use during and after the BEAD application process.

## 5. CONCLUSION

Even though BEAD implementation continues to progress as NTIA approves more and more state proposals, there is still time for improvements to be made. Indeed, several recent developments, including the possibility of RDOF amnesty and the likelihood of ACP subsidies expiring, increase the chances that NTIA will require states to adjust their BEAD plans to account for these events.

NTIA should use the continued fallout from RDOF as grounds for encouraging, if not requiring, states to shore up their vetting of prospective subgrantees. Too much is at stake for BEAD to fall prey to the kind of waste, fraud, and abuse that has plagued previous federal broadband funding programs. Bolstering the vetting procedures for non-traditional ISPs and those without a substantial track-record in the broadband sector before the application process could greatly reduce the number of un- and under-qualified firms allowed to participate. At the same time, streamlining the vetting of established ISPs with a demonstrated record of success could reduce the administrative burden in state broadband offices and free up resources that can be applied to thoroughly vetting newcomers.

Ultimately, NTIA and the states should do everything in their power to prevent another LTD debacle and ensure, to the greatest extent possible, that BEAD funding is deployed efficiently and effectively. The recommendations offered here should be a starting point for discussions about properly calibrating BEAD vetting and implementing a strong complement of scoring criteria and accountability requirements to maximize the impact of these once-in-a-lifetime funds.



## NOTES

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<sup>1</sup> IIJA § 60102(h)(1)(iii).

<sup>2</sup> BEAD Notice of Funding Opportunity, at p. 51, NTIA (May 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (“BEAD NOFO”).

<sup>3</sup> BEAD NOFO at p. 71.

<sup>4</sup> *Id.*

<sup>5</sup> BTOP, NTIA, <https://www.ntia.gov/category/broadband-technology-opportunities-program>.

<sup>6</sup> BTOP Program Page (Archive), NTIA, <https://www2.ntia.doc.gov>.

<sup>7</sup> See, e.g., Gregory Rosston and Scott Wallsten, *The Broadband Stimulus: A Rural Boondoggle and Missed Opportunity*, TPI (Nov. 2013), <https://techpolicyinstitute.org/wp-content/uploads/2013/11/the-broadband-stimulus-a-rural-2007592.pdf>; Edward Wyatt, *Waste is Seen in Program to Give Internet Access to Rural U.S.*, Feb. 11, 2013, N.Y. Times, <https://www.nytimes.com/2013/02/12/technology/waste-is-seen-in-program-to-give-internet-access-to-rural-us.html>; *Background and Issues for Congressional Oversight of ARRA Broadband Award (Updated Aug. 4, 2015)*, Congressional Research Service, <https://crsreports.congress.gov/product/pdf/R/R41775/>

<sup>8</sup> See, e.g., Thomas Hazlett and Scott Wallsten, *Unrepentant Policy Failure: Universal Service Subsidies in Voice & Broadband*, Alliance for Generational Equity (July 2013), <http://web.archive.org/web/20160715151756/http://www.ageadvocacy.org/age-study-fcc-wastes-up-to-24000-per-line-a-year-on-phone-subsidies-going-into-high-income-areas-around-us/>.

<sup>9</sup> See, e.g., *Report and Order and Further Notice of Proposed Rulemaking*, In the Matter of the Connect America Fund, WC Docket No. 10-90 (Oct. 27, 2011), [https://docs.fcc.gov/public/attachments/FCC-11-161A1\\_Rcd.pdf](https://docs.fcc.gov/public/attachments/FCC-11-161A1_Rcd.pdf).

<sup>10</sup> See, e.g., Jon Brodtkin, *CenturyLink, Frontier Missed FCC Broadband Deadlines in Dozens of States*, Jan. 22, 2021, *Ars Technica*, <https://arstechnica.com/tech-policy/2021/01/centurylink-frontier-missed-fcc-broadband-deadlines-in-dozens-of-states/>.

<sup>11</sup> See, e.g., Diana Goovaerts, *FCC Rejects LTD Broadband, Starlink RDOF Bids*, Aug. 10, 2022, *Fierce Telecom*, <https://www.fiercetelecom.com/broadband/fcc-rejects-ltd-broadband-starlink-rdof-bids>.

<sup>12</sup> *Order on Review*, In the Matter of Application for Review of LTD Broadband, LLC Denial of Application for RDOF/Auction 904, at ¶ 3, WC Docket No. 19-126 (Dec. 1, 2023). <https://docs.fcc.gov/public/attachments/FCC-23-103A1.pdf> (“Order on Review”).

<sup>13</sup> *Id.*

<sup>14</sup> Mike Hughlett, *Winner of \$1.3B in Federal Broadband Funds Faces Hurdles*, July 11, 2022, *Star Tribune*, <https://www.govtech.com/network/winner-of-1-3b-in-federal-broadband-funds-faces-hurdles>.

<sup>15</sup> *Order on Review* at ¶ 8.

<sup>16</sup> *Id.* at ¶ 10.

<sup>17</sup> *Id.* at ¶ 11.

<sup>18</sup> *Id.* at ¶ 12.

<sup>19</sup> *Id.* at ¶ 13; see also Julia King, *Etheric and GigFire Hit with \$22M in Penalties for RDOF Defaults*, Dec. 7, 2023, *Fierce Telecom*, <https://www.fiercetelecom.com/broadband/etheric-and-gigfire-hit-22m-penalties-rdof-defaults>. LTD has challenged the FCC’s actions in court. See Jericho Casper, *LTD Broadband Challenges FCC Denial of RDOF Funds in Court*, Feb. 20, 2024, *Broadband Breakfast*, <https://broadbandbreakfast.com/ltd-broadband-challenges-fcc-denial-of-rdof-funds-in-court/>.

<sup>20</sup> Carol Matthey, *Takeaways from the FCC's LTD Decisions*, Dec. 7, 2023, Medium, <https://medium.com/@CarolMatthey/takeaways-from-the-fccs-ltd-decisions-10fea797a7f0>.

<sup>21</sup> *Id.*

<sup>22</sup> See, e.g., Julia King, *FCC Faces Pressure to Pardon RDOF Defaults*, March 6, 2024, Fierce Telecom, <https://www.fiercetelecom.com/broadband/fcc-faces-pressure-pardon-rdof-defaults>.

<sup>23</sup> *Letter to FCC Chair Jessica Rosenworcel re Rural Digital Opportunity Fund Auction (Auction 904)*, AU Docket No. 20-34, Feb. 28, 2024, Connect Humanity, <https://connecthumanity.fund/wp-content/uploads/2024/02/RDOFFCCLetter12824fin.pdf>.

<sup>24</sup> See, e.g., Jericho Casper, *Demanding Requirements on NTIA's BEAD Program May Depress Broadband Participation*, June 7, 2022, Broadband Breakfast, <https://broadbandbreakfast.com/demanding-requirements-on-ntias-bead-program-may-depress-broadband-participation/>.

<sup>25</sup> *Id.*

<sup>26</sup> *BEAD NOFO* at p. 74-75.

<sup>27</sup> *BEAD NOFO* at p. 75.

<sup>28</sup> *BEAD NOFO* at p. 72-73.

<sup>29</sup> *BEAD Letter of Credit Waiver*, NTIA, <https://broadbandusa.ntia.gov/funding-programs/policies-waivers/BEAD-Letter-of-Credit-Waiver>.

<sup>30</sup> *Id.*

<sup>31</sup> *BEAD Financial Capability Alternatives Policy*, NTIA, [https://broadbandusa.ntia.doc.gov/sites/default/files/2024-02/BEAD\\_Financial\\_Capability\\_Alternatives\\_Policy.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2024-02/BEAD_Financial_Capability_Alternatives_Policy.pdf).

<sup>32</sup> *Id.*

<sup>33</sup> *BEAD NOFO* at p. 73-74.

<sup>34</sup> *BEAD NOFO* at p. 74.

<sup>35</sup> *BEAD NOFO* at p. 75-76.

<sup>36</sup> *BEAD NOFO* at p. 20-22.

<sup>37</sup> *BEAD NOFO* at p. 20.

<sup>38</sup> *BEAD NOFO* at p. 70-71.

<sup>39</sup> *Id.*

<sup>40</sup> *BEAD NOFO* at p. 51.

<sup>41</sup> ACLP Research (on file).

<sup>42</sup> *BEAD NOFO* at p. 51.

<sup>43</sup> *BEAD NOFO* at p. 32.

<sup>44</sup> ACLP Research (on file).

<sup>45</sup> *BEAD NOFO* at p. 21-22.

<sup>46</sup> *Id.*

<sup>47</sup> *Frequently Asked Questions and Answers 3.0*, at p. 46, NTIA BEAD Program, [https://broadbandusa.ntia.doc.gov/sites/default/files/2023-07/BEAD\\_Frequently\\_Asked\\_Questions\\_Version\\_3.0.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2023-07/BEAD_Frequently_Asked_Questions_Version_3.0.pdf).

<sup>48</sup> *BEAD NOFO* at p. 44.

<sup>49</sup> ACLP Research (on file).

<sup>50</sup> *BEAD Initial Proposal – Volume 2 (NTIA Approved)*, at p. 25, Louisiana, [https://broadbandexpanded.com/files/iija\\_plans/LA%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf](https://broadbandexpanded.com/files/iija_plans/LA%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Final.pdf).

<sup>51</sup> *Id.*

<sup>52</sup> *BEAD Initial Proposal – Volume 2 (Pending NTIA Approval)*, at p. 20, Kansas, [https://broadbandexpanded.com/files/iija\\_plans/KS%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Submitted.pdf](https://broadbandexpanded.com/files/iija_plans/KS%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Submitted.pdf).

<sup>53</sup> See, e.g., Doug Dawson, *The Sudden Mad Rush of BEAD*, March 4, 2024, POTs and PANs, [https://potsandpansbyccg.com/2024/03/04/the-sudden-mad-rush-of-bead/?mc\\_cid=6463898d21&mc\\_eid=d4bbc38d0d](https://potsandpansbyccg.com/2024/03/04/the-sudden-mad-rush-of-bead/?mc_cid=6463898d21&mc_eid=d4bbc38d0d).

<sup>54</sup> *BEAD NOFO* at p. 75-76.

<sup>55</sup> *BEAD Initial Proposal Volume 2 (Public Comment Version)*, at p. 22, Delaware, [https://broadbandexpanded.com/files/iija\\_plans/DE%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Draft.pdf](https://broadbandexpanded.com/files/iija_plans/DE%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Draft.pdf).

<sup>56</sup> *BEAD Initial Proposal Volumes 1 and 2 (Pending NTIA Approval)*, at p. 52, Florida, [https://broadbandexpanded.com/files/iija\\_plans/FL%20-%20BEAD%20Initial%20Proposal%20-%20Volume%201%20and%202%20Submitted.pdf](https://broadbandexpanded.com/files/iija_plans/FL%20-%20BEAD%20Initial%20Proposal%20-%20Volume%201%20and%202%20Submitted.pdf).

<sup>57</sup> *BEAD Initial Proposal Volume 2 (Public Comment Version)*, at p. 19, Michigan, [https://broadbandexpanded.com/files/iija\\_plans/MI%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Draft.pdf](https://broadbandexpanded.com/files/iija_plans/MI%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Draft.pdf).

<sup>58</sup> *BEAD Initial Proposal Volume 2 (Pending NTIA Approval)*, at p. 41, Montana, [https://broadbandexpanded.com/files/iija\\_plans/MT%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Submitted.pdf](https://broadbandexpanded.com/files/iija_plans/MT%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Submitted.pdf).

<sup>59</sup> *Id.*

<sup>60</sup> *BEAD Initial Proposal Volume 2 (Public Comment Draft)*, at p. 22, North Dakota, [https://broadbandexpanded.com/files/iija\\_plans/ND%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Draft.pdf](https://broadbandexpanded.com/files/iija_plans/ND%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Draft.pdf).

<sup>61</sup> *BEAD Initial Proposal Volume 2 (Pending NTIA Approval)*, at p. 80, Ohio, [https://broadbandexpanded.com/files/iija\\_plans/OH%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Submitted.pdf](https://broadbandexpanded.com/files/iija_plans/OH%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Submitted.pdf).

<sup>62</sup> *BEAD NOFO* at p. 51.

<sup>63</sup> *Id.*

<sup>64</sup> *BEAD Initial Proposal Volume 2 (Pending NTIA Approval)*, at p. 141, West Virginia, [https://broadbandexpanded.com/files/iija\\_plans/WV%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Submitted.pdf](https://broadbandexpanded.com/files/iija_plans/WV%20-%20BEAD%20Initial%20Proposal%20-%20Volume%202%20Submitted.pdf).