



NATOA Annual Conference

BEAD: One Year in, What's Your Plan?

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- ◆ Legal information is not the same as legal advice, which involves the application of law to an individual's specific circumstances. The interpretation and application of the law to an individual's specific circumstance depends on many factors.
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BEAD: What it is (and what is it not)



- ◆ Broadband Equity, Access and Deployment (“BEAD”) program - \$42.45 billion – part of the Infrastructure Investment and Jobs Act
- ◆ Administered by the NTIA
- ◆ Primarily last-mile infrastructure
- ◆ Grants made to States & Territories (“Eligible Entities”)
- ◆ Eligible Entities make subgrants to fund:
 - ◇ “unserved service projects” (80%+ locations no 25/3 RBS) and
 - ◇ “underserved service projects” (80%+ locations no 100/20 RBS)
 - ◇ Eligible Community Anchor Institutions (<1Gbps)
- ◆ “Reliable Broadband Service”:
 - ◇ Fiber, coax, DSL, FWA (licensed or hybrid). Satellite and unlicensed FWA are not RBS.
- ◆ End-to-end Gbps+ FTTP is “Priority Broadband Project” = Automatic win if no other Priority Broadband Project proposed for location

BEAD: How Does it Fit Within Other Federal and State Programs Including Digital Equity



Intended to compliment other programs, including:

- ◆ Digital Equity Act -- \$2.75 Billion
- ◆ NTIA Middle Mile -- \$1 Billion
- ◆ ARPA – Funds may be used as Match
 - ◇ State and Local Fiscal Recovery Funds
 - ◇ Capital Project Funds
- ◆ Affordable Connectivity Program

BEAD: Eligibility

- ◆ Recipients – “Any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands
- ◆ Subrecipients -- In theory broad Eligibility, with focus on participation by non-traditional entities including local government entities and public-private partnerships:
 - ◇ State “may not exclude, as a class, cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility as a subgrantee.” (IIJA)
 - ◇ More on this later...

BEAD: Key Steps in Process



- ~~◆ Letter of Intent – Summer 2022~~
- ~~◆ Request for Initial Planning Funds – Summer 2022~~
- ~~◆ Five Year Action Plan – Within 270 days of Initial Planning Funds~~
- ◆ State funding allocations made by NTIA (June 2023)
 - ◇ [NTIA State-allocations](#)
- ◆ State Initial Proposals underway, due 180 days after funding allocation (Dec. 27):
 - ◇ Initial identification of eligible locations
 - ◇ Description of challenge process
 - ◇ Description of local coordination
 - ◇ Plan to award subgrants
- ◆ State challenge process (after NTIA approval of Initial Proposal Vol. 1)
- ◆ 20% funding release after challenge process completed and Initial Proposal approved
 - ◇ State may “fully fund” unserved service projects in high-poverty areas.
- ◆ Final Proposal due 12 months after approval of Initial Proposal
- ◆ Release of remaining funds

BEAD: Opportunity for Carriers to Further Erode Local Government Management of ROW and Facilities



- ◆ The NOFO indicates that Initial Funding Proposals from states should:
Identify steps that the [State] will take to reduce costs and barriers to deployment, promote the use of existing infrastructure, promote and adopt dig-once policies, streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements.
- ◆ This is likely to be utilized by carriers as an invitation to seek additional state limitations on municipal authority over the management of ROW and/or attachments to their poles and conduit

BEAD: Where are We In Process

- ◆ Roughly half of states have submitted their Initial Funding Proposals
 - ◆ [Public Notice Posting of State and Territory BEAD and Digital Equity Plans/Proposals | BroadbandUSA \(ntia.gov\)](#)
- ◆ Minimum of 30 days for public comment
 - ◆ Some comment periods have closed

BEAD: State Challenge Process



- ◆ What Can be Challenged:
 - ◆ Status of location as “unserved,” “underserved” (speed, availability, etc.), confirming that provider-reported data is in fact accurate.
 - ◆ Existing commitments to serve (“enforceable” and “planned”)
 - ◆ Designation of eligible CAIs

- ◆ Who Can Challenge:
 - ◆ Nonprofit organizations
 - ◆ Units of local government
 - ◆ Broadband service providers

- ◆ Process: ~90 days, detailed process of notice, rebuttal etc.

BEAD: State Subgrant Selection Process



Subgrant selection process largely left to states and territories

- ◆ Subgrant programs cannot exclude “cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments.”
- ◆ NTIA will consider whether the state has adopted new laws, regulations, policies, procedures or any other form of rule or restriction that seeks to exclude any potential providers from the subgrant competition.
- ◆ State/territory “Initial Proposals” must certify that coordination was conducted with local groups, stakeholders
 - ◆ Local government entities need to participate to help ensure that proposal allows for meaningful participation
- ◆ Selection programs must be non-discriminatory, but can account for local and regional capabilities, speed of deployment, open access, etc.

BEAD: Prioritization for Partnerships



- ◆ NTIA recognizes value of partnerships in making subgrants in order to facilitate cost-effective and rapid deployment of broadband by leveraging:
 - ◇ Increased financial resources both for match and long-term stability
 - ◇ Access to right-of-way, poles, conduit, easements, other infrastructure (possible source of match)
 - ◇ Targeted skills, experience, and expertise
 - ◇ Asymmetric goals
 - ◇ Greater flexibility to address legal and political barriers
 - ◇ Development of network beyond the BEAD funded area
- ◆ Scoring of competing proposals may assign value to partnerships
 - ◇ E.g., NTIA and some states may rank some proposals higher that contain municipal entities, public power utilities, coops, etc.

BEAD: Hot Topics – Letter of Credit



- ◆ BEAD *applicants* must submit a bank letter “committing to issue an irrevocable standby letter of credit” for 25% of grant award, for life of the grant
 - ◇ Banks will charge fee to issue commitment letter, and collateral needed for ILOC. \$\$\$
 - ◇ Major hurdle for smaller applicants in particular
 - ◇ Questions on qualifications of entities that can provide LOC
 - ◇ Growing pressure on this issue
- ◆ NTIA Director has said that they are developing a menu of options to provide greater flexibility

BEAD: Hot Topic – Match



- ◆ 25% baseline match requirement, but States *must* incentivise higher matches. 50% may be more realistic.
 - ◆ In-kind contribution OK
 - ◆ ARPA, CARES Act funds may be used (but not other federal funding, generally)
 - ◆ Projects serving “high cost” areas exempt
 - ◆ Municipal entities may contribute municipal revenue bond proceeds. Repayment of bond principal (but not interest) may be an allowable cost, and repaid through program income. (See BEAD FAQ 9.8, 9.9)
 - ◆ ROW, poles, conduit all eligible for match, but these must properly allocated and accounted for, otherwise there could be potential discrimination and other competitive equity considerations

BEAD: High Level Considerations for Local Participation



- ◆ What is your source of authority? Federal law allows and encourages but does not alone provide authority to engage in activities if otherwise denied by the state.
 - ◇ Will net neutrality redux impact authority?
- ◆ Clearly identify allocation of responsibilities for grant compliance, service, and regulatory compliance
- ◆ Keep aware of what “hat” is being worn – participant or regulator

Thank You

Any questions?



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JLA: Overview & Client Value Proposition



JLA Advisors provides end-to-end services in the areas of strategy, technology, and execution. Our extensive experience in broadband, software and edge allow our clients to capitalize on the world's most impactful technological trends and developments.

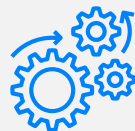
Core Offering



Strategy & Advisory



Technology & Innovation



Execution & Operations

Practices

Broadband



Develop business and technology strategies for both fiber and wireless broadband

Private Networks - IoT



Evaluate, design and deploy secure and reliable enterprise-grade private networks and IoT platforms

Edge



Develop strategies, use cases and deployment models for low latency services and applications

Software



Help our SaaS clients grow, focusing on product strategy, operational excellence and technology roadmap

Industries Served



Telecom



Investors



Government & Defense



Enterprise/Commercial

Key Elements for Local Governments



Local governments and municipalities should pay special attention to BEAD needs and begin navigating key parts of the program early

1

Local Involvement



- Fundamentally, **use your voice, early and often to meet the needs of the citizens**
- Partnerships and sustainable jobs are key components
- Local coordination is a key part of 5 Year Action Plans

2

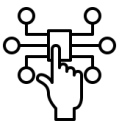
Participate, Comment & Challenge



- **Work closely with your State Broadband Office (BEAD has funded their expansion)**
- Local governments can offer input via **Initial Proposal**
- Can challenge eligible locations via speed tests
- Successful challenges will be reviewed by NTIA
- Reconciliation amongst other broadband stimulus plans

3

Digital Equity



- Incorporate state digital equity plans with Action Plans
- Advance digital equity through initiatives aside from BEAD
- Ensure communities have IT services and skills

4

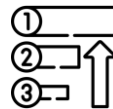
Matching Funds



- Applicants and subgrantees must plan to cover 25% of project costs associated with BEAD deployments
- **Matching funds can include in-kind contributions such as fiber, rights-of-way, real estate, etc.**
- Matching requirement can also be met with funds under Families First Coronavirus Response, CARES, Consolidated Appropriations, and the American Rescue Plan Act

5

Deployment Priorities



- Prioritize unserved, underserved, and then eligible CAIs
- Prioritize fiber-optic architecture for deployment
- Subgrantee selection applies the same prioritization
- Inclusion of open access for subgrantees is encouraged

Local Government Action Items



To meet BEAD requirements, states are scaling up their broadband programs to ensure proper data collection, planning, stakeholder engagement, and funding decisions to maximize their chances of success with BEAD

Local Government Checklist



Map: Assist in the mapping process to ensure unserved and underserved locations are identified and communicated, coordinating among residences and CAIs



Take Inventory: Determine which community assets can be leveraged with the state or ISPs to drive speed and funding including towers and fiber, aiding match requirements



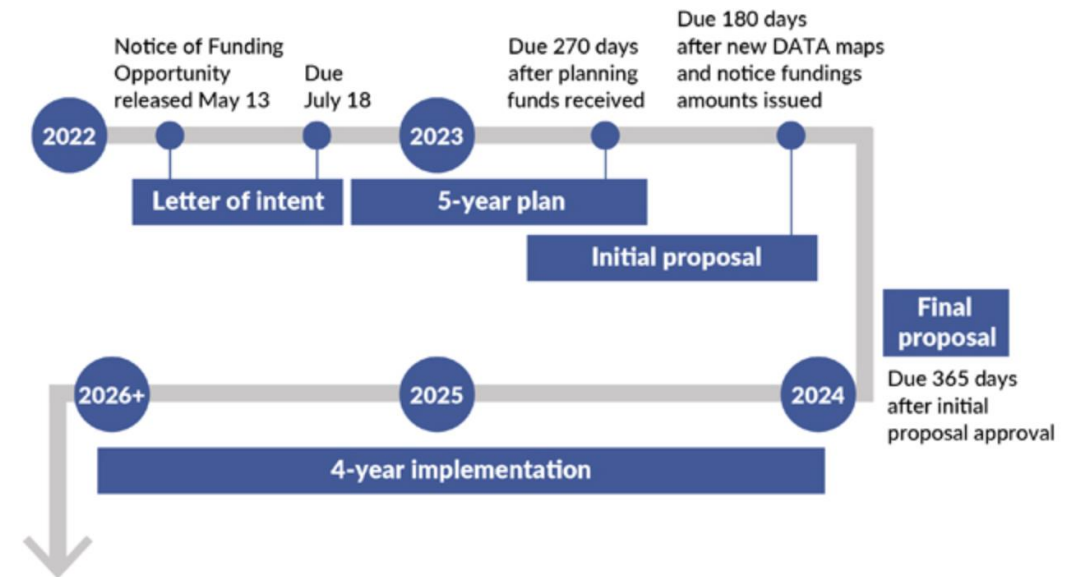
Engage: Early, active, and ongoing engagement with your communities, state broadband offices, lawmakers, and ISPs, and others are critical to understanding interest and approach



Prepare: States will build programs that reflect their priorities like identifying areas eligible for funding, defining affordability, and designing engagement strategies

ESTIMATED TIMELINE

Timeline approximate unless exact date specified



5 Year Plans and Initial Proposals are current priorities

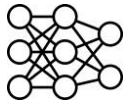
Key Elements for ISPs



ISPs have distinct requirements including compliance with state and federal guidelines. Subgrantees must evaluate these elements to enhance the likelihood of winning BEAD funding

1

Existing Obligations



- Consider current FWA and FTTx network deployment to optimize the impact of potential BEAD wins
- Consider market opportunities adjacent to obligations

2

Early State Engagement



- States are drafting their plans and require stakeholder input, particularly from ISPs
- Smaller ISPs must remain involved in making comments and engaging in the challenge process

3

Matching Funds



- ISPs must present matching funds of 25% of project costs, which may come from funds under other acts
- ISPs should explore ways to cover costs outside of BEAD funding which can come from governments, utility companies, cooperatives, nonprofits, or other partners

4

Letter of Credit Requirements



- Requires a model letter of credit like RDOF
- Provides a dollar amount and the issuing bank agreement
- Valued at 25% of subaward amount
- Controversial due to impact on smaller providers

5

Scoring Selection Criteria

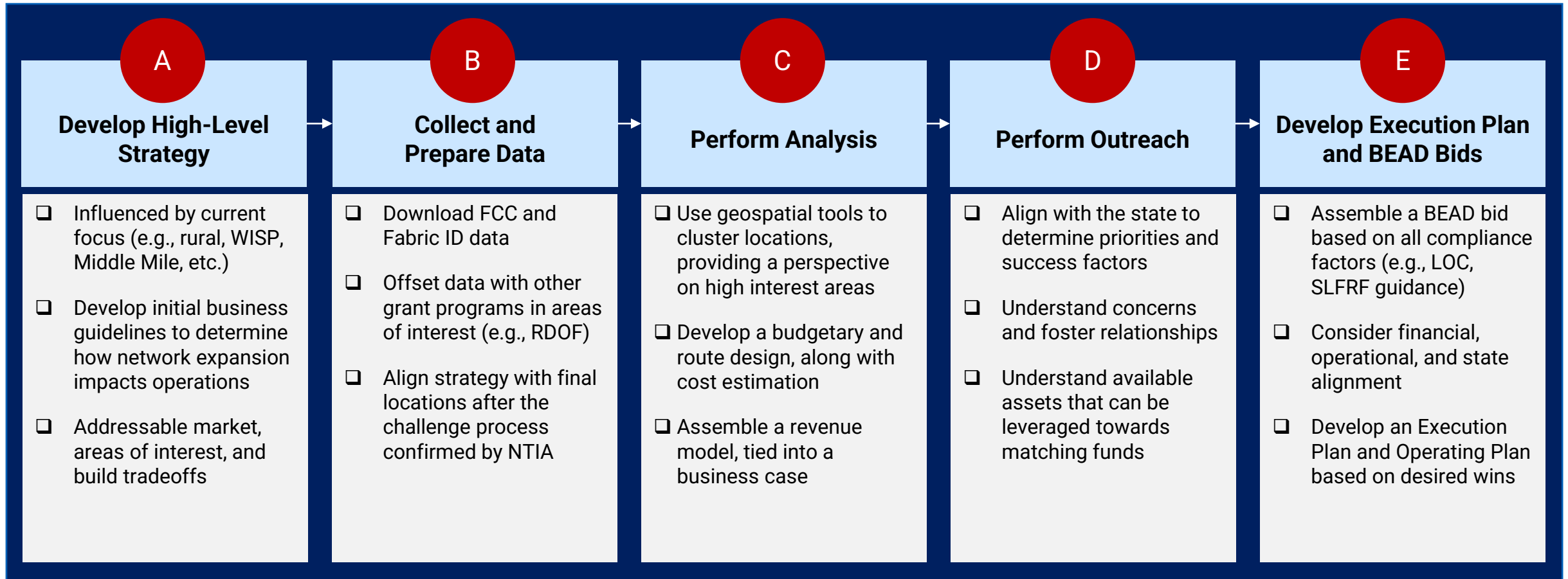


- Prioritization and Scoring Selection Among Competing Last-Mile Proposals
 - Primary Criteria: Minimal BEAD Outlay; Affordability (subgrantee's commitment not actual price); Fair Labor Practices
 - Secondary Criterion: Speed to Deployment
 - Additional Criteria: Equitable Workforce Development and Job Quality; Open Access; Local and Tribal Coordination
- Consider market opportunities adjacent to obligations

Key Action Items for ISPs



ISPs looking to win BEAD funds must focus on data analysis, network planning, and deployment strategy.



In Summary, Important Factors to Consider



1

- Challenge Process: States managing the challenge process to determine the served, underserved and unserved locations. Those then get sent to the NTIA who acts as a judge. This factors in other programs (SLFRF, CPF, RDOF, etc.).
 - **Linear Process – Can't fund the same location twice!**
 - Perform Outreach, Education and Submit Challenges
 - Model Location & Model MDU [NTIA Examples]
- Affordable Connectivity Program (ACP) is a major factor for all parties
 - **Expires in 2024; more than 20 million participants.** Influence future of program?
 - Impacts the willingness to bid & invest, as well as the ultimate adoption and usage.
- Create constructive partnerships between State, Local, ISPs and other.
 - Example – state of Virginia has developed a program to leverage fiber assets of primary state utilities
- Additional Local Activities and Priorities
 - **Leverage Municipal Assets:** Poles, conduits, rights of way, railroad crossings to enhance efficiency of program. This ties in with the Matching Funds aspect.
 - Develop/enhance software to facilitate permitting
 - Embrace new techniques / microtrenching
- Extremely high cost per location threshold: States set a number; **will drive balance between fiber and wireless alternatives**



Thank You

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