



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 23-1115

Released: November 29, 2023

WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE TO HIGH-COST SUPPORT RECIPIENTS REGARDING ENGAGEMENT WITH STATES AND TRIBAL GOVERNMENTS TO DETERMINE ELIGIBILITY OF LOCATIONS FOR THE BEAD PROGRAM AND TO AVOID DUPLICATIVE FUNDING

WC Docket No. 10-90
WC Docket No. 18-143
WC Docket No. 19-126
WC Docket No. 20-54
AU Docket No. 17-182

By this Public Notice, the Wireline Competition Bureau (Bureau) provides guidance to Enhanced Alternative Connect America Cost Model (Enhanced A-CAM), Rural Digital Opportunity Fund (RDOF), Connect America Fund (CAF) Phase II auction, Bringing Puerto Rico Together Fund, and Connect USVI Fund support recipients (collectively, high-cost support recipients or service providers) regarding their coordination with state broadband offices and Tribal entities to determine the eligibility of locations for the Broadband Equity, Access, and Deployment Program (BEAD Program), and to avoid duplicative broadband network funding.¹ Differing timelines, deployment commitments, and technologies across federal funding programs require a collaborative effort not just between federal agencies,² but also among

¹ Enhanced A-CAM support recipients are required “to participate, in good faith, in any relevant BEAD Program challenge processes or other processes conducted by states or other BEAD Program eligible entities to determine eligibility of locations for the BEAD Program, to otherwise coordinate with states, Tribes, and other eligible entities to help avoid duplicative federal broadband funding, and to certify their compliance with this obligation annually.” *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, *et al.*, FCC 23-60, at 24-25, para. 52 (July 24, 2023) (*Enhanced A-CAM Order*); *see also* 47 CFR § 54.313(f)(6)(i). For the purposes of this Public Notice, and consistent with section 60102(a)(2)(H) of the Infrastructure Investment and Jobs Act, the term “location” is synonymous with the term “broadband-serviceable location” as defined by the Commission. 47 U.S.C. § 1702(a)(2)(H); *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket No. 19-195 et al., Third Report and Order, 36 FCC Rcd 1126, 1175-77, paras. 126-32 (2021). When we refer to “state,” we use this term generally to include states, territories, and the District of Columbia.

² As required by the Broadband Interagency Coordination Act, the Federal Communications Commission, U.S. Department of Agriculture (USDA), and the U.S. Department of Commerce’s National Telecommunication and Information Administration (NTIA) announced in January 2021 they had entered into an agreement to provide for sharing information about existing or planned projects that have received, or will receive, funding through the Commission’s high-cost programs and programs administered by NTIA and the USDA. Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, § 904, 134 Stat. 1182, 3214 (codified at 47 U.S.C. § 1308 *et seq.*); Press Release, FCC, FCC, NTIA and USDA Announce Interagency Agreement to Coordinate Broadband Funding Deployment (June 25, 2021), <https://www.fcc.gov/document/fcc-ntia-usda-interagency-agreement-broadband-funding-deployment>. In an effort to further facilitate broadband deployment funding coordination, in May 2022, the FCC, USDA, and NTIA entered into an interagency agreement with the Department of Treasury. *See* Press Release, FCC, FCC, NTIA, USDA and Treasury Announce Interagency Agreement to Collaborate on Federal Broadband

(continued...)

states, Tribal governments, and service providers to avoid unnecessary duplication and to maximize the deployment of high-quality broadband service across the United States.

High-Cost Support Recipients Should Engage Directly with State Broadband Offices and Provide Detailed Information on the Technologies That Will Be Used for Deployment. Section 60102 of the Infrastructure Investment and Jobs Act directed the National Telecommunications and Information Agency (NTIA) to establish the BEAD Program, through which NTIA has allocated \$42.45 billion to states, territories, and the District of Columbia (collectively, Eligible Entities) for grants “to bridge the digital divide.”³ Eligible Entities will allocate the BEAD Program funds they receive from NTIA to subgrantees, with the “principal focus” on deploying broadband to unserved and underserved locations.⁴ Eligible Entities are required to conduct a BEAD Program-specific challenge process – separate and apart from the challenge processes administered by the Commission in connection with the National Broadband Map – to determine which locations are eligible for BEAD Program funding.⁵ Locations that are served by “reliable broadband service” at certain speeds, or that are subject to an enforceable commitment for the deployment of qualifying broadband, as defined by the BEAD Program Notice of Funding Opportunity (NOFO), are ineligible for BEAD funding.⁶

Full participation of high-cost support recipients in BEAD Program challenge processes is critical to ensuring that the FCC’s high-cost funding is not duplicated by the BEAD Program. Participation in the BEAD Program challenge process also ensures state broadband offices receive information about high-cost program supported deployments beyond the valuable information provided on the Broadband Funding Map.⁷ Specifically, high-cost support recipients are expected to engage directly with state

(Continued from previous page) _____

Funding (May 12, 2022), <https://www.fcc.gov/document/fcc-ntia-usda-treasury-announce-broadband-info-sharing-agreement>.

³ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021); 47 U.S.C. § 1702(b)(1).

⁴ See Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity at 7 (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (BEAD Program NOFO).

⁵ BEAD Program NOFO at 34-35; Department of Commerce, National Telecommunications and Information Administration, BEAD Program Challenge Process Policy Notice (June 28, 2023), https://ntia.gov/sites/default/files/publications/beat_challenge_process_policy_notice_final.pdf (BEAD Program Challenge Process Policy Notice).

⁶ BEAD Program NOFO at 16-17, 36-37 & n.52 (explaining that any location that is already subject to an enforceable commitment for the deployment of qualifying broadband cannot be treated as unserved or underserved, and defining unserved locations to mean those locations having no access to broadband service or lacking access to low latency “reliable broadband service” at speeds of 25/3 Mbps, and underserved locations as those locations lacking access to low latency “reliable broadband service” at speeds of 100/20 Mbps). The BEAD Program NOFO defines qualifying broadband to locations that are not community anchor institutions as “reliable broadband service with (i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds”. *Id.* at 37. “Reliable broadband service” is defined to include “(i) fiber-optic technology; (ii) Cable Modem/ Hybrid fiber-coaxial technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.” *Id.* at 15.

⁷ For example, while the Broadband Funding Map depicts a high-cost support recipient’s funded service area, required broadband speeds, and intended technologies, it does not provide specifics regarding when locations within the service area will be served. Federal Communications Commission, Broadband Funding Map, <https://fundingmap.fcc.gov/home> (last visited Nov. 29, 2023). High-cost support recipients must meet set service milestones, but have the flexibility to determine when they will serve individual locations within their funded service areas by those service milestones. See, e.g., 47 CFR §§ 54.310(c), 54.802(c), *Enhanced A-CAM Order* at 23, para. 48. Moreover, because high-cost support programs are technology neutral, a service provider may subsequently decide to use a different technology than currently indicated on the Broadband Funding Map to meet its obligations, but will still be in compliance with high-cost program rules as long as it otherwise meets the relevant

(continued....)

broadband offices by participating in BEAD Program challenge processes and otherwise provide information requested by the states in furtherance of the BEAD Program. This may include providing specific information regarding high-cost recipients' supported locations, service areas, and the timing of planned deployments. It may also include providing information regarding the technologies high-cost support recipients are using or intend to use to offer service meeting the relevant program requirements as well as the maximum broadband speeds they intend to offer. Contact information for each state broadband office is available here: <https://internetforall.gov/funding-recipients>.⁸

High-cost support recipients should ensure that the states know which locations the support recipient is serving with "reliable broadband service," including which of the locations covered under an enforceable high-cost commitment will be served with qualifying broadband, as defined by the BEAD Program NOFO.⁹ In addition, because the BEAD Program permits states to fund deployment using technologies that do *not* meet the definition of "reliable broadband service" (but otherwise satisfy the BEAD Program's technical requirements) to locations that exceed the state's extremely high cost per location threshold,¹⁰ high-cost support recipients should ensure that the states know which locations the support recipient is serving with service that is *not* "reliable broadband service," and provide details regarding the technologies to be deployed. High-cost support recipients should be prepared to submit documentation as needed to provide evidence of their currently-served locations and deployment plans, and discuss with states any confidentiality concerns.

Finally, some recipients of high-cost support are not required to offer broadband at speeds of 100/20 Mbps across their funded service areas, and thus do not have an enforceable commitment for the deployment of qualifying broadband, as defined by the BEAD Program NOFO.¹¹ Such recipients should ensure that the National Broadband Map accurately reflects the locations they serve, the speeds they provide to the locations, and the technologies they use to serve those locations.¹² They should also engage with the states if any information is needed regarding their reported deployments.

High-Cost Support Recipients Should Engage With Each Relevant Tribal Government Every Year Even if the High-Cost Support Recipient Has Not Begun Deployment. If a high-cost support recipient's supported service areas include Tribal lands, the service provider must demonstrate on an annual basis that it has engaged Tribal governments that have Tribal lands in the service provider's high-cost

(Continued from previous page) _____
performance requirements. *See, e.g., Enhanced A-CAM Order* at 19, para. 39; *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 702, para. 31 (2020); *Connect America et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 5949, 5956, para. 14 (2016). We note that any location in a FCC high-cost supported area shown on the Broadband Funding Map is subject to the BEAD challenge process as described in the BEAD Challenge Process Policy Notice.

⁸ Each individual state's progress in implementing its process for allocating BEAD Program funding is available here: <https://internetforall.gov/bead-initial-proposal-progress-dashboard>. Once NTIA approves Volume 1 of a state's initial plan and the state submits Volume 2, the state may begin its challenge process.

⁹ High-cost support recipients may consider whether to seek BEAD Program funding for eligible locations that are adjacent to their high-cost supported networks, but are outside their funded high-cost service areas. While high-cost support recipients cannot use their high-cost support to serve locations outside of their funded service areas, they may be able to take advantage of any cost efficiencies due to the proximity of such locations to their high-cost supported networks to apply for other state and federal funding.

¹⁰ BEAD Program NOFO at 13 & n.6, 31, 38-39.

¹¹ *Id.* at 36-37 & n.52. This includes CAF Phase II auction and RDOF recipients that did not commit to deploy broadband at speeds of at least 100/20 Mbps, and recipients of the Alaska Plan, Connect America Fund Broadband Loop Support (CAF BLS), A-CAM I, and A-CAM II high-cost support programs.

¹² Federal Communications Commission, National Broadband Map, <https://broadbandmap.fcc.gov/home> (last visited Nov. 29, 2023).

supported service area,¹³ and the Commission strongly encourages high-cost support recipients to engage with each Tribal government regarding the support recipients' deployment plans at least annually.¹⁴ The Commission takes the Tribal engagement requirement seriously. For locations on Tribal lands, the BEAD Program will not recognize a high-cost supported location as an enforceable commitment for the deployment of qualifying broadband that would make the location ineligible for BEAD Program funding “unless [the enforceable commitment] includes a legally binding agreement, which includes a Tribal Government Resolution, between the Tribal Government of the Tribal Lands encompassing that location, or its authorized agent, and a service provider offering qualifying broadband service to that location.”¹⁵ Accordingly, a high-cost support recipient that has not entered into such agreement may encounter a situation where another service provider receives BEAD Program funding for the Tribal locations, or may find that it is obligated to serve Tribal locations already served by BEAD Program recipients.¹⁶ If a high-cost support recipient has obtained consent from a Tribal government meeting the BEAD Program requirements, it should be prepared to provide documentation to the relevant state broadband office during the state's challenge process window.

While the high-cost programs did not require service providers to obtain a Tribal government resolution prior to receiving support, all high-cost support recipients that serve Tribal lands are required to demonstrate that they have engaged annually with Tribal governments on a range of issues, including compliance with local rights of way, land use permitting facilities siting, and environmental and cultural preservation review processes, as well as Tribal business and licensing requirements, that are necessary for a service provider to obtain before fulfilling its deployment and service obligations.¹⁷ The Commission's Tribal engagement obligation represents an opportunity for Tribal governments and high-cost support recipients to coordinate on many issues critical to the deployment and adoption of

¹³ 47 CFR § 54.313(a)(5); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17868-69, paras. 636-37 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). High-cost support recipients must submit documents or information demonstrating they have met this requirement in their FCC Form 481 filing due July 1st each year. 47 CFR § 54.313(a)(5), (j).

¹⁴ The requirement to engage with Tribal governments applies to all high-cost support programs. 47 CFR § 54.313(a)(5).

¹⁵ BEAD Program NOFO at 37 n.52. Other federal funding programs also include Tribal consent and engagement requirements. *See, e.g.*, Department of Commerce, National Telecommunications and Information Administration, Tribal Broadband Connectivity Program Round 2 Notice of Funding Opportunity (NOFO) at 10-11 (July 27, 2023), <https://www.ntia.gov/sites/default/files/2023-07/ntia-tbcp-round2-nofo.pdf> (defining an “Enforceable Buildout Commitment” to mean “a legally binding agreement in which the Tribe provides a limited waiver of sovereign immunity in a Tribal Government Resolution and in the contract vehicle, between the Tribal Government of the Tribal Lands in the proposed service area, or its authorized agent, and a service provider committing to deliver ‘Qualifying Broadband Service’ to Unserved households on those Tribal Lands”); 7 CFR § 1738.202(d)(16) (requiring an applicant of the United States Department of Agriculture's broadband loan and loan/grant programs to include in its application “[i]f service is being proposed on [T]ribal land, a certification from the proper [T]ribal official that they are in support of the project and will allow construction to take place on [T]ribal land”).

¹⁶ For Enhanced A-CAM, if a state awards BEAD Program funds to another service provider to serve locations subject to an Enhanced A-CAM authorization, the Enhanced A-CAM support recipient and Tribal government can notify the Bureau that they mutually agree to forego the A-CAM deployment obligation, and the Bureau will adjust the Enhanced A-CAM support recipient's support and deployment obligations accordingly. *Enhanced A-CAM Order* at 45, para. 105. Such notifications must be made to the Bureau before July 1, 2025. *Wireline Competition Bureau Announces Enhanced Alternative Connect America Cost Model Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-779, at 7 (WCB Aug. 30, 2023) (*Enhanced A-CAM Offer Public Notice*).

¹⁷ *See* 47 CFR § 54.313(a)(5); *USF/ICC Transformation Order*, 26 FCC Rcd at 17868-69, paras. 636-37..

communications technologies on Tribal lands.¹⁸ Annual Tribal engagements also provide Tribal leaders with an opportunity to communicate their needs and priorities to high-cost support recipients whose supported service areas include their Tribal lands. If contact information for a Tribal government is needed, the U.S. Department of the Interior, Bureau of Indian Affairs maintains the official list of contact information for Tribal leaders at <https://www.bia.gov/service/tribal-leaders-directory>. Service providers can also email the FCC's Office of Native Affairs and Policy at native@fcc.gov to request contact information.

On at least an annual basis, a high-cost support recipient should engage with each Tribal government that has Tribal lands within the high-cost support recipient's supported service area. Thus, a high-cost support recipient should work with the relevant Tribal governments to obtain the necessary consent, permits, and other approvals as soon as practicable and not wait to engage with a Tribal government even if the high-cost support recipient plans to offer service to locations on the relevant Tribal lands later on in its support term, *i.e.*, the support recipient should engage with the Tribal government annually even if planned deployment is several years in the future.¹⁹ As explained above, the Commission takes high-cost support recipients' Tribal engagement requirements seriously and monitors compliance. Failure to satisfy the Tribal engagement obligations may result in the withholding, recovery, or reduction of high-cost support and/or other non-compliance measures or enforcement consequences, if appropriate.²⁰ We encourage Tribes to raise with the Commission any issues or concerns regarding their engagement with high-cost support recipients.

For additional information, please contact Heidi Lankau (Heidi.Lankau@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-2876.

- FCC -

¹⁸ See *Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, WC Docket No. 10-90 et al., Public Notice, 27 FCC Rcd 8176 (ONAP/WTB/WCB 2012).

¹⁹ Enhanced A-CAM support recipients are required to initiate engagement with any relevant Tribal governments within 90 days of the Bureau extending an Enhanced A-CAM offer. *Enhanced A-CAM Order* at 44-45, para. 104. The Bureau extended Enhanced A-CAM offers on August 30, 2023. *Enhanced A-CAM Offer Public Notice*.

²⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17868-69, para. 637; see also 47 CFR § 54.320(c) ("Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with public interest obligations or any other terms and conditions may be subject to further action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8.").