



BEAD:

Broadband or Bust

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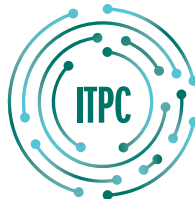


About CAGW

Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement, and inefficiency in government.

CAGW was founded in 1984 by J. Peter Grace and nationally syndicated columnist Jack Anderson to build public support for implementation of the Grace Commission recommendations and other waste-cutting proposals. Since its inception, CAGW has been at the forefront of the fight for efficiency, economy, and accountability in government.

CAGW has more than 1 million members and supporters nationwide. Since 1984, CAGW and its members have helped save taxpayers more than \$2.4 trillion. CAGW publishes special reports, including the *Congressional Pig Book* and *Prime Cuts*, as well as its official newsletter *Government WasteWatch* and blog *The WasteWatcher*, to expose government waste and educate the American people on what they can do to stop the abuse of their hard-earned money. Internet, print, radio, and television news outlets regularly feature CAGW's publications and experts.



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Introduction

The Infrastructure Investment and Jobs Act (IIJA) provided \$1.2 trillion for transportation and infrastructure projects across the country.¹ The legislation, which was signed into law on November 15, 2021, included \$65 billion for broadband, \$42.45 billion of which was directed to the Broadband Equity, Access, and Deployment (BEAD) program, which would be administered by the Department of Commerce’s National Telecommunications and Information Administration (NTIA).

Following the enactment of the IIJA, Federal Communications Commissioner Brendan Carr said that there could be as much as \$800 billion available from the federal government for broadband.² And a May 31, 2022, Government Accountability Office (GAO) report revealed at least 133 programs across 15 federal agencies providing funding for broadband, and that “likely understates the full amount of federal broadband support.”³

Since the NTIA released its notice of funding opportunity (NOFO) guidance on May 12, 2022, there have been repeated delays in approval of final applications for funding by NTIA, and not a single location has been connected using BEAD money.⁴ The agency announced its first final approval of a state funding proposal when it approved the second volume of Louisiana’s initial proposal on December 15, 2023.⁵ In the following months, approvals were stalled over provisions of the NOFO guidance including the suggested rate regulation of internet service for low and middle income households. Finally, on August 7, 2024, NTIA Deputy Associate Administrator for BEAD Evan Feinman announced that the agency would accelerate the process of approving all remaining state proposals.⁶

In September 2023, Senate Commerce, Science, and Transportation Ranking Member Ted Cruz (R-Texas) released *Red Light Report: Stop Waste, Fraud, and Abuse in Federal Broadband Funding*, analyzing the NTIA’s handling of the BEAD program. The report spotlighted failures in funding like providing “ten states and territories more than \$10,000 per unserved location – including a galling \$547,254 per unserved location in Washington, D.C.,”

¹ Infrastructure Investment and Jobs Act (IIJA), H.R. 3684, Pub. L. No. 117-58, <http://www.congress.gov/bill/117th-congress/house-bill/3684>.

² Facebook Live with Federal Communications Commissioner Brendan Carr and Citizens Against Government Waste (CAGW) President Tom Schatz, CAGW, April 6, 2022, <https://youtu.be/Z4aKoHA5n0s?si=1PI9Zg2e3VVS-Mri>.

³ Government Accountability Office (GAO), “Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide,” GAO-22-104611, May 31, 2022, <https://www.gao.gov/products/gao-22-104611>.

⁴ Joe Lancaster, “Why Has Joe Biden’s \$42 Billion Broadband Program Not Connected One Single Household?”, *Reason*, June 27, 2024, <https://reason.com/2024/06/27/why-has-joe-bidens-42-billion-broadband-program-not-connected-one-single-household/>.

⁵ Jake Neenan, “In a First, Louisiana Receives NTIA Approval of Both BEAD Initial Proposals,” *Broadband Breakfast*, December 17, 2023, <https://broadbandbreakfast.com/in-a-first-louisiana-receives-ntia-approval-of-both-bead-initial-proposals/>.

⁶ Joel Leighton, Drew Clark, “Final BEAD Proposals Will Be Quicker, NTIA Deputy Says,” *Broadband Breakfast*, August 7, 2024, <https://broadbandbreakfast.com/final-bead-proposals-will-be-quicker-ntia-deputy-says/?ref=alerts-newsletter>.

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allocating “funding to over five million locations that are already being funded by other federal programs,” and imposing a “technology bias against non-fiber broadband.”⁷

The diverted funding included “unserved locations” at the National Zoo, comprising 33 percent of the funding to Washington, D.C. and \$108 million to Delaware for 2,166 unserved locations including the Biden Environmental Training Center, despite the state already receiving \$13 million in Rural Digital Opportunities Funds and \$33 million in CARES Act and American Rescue Plan Act funding to build broadband to 6,500 homes and businesses.⁸

Sen. Cruz’s report also acknowledged the problems with the administration’s bias toward the use of one specific technology, namely fiber only connectivity at 100/100 Mbps speeds, even if that technology is not the best one suited to a specific location. This lack of technology neutrality in the administration’s guidance will slow deployment to more rural areas and increase the cost of deployment.

Sen. Cruz is not the only member of Congress raising alarms over BEAD funding. An April 30, 2023, letter signed by 11 of the 13 Republican members of the Senate Commerce, Science, and Transportation Committee informed NTIA that its Middle-Class Affordability requirement, encouragement of government-owned networks, and failure to provide the flexibility to use technology other than fiber as well as other provisions of the NOFO are contrary to congressional intent under the IIA.⁹

At a July 9, 2024, House Energy and Commerce Subcommittee on Communications and Technology hearing, Commissioner Carr questioned the Biden-Harris administration’s push for agencies to increase regulations on individuals and businesses across the country, including “implementation of its \$42 billion Internet infrastructure plan – known as the Broadband Equity, Access, and Deployment program or BEAD – which puts partisan political goals ahead of sound policy.” He further noted, “This \$42 billion program is the Biden Administration’s signature plan for extending high-speed Internet to millions of Americans across every state in the nation. And it is a program that is going off the rails.”¹⁰

Commissioner Carr added, “It has now been 967 days since President Biden signed this \$42 billion plan into law. And today, not one person has been connected to the Internet with those dollars – not one home, not one business. Indeed, not even one shovel worth of dirt has been turned with those dollars. And it gets worse. The Biden Administration recently confirmed that no construction projects will even start until sometime next year at the earliest and in many

⁷ Sen. Ted Cruz (R-Texas), Ranking Member, U.S. Senate Committee on Commerce, Science, and Transportation, “Red Light Report: Stop Waste, Fraud, and Abuse in Federal Broadband Funding,” September 15, 2023, <https://www.commerce.senate.gov/services/files/0B6D8C56-7DFD-440F-8BCC-F448579964A3>.

⁸ Ibid.

⁹ U.S. Senate Commerce Committee, Letter to Alan Davidson, Assistant Secretary of Commerce for Communications and Information, National Telecommunications and Information Administration (NTIA), April 20, 2023, https://www.capito.senate.gov/imo/media/doc/ntia_letter.pdf.

¹⁰ Testimony of Brendan Carr, Commissioner, Federal Communications Commission (FCC), Before the Subcommittee on Communications and Technology of the United States House of Representatives Committee on Energy and Commerce, “The Fiscal Year 2025 Federal Communications Commission Agency Budget,” July 9, 2024, https://d1dth6e84htgma.cloudfront.net/07_09_24_Testimony_Carr_8ee3f64be1.pdf.

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cases not until 2026. This makes President Biden’s signature BEAD initiative the slowest moving federal broadband deployment program in recent history, as far as I can tell.”¹¹

There is more than enough federal funding to bring broadband connectivity to every household and business in America. However, if the administration continues its path of wasteful, duplicative, anti-competitive, and anti-consumer spending, this goal will remain unachievable. This report details the efforts being made by states to bridge the digital divide and the complex barriers to deployment, to achieve that goal.

Middle-Class Affordability

The IJA did not set rates for broadband. It included provisions for states participating in BEAD to describe how their proposals will guarantee broadband access and affordability for low-income households, which can be found in Requirement 16 of the NOFO.¹² But NTIA went beyond the provisions of the IJA by requiring states to regulate broadband rates for middle-class households in Requirement 20 of the NOFO, which requires a schedule of rate regulations for at least two speed tiers of broadband service in their funding proposals. These fixed rate schedules will award more credit to providers in the competitive bidding process who pledge to charge no more than the monthly rates “suggested” in a state’s rate schedule for each speed tier. The IJA also requires states participating in BEAD to describe how their proposals will guarantee broadband access and affordability for low-income households, as described in Requirement 16 of the NOFO.¹³

States that wish to avoid regulating rates could instead define affordability according to the Reasonable Comparability Benchmark rates identified by the Federal Communications Commission (FCC)’s Urban Rate Survey (URS). In June 2024, the FCC reevaluated the minimum speed thresholds that define high-speed broadband service from 25 Mbps download speeds and 3 Mbps upload speeds to 100 Mbps download speeds and 20 Mbps upload speeds.¹⁴ Thus, providers may access BEAD funding only for projects to deliver speeds of at least 100/20 Mbps. The FCC also uses this threshold to determine its Reasonable Comparability Benchmark rate, which equals \$118.24 per month in 2024 for 1000/500 Mbps service, and \$92.26 for 100/20 Mbps service, respectively compared to \$142.75 and \$105.01 in 2023.¹⁵ The FCC sets its benchmark rate at two standard deviations above the mean rate paid by urban households for terrestrial fixed broadband at each speed tier. States using these URS benchmark rates as their maximum allowable rate for providers to receive full credit for Requirement 20 recognize the cost disparities between delivering high-speed internet to households in closer proximity to

¹¹ Ibid.

¹² NTIA, Notice of Funding Opportunity (NOFO), Broadband Equity, Access, and Deployment Program (BEAD), Executive Summary, <http://www.broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

¹³ Ibid.

¹⁴ Joe Supan, “The FCC Quadrupled the Definition of Minimum Broadband Speeds. Here’s Why It Matters,” CNET, June 3, 2024, <https://www.cnet.com/home/internet/the-fcc-quadrupled-the-definition-of-minimum-broadband-speeds-heres-why-it-matters/>.

¹⁵ FCC, 2023 Urban Rate Survey – Fixed Broadband Service, <https://us-fcc.app.box.com/v/2023URSBroadbandMethodology>; FCC, 2024 Urban Rate Survey – Fixed Broadband Service, <https://www.fcc.gov/sites/default/files/2024%20Urban%20Rate%20Survey%20Broadband%20Methodology%20ReportFinal.pdf>.

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existing infrastructure and those in remote areas. Alternatively, states wishing to avoid prescribing a rate cap can prohibit participating providers from charging monthly rates to BEAD-funded households and businesses that exceed what they charge users in locations not funded by BEAD for the same level of service, thereby ensuring that the benefits of the program accrue to the formerly unserved end users.

CAGW's 50-State BEAD Proposal Review details the Middle-Class Affordability strategies pursued by each state and groups them into four categories.¹⁶ While the review identified 23 states and four U.S. territories as rate regulators there are differences in how they set the rates. There are 21 states that prescribe specific statewide rates for 1/1 Gbps service. Michigan's initial draft proposal bifurcated its Middle-Class Affordability rates into two geographic zones with separate maximum rates but the Michigan High Speed Internet Office replaced that plan with one statewide affordability threshold in the final version of its funding proposal approved by NTIA on August 28, 2024.¹⁷ Tennessee, along with the Northern Mariana Islands, prescribes rates for Middle-Class Affordability that are higher, and thus less stringent, than the FCC benchmark. Tennessee will award full points to providers that deliver 1/1 Gbps service for no more than \$0.24 per megabit, or \$240 per gigabit, and partial points for providers that charge up to \$1.24 per megabit, or \$1,240 per gigabit.¹⁸ The Northern Mariana Islands' initial proposal would have awarded full credit to providers charging up to \$250 per month for 1/1 Gbps service and partial credit for providers charging less than \$1,000 per month. However, the territory narrowed this price range in response to public comments, and its final rules, approved by NTIA, will award full credit to providers charging up to \$350 per month for 1/1 Gbps service and partial credit for providers charging less than \$750 per month.¹⁹ Even though they qualify as rate-regulators, their caps will not discourage provider participation or continued investment.

There are 10 other states (Arkansas, Illinois, Indiana, Kansas, Mississippi, Missouri, Montana, Nebraska, Utah, and Wisconsin) that grant partial credit to providers that charge more than the FCC benchmark to BEAD-funded customers for either 1/1 Gbps or 100/20 Mbps

¹⁶ Alec Mena, "CAGW Reviews 50 States' BEAD Proposals," *The WasteWatcher*, CAGW, April 24, 2024, <https://www.cagw.org/thewastewatcher/cagw-reviews-50-states-bead-proposals>.

¹⁷ Michigan Department of Labor and Economic Opportunity High-Speed Internet Office BEAD Initial Proposal Vol. II Draft for Public Comment, October 2023, pp. 18-21, 71-74, https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/MIHI/BEAD/Initial-Proposal-Volume-II_DRAFT_For_Public_Comment_10302023.pdf?rev=56278b1ffc464745afe7dc737b19a4a9&hash=766A9AD850F4B43C66C9B5265D44E2B3; Michigan Department of Labor and Economic Opportunity High-Speed Internet Office BEAD Initial Proposal Vol. II Final, August 27, 2024, pp. 18-21, 71-74, <https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/MIHI/BEAD/APPROVED-Michigan-Initial-Proposal-Volume-II.pdf?rev=b9eca5f5d87a4b6a8b88b2f700c13753&hash=FC1BED3A4F3FE9B5DFEEC4158AFE6E8F>; Jake Neenan, "Michigan BEAD Volume Two Approved As NTIA Head Promotes Digital Equity Grant Program," *Broadband Breakfast*, August 28, 2024, <https://broadbandbreakfast.com/michigan-bead-volume-two-approved-as-ntia-head-promotes-digital-equity-grant-program/>.

¹⁸ Tennessee Department of Economic and Community Development BEAD Initial Proposal Vol. II, p. 15, https://web.archive.org/web/20240118205018/https://www.tn.gov/content/dam/tn/eecd/documents/broadband/infrastructure/bead/TNECD_Initial_Proposal_V2_Public_Comment.pdf.

¹⁹ Commonwealth of the Northern Mariana Islands BEAD Initial Proposal Vol. II, pp. 27-28, <https://bpd.cnmi.gov/storage/2024/07/CNMI-BEAD-Initial-Proposal-Volume-II.pdf>.

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service.²⁰ The remaining 11 states that prescribe Middle-Class Affordability rates (Arizona, California, Colorado, Idaho, Maine, Massachusetts, Michigan, Oklahoma, Pennsylvania, Washington, and West Virginia) will grant zero credit to providers that exceed the FCC benchmark.²¹

CAGW has identified Illinois and Wisconsin as the states with the most restrictive maximum rates for full credit on NOFO Requirement 20 because they will not award full credit for Middle-Class Affordability to any provider as their sliding scale awards more points as providers' proposed prices approach \$0 per month.²² Thus, only a provider offering high-speed internet service for \$0 would earn full credit. These states' scoring methods are not designed for any provider to receive full credit. Regardless of the scoring method used, providers need only score more points than their competitors to win a contract to deliver service to a given location.

Wyoming's preliminary proposal originally employed this same approach but in response to public comments, the Wyoming Broadband Office's final proposal, published July 11, 2024, replaced that system with another by which providers could earn the full 15 points for affordability by proposing a price within the lowest 16.7 percent of proposed prices to serve a given location.²³ Of the remaining 21 states that regulate rates for Middle-Class Affordability,

²⁰ For example, Arkansas grants partial credit to providers who offer 1/1 Gbps service for more than the 2024 FCC benchmark rate of \$118.24 for 1000/500 Mbps service but grants no credit to providers who offer 100/20 Mbps service for more than the FCC benchmark rate for 100/20 Mbps of \$92.26.

²¹ Arizona Commerce Authority BEAD Initial Proposal, Vol. II, May 2024, pp. 41, 46, 120-122, https://www.azcommerce.com/media/owtphdsj/az_bead-initial-proposal-vol-ii_final_05_24_2024v6_ntia.pdf; California BEAD Initial Proposal Vol. II, pp. 35, 39, <https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/internet-and-phone/bead-program/draft-cpuc-bead-ipv2-as-submitted.pdf>; Advance Colorado Broadband NTIA Initial Proposal Vol. II BEAD - Final for Publication, pp. 59-61, 78-79, <https://docs.google.com/document/d/1D13pf3wdt011PhIUpywBTxBbOL7RHpryz5R6M1WRCsE/edit>; Idaho BEAD Initial Proposal Vol. II, pp. 22-24, 30-32, 81-82, <https://linkup.idaho.gov/wp-content/uploads/2023/09/ID-Vol-II-Final-Draft-Post-for-Public-Comment-9.29.23.pdf>; Maine Connectivity Authority BEAD Initial Proposal Vol. II, pp. 64-65, <https://drive.google.com/file/d/18Zu9jPeUeTs3ahT5rIGckmLCnys3rfwL/view>; Maryland BEAD Initial Proposal Vol. II BEAD, May 2024, pp. 35, 39-40, 135-138, <https://dhcd.maryland.gov/Broadband/Documents/State-Plans/Maryland-BEAD-IPv2.pdf>; Massachusetts BEAD Initial Proposal Vol. II, July 15, 2024, Massachusetts Broadband Institute, pp. 31-34, 82, <https://broadband.masstech.org/sites/default/files/2024-07/BEAD%20Initial%20Proposal%20Volume%20II.pdf>; Michigan Initial Proposal Vol. II, pp. 25, 38, 100; Oklahoma BEAD Initial Proposal Vol. II, Oklahoma Broadband Office, pp. 35-36, https://oklahoma.gov/content/dam/ok/en/broadband/documents/grant-programs/bead/BEAD_Volume_II.pdf; Pennsylvania Initial Proposal Vol. II, pp. 33, 76; Washington State Department of Commerce BEAD Initial Proposal Vol. II, pp. 36-37, 39, 42-43, 120-121, 143, <https://deptofcommerce.app.box.com/s/hnu4g9c0zom4y5sh55qd3t9ijzf0ym9t>; West Virginia Department of Economic Development Initial Proposal Vol. II, January 23, 2024, pp. 34, 133-34, <https://broadband.wv.gov/wp-content/uploads/2024/02/West-Virginia-Initial-Proposal-Volume-2-Revised-23Jan2024.pdf>.

²² Connect Illinois Initial Proposal Vol. II BEAD December 2023, pp. 41-42, <https://web.archive.org/web/20240518173115/https://dceo.illinois.gov/content/dam/soi/en/web/dceo/connectillinois/documents/il-bead-initial-proposal-vol-ii-dec-2023.pdf>; Public Service Commission of Wisconsin, Wisconsin Broadband Office, BEAD Initial Proposal Vol. II, pp. 33-38, <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=485024>.

²³ Wyoming Business Council 2023.10.18 Initial Proposal Vol. II PRELIMINARY-DRAFT, https://wyomingbusiness.org/wp-content/uploads/2023/10/2023.10.18_Initial-Proposal-Volume-II_PRELIMINARY-DRAFT.pdf; Wyoming Broadband Office, Wyoming Business Council BEAD Initial Proposal Vol. II, July 11, 2024, pp. 53-54, <https://wyomingbusiness.org/wp-content/uploads/2024/08/Wyoming-BEAD-Initial-Proposal-Volume-II-Approved.pdf>.

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the most restrictive such caps for 1/1 Gbps are \$30 per month imposed by Oklahoma and North Dakota, \$35.47 imposed by Colorado, and \$42.50 by Arkansas.²⁴

Colorado made changes to its affordability criteria in response to public comments. While the state's preliminary proposal called for a fixed \$35 rate cap for providers to earn full credit for both 1/1 Gbps and 100/20 Mbps service and a fixed \$85 rate cap for partial credit, the state's final proposal, approved by NTIA, awards partial credit to providers who charge no more than the annual URS rate and full credit to providers who charge no more than 30 percent of the URS rate. This change raises the 1/1 Gbps full credit monthly rate for 2024 by \$0.47 from \$35 to \$35.47 but raises the minimum partial credit rate from \$85 to \$118.24.

For the 100/20 Mbps speed tier, the most restrictive caps for full credit are \$29.99 imposed by Mississippi, \$30 imposed by the District of Columbia, \$35 imposed by California, and \$39.99 imposed by Washington.²⁵ In response to public comment, California raised its full credit rate cap for 1/1 Gbps service from \$50 to \$55 and its full credit cap for 100/20 Mbps service from \$30 to \$35. The state also reduced the weight given to affordability considerations for competitive BEAD-funded awards from 40 percent to 35 percent. California's proposed partial credit thresholds of \$90 for 1/1 Gbps and \$70 for 100/20 Mbps remained unchanged.

CAGW identified North Dakota, West Virginia, and Wisconsin as the states with the most restrictive maximum rate for partial credit on NOFO Requirement 20. North Dakota will award partial credit for Middle-Class Affordability to providers charging up to \$60 per month for 1/1 Gbps service, West Virginia will award partial credit for up to \$75 per month, and Washington will award partial credit up to \$85. For the 100/20 Mbps speed tier, the most restrictive caps for partial credit are \$50 imposed by Washington and \$54 imposed by Pennsylvania.²⁶

Arizona's preliminary proposal called for a \$64.99 threshold for full credit on 1/1 Gbps service and \$75 for partial credit, along with a \$44.99 threshold for full credit on 100/20 Mbps service and \$55 for partial credit. These would have been among the nation's most restrictive caps. However, in the final version of its proposal, approved by NTIA on August 5, 2024, the state eliminated these fixed rate caps and implemented a new affordability criterion based on the

²⁴ Oklahoma Initial Proposal Vol. II, pp. 35-36; North Dakota BEAD Initial Proposal Vol. II, p. 87, https://www.ndit.nd.gov/sites/www/files/documents/BEAD-Initial-Proposal_Volume-II.pdf; Colorado Initial Proposal Vol. II, pp. 59-61, 78-79; Arkansas BEAD Initial Proposal Vol. II, pp. 20, 66-67, https://broadband.arkansas.gov/wp-content/uploads/2024/10/NTIA-Approved-Volume-2-2024.09.30_Redacted.pdf.

²⁵ Mississippi BEAD Initial Proposal Vol. II, p. 12, https://www.beam.ms.gov/sites/beam/files/Mississippi_BEAD_Initial_Proposal_Volume_II_-_For_Public_Comment.pdf; District of Columbia Office of the Chief Technology Officer, BEAD Initial Proposal Vol. II, p. 29, https://www.techtogetherdc.com/files/ugd/c77500_e7a9eab5107d4da4b3c194cabef4cd06.pdf; California BEAD Initial Proposal Vol. II Draft, November 7, 2023, pp. 31, 33, <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M520/K763/520763574.PDF>; California BEAD Initial Proposal Vol. II, pp. 35, 39, <https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/internet-and-phone/bead-program/draft-cpuc-bead-ipv2-as-submitted.pdf>; Washington Initial Proposal Vol. II, pp. 42-43, 143.

²⁶ Ibid; Pennsylvania Broadband Development Authority BEAD Initial Proposal Vol. II, p. 76, https://www.broadband.pa.gov/wp-content/uploads/2024/05/BEAD-Volume-II_2024.pdf.

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FCC URS.²⁷ Arizona’s final NTIA-approved rules require providers to charge no more than 80 percent of the rate for each speed tier determined annually by the URS. In 2024, these caps amount to \$85.55 for full credit on 1/1 Gbps service and \$114.07 for partial credit, as well as \$63.02 for full credit on 100/20 Mbps service and \$84.02 for partial credit. Arizona also reduced the weight given to affordability considerations for competitive BEAD-funded awards from 18 percent to 15 percent.²⁸

The three states with the largest range between their maximum full credit rate and maximum partial credit rate are Tennessee, Illinois, and Wisconsin, while the three states with the shortest such range are Maine, which awards no partial credit whatsoever; Washington, which allows partial credit rates only \$10.01 above its full credit rate; and Massachusetts, which allows partial credit rates up to \$20.01 above its full credit rate.²⁹

Low-Cost Broadband Service Option

The NOFO requires each state’s application to describe how it will require participating providers to make a Low-Cost Broadband Service Option (LCBSO) available and affordable for low-income households. The IJA gave state broadband offices the flexibility to determine their own definitions of affordability and their own income eligibility thresholds, but the NOFO’s guidance suggests requiring providers to offer an LCBSO for no more than \$30 per month. Because the IJA does not authorize NTIA to require such rate regulation, CAGW has repeatedly made the case that states should ignore this suggestion in favor of other measures of affordability. Nevertheless, 27 states and two territories propose an LCBSO rate cap of \$30 for providers to receive full credit in their competitive applications to serve a given location: Alabama, Arizona, California, Connecticut, Delaware, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin as well as the District of Columbia; and Guam.³⁰ Colorado will cap

²⁷ Arizona Commerce Authority BEAD Initial Proposal Vol. II Draft, November 6, 2023, pp. 40-42, 45-46, 108-109, https://www.azcommerce.com/media/baebeqt1/aca-bead-initial-proposal_vol-ii_draftv8_for-final-review_110623_.pdf; Jake Neenan, “Arizona Gets BEAD Volume Two Approval,” *Broadband Breakfast*, August 5, 2024, <https://broadbandbreakfast.com/arizona-gets-bead-volume-two-approval/>.

²⁸ Arizona Initial Proposal, Vol. II, May 2024, pp. 41, 46, 120-122.

²⁹ Illinois Initial Proposal Vol. II December 2023, pp. 41-42; Maine Initial Proposal Vol. II, pp. 18-19; Massachusetts Initial Proposal Vol. II, July 15, 2024, p. 31; Tennessee Initial Proposal Vol. II, p. 15; Washington Initial Proposal Vol. II, pp. 36-37, 39, 42-43, 120-121, 133-136; Wisconsin Initial Proposal Vol. II, pp. 33-38.

³⁰ Alabama BEAD Initial Proposal Vol. II Draft, November 2023, pp. 38, 146-7, <https://adeca.alabama.gov/wp-content/uploads/Alabama-BEAD-Initial-Proposal-Volume-2.docx>, (Providers must deliver a low-cost option for no more than \$70 per month but the state will award an additional four points, out of 100, to those that do so for \$30 per month); Arizona Initial Proposal, Vol. II, May 2024, p. 117; California Initial Proposal Vol. II, pp. 189-190; Connecticut Department of Energy & Environmental Protection BEAD Initial Proposal Vol. II, p. 144, <https://portal.ct.gov/-/media/deep/energy/broadband/ct-deep-ipv2formatted-pdf-1-1.pdf>; BEAD Program, Delaware Initial Proposal Vol. II, May 2024, pp. 84-85, Delaware Broadband Office, Department of Technology and Information, https://broadband.delaware.gov/pages/contentFolder/pdfs/BEAD_Delaware_IP2.pdf?cache=1724870795728; District of Columbia Initial Proposal Vol. II, pp. 84-85; Connect Kakou State of Hawai’i BEAD Initial Proposal Vol. II, pp. 97-99, <https://www.hawaii.edu/broadband/wp-content/uploads/sites/40/2024/07/Hawaii-BEAD-Initial-Proposal-Vol2-APPROVED-20240716.pdf>; Idaho Initial Proposal Vol. II, p. 81 (providers subject to the \$30 cap can apply for a waiver to raise their rates up to \$50 per month); Illinois Initial Proposal Vol. II, December 2023, pp. 117-18; Kansas BEAD Initial Proposal Vol. II

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its LCBSO at \$30 per month if Congress restores the Affordable Connectivity Program (ACP) but applies a \$50 cap until such time.³¹

The following 16 states set their LCBSO rate cap at \$30 with an inflation escalator: Alabama, California, Connecticut, Delaware, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Oregon, Washington, and Wisconsin.³²

submission for NGP, Submitted January 26, 2024, pp. 83-86, <https://www.kansascommerce.gov/wp-content/uploads/2021/04/NTIA-Vol-2-Approved.pdf>; Commonwealth of Kentucky BEAD Initial Proposal Vol. II, May 17, 2024, pp. 37-38, <https://broadband.ky.gov/Documents/Intake%20Summary-Volume%202-05-17-2024.pdf>; Louisiana BEAD Initial Proposal Vol. II, pp. 112-113 (providers subject to the \$30 cap can apply for a waiver to raise their rates up to \$65 per month if the provider puts forward evidence “indicating that the target effective rate above would be financially unsustainable.”); See <https://connect.la.gov/media/a40jyhpl/louisiana-ip-vol-2-final.pdf>; Maine Initial Proposal Vol. II, pp. 64-65; Maryland BEAD Initial Proposal Vol. II BEAD, May 2024, p. 133, <https://dhcd.maryland.gov/Broadband/Documents/State-Plans/Maryland-BEAD-IPv2.pdf>; Massachusetts Initial Proposal Vol. II, July 15, 2024, pp. 32, 35, 80-81; Mississippi BEAD Initial Proposal Vol. II, p. 12, [https://www.beam.ms.gov/sites/beam/files/Mississippi BEAD Initial Proposal Volume II - For Public Comment.pdf](https://www.beam.ms.gov/sites/beam/files/Mississippi%20BEAD%20Initial%20Proposal%20Volume%20II%20-For%20Public%20Comment.pdf); High Speed NV BEAD Initial Proposal Vol. II As Approved by NTIA, Nevada Governor’s Office of Science, Innovation and Technology, pp. 35, 105-107, <https://osit.nv.gov/uploadedFiles/ositnvgov/Content/Broadband/Nevada%20Initial%20Proposal%20Vol%20II%20-%20Final%20Approved.r2.pdf>; New Hampshire Department of Business and Economic Affairs, Mission Broadband, BEAD Initial Proposal Vol. II, May 7, 2024, pp. 113-116, <https://www.nheconomy.com/getmedia/51af372c-52e6-47ae-8dc9-0975f99335b0/BEAD-Vol-II-Final-after-curing.pdf>; New Jersey Approved Initial Proposal Vol. II, pp. 92-93, https://www.nj.gov/connect/documents/beat/Approved_Initial%20Proposal%20v2.pdf; North Carolina BEAD Initial Proposal Volume II, pp. 73-74, <https://www.ncbroadband.gov/beat-volume-2-initial-proposal-approved-ntia-91824/download?attachment>; North Dakota Initial Proposal Vol. II, pp. 20, 23, 85-86; Ohio Department of Development, Broadband Ohio, BEAD Initial Proposal Vol. II, December 2023, pp. 3, 197-200, <https://dam.assets.ohio.gov/image/upload/broadband.ohio.gov/01092024-DRAFT-Ohio-BEAD-Initial-Proposal-Volume-II-vPostPublicComment.pdf>; Business Oregon BEAD Initial Proposal Vol. II, June 2024, pp. 123-127, https://www.oregon.gov/biz/Publications/Broadband/IPv2_FinalApproved.pdf; Pennsylvania Broadband Development Authority BEAD Initial Proposal Vol. II, pp. 73-74, https://www.broadband.pa.gov/wp-content/uploads/2024/05/BEAD-Volume-II_2024.pdf; Rhode Island Commerce Corporation Connect RI BEAD Initial Proposal Vol. II, June 4, 2024, pp. 169-171, <https://ricom.maps.arcgis.com/sharing/rest/content/items/cf7555128a5c4641ab70008319165e11/data>; Washington State Initial Proposal Vol. II, pp. 115-118; Wisconsin Initial Proposal Vol. II, pp. 73-74; Guam Office of Infrastructure Policy and Development, November 2023, BEAD Initial Proposal Volume II, pp. 70-73, <https://notices.guam.gov/app/webroot/userfiles/files/Guam%20BEAD%20Initial%20Proposal%20Vol.%20II%20DRAFT%20for%20Public%20Comment.pdf>; U.S. Virgin Islands Broadband Office Connect VI BEAD Initial Proposal Vol. II, August 2024, <https://omb.vi.gov/wp-content/uploads/2024/08/USVI-Volume-II-Final-.pdf>; The District of Columbia will allow providers subject to the \$30 cap to apply for a waiver to raise their rates up to \$50 per month if they “clearly demonstrate that offering a \$30 low-cost service option is cost-prohibitive or not reasonably possible.”; Guam will allow providers subject to the \$30 cap to apply for a waiver to raise their rates up to \$50 per month; North Dakota will allow providers to apply for a waiver to raise rates by an unspecified amount “with proof that the \$30 service option is cost-prohibitive or not reasonably possible.”

³¹ Colorado is the only state to limit low-cost option rates on federally recognized Tribal lands to \$85 rather than the default \$75 that applies in all other states. If ACP is restored, Colorado will also allow providers subject to the \$30 cap to apply for a waiver to raise their rates up to \$50 per month if they can demonstrate their “genuine need” and the “public interest or community benefit that will result from granting the waiver.” Colorado Initial Proposal Vol. II, pp. 220-221.

³² Alabama Initial Proposal Vol. II Draft, pp. 38, 146-7; Connecticut Initial Proposal Vol. II, p. 144; Delaware Initial Proposal Vol. II, pp. 84-85; Kansas Initial Proposal Vol. II submission for NGP, January 26, 2024, pp. 83-86; Louisiana Initial Proposal Vol. II, pp. 112-3; Maine Initial Proposal Vol. II, pp. 64-65; Maryland Initial Proposal Vol. II, May 2024, p. 133; Massachusetts Initial Proposal Vol. II, pp. 32, 35, 80-81; New Jersey Approved Initial Proposal Vol. II, pp. 92-93; North Carolina Initial Proposal Vol. II, pp. 73-74; Ohio Initial Proposal Vol. II, pp. 3,

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The following 11 states set LCBSO rate cap at \$30 and with no inflation escalator: Arizona, Colorado, Hawaii, Idaho, Illinois, Mississippi, Nevada, New Hampshire, North Dakota, Pennsylvania, and Rhode Island. However, Nevada awards providers partial credit up to \$50. Maine’s preliminary BEAD proposal allowed no inflation adjustment to its \$30 LCBSO rate, but the state’s final proposal, approved by NTIA on June 17, 2024, allows for annual inflation adjustments according to the Consumer Price Index (CPI) up to a maximum of \$65.³³

Michigan, Mississippi, and New York impose an LCBSO rate cap lower than \$30 per month for full credit. Michigan’s preliminary proposal would have set a \$30 LCBSO with no inflation adjustment. However, the state’s final proposal, approved by NTIA on August 28, 2024, sets the LCBSO full credit rate at \$28 per month, the lowest of any state, for applicants who do not participate in the FCC’s Lifeline Program for Low-Income Consumers and \$37.25 for applicants who participate in Lifeline, and awards partial credit up to \$65 per month for providers that do not participate in Lifeline or up to \$74.25 for providers that participate in Lifeline.³⁴ Mississippi appears to apply the same pricing standard to both its LCBSO and its Middle-Class Affordability strategy, under which providers may earn full points on their competitive applications to serve a given location by charging no more than \$29.99 per month, with no inflation adjustment allowed. New York’s preliminary proposal awarded full credit to providers charging up to \$65 per month, without inflation adjustment, and did not award any partial credit to providers exceeding that rate. However, the state’s final proposal, approved by NTIA on August 13, 2024, awards full credit to providers that charge no more than \$15 per month, with annual adjustments for inflation, and partial credit to providers charging up to \$65 per month, without any inflation adjustment. New York is the only state that allows inflation adjustments to its full credit maximum LCBSO rate but does not allow such adjustments to its partial credit maximum rate.³⁵

Rhode Island ties its Middle-Class rate caps to inflation but does not tie its LCBSO rate cap to inflation. Michigan requires a net-zero price to the customer rather than a \$30 per month rate. Since ACP-eligible customers qualify for Michigan’s LCBSO, this requirement amounts to a \$30 per month rate cap only when ACP’s subsidy is available. Until Congress restores ACP,

197-200; Oregon Initial Proposal Vol. II, pp. 123-127; Washington Initial Proposal Vol. II, pp. 115-118; Wisconsin Initial Proposal Vol. II, pp. 33-38.

³³ Maine Connectivity Authority BEAD Initial Proposal Vol. II, p. 64; Taormina Falsitta, “NTIA Approves Maine, Kentucky BEAD Initial Proposals,” *Broadband Breakfast*, June 17, 2024, <https://broadbandbreakfast.com/ntia-approves-maine-kentucky-bead-initial-proposals/>.

³⁴ Michigan Department of Labor and Economic Opportunity High-Speed Internet Office BEAD Initial Proposal Vol. II Draft for Public Comment, October 2023, p. 67; Michigan BEAD Initial Proposal Vol. II Final, August 27, 2024, pp. 96-99; FCC Lifeline Program for Low-Income Consumers, <https://www.fcc.gov/general/lifeline-program-low-income-consumers>.

³⁵ New York BEAD Initial Proposal Vol. II Draft for Public Comment, December 18, 2023, p. 123, <https://web.archive.org/web/20231218122947/https://broadband.ny.gov/system/files/documents/2023/12/draft-initial-proposal-vol.-2-for-public-comment.pdf>; New York BEAD Initial Proposal Vol. II Approved, August 16, 2024, pp. 127-128, <https://broadband.ny.gov/system/files/documents/2024/08/nys-initial-proposal-vol.-2-approved-1.pdf>; NTIA, “Biden-Harris Administration Approves New York’s ‘Internet for All’ Initial Proposal,” August 13, 2024, <https://www.ntia.gov/press-release/2024/biden-harris-administration-approves-new-york-s-internet-all-initial-proposal>.

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the most recent year's ACP benefit will act as Michigan's LCBSO rate cap, subject to annual increases for inflation.

The following LCBSO monthly rate caps in 11 states are set between \$40 and \$75 for providers to receive full credit: \$40 in Iowa and Vermont, \$50 in Missouri, Nebraska, New Mexico, Tennessee, and West Virginia, \$60 in Utah and Oklahoma, \$66.26 in Georgia, \$70 in Wyoming, \$74.95 in South Dakota, and \$75 in South Carolina.³⁶ Iowa's draft proposal did not allow providers to apply for a waiver to exceed the state's \$40 cap, but its final proposal added a provision allowing providers to apply for a discretionary waiver to charge up to \$70 per month, "with justification."³⁷ Utah's preliminary proposal imposed a \$55 LCBSO cap on rural areas and a \$30 cap on non-rural areas, but its final proposal, approved by NTIA on July 22, 2024, raised this cap to \$60 for rural areas while maintaining the \$30 cap for non-rural areas.³⁸

The following eight states set the LCBSO rate cap at a fixed rate between \$40 and \$70 with an inflation escalator: Iowa, Montana, Oklahoma, Vermont, Tennessee, West Virginia, Utah, and Wyoming. Oklahoma's preliminary BEAD proposal allowed no inflation adjustment to its \$60 LCBSO rate, but the state's final proposal, approved by NTIA on August 1, 2024, allows for annual inflation adjustments according to the CPI.³⁹ The following three states set the LCBSO rate cap at fixed rate between \$40 and \$70 with no inflation escalator: Missouri, Nebraska, and New Mexico.

Arkansas, Indiana, and Texas use a formula for determining their LCBSO rate cap that will allow rates to rise annually in proportion to growth in low-income wages in their state, rather than price inflation.⁴⁰ For 2024, Arkansas' formula produces a rate cap of \$36.83 per

³⁶ Iowa BEAD Initial Proposal, Vol. I and II, pp. 100-101, 126, <https://dom.iowa.gov/media/536/download?inline>; Vermont Community Broadband Board BEAD Initial Proposal Vol. II, August 1, 2024, pp. 93-95, https://publicservice.vermont.gov/sites/dps/files/documents/VT%20Initial%20Proposal%20Volume%202_1%20Aug%202024_Public_0.pdf; Missouri Department of Economic Development BEAD Initial Proposal Vol. II, pp. 121-123 (low-cost option rates will be capped at \$50 for providers that accept the ACP device subsidy and \$30 for those that do not accept the ACP device subsidy and if ACP is not restored, all providers will be subject to the \$30 cap), <https://ded.mo.gov/media/pdf/bead-initial-proposal-volume-ii-final>; Nebraska Broadband Office ConNEcting Nebraska BEAD Initial Proposal to the NTIA Vol. II, p. 105. <https://broadband.nebraska.gov/media/q0ybw0aa/nbo-bead-initial-proposal-volume-2-v121.pdf>; New Mexico BEAD Initial Proposal Vol. II, July 27, 2024, p. 135, https://connect.nm.gov/uploads/1/4/1/9/141989814/new_mexico_ipv2_-_final_-_20240727.pdf; Oklahoma Initial Proposal Vol. II, pp. 38-39, 87-91; Tennessee Initial Proposal Vol. II, pp. 63-66; Connecting Utah BEAD Initial Proposal Vol. II, pp. 97-100, https://www.connectingutah.com/files/ugd/ffdde1_42ba4323fe7b411b8170c754cd1b0459.pdf; West Virginia Initial Proposal Vol. II, p. 131; Wyoming Initial Proposal Vol. II, July 11, 2024, pp. 118-119.

³⁷ Iowa Initial Proposal Vol. II, p. 101.

³⁸ NTIA, "Biden-Harris Administration Approves Utah, Commonwealth of Northern Mariana Islands, and the U.S. Virgin Islands' 'Internet for All' Initial Proposals," July 22, 2024, <https://www.ntia.gov/press-release/2024/biden-harris-administration-approves-utah-commonwealth-northern-mariana-islands-and-us-virgin>; Connecting Utah, BEAD Initial Proposal Vol. 2 Redlined Draft, June 28, 2024, p. 113, https://www.connectingutah.com/files/ugd/3649e5_54e26630547240609f6059b16447331d.pdf.

³⁹ Oklahoma Broadband Office BEAD Initial Proposal Vol. II, pp. 88-91; NTIA, "Biden-Harris Administration Approves Montana, Oklahoma, and Vermont's 'Internet for All' Initial Proposal," August 1, 2024, <https://www.ntia.gov/press-release/2024/biden-harris-administration-approves-montana-oklahoma-and-vermonts-internet-all-initial-proposal>.

⁴⁰ Arkansas BEAD Initial Proposal Vol. II, pp. 64-66,

<https://web.archive.org/web/20231116165120/https://broadband.arkansas.gov/wp-content/uploads/Arkansas-BEAD->

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month, Indiana’s produces a rate cap of \$48.60 per month, and Texas’ produces a rate cap of \$62.15.

In the following seven states, local market conditions are used to regulate LCBSO rates: Alaska, Florida, Georgia, Minnesota, Montana, South Carolina, South Dakota, and Virginia.⁴¹ Alaska requires providers to charge the same LCBSO rates in both rural and urban areas. Minnesota prohibits providers from charging higher rates to LCBSO-eligible customers that the provider uses a BEAD subsidy to reach than it charges to those it already serves with a low-cost option without the BEAD subsidy, but these rates may not exceed the FCC’s 2024 Reasonable Comparability Benchmark. Similarly, South Dakota’s preliminary proposal required that providers’ proposed BEAD-funded LCBSO “cannot exceed a provider’s lowest cost plan option.”⁴² However, the state’s final proposal, approved by NTIA on August 29, 2024, removed this language and adopted a URS-based pricing strategy instead.⁴³ In 2024, South Dakota’s statewide cap is \$74.95. Virginia caps its LCBSO rate at the FCC Benchmark rate. Kentucky’s preliminary proposal allowed providers to satisfy their LCBSO requirement by charging no more than the yearly URS rate for 100/20 Mbps service, however the final version of the state’s application, approved by NTIA on June 17, 2024, places a \$30 cap on the LCBSO, albeit with the option for providers to apply for a waiver to charge up to \$65 if certain conditions are met, at the discretion of the state broadband office.⁴⁴ Kentucky will allow providers to raise their LCBSO rates annually with CPI inflation.

[Initial-Proposal-Volume-2-Public-Comment80.pdf](#); Indiana Broadband Connecting Indiana BEAD Initial Proposal Vol. II, pp. 74-75, <https://www.in.gov/indianabroadband/files/IndianaApprovedVolume2.pdf>; Texas Broadband Development Office Draft BEAD Initial Proposal Vol. II, November 2023, pp. 79-80, <https://s3.amazonaws.com/connected-nation/c2098368-05a0-47fd-831f-29a8ca771866/TexasInitialProposalVolumeIIFINAL.pdf>.

⁴¹ Alaska Department of Commerce, Community, and Economic Dev. Broadband Office BEAD Initial Proposal Vol. II, November 20, 2023, p. 39, [https://www.commerce.alaska.gov/web/Portals/19/pub/State%20of%20Alaska%20--%20Initial%20Proposal%20Volume%20%20\(R8b%2011-20-23\).pdf](https://www.commerce.alaska.gov/web/Portals/19/pub/State%20of%20Alaska%20--%20Initial%20Proposal%20Volume%20%20(R8b%2011-20-23).pdf); Connected Florida: Access, Opportunity, Workforce, Prosperity, Resiliency Florida’s BEAD Initial Proposal Vol. II, p. 74, https://www.floridajobs.org/docs/default-source/office-of-reemployment-assistance/initial-proposal--volume-2_final.pdf?sfvrsn=ba305db0_2; Minnesota Employment and Economic Development, Office of Broadband Dev. BEAD Initial Proposal Vol. II Draft, July 15, 2024, pp. 49-52, https://mn.gov/deed/assets/volume2-updated-draft_tcm1045-632409.pdf; Montana Department of Administration, Internet for All Initial Proposal Vol. II Final, April 3, 2024, pp. 126-130, https://connectmt.mt.gov/files/2024.04.23_MT-BEAD-Initial-Proposal-Volume-II_Clean.pdf; BEAD Program Initial Proposal Vol. II GRN -000156, Executive Office of the State of South Carolina, pp. 59-60, <https://ors.sc.gov/sites/scors/files/Documents/Broadband/BEAD/Intake%20Summary-Volume%202-08-20-2024%2011-30-EXECUTIVE%20OFFICE%20OF%20THE%20STATE%20OF%20SOUTH%20C-GRN-000156.pdf>; Connect South Dakota BEAD Initial Proposal Vol. II, Governor’s Office of Economic Development, p. 47, <https://sdgoed.com/wp-content/uploads/2024/09/NTIA-Approved-South-Dakota-BEAD-Volume-2-Initial-Proposal.pdf>; Commonwealth Connect, Virginia Department of Housing and Community Development, BEAD Initial Proposal Vol. II, pp. 50-51, <https://www.dhcd.virginia.gov/sites/default/files/DocX/bead/final-approved-virginia-bead-volume-2.pdf>.

⁴² Connect South Dakota BEAD Initial Proposal Vol. II Draft, p. 47, <https://sdgoed.com/wp-content/uploads/2024/08/2024-15-July-South-Dakota-BEAD-Volume-2-Initial-Proposal-Draft-1.pdf>.

⁴³ NTIA, “Biden-Harris Administration Approves Mississippi and South Dakota’s ‘Internet for All’ Initial Proposal,” August 29, 2024, <https://www.ntia.gov/press-release/2024/biden-harris-administration-approves-mississippi-and-south-dakota-s-internet-all-initial-proposal>.

⁴⁴ Commonwealth of Kentucky BEAD Initial Proposal Vol. II Draft, November 2023, p. 10, <https://broadband.ky.gov/Documents/DRAFT%20Kentucky%20Initial%20Proposal%20Volume%20II%20for%20c>

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Georgia initially considered adopting NTIA’s suggested \$30 rate cap, but its final proposal, approved September 26, 2024, instead set the cap at the national average rate identified by FCC’s URS which is \$66.26 in 2024, with the option for providers to apply for a discretionary waiver to charge up to \$75. This is more restrictive than the FCC Reasonable Comparability Benchmark rate, however, which is two standard deviations above the average. Justifying its decision to ignore NTIA’s non-binding and non-statutory guidance, Georgia’s proposal explains that “Adopting the Urban Rate Survey estimated mean as an upper limit reflects feedback from potential BEAD applicants who indicated they might not participate in the grant opportunity if the low-cost broadband service option is set too low and setting the rate at a mandatory \$30 as proposed by NTIA was deemed unworkable. The effective end-user cost of \$0 once the ACP subsidy is factored in, is therefore also unworkable, and there is no guarantee that the ACP program or a successor program will be funded by Congress. The state’s objective of covering as many locations as possible with Priority Broadband will not be achievable if the pool of BEAD participants shrinks substantially due to the low-cost broadband service option being set at a rate that does not allow providers, especially rural providers, to be able to operate and maintain their networks. Therefore, the state sets its low-cost broadband service option so that it does not exceed \$66.26. ... the LBSCO ceiling and waiver will be adjusted every year consistent with changes to the Urban Rate Survey date and the U.S. Reasonable Comparability Benchmark or by CPI.”⁴⁵

Montana’s preliminary proposal awarded full credit on the LCBSO requirement to providers charging up to \$45 per month and partial credit to those charging between \$45 and \$65. However, the state’s final proposal, approved by NTIA on August 1, 2024, implemented a URS-based affordability criterion whereby providers may charge up to average of the yearly median rates for 100/20 Mbps service in 11 Western states over the prior three years, rounding up to the nearest whole dollar.⁴⁶ In 2024, this cap equals \$70 per month.

New Jersey’s preliminary proposal described an LCBSO that defined the FCC’s URS 2024 benchmark rate for its LCBSO cap for 100/20 Mbps service as the upper bound “reference price” which will award providers minimum credit on their competitive application. Providers that exceed this rate will earn zero credit. Then, “all applications that submit a commitment to offer service at a price lower than [the reference price] ... will receive an additional score ... as follows: $5 * (1 - \text{percent of monthly reference price requested})$.” Thus, New Jersey would not award full credit for Requirement 16 to any provider as its sliding scale awards more points as providers’ proposed prices approach \$0 per month. Only a provider offering high-speed internet

[omment.pdf](#); Commonwealth of Kentucky BEAD Initial Proposal Vol. II, May 17, 2024, pp. 37-38, <https://broadband.ky.gov/Documents/Intake%20Summary-Volume%202-05-17-2024.pdf>; Taormina Falsitta, “NTIA Approves Maine, Kentucky BEAD Initial Proposals,” *Broadband Breakfast*, June 17, 2024, <https://broadbandbreakfast.com/ntia-approves-maine-kentucky-bead-initial-proposals/>.”

⁴⁵ Georgia BEAD Initial Proposal Vol. II, September 17, 2024, pp. 138-143,

<https://gta.georgia.gov/document/document/georgia-ip-v2-81224pdf/download>.

⁴⁶ Montana Broadband Office (MBO), Department of Administration, Internet for All BEAD Initial Proposal Vol. II Draft for Public Comment, September 28, 2023, pp. 26, 27, 102-105, https://connectmt.mt.gov/2023.09.28_BEAD-Initial-Proposal-Volume-II_v_Public-Comment.pdf; MBO, Department of Administration, Internet for All BEAD Initial Proposal Vol. II Final, April 3, 2024, pp. 26, 27, 102-105, https://connectmt.mt.gov/files/2024.04.23_MT-BEAD-Initial-Proposal-Volume-II_Clean.pdf; the FCC categorizes Arizona, New Mexico, Utah, Wyoming, Colorado, Idaho, Montana, Nevada, California, Oregon, and Washington as Western states.

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service for \$0 would earn full credit. Further, “Applicants must offer the same price commitment to all locations included in their total awarded project area. Additionally, with OBC’s approval, price commitments may be adjusted annually in relation to the Consumer Price Index (CPI).”⁴⁷ However, the state’s final application, approved by NTIA on September 6, 2024, abandoned this flexible pricing approach in favor of a \$30 fixed monthly price cap with automatic annual adjustments based on the CPI.⁴⁸

Virginia’s refusal to acquiesce to NTIA’s non-statutory demand that states prescribe a specific rate or formula for their low-cost option received significant media attention thanks to the state’s early proposal submission in September 2023.⁴⁹ Virginia’s plan, approved by NTIA on July 26, 2024, sets a precedent that applies to every state, but most directly affects the two other states, Florida and South Carolina, that avoid prescribing monthly rates for their low-cost option.⁵⁰

The Florida proposal, for example, says, “The Office will not set a price for the low-cost service option across the state. Prospective subgrantees may submit their proposed pricing structure with their application. However, the Office will require subgrantees to maintain the price-point for their current low-cost option through the duration of the BEAD Program.”⁵¹

Similarly, the original South Carolina proposal stated that, “To participate in the BEAD program, each ISP must set forth their own LCBSO, including a fixed price excluding the ACP benefit; and, submit to the [South Carolina Broadband Office] a justification on why the LCBSO is affordable to the eligible population within the BEAD project area, including a market analysis, or other objective evidence, that demonstrates clearly that the service option is reasonably affordable to the average household. Failure to demonstrate that the LCBSO is affordable may result in [the Office] requiring additional information to justify that the service option meets the requirement.”⁵² The original South Carolina proposal explained that “the language of the IJJA, the testimony of the NTIA, and South Carolina statutory provisions foreclose prescriptive rate-setting for broadband service in South Carolina’s BEAD program. . . . Requiring ISPs to commit to a fixed price for broadband service for an undisclosed amount of time is not reasonable and will likely result in a hardship for local providers throughout the State.”⁵³

⁴⁷ New Jersey BEAD Initial Proposal Vol. II Draft, p. 18-19, 80-81,

<https://www.nj.gov/connect/documents/bead/IPV2.pdf>.

⁴⁸ New Jersey Approved Initial Proposal Vol. II, pp. 92-93; Biden-Harris Administration Approves New Jersey’s “Internet for All” Initial Proposal, September 6, 2024, <https://www.internetforall.gov/news-media/biden-harris-administration-approves-new-jerseys-internet-all-initial-proposal>.

⁴⁹ Virginia Initial Proposal Vol. II Redlined Draft, pp. 51-55.

⁵⁰ Virginia Department of Housing and Community Development, “Governor Glenn Youngkin Celebrates Approval of Virginia Broadband Proposal: Approval provides access to Virginia’s \$1.48 billion BEAD allocation to close the digital divide,” July 26, 2024, <https://www.dhcd.virginia.gov/governor-glenn-youngkin-celebrates-approval-virginia-broadband-proposal>.

⁵¹ A Connected Florida: Access, Opportunity, Workforce, Prosperity, Resiliency Florida’s BEAD Initial Proposal, Volume 2, p. 74, https://www.floridajobs.org/docs/default-source/office-of-reemployment-assistance/initial-proposal---volume-2_final.pdf?sfvrsn=ba305db0_2.

⁵² South Carolina Initial Proposal Vol. II, pp. 59-60.

⁵³ Ibid.

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Facing a lengthy delay in approval, however, the state acquiesced in the final version of its proposal to NTIA's pressure to define a fixed rate cap, drawing this line at \$75 per month. Explaining its decision, the South Carolina Broadband Office said, "Without the establishment of an approved low-cost broadband service option, the NTIA will not open to the State of South Carolina its additional allocation of \$546,535,983.05 in BEAD funds. Accordingly, the SC Broadband Office (SCBBO) establishes the low-cost broadband service option below only to avail the State of its additional \$546,535,983.05 in allocated BEAD funds and, the SCBBO is not claiming the right, nor making an attempt, to rate regulate. The SCBBO is establishing this low-cost plan only pursuant to the requirements set forth in the BEAD NOFO."⁵⁴ In this final version, South Carolina also extended the duration of its LCBSO rate control from three years to five years.

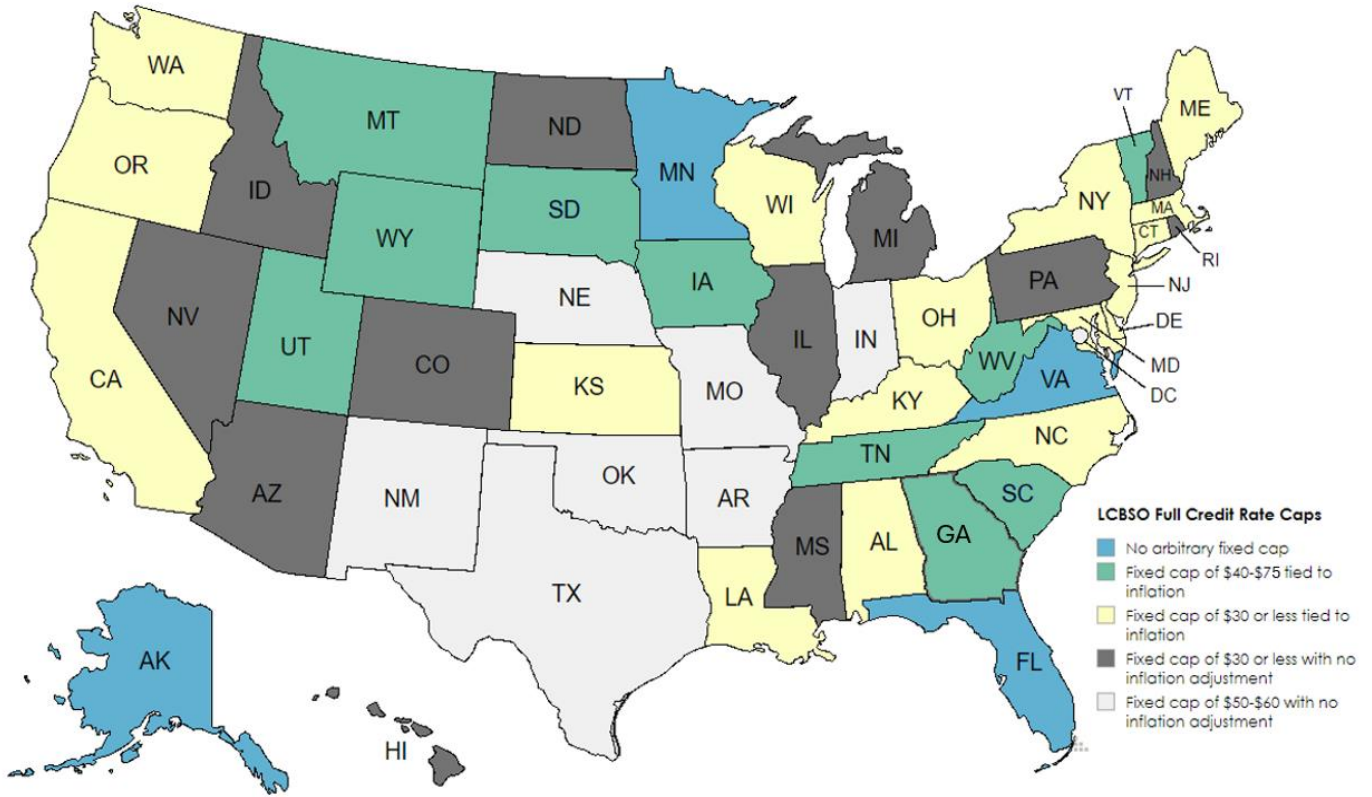
American Samoa's proposal does not specify any fixed LCBSO rate or annual formula. The territory may therefore follow the Virginia strategy of allowing market conditions to determine rates. But the proposal includes several unrelated policy objectives that may discourage providers from participating in the island's BEAD rollout, like requiring low-cost service plans to provide "consumers with services that adhere to values that have been identified by the [broadband] Office, like net neutrality, transparent pricing, and data privacy."⁵⁵

The following map shows the 22 states that peg their rate caps to some measure of inflation. States in yellow and green peg their rate caps to price inflation, while states in light or dark grey do not. The eight states in blue use alternative methods of defining their LCBSO without mandating a fixed rate cap or annual rate cap formula.

⁵⁴ Ibid.

⁵⁵ Territory of American Samoa BroadbandiNEI Initial Proposal Volume II, November 2023, p. 36, https://web.archive.org/web/20240118204840/https://www.doc.as.gov/files/ugd/affe36_1e9cc7287cd64fc1886e1fad3e814a9c.pdf.

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Broadband Rate Regulation in the Absence of the Affordable Connectivity Program

In the American Rescue Plan Act, Congress created the Emergency Connectivity Program, which was replaced in the IIJA by the ACP with an appropriation of \$14.2 billion.⁵⁶ The ACP provided eligible households with a discount of up to \$30 per month on internet service, and \$75 per month for households on qualifying Tribal lands, and a one-time discount on computer equipment with the condition that the household contribute more than \$10 and less than \$50 toward the purchase price.⁵⁷ On June 1, 2024, the funding for the program ran out and was not renewed by Congress.

Without a renewal, the states that use ACP eligibility to define eligibility for their LCBSO may have to amend their BEAD proposals to include a new definition of eligibility for this low-cost option. This increases the complexity of complying with LCBSO affordability standards across the states and territories.

Requirement 16 states that providers must offer an LCBSO for low-income households. State broadband offices can define “low-cost” and determine which households are eligible to receive this option. The NOFO suggests that states impose a \$30 price cap on LCBSO plans and require providers to commit to delivering an LCBSO “for the useful life of the funded network assets.” New hardware, however, has the potential to function for decades. Any state law that locks providers into offering a \$30 per month plan for such a length of time without any consideration of how providers’ operating costs will rise over that period may discourage providers from opting to participate in BEAD altogether.

Investment may also shift away from states that fail to attach an inflation escalator to their LCBSO rate regulation and toward those states that have the foresight to anticipate price inflation in the coming years. New York and West Virginia set their LCBSO rate regulation to expire 10 years after infrastructure installation; Kentucky and Wyoming set that limit at eight years; Alabama, Kansas, Maine, and Rhode Island set it at five years; and South Carolina sets it at three years.⁵⁸

Inflation Adjustments for Regulated Rates

All 56 U.S. states and territories apply the same 100/20 Mbps speed threshold for their LCBSO, which provides the opportunity to compare the prescribed rates. There are 36 states, along with the District of Columbia, Guam, and the Virgin Islands, that impose a fixed rate for their LCBSO and 13 of them do not peg that rate to price inflation. In 22 states, the District of

⁵⁶ American Rescue Plan Act of 2021, H.R. 1319, Pub. L. No. 117-2, <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>.

⁵⁷ FCC, “Affordable Connectivity Program,” <https://www.fcc.gov/affordable-connectivity-program-consumer-faq>.

⁵⁸ Alabama Initial Proposal Vol. II, pp. 38, 146-7; Kansas Initial Proposal Vol. II, pp. 83-86; Kentucky Initial Proposal Vol. II, pp. 37-38; Maine Initial Proposal Vol. II, pp. 64-65; New York Initial Proposal Vol. II Approved, August 16, 2024, pp. 127-128; Rhode Island Initial Proposal Vol. II, pp. 169-171; South Carolina Initial Proposal Vol. II, pp. 59-60; West Virginia Initial Proposal Vol. II, January 23, 2024, p. 131; Wyoming Initial Proposal Vol. II, July 11, 2024, p. 107.

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Columbia, Guam, and the Virgin Islands, the LCBSO rate cap for any provider seeking full credit on its application to serve a given low-income household may not exceed \$30 per month. Missouri sets a \$30 cap only on providers that participate in the device subsidy portion of the federal ACP and a \$50 cap for providers that do not accept the device subsidy.⁵⁹ Washington does not specify which measure of inflation it will use to raise its rate cap.⁶⁰ California allows providers (called subgrantees) to apply for a waiver from the California Public Utilities Commission for permission to charge a higher rate for a time period specified by the provider, if the application includes “an explanation of why it would be infeasible for the prospective subgrantee to meet the low-cost service.”⁶¹ Ohio amended its initial proposal to include an automatic annual inflation escalator after public comments to the state’s regulators described the necessity of including one.⁶²

Florida, South Carolina, and Virginia did not regulate monthly rates for their LCBSO. Florida’s Office of Broadband “will not set a price for the low-cost service option across the state. Prospective subgrantees may submit their proposed pricing structure with their application. However, the Office will require subgrantees to maintain the price-point for their current low-cost option through the duration of the BEAD Program.”⁶³ Similarly, South Carolina’s proposal explains that to “participate in the BEAD program, each ISP must set forth their own LCBSO, including a fixed price excluding the ACP benefit; and submit to the SCBBO a justification on why the LCBSO is affordable to the eligible population within the BEAD project area, including a market analysis, or other objective evidence, that demonstrates clearly that the service option is reasonably affordable to the average household. Failure to demonstrate that the LCBSO is affordable may result in SCBBO requiring additional information to justify that the service option meets the requirement.”⁶⁴

NTIA has already reviewed Florida and South Carolina’s initial proposals and returned them for final edits. NTIA’s BEAD progress dashboard shows that, as of October 4, 2024, Volume II of 51 state and territory proposals have been approved while the remaining 5 states continue to incorporate NTIA’s first round of feedback into their revised proposals.⁶⁵

Between the initial draft proposals published in the latter half of 2023 and the final approval by NTIA in 2024, the following states loosened the rate regulation components of their BEAD funding proposals: Arizona, California, Colorado, Oklahoma, Maine, Michigan, Montana, Utah, and Wyoming. However, in that same interval, Connecticut, Kentucky, and South Dakota made their rate regulation proposals more stringent and less attractive for providers.

⁵⁹ Missouri Initial Proposal Vol. II, pp. 121-123.

⁶⁰ Washington Initial Proposal Vol. II, p. 116.

⁶¹ California Public Utilities Commission BEAD Initial Proposal Vol. II Draft, December 2023, pp. 189-190, <https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/internet-and-phone/bead-program/draft-cpuc-bead-ipv2-as-submitted.pdf>.

⁶² Ohio Initial Proposal Vol. II, p. 3.

⁶³ A Connected Florida: Access, Opportunity, Workforce, Prosperity, Resiliency Florida’s BEAD Initial Proposal Vol. II, p. 74, https://www.floridajobs.org/docs/default-source/office-of-reemployment-assistance/initial-proposal---volume-2_final.pdf?sfvrsn=ba305db0_2.

⁶⁴ South Carolina Initial Proposal Vol. II, pp. 66-67.

⁶⁵ Internet for All BEAD Initial Proposal Progress Dashboard, <https://internetforall.gov/bead-initial-proposal-progress-dashboard>.

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Methods of Inflation Adjustment

Every state and territory will increase the Low-Cost Option rate based on the CPI, the Producer Price Index (PPI), or the FCC Reasonable Comparability Benchmark rate, except Arkansas, Indiana, and Texas, which use the Census Bureau’s American Community Survey (CASC). Tying the cap to CASC rather than CPI or PPI means broadband rates can rise in proportion to annual wage growth for low-income households rather than price inflation. Monthly rates in Arkansas may not exceed one-twelfth of 2 percent of the annual income of households in the 20th percentile of households in Arkansas by income, which is \$36.83 monthly in 2024. Texas’ formula sets the rate cap at 2 percent of 150 percent of the federal poverty level (FPL) for a three-person household, which equals \$62.15 in 2024.⁶⁶

Georgia, Iowa, Kansas, New Jersey, North Carolina, West Virginia, Wisconsin, and Wyoming all peg their LCBSO rate cap to some form of CPI, while Vermont allows providers to use CPI “or another industry-recognized measure of inflation.”⁶⁷ Iowa uses the Midwest Regional CPI rather than the national index, and West Virginia uses the index of non-food and non-energy price inflation for urban consumers, a measure known as “Urban Core CPI” or C-CPI-U.⁶⁸ Kansas uses the Midwest Regional CPI-U.⁶⁹ Alabama, California, Connecticut, Delaware, and Maryland peg their LCBSO rate cap to their state’s PPI.⁷⁰

Arizona and Michigan peg their rate caps to one of the measures of inflation if the ACP expires without any substitute program.⁷¹ If the program continues in any form, however, providers in those states may not adjust their LCBSO rate to reflect price inflation. Rhode Island ties its Middle-Class rate caps to inflation but does not tie its LCBSO rate cap to inflation.⁷²

Duration of LCBSO Rate Control

States should prescribe a specific length of time before LCBSO rate caps expire, rather than adopting NTIA’s guidance that rate caps should apply for the “useful life of the funded network assets.”⁷³ Both West Virginia and New York impose a 10-year LCBSO rate cap. West Virginia allows its \$50 per month rate cap to rise in proportion to C-CPI-U and New York does

⁶⁶ Texas Broadband Development Office Draft BEAD Initial Proposal Volume II, November 2023, p. 80, <https://s3.amazonaws.com/connected-nation/c2098368-05a0-47fd-831f-29a8ca771866/TexasInitialProposalVolumeIIFINAL.pdf>.

⁶⁷ Georgia BEAD Initial Proposal Vol. II, September 17, 2024, p. 142; North Carolina Initial Proposal Vol. II September 18, 2024, p. 73; Vermont Initial Proposal Vol. II, August 1, 2024, p. 94.

⁶⁸ Iowa BEAD Initial Proposal, Vol. I and II, p. 88; West Virginia Initial Proposal Vol. II, January 23, 2024, p. 131.

⁶⁹ Kansas BEAD Initial Proposal Vol. II submission for NGP, January 26, 2024, p. 79, <https://www.kansascommerce.gov/wp-content/uploads/2021/04/NTIA-Vol-2-Approved.pdf>.

⁷⁰ Alabama Initial Proposal Vol. II Draft, November 2023, pp. 38, 146-7; California Initial Proposal Vol. II Draft, December 2023, pp. 185-191; Connecticut Initial Proposal Vol. II, p. 144; Delaware Initial Proposal Vol. II, pp. 84-85; Maryland Initial Proposal Vol. II, pp. 38-39, 131-133.

⁷¹ Arizona Initial Proposal Vol. II, May 2024, pp. 41, 46, 120-122; Michigan Initial Proposal Vol. II Final, August 27, 2024, pp. 96-99.

⁷² Rhode Island Initial Proposal Vol. II, June 4, 2024, pp. 169-174.

⁷³ Vermont Community Broadband Board BEAD Initial Proposal Vol. II, p. 94.

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not permit any adjustments to its \$65 monthly rate cap.⁷⁴ Iowa prescribes a rate cap of \$40 per month, which may be adjusted according to the Midwest Regional CPI.⁷⁵ Ohio sets a four-year duration for its \$30 rate cap with annual adjustments based on CPI.⁷⁶ Alabama and Maine both impose a five-year rate cap. Maine’s \$30 cap does not change but Alabama’s will change based on the state PPI.⁷⁷

LCBSO Eligibility

American households making up to 200 percent of the FPL qualified for the ACP in 2023. The initial threshold was set at 130 percent threshold in 2021. Wyoming’s proposal states that “eligibility criteria for the low-cost plan will be the same as those for the Affordable Connectivity Program.”⁷⁸ Georgia final proposal also sets its LCBSO eligibility equal to ACP eligibility. If Congress renews ACP with a reduced income threshold of 130 percent of the FPL, then LCBSO eligibility in Georgia and Wyoming will automatically fall to the same threshold. States that set their own specific income thresholds will remain unaffected by any changes to the funding availability or eligibility qualification for ACP. For example, Delaware set its LCBSO eligibility at no more than 130 percent of FPL, while eight states (California, Connecticut, Nebraska, New Mexico, New York, Maine, Maryland, and Oregon) have set their eligibility at 200 percent of the FPL regardless of whether Congress restores ACP.⁷⁹ Connecticut’s draft proposal set LCBSO eligibility at 130 percent of FPL, but the final version of its proposal approved by NTIA raised this threshold to 200 percent of FPL. Georgia’s draft proposal set eligibility at a fixed 200 percent of the FPL, but its final version amended this to allow any future changes to ACP eligibility to concomitantly change Georgia’s LCBSO eligibility.⁸⁰

Alabama awards points to providers that offer a \$30 per month plan to households earning up to 200 percent of FPL, but the state does not require “such service offerings as part of the low-cost broadband service option.”⁸¹ North Carolina’s plan for ACP expiration states, “If Congress ceases to fund the ACP or the program otherwise expires, and the federal government does not create a successor program or issue new criteria for eligible households, the division will propose new criteria for determining eligible households and publish such criteria for public

⁷⁴ West Virginia Initial Proposal Vol. II, January 23, 2024, p. 131; New York Initial Proposal Vol. II, pp. 127-128.

⁷⁵ Iowa Initial Proposal Vol. II, p. 100.

⁷⁶ Ohio Initial Proposal Vol. II, pp. 3, 11, 197-200.

⁷⁷ Maine Connectivity Authority BEAD Initial Proposal Volume 2, p. 45, <https://drive.google.com/file/d/18Zu9jPeUeTs3ahT5rIGckmLCnys3rfwL/view>.

⁷⁸ Wyoming Initial Proposal Vol. II, July 11, 2024, p. 118.

⁷⁹ Delaware Broadband Office, Department of Technology and Information, BEAD Program, Delaware Initial Proposal Volume II, Public Comment Version, October 13, 2023, p. 79, <https://broadband.delaware.gov/contentFolder/pdf/BeadBroadbandProposal-Volume2.pdf?cache=1709577363671>; California BEAD Initial Proposal Volume II, p. 190; Connecticut Department of Energy & Environmental Protection BEAD Initial Proposal, Vol. II, p. 144, <https://portal.ct.gov/-/media/deep/energy/broadband/ct-deep-ipv2formatted-pdf-1-1.pdf>; Georgia Initial Proposal Vol. II, p. 142; New Mexico Initial Proposal Vol. II, July 27, 2024, p. 135; New York Initial Proposal Vol. II, p. 127; Maine Initial Proposal Vol. II, p. 45; Maryland Initial Proposal Vol. II, May 2024, p. 116; Oregon BEAD Initial Proposal Vol. II DRAFT November 2023, p. 155, https://www.oregon.gov/biz/Publications/Broadband/Oregon_BEAD_IPV2_Draft.pdf.

⁸⁰ Georgia Technology Authority, Initial Proposal Vol. II Draft, April 12, 2024, p. 143, <https://drive.google.com/file/d/14bTxEmMJa1RKIsSWhncxZrHtz1IsYshr/view>.

⁸¹ Alabama Initial Proposal Vol. II, p. 147.

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comment for no fewer than 30 days before issuance.”⁸² California’s proposal says “due to the uncertainty surrounding the continued availability of funding for the ACP, the CPUC will require subgrantees to offer the Low-Cost Broadband Service Option at a price of \$30 per month for all customers with household income below 200 percent of the FPL if ACP funding is expended and no successor program guaranteeing an equivalent subsidized price of service for eligible customers is established.”⁸³

State BEAD Allocations

To comply with the spirit of the IJA, NTIA’s funding formula should have allocated money to states in proportion to their average cost of serving an unserved location. This would have ensured that states with more rural populations and greater distances between each unserved location would have received a greater allocation per location than denser, more urban states with shorter distances between each unserved location. However, NTIA decided instead to employ a funding formula that tends to prioritize denser, more urban states and shift resources away from the rural states where connections may be more costly.

The IJA required NTIA “to determine how much each state is to receive based on the number of locations in their state unserved by high-speed Internet service. The allocation formula set in the law includes three components: a baseline of \$100 million for each state (plus the District of Columbia and Puerto Rico) and \$25 million for each territory, a calculation of the number of unserved locations in each state divided by the nationwide total of unserved locations, and the number of ‘high cost’ unserved locations in each state divided by the nationwide total of high-cost unserved locations.”⁸⁴ Though it costs less to serve the average unserved location in a densely populated state than to do so in a more rural state, densely populated states tend to have a greater concentration of unserved locations, simply due to their size. Thus, by awarding funding in proportion to each state’s number of unserved locations rather than according to any estimate of the average cost of serving these unserved locations, the NOFO distorted the IJA’s intention by focusing resources on more densely populated states. Census Bureau data for population density in 2023 show a positive correlation between state (and territory) allocations per unserved location and population density.⁸⁵ This is a counterintuitive finding given that providers in rural states, with greater distance between unserved locations, face a higher cost of serving the average unserved location than providers in denser states.

Delivering broadband over shorter distances in dense areas costs less than doing so over longer distances in less-dense areas. Construction crews across the country also encounter challenges including extreme weather, rugged terrain, and hazardous wildlife which can make it more difficult to get those areas of America connected with new cellular towers or fiber.⁸⁶ The

⁸² North Carolina Initial Proposal Volume II, p. 74.

⁸³ California Initial Proposal Vol. II Draft, December 2023, p. 190.

⁸⁴ NTIA, “BEAD Allocation Methodology,” <https://www.internetforall.gov/program/broadband-equity-access-and-deployment-bead-program/bead-allocation-methodology>.

⁸⁵ Census Bureau, “Quick Facts, Population Density, Population Estimates,” July 1, 2023 (V2023). Each state’s 2023 population divided by its land area, measured in square miles, produced this residents-per-square-mile measure of population density.

⁸⁶ Whitney Amann, “Tough Jobs in Northern Michigan: Tower Climbing,” 9 & 10 News WWTW, <https://www.youtube.com/watch?v=muLZsANal3s>.

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documentary film *Every Last Mile*, released June 20, 2024, illustrates these high costs of delivering broadband to rural and remote locations with real-world examples of construction crews facing harsh conditions as they lay fiber optic cables in Alaska, Arizona, and Minnesota.⁸⁷ The NTIA does not appear to have taken these factors into consideration in the NOFO.

State policies of preferential treatment for fiber to the exclusion of alternative high-speed internet technologies will further exacerbate this urban-rural cost divide. A Wireless 20|20 April 2020 study measured the costs to deliver 25/3 Mbps service to every home in 10 Georgia counties and concluded that Georgia's BEAD allocation will not provide sufficient funding to accomplish this task unless NTIA allows providers to use the funding to deploy alternative technologies that can more efficiently and less expensively deliver high-speed internet to rural and remote communities.⁸⁸ This issue was partly addressed by NTIA on August 26, 2024, when the agency approved low-earth orbit satellite internet providers including SpaceX's Starlink service and Amazon's Project Kuiper, planned for launch in 2025, for funding under BEAD.⁸⁹

Conclusion

The goal of deploying broadband to unserved and underserved Americans was one of the primary motivations of the IJJA. However, on its current trajectory, NTIA's BEAD funding program is falling short of that goal. In a hearing of the House Energy and Commerce Subcommittee on Communications and Technology on September 10, 2024, Chair Bob Latta (R-Ohio) lamented that "NTIA continues to add requirements that are contrary to Congressional intent and make this program less attractive and more expensive to the broadband providers needed to deploy to unserved and underserved communities. ... I fear that these burdensome requirements are delaying approval of state initial proposals and will jeopardize the success of the grant program."⁹⁰ In his September 19, 2024, testimony before the House Committee on Oversight and Accountability, Commissioner Carr said that "absent major reforms, the Biden-Harris Administration's implementation of this \$42 billion BEAD program is wired to fail."⁹¹ If the administration wants to connect unserved and underserved households and businesses across the country, then it should revise the NOFO and give states the flexibility they need to use the technology that would be the most effective and efficient to expand the use of broadband.

⁸⁷ NCTA, "NOW STREAMING 'Every Last Mile: The Untold Story of Connecting Rural America,'" June 27, 2024, <https://www.ncta.com/whats-new/now-streaming-every-last-mile-the-untold-story-of-connecting-rural-america>.

⁸⁸ Fred Campbell, Berge Ayvazian, and Haig Sarkissian, "Will BEAD Funding Close the Digital Divide with Fiber?" Wireless 20/20, April 2023, <https://wireless2020.com/images/white-papers/White-Paper-Will-BEAD-Funding-Close-the-Digital-Divide-with-Fiber-04222023.pdf>.

⁸⁹ Joe Supan, Starlink Can Get a Piece of the BEAD Pie, Says New NTIA Guidance, *CNET*, <https://www.cnet.com/home/internet/starlink-can-get-a-piece-of-the-bead-pie-says-new-ntia-guidance/>.

⁹⁰ House Energy and Commerce Subcommittee on Communications and Technology Chair Bob Latta (R-OH), "Subcommittee Chair Latta Opening Remarks at Hearing to Assess BEAD Program Implementation," September 10, 2024, <https://energycommerce.house.gov/posts/subcommittee-chair-latta-opening-remarks-at-hearing-to-assess-bead-program-implementation>.

⁹¹ Testimony of Brendan Carr, Commissioner, FCC, Before the House Committee on Oversight and Accountability, "A Legacy of Incompetence: Consequences of the Biden-Harris Administration's Policy Failures," September 19, 2024, <https://oversight.house.gov/wp-content/uploads/2024/09/Carr-Testimony.pdf>.