

April 20, 2022

The Honorable Alan Davidson
Assistant Secretary of Commerce for Communications and Information
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Re: Open Access and Wholesale Competition in BEAD Implementation

Dear Assistant Secretary Davidson:

We are writing to express our support for proposals that NTIA adopt measures to increase broadband competition in the Broadband Equity, Access, and Deployment (“BEAD”) program. Specifically, NTIA could condition the availability of funding from the BEAD program on funding recipients’ compliance with reasonable open access or wholesale service obligations, or, alternatively, NTIA could establish incentives for funding applicants to commit to offering such open access or wholesale terms.¹ Either approach would enable NTIA to ensure that families and small businesses benefit from competitive choice, lower prices, and innovation.

As many parties, including the undersigned, explained in comments filed with NTIA regarding the BEAD program implementation, open access or wholesale requirements for funding subgrantees are essential for ensuring that consumers served by funded networks benefit from competition and that the BEAD program meets Congress’ objective of promoting the availability of affordable, high-quality broadband service.² This is because the BEAD program

¹ If NTIA opts for incentives, they should be sufficiently robust to ensure meaningful wholesale or open access commitments. First, wholesale should be a stand-alone factor in assessing funding applications, so that an applicant receives more points or greater likelihood of receiving funding by committing to offer broadband services at wholesale. Second, applicants should be incentivized to offer wholesale broadband service “at rates and terms that are reasonable and nondiscriminatory” as stated in the ReConnect criteria. Finally, applicants should be incentivized to commit to (1) negotiate in good faith, (2) publicize their wholesale rates, and (3) agree to resolve disputes pursuant to arbitration at the State PUC.

² See INCOMPAS Comments at 3-4, 19-24 (explaining that BEAD funding to sub-grantees should be conditioned on recipients’ agreement to offer broadband service to wholesale customers on reasonable and nondiscriminatory terms, preferably subject to a discount equal to the avoided-cost resale discount adopted by States in implementing Sections 251(c)(4) and 252(d)(3) of the Communications Act); Electronic Freedom Foundation Comments at 3 (“EFF strongly recommends the NTIA dedicate a portion of the grant funding exclusively toward the deployment of open access fiber networks in order to stretch the federal dollars as far as possible.”); Public Knowledge and Turn Comments at 10-12 (describing the benefits of open

will fund broadband networks in unserved and underserved areas where there is little chance that facilities-based competition will develop.

Moreover, there is bicameral support from Congress for NTIA to require that the funding be used to promote open access networks to increase competition and consumer choice for broadband internet access service.³ As the Open Technology Institute’s Cost of Connectivity reports have shown, open access/wholesale service regimes are especially appropriate for broadband networks deployed in areas (such as Ammon, Idaho) where it is likely that only a single broadband network can be deployed.⁴ In addition, as Representative Gerald Connolly, Chairman of the House Subcommittee on Government Operations, has explained, wholesale broadband competition for BEAD grantees would yield substantial benefits for the many federal government offices located in unserved and underserved areas.⁵ Nor is there any reason to believe that an open access or wholesale condition would somehow undermine prospective BEAD program participants’ incentive to participate in the program.⁶ Finally, as Public Knowledge and Turn explained, promoting competition through resale, as open access and wholesale service conditions would do, advances the objective established in President Biden’s

access networks and arguing that the BEAD program should prioritize such networks); Open Technology Institute Comments at 5 (describing the benefits of the Ammon, Idaho open access regime and arguing that “[t]his consumer-friendly, hyper-competitive dynamic is precisely what BEAD should strive to replicate”); Broadband Connects America Comments at 5 (stating that, “[o]pen access projects can give rural and Tribal consumers choice in broadband providers when they would otherwise be left with a monopoly” and describing the benefits of open access); and Benton Institute Comments at 6 (“IIJA broadband programs should give preference in awarding funding to broadband network builders that choose to provide open access”).

³ See Letter from the Honorable Richard Blumenthal and the Honorable Edward Markey, to the Honorable Alan Davidson, Assistant Secretary, NTIA (March 8, 2022); see also Letter, “[E&C Democrats Outline Priorities on Implementation of Bipartisan Infrastructure Law’s Broadband Investments](#)”, to the Honorable Alan Davidson, Assistant Secretary, NTIA (March 21, 2022).

⁴ See Becky Chao & Claire Park, *The Cost of Connectivity 2020*, Open Technology Institute, New America, at 52-55, <https://www.newamerica.org/oti/reports/cost-connectivity-2020/>; Becky Chao & Lucas Pietrzak, *Cost of Connectivity in Ammon, Idaho*, Open Technology Institute, New America, <https://www.newamerica.org/oti/reports/cost-connectivity-ammon-idaho/>.

⁵ Letter from the Honorable Gerald E. Connolly, Chairman, House Subcommittee on Government Operations, to the Honorable Alan Davidson, Assistant Secretary, NTIA (March 17, 2022).

⁶ See Letter from Angie Kronenberg and Andrew Mincheff, INCOMPAS, to NTIA (Feb. 4, 2022), [https://www.incompas.org/Files/filings/2022/02-04-22%20INCOMPAS%20Comments-%20NTIA%20IIJA%20Broadband%20Programs%20\(Docket%20NTIA-2021-0002\).pdf](https://www.incompas.org/Files/filings/2022/02-04-22%20INCOMPAS%20Comments-%20NTIA%20IIJA%20Broadband%20Programs%20(Docket%20NTIA-2021-0002).pdf).

Executive Order 14036 of promoting a “whole of government” approach to enhancing competition across the economy.⁷

We therefore urge NTIA to promote cost-saving competition and prevent monopoly abuse by ensuring that BEAD funding recipients comply with reasonable open access or wholesale service terms. Without such terms, the program will fail to meet its promise of delivering affordable, high-quality broadband service options that families and small businesses need. We look forward to working with NTIA in implementing the BEAD program in a manner that maximizes the benefits of the substantial program funding appropriated by Congress.

Respectfully submitted,

/s/ Chip Pickering

Chip Pickering
CEO
INCOMPAS

/s/ Andrew Jay Schwartzman

Andrew Jay Schwartzman
Senior Counselor
Benton Institute for Broadband & Society

/s/ Jonathan Schwantes

Jonathan Schwantes
Senior Policy Counsel
Consumer Reports (CR)

/s/ Ernesto Falcon

Ernesto Falcon
Senior Legislative Counsel
Electronic Frontier Foundation

/s/ Josh Stager

Josh Stager
Deputy Director
New America, Open Technology Institute

⁷ See Public Knowledge and TURN Comments at 11, citing Executive Order 14036, *Promoting Competition in the American Economy*, (July 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competiti-on-in-the-american-economy/>.

/s/ Jenna Leventoff
Jenna Leventoff
Senior Policy Counsel
Public Knowledge