

August 2, 2023

National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue NW  
Washington, DC 20230

**Re: NTIA BEAD Uniform Guidance Request for Comment**

Dear National Telecommunications and Information Administration:

INCOMPAS, the Internet and competitive networks association, submits these comments in response to NTIA's Request for Comment regarding the Office of Management and Budget (OMB) Uniform Guidance for the Broadband Equity, Access, and Deployment (BEAD) Program.<sup>1</sup>

INCOMPAS is the nation's leading advocate for competition and innovation. Our members have been at the forefront of investing in and delivering broadband infrastructure throughout the U.S. in the middle and last mile. They have brought the fastest networks to market, offering consumers and businesses better service and pricing. With their experience building fiber, fixed wireless, and mobile networks in urban, suburban, and rural America, our companies are making substantial investments in broadband infrastructure and innovative technologies to offer residential, small business, enterprise customers, and anchor institutions such as schools, libraries, and hospitals, cutting-edge services at affordable prices.

INCOMPAS' members have proven that competition works and monopolies fail. Markets with multiple providers, wholesale access and new fiber builders have faster speeds and the lowest prices. Access to competition helps families save and small businesses grow, and we urge both NTIA and the OMB to build on competition laws and results as it formulates the rules and policies for implementing the BEAD Program.

Our comments below reflect the input our member companies have provided us with based on their own experiences and success.

**PROGRAM INCOME AND "PROFIT"**

*Question 1: The Uniform Guidance allows Federal awarding agencies to adjust requirements to a class of awards when approved by OMB.<sup>2</sup> Pursuant to this authority, NTIA proposes to seek from OMB an exemption from the Uniform Guidance's requirements for recipients and subrecipients to retain program income without restriction, including retaining program income for profit.<sup>3</sup> NTIA would also seek*

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<sup>1</sup> See BEAD Uniform Guidance RFC:  
<https://www.regulations.gov/document/NTIA-2023-0007-0001>.

<sup>2</sup> See 2 CFR 200.102(c).

<sup>3</sup> 2 CFR 200.307(e); 2 CFR 200.400(g).

*conforming changes to the award terms in light of Section B.05 of the DOC ST&Cs. NTIA seeks comment on this proposal.*

The OMB's Uniform Guidance defines program income as earned income "that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance."<sup>4</sup> In addition, the Uniform Guidance states that recipients and subrecipients "may not earn or keep any profit resulting from Federal financial assistance unless explicitly authorized by the terms and conditions of the award."<sup>5</sup>

INCOMPAS agrees with the NTIA that an exemption should be authorized by the OMB to allow for subgrantees or subrecipients of the grants funding to help extend the benefits of the BEAD Program to more Americans. We should incentivize more parties to participate in the BEAD Program and allow for greater competition in the grants process. INCOMPAS also supports retaining these profits to help offset costs associated with building out networks in reaching both unserved and underserved communities, and an exemption will ensure that taxpayers benefit from a more efficient program when there is increased competition in each state's bidding process.

INCOMPAS is very supportive of NTIA's position that greater competition for a given set of locations will reduce the level of grant funding required on a per location basis. INCOMPAS' members have been successful entering the market in many different types of communities and situations. They have built rural areas where no providers were offering service with no public sector support or funding, and they have partnered with towns and cities to deliver fiber-based connectivity for the first time that has transformed communities. Many of our association's members are small, regional service providers who are already on the ground and committed to serving their local communities' needs. INCOMPAS' members live in the communities they serve, and many of them entered the broadband business specifically to address the needs of their communities when no other entity stepped up.

By incentivizing providers who are interested in participating in the BEAD Program with the certainty that they will be able to retain potential program income or "profits" and which allows for many types of organizations to compete for program funding, our members have found that in other funding programs that offer competitive providers an opportunity to participate, the funding program is more efficient in the long-run and leads to better networks, improved service, and lower prices.

Another factor impacting providers' participation in the BEAD Program and ultimately our members' bottom lines will be the added costs associated with network deployment including permitting and franchise fees for accessing the public rights-of-way. Recognizing the excessive and costly delays associated with each of these including the review process, application/processing fees, waiting on approvals, and trying to gain access to the public rights-of-way are frequent challenges our members often face.

INCOMPAS advocacy at the federal, state, and local level encourages increased broadband providers' access to public rights-of-way to help spur faster and more efficient deployments to unserved areas and that will ultimately benefit consumers and businesses waiting for access to next-generation networks. INCOMPAS' members have seen significant delays and increase in costs prior to the public sector financing that's now available, and they are concerned that further delays are likely as those who manage/own the rights-of-way are ill-prepared for the increased demand for requests to access the rights-of-way with this upcoming BEAD funding. The OMB must recognize these added costs associated with

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<sup>4</sup> See 2 CFR 200.1.

<sup>5</sup> 2 CFR 200.400(g).

deployment impact business decisions and what our providers regularly encounter with accessing the public rights-of-way including working with those entities that own or manage poles, highways, and railroads.

INCOMPAS remains committed to building coalition support with our members, other industry trade associations, and in Congress for developing new policy as it relates to removing barriers to deployment such as railroad crossings, and we are currently working to ensure that the streamlining measures the House Energy & Commerce Committee recently passed reflect our policy priorities for fiber, fixed wireless, and small cell deployment. In addition, our association is advocating at the Federal Communications Commission (FCC) for it to take immediate action on its pending pole attachment proceeding that, if resolved, will help provide more certainty and speed deployment in a more cost-effective manner for the poles the FCC regulates.<sup>6</sup>

INCOMPAS has also continued its outreach to state and local governments to address the costs and delays associated with accessing the public rights-of-way and build support with other businesses and entities who have been advocates for streamlining, deregulation, and removing barriers to deployment. It is not hyperbolic to suggest BEAD projects may be the most important infrastructure activity this century for many communities. To help guarantee that future projects are done right and deployed with all deliberate speed, INCOMPAS through its BroadLAND campaign, introduced a “Broadband Ready City Checklist” to help guide cities, counties and all local municipalities in promoting smart, fast and cost-effective deployment as part of the BEAD Program and demonstrate a willingness to enhance competition and choice.<sup>7</sup>

We need to ensure that the \$42.5 billion allocated for the BEAD Program will not only incentivize more providers in participating in the grants process and stretch federal dollars even further but also to help create opportunities by offsetting those costs associated with deploying broadband network facilities to reach all unserved and underserved locations. Without action, jurisdictions will continue to charge excessive fees for access, delay deployment, and stifle the goals of the BEAD Program and other NTIA programs including the Enabling Middle Mile Broadband Infrastructure Program – timely deployment cannot happen without changes to the status quo.

## **CONCLUSION**

We offer these comments in support of NTIA’s request that the OMB consider authorizing an exemption for recipients and subrecipients to retain program income without any restriction. INCOMPAS wants to see NTIA BEAD Program ultimately succeed and lead to greater investment in broadband infrastructure in areas that are unserved or underserved; that will enable and promote competition that leads to faster speeds, better service, and more affordable pricing; and that will meet the needs of the communities in the long-term.

INCOMPAS looks forward to working together with NTIA and the OMB on the BEAD Program, and if there is any other opportunity to help contribute and provide your staff with feedback, please let us know. Thank you for your consideration of our comments.

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<sup>6</sup> See Comments of INCOMPAS, WC Docket No. 17-84, (filed June 27, 2022).

<sup>7</sup> See INCOMPAS – BroadLAND, “Broadband Ready City Checklist”:  
<https://broadlandusa.com/checklist/>.

Sincerely,

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