

December 19, 2023

FloridaCommerce
Office of Broadband
The Caldwell Building
107 East Madison Street, MSC-400
Tallahassee, Florida 32399

Re: Comments of INCOMPAS – Initial Proposal, Volume II

Dear FloridaCommerce:

INCOMPAS, the internet and competitive networks association, hereby files its comments in response to the Office of Broadband’s Initial Proposal, Volume II regarding the implementation of the Broadband Equity, Access, and Deployment Program (BEAD).

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, they know both the challenges and opportunities in delivering robust broadband network capability.

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 the Office of Broadband to build on competition laws and results as it formulates the rules and policies for implementing the BEAD Program.

Our comments below reflect our member companies' input based on their own experiences and success.

MULTIPLE TECHNOLOGIES FOR BROADBAND SERVICE

Preparing for the future by clearing the way for both high-speed fixed and mobile networks, including 5G networks, is critical, and INCOMPAS is a proponent that fiber serves as the foundation for these networks. Every technology in the broadband ecosystem needs access to fiber—including fixed wireless, cable, cellular (mobile & 5G), and satellite. Building more fiber helps all, and fiber densification throughout the U.S. is critical for winning the race to 5G.

INCOMPAS also acknowledges that fiber to the premises may not be technically and geographically possible in certain unserved and underserved locations in Florida. Therefore, INCOMPAS posits that the U.S. Treasury's final guidance on the American Rescue Plan struck the right balance by encouraging recipients to prioritize investments in fiber infrastructure wherever feasible and also requiring recipients "to design projects to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds" in the last mile.¹ In those situations where it is not practicable to do so because of the extremely high cost of the project or geography or topography of the area to be served by the project, projects must reliably meet or exceed the 100/20 Mbps standard and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds.

In defining the "Extremely High Cost Per Location Threshold" for project funding areas, the Office of Broadband should follow Treasury's example and continue to set speeds at a level that spurs competition by retaining the standard of at least 100/20 Mbps while also encouraging scalability up to 100/100 Mbps to help deliver reliable home broadband in a time-efficient way that does not leave thousands of Floridians on the wrong side of the digital divide. This funding represents an historic

¹ Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule, at 39, *available at* <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf>.

opportunity to provide every American with reliable, affordable broadband, so states should set their scoring of applications judiciously to guarantee that BEAD funds go towards the appropriate mix of fiber and other hybrid, cost-effective alternative technologies—such as next generation Fixed Wireless Access solutions—to ensure that all unserved and underserved families and communities are granted access to high quality broadband. To award scalability and promote other future-proof technologies, INCOMPAS encourages that the Office of Broadband also consider possible speed tiers of service for wireless to ensure the bids selected are most able to provide a competitive or fiber-equivalent service. Specifically, in those circumstances where the subgrantee’s alternative technology such as Fixed Wireless Access has proven it can exceed 100/100 Mbps for serving high-cost areas, the state could award applications with added points for going beyond the speed of service requirements and reaching certain speed levels (ex. 200/50 Mbps, 400/100 Mbps, etc.), as well as for attaining a lower cost per location within the applied-for project funding area(s).

SELECTION AMONG PRIORITY BROADBAND PROJECTS

INCOMPAS believes it is critical that this infrastructure investment be made in robust and reliable networks that can offer greater connectivity today and higher speeds in the future, and projects must be able to scale to meet consumer and business demand over time. Indeed, it is important to deploy for today and the future so that the networks can serve both high-speed fixed and mobile networks.

The Office of Broadband should also consider those grantees who can continue to scale and have proven experience meeting their community’s needs. This should include successful experience offering broadband internet access service or partnering with entities who do so, serving other businesses, community anchor institutions, and residences, and a demonstrated willingness to hire within the community and support the local economy with the BEAD Program. Such entities must also be able to deliver on the project both financially and technically in a timely fashion.

Regarding additional prioritization factors to evaluate broadband project awards, the BEAD Program will not achieve the objective of ensuring the availability of affordable, high-quality broadband service in unserved and underserved areas unless the Office of Broadband exercises its authority to adopt rules promoting competition. The networks funded by the BEAD Program will likely be the only broadband facilities in the unserved and underserved areas that the program was designed to target, and the high entry barriers in those areas make it unlikely that another competing service provider will deploy network facilities in the same area. Customers served by networks funded by the BEAD Program will likely have no choice of providers. This absence of competition poses a serious threat to ensuring affordable and high-quality services. It is therefore critically important that Florida adopt Open Access as a Secondary Criterion for selecting among Priority Broadband Projects.

COMPETITIVE BID PROCESS

To further enable and promote increased competition in both unserved and underserved areas, Florida must ensure a competitive, open bid process as required by the IIJA. We urge the Office of Broadband to clearly set forth that the BEAD Program be awarded through a competitive process and must permit competitive broadband and infrastructure providers, as well as others, to participate and without tilting the playing field in a way that discourages participation by private sector entities. The framework or details for the competitive process should be publicly available, with clear rules from the beginning that are published and in compliance with NTIA's requirements.

INCOMPAS' members have successfully entered the market in many different types of communities and situations. They have built networks in rural areas where no providers were offering service and did so with no public sector support or funding. They have partnered with towns and cities to deliver fiber-based connectivity for the first time which has transformed communities. INCOMPAS believes that there is no need to preference certain types of entities in the grant process. Rather, transparent deployment and service requirements stated in the grant process will allow all entities that

could deliver such service to compete, and taxpayers benefit from a more efficient program when there is competition for it.

INCOMPAS supports the Office of Broadband thoroughly vetting and reviewing subrecipients to ensure that they have the technical and financial experience to deliver on the grant projects. INCOMPAS also believes that potential recipients should not be discriminated against for being a private sector company. Prioritizing one class of recipient over others is not in the public interest and prevents all applicants from having meaningful and robust opportunities to compete for funding. Recipients should be judged on their ability to meet the grant requirements and their proposals. Prioritizing certain types of entities (e.g., non-profits and co-ops) should be strictly forbidden.

REMOVING BARRIERS TO DEPLOYMENT

Speeding up broadband deployment is critical for families and small businesses who need internet access. INCOMPAS' members consistently face delays in securing permits and gaining access to the public rights-of-way to deploy facilities. Speed to market is critical to meet needs as quickly as possible for the BEAD Program. Thus, INCOMPAS believes it is necessary to have the Office of Broadband review or enact guidelines that enable faster processing to allow the deployment of broadband infrastructure more quickly; these guidelines should cover both small cells and other wireless equipment and fiber that is used by both fixed and mobile providers to connect their networks.

As part of allocating the BEAD Program funds, the Office of Broadband should encourage local authorities to review their permitting processes and determine whether they have the resources they need to process and issue permits quickly. Duplicative, slow, and costly local processes in certain jurisdictions create a significant impediment to deployment efforts, and these processes can constitute a barrier to entry to competitive providers. Accordingly, the Office of Broadband should encourage local jurisdictions to expedite permitting, allow applicants to submit applications in batches, and keep permitting and all other

fees low. The Office of Broadband should also require that these fees be publicly disclosed, competitively and technology neutral, non-discriminatory, and based on actual and direct costs reasonably incurred.

And where cities and towns need financial assistance to purchase and implement technology upgrades for speeding permitting processes, such as offering batch permit processing, or they need to hire temporary staff to handle the number of requests, the Office of Broadband should evaluate these needs and allow for such reasonable costs to be covered by the BEAD Program funding.

It is also critical for the Office of Broadband to encourage local jurisdictions to evaluate their processes and fees for reasonableness so that project dollars are used efficiently and effectively, which will enable more fiber miles to be built. Forcing competitive providers to construct their network entirely underground in areas where existing overhead facilities are available, but where municipal right-of-way fees or requirements prohibit overhead deployment—not only creates unnecessary delay, but it also guarantees fewer fiber miles will be built. INCOMPAS members also mention the delays and difficulties with the underground utility locates process and the burden this creates for deploying networks. Recognizing the costly delays associated with locates including inaccurate markings, lack of coordination and late work completion, INCOMPAS suggests that the Office of Broadband work with their state 811 One Call Center local authorities to evaluate their locates process to address this barrier to deployment and to help optimize projects for speed and efficiency as part of this new funding.

Another challenge our members often face is accessing poles and public rights-of-way. Increasing broadband providers' access to public rights-of-way will help spur faster and more efficient deployments to unserved areas—benefiting consumers and businesses waiting for access to next-generation networks. The Office of Broadband must work with those entities that own and/or manage the rights-of-way and the facilities located within the rights-of-way to extend fair and transparent protections to providers who need access to build out their networks. This includes those entities that own or manage utility poles, highways, and railroads. Utility poles in the right-of-way, which are typically owned by large electric utilities or incumbent telephone providers or municipal or cooperative utilities, are crucial for deploying fiber and

small cells quickly and efficiently. These pole owners control “make-ready” costs—the charges that prepare the pole for a new attachment. When these costs, including costs to replace poles and charges to correct pre-existing conditions on the pole, are unreasonably high, providers may scale back their deployment or forego serving an area entirely. Some of these pole owners have a competitive interest in denying access to their facilities because they are themselves deploying broadband. For instance, INCOMPAS’ members have repeatedly faced prohibitions for accessing the pole infrastructure of utility cooperatives who use their monopoly position to deny access to competitors which has disadvantaged rural areas from receiving broadband from a competitive provider. The Office of Broadband should make clear that any grants awarded for projects are conditioned upon grantees permitting competitors reasonable, fair, and non-discriminatory access to their owned and managed utility poles and conduit. Entities receiving federal grants should not be permitted to engage in anti-competitive activity by excluding competitive providers from their service territories by actually or constructively denying them access to their poles and conduit—including by refusal to negotiate pole access agreements or charging excessively high pole attachment fees—which competitors must access in order to provide a competitive alternative.

Finally, the BEAD Program and other broadband investment programs present a historic opportunity for communities large and small, urban and rural, to right the wrongs of the past and build a better future for all Americans. It is not hyperbolic to suggest BEAD projects may be the most important infrastructure activity this century for communities. To help ensure projects are done right and deployed with all deliberate speed, INCOMPAS proposes the Office of Broadband implement a [“Broadband Ready City” Checklist](#) to help guide cities, counties, and all local municipalities.² This checklist for broadband success will promote smart, fast, and cost-effective deployment as part of the BEAD Program and demonstrate a willingness to enhance competition and choice.

² See [INCOMPAS, BroadLAND USA “Broadband Ready City” Checklist](#).

Suggestions for developing broadband deployment ready guidelines for cities, towns, counties, and local entities include:

- **Broadband Money for Broadband Projects:** Limit application fees to the actual, objectively reasonable costs incurred by the jurisdiction to process an application. Limit rights-of-way access fees to actual objectively reasonable cost.
- **Streamlined for Speed:** Implement expedited or streamlined review of zoning and permitting applications that facilitate wireless and fiber deployment, including those that make efficient use of existing infrastructure pursuant to federal law.
- **Transparent Review:** Establish procedures to allow all forms, applications and documentation related to a project to be reviewed and either approved or denied within 30 days after the application is submitted. Adopt efficient intake procedures, such as batch permitting and electronic submission.
- **Pro Innovation:** New innovative deployment processes and construction techniques, such as micro-trenching, speed deployment and cut construction time. Investing in faster, future-proof networks that are built to last and enable an “all of the above” deployment strategy.
- **Smart Restoration:** Working together to ensure broadband money is dedicated to internet access, smart street restoration obligations that are in scope with deployment construction projects set at the time of the application, will help communities maximize the benefits of their broadband dollars.

INCOMPAS urges the Office of Broadband to begin the process of including these deployment issues in its discussions on its rules with the implementation process. INCOMPAS’ members are seeing significant delays and increases in costs prior to the public sector financing that’s now available, and they are concerned that with the additional financial boost afforded by Congress, 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.

Agencies at the Federal, State, and Local levels all need to prepare now and begin discussions of how to avoid costly delays. INCOMPAS recommends identifying where there are current gaps, including training employees, reviewing processes that can be expedited by investing in technological upgrades, and coordinating between agencies/managers of rights-of-way as soon as possible. Better, faster internet will bring more educational opportunities, healthcare options, and attract greater investment to fuel local economic growth. More competition brings consumers and businesses more choice and lower prices.

CONCLUSION

We offer these comments in support of ensuring that the NTIA BEAD Program will lead to 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 the Office of Broadband and NTIA 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.

Sincerely,

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