

## **QFR Responses from Shirley Bloomfield – E&C Subcommittee on Communications and Technology hearing titled “From Introduction to Implementation: a BEAD Program Progress Report”**

### **The Honorable Earl L. “Buddy” Carter**

1. What first-hand experience do your members have when it comes to permitting issues and railroads?

*a. We have heard from many of our members regarding delays in broadband deployment caused by permitting and railroad crossing issues. While no one should overlook that the economic barriers to deployment and the ongoing provision of broadband services are far greater than just permitting and railroad barriers alone, streamlining environmental and historical preservation reviews, providing more reasonable capability for the upgrading and replacement of facilities in previously disturbed rights of way, establishing more meaningful “shot clocks” for review of applications, and addressing the unreasonable costs and delays associated with railroads acting as unconstrained “gatekeepers” can all help in making the business case for investment as well and in delivering services more rapidly to consumers and communities in need.*

*Below are a few examples of NTCA members’ first-hand experience when it comes to issues they face with permitting generally and railroads specifically:*

- One NTCA member sought to place fiber under a road under the purview of the Bureau of Land Management. The project was part of a fiber ring meant to improve redundancy and reliability of the operator’s network, and the portion touching BLM land was a small percentage of the overall project. Among other costs dedicated to this small component, the provider incurred \$30,000 for an engineering and environmental study. Moreover, the initial permit application was not accepted as complete for nearly a year, during which time the provider received sequential requests for additional information.*
- Another NTCA member utilized ReConnect funding to connect consumers via fiber in a rural area. Although the entire project was in a previously disturbed right-of-way and subject to a NEPA “Categorical Exclusion” (the most streamlined level of NEPA review), the provider was not granted final approval and release of funds to begin construction for 9 months. This resulted in an even greater delay, however, as the project is in an area of the country where frozen ground prevents construction for approximately 5 months of the year – meaning construction could not commence for another several months thereafter.*
- Still another NTCA member reported that state permitting fees have been increasing, with the fees amounting to over \$125 per subscriber and with no clear tie to the costs incurred by the state in processing the application or arising out of the use of the right-of-way.*
- A member reported attempting to deliver fiber connections to several schools on Tribal lands, but apparent staffing shortages in Tribal offices to complete NHPA consultation obligations have delayed this work.*

- *One NTCA member company was quoted an application fee of \$750 and a yearly rental fee of several thousand dollars per year (with a built-in annual increase) for boring beneath a railroad track. The fiber installed under the railroad will not touch railroad property on either side of the track.*
- *One NTCA member received a request from a business for a fiber broadband connection lacking one currently. Providing the connection to the potential customer involved the underground installation of fiber in a public ROW adjacent to a state highway that at one point intersected with the railroad crossing at issue. The railroad quoted fees of nearly \$20,000, which was composed of more than \$10,000 for the permit once it was issued, a separate upfront application fee, an “engineer mobilization” fee, and a “flagging/observer” fee; the railroad also required the broadband provider to purchase insurance at a cost of nearly \$2,000. These fees as quoted by the railroad did not include any of the construction fees that the broadband provider was also required to incur. When the business customer balked at the special construction cost associated with such fees and a local economic development coordinator intervened, the railroad reduced its quote by several thousand dollars. The boring of the fiber was completed in one day, traversing a grand total of 15 feet under the railroad crossing and emerging on the other side also in the public ROW.*
- *One member paid nearly \$50,000 in fees (including permit and “observation” fees) for building under two railroad lines. The process of negotiating the fees and obtaining the final permits for the crossings took eight months.*

2. How are you preparing for the influx of BEAD projects when it comes to workforce?

a. *This Committee is rightly focused on workforce issues, which are a concern for small rural providers especially when it comes to preparing for the influx of BEAD projects in the not-so-distant future. Finding ways to develop the workforce that is needed now and into the future to build broadband networks and telecom infrastructure is imperative.*

*For the past several years, NTCA has been working with our telecom colleagues (like WIA, WISPA, CCA, Fiber Broadband Association, INCOMPAS, NATE, TIA, USTELCOM, and PCCA) and the Biden Administration as part of the Infrastructure Talent Pipeline Challenge. As part of the Challenge, we partnered with the Communications Workers of America to make registered apprenticeships more accessible to NTCA member companies – including by surveying companies on their training needs, co-hosting events on registered apprenticeships for NTCA members, and offering OSHA-10 training to employees of NTCA members.*

*NTCA also partnered with Northwood Technical College to provide apprenticeship-like training and coursework to help ensure a strong broadband workforce through new expanded and advanced training opportunities. Employers will be able to work with NTCA, which will serve as a guide for companies offering supervised work experience and mentoring to students who concurrently enroll in or who have completed Northwood Technical coursework.*

*We have also worked with your colleagues in the House and the Senate in supporting legislation focused on increasing the number of skilled workers and expanding workforce development opportunities. For example, Congressman Langworthy and Congresswoman Tokuda’s CAREERS Act*

*that would expand access to workforce development opportunities into telecommunications industry through USDA's existing RISE Grant Program.*

### **The Honorable John Joyce**

1. Under BEAD guidelines, states may solicit competitive BEAD proposals for location sizes as small as per-location basis or another predefined project area unit, such as census blocks, census block groups, or counties. NTCA recently expressed concern to NTIA that larger project areas will deter participation by small ISPs. How can we use the experience of prior broadband programs to inform the development of BEAD project areas?

*a. Experience with prior grant programs confirms that the structuring of project areas directly affects small company participation and ultimately buildout of rural areas. For example, Iowa's September 2021 Notice of Funding Availability (NOFA) 6 was highly successful. Thirty-nine awards, totaling \$97.5 million went to 28 small rural providers to offer 100 Mbps symmetrical broadband service. By contrast, Iowa's January 2023 NOFA 7 was marred by systemic problems that failed to adequately address competing applications in the same area, and the available service areas were disjointed in a "checkerboard" pattern. Eighty percent of applicants received reduced awards, and several then rejected the awards because the adjusted service territories could not match rational business or network design plans. Learning from this mistake, Iowa pivoted for NOFA 8 in September 2023 to create Broadband Intervention Zones deemed to be most in need of broadband access. Small rural providers received 35 of 39 awards for more than \$127 million in that round. Similarly, in Georgia's first round of grants leveraging American Rescue Plan Act funding, the State permitted providers to select from all unserved locations, and applications were scored based on the applications and any overlaps in locations. Providers determined which areas should be grouped together based on location, their resources, and other legitimate business considerations. However, in its next round, Georgia required providers to serve all unserved eligible locations across a county, regardless of logical tether or distance. This approach drove up the cost per location and only a few providers applied. Only one small provider was successful in winning to serve a county. The BEAD program should draw upon this experience.*

### **The Honorable Russ Fulcher**

1. You note the importance of getting as many applicants into the BEAD program as possible. You also mentioned how important smaller and more flexible project service areas will be to encourage more participation in NTIA's BEAD Program. Aren't the service sizes determined by the states? If so, what is NTIA's role in determining the minimum project service area? What is an example you or members have encountered where the proposed service area was too large for them to apply for funding?

*a. Although a State is permitted in BEAD to "solicit proposals . . . at the geographic level of its choosing," it would appear that at least some states are prioritizing administrative efficiency in review of applications at the expense of enabling the creation of service areas that would result in more widespread fiber deployment and promote smaller provider participation. If potential project service areas are drawn too widely – such as across entire rural counties that may span hundreds of square miles or more – this could preclude smaller providers from "edging out" and leveraging existing network assets, instead contemplating sweeping new deployments that demand resources far beyond the wherewithal of many smaller operators. Scoping project service areas in such a manner all but guarantees that the vast majority of projects will be sought – and won – by the largest*

*providers, many of whom lack a track record of meaningful past commitment to rural deployment and service delivery. Moreover, the larger the project area, the less likely consumers are to receive lasting investment in the form of fiber deployment, as the averaging of costs over a vast geography affects the extremely high-cost threshold for locations that otherwise could likely have received proposals for deployment of fiber.*

*By contrast, opportunities to bid on and serve smaller and more cohesive geographic areas maximizes the likelihood of efficient participation by both large and small providers and promotes efficient buildout. Fiber can be economically deployed where feasible, while facilitating the delivery of broadband using alternate technologies specifically for those outlying locations that are more difficult to serve. And, providers who are interested in serving large swaths of territory can always bid upon and aggregate locations into larger project areas. This process would not only encourage small company participation, but also better localize choices for network deployment in a more efficient manner.*

*NTCA therefore urges NTIA, as it reviews State initial proposals, to carefully consider: (a) how defined project service areas can discourage or encourage small rural broadband providers from participating in the BEAD program; and (b) how to maximize the potential for deployment of lasting fiber connectivity as widely as possible even as outlying areas may need to be connected using alternate technologies.*

2. We have seen some of the shortcomings, and you highlighted in your testimony, including the lack of adequate vetting of bidders until after the end of the reverse auction. So much so that the FCC provided amnesty to RDOF some winners so they could participate in the BEAD program instead. What are some lessons learned that BEAD should implement?

a. *Based upon prior experience with various rounds of State grant programs, NTCA members have expressed concern about the impact of excessive weighting on the provision of matching funds in BEAD scoring. NTIA expects States to award grants to applicants that seek the lowest “BEAD program outlay.” Taken literally, this appears to favor applicants who can supply more matching funds. It is true that program rules allow matching to be satisfied in other ways such as through state or local grants or in-kind contributions, but this creates an additional level of work to locate and negotiate over such elements that larger organizations with much larger war chests need not address. Moreover, while matching funds are not required in “high cost” areas, States are incented to minimize those areas considered “high cost” and to draw their eligible areas accordingly.*

*In lieu of a system that empowers larger operators “to buy the business” – which effectively could result in BEAD becoming a “reverse auction” mechanism not unlike the much-derided RDOF – NTIA should look to programs like the USDA’s ReConnect Loan and Grant Program for guidance on finalizing selection rubrics. The ReConnect program generally emphasizes quality over simple prioritization of the lowest bidder, and it has resulted in the distribution of funds to mostly local community-based providers who are delivering broadband.*

*Indeed, experiences in the Connect America Fund II (CAF Phase II) and the RDOF auctions should sound a cautionary note about the risks of rewarding the lowest bidders as the highest priority. Even as these initiatives clearly helped in closing the digital divide (or will do so in coming years) in some places, there were far too many winners who were ill-suited to meet their obligations upon more qualitative review or who have shown little progress on their commitments as time has passed (or who are actively seeking “amnesty” from defaulting after realizing that “buying the business” was*

*not viable in many deeply rural areas after all). NTIA, in working with the States, should draw upon the lessons learned from these auctions, and place greater scoring emphasis on a mix of matching funds and other more qualitative factors that recognize the willingness and proven capability of the winning applicant to perform as promised.*