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VIA ELECTRONIC FILING

Aug. 3, 2023

Sean Conway, Acting Deputy Chief Counsel
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Ave., NW
Room 4878
Washington, DC 20230

RE: Tailoring the Application of the Uniform Guidance to the BEAD Program (Docket No.: 230622-0154)

Dear Mr. Conway:

On behalf of the Pennsylvania Chamber of Business and Industry, the largest, broad-based business advocacy organization in the Commonwealth, representing nearly 10,000 members of all sectors and sizes, please find below our comments with respect to the National Telecommunications and Information Administration (“NTIA”)’s request for comments regarding the Uniform Guidance to the BEAD Program, as published July 5, 2023 in the Federal Register.

Our organization was a supporter of the bipartisan infrastructure legislation and we believe its effective implementation will expand opportunity in Pennsylvania and the country by modernizing our infrastructure and dramatically improving connectivity and accessibility for our businesses, communities and families. As such, we are honored to work with your agency and other stakeholders and leaders to close the digital divide in Pennsylvania and to achieve the Administration’s goal of bringing high-speed Internet to everyone in America. We are off to a strong start, having allocated more than \$279 million in American Rescue Plan Act (“ARPA”) funds from the U.S. Department of Treasury toward expanding high-speed Internet access to unserved and underserved areas of Pennsylvania. These funds, through effective implementation, will deliver reliable, affordable broadband service to the Pennsylvanians who need it most.

With this in mind and Pennsylvania Broadband Development Authority (“PBDA”) BEAD preparations approaching full gear, we write to urge you to adopt in full for BEAD the same guidance that Treasury recently issued regarding the application of the Federal Uniform

Guidance (or “Part 200”) to ARPA broadband infrastructure grants.¹ Doing so will provide States with the assurance that the Part 200 broadband grant administration processes that they have honed for ARPA broadband grants can apply with equal measure to forthcoming BEAD grants. Such streamlined Part 200 compliance would not only save PBDA resources – by minimizing confusion, conflicting requirements, and duplicative efforts – but also enable Pennsylvania to get one step closer to deploying BEAD funds and closing the digital divide. Besides the many procedural benefits of aligning BEAD application of the Part 200 requirements with that of Treasury’s Part 200 requirements for the ARPA broadband infrastructure grant programs, adopting the balanced and reasonable approach Treasury has taken will have significant substantive benefits for BEAD program success. While navigating ARPA broadband program implementation over the past two years, Pennsylvania businesses have experienced firsthand that rigid application of Part 200 can dissuade participation by qualified and experienced providers and new entrants alike – presenting a fundamental risk to our shared goal of providing Internet for all. Whereas these rules may make sense for traditional federal grant programs (e.g., for research and development), our members’ experience is that Part 200 restrictions on cost accounting, procurement, property disposition, program income, and program audits are impractical, unnecessary, and unduly burdensome for deployment of sustainable broadband networks. The Treasury Part 200 Guidance takes this into account by providing measured and thoughtful interpretations and guidance to States and ISPs on how these rules apply to broadband infrastructure grants for a reasonable set period of time. Likewise, the Treasury Part 200 Guidance gives States the flexibility to classify funded ISPs as “contractors” or “subrecipients” and treat grants as “fixed amount subawards.”

Moreover, the Treasury Part 200 Guidance does this all while preserving core protections and oversight to prevent waste, fraud, and abuse. Indeed, States have every incentive to ensure that BEAD Program funds are used as efficiently as possible, and the IJA itself, along with NTIA’s BEAD NOFO, establish robust reporting and oversight requirements to protect the public interest.² Application of Part 200 measures in ways that depart from the Treasury Guidance would only cause additional burdens, costs, and confusion for States and grant recipients, and would reduce the impact of BEAD funds for extending broadband networks to those who need it most.

In sum, our members report that the Treasury Part 200 Guidance – which was put out for public comment and was approved by OMB – provides reasonable protections and flexibility for States to administer broadband infrastructure grant programs in a way that fits their needs and yet also maximizes the likelihood of success for the ARPA grant programs. This is precisely the framework Congress envisioned in establishing the BEAD Program. As with the ARPA State and Local Fiscal Recovery Funds and Capital Projects Fund, Congress in the IJA designed the BEAD Program to enable States to structure and lead implementation of broadband grant programs that reflect each State’s unique circumstances. The Treasury Part 200 Guidance is a

¹ See U.S. Dep’t of Treasury, *SLFRF and CPF Supplementary Broadband Guidance* (May 17, 2023), <https://home.treasury.gov/system/files/136/SLFRF-and-CPF-Supplementary-Broadband-Guidance.pdf> (“Treasury Part 200 Guidance”).

² See, e.g., Nat’l Telecomm.’s and Info. Admin., U.S. Dept. of Commerce, *Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program* at 89-93 (2022) (discussing “Reporting,” “Recipient Integrity and Performance Matters,” and “Audit Requirements”).

balanced and appropriate extension of this statutory imperative, and this reason alone should compel NTIA to apply the same guidance for BEAD.

As both Secretary Raimondo and Assistant Secretary Davidson have frequently emphasized, closing the digital divide requires a “whole-of-government approach” and close coordination among federal agencies. Indeed, when creating the BEAD program, Congress expressly recognized the importance of such coordination in the IJA, and the statute directs all “[f]ederal agencies responsible for supporting broadband deployment” to, “to the extent possible, align the goals, application and reporting processes, and project requirements with respect to broadband deployment supported by those agencies.”³ We strongly urge you to heed those words and congressional direction and align the application of Part 200 rules in the BEAD Program so they are fully consistent with Treasury’s carefully considered, and OMB-approved, guidance for the ARPA broadband grant programs.

On behalf of the PA Chamber, thank you for your consideration of these comments. We look forward to continuing to work with your agency, PBDA, and key stakeholders across Pennsylvania to effectively deploy these important funds.
Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Sunday". The signature is fluid and cursive, with a large initial "K" and "S".

Kevin Sunday
Director, Government Affairs

³ IJA § 60102(m), codified at 47 U.S.C. § 1702(m).