Montana Broadband Communications Advisory Commission Meeting

October 23, 2024

PROGRAMMATIC UPDATE

WHERE WE ARE TODAY

- MBO initially hoped to have completed application review by early winter 2024.

- The NTIA review and approval process has taken significantly longer than anticipated:
  - **DELAY -** IPV2 was submitted in December 2023 and not approved until July 2024,
  - **DELAY -** Challenge Results was submitted May 2024 and not approved until October 2024.

- **DELAY -** Due to process issues, the application window has extended beyond our initial July close date

- **DELAY -** NTIA has yet to issue finalized guidance on Alternative Technologies or Permitting.

- **DELAY -** NTIA has mandated a minimum 45-day period of review for the Final Proposal after preliminary selection of all applications.

- **DELAY -** NTIA has not issued any guidance on how long it will take to approve the Final Proposals.

- MBO is committed to completing the subgrantee selection process as quickly and efficiently as possible. Given our current understanding, 2025 will be a planning year.

DEPARTMENT OF ADMINISTRATION

DISCUSSION TOPICS

OCTOBER 2024 COMMISSION MEETING:

- Challenge Process Updates

- BEAD Program Timeline Updates

- BEAD Main Round Application Review

- Alternative Technology Application Process

- National Environmental Policy Act (NEPA) Update

- Digital Opportunity Program Update

- Public Comment
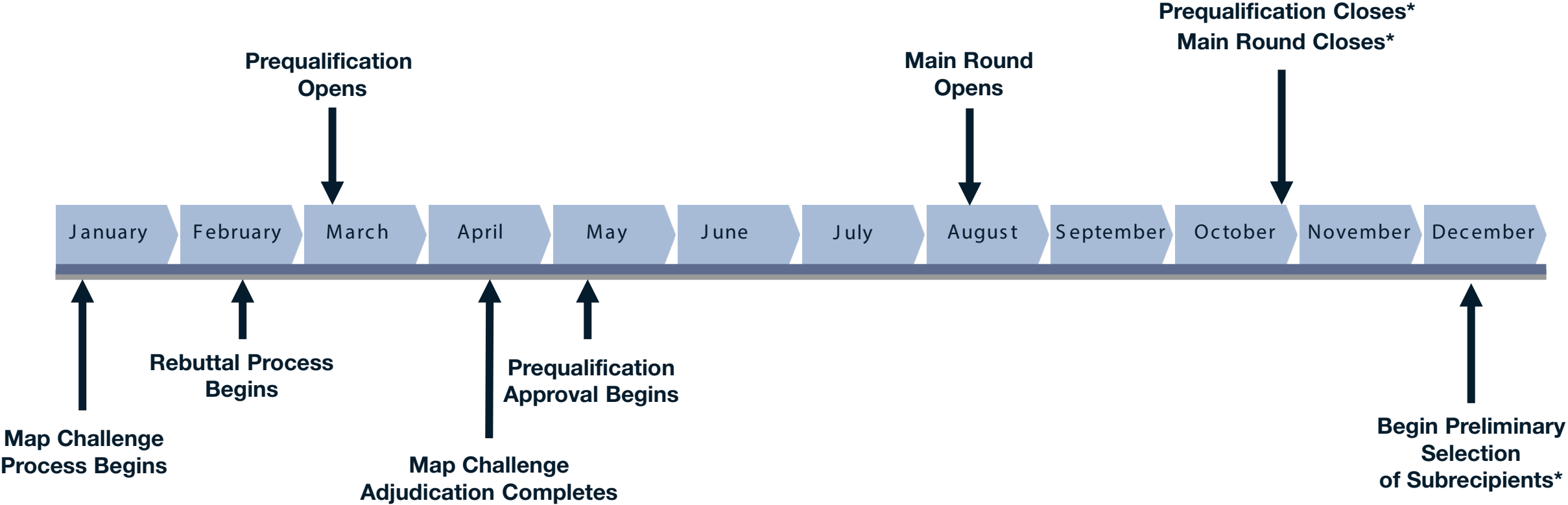
CHALLENGE PROCESS UPDATE

- Montana received approval of Initial Proposal Volume 1, which outlines the Challenge Process, on December 28, 2023.

- Montana initiated the Challenge Process on January 16, 2024.

- Montana submitted its Initial Challenge Process results on May 23, 2024, and subsequently completed eight rounds of curing.

- NTIA notified the ConnectMT Broadband Office on October 3, 2024, that Montana's Challenge Process curing is complete. Montana is awaiting final approval of its Challenge results. Application window will close three weeks after final approval.

- Preliminarily approved results and associated benchmarking were posted October 4, 2024.

- IIJA Broadband Map update in progress, anticipated completion October 30, 2024.

Curing Summary:

- **5/30:** NTIA 1st curing request

- **6/07:** MT resubmits

- **6/13 - 6/26:** Second curing and resubmission

- **7/02 - 7/17:** Third curing request and resubmission

- **7/22 - 8/06:** Fourth curing request and resubmission

- **8/09 - 8/12:** Fifth curing request and resubmission

- **8/15:** Sixth resubmission

- **8/16 - 8/20:** Seventh curing request and resubmission

- **8/22 - 8/28:** Eighth curing request and resubmission

- **9/19 - 9/25:** Ninth curing request (TCBP adjustments) and resubmission

- **9/30 - 10/1:** Tenth curing request and resubmission

- **10/3:** NITA provides notice of tentative approval of Challenge Results

2024 BEAD PROGRAM TIMELINE

Prequalification Opens → March

Main Round Opens → August

Prequalification Closes*
Main Round Closes* → October

| January | February | March | April | May | June | July | August | September | October | November | December |

Map Challenge Process Begins (January)

Rebuttal Process Begins (February)

Map Challenge Adjudication Completes (April)

Prequalification Approval Begins (May)

Begin Preliminary Selection of Subrecipients* (December)

NOTE: Main Round Closure subject to NTIA Challenge Results Approval.

APPLICATION KEY DATES

BEAD Program Dates:

- o BEAD Main Round opened Tuesday, August 13, 2024

- o BEAD Prequalification close October 30, 2024*

- o BEAD Main Round close on October 30, 2024*

BEAD APPLICATION REVIEW

PREQUALIFICATION

- The BEAD Program application is a multi-phase application process of Prequalification and Main Round.

- Prequalification is used to determine that applicants meet the BEAD minimum eligibility requirements of financial capability, organizational capability, and certifications and compliance.

- Prequalification opened March 11, 2024, and will close the same date as Main Round.

- Prior to starting Main Round review, MBO will confirm a prequalification application has been completed.
  - If an applicant has not previously been prequalified, this review will be prioritized to ensure eligibility.
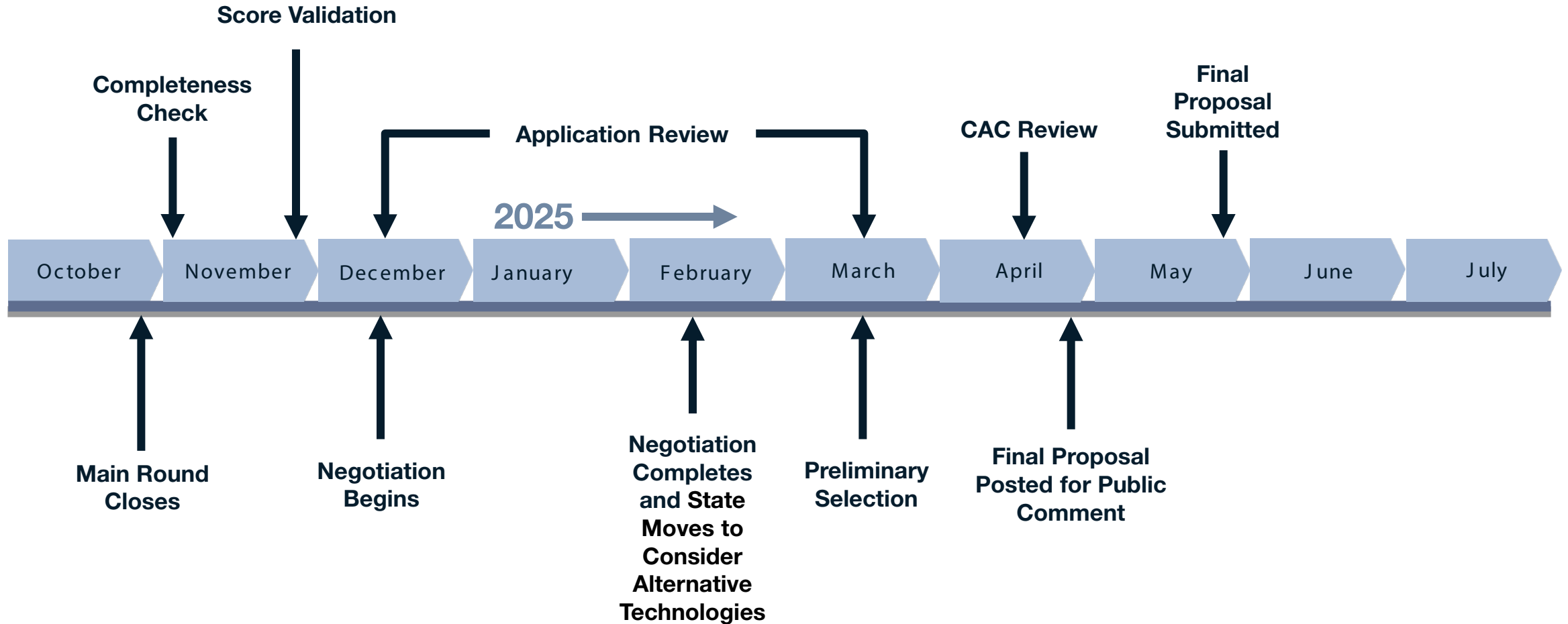
HIGH-LEVEL MAIN ROUND REVIEW PROCESS

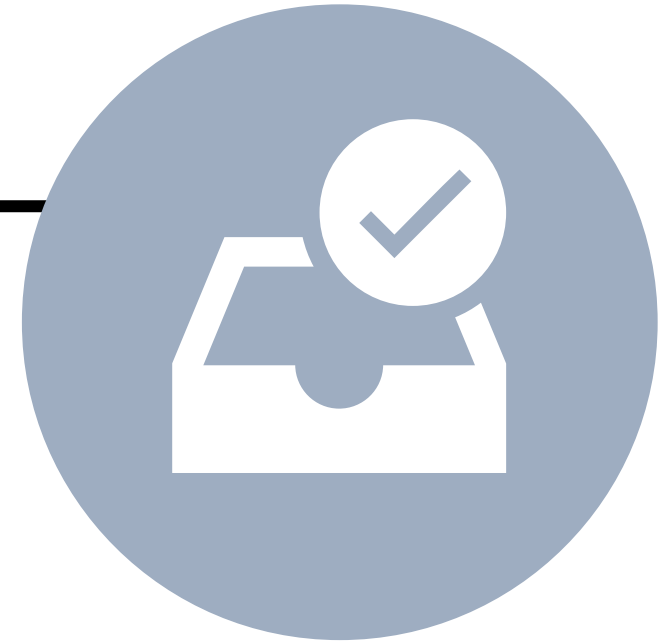**01** INTAKE & COMPLETENESS

02 SCORING

03 PROGRAMMATIC REVIEW & NEGOTIATION

04 PRELIMINARY SELECTION

ANTICIPATED REVIEW TIMELINE

Score Validation

Completeness Check

Application Review

CAC Review

Final Proposal Submitted

2025

| October | November | December | January | February | March | April | May | June | July |

Main Round Closes

Negotiation Begins

Negotiation Completes and State Moves to Consider Alternative Technologies

Preliminary Selection

Final Proposal Posted for Public Comment

NOTE: Notional timelines, dates are subject to change.

INTAKE & COMPLETENESS CHECK

- Intake and Completeness is the first stage in application review.

- The Completeness Reviewers will ensure that applicants have answered all questions and uploaded documentation where needed. Specifically, reviewers will:
  - Review documents to ensure they can be opened and contain content
  - Verify that applicants have completed a Prequalification Application
  - Verify that the CBG Data Template is the correct template, CBG IDs are valid, and the approved version of the challenge results (eligible BSLs) was referenced.

- Curing may occur if: Questions are unanswered; documents are blank/unable to be opened; and/or incorrect CBG template and/or invalid CBG IDs.
  - Applicants will be given 2 business days to cure in the event of system error.

SCORING: PRIORITY APPLICATIONS

Primary criteria

Minimal BEAD program outlay: Per project BEAD grant request	40
Affordability: Lowest price for **1/1 Gbps** service commitment	20
Fair labor practices: Past compliance with fair labor practices and future commitment to prevailing wages	15

Secondary criteria

Speed to deployment (<4 years)	1

Additional prioritization factors

Whether the proposed project area serves unserved or underserved areas, with unserved areas receiving greater weight	14
Broadband service providers who have broadband service infrastructure already deployed in the project area	4
The length of time the provider has been providing broadband service in the state	4
High-cost areas must be considered for services to the extent terrestrial service is economically viable	1
The number of households, businesses, farms, ranches, and community anchor institutions served	1

Total score	100

Note: Curing will only occur if an applicant does not provide sufficient information to calculate a valid score. Applicants will be given one week to cure.

SCORING: NON-PRIORITY APPLICATIONS

Primary criteria	Maximum Points Possible
Minimal BEAD program outlay: Per project BEAD grant request	40
Affordability: Lowest price for **100/20 Mbps** service commitment	20
Fair labor practices: Past compliance and future commitment to prevailing wages	15

Secondary criteria	
Speed to deployment (<4 years)	1
Speed of network and other technical capabilities	1

Additional prioritization factors	
Whether the proposed project area serves unserved or underserved areas, with unserved areas receiving greater weight	14
Broadband service providers who have broadband service infrastructure already deployed in the project area	3
The length of time the provider has been providing broadband service in the state	4
High-cost areas must be considered for services to the extent terrestrial service is economically viable	1
The number of households, businesses, farms, ranches, and community anchor institutions served	1

Total score	100

Note: Curing will only occur if an applicant does not provide sufficient information to calculate a valid score. Applicants will be given one week to cure.
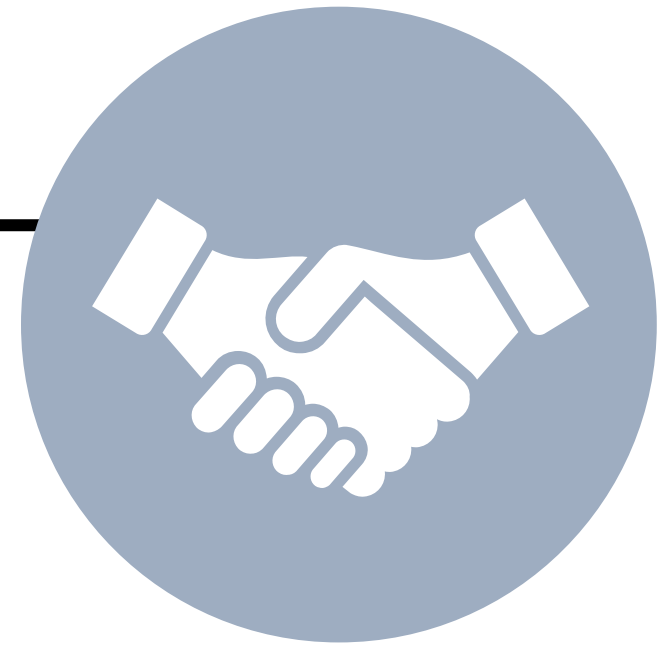
PROGRAMMATIC REVIEW

- Subject Matter Expert Reviewers will review the following sections for compliance with BEAD requirements as outlined in the BEAD NOFO, IPV2, and Application Materials:

    o Financial

    o Organizational and Managerial Capacity

    o Project Staffing and Labor Requirements

    o Project Plan

- The Reviewers will review these sections and determine if an applicant's answer to a question is compliant or non-compliant with application and BEAD NOFO requirements.

- If an applicant's answer is deemed to be non-compliant or insufficient by the reviewers, the corresponding question may require a curing request.

    - Applicants will be given one week to cure.

NEGOTIATION PLANNING

- Applications will be ranked by technology and then score.

  - Priority technologies are ranked first followed by non-priority technologies.

- From here:

  o Applications can be determined not eligible for preliminary selection or initial negotiation and placed on the waitlist.

  o Applications can be eligible for preliminary selection and move forward to Programmatic Review.

  o Applications can be eligible for negotiation and move forward to the Negotiation process.

NEGOTIATION

- Negotiation will progress through the ranked order of applications.

- Aspects of the application that could be subject to negotiation:
  - Award amount requested
  - CBGs requested (either add or descope)
  - Individual BSLs (either add or descope)

- If an applicant accepts the negotiation request, a negotiation call will be scheduled with DOA

- If an applicant accepts the negotiation terms offered by the State of Montana, applications will be re-opened, and they will have 10 business days to re-submit their application. This resubmission will include any additional curing identified in programmatic review.

- Once re-submitted, the Negotiation team will review the application to ensure it is what was agreed upon during the Negotiation call.

Key Notes:

- The goal of the negotiation process is to reach full coverage of all unserved and underserved locations in the state within the allocated budget.

- If additional BSLs remain after negotiation process completes, the state will continue with the procedures described in IPV2.

PROVISIONAL SELECTION & FINAL PROPOSAL

- Once applications have been reviewed and the State has identified service for each eligible BSL, applications will be preliminarily selected.

- Based on this preliminary selection, Montana will develop the Final Proposal in accordance with NTIA guidance:
  - Final Proposal will be posted for public comment for 30 days.
  - Final Proposal will be submitted to NTIA for approval.

- Once NTIA approves Montana's Final Proposal, DOA will begin to execute awards.

OTHER PROGAM UPDATES

ALTERNATIVE TECHNOLOGY

On August 26, 2024, NTIA released for public comment draft additional guidance regarding the use of alternative technologies to serve unserved and underserved locations within their jurisdiction with a request of public comment by September 10, 2024.

Key points in the draft guidance include:

- Outlines a set of standards for review of Alternative Technologies that can be funded for locations for which no affordable "Reliable Broadband Technology" is fundable

- Precludes funding Alternative Technologies for locations at which such technologies are already available and outlines a secondary Challenge process specifically for Alternative Technologies; and,

- Allows for subgrants to low earth orbit (LEO) service providers to reserve capacity with a performance requirement of 10 years.

Public Comment Response:

- Montana submitted a response to NTIA's request for public comment on September 10, 2024.

- **Key issues highlighted by the state included:**

  - NTIA has issued this guidance at a remarkably—and unreasonably—late date.

  - Introduces new requirements not considered in the state's approved IPV2.

  - New requirements add additional activities, challenging the state's timeline.

  - Proposed policies add new costs to the program.

DEPARTMENT OF ADMINISTRATION

PROPOSED PROCESS

Based on review of recent NTIA guidance and consultation with subject matter experts, MBO anticipates a condensed phased application process for Alternative Technology providers to apply for BEAD funding:

1. **Prequalification:** MBO will encourage applicants to submit a BEAD prequalification application.
   - Recent NTIA draft guidance on Alternative Technology outlines that providers must meet BEAD financial and managerial requirements.

2. **Challenge:** MBO will post public notice of BEAD eligible BSL locations not covered via applications from reliable broadband providers.
   - A 7-day window for existing providers to communicate to the state that they have an existing grant obligation (1) or currently provide BEAD-level service (2) in a specified award area.
   - If case 2, providers will be given an additional 30 days to provide evidence supporting their service availability claims.
   - MBO will review any responses and develop a list of eligible locations for alternative technologies.

PROPOSED PROCESS, cont.

3. Phased Application Window: MBO will solicit bids for locations for eligible locations.

    *   A 14-day window for alternative technologies to review list and provide simplified proposal with locations and price.

    *   Once reviewed, selected alternative technologies will have an additional 30 days to provide other required application materials.

4. Application Review: MBO will validate, and review received alternative technology applications to ensure they meet BEAD requirements and reflect all designated eligible BSLs.

5. Provisional Selection: MBO will extend offer for preliminary BEAD awards to qualified alternative technology applications.

DEPARTMENT OF ADMINISTRATION

NEPA UPDATE

- NTIA continues to provide additional information on how it anticipates implementing Environmental and Historical Preservation review procedures. However, to date, no specific guidance has been given.

- MBO continues to work closely with NTIA, DEQ, SHPO and other state stakeholders to ensure procedures are implementable when final guidance is released.

- Final Proposal requirements (listed in the next slide) are limited to the review of current standards, development of procedures, and documentation of any additional state specific review requirements.

JOINT LEAD AGENCY

- NTIA has required Montana as joint lead agency alongside NTIA to meet National Environmental Protection Act (NEPA) obligations in hopes of minimizing potential NEPA delays in State while implementing the BEAD program in an environmentally sensitive manner.

  - In its role as joint lead agency, Montana will need to comply with environmental and historic preservation (EHP) requirements including but not limited to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (NEPA), Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) (NHPA), Section 7 of the Endangered Species At (16 U.S.C. 1521, et seq.), Section 404 of the Clean Water Act (33 U.S.C. 1251, et seq.), and all other applicable Federal, state, and local environmental laws and regulations.

- As joint lead agency, Montana has been given the following responsibilities:

  - Use of NTIA NEPA tools and efficiencies to minimize potential NEPA delays while implementing BEAD.

  - Completion of an evaluation of the sufficiency, applicability and accuracy of the analysis in the relevant First Responder Network Authority (FirstNet) Regional Programmatic Environmental Impact Statement (PEIS) chapter as it applies to anticipated implementation activities for the State.

  - For grant funded activities carried out by subgrantees, certification of the sufficiency of subgrantee NEPA documentation, either by preparing such documentation or by supervising subgrantees' preparation of draft documents, independently reviewing those drafts, and verifying that draft documents meet the requirements of NEPA prior to transmittal to NTIA. This includes conditioning the subgrant agreement to prohibit project implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other project implementation activities) from beginning prior to NEPA completion.

  - Submittal of NEPA documentation—including any supporting environmental documentation required or requested by NTIA—to NTIA for review.

  - Development of a schedule for environmental review and permitting.

  - Monitoring and oversight of subgrantees to ensure they understand and comply with relevant environmental laws, including but not limited to NEPA.

- DOA's existing contractor will be able to provide recommendations on these reviews for Montana and MBO will continue to work closely with permitting agencies on its recommendations and processes for BEAD.

NEPA UPDATE, FINAL PROPOSAL

For the Final Proposal, Montana must provide:

- Description of how the Eligible Entity will comply with applicable environmental and historic preservation (EHP) requirements, including a brief description of the methodology used to evaluate the Eligible Entity's subgrantee projects and project activities against NTIA's programmatic and National Environmental Policy Act (NEPA) guidance.

- Description of the Eligible Entity's plan to fulfill its obligations as a joint lead agency for NEPA.

- Evaluation of the sufficiency of the environmental analysis for your state or territory that is contained in the relevant FirstNet Regional Programmatic Environmental Impact Statement (PEIS).

- Evaluation of whether all deployment related activities anticipated for projects within your state or territory are covered by the actions described in the relevant FirstNet Regional PEIS.

- If applicable, a draft supplemental environmental assessment (EA), providing any information or analysis missing from the relevant FirstNet Regional PEIS that is necessary for the programmatic review of BEAD projects within your state or territory.

- Methodology for the NEPA screening of the Eligible Entity's subgrantee projects to identify, confirm, and categorize projects qualifying for NTIA Categorical Exclusions and those requiring further environmental review.

- Description of the Eligible Entity's plan for applying specific award conditions or other strategies to ensure proper procedures and approvals are in place for disbursement of funds while projects await EHP clearances.

NEPA REVIEW

- After signing a grant agreement, MBO will need to review each project in depth for NEPA to determine whether

    1. Projects qualify for a categorical exclusion or,

    2. Extraordinary circumstances exist under FirstNet's NEPA implementing procedures that require either an Environmental Assessment or Environmental Impact statement.
       See https://firstnet.gov/sites/default/files/FirstNet_Implementing_Procedures_January_2018_0_0.pdf

- NTIA is developing a project-level NEPA review tool for states based on its permitting map. That tool may not be available for months. MT will be prepared with a process for this review consistent with the FirstNet procedures, if the tool is not available timely.

- Preliminarily selected subgrantees may begin preparing for NEPA by reviewing their project using the NTIA permitting tool: NTIA Permitting and Environmental Information Application (arcgis.com) and understanding NTIA's Best Management Practices and Mitigation Measures for any area (e.g., wetlands, wilderness area) https://broadbandusa.ntia.gov/technical-assistance/BMP_and_Mitigation_Measures.

DIGITAL OPPORTUNITY PROGRAM

- 5/28/24 - The State submitted the original Digital Opportunity application.

- 10/7/24 - The State has completed the most recent round of four rounds of curing.

FUNDING:
- The State received project proposals from different state agencies to utilize this funding.
  - Because proposals outweigh funding, they have been prioritized based on largest need.
  - Others will be reviewed during the next round of the grant.
  - The full list of proposals was sent to NTIA.

- The State has been assigned a DE FPO named RasTafari (Ras) Smith.

PUBLIC COMMENT