

MINUTES

Broadband Development Office Board of Advisors Meeting

December 14, 2022

The Broadband Development Office Board of Advisors (BDOBOA) meeting was held virtually and in person. Texas Comptroller Glenn Hegar called the meeting to order at 10 a.m. via Cisco WebEx on Dec. 14, 2022.

Members Present:

Comptroller Glenn Hegar

Rep. Trent Ashby

Alonzo Cantu

Sergio Contreras

Robert F. McGee

Dr. Scott Muri

Mari Robinson

Greg Conte

Members Not Present:

Adriana Cruz

The BDOBOA proceeded on the posted agenda items in the order as follows:

Agenda Item I: Call to order and roll call.

Comptroller Hegar called the meeting to order at 10:04 a.m.

Mr. Jimmy Anderson, systems coordinator for the Comptroller's Legislative Affairs team, called each member's name, and most BDOBOA members were present. Ms. Adriana Cruz was not in attendance. Comptroller Hegar recognized that roll was called and that most members on the BDOBOA were listed as present.

Agenda Item II: Adoption of minutes from Oct. 11, 2022, meeting.

Comptroller Hegar moved to approve the minutes from the BDOBOA meeting on Oct. 11, 2022.

Ms. Robinson noted an error in the record of her attendance at the Oct. 11 meeting and requested it be corrected. She seconded the motion to approve with the correction made.

Agenda Item III: Overview of the Texas Department of Transportation's (TxDOT) ongoing and future broadband initiatives.

After the meeting minutes were approved, Comptroller Hegar asked representatives from TxDOT to describe their agency's broadband expansion efforts in Texas to the BDOBOA. Kyle Madsen, TxDOT Director of Right of Way, detailed three ways that TxDOT interacts with broadband companies: 1) SB 507 (87R) enabled the use of state highway rights-of-way by broadband-only providers if the broadband

projects meet speed requirements. As a result, TxDOT is working with companies to extend their services. 2) TxDOT has a few hundred offices across the state with broadband needs. Some are in unserved and underserved areas for which they are actively looking for solutions to provide access and how the communities can benefit as well. 3) Transportation technology (i.e., traffic management systems) is expanding and becoming more connected. Mr. Madsen noted that those new projects increasingly have a major broadband component and TxDOT is actively looking for ways to work with private companies to develop connected corridors.

Catherine Milner, who coordinates broadband efforts for TxDOT, has been working to increase access to TxDOT district offices to 500 Mbps minimum broadband speeds.

Ms. Milner discussed the “Big Bang Bandwidth Statewide Upgrade” initiative. The overall goal of this initiative is for the TxDOT area offices, traffic centers, border facilities, maintenance and district offices to receive gigabyte speeds. TxDOT is currently in sweep three of the upgrade process. Milner discussed how sweeps have been delayed by global chip shortages and how the third sweep focuses on replacing copper infrastructure, primarily in rural areas.

Showed a slide with rates by office type.

TxDOT shared images of rural areas in Texas where getting fiber was not practical, stating that Childress, El Paso and Odessa are the most impractical office areas where fiber isn’t feasible. TxDOT is working with service providers through public-private partnerships to increase connectivity in those areas.

Agenda Item IV: Update from the BDO on activities related to:

- **Infrastructure, Investment, and Jobs Act (IIJA).**
- **American Rescue Plan Act (ARPA) and Capital Projects Fund (CPF).**
- **Program development under House Bill 5.**

Mr. Conte updated the BDOBOA and announced that on Dec. 1, 2022, the BDO received \$500 million in Broadband Equity, Access and Deployment (BEAD) initial planning funds and \$3.1 million in Digital Equity planning funds. The receipt of these funds starts the timeline for rolling out the state’s BEAD initial proposal and digital equity plan. It also starts the timeline for planning activities.

The BDO must develop a five-year action plan by Aug. 28, 2023, which will outline its federally compliant grant process.

The State Digital Equity Plan is due to NTIA by Dec. 21, 2023, which is a stakeholder driven process in which the BDO will identify and address barriers to broadband access and project partners to assist in expanding digital equity across the state.

Mr. Conte discussed the CPF grant plan that the BDO submitted to the U.S. Treasury in September and informed the BDOBOA that curing has taken place on the grant plan regarding minor clerical issues; however, Treasury has not informed the BDO when or if the other plans will be reviewed or approved. Ms. Korry Castillo, Associate Deputy Comptroller, further explained that questions from Treasury regarding the grant plan are about logistics and timelines, not about the content of the program plan. Dr. Muri asked how the delay in feedback from the federal government is impacting the BDO’s timeline and whether Treasury has provided the BDO with an approval date. Conte replied no, and that he believes the delay is due to Treasury being understaffed.

The BDO is working on getting the application portal in place and cannot open anything until it receives Treasury’s approval on its grant plan.

When discussing program development under HB 5, Mr. Conte spoke about how the BDO received more

than 200 comments on the proposed rules. To ensure all BDOBOA members and members of the public got the chance to comment on the rules, the BDO opened the rules up for comment during the BDOBOA meeting on Dec. 14 and closed the comment window on Dec. 16. Mr. Conte later announced that another comment window will open on Dec. 28, 2022, when the BDO hosts a virtual public hearing on the proposed rules. Mr. Conte announced the BDO's partnership with A&M ITEC to assist with technical evaluations for grant applications that the office receives.

Mr. Contreras asked when the grant application will open. Mr. Conte responded that early 2023 is when the BDO plans to open the BDO Grants Portal for its last-mile infrastructure program. Mr. Cantu asked when the Texas Broadband Availability Map would be published on the Comptroller's website, to which Mr. Conte assured him it would be published on or before Jan. 1, 2023.

Agenda Item V: Discussion on the Federal Communications Commission's (FCC) National Broadband Map challenge process.

Comptroller Hegar discussed the FCC's Nov. 18 release of the first draft of the National Broadband Map that displays where broadband internet services are — and are not — available across the country.

The National Telecommunications and Information Administration (NTIA) is encouraging entities and individuals to submit their challenges before Jan. 13 to give the FCC time to process them and to make sure they are included in the final version of the map that will be used to set BEAD funding allocations for states — which will be announced June 30. Hegar acknowledged that the timeline places unnecessary burdens and time constraints on individuals to get their challenges in during the holidays. Hegar informed the BDOBOA that on Dec. 13 he sent a letter to the FCC and NTIA urging them to extend the deadline to challenge the new map. Currently, the FCC map contains several inaccuracies, and Texans need more time to fix those inaccuracies to ensure we receive our fair share of funding. Hegar assured members that his office will work with stakeholders and local governments around the state to establish the best possible avenues for challenging broad inaccuracies through the bulk challenge process. But it is critical that individual Texans also engage in the challenge process to ensure the maps are as accurate as possible and funds are fairly allocated to areas that lack service. To assist in this regard, Hegar discussed how his office created the FCC Map Challenge Toolkit for Texans, which is published on the BDO website.

The issue with the FCC map, according to Comptroller Hegar, is that many companies are overstating coverage and that community anchor institutions (CAIs) are assumed to all have broadband; his staff needs more time to accurately show there isn't coverage. Mr. Conte added that the burden of proof is on CAIs to show they are a broadband serviceable location subscribing the mass market broadband service, because his office can't provide funding for a location that is not on the federal map.

Mr. McGee noted that after he worked with the map and adjusted the speed setting to 100/20Mbps, the map became more accurate.

Members asked Mr. Conte if the speeds on the map represent the actual speeds if someone were to use an Ookla speed test. Mr. Conte replied that the map shows the provider's highest advertised speed and that HB 5 requires the BDO to use the same methodology as the FCC for the Texas map. While there is an Ookla component of the map, FCC claims speed data will not be accepted for challenges but will be considered.

Ms. Robinson asked if CAIs are assumed to have broadband and if schools are considered CAIs. Mr. Conte replied that schools, libraries, hospitals, and any institution where a member of the public can go and connect to the internet is a CAI. Conte noted that he would send the definition to members after the meeting. Ms. Robinson pointed out that not all schools have access, and she knows of several groups that are struggling to connect via schools. Comptroller Hegar noted the importance of getting CAIs to challenge the map fabric to ensure they are included on the map.

Dr. Muri thanked Comptroller Hegar for sending the letter to the FCC and NTIA and provided that he would

disperse the challenge toolkit across his community. Muri asked if the BDO was going to submit a bulk challenge on behalf of the entire state of Texas. Mr. Conte discussed how the FCC's map vendor CostQuest and Texas' vendor LightBox (LBX) are engaging in conversations to develop a usage agreement to ensure that CostQuest cannot use LBX's data to improve their business model. The BDO and LBX are fully prepared to submit a bulk location challenge once CostQuest and the FCC commit to an agreement.

Rep. Ashby discussed that he has heard a lot of feedback about the FCC map that shows the district he represents as covered, although he knows that is not accurate. Rep. Ashby shared that he was pleased that the BDO is working on a map challenge because local communities don't have the time or resources. He echoed that it is critical the state plays a role to ensure Texas gets the funding. Rep. Ashby went on to thank Comptroller Hegar for the letter for which he hoped the FCC would do the right thing and negotiate an agreement. Dr. Muri echoed Rep. Ashby's points and said that he would be sure to share collateral with the public and emphasize the importance of challenges, so we get our money.

Mr. Contreras asked if applicants have to propose a project area that is reflected on both the FCC map and the Texas map. Conte explained that for the CPF grant program the BDO will follow state law and use the Texas Map to determine eligibility for funding; however, the BDO can't fund a project that is not on the FCC map, because the federal government cannot award funds to areas that aren't on the FCC map.

Mr. Contreras asked if Council of Governments, education, or economic groups were being charged with completing regional challenges. Mr. Conte replied that while it is not required of these groups, many of them are guiding their communities through the process and that Texas Association of Regional Councils (TARC) and Texas Rural Funders inspired the BDO's challenge collaterals.

Dr. Muri, appreciative of Rep. Ashby's comments, asked what tools the BDO needs for appropriate response and what the BDOBOA can do.

Agenda Item VI: Discussion on proposed rules for the broadband development program provided to the *Texas Register* in September 2022.

Comptroller Hegar provided time for interested BDOBOA members to provide their feedback. This will be considered by BDO staff as they develop their responses.

Mr. David Cruz, Broadband Program Attorney, gave the BDOBOA some background information; specifically, that the office had received more than 200 comments to the proposed rules, mostly favorable comments, and that there were three major areas that received the most comments: designated area eligibility rules, program eligibility (definition of commercial and commercial preference and evaluation criteria) and suggestions about individual criteria.

Mr. Contreras asked what comments the office received on Section 16.31, related to the Notice of Funds Availability (NOFA) and outreach. Mr. Cruz said commenters wanted more specificity about where it would be published. The NOFA will be published in the *Texas Register*, the Comptroller's website and eGrants.

Mr. Contreras and Mr. Cantu asked what comments were received about the "80/20" proposal in section 16.33. Cruz listed: 1) Change scope of designated area; 2) Some wanted household level; 3) Seeking expansion of eligibility to underserved locations, which shows that there is concern about the 25/3 level; 4) Comments about reducing from 80 to 50 percent.

Ms. Robinson asked if commercial or non-commercial providers were defined. Cruz said no, these terms were pulled from statute and that the office received several comments asking for that definition. He assured the BDOBOA that the office is working on a definition that respects the legislative intent and is supportive of various types of providers.

Ms. Robinson asked if Section 16.45, failure to perform and forfeiture process, was going to be a Traditional Standing Offer Agreement (SOA) process? Cruz said that will be contractually enforced. This intent is failure to perform means no future funding. Robinson explained how contractual language will let you get funds back, but after the contract is up, the contractual language will not be in effect, so the office can't point back to the contract that is no longer in effect. Ms. Castillo added that the contractual agreement will outline due process, flexibility for force majeure, etc.

Agenda Item VII: Discussion on topics and dates of future BDOBOA meetings.

Comptroller Hegar outlined next meeting date and agenda items. He asked the BDOBOA if anyone had ideas for agenda items for the next meeting. Mr. Contreras said that he enjoyed hearing from TxDOT during today's meeting and would like to see more presentations from entities like CAIs, as well as education and telehealth institutions to speak on their broadband initiatives.

Agenda Item VIII: Public comment.

Comptroller Hegar opened the meeting up for public comment. Jennifer Harris, NTIA, provided comments in person and announced NTIA's permitting webinar at 2 p.m. today as well as the dates and times of the FCC and NTIA joint mapping workshop office hours.

Attending virtually, Paul Donovan provided comments related to the inaccuracy in the FCC broadband maps for the Permian Basin area. Mr. Donovan also encouraged the BDO to continue reaching out to the Texas providers who did not submit data to the office.

Agenda Item IX: Adjournment.

Comptroller Hegar called the meeting to a close 11:35 a.m.