SPACEX

August 13, 2025

Virginia Department of Housing and Community Development
600 East Main Street, Suite 300
Richmond, VA 23219

Via Email to broadband@dhcd.virginia.gov

Re: Space Exploration Technologies Corp. (SpaceX) Comments on Virginia Final Proposal

Department of Housing and Community Development:

The Commonwealth of Virginia's Broadband, Equity, Access, and Deployment (BEAD) program Final Proposal represents a massive waste of federal taxpayer money, reverting to the Biden Administration's failed approach to BEAD and completely disregarding the Trump Administration's effort to restructure the program to accelerate broadband deployment and reduce spending. Simply put, Virginia has put its heavy thumb on the scale in favor of expensive, slow-to-build fiber bias over speedy, low cost, and technology neutral competition.

On its face, the Virginia proposal clearly fails to comply with the Infrastructure Investment and Jobs Act (IIJA),[1] the Notice of Funding Opportunity (NOFO),[2] as amended by the BEAD Restructuring Policy Notice,[3] and state law.[4] If allowed to proceed, the taxpayer and those without access internet will not get the "Benefit of the Bargain" as promised. Allowing this sort of non-compliant proposal to proceed will inevitably delay administration of the program and, worse, ultimately slow or prevent delivery of broadband to Virginians that need it most.

Virginia asks NTIA to approve a Final Proposal in which Virginia failed to run a competitive process, failed to observe technology neutrality, and demonstrated obvious disregard for program rules in proposing to spend $613 million dollars to connect the unconnected when it received an offer to do the same, faster, and at one tenth the cost. The Final Proposal is a manufactured outcome that is incompatible with the law and results in grossly wasteful and unnecessary costs to the taxpayer. Instead of an open and competitive process, the Final Proposal makes clear that Virginia began with a pre-

[1] 47 U.S. Code § 1702.
[2] Notice of Funding Opportunity, Broadband Equity, Access, And Deployment Program (May 12, 2022), available at: https://broadbandusa.ntia.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf (NOFO).
[3] Broadband Equity, Access, and Deployment (BEAD) Program: BEAD Restructuring Policy Notice (June 6, 2025) (Policy Notice).
[4] Including, but not limited to, the Virginia Public Procurement Act, Va. Code Ann. § 2.2-4300 et seq.

ordained result and then overlaid a paper-thin veneer of "analysis" to unlawfully achieve its preferred outcome – maximum taxpayer spending benefiting specific companies and a misapplication of competitive rules.

To achieve this result, Virginia excluded SpaceX from competing on equal footing with other providers for more than 95% households in the program based on biased third-party analysis championed by SpaceX's competitors. This analysis is inaccurate and objectively controverted by the active Starlink userbase in Virginia:

- 95% of BEAD locations in Virginia have an active Starlink subscriber within 1 mile, showing that Starlink already serves every type of environment in Virginia's BEAD program today; and
- 15% of BEAD locations in Virginia have an active Starlink subscriber within 100 meters demonstrating that (1) Virginia's "analysis" is flawed and underrepresents SpaceX's capabilities by at least 300% (and in fact does so to a much greater degree), and (2) Virginia claims Starlink cannot serve at least 18,000 households at which Starlink is actively providing service.

Based on the average per location price in Virginia's proposal, Virginia proposes for taxpayers to spend $91 million dollars to build unneeded infrastructure to BEAD households actively receiving high-speed internet via Starlink. Notably, the amount Virginia proposes to pay to serve this fraction of the program exceeds SpaceX's offer to serve every BEAD household in Virginia.

These results cannot be considered the "Benefit of the Bargain," unless NTIA intends for the benefit to go to the traditional broadband industry and not to the American people. Virginia must immediately revise its final proposal to appropriately consider applications received in line with program rules. Alternatively, NTIA must deny Virginia's final proposal.

I. Virginia's Final Proposal Includes Grossly Wasteful Spending and is Facially Incompatible with the NOFO

Virginia's Proposed results speak for themselves:

- Virginia received a proposal from SpaceX to serve virtually every BEAD-eligible household in Virginia with high-speed broadband **for $60 million dollars**, available to Virginians immediately**.**
- Instead, Virginia proposes to **spend $613 million dollars** for connectivity that will be deployed at some point within the next four years, if ever, resulting in taxpayers overspending for connectivity in Virginia by ten times the necessary amount.

These results cannot be squared with the NOFO as amended by the Restructuring Policy Notice, which requires "Eligible Entities" like Virginia to award grants based on the lowest cost to the program,[5] except in limited circumstances not present here.

II. Virginia Did Not Run a Competitive Process and Fails to Comply with the IIJA, NOFO, and Program Rules

While wasteful spending proposals are concerning and unfortunately all too common, Virginia's methods to reach these results are even more troubling. The IIJA requires Virginia to "competitively award" subgrants.[6] A cornerstone of any competitive process is an equally applicable set of rules, announced to participants ahead of the competition, and adhered to throughout the process. These competitive requirements are recognized in Virginia state law.[7] None of the hallmarks of a competitive process were observed by Virginia, which used undisclosed and inaccurate third-party studies to obfuscate its non-technology neutral approach with no regard to taxpayer spending in the state.

A. The Course of the Award Process Incontrovertibly Demonstrates that Virginia Ignored the Program Rules

The course of Virginia's "competitive" award process demonstrates that Virginia did not follow the program rules in evaluating SpaceX's application. Per the Policy Notice, "[t]he Benefit of the Bargain Round must permit all applicants – regardless of technology employed or prior participation in the program – to compete on a level playing field."[8] Virginia started the process as directed by the NOFO and initially solicited applications in its Benefit of the Bargain round for all of Virginia's 80,308 eligible locations.[9]

SpaceX submitted a highly competitive and cost-effective proposal to serve all of these locations but was provisionally awarded fewer than 2,900 locations in this first round, only 3.6% of the locations included in its application. Virginia then conducted a Negotiation Round in which over 18,000 of the original 80,308 locations were made available for

[5] Policy Notice at 12 ("The Eligible Entity must select the combination of project proposals with the lowest overall cost to the Program.").
[6] 47 U.S. Code § 1702(f).
[7] Virginia Public Procurement Act (The process for competitive sealed bidding shall include the following: … Evaluation of bids based upon the requirements set forth in the Invitation to Bid … Award to the lowest responsive and responsible bidder.").
[8] Policy Notice at 10.
[9] SpaceX notes that the locations included in Virginia's Final Proposal include approximately 43,236 "de-obligated" locations, such that of the 127,216 locations included in the data sets provided, only 80,308 locations were eligible for BEAD funding. As provided by Virginia with its Final Proposal, the figures related to project costs are based on the total population of obligated and de-obligated locations.

bidding again despite the fact that SpaceX had submitted an application for each of these locations in the initial round. Virginia's disregard of SpaceX's first round proposals is plainly contrary to the NOFO, which provides that:

> If, after soliciting proposals, *the Eligible Entity has received no proposals to serve a location* or group of locations that are unserved, underserved, or a combination unserved and underserved, the Eligible Entity may engage with existing providers and/or other prospective subgrantees to find providers willing to expand their existing or proposed service areas.[10]

Virginia's move to re-compete these locations when it had already received a proposal is a violation of program rules.

B. Contrived Explanations Related to SpaceX's Technical Capabilities Cannot Explain Virginia's Actions

Virginia cannot justify this outcome on a determination that SpaceX's applications did not qualify as "Priority Broadband." This assertion is flatly wrong, SpaceX provided information demonstrating these capabilities in its application, and it appears that Virginia used this definition only as a pretext to reach a pre-ordained outcome. Critically, Priority Broadband status is relevant within the framework of the competitive process only when comparing Priority Broadband projects with non-Priority Broadband projects.[11] Accordingly, even if SpaceX were not to qualify as Priority Broadband, this determination would not enable Virginia to completely disregard SpaceX's proposal in its entirety and recompete areas for which it already received an application.

Additionally, Virginia cannot explain away its failure to comply with the program rules by stating that SpaceX failed to show technical capability because: (1) in addition to the information demonstrating this capability provided in SpaceX's application, SpaceX has demonstrated these capabilities in the real world, including by providing broadband services with speeds off 100/20 Mbps and less than 100 ms latency in every US state, including Virginia, and over 150 markets globally, and (2) even if such capability was in dispute, Virginia had already provisionally awarded SpaceX thousands of locations,

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[10] NOFO at 38 (emphasis added).

[11] Policy Notice at 9-11 (providing that "[a]s Eligible Entities conduct further rounds of subgrantee selection to comply with this Notice, they must prioritize Priority Broadband Projects over non-Priority Broadband Projects" and "[t]he Benefit of the Bargain Round must permit all applicants – regardless of technology employed or prior participation in the program – to compete on a level playing field" and finally that "[i]f an Eligible Entity determines that no proposal meets the definition of a Priority Broadband Project, then it may select a non-priority broadband project that meets the speed and latency requirements of the statute and NOFO.").

showing that, in fact, Virginia believed SpaceX was capable of offering BEAD-qualifying services. Any post hoc rationalizations that Virginia may offer are pure pretext and lack any credibility. The playing field was anything but level and technology neutral, as required by the as-amended NOFO,[12] and was instead insurmountably stacked against low-Earth orbit satellite operators like SpaceX.

C. Virginia Used Unpublished and Inaccurate Evaluation Criteria to Dismiss SpaceX's Application and Never Engaged in Single a Technical Discussion on These Issues

Virginia indicates in the Final Proposal that it determined that 95%+ of SpaceX's initial application did not qualify "Priority Broadband." To date, Virginia has not provided SpaceX with any information, rationale, or justification to support this determination, and has not published any studies or technical requirements used to evaluate SpaceX's application. Based on Virginia's brief references to subscriber density, topographical factors like tree cover, and serviceable life of certain pieces of infrastructure in the Final Proposal, SpaceX assumes these factors were the basis upon which Virginia made this determination. SpaceX was never afforded an opportunity to directly respond to these third-party claims.

In any event, none of these factors serve as a barrier to SpaceX's ability to serve BEAD households in Virginia. SpaceX submitted information to Virginia demonstrating its status as Priority Broadband and provided a roadmap for capacity deployments and evolving capabilities during the BEAD period of performance. SpaceX also provided analysis dispelling various sham "studies" propagated by the fiber lobby that purportedly define constraints for the Starlink system that had been circulating in the media. Virginia never substantively engaged with SpaceX on any of these issues and has not provided any reasoned justification for its decision.

The Starlink network serves millions of households in the United States, and millions more globally, in every ecosystem and physical environment imaginable. The idea that Starlink is technically precluded from serving 95% of locations in Virginia does not remotely square with the realities of Starlink's existing user base (including in Virginia) that is geographically

[12] Policy Notice at 8 ("To guarantee that American taxpayers obtain the greatest return on their broadband investment – the Benefit of the Bargain – NTIA finds that the full force of the competitive marketplace must be utilized. Therefore, all broadband technologies that meet the performance requirements of IIJA and the NOFO must be eligible to participate in the BEAD Program. Accordingly, NTIA rejects the Biden Administration's imposition of technology preferences on Eligible Entities and instead adopts a technology neutral approach for the BEAD subgrantee selection process.").

dispersed across the country and world. Put simply, Virginia's claims about Starlink's efficacy throughout its territory, which are implicit in award decisions, are absurd.

Virginia has a legal obligation to conduct a fair technical evaluation of the applications it receives and, as such, should immediately view "studies" making bold and implausible claims with skepticism. Virginia should have been on alert as the fiber industry is notorious for providing sham studies about Starlink that have been proven to be demonstrably false. Moreover, conducting "studies" of only one provider or technology without applying the same scrutiny to other providers and technologies is inherently non-neutral and ignores the program rules. A fair technical evaluation does not simply accept unsubstantiated third-party claims, with no engagement or discussion with the operator of the technology in question and then use these "studies" as the primary basis for key decisions implicating hundreds of millions of taxpayer dollars – unless maximizing spending and distorting the competitive results is the goal.

III. Comparing Virginia's Statements in the Final Proposal to the Facts Illustrates the Mere Lip Service Virginia Paid to Statutory and Regulatory Requirements

The Final Proposal pays lip service to Virginia's adherence to a competitive process and other program requirements. But the facts tell a different story:

- Virginia claims that it "[e]nsured that all applicants had the same opportunities to cure their applications by providing feedback and accepting responses within standardized time periods" and that it "engaged in provider-specific outreach after the initial cycle of applications were submitted, with the goal of curing applications toward completion or compliance."[13]

In fact, Virginia never communicated with SpaceX about any technical issue related to Starlink's capabilities or any purported technical constraints that Virginia used to justify the rejection of 95%+ of SpaceX's application.

- Virginia claims that it "prioritized effective and cost-efficient broadband deployment."[14]

[13] Commonwealth Connect, Broadband Equity, Access and Deployment Program, Final Proposal at 6, available at: https://www.dhcd.virginia.gov/sites/default/files/DocX/bead/final-proposal/bead-final-proposal-publiccomment.pdf.
[14] *Id.* at 4.

In reality, Virginia's proposal would cost the taxpayer more than 10 times the amount necessary to serve all BEAD households. Additionally, as one of many such examples of wasteful spending, Virginia asks NTIA to exempt 2,236 locations from the program requirement that a service provider cover at least 25% of a project's costs as a "match."

- In the associated waiver request, Virginia claims that "[d]espite outreach efforts, prospective subgrantees in these areas are unable to meet the full match requirement."[15]

This statement is unequivocally false. Virginia received a proposal from SpaceX to serve these locations for approximately $1.7M, with SpaceX providing matching funds for 73.9% of the project costs. It appears this waiver request results from projects awarded to Point Broadband Fiber Holding, LLC[16] at an average per location price of $6,217, meaning Virginia proposes to spend $13.9M to serve these 2,236 locations, again nearly 10 times SpaceX's offer.

In sum, these provably inaccurate claims made by Virginia in its Final Proposal shed light on the equally troubling activity that the Final Proposal obfuscates and the overall lack of open and fair competition in the process.

IV. Virginia's Final Proposal Must Be Revised to Comply with the Legal Requirements of the Program or Be Rejected

Virginia's Final Proposal is replete with "red flags" that show non-compliance with statutory requirements and the program rules. At this juncture, Virginia must re-evaluate the applications received in compliance with the legal requirements of the program, issue a revised Final Proposal and new provisional awards. Without this action, NTIA must deny Virginia's Final Proposal. These efforts will not delay BEAD households from receiving much-needed connectivity but will accelerate the program by prioritizing lowest-cost awards to providers like SpaceX that are already deployed and are ready to enroll customers tomorrow, instead of waiting years for terrestrial deployments to materialize.

[15] Match Waiver Request, available at: https://www.dhcd.virginia.gov/sites/default/files/DocX/bead/final-proposal/bead-match-waiver-request-signeddated.pdf.

[16] Based on Virginia's published results, Point Broadband Fiber Holding, LLC is the only awardee receiving funds with a match percentage below 25%.