SPACEX

Re: Subgrant Agreement for Low-Earth Orbit Satellite Providers

As an initial matter, we want to thank your office for the collaborative spirit and significant efforts to get final proposal approval (or soon-to-be approved). We appreciate there were major changes made to the program, timelines were tight, and that Low-Earth Orbit satellite technology is a relatively new concept in the context of connectivity programs, with major differences from traditional terrestrial technologies. We also note that SpaceX, among LEO providers, is uniquely situated with a robustly deployed LEO network (over 10,000 satellites) and many millions of existing subscribers.

Clearly, efforts have been made to adapt underlying program documents to LEO within the initial timelines available. However, a number of issues remain that, if unaddressed, could render LEO participation in the program untenable. We look forward to working together to more fully tailor aspects of the project agreement to the reality of LEO deployment and operations now that the initial project selection and approval phase is accomplished.

Toward this goal, we have developed a set of terms that we intend to function as a rider to all subgrant agreements across the country. This rider is intentionally limited in scope to addressing items of critical importance, to minimize the need for negotiation, and provide clarity to both parties moving forward. Our intention is for the LEO rider to enable the state to keep its core subgrant agreement relatively uniform amongst grantees, retain state-law-specific requirements, co-locate all relevant LEO-specific material for ease of administration, and standardize agreements across states.

Overview of the Rider

We have attached a copy of the rider and provide a brief overview and rationale of its major elements below.

Performance Obligations

Like all other providers, LEO has three primary program obligations: (1) deploy a network within 4 years, (2) provide access to requesting subscribers within 10 business days, and (3) provide subscribers with at least 100/20 Mbps. For a LEO provider, however, these efforts are accomplished differently than by accomplishing localized construction projects. Principally, SpaceX will (a) reserve network capacity sufficient to provide the required quality of service,

and (b) provide up to three sets of Customer Premises Equipment (CPE), a user terminal and router, to a user that is functional simply by plugging it in.

With respect to capacity reservations, we have found some confusion regarding how such a reservation is made. Given the dynamic nature of the Starlink network, the reservation will not be such that SpaceX holds large portions of capacity fallow. This would be wasteful, inefficient, and does not reflect a LEO providers ability to dynamically allocate capacity where needed. Instead, SpaceX will include the capacity needs of BEAD users into its network planning efforts. These activities are multifaceted and include real time capacity allocation at the network level, launch activities, and sales efforts. As a result, there is no single "document" evidencing the reservation of capacity.

Fortunately, the program includes robust quality of service measurement and reporting that will demonstrate whether any grantee is providing the services it agreed to provide. If SpaceX is providing customers with the appropriate quality of service, on the appropriate timelines, this is direct evidence that SpaceX has made the necessary reservation because it demonstrates that the capacity was in fact available to BEAD users when requested. If sufficient capacity was not reserved, performance testing will reveal insufficient quality of service, and this deficiency will be transparent to the state. Developing a separate, indirect measurement of the reservation itself is infeasible and unnecessary.

Regarding the three per-BSL CPE limitation, we seek to clarify that this limitation is a "hard" cap given our observation certain language regarding arguably unlimited CPE replacement for "weather" or "malfunctions" outside this limitation. SpaceX's bids are premised on the provision of no more than three sets of CPE to each BSL. For replacements, SpaceX would apply its standard 30-day trial, one-year limited warranty and replacement policies applicable to non-BEAD users.

Payments

As referenced in the Restructuring Policy Notice, SpaceX seeks to clarify that payment schedule releases 50% of the total grant funds upon the time SpaceX certifies it is capable of initiating BEAD-quality service, upon request, to any BSL in a project area within 10 business days. Thereafter, the state would pay SpaceX the remaining 50% of funds in equal quarterly installments over the 10-year period of performance. Tying payments to the independent purchasing decisions of users solely for awardees using LEO technologies, and not for any other technology, is, by definition, not technology neutral. SpaceX is already appropriately incentivized to gather customers by the opportunity to capture the monthly recurring revenue from each subscriber. SpaceX was in most instances awarded the most remote and difficult areas to serve among all other providers. SpaceX is up to the task of ensuring success in these challenging areas, however, it cannot undertake this mission without certainty of consistent payments to compensate such work. SpaceX additionally seeks to align termination requirements with applicable regulation, e.g., 2 CFR 200.340(a)(3).

Penalties

The Infrastructure Investment and Jobs Act (IIJA), and the BEAD Notice of Funding Opportunity (NOFO) authorizes certain penalties for subgrantee non-compliance: (1) the claw back of previously disbursed funds and (2) the mechanisms of suspension and debarment where appropriate. As such, SpaceX seeks to clarify these two remedies are the exclusive remedies available in the event of grantee default. We seek to specifically address terms in many agreements obligating grantees to pay for replacement broadband, often times based on terrestrial costs, or forcing wholesale network access in the event of default.

Penalties to pay for replacement would be exceptionally unreasonable for a LEO provider like SpaceX that stands to receive approximately $500-$1500 on average in payment per BSL. Any other technology is many times more expensive per BSL, particularly in the remote areas awarded to SpaceX. Taking on a contractual liability potentially tens of times higher than the payments to be received is simply not workable for any rational business. Wholesale access provisions were explicitly eliminated in the Restructuring Policy notice, making their inclusion in a project agreement inconsistent with the program rules.

Reporting, Records and Audits

NTIA has authorized the use of "Fixed Amount Awards" for BEAD projects. The federal regulation governing this type of wards, 2 CFR § 200.201, provides that "[a]ccountability must be based on performance and results, which can be communicated in performance reports or through routine monitoring. There is no expected routine monitoring of the actual costs incurred by the recipient or subrecipient under the Federal award. Therefore, no financial reporting is required."

It is imperative for LEO projects that Fixed Amount Awards are utilized fully and that performance is exclusively measured via actual results (connectivity) and not through financial monitoring as if the project were reimbursement for construction-related activities. The realities of LEO deployment, involving globally utilized, space-based infrastructure simply do not support the structures around documentation of costs applicable to serving specific BSLs or project areas. For SpaceX, this issue is particularly acute given its substantial vertical integration, meaning that invoices from third parties for finished products (launch activities, satellites, CPE, ground network) simply do not exist because these are each manufactured by SpaceX itself.

Labor, Contractors and Procurement Issues

Just as there are no identifiable pieces of SpaceX infrastructure equipment (other than satellite capacity delivered from Space) being funded via BEAD to support BSLs in the state, there are no identifiable employees, contractors, or contracts being funded to support BSLs in the state. As such, all requirements related to labor issues (e.g., prevailing wage and similar obligations), contractors, and procurement are inapplicable to SpaceX. Any other interpretation could render SpaceX's entire workforce subject to these requirements – and to these requirements in virtually

every state. Such a broad application of this plethora of administrative requirements, which are unrelated to the goals of the BEAD program in general, would far outweigh any benefit SpaceX might receive from accepting the award.

Insurance

By the same reasoning, the various insurance requirements contained in subgrant agreements do not make sense for a LEO provider like SpaceX. SpaceX is not conducting any dangerous or material activities in state for which insurable risks might arise. As such, all insurance requirements should be removed from the agreement. Separate and apart from the program, SpaceX maintains insurance related to its general business operation. SpaceX's business would be highly similar between BEAD and non-BEAD customers in the state and such insurance would similarly be sufficient for any BEAD-related activities.

We thank you for your consideration of these important issues and look forward to addressing them to quickly get users at BEAD locations connected.

Respectfully Submitted,

/s/ Shea Boyd

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