BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program	Rulemaking 23-02-016 (Filed February 23, 2023)

OPENING COMMENTS OF THE YUROK TRIBE ON THE ORDER INSTITUTING RULEMAKING TO IMPLEMENT THE BROADBAND EQUITY, ACCESS, AND DEPLOYMENT PROGRAM

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I. INTRODUCTION

The Yurok Tribe submits these Opening Comments and seeks Party Status in accordance with the Order Instituting Rulemaking ("OIR") and Rule 1.4(a)(ii) and Rule 6.2 of the Commission's Rules of Practice and Procedure.

On February 23, 2023, the California Public Utilities Commission ("Commission") issued an OIR to consider rules to determine grant funding, eligibility, and compliance for funds distributed to California under the federal Broadband Equity, Access, and Deployment Program ("BEAD"), created by the Infrastructure Investment and Jobs Act of 2021 ("IIJA"). In accordance with the Commission's invitation for comments, the Yurok Tribe files this comment to respond to the fourteen issues and questions listed in the Preliminary Scoping Memo section of the OIR.

The Yurok Tribe is a sovereign nation and federally recognized tribe, the largest within California, with over 6,500 enrolled members. The Yurok Tribe's government is made up of many different divisions and departments that implement and enforce Yurok law, manage the day-to-day operations of the government, and interact with tribal, federal, state, and local governments and entities on behalf of Yurok tribal members.

The Yurok Reservation ("Reservation") is home to Yurok tribal members, other tribal members, and non-Indians. The Reservation extends approximately forty-five (45) miles up the Klamath River from the Pacific Ocean to the convergence of the Klamath River and Trinity River near Weitchpec, spanning one mile one each side of the river. The Yurok Ancestral Lands are substantial and includes large portions of California's Del Norte and Humboldt counties, as well as substantial ocean and watershed territories. The Yurok Tribe also has various wholly owned Yurok corporations, utility districts, and other entities that serve as arms of the Yurok tribal government. The Tribal government, its corporations, utility districts, and other tribal entities combined are one of the largest employers in the area and provide a wide variety of services to both Indian and non-Indian community members, including, but not limited to, health and human services, emergency services, legal, environmental and natural resource management, broadband, and education. The Yurok Tribe operates a Wireless Internet Service Provider ("WISP"), that provides broadband services to Reservation residents within Del Norte and Humboldt counties.

II. Responses to the Issues in the Preliminary Scoping Memo

A. Extremely High-Cost Threshold. The NTIA's Notice of Funding Opportunity requires the Commission to establish an "Extremely High Cost Per Location Threshold" in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements. The NTIA expects the Extremely High Cost Per Location Threshold to be set as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible. How should the Commission define the threshold for locations that constitute "extremely high cost" locations?

As an initial matter, the Yurok Tribe urges the Commission to establish the Extremely High Cost Per Location Threshold based on cost per mile, rather than per location. Cost per location unreasonably discounts the benefits and opportunities for growth which broadband buildout will create. Moreover, cost per location disadvantages rural projects which serve relatively small but heavily unserved communities. Finally, cost per mile is a cost metric with established precedent; for example, the Statewide Middle Mile Initiative has an estimated cost of approximately $350,000 per mile. Utilizing cost per mile, and tethering this metric to established projects like the Statewide Middle Mile Initiative's cost is reasonable and reduces the chance of unfair discrimination.

In the alternative, the Commission should establish a threshold of $25,000 per location served. This threshold is should allow for much-needed end-to-end fiber projects in rural areas, while preventing unreasonably costly projects from absorbing a disproportionate share of the state's BEAD allocation.

B. Geographic Level. The Notice of Funding Opportunity gives flexibility to states to solicit proposals from prospective subgrantees at the geographic level of their choosing—for example, on a per-location basis, per-census block basis, per-town, per-county or another geographic unit. States may alternatively solicit proposals for project areas they define or ask prospective subgrantees to define their own proposed project areas. What is the best, or most appropriate, geographic level for subgrantee proposals?

The appropriate geographic level for project subgrantee proposals will depend on the specific circumstances of the subgrantee and its customer base, the existing broadband infrastructure in the subgrantee's service area, existing land uses and conditions in the service area, and other factors. For example, the Yurok Reservation includes numerous unserved households, limited road infrastructure, and extremely variable and heavily forested terrain. Moreover, the Yurok tribal community which will benefit from a BEAD-funded project is not neatly described by a set geographic unit, such as a census block, town, or county, but rather spans various jurisdictional boundaries. The Yurok Reservation is one jurisdiction but the state recognizes overlapping jurisdictions that tend to cut the Reservation into two, or even three, parts. Further, the Yurok Tribe service area includes all of its Ancestral Lands and other areas not easily replicated by a state jurisdiction map. Thus, the Yurok Tribe recommends that the Commission accept proposals at geographic levels determined by subgrantees, and consider the propriety of a geographic level to be a function of the project's ability to satisfy the Primary Criteria, Secondary Criterion, and additional prioritization factors.

C. Overlapping Project Areas. What mechanism should be used for overlapping proposals to allow for a like-to-like comparison of competing proposals?

The Yurok Tribe reserves its right to respond to this question at a later time.

D. Selection Among Priority Broadband Projects. In addition to the Primary Criteria and Secondary Criterion required in the Notice of Funding Opportunity, which additional prioritization factors should be considered? How should they each be measured, and should they be weighted in prioritization?

Under the BEAD NOFO, Eligible Entities are afforded discretion to develop additional secondary criteria, and to assign weights to such criteria. The Commission should adopt a criterion, or modify the NTIA-recommended "Local and Tribal Coordination" criterion, to favor projects that are developed by tribal governments or wholly owned tribal corporations or utilities. Tribal governments are best positioned to advocate for tribal communities' broadband infrastructure needs; therefore, tribal government approval of a project is a strong indicator that a project will be beneficial to tribal communities who are unserved or underserved by existing broadband infrastructure.

Furthermore, tribal governments are best positioned to ensure broadband infrastructure projects lead to equitable workforce development and quality job creation in tribal communities. For example, the Yurok Tribe, which is responsible for driving and promoting economic growth for the benefit of those within its Ancestral Lands and Yurok tribal members, is deeply committed to promoting local job growth and developing pathways to high-income, skilled careers for tribal members.

Tribal projects are the most likely to be aligned with the needs of tribal communities, to achieve the other additional prioritization factors, and to facilitate tribal self-determination, and therefore the Commission should give greatest weight to these projects.

If the Commission is to adopt additional prioritization factors incorporating equitable workforce development and job quality, the Yurok Tribe urges the Commission to include commitments to employing tribal members. As tribal members have been both disadvantaged by nonexistent or poor broadband infrastructure, as well as by lack of economic opportunities in and around tribal communities, provision of jobs in broadband deployment and operations to tribal members should be a major priority.

The Commission should also adopt a criterion favoring projects which will serve customers on Indian reservations and within tribal lands. Communities living within Indian reservations have been historically excluded from broadband infrastructure development, resulting in high rates of unserved and underserved homes on Indian reservations. Lack of reservation broadband has led to negative economic, social, and public health impacts in these communities. As identified in the BEAD NOFO, the digital divide is particularly acute for Tribal

Nations; thus, the Commission should prioritize funding projects which will serve reservation customers.

Next, the Commission should adopt a criterion favoring projects which will serve customers with a median household income of less than 25th percentile. Lack of access to broadband is a major impediment to upward economic mobility, especially in rural communities where high-quality local job opportunities are less numerous. Additionally, lack of broadband access compounds other problems experienced by low-income communities, such as lack of access to adequate healthcare and education. As identified in the BEAD NOFO, the digital divide is particularly acute for low-income areas; thus, prioritizing these areas should be an aim of the Commission's program. According to the Commission's Federal Funding Account Public Map, all customers on the Yurok Reservation have a median household income of less than 25%. The Commission's determination of median household income on tribal lands should be based on data from the federal funding account map, or else from self-reported data from tribes.

Finally, the Commission should adopt a criterion to prioritize projects which further federal and state "Dig Once/Smart" policy objectives. "Dig Once," also known as "Dig Smart," is a policy that aims to prevent multiple excavations for broadband, transportation, and electrification projects. The Biden Administration has endorsed "Dig Once," directing the Departments of Commerce, Transportation, and Energy to cooperate to initiate and carry out "Dig Once."[1] California similarly has adopted a "Dig Smart" policy to install conduit along state-funded strategic corridor transportation projects, first recommended in the California State "Broadband for All" Action Plan, and later implemented through AB 41 (2021). "Dig Once/Smart" is a policy that promotes services buildout to unserved and underserved communities by lowering capital costs of infrastructure deployment. The Commission should not only consider "Dig Once/Smart" compatibility and additional prioritization factor, but also deemphasize the secondary criterion in evaluating projects which are likely to expedite deployment of transportation and electrification projects.

The Yurok community has not only been left behind by modern broadband projects, but also highway and rural electricity transmission and distribution projects, especially in upriver

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[1] *Fact Sheet: The Biden-Harris Administration Announces Action Plan to Accelerate Infrastructure,* THE WHITE HOUSE (Oct. 13, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/13/fact-sheet-the-biden-harris-administration-announces-action-plan-to-accelerate-infrastructure/.

homes in Humboldt County. Consideration of "Dig Once/Smart" will adequately account for the co-benefits associated with broadband projects which will substantially assist with alleviating these transportation and electrification issues that individually and multiplicatively lower quality of life on the Yurok Reservation and in the Yurok community.

E. Selection Among Other Last-Mile Broadband Deployment Projects. In addition to the Primary Criteria and Secondary Criteria required in the Notice of Funding Opportunity, which Additional Prioritization Factors should be considered? How should they each be measured, and should they be weighted in prioritization?

Please see comments under section D.

F. Challenge Process. States must develop and implement a transparent, evidence-based, fair, and expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by states as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for grant funds. Among other things, the process must allow for challenges regarding whether a particular location is unserved or underserved as defined in the Infrastructure Act and Section I.C of the Notice of Funding Opportunity. What information should be provided by a challenger as a basis for asserting service already exists at a location, or at locations, that disqualify them from being called "unserved?"

The Yurok Tribe reserves its right to respond to this question at a later time.

G. Match Requirement. The IIJA expressly provides that matching funds for the BEAD Program may come from federal regional government entities and from funds that were provided to an Eligible Entity or a subgrantee for the purpose of deploying broadband service under the Families First Coronavirus Response Act, the CARES Act, the Consolidated Appropriations Act of 2021, or the American Rescue Plan Act of 2021, to the extent permitted by those laws. What state funding should also be allowed to be used as matching funds?

The Commission should allow all sources of state funds, and explicitly allow the following funding sources for purposes of matching BEAD Program funds: Local Agency Technical Assistance, Last Mile Federal Funding Account, the Loan Loss Reserve Fund, and the California Advanced Series Fund. The Yurok Tribe, as a tribal nation, does not have a tax base to pay for large infrastructure projects; thus, the Tribe is reliant on other sources of funding, such as state grants. Allowing matching using these sources of state funding is critical to ensure sufficient capital is available to complete critical broadband infrastructure projects in tribal

communities. Additionally, the Commission should broadly allow the use of matching funds from nonprofits and private corporations.

The Yurok Tribe also strongly urges the Commission to consider waiving the matching requirement, or funding the match requirement itself, for projects proposed by tribal governments, tribal corporations, and entities with a preexisting agreement with a tribe to deploy a project which the BEAD award is intended to fund. The BEAD NOFO acknowledges that "a match requirement could deter participation in the BEAD Program by small and non-traditional providers, in marginalized or low-income communities, or could threaten affordability," and that to address such cases, "an Eligible Entity should consider ways to cover part or all of the provider's match through Eligible Entity or other funds or seek a match waiver [from the Assistant Secretary of Commerce for Communications and Information]." The Commission should seek a waiver for the above-described projects. Additionally, the Commission should identify funds to cover the required match portion for such projects.

H. Statewide Middle Mile. How should the Commission prioritize subgrantee project proposals that plan on utilizing the statewide open-access middle mile network? Should the Commission require applicants proposing to build their own middle mile infrastructure with BEAD funds to make their network open access? In the event the middle mile portion of an application significantly overlaps the statewide middle mile network, should the applicant be required to consult with the California Department of Technology?

The Commission should prioritize projects which connect to projects supported by federal funding, including projects funded by the NTIA, and especially federally funded projects on tribal lands.

The Yurok Tribe makes no comment at this time regarding whether Commission should require applicants building middle mile infrastructure with BEAD funds make their network open access in general. However, the Commission should not require open access on projects on tribal lands. Such a requirement would be counter to tribal sovereignty, encroaching on tribes' rights to regulate matters of economic importance on their reservations. Further, rural Tribes such as the Yurok Tribe, have been historically left behind due to their limited potential customer numbers and high cost per location served. Tribes have a unique obligation to their communities and are not entering the telecommunications for profit, but to meet a need of the community. Tribes are at the forefront of closing the digital divide in Indian country. It we would be

inequitable for Tribes to once again bear the costs of bringing connectivity to their lands to only face revenue deficits due to sudden competition from other large providers that are able to reduce costs per location through economies of scale, when those same companies couldn't be bothered to provide service before.

The Yurok Tribe makes no comment at this time regarding whether the Commission should require consultation with CDT when a proposed project overlaps significantly with the statewide middle mile network.

I. Ministerial Review. Should the Commission include a ministerial review process whereby the Commission delegates to staff the ability to approve BEAD subgrants that meet certain criteria? What should those criteria be?

The Yurok Tribe reserves its right to respond to this question at a later time.

J. Grant Conditions. What conditions should the Commission impose on BEAD subgrantees-- for example, workforce development (e.g., job training) or affordable plans?

The Yurok Tribe reserves its right to respond to this question at a later time.

K. Grant Applications. How many application cycles should there be in a calendar year?

The Yurok Tribe reserves its right to respond to this question at a later time.

L. Payments. What payment milestones should the BEAD subgrantee program adopt?

The Yurok Tribe reserves its right to respond to this question at a later time.

M. Impacts on environmental and social justice communities, including the extent to which BEAD Program subgrants will impact achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

The deployment of large infrastructure projects has the ability to both benefit and harm ESJ communities. On one hand, BEAD Program subgrants have great potential to achieve Commission goal 3.4, Extend Essential Communications Services to ESJ Communities. On the other hand, poor deployment could create new environmental justice issues, exacerbate existing environmental justice issues, and prolong social and public health issues resulting from lack of broadband access.

Communities in "all tribal lands" are considered ESJ communities in the Commission's Environmental and Social Justice Action Plan. Therefore, the extent to which BEAD program subgrants go to tribally led projects or projects developed in partnership with tribes and intended to serve tribal communities directly correlates with achievement of this goal, because such projects serve ESJ communities while accounting for the specific needs of tribal communities, thereby minimizing the possibility of effects from poor deployment. A central aim of the Yurok Tribe is to provide fast, reliable internet to all Yurok tribal members, as well as throughout the Yurok Ancestral Lands. Funding projects which advance this aim also advances goal 3.4

N. How should the Commission implement other issues for which it has discretion under the BEAD NOFO? Parties should specify the issues, including the statute or rule, and include specific recommendations.

The Yurok Tribe urges the Commission to consider the following additional recommendations. First, the Commission should develop an ex ante fund distribution process. Past Commission programs have utilized a reimbursement model, which presents challenges for entities, such as tribes, which have limited free capital and access to credit. Moreover, reimbursement models are cumbersome and deplete already thinly-stretched administrative resources. Second, the Commission should allow tribal subgrantees to expend up to 30% of grant funds on indirect administrative expenses. Unlike private service providers, which have ample staff and resources to dedicate to deploying broadband infrastructure projects, tribal subgrantees require grant funds to train staff, aggregate resources, and acquire additional capacity. Allowing for the allocation of grant funds towards these purposes will enable tribal subgrantees to put grant funds where they are most needed and maximize the probability of successful project deployment.

III. CONCLUSION

The Yurok Tribe appreciates the Commission's work thoughtful consideration of the Tribe's comments.

Respectfully submitted in Sacramento, California,

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