

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

05/08/23

04:59 PM

R2302016

Order Instituting Rulemaking Proceeding to
Consider Rules to Implement the Broadband
Equity, Access, and Deployment Program

Rulemaking 23-02-016

**REPLY COMMENTS OF THE PUBLIC ADVOCATES OFFICE
ON THE ORDER INSTITUTING RULEMAKING PROCEEDING TO
CONSIDER RULES TO IMPLEMENT THE BROADBAND EQUITY,
ACCESS, AND DEPLOYMENT PROGRAM**

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May 8, 2023

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I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these reply comments on the *Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program* (OIR).¹ Parties filed opening comments on this OIR on April 17, 2023.

These reply comments respond to selected opening comments related to the affordability and accessibility of broadband services provided by BEAD-funded networks; reply to recommendations regarding the Commission’s challenge process; and respond to opening recommendations that would limit or further the ultimate public benefits conferred by the substantial public investment dedicated under the BEAD Program. Cal Advocates’ silence on other recommendations raised in opening comments does not indicate support or acquiescence on such recommendations.

II. DISCUSSION

A. **The Commission Should Require BEAD Subgrantees to Provide Low Income and Middle-Class Affordable Rate Plans to Ensure BEAD Funded Networks Deliver Public Benefits.**

1. **Low-cost broadband service plans must fit the needs of all low-income Californians.**

The BEAD NOFO² gives the Commission discretion to include, within its proposed definition of Eligible Subscribers (i.e., those to whom the low-cost broadband plan must be made available), *all* low-income Californians, as defined by metrics that take into consideration the varied incomes and costs of living across the state.³ The Commission should reject calls to limit the scope of eligibility for its low-cost broadband service plan requirement to only those subgrantees who participate in or who are eligible to participate in

¹ California Public Utilities Commission (CPUC) Order Instituting Rulemaking (OIR) R.23-02-016, Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program, Mar. 1, 2023 (hereinafter, BEAD OIR).

² BEAD NOFO at 12-13.

³ See also Opening Comments of The Greenlining Institute (GL), #OaklandUndivided (OU), and California Community Foundation (CCF) at 4.

the Affordable Connectivity Program (ACP).⁴ To qualify for the ACP on an income-only basis, California families of four must earn less than \$60,000.⁵ However, the county-specific definition of “low-income” used by the California Department of Housing and Community Services (HCD) exceeds \$60,000 in every county in the state.⁶ That is, in every county across California, a person that income qualifies for Section 8 low-income housing assistance could in fact earn *too much* to qualify for the ACP. This is particularly true if the individual is not connected with other assistance programs despite their eligibility.

While participation in programs with other income thresholds (e.g., Section 8) may serve as a qualifying factor for the ACP, setting an income-based threshold that matches those qualifying programs’ income thresholds is the only way to ensure the full scope of intended beneficiaries are eligible, because an individual may not already be connected to low-income services prior to gaining broadband access. An ACP-only low-income program requirement could leave low-income families without an affordable option for broadband service.

Other parties cite additional reasons for the Commission to look beyond simply requiring ACP participation when setting requirements for mandated low-cost broadband service options. For example, the County of Los Angeles notes that a low-cost plan should be made available to all low-income customers regardless of whether they have chosen to apply their ACP benefit to mobile service.⁷ Indeed, the Commission itself recently found that a commitment to offer ACP is not a fool-proof method of ensuring affordability for the intended low-income beneficiaries of broadband deployment projects.⁸ While the

⁴ See e.g., Opening Comments of CTIA at 8; Opening Comments of ACA Connects at 19; Opening Comments of California Broadband & Video Association (CVBA) at 42 (opposing modification of the NOFO’s definition of “Eligible Subscriber”).

⁵ See Do I Qualify? - ACP - Universal Service Administrative Company (<https://www.affordableconnectivity.gov/do-i-qualify/>) (last visited Apr. 20, 2023).

⁶ See May 13, 2022 Department of Housing and Community Development Letter to Interested Parties (<https://www.hcd.ca.gov/docs/grants-and-funding/inc2k22.pdf>) (last visited Apr. 20, 2023).

⁷ Opening Comments of the County of Los Angeles at 6-7.

⁸ Resolution (Res.) T-17775 Approval of nineteen (19) public housing infrastructure projects for grant funding from the California Advanced Services Fund’s Broadband Public Housing Account totaling \$1,398,593, at 6-7.

Commission must require all subgrantees to participate in ACP, the NOFO is clear that this requirement should not limit participation.⁹ The Commission should craft low-cost broadband plan requirements that include requiring grantees to offer a low-income broadband plan, regardless of the future of federal ACP subsidies.

2. The plan to address middle-class affordability must ensure that all middle-class Californians have access to affordable high-speed internet.

The BEAD NOFO *expressly requires* the Commission to develop “a middle-class affordability plan to ensure that *all* consumers have access to *affordable* high-speed internet.”¹⁰ To this end, the Commission must define and measure “middle class affordability.” If the Commission finds middle-class Californians cannot afford broadband, it must address the issue. The BEAD NOFO suggests that this could be accomplished by “requiring providers receiving BEAD funds to offer low-cost, high-speed plans to all middle-class households using the BEAD-funded network,” among other proposed options for action to address middle-class affordability.¹¹

Given that roughly 64 percent of American adults were living paycheck-to-paycheck at the end of 2022 — including high-earners¹² — the Commission should use robust analysis to craft affordable middle-class plans. It would be unfounded and unreasonable to assume that competition, ties to the FCC urban rate benchmarks, or average urban rates will ensure project rates that are affordable to middle-class Californians.¹³ To build the record needed to ensure this plan is both reasonable and effective, the Commission should receive comment

⁹ BEAD NOFO at 66-67.

¹⁰ BEAD NOFO at 66.

¹¹ BEAD NOFO at 66.

¹² Alexandre Tanzi, *Even on \$100k Plus, More Americans are Living Paycheck to Paycheck*, Bloomberg, last accessed Apr. 20, 2023, available at <https://www.bloomberg.com/news/articles/2023-01-30/even-on-100k-plus-more-americans-live-paycheck-to-paycheck#xj4y7vzkg> (last visited Apr. 20, 2023), *citing* New Reality Check: The Paycheck-to-Paycheck Report: 2022 Year in Review, available at <https://www.pymnts.com/study/reality-check-paycheck-to-paycheck-2022-year-in-review-consumer-finance/> (last visited May 2, 2023).

¹³ *See, e.g.*, Opening Comments of AT&T at 10; Opening Comments of the California Broadband and Video Association (CBVA) at 41; Opening Comments of the WISPA at 19-20; Opening Comments of Geolinks at 6; Opening Comments of Cellco Partnership and MCImetro Access Transmission Services (Verizon) at 21-22.

on the appropriate standards for a middle-class affordable rate plan that the Commission should require every BEAD funded network provider to offer.

While the Commission can and should *prioritize* projects that increase the affordability of generally available (i.e., not income-qualified) 1 Gigabit broadband service plans,¹⁴ the Commission may not always have two potential subgrantees competing to serve the same locations. Thus, prioritization may not always be available to the Commission as a tool to incentivize affordability. The Commission should adopt strong, baseline affordability requirements, such as a defined broadband service plan that is affordable to middle-class families, to ensure that *every* project funded by public investment yields the intended public benefits – including, but not limited to, affordable broadband service for middle-class Californians.

B. BEAD Challenge Process Must Be Usable for Non-Profit Entities, Local Government Units and Internet Service Providers Alike

Given concerns regarding the Federal Communications Commission’s (FCC) Broadband DATA Maps’ current errors¹⁵ and concerns related to the FCC’s challenge process,¹⁶ the Commission should adopt a challenge process in which non-profits and local government agencies can meaningfully participate. As noted in Cal Advocates’ and others’ opening comments,¹⁷ the Federal Funding Account (FFA) challenge process should be the Commission’s starting place for developing its BEAD challenge process.

However, the Commission should allow for crowdsourced speed, latency, and reliability data (beyond CalSPEED) to be used to challenge the Commission’s designation of

¹⁴ The BEAD NOFO’s Primary Criteria relating to affordability of Priority Broadband Projects requires the Commission to assess the prospective subgrantees’ commitments to provide the most affordable price for a 1 Gigabit/1Gigabit service plan in the project area. BEAD NOFO at 43. For Other Last Mile Broadband Projects, the Commission will weigh affordability at the 100/20 Mbps service plan level. BEAD NOFO at 45.

¹⁵ See, e.g., Opening Comments of Opening Comments of GLI, OU, and CCF at 10-11. See also Opening Comments of the Schools, Health, and Libraries Broadband Coalition at 6-7.

¹⁶ See e.g., Opening Comments of County of Los Angeles (noting that the FCC has opened investigations into provider overreporting of coverage in its National Broadband Map).

¹⁷ Opening Comments of the Public Advocates Office at 21; Opening Comments of GLI, OU and CCF at 11.

a location as served, as recommended by The Greenlining Institute (GLI), #OaklandUndivided (OU), and California Community Foundation (CCF),¹⁸ provided that the guidelines for doing so are clear. This would effectuate, for example, the BEAD NOFO's statement that a proper basis for a challenge would be a Digital Subscriber Line (DSL)-served location labeled as served or underserved but that "it is not in fact reliably served at such speeds."¹⁹ Also, as noted by GLI, OU, and CCF, the timeline for the challenge process should reflect the broader scope of review than would be associated with the FFA challenge process and potential relative inexperience of eligible challengers. While the FFA allows for a 14-day challenge process following the posting of received applications,²⁰ the Commission's challenge process for the BEAD Program will likely need to be longer.

Consistent with The Utility Reform Network's (TURN) comments as well as those from GLI, OU, and CCF, the Commission should also host a technical workshop that will guide non-profits, local governments, and broadband service providers through its proposed challenge process.²¹ If this technical workshop is held in person, the Commission should offer a virtual attendance option and an option to view the workshop later online to increase public access. The Commission should include in its technical workshop, and in the challenge process itself, information and processes related to challenging mischaracterization of connectivity to and in community anchor institutions and multi-dwelling unit (MDU) residences, as recommended by the Schools, Health, and Libraries Broadband Coalition (SHLB), among other parties.²² To further support newer participants to broadband deployment programs, the Commission should require Communications Division staff to host regular drop-in office hours, as recommended by GL, OU, and CCF.²³ Such office

¹⁸ Opening Comments of GLI, OU, and CCF at 12. *See also* Opening Comments of ACA Connects at 14 (supporting Commission use of Ookla test results as evidence to support challenges).

¹⁹ BEAD NOFO at 15 n.13.

²⁰ Decision (D.) 22-04-055, App. A at A-21.

²¹ Opening Comments of TURN at 32; Opening Comments of GLI, OU, and CCF at 15.

²² Opening Comments of the Schools, Health, and Libraries Broadband Coalition at 6. *See also* Opening Comments of GL, OU, and CCF at 14-15.

²³ Opening Comments of GL, OU, and CCF at 15.

hours would provide a reliable opportunity for stakeholders to have substantive conversations with program experts and help ensure that questions are answered.

The Commission should reject recommendations to allow for a second challenge process after subgrantee application submission and instead set the date for determining final location eligibility status *before* prospective subgrantees will have expended significant resources on preparing and submitting their applications. This will provide certainty to potential subgrantees, political leaders, and the public regarding which locations will be eligible for BEAD funding before potential subgrantees commit the resources required to prepare applications, saving public resources.

C. The Commission should adopt party recommendations that serve the public interest.

The Commission should adopt two recommendations made in opening comments that prioritize public needs and public benefits in its rollout of the BEAD Program. First, the Commission should reject recommendations to forgo open access requirements for funded middle mile²⁴ or to refrain from prioritizing proposals that would lead to open access last mile networks.²⁵ The FFA and California Advanced Services Fund (CASF) Broadband Infrastructure Grant Account require funded middle mile to be open access,²⁶ promoting the affordability of and delivery of public benefits from networks funded by those programs. Aside from the need for consistency between deployment programs for those entities whose required match is funded by those other state programs, this is consistent with the Commission’s prior acknowledgment, as cited by the Center for Accessible Technology and Electronic Frontier Foundation, that “[o]pen access offers valuable benefits, including broad public benefits, competition, cost efficiencies, and long-term scalability that will enable more Californians to be served over time.”²⁷ To further promote these public benefits, the

²⁴ Opening Comments of Race Telecommunications at 3; Opening Comments of WISPA at 18; Opening Comments of CTIA at 8; Opening Comments of CVBA at 36-37; Opening Comments of AT&T at 8.

²⁵ Opening Comments of CVBA at 17.

²⁶ D.21-03-006 at 30, Finding of Fact 18; D.22-04-055 at 50-52.

²⁷ Opening Comments of the Center for Accessible Technology and the Electronic Frontier Foundation at 15, citing D.21-01-003 at 18; *see also* D.22-11-023 (CASF), Attach. A at 11.

Commission should adopt strong open access requirements for all BEAD-funded middle mile and should prioritize those projects that propose funded last mile to also be open access.

Second, the Commission should adopt TURN’s recommendation²⁸ to supplement the workshops held by the California Department of Technology with Commission-hosted, specific, and practical workshops to develop the highly technical aspects of this program, including the Extremely High-Cost Threshold and the challenge process.

III. CONCLUSION

The Commission has an unprecedented opportunity to further universal access to broadband in California. To ensure the BEAD Program achieves its aim to deliver reliable broadband service to all unserved, underserved, and eligible community anchor institutions in the state, the Commission should adopt the recommendations herein.

Respectfully submitted,

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May 8, 2023

²⁸ Opening Comments of TURN at 30.