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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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

Rulemaking 23-02-016

**ASSIGNED COMMISSIONER’S SCOPING MEMO AND RULING**

This scoping memo and ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities Code section 1701.1 and Article 7 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rules).

**1. Procedural Background**

On February 23, 2023, the Commission initiated this Order Instituting Rulemaking (OIR) to consider rules to determine grant funding, eligibility and compliance for funds distributed to California under the federal Broadband Equity, Access, and Deployment (BEAD) Program, created by the Infrastructure Investment and Jobs Act of 2021.<sup>1</sup> Among the law’s numerous provisions, the IIJA establishes the \$42.45 billion BEAD Program, administered by the National Telecommunications and Information Administration (NTIA). After receiving BEAD funding from the NTIA, a state may award sub-grants competitively to subgrantees to carry out the following broadband deployment activities:

- 1) unserved service projects; 2) underserved service projects; 3) projects

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<sup>1</sup> P.L. 117-58 §60102(b) (2021).

connecting eligible community anchor institutions; 4) broadband data collection, mapping, and planning; 5) installing internet and Wi-Fi infrastructure or providing reduced-cost broadband within a multi-family residential building; 6) broadband adoption programs; and 7) other activities determined by NTIA.

On April 17, 2023, parties filed comments in response to the OIR. On May 8, 2023, parties filed reply comments.

A prehearing conference was held on May 31, 2023, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. After considering the comments and reply comments, and the discussion at the prehearing conference, I have determined the issues and schedule of the proceeding to be set forth in this scoping memo.

## **2. Issues**

The issues to be determined or otherwise considered are:

- 1. Extremely High-Cost Threshold.** The NTIA's Notice of Funding Opportunity requires the Commission to establish an "Extremely High Cost Per Location Threshold". 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? What considerations should the Commission weigh for projects proposed to serve locations that exceed the Extremely High Cost Per Location Threshold?
- 2. 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?
3. **Overlapping Project Areas.** If the Commission receives grants proposals that would serve the same areas, what mechanism should be used for overlapping proposals to allow for a like-to-like comparison of competing proposals?
  4. **Selection Among Priority Broadband Projects.** In addition to the Primary Criteria and Secondary Criterion required in the Notice of Funding Opportunity, should the Commission adopt additional prioritization factors for Priority Broadband Projects? If yes, which factors should the Commission adopt and how should those factors be measured or weighed?
  5. **Selection Among Other Last-Mile Broadband Deployment Projects.** In addition to the Primary Criteria and Secondary Criteria required in the Notice of Funding Opportunity, should the Commission consider additional prioritization factors for Other Last-Mile Broadband Deployment Projects? If yes, how should those factors be measured and weighted?
  6. **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 required from a challenger as a basis for asserting Reliable Broadband Service already exists at a location, or at locations, at sufficient speeds that disqualify them from being called “unserved” or “underserved?” What information should be required

from a challenger as a basis for asserting a location, or a group of locations, lack Reliable Broadband Service at sufficient speeds and should be considered “unserved” or “underserved”? What entities should be considered permissible challengers eligible to file challenges to locations? How much time should challengers and challenged service providers be permitted to file and respond to challenges? Should permissible challengers be permitted to respond to rebuttals provided by challenged service providers? Should the Commission adopt any or all of the Model Challenge Process proposed by the NTIA?<sup>2</sup>

7. **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. Should the Commission prioritize projects that include matching funds beyond those allowed by the IIJA? What state funding, if any, should also be allowed to be used as matching funds?
8. **Statewide Middle Mile.** 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?
9. **Ministerial Review.** Should the Commission include a ministerial review process whereby the Commission

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<sup>2</sup> Updated information on the NTIA’s Model Challenge Process is available at: <https://internetforall.gov/bead-challenge-process-policy>

delegates to staff the ability to approve BEAD subgrants that meet certain criteria? If so, what should those criteria be?

10. **Affordability.** Section C.2.c of the Notice of Funding Opportunity requires each Eligible Entity to include in its Initial and Final Proposals a middle-class affordability plan to ensure that all consumers have access to affordable high-speed internet. If the Commission were to adopt an affordable plan requirement, what constitutes an “affordable plan?” How should the Commission define “middle-class households”? How should the Commission define “low-cost broadband service option” required to be offered by all subgrantees? What other factors should the Commission consider in developing the middle-class affordability plan?
11. **Technical Assistance.** May BEAD funds be used for technical assistance and, if yes, should the Commission make funding available for potential subgrantees?
12. **Climate Resilience.** Section IV.C.1.h of the Notice of Funding Opportunity requires each Eligible Entity to provide an assessment of climate threats and proposed mitigation measures. How should the Commission evaluate potential climate threats to deployed infrastructure? What mitigation measures should be required of subgrantees?
13. **Labor Practices and Workforce Development.** The Notice of Funding Opportunity encourages Eligible Entities to consider workforce development goals when selecting subgrantees. What requirements should the Commission consider to ensure Eligible Entities are considering workforce development goals? Should the Commission require subgrantees or their contractors and/or subcontractors provide Registered Apprenticeships and pre-apprenticeships tied to a Registered Apprenticeship, joint labor management partnerships, and other high-quality, on-the-job training opportunities? Should subgrantees be required to offer “quality” jobs and, if so,

what should be the definition of “quality” jobs? Should subgrantees be required to prioritize hiring local workers and have robust and specific plans to recruit historically underrepresented populations facing labor market barriers and, if so, what should be the definition of an underrepresented population? Should the Commission ensure that subgrantees prioritize projects that use unionized labor? Should there be any other requirements for subgrantees to support the development of a highly skilled workforce capable of carrying out work in a manner that is safe and effective.

14. **Grant Conditions.** Should the Commission impose additional conditions on BEAD subgrantees? What conditions should the Commission impose?
15. **Grant Applications.** How many application cycles should the Commission create in a calendar year?
16. **Payments.** What payment reimbursement milestones should the Commission adopt for BEAD subgrantees? What requirements should the Commission adopt?
17. **Impacts on Environmental and Social Justice Communities (ESJ).** What potential 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, should be considered?

### **3. Need for Evidentiary Hearing and a Workshop**

There are no issues of material disputed fact and parties have not requested an evidentiary hearing. Accordingly, no evidentiary hearing is needed.

The Commission will hold a workshop as part of this proceeding. Parties are invited to provide responses to the following questions for the purpose of providing information to the Commission to consider when setting the agenda for the workshop. Responses to the below questions are to be served and docketed no later than July 21, 2023, with reply comments due by July 28, 2023.

- I. What should be the content and focus of a workshop?
- II. What potential subgrantees are subject to special circumstances requiring the Commission to seek their specific input on the Initial Proposal or will require the most assistance applying for funds?
- III. At what stage in the process (i.e. before or after issuance of a Staff Proposal) should the Commission hold a workshop?
- IV. Should the Commission prioritize a virtual workshop or an in-person workshop?
- V. If in-person, how should the Commission determine a location?

**4. Schedule**

The following schedule is adopted here and may be modified by the Assigned Commissioner or administrative law judge (ALJ) as required to promote the efficient and fair resolution of the rulemaking:

Event	Date
Draft Five Year Plan Issued for Public Comment	July 2023
Comments in response to questions regarding workshop, Filed and Served	July 21, 2023
Reply comments regarding workshop, Filed and Served	July 28, 2023
Comments on Draft Five-Year Plan and Community Engagement Event Summaries (see Attachment A), Filed and Served	August 7, 2023
Reply Comments on Draft Five-Year Plan and Community Engagement Event Summaries (see Attachment A), Filed and Served	August 11, 2023
Five-Year Plan Submitted to NTIA	August 27, 2023
Draft Staff Proposal, Issued	October 2023
Workshop, Held	October 2023

Public Participation Hearing, Held	TBD
Opening Comments, Filed and Served	November 2023
Reply Comments, Filed and Served	November 2023
Revised Staff Proposal/Initial Proposal Submitted to NTIA	December 29, 2023
Proposed Decision, Issued	First Quarter 2024
Commission Decision, Issued	<i>[no sooner than 30 days after PD]</i>

The proceeding will stand submitted upon the filing of reply comments to the Staff Report, unless the assigned Commissioner or ALJ require further evidence or argument. Based on this schedule, the proceeding will be resolved within 18 months as required by Public Utilities Code section 1701.5.

In addition to formal activities and tasks that are part of this rulemaking, parties also should keep in mind that the NTIA has its own requirements for grantees, including the Commission, as well as its own timeline for approving the Commission’s BEAD plan. Specific milestones include: 1) by June 30, 2023, the NTIA plans to announce BEAD allocations; 2) in August 2023, the Commission must submit a 5-Year Action Plan to the NTIA for its approval; and 3) the Commission must submit its BEAD Initial Proposal 180 days after the NTIA announcing funding allocations.

**5. Category of Proceeding and Ex Parte Restrictions**

This ruling confirms the Commission’s preliminary determination<sup>3</sup> that this is a quasi-legislative proceeding because our consideration and approval of this matter would establish policy or rules affecting a class of regulated entities.

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<sup>3</sup> OIR at 8.



Accordingly, ex parte communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Rules.

**6. Public Outreach**

Pursuant to Public Utilities Code section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission’s monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission’s website. Additionally, this Commission and the California Department of Technology (CDT) jointly coordinated with local, tribal and regional organizations and other state entities to host 20 planning workshops throughout California. These workshops included 17 community engagement events and three regional tribal consultations.<sup>4</sup> The Commission will also meet individually with any California Native American that would like an individual government to government consultation. Finally, the Commission served the Order Instituting Rulemaking on the Service Lists of R. 20-09-001 and R. 20-08-021.

**7. Intervenor Compensation**

Pursuant to Public Utilities Code section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by June 30, 2023, 30 days after the prehearing conference.

**8. Response to Public Comments**

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

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<sup>4</sup> The summaries of the 17 community engagement events are included in Attachment A.

## **9. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **10. Filing, Service, and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the Service List is correct and serve notice of any errors on the Commission's Process office, the Service List, and the ALJ. Persons may become a party pursuant to Rule 1.4.<sup>5</sup>

When serving any document, each party must ensure that it is using the current official Service List on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Unless otherwise instructed, parties should only serve electronic copies of documents on the assigned ALJ.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official Service List, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

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<sup>5</sup> The form to request additions and changes to the Service List may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the “Information Only” category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the Service List to consider the Commission’s subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

#### **11. Receiving Electronic Service from the Commission**

Parties and other persons on the Service List are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive emails from the Commission. Please add “@cpuc.ca.gov” to your email safe sender list and update your email screening practices, settings and filters to ensure receipt of emails from the Commission.

#### **12. Assignment of Proceeding**

Darcie L. Houck is the assigned commissioner and Thomas J. Glegola is the assigned ALJ for the proceeding.

**IT IS RULED** that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing is not needed.

4. The category of the proceeding is quasi-legislative.

Dated July 14, 2023, at Sacramento, California.

/s/ DARCIE L. HOUCK

Darcie L. Houck  
Assigned Commissioner