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R2302016

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

ADMINISTRATIVE LAW JUDGE'S RULING ISSUING STAFF PROPOSAL

Pursuant to Rule 7.5 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, as well as the requirements of the National Telecommunications and Information Administration (NTIA),¹ this ruling serves proposed rules for the Commission's Broadband Equity, Access, and Deployment Program (BEAD) Program, as prepared by the Commission's Communications Division Staff (Staff).

Parties are requested to file and serve comments by November 27, 2023. The deadline for reply comments is December 7, 2023.

1. General Background

The Infrastructure Investment and Jobs Act (IIJA) was signed into law by President Biden on November 15, 2021.² Among the law's numerous provisions, the IIJA establishes the \$42.45 billion BEAD Program, administered by the NTIA.

¹ National Telecommunications and Information Administration, Notice of Funding Opportunity, Broadband Equity, Access, and Deployment Program ("BEAD NOFO"), Funding Opportunity Number NTIA-BEAD-2022, at 9: "Prior to submission to NTIA, the Initial Proposal must be made available for public comment, and the Initial Proposal must incorporate local coordination feedback... (for NTIA review)."

² P.L. 117-58 §60102(b) (2021).

After receiving BEAD funding from the NTIA, a state may award subgrants competitively to subgrantees to carry out the following broadband deployment activities: 1) unserved service projects; 2) underserved service projects; 3) projects 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.

California is eligible to receive approximately \$1.86 billion in BEAD funding, based on the federal government's calculation of California's share of unserved locations nationally.

2. NTIA Process

As noted in the Assigned Commissioner's Scoping Memo and Ruling for this proceeding, the NTIA must approve the Commission's BEAD plans, including the Initial Proposal.³ The Commission must submit its Initial Proposal 180 days after the NTIA announced funding allocations, December 27, 2023.⁴

The Initial Proposal will be divided into two volumes. Volume 1 is entitled "Challenge Process,"⁵ and contains the proposed rules to determine eligible

³ Assigned Commissioner's Scoping Memo and Ruling, issued July 14, 2023, at 8.

⁴ Note the Assigned Commissioner's Scoping Memo and Ruling inadvertently states the deadline for the Commission to submit to Initial Proposal is December 28, 2023.

⁵ After submission of its Initial Proposal and before allocating BEAD funds received for the deployment of broadband networks to subgrantees, an Eligible Entity must conduct a challenge process. Under this process, a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by the Eligible Entity in the Initial Proposal as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for the grant funds, including whether a particular location is unserved or underserved, and Eligible Entities must submit any successful challenges to NTIA for review and approval.

locations, and how eligible entities may challenge the current eligibility of locations. A draft of Volume 1 is included with this ruling as Attachment A. Volume 2 is entitled “Subgrantee Selection Process,” which will describe the competitive process this Commission proposes to use to select subgrantees to construct BEAD broadband projects.⁶ A draft of Volume 2 is included with this ruling as Attachment B.

The Initial Proposal is the first opportunity for parties and the public to review the Commission’s Draft Proposal for grant funding.⁷ The NTIA may modify the proposed challenge and subgrantee selection processes as necessary and inform the Commission of any required modifications required for NTIA’s approval. The Commission must submit a Final Proposal no later than twelve months after approval of Volume 2. The Final Proposal must include the designated subgrantees for BEAD funding.

3. Commission Process

The Commission must conduct the approved challenge process in the adopted Volume 1 of the Initial Proposal before allocating grant funds. After resolving each challenge and at least 60 days before allocating grant funds, this Commission must provide public notice of the final classification of each unserved location, underserved location, or Eligible Community Anchor Institution. The Commission also must notify the NTIA of any modifications to the Initial Proposal that are necessitated by successful challenges to its initial determinations.⁸

⁶ Discussed in more detail in the BEAD NOFO at pp. 35-46.

⁷ BEAD NOFO at 30.

⁸ *Id* at 34-35.

Both Volume 1 and Volume 2 must be submitted to the NTIA by December 27, 2023. Given the short timeframe to implement the NTIA-approved Initial Proposal and develop the Final Proposal,⁹ the Assigned Commissioner intends to issue two proposed decisions on BEAD rules; one for Vol 1 and one for Vol 2. These decisions will be issued after parties have an opportunity to file and serve comments and reply comments, which will be considered prior to issuance of any decisions. The first proposed decision will focus on the proposed rules for the Commission's Challenge Process, and the second on the rules for review of subgrantee applications.

4. Questions for Parties

Parties are asked to comment on the Staff Proposal contained in Attachments A and B, and to answer the following questions:

1. Do the proposed rules comply with federal requirements?
2. Should the Commission adopt the proposed rules?
3. Are there some proposed rules that comply with federal requirements but should be modified? If yes, how would parties modify the proposal? Are there specific portions of the proposal the Commission should not adopt? and
4. Any additional questions asked in the Staff Proposal.¹⁰

Parties are asked to explain their answers and to include proposed edits to the Staff Proposal in an attachment to their comments.

⁹ The Final Proposal includes awarding BEAD funds to successful subgrantees, coupled with guidance from the NTIA that it will review and approve Volume 1 of the Initial Proposal before reviewing Volume 2.

¹⁰ For example, in Section 5, Subgrantee Selection, parties are asked to comment on possible options for defining projects areas and determining the extremely high-cost per location threshold.

Additionally, parties are asked to comment on any statements made during the October 26, 2023 workshop, either to reiterate issues raised by panelists, or to respond to those statements.

Finally, much of the data and other information used to develop this Staff Proposal, including draft versions of required Volume 1 Appendices 1-5, are available at the following URLs:

- Appendix 1, Broadband Funding Sources:
<https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/appendix-1---broadband-funding-sources.xlsx>
- Appendix 2, Unserved Locations:
<https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/appendix-2---unserved.csv>
- Appendix 3, Underserved Locations:
<https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/appendix-3---underserved.csv>
- Appendix 4, Community Anchor Institutions:
<https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/appendix-4---community-anchor-institutions.xlsx>

- Appendix 5,_Programs for De-Duplication:
<https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/appendix-5---programs-for-de-duplication.xlsx>.

IT IS RULED that:

1. The proposed rules for the Broadband Equity, Access, and Deployment Program (BEAD) Program, contained in Attachments A and B of this ruling, are served on the Service List of this proceeding.
2. On or before November 27, 2023, parties may file and serve comments on the proposed rules in Attachments A and B. Reply comments are due on or before December 7, 2023.

Dated November 7, 2023, at Sacramento, California.

/s/ THOMAS J. GLEGOLA

Thomas J. Glegola
Administrative Law Judge