

**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

R.23-02-016

**OPENING COMMENTS OF  
COMMUNICATIONS WORKERS OF AMERICA DISTRICT 9;  
CALIFORNIA LABOR FOR CLIMATE JOBS; JOBS WITH JUSTICE SAN  
FRANCISCO; LABOR NETWORK FOR SUSTAINABILITY; UNITED  
STEELWORKERS DISTRICT 12; LOS ANGELES COUNTY FEDERATION OF  
LABOR, AFL-CIO; KERN INYO MONO COUNTIES CENTRAL LABOR COUNCIL,  
AFL-CIO; ORANGE COUNTY LABOR FEDERATION; AND SAN DIEGO AND  
IMPERIAL COUNTIES LABOR COUNCIL  
ON ADMINISTRATIVE LAW JUDGE'S RULING ISSUING STAFF PROPOSAL**

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**Introduction**

Pursuant to the Administrative Law Judge’s Ruling Issuing Staff Proposal,  
Communications Workers of America District 9 (“CWA”); California Labor for Climate Jobs;  
Jobs with Justice San Francisco; Labor Network for Sustainability; United Steelworkers District  
12; Los Angeles County Federation of Labor, AFL-CIO; Kern Inyo Mono Counties Central  
Labor Council, AFL-CIO; Orange County Labor Federation; and San Diego and Imperial  
Counties Labor Council (collectively “Respondents”)<sup>1</sup> submit these joint comments regarding  
the CPUC’s Draft Initial Proposal Volume 1 and Volume 2.

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<sup>1</sup> Communications Workers of America (CWA) District 9 is a labor organization representing workers in telecommunications and other industries in California, Nevada, and Hawaii. CWA advocates for good jobs, safety, and high-speed broadband for all. California Labor for Climate Jobs is a statewide coalition of labor unions organizing for a worker-led transition to a climate-safe and just economy. CLCJ’s member unions represent oil and gas workers, public sector workers statewide including in oil and gas dependent counties, as well as teachers, domestic workers, healthcare workers, farmworkers, janitors and

These comments respond to Volume 1, Challenge process (Requirement 7); and Volume 2, Deployment subgrantees selection (Requirement 8); Labor standards and protection (Requirement 11); Workforce readiness (Requirement 12) and Certification of Compliance with BEAD requirements (Requirement 19).

**I. Challenge process (Volume 1, Requirement 7)**

**A. Respondents support proposed DSL modifications 1 and 2.**

Respondents applaud the CPUC’s recognition that DSL is inadequate broadband technology. The failure of incumbent ISPs to maintain their legacy copper networks has made them more susceptible to outages after natural disasters and led to a general degradation of service quality. The CPUC’s adoption of NTIA’s Optional Module for DSL Modification ensures investment in future-proof fiber networks and expedites the phase-out of legacy copper facilities by treating locations that the National Broadband Map shows to have available

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many more. Jobs with Justice San Francisco is a long-term alliance of more than 30 labor unions, worker centers, and community groups working together to protect workers’ rights and build a strong working-class movement. Labor Network for Sustainability (LNS) is an organization that works at the national, statewide, and local levels to ensure climate policies are shaped by workers’ voices. Ensuring “green jobs” are quality careers, and that financial and other support is in place for workers who will lose their jobs in the transition are at the core of LNS’s organizing in California and across the country. United Steelworkers (USW) District 12 is the western district of the USW, North America’s largest industrial union. USW District 12 represents 53,000 workers in multiple industries throughout California and ten other western states. The Los Angeles County Federation of Labor, AFL-CIO, is the Central Labor Council for Los Angeles County, representing over 800,000 members across 300 affiliates. Kern Inyo Mono Counties Central Labor Council-AFL-CIO is one of the 500 state and local labor councils of the AFL-CIO and the heart of the labor movement, a democratically elected body dedicated to representing the interests of working people at the state and local level, mobilizing our union affiliate members and community partners to advocate for social and economic justice and striving daily to vanquish oppression and make our communities better for all people—regardless of race, color, gender, religion, age, sexual orientation, or ethnic or national origins. The Orange County Labor Federation represents more than ninety-seven local union from every sector of the labor movement with a membership of more than 270,000 working men and women, with a mission to build worker power through union organizing, political education, economic development and training programs to give workers a voice and improve the quality of life for all working families. The San Diego and Imperial Counties Labor Council represents 130 labor organizations and over 200,000 working families in the Southern California Border region.

qualifying broadband service delivered via DSL (i.e., a location that is “served”) as “underserved.”<sup>2</sup> Respondents further support the proposal to mark qualifying broadband service delivered via DSL as “unserved” for reported speeds that are lower than 30/5, for which there is supporting evidence that speeds consistently deliver below 25/3 service.

**B. Respondents support the fixed wireless modification.**

Respondents support the CPUC’s proposal to revise “underserved” locations delivered over Licensed Fixed Wireless (LFW) as “unserved” for reported speeds that are lower than or equal to 30/5 Mbps. Respondents further recommend the CPUC change the availability status of areas listed on the National Broadband Map as served through licensed fixed wireless from “served” to “underserved.” This revision will limit the use of fixed wireless as an inferior bandaid for the lack of broadband availability.

**C. Respondents support the proposed speed test modification.**

Similarly, Respondents support the CPUC’s proposal to adopt the Optional Module for Speed Test Modification, which would ensure that the locations that are shown as “served” on the FCC Map can be reclassified as “underserved” if rigorous speed test methodologies demonstrate that the “served” locations actually receive service that is materially below 100 Mbps downstream and 20 Mbps upstream. Respondents also support the CPUC’s proposal to treat as “unserved” locations that the National Broadband Map shows to be “underserved” or “served” if rigorous speed test methodologies demonstrate that these locations actually receive service that is materially below 25 Mbps downstream and 3 Mbps upstream.

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<sup>2</sup> See NTIA’s Proposed BEAD Challenge Process Guidance at 9, [https://www.internetforall.gov/sites/default/files/2023-04/BEAD\\_Model\\_Challenge\\_Process\\_-\\_Public\\_Comment\\_Draft\\_04.24.2023.pdf](https://www.internetforall.gov/sites/default/files/2023-04/BEAD_Model_Challenge_Process_-_Public_Comment_Draft_04.24.2023.pdf).

**D. Respondents recommend the adoption of an MDU modification.**

Respondents believe that the FCC Map may overestimate coverage at many MDUs and urge the CPUC to reclassify all MDUs within high-poverty and highly unconnected census tracts as “underserved,” until appropriately rebutted. This bulk reclassification will serve as an additional check to ensure that all of the units within an MDU meet the definition of served location. Other states such as Delaware, Michigan, and Wisconsin have proposed a similar reclassification as part of their initial proposals.

**E. Respondents recommend the adoption of an affordability challenge.**

Respondents propose that the CPUC create an affordability challenge for instances where all available broadband subscription options remain unreasonably costly, making the service inaccessible in practice. The Public Service Commission of Wisconsin proposed an affordability challenge in its draft Initial Proposal Volume I. It defined unreasonable subscription cost as exceeding 250 percent of the average minimum broadband monthly subscription price for an urban census block. Successful challenges to locations that meet this criteria are then designated as eligible “underserved” locations. To facilitate a smooth challenge process, Respondents recommend the CPUC publish the actual dollar amount of what it considers to be an unreasonable broadband subscription cost in its final draft and offer technical assistance to any localities or nonprofit organizations seeking to develop challenges.

**F. Challenge process design**

To ensure successful implementation, Respondents recommend the CPUC maximize transparency and accountability in the challenge process. Prior to the start of the challenge process, the CPUC should provide notice and training to units of local government and nonprofit organizations on how to challenge the current broadband map and increase the 30-day challenge

submission timeline when a nonprofit or local entity provides a reasonable explanation on why an extension is needed. While ISPs have had many years of experience challenging broadband availability data with federal and state agencies, the process is new to local governments and organizations. In order to ensure the most accurate availability of data, the CPUC should extend the 15-day rebuttal period if an ISP provides a reasonable explanation for why additional time is needed to submit rebuttal evidence. Further, the CPUC should publicly disclose and post online in an easily accessible format all submitted challenges and rebuttals before the final challenge determination has been made.

Considering that ISPs have had several opportunities to submit accurate broadband deployment data through the FCC’s Broadband Map and the NTIA’s Broadband Need Map/the National Broadband Availability Map (NBAM), Respondents urge the CPUC to thoroughly scrutinize challenges based on “Enforceable Commitments” and “Planned Service.”<sup>3</sup> ISPs that serve or plan to serve broadband at a location should be required to explain why they had not previously provided the relevant data to the aforementioned mapping processes.

Challengers should always be required to provide evidence of service for each location getting challenged.<sup>4</sup> Respondents recommend that the CPUC prevent providers from submitting area challenges to reclassify a census block as served, which can overstate actual coverage.

Lastly, the CPUC should closely scrutinize all requests for redactions due to proprietary information so that important public information remains within the public record.

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<sup>3</sup> See, National Telecommunications and Information Administration, “Data & Mapping, Public Maps & Tools, Indicators of Broadband Need Map,” <https://broadbandusa.ntia.doc.gov/resources/data-andmapping>.

<sup>4</sup> See comments of The Utility Reform Network, In the Matter of Infrastructure Investment and Job Act Implementation, NTIA, Docket No. 220105-002 (May 5, 2023).

## **II. Deployment Subgrantee Selection (Volume 2, Requirement 8)**

### **A. Respondents support the inclusion of considerations regarding direct employment, in-house training, and locally based workforce, and the CPUC should incorporate additional prioritization of these factors, for example, by clarifying how those factors will be weighted.**

The Initial Proposal includes in its Fair Labor Practices section information regarding direct employment, in-house training, wages and benefits, and locally based workforce (p. 29) and states that this information will be considered in its scoring of labor standards (p. 30).

Respondents support the inclusion of these factors in the scoring rubric. The CPUC should ensure the prioritization of these factors, for example, by clarifying a point value allocated to each factor or to forward-looking labor compliance factors more broadly. For example:

An application that proposes more robust standards to ensure and promote ongoing labor compliance will receive greater credit.

1. Safety and Training - An application that describes a more comprehensive in-house training program, for example, a program tied to certifications, titles, and uniform wage scales and/or participation in a labor-management apprenticeship program, will receive greater credit.
2. Accountability and Subcontracting - An application that commits that a greater proportion of the broadband deployment workforce (a core set of job titles central to the success of the project) will be directly employed by the entity that will own the network will receive greater credit.
3. Job Quality: An application that describes paying higher wages and more robust benefits to workers will receive greater credit. If Applicant uses a contracted workforce, having a plan to monitor compliance and job quality.
4. Local hire and targeted hire: An application that commits to a high percentage of the workforce that will reside in California and/or includes policies or practices that promote career pathways for local residents and hiring for marginalized communities or the local community, will receive a higher score.
5. Ongoing Network Operations - An application that describes more robust high road practices for the workforce that will perform ongoing customer service, installation, and maintenance work, for example, good jobs, a locally based workforce, and/or a directly hired workforce, will receive

greater credit.<sup>5</sup>

In particular, Respondents emphasize the value of prioritizing a directly employed workforce. As we've argued in our previous comments, work conditions in the telecommunications industry have seen substantial degradation in recent decades, in part due to the proliferation of subcontracting arrangements. The BEAD program has the potential to address, rather than exacerbate, longstanding employer abuses in the labor market for telecommunications technicians. Telecom technicians have seen their wages stagnate and working conditions degrade as a result of ISPs' outsourcing of work to cut labor costs and undercut unions' existing work standards. Unlike in traditional construction trades – where the state's high level of spending has helped shape industry labor markets through CA Labor Code § 1776, which taps into existing joint apprenticeship programs to supply skilled labor – the broadband labor market is controlled by the operators of the networks, who hire the workers or bid work out to contractors who then hire workers on their behalf. Company abuses have dragged down standards and silenced workers' voices over the past forty years of declining union density in the telecommunications sector. From a height of nationwide bargaining with the Bell System and independent telephone companies, when democratically governed trade unions represented 60% of all workers in the sector and turned low-wage jobs into middle class jobs, today the Bureau of Labor Statistics reports fewer than 10% of workers in the telecommunications industry are represented by a union. By incentivizing employers to use a

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<sup>5</sup> Communications Workers of America, Broadband Investments that Go the Distance, <https://buildbroadbandbetter.org/system/files/2023-09/CWA-Broadband-High-Road-Labor-Report-2023.pdf>.



directly employed workforce, the CPUC promotes good labor practices and rewards applicants who make the choice to promote a more sustainable directly employed workforce.<sup>6</sup>

The history of the sector also supports prioritizing applicants with robust in-house training tied to uniform and progressive wage scales, job titles, and certifications or skill codes recognized by the industry. As Respondents have explained in earlier comments, unlike in traditional construction, where contracting arrangements are historically entrenched and often unionized, in telecommunications these arrangements are relatively rare.<sup>7</sup> Training models like apprenticeships have not been widely adopted in telecommunications and training has traditionally been done in-house, through a rigorous and progressive system. Accordingly, in prioritizing applicants with robust in-house training tied to uniform and progressive wage scales, job titles, and certifications or skill codes recognized by the industry, the CPUC recognizes the way in which high road training has largely been performed in the sector.

**B. The CPUC should clarify the “workforce capacity building and development” category and include direct employment, in-house training, and locally based workforce as factors in this category.**

Within the Fair Labor Practices category, the Initial Proposal allocates ten points to “workforce capacity building and development commitments, especially those prioritizing equitable workforce development” (p. 31). Respondents recommend that the CPUC clarify how this category will be defined, and include within this category commitments to direct employment, by the entity that will own the network, of a core set of job titles central to the

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<sup>6</sup> Comments of CWA et al., R.23-02-016, April 17, 2023, p. 3-10.

<sup>7</sup> See Comments of CWA et al., R.23-02-016, April 17, 2023; p. 5-6, Reply Comments of CWA et al., R.23-02-016, May 8, 2023, p. 8-10.

success of the project; robust in-house training with established requirements that are tied to uniform and progressive wage scales, job titles, and certifications or skill codes recognized by the industry; and a locally based workforce. As Respondents have stated in previous comments, commitments that support high road labor practices are in themselves workforce development supports.<sup>8</sup> Applicants that use high road labor practices - like in-house training with established requirements that are tied to uniform and progressive wage scales, job titles, and certifications or skill codes recognized by the industry; a directly hired workforce in core job titles; and a locally based workforce - are supporting low turnover, career paths within the industry, and sustainable workforce development. “Workforce capacity building and development commitments” should be defined to include high road workplace practices such as these that contribute to sustainable career paths within the industry.

**C. Respondents support the incorporation of Fair Labor Practices information in the prequalification stage.**

The Initial Proposal incorporates Fair Labor Practices information in the prequalification stage (5.3.2, p. 29). Respondents support incorporating these factors into the prequalification stage. Labor considerations are indicative of overall technical and managerial capacity, and including them in the prequalification stage supports the goals of prequalification.

**D. Respondents support an emphasis on forward-looking labor compliance measures and recommend the CPUC clarify how commitments regarding future compliance will be weighted.**

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<sup>8</sup> Reply Comments of CWA et al., R.23-02-016, May 8, 2023, pp. 3-8.

The Initial Proposal includes information on forward-looking labor measures such as whether the workforce will be directly employed or subcontracted, job quality, locally based workforce, and quality of in-house training (p. 30) in the Fair Labor Practices category. The scoring criteria includes commitments to future compliance in one ten point allocation, and workforce capacity building and development commitments in a second ten point allocation (p. 31). Respondents support the Initial Proposal's emphasis on forward-looking measures. In other states, CWA has submitted comments to recommend that allocating points towards forward-looking plans for compliance, as opposed to backwards-looking records of compliance, better promotes an effective program. The CPUC should consider clarifying that the forward-looking labor measures receive greater weight in the first ten point allocation, which currently refers to (1) a demonstrated history of compliance with federal labor laws; (2) demonstrated commitments to future compliance with federal labor laws; and (3) the quality and contents of labor practice-related items submitted during the Application Phase. CWA recommends that past compliance should be worth 20% of the points allocated for Fair Labor Practices, and plans for ensuring compliance be allocated 80% of the total points allocated for Fair Labor Practices. For example, if Fair Labor Practices are worth 10% of the total point allocation, we recommend that records of compliance be worth 2% and plans for compliance be worth 8%. Allocating points towards forward looking measures incentivizes applicants to ensure high road labor practices on the project and better promotes an effective program.

**E. Respondents support the current point allocation for Fair Labor Practices or a higher point allocation.**

Respondents support the allocation of up to 20 points for labor practices (p. 31). The CPUC should consider increasing the point allocation to 25 points and in any event should not

decrease it. As stated in previous comments, high road labor practices are mutually reinforcing with program considerations of managerial, technical, and financial capacity to execute the project. A substantial point allocation for Fair Labor Practices supports multiple program goals. Other states' initial proposals reflect similar considerations. Delaware's recently published Initial Proposal Volume II allocates 25% to Fair Labor Practices. Pennsylvania allocates a combined 25% to labor factors, including 15% to Fair Labor practices and 10% to Equitable workforce development and job quality. New York's Initial Proposal and Maryland's Initial Proposal allocate 30% to Fair Labor Practices.<sup>9</sup>

#### **F. Extremely High Cost Per Location Threshold**

Respondents urge the CPUC to set the EHCT number as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible. Fiber is sustainable, scalable, and renewable. It offers greater capacity, predictable performance, lower maintenance costs, and a longer technological lifetime than coaxial cable, satellite, and fixed wireless technologies. Respondents do not oppose the CPUC's plan to set an EHCT in later stages of the BEAD grant-making process. As the CPUC is likely aware, the objective of 100 percent coverage is not intended by NTIA to undercut a strong preference for end-to-end fiber-optic architecture.<sup>10</sup> The allocated BEAD funds should be sufficient to deploy fiber to the majority of unserved locations in California, which is the primary mandate under the Bipartisan Infrastructure Law, and can likely reach a significant share of underserved locations as well. Other state and federal universal

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<sup>9</sup> <https://broadband.delaware.gov/pages/index.shtml?dc=community>; <https://dced.pa.gov/download/volume-ii-of-the-broadband-equity-access-and-deployment-bead-proposal/?wpdmdl=122099>; <https://broadband.ny.gov/broadband-deployment-initial-proposal>; <https://dhcd.maryland.gov/Broadband/Documents/State-Plans/DRAFT-Maryland-BEAD-IPv2.pdf>.

<sup>10</sup> BEAD Program Notice of Funding Opportunity at 13, fn 6.

service programs and appropriations-funded broadband grant programs could help fill the remaining connectivity gaps and ensure that everyone can benefit from future-proof fiber technology.

Respondents also encourage the CPUC to consider studies of the long-term value of fiber in determining an EHCT. An engineering analysis of fixed wireless technologies by consulting firm CTC Technology and Energy concludes that “fiber represents the most fiscally prudent expenditure of public funds in most circumstances because of its longevity and technical advantages.”<sup>11</sup> CTC’s cost analysis of fiber and fixed wireless deployments finds that while fiber’s upfront capital costs are higher than those of fixed wireless in many circumstances, the total cost of ownership over 30 years is comparable for fiber and fixed wireless, and fiber provides much higher quality service. The CTC analysis further finds that while fixed wireless technologies will continue to improve, they will not match the performance of fiber optic networks. Respondents recommend that the CPUC incorporate a minimum of a 30-year period to evaluate the total cost of ownership of non-FTTP networks as part of its EHCT analysis.

### **III. Labor standards and protection (Volume 2, Requirement 11) and Workforce readiness (Volume 2, Requirement 12)**

#### **A. Respondents support the disclosure requirements regarding labor standards described in the Initial Proposal and recommend the CPUC incorporate additions regarding employing entity and ongoing network operations.**

The Initial Proposal outlines the collection of different labor information from applicants, including information on workforce plan including training and safety, job quality, local hire and

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<sup>11</sup> CTC Technology, “Fixed Wireless Technologies and Their Suitability for Broadband Delivery”, 49-51, June 2022, <https://www.benton.org/sites/default/files/FixedWireless.pdf>.

targeted hire; current and future practices regarding a directly employed workforce, in-house training, wages and benefits, and a locally based workforce; and discussion of whether the workforce will be directly employed or contracted, the size of the workforce, whether the workforce will be local or regional, and safety and standards and training (p. 60-61).

Respondents support the labor standards disclosure collection requirements outlined in the Initial Proposal.

In the ongoing workforce reports, if a subgrantee is subcontracting work, the CPUC plans to require them to disclose the employing entity (p. 63). The CPUC should clarify that the initial disclosures also require that if an applicant will be subcontracting work, that they should disclose what the entity will be, or submit the information as soon as it is available.

The CPUC should also incorporate disclosures regarding ongoing network operations, for example:

Ongoing Network Operations - For projects where the applicant will operate the network, does the applicant have an existing workforce to perform the customer service and operations work? Will that workforce be based locally and directly hired by the employer? If those functions will be outsourced, will any of the jobs be overseas?

Describe the wage scales, minimum wage rates, and benefits this workforce will receive.

**B. Respondents support ongoing workforce reports that are legally binding and publicly available.**

The Initial Proposal states that successful applicants will be required to submit ongoing workforce reports and that these reports will be legally binding and publicly available (p. 62-63). Respondents commend the CPUC for the model practices outlined in this section. Enforcement is an endemic problem in labor compliance. Workforce representations by applicants mean little if

they are not legally binding or enforceable. If the information applicants disclose as part of their skilled and qualified workforce information is posted publicly, the public and worker organizations are able to hold applicants accountable to those commitments and aid in enforcement.

#### **IV. Certification of compliance with BEAD requirements (Volume 2, Requirement 19)**

Respondents support the CPUC's plans to conduct desk review, field engineering reviews, and site visits. Respondents recommend that the CPUC conduct periodic and random site visits, which should include inspections of pole attachments and handholds. Respondents further recommend subgrantees submit "as-built" technical documentation, certified by a licensed Professional Engineer, that verifies project completion and demonstrates that the deployed infrastructure, service area, and equipment match those in the approved final application and are capable of delivering the minimum proposed speeds consistently to all potential customers in the project area. Recipients should be required to identify any differences between the network design in the approved final application and the "as-builts," and explain the reasons for the differences and any impacts or changes to the final application resulting from these differences. Subgrantees should also be required to validate the performance characteristics of any deployed infrastructure and equipment that differs from the specifications in the approved final application.

Dated: November 27, 2023

Respectfully Submitted,

*/s/ Frank Arce*

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