

**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 23-02-16
(Filed February 23, 2023)

**REPLY COMMENTS OF AT&T ON
INITIAL PROPOSAL VOLUME I & II**

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Pursuant to the *Administrative Law Judge’s Ruling Issuing Staff Proposal* (“Ruling”) filed in Rulemaking (R.) 23-02-016 on November 7, 2023, Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C), AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C), New Cingular Wireless PCS, LLC (U 3060 C) d/b/a AT&T Mobility, and Santa Barbara Cellular Systems, Ltd. (U 3015 C) (collectively, “AT&T”) hereby their submit reply comments on the Broadband Equity, Access, and Deployment (“BEAD”) Initial Proposal Volume I¹ and Volume II.²

I. INTRODUCTION

In developing its initial proposals for BEAD funding, the Commission should establish requirements that are consistent with the detailed program criteria established by the NTIA and sufficiently flexible and streamlined to attract the greatest number of applications from qualified bidders. This approach will result in a more competitive bidding process, more efficient broadband deployment, and more broadband for Californians.

II. DISCUSSION

A. Allowing Parties to Define Their Own Project Areas Will Promote Greater Participation in The BEAD Program.

As AT&T discussed in opening comments, the Commission can best promote broad participation in the BEAD program by allowing applicants as much flexibility as possible to design the project areas included in their applications.³ AT&T agrees with CalBroadband and CTIA that allowing applicants to define their own project areas will result in more broadband

¹ *Administrative Law Judge’s Ruling Issuing Staff Proposal* (“Ruling”), Rulemaking (R.) 23-02-016, Attachment A – Initial Proposal Volume I, (Nov. 7, 2023).

² *Id.* Attachment B – Initial Proposal Volume II.

³ *Opening Comments of AT&T on Initial Proposal Volume I & II* (“AT&T Opening Comments”), Rulemaking (R.) 23-02-016, at 3 (Nov. 27, 2023).

deployment to Californians because this approach will result in: (1) efficient and economical proposals that leverage existing networks and maximize network deployment efficiency; (2) account for topography, terrain, environmental factors, and right-of-way considerations; (3) and applicants' ability to successfully and sustainably operate and maintain their networks.⁴ CalBroadband also accurately observed that “broadband networks were never designed or built based on government-created geographic boundaries...” Efficient deployment of broadband networks is key to reducing the cost of BEAD projects, increasing the amount of projects funded by the limited BEAD dollars, and increasing broadband access to more Californians. For these reasons, AT&T recommends the Commission revise Volume II to allow applicants to define their own project areas.

B. The Infrastructure Investment and Jobs Act (“IIJA”) Prohibits Rate Regulation.

Parties' opening comments remind the Commission that “broadband service is an interstate information service and, as such, may not be subjected to common carrier regulation.”⁵ AT&T agrees with parties that caution the Commission against setting unlawful rate caps when scoring affordability points because rate caps are a form of rate regulation,⁶ which is prohibited by the Infrastructure Investment and Jobs Act (“IIJA”).⁷ The Commission should be careful

⁴ See *Comments of the California Broadband & Video Association on ALJ's Ruling Issuing Staff Proposal* (“CalBroadband Opening Comments”), Rulemaking (R.) 23-02-016, at 9-11 (Nov. 27, 2023); *Comments of CTIA on Broadband Equity, Access, and Deployment Program Initial Proposal*, (“CTIA Opening Comments”), Rulemaking (R.) 23-02-016, Attachment 2 at 4-6 (Nov. 27, 2023).

⁵ CTIA Opening Comments, Attachment 2 at 5 (citing *Restoring Internet Freedom, Declaratory Ruling, Report and Order, and Order*, 33 FCC Rcd 311 (2018), *pet. for rev. granted in part, denied in pertinent part, Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019) (per curiam); *Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling and Order*, 30 FCC Rcd 5601, 5775, 5814 ¶¶ 382, 451 (2015)).

⁶ See CTIA Opening Comments, Attachment 2 at 2 (Nov. 27, 2023); CalBroadband Opening Comments at 16-23.

⁷ 47 U.S.C. § 1702(h)(5)(D).

to avoid inflexibly locking in prices without accommodating changes in costs and broader economic conditions.

C. The Commission Should Define The “Useful Life” of BEAD Infrastructure Consistent With the Commission’s Federal Funding Account.

AT&T agrees with CTIA’s suggestion that the Commission define the “useful life” of BEAD infrastructure as five years.⁸ As CTIA notes, five years is “consistent with the price commitment period for the Commission’s Federal Funding Account” and “the required period to offer the low-cost plan at a set price proposed by other states in their BEAD proposals.”⁹ Additionally, the Commission should align with its previous decision and allow subgrantees the option to adjust price commitments in accordance with the Consumer Price Index.¹⁰ Maintaining continuity among the subsidy programs administered by the Commission minimize administrative burden and will attract the greatest number of applicants which will result in a more competitive bidding process that benefit Californians.

D. The Commission Should Not Take On Complex Extraneous Issues Here Because Doing So Would Unduly Delay This Proceeding and May Unduly Reduce the Impact of BEAD Funding.

Several parties raised complex and extraneous issues the Commission is addressing or has already addressed in other proceedings. For example, CalBroadband’s opening comments discuss pole accessibility.¹¹ Other parties raised the issues of resiliency and backup power.¹²

⁸ CTIA Opening Comments, Attachment 2 at 7, fn. 21.

⁹ *Id.* (citing Decision (D.) 22-04-055 at 56, 96, and Exhibit A, Section 7.b; Maine’s BEAD Initial Proposal, Volume 2 at 45.)

¹⁰ Decision (D.) 22-04-055 at 56.

¹¹ CalBroadband Opening Comments, at 44-46.

¹² *The Public Advocates Office Opening Comments on the Assigned Administrative Law Judge’s ruling Issuing Staff Proposal* (“PAO Opening Comments”), Rulemaking (R.) 23-02-016, at 17, (Nov. 27, 2023); *Opening Comments of The Utility Reform Network and Center for Accessible*

AT&T disagrees that the BEAD proceeding is the appropriate docket for these issues because they are outside the scope of the BEAD proceeding. Taking on these complex issues would require an expansion of the scope of this proceeding, the inclusion of additional affected parties, and the consideration of additional evidence. That would result in unacceptable delay in the BEAD process and ultimately could limit the impact of BEAD funding.

Pole accessibility is a complex issue that is already within the scope of another Commission proceeding, Investigation (I.) 17-06-027/Rulemaking (R.)17-06-028. Adding pole accessibility to the scope of this proceeding would require the development of a largely duplicative record and participation of additional parties, including the electric Investor-Owned Utilities, which have a significant interest in the issue because they are outright or joint owners of millions of poles in California. They are neither parties to this proceeding, nor have they been put on notice that the issue of pole accessibility would be addressed here.

Similarly, resiliency and backup power are the subject of Commission proceeding Rulemaking (R.)18-03-011. After considering an extensive record, the Commission adopted resiliency strategies for certain wireless and wireline providers.¹³ Parties requesting the imposition in this proceeding of additional resiliency requirements, such as further backup power requirements, are essentially relitigating issues resolved in Rulemaking (R.) 18-03-011, but without the necessary parties or evidentiary record.

Lastly, the parties proposing requiring or awarding points for installing backup power that goes beyond the Commission's resiliency decisions are not only second-guessing the Commission's current decisions. They are also seeking to reduce the impact of BEAD funding.

Technology on the ALJ ruling Requesting comment on the Draft Initial Staff Proposal (“TURN/CforAT Opening Comments”), Rulemaking (R.) 23-02-016, at 6-9 (Nov. 27, 2023).

¹³ Decision (D.) 20-07-011; Decision (D.) 21-02-029.

