

**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 23-02-016  
(Filed February 23, 2023)

**REPLY COMMENTS OF THE YUOK TRIBE ON THE  
ADMINISTRATIVE LAW JUDGE'S RULING ISSUING STAFF  
PROPOSAL**

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**I. INTRODUCTION**

The Yurok Tribe submits these Reply Comments pursuant to the Yurok Tribe’s status as a party to the proceeding under Rule 1.4(a)(2)(ii).

On February 23, 2023, the California Public Utilities Commission (Commission) issued an OIR to consider rules to determine grant funding, eligibility, and compliance for funds distributed to California under the federal Broadband Equity, Access, and Deployment Program (“BEAD”), created by the Infrastructure Investment and Jobs Act of 2021 (“IIJA”). On November 7, 2023, the assigned Administrative Law Judge Glegola made a ruling issuing proposed rules for the BEAD program, inviting comments by November 27 and reply comments by December 7. In accordance with the Commission’s invitation for comments, the Yurok Tribe files this comment replying to the comments of other parties, and raising additional concerns.

The Yurok Tribe is a sovereign nation and federally recognized tribe, the largest within California, with over 6,500 enrolled members. The Yurok Tribe’s government is made up of many different divisions and departments that implement and enforce Yurok law, manage the day-to-day operations of the government, and interact with tribal, federal, state, and local governments and entities on behalf of Yurok tribal members.

The Yurok Reservation (“Reservation”) is home to Yurok tribal members, other tribal members, and non-Indians. The Reservation spans approximately forty-five (45) miles from the Pacific Ocean along both sides of the Klamath River to the convergence of the Klamath River and Trinity River near Weitchpec. The Yurok ancestral territory is substantial and includes large portions of California’s Del Norte and Humboldt counties, as well as substantial ocean and watershed territories. The Yurok Tribe also has various wholly owned Yurok corporations, utility districts, and other entities that serve as arms of the Yurok tribal government. The Tribal government, its corporations, utility districts, and other tribal entities combined are one of the largest employers in the area and provide a wide variety of services to both Indian and non-Indian community members, including, but not limited to, health and human services, emergency services, legal, environmental and natural resource management, broadband, and education. The Yurok Tribe operates a Wireless Internet Service Provider (“WISP”), that provides broadband services to Reservation residents within Del Norte and Humboldt counties.

## **II. RESPONSES TO COMMENTS OF OTHER PARTIES ON THE RULING ISSUING STAFF PROPOSAL**

### **A. Letter of Credit Requirement**

The Yurok Tribe agrees with TURN and CforAT's recommendation that non-traditional providers, including Tribes and tribal entities, would greatly benefit from NTIA's four recommended conditional programmatic waivers of the Letter of Credit requirement. As stated in that comment, Tribes, lacking a traditional tax base and often lacking a lengthy, strong credit history due to historical disinvestment in tribal communities, may face significant difficulty in meeting the Letter of Credit requirement. Adopting the four conditional programmatic waivers would give Tribes and tribal entities additional flexibility needed to meet grant requirements while assuring risk is adequately mitigated.

The Yurok Tribe agrees with TURN and CforAT's recommendation that modifying the Letter of Credit requirement to include the CASF Broadband Loan Loss Reserve Program. As previously discussed, significant barriers to satisfying the Letter of Credit requirement could make Tribal participation in BEAD difficult. Allowing Tribes to utilize the Loan Loss Reserve Program an alternative to meeting the Letter of Credit Requirement could help lower this barrier.

## **B. Matching Requirement**

The Yurok Tribe fully supports TURN and CforAT's request that the Commission create an equity-based waiver of matching requirements for tribal applicants and provide a full allotment of points for "minimizing BEAD outlay" to entities who receive such a waiver. Due to historic disinvestment, many tribal communities have limited ability to meet the BEAD matching requirement, either through cash or in-kind investments. An equity-based waiver would allow the Tribe to explain, and the Commission to account for, the unique circumstances arising from this historic disinvestment.

## **C. Geographic Area of Project Area Units**

Yurok Tribe disagrees with AT&T's recommendation to create a project size scoring subcategory. Doing so would reward incumbent providers at the cost of new providers, as incumbent providers are better positioned to develop larger projects that serve more locations. Additionally, this category would cause projects serving rural customers to score lower, as remote, rural projects will almost necessarily cost more per person served, meaning that on average, a non-rural project of the same outlay as a rural project will serve more customers and receive a higher score.

## **D. Project Size Scoring Category**

Yurok Tribe disagrees with AT&T's recommendation to allow project area units to be geographically small as possible, such that project areas may serve some, but not all locations within an area of tribal land. AT&T says that requiring minimum geographic units to be equivalent to a contiguous tribal land area could "eliminate synergies and increase costs." This is precisely the logic that has led to a patchwork of service on tribal lands, and the chronic underinvestment of incumbent providers in remote, rural tribal locations.

## **E. Prior Experience with Certain Technologies**

Yurok Tribe disagrees with AT&T's recommendation that applicants have prior experience with the technology proposed in their applications. This suggestion would, quite obviously, completely disqualify a number of new providers seeking to bring quality service to areas long ignored by incumbent providers from eligibility. The CPUC should not adopt this scoring criterion, as doing so would be inconsistent with BEAD's principal purpose of serving unserved and underserved areas and the broader principle of promoting digital equity which underlies the BEAD program.

### III. CONCLUSION

The Yurok Tribe appreciates the Commission's consideration of the Tribe's comments.

Respectfully submitted in San Francisco, California,

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