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ATTACHMENT B



PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
505 VAN NESS AVENUE | SAN FRANCISCO, CALIFORNIA 94102

February 23, 2024

Susan Walters, Regional Director - West
Robyn Madison, Regional Director - Northern Plains
Marina MacLatchie, Federal Program Officer - California
Chris Hall, Federal Program Officer - Iowa
Office of Internet Connectivity and Growth
National Telecommunications Administration (NTIA)
U.S. Department of Commerce
1401 Constitution Ave., N.W.
Washington, D.C. 20230
BroadbandUSA@ntia.gov

Re: Request for further clarification for Initial Proposal Volume 1 curing

Dear NTIA BEAD Program Team,

We appreciate the NTIA's timely response to CPUC's BEAD Initial Proposal Volume 1 (IPV1) and the feedback for curing received on February 6, 2024. We have incorporated the feedback and requests for additional information. To ensure clarity on the direction provided by NTIA, we are submitting this communication concurrently with our cured IPV1 and kindly request written responses to the questions and issues outlined below.

In the most recent set of curing comments on IPV1 provided by NTIA to identify issues where information or documentation is missing or incomplete, the following feedback was received regarding DSL Modification 2 under Box 1.4.2b:

"NTIA's DSL pre-challenge modification template allows the Eligible Entity to change a location from served to underserved only. Recategorization of this type does not provide enough evidence, though it may be possible to achieve the desired results through speed tests or other methods during the Challenge Process itself."

In the cured version of the IPV1, we provide additional information from the Federal Communications Commission's (FCC) Measuring Broadband America Fixed Broadband Twelfth Report, published January 6, 2023, indicating that objective and rigorous testing methodologies utilized by the FCC demonstrate that advertised or claimed DSL speeds rarely meet or exceed actual speeds delivered to customers. This evidence adds to documentation and evidence present in the latest version of the IPV1, which highlights the findings of the CPUC's recent Network Examination of the AT&T and Frontier copper networks indicating that claimed speeds are likely to exceed actual speeds experienced by customers.

These multiple sources of objective data provide ample evidentiary basis to substantiate the CPUC's proposed DSL Modification 2, which would presume locations for which providers have claimed to deliver speeds only slightly above the "unserved" threshold, up to 30/5 Mbps, are actually receiving speeds below the "unserved" threshold of 25/3 Mbps. This modification is consistent with the CPUC's and NTIA's longstanding efforts to phase

out legacy copper network infrastructure, and it does not seek to modify in any way the unserved threshold established in the Infrastructure Investment and Jobs Act (IIJA). Furthermore, the modification would enable providers to submit evidence through the upcoming Challenge Process substantiating their claimed speeds. While NTIA has noted that the Challenge Process could be a venue for challenges to the claimed speeds, this is unlikely to be feasible for communities most affected by low-speed legacy copper-based technologies (DSL). These communities lack reliable broadband necessary to participate in the web-based challenge process anticipated in IP Volume 1. Instead, adopting DSL Modification 2 will appropriately place the burden of proof on providers to substantiate their claims, rather than the communities affected by disinvestment in future-ready infrastructure themselves, who may be among the most in need of BEAD investments.

If the information and reasoning summarized above, which is further explicated in the cured version of IPV1, is insufficient for NTIA's approval process, the CPUC respectfully requests that NTIA provide a clear, written explanation of what the threshold for determining sufficiency will be, or a clear written communication indicating that the modification will not be accepted for specific reasons.

As you are aware, the CPUC follows a deliberative, transparent process for our rulemaking proceedings, including Rulemaking (R.) 23-02-016 to implement the BEAD program. NTIA's determination of whether or not to approve specific elements of our proposed Initial Proposal is directly relevant to this deliberative process, and it is necessary for the CPUC to be able to clearly indicate what elements of the proposed Initial Proposal were disallowed due to NTIA's own determination. We look forward to your response.

Sincerely,

Maria Ellis

Maria Isabel Ellis
Deputy Director for Broadband, Communications Division
NTIA Authorized Organizational Representative
California Public Utilities Commission

CC: Commissioner Darcie Houck
Robert Osborn, Director, Communications Division

(END OF ATTACHMENT B)