Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program.

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

OPENING COMMENTS OF NEXT CENTURY CITIES TO ORDER INSTITUTING RULEMAKING 23-02-016

Corian Zacher
Senior Policy Counsel, State & Local Initiatives
Next Century Cities
1828 L Street NW, Suite 300 – A
Washington, DC 20036
Tel: 405.762.0571
Email: corian@nextcenturycities.org

April 17, 2023
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
(Filed February 23, 2023)

OPENING COMMENTS OF NEXT CENTURY CITIES TO ORDER
INSTITUTING RULEMAKING 23-02-016

Table of Contents
I. Introduction .................................................................................................................. 2

II. Flexible geographic areas and multiple application windows would allow applicants to
tailor proposals to community needs. ............................................................................. 2

III. The Commission should foster collaboration between BEAD subgrantees, local
governments, and community organizations................................................................. 3

IV. The Commission’s process should allow challengers to show whether the quality of
service at a location matches the availability data reported on the State’s broadband map. 4

V. Coordination with California’s Middle-Mile program is imperative to ensuring the
projects work synchronically.......................................................................................... 5

VI. The Commission should align grant conditions with community needs.................... 5

VII. Robust community engagement could advance both the Commission’s BEAD goals
and Environmental and Social Justice Action Plan......................................................... 6

VIII. Conclusion.................................................................................................................. 7
I. Introduction

In accordance with Rule 6.2 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure (“Rules”), Next Century Cities (NCC) respectfully submits comments to the Order Instituting Rulemaking 23-02-016 (“Rulemaking”). Next Century Cities works in coalition with local governments nationwide, including 32 members in California, that have been instrumental in deploying and maintaining broadband networks. Their broadband leadership has been critical for improving public health and safety, enhancing competition from private providers, and serving anchor institutions, businesses, and residents.

In August 2020, Governor Gavin Newsom directed the CPUC to take actions targeted at expanding broadband to all residents in California. Notably, Governor Newsom’s Executive Order states that “local and tribal governments play a critical role in understanding the broadband needs of their communities and in infrastructure planning and permitting.” Likewise, the National Telecommunications and Information Administration’s (NTIA) BEAD Notice of Funding Opportunity (NOFO) states that, “Localities and groups representing historically excluded communities can and must make their voices heard to ensure that longstanding equity gaps are finally closed.” Through close partnerships with local and Tribal governments as well as community organizations, the Commission can ensure that local expertise informs policy decisions aimed at closing California’s digital divide.

II. Flexible geographic areas and multiple application windows would allow applicants to tailor proposals to community needs.

The Commission asks at what geographic level – including location, census block, town, county, or another geographic unit – applicants should submit proposals. Additionally, the

---

1 Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program Rulemaking 23-02-016 (March 1, 2023), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M502/K991/502991618.PDF (“Rulemaking”).
3 Id.
5 Rulemaking, at 5.
Commission is considering the number of application windows necessary to best implement the state’s BEAD program.

Communities across the U.S. are piloting innovative projects that often begin in neighborhoods with persistent needs and scale up as needed. Particularly because NTIA’s NOFO prioritizes unserved and underserved locations, some BEAD applicants will likely seek funding for a piece of a larger project. In other communities, taking a regional approach helps maximize efficiency and harness collaborative strengths. Allowing applicants to define their own project areas and working with communities to understand local needs would allow for greater flexibility than a fixed rule for geographic areas.

Inaccurate or incomplete data may cause barriers to accessing BEAD funds for entire cities, counties, and zip codes. Even after funding for the BEAD program expires, service providers of all types may need future federal, state, and local funding to continue expanding the networks. If the Commission relies on inaccurate data, it risks excluding communities with the highest need from being eligible for broadband funding.

Thus, flexibility in defining project areas at the outset creates an advantage by eliminating barriers to multiple funding rounds. Ultimately, that would help ensure that California’s broadband funding supports innovative models that continue to deliver affordable, high-quality broadband to communities in the future.

III. The Commission should foster collaboration between BEAD subgrantees, local governments, and community organizations.

Communities across California face a range of barriers to connecting all residents with high-quality and affordable service offerings. In this proceeding, the Commission asks what mechanism should be used for overlapping proposals to allow for a like-to-like comparison of competing proposals.6

When overlapping proposals are submitted, the Commission should prioritize applicants who can demonstrate collaboration with the Tribal or local government, anchor institutions, or trusted community organizations. Additionally, the Commission can and should facilitate competition by prioritizing open access networks, particularly those using the statewide middle-
mile network and those with interest from multiple retail providers. Ensuring that competitive and redundant service is available to all California residents will require collaboration with local governments and trusted community organizations.

IV. The Commission’s process should allow challengers to show whether the quality of service at a location matches the availability data reported on the State’s broadband map.

Current broadband availability data from the Federal Communications Commission reflects provider coverage claims. In several instances where provider reporting has been investigated, the National Broadband Map recreated long-standing inaccuracies in federal broadband data: overstating availability and quality of service while neglecting to collect price information.7 The Commission now seeks comment on what information challengers should provide to show whether a location is served.8

State and local efforts to crowdsource broadband data through speed tests and surveys are currently the best practice for validating broadband availability data. Speed tests are the primary method that residents have of verifying broadband speed and quality of service at their location. Moreover, many local governments and community organizations have invested state and federal funding into gathering feedback through surveys, which often include questions about price, service quality, and available offerings.

The National Broadband Map reports fixed service by advertised speed and technology, meaning both DSL and fixed wireless are included alongside cable and fiber broadband offerings. At the same time, DSL and fixed wireless may not reliably provide the service reported to the FCC, particularly during environmental and human-made disasters. Further, broadband provided through fixed wireless often includes data caps, which impact whether service is consistently available and affordable. Consequently, speed tests and community surveys are a helpful supplement to understand what speed and service quality residents receive.

8 Rulemaking, at 6.
V. **Coordination with California’s Middle-Mile program is imperative to ensuring the projects work synchronically.**

With new state and federal funding available for municipal projects, coordination with communities invested in identifying remaining needs and ensuring that the middle-mile network supports widespread broadband access and adoption as intended. Reporting requirements should vary based on operating entity and access type. Mapping open-access middle-mile networks could expedite last-mile deployment timelines while facilitating collaboration between the state’s middle-mile network and broadband grant recipients from other funding programs.⁹

Local leaders are closely situated to the physical infrastructure and interact with the community members who will ultimately benefit from the undertaking. They often work in partnership with local broadband grant recipients. Accordingly, the CPUC should solicit and rely on local expertise when developing middle-mile coordination requirements, particularly to identify helpful data points. Partnering with local governments to develop reporting requirements could also reduce information gaps, synchronize last-mile projects, and mobilize local support for middle-mile network deployment.

VI. **The Commission should align grant conditions with community needs.**

Broadband needs in communities vary widely. Requiring subgrantees to work with local governments and community-based organizations to ensure that they are supporting local needs is imperative for ensuring that California’s BEAD funding addresses the root causes of the digital divide.

Capacity and affordability needs also vary widely by community. What works in one area may not work well in another. And even though existing data fails to capture current broadband pricing, affordability for residents must remain a central priority.

The lack of standard speed tiers across providers and the inconsistency between the federal broadband speed and benchmarks for CPUC-funded projects further complicates any affordability analysis. Furthermore, CPUC’s role extends beyond collecting broadband price and speed data. By also collecting information about redundancy, reliability, latency, and

---

competition, the CPUC can help ensure that federally funded networks enable affordable, high-quality last-mile broadband service.

VII. Robust community engagement could advance both the Commission’s BEAD goals and Environmental and Social Justice Action Plan.

Ensuring robust community engagement is imperative to ensuring that BEAD programs address the myriad of connectivity barriers that California communities face. Goal Five of the Commission’s Environmental and Social Justice Action plan is to “Enhance outreach and public participation opportunities for ESJ communities to meaningfully participate in the CPUC’s decision-making process and benefit from CPUC programs.”10 Using the Commission’s website is an important step in making information transparent. Additionally, partnerships with Tribal and local governments as well as trusted community organizations can help the Commission develop a deep, well-informed record of how broadband and environmental goals can work in tandem.

Robust broadband access and adoption are critical to achieving economic equity, one of the Commission’s central issues. Having a high-quality, reliable home broadband connection, the devices, and the skills to use them are integral to all aspects of workforce development.11 In particular, populations with disabilities and those who are currently incarcerated face additional barriers to accessing online services while also experiencing disproportionate unemployment rates. Partnering with community organizations that work directly with populations could accelerate progress toward digital equity statewide while equipping residents with the necessary tools to contribute to California’s economy.

Smart city applications can also help address neighborhood environmental health concerns. Broadband is a critical tool for powering devices that help residents manage asthma, diabetes, heart disease, and stroke risks. For example, in Chattanooga, Tennessee, efforts to expand high-speed connectivity are being coupled with installing air quality sensors, providing

roof improvements, and updating heating, ventilation, and air conditioning (HVAC) systems to improve social determinants of health.\textsuperscript{12}

Local expertise and planning capacity varies across communities, and those with the greatest need may be the least equipped with internal support.\textsuperscript{13} Providing planning and technical assistance to local and regional grantees could help ensure that BEAD funding works in tandem with the Commission’s Environmental and Social Justice Action Plan. In particular, the Commission could provide additional funding to the Local Agency Technical Assistance (LATA) grant program, which local entities are already familiar with.\textsuperscript{14}

\textbf{VIII. Conclusion}

The CPUC must foster communication channels between state, local, Tribal, and community leaders. Tapping into existing institutional knowledge from community leaders and local perspectives from impacted communities is also critical for developing lasting connectivity solutions with BEAD grant funding. Working together, CPUC could play a crucial role as a convener, educator, and coordinator among the wide variety of broadband programs necessary to achieve ubiquitous connectivity statewide.

Next Century Cities’ participation in this proceeding will not prejudice any party and will not delay the schedule or broaden the scope of the issues in the proceeding. For the reasons stated above, Next Century Cities respectfully requests that the CPUC grant this Motion for Party Status filing.


\textsuperscript{13} See Kathryn de Wit, \textit{3 Key Components Define Effective State Broadband Programs} (May 21, 2021), https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2021/05/3-key-components-define-effective-state-broadband-programs.

Dated: April 17, 2023

Respectfully submitted,

/s/ Corian E. Zacher
Corian Zacher
Senior Policy Counsel, State & Local Initiatives
Next Century Cities
Tel: 405.762.0571
E-mail: corian@nextcenturycities.org