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)

REPLY 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

May 8, 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)

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

Table of Contents

I. INTRODUCTION

Next Century Cities ("NCC") respectfully submits these reply comments in response to the California Public Utilities Commission ("CPUC" or "Commission") on its role in implementing California's Broadband Equity, Access, and Deployment (BEAD) program. Commenters broadly agree that while BEAD will make a monumental amount of funding available for broadband deployment and digital inclusion programs across California, BEAD funding alone is not enough to fully address persistent connectivity gaps. The CPUC must ensure that the State's BEAD policy is flexible enough to support the range of community-led initiatives necessary to make ubiquitous broadband a reality in California.

II. THE COMMISSION SHOULD ENCOURAGE AND INCENTIVIZE LOCAL COORDINATION WITH SUBGRANTEES.

The Commission should prioritize applications that include partnerships with the local government and community-based organizations. Local coordination is an essential component of BEAD Program requirements. Though the Commission announced a series of local engagement workshops designed to inform the State's BEAD and Digital Equity ("DE") programs, many people remain unaware of the opportunity to share program ideas and community needs. In fact, those most impacted by California's digital divide have the fewest tools to comment in this proceeding and learn about public engagement events.

Even those who are aware of opportunities to comment may not have had adequate time to prepare to attend events. The Commission announced the dates of public engagement workshops on April 11th and the first workshop occurred three days later, on April 14th, with seven subsequent events planned in the following month, one of which was scheduled after the

initial announcement.[1] Particularly for communities already struggling with unreliable broadband, short notice about events can pose an insurmountable barrier to attending in-person events during an already busy time of year.

Some broadband deployment and digital inclusion projects will require local coordination. As explained by the City of San José, "subgrantees must seek approval from the city before commencing any work within the city and should, therefore, be required to coordinate with the city as part of the application process."[2] The City and County of San Francisco similarly propose "requiring each prospective subgrantee to provide a letter from the city, county or tribal representative confirming coordination with the local or tribal jurisdiction on specific concerns and interests of the community."[3] Prioritizing applicants with existing local partnerships and requiring local coordination could help ensure that BEAD funding supports community needs.

III. SERVICE QUALITY IS AN ESSENTIAL COMPONENT OF THE BEAD PROGRAM.

The Commission should prioritize last mile network deployments that provide symmetrical speed tiers, low latency, and support affordable, competitive service offerings. Several commenters discuss specific ways that the Commission can design BEAD to address related state broadband goals. Prioritizing reliability, resilience, and open access could encourage high-quality and affordable network deployment.

---

[1] *See* Administrative Law Judge's Ruling Providing Notice of Public Engagement Workshops (April 11, 2023), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M505/K839/505839895.PDF.
[2] *See* City of San José Comments, (April 10, 2023), https://apps.cpuc.ca.gov/apex/f?p=401:65:0::NO:RP,57,RIR:P5_PROCEEDING_SELECT:R2302016.
[3] City and County of San Francisco Comments, at 3 (April 17, 2023), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M506/K522/506522670.PDF.

A. Service quality goes beyond meeting speed benchmarks.

Speed as well as other service quality factors are imperative to ensuring that residents have reliable, affordable broadband. The BEAD program is not designed to address broadband deployment in isolation. Rather, it also helps states address related connectivity objectives and prioritize equity throughout the program.

When awarding BEAD funds, the Commission should prioritize projects that promote high-quality network deployment in tandem with other goals. For example, TURN rightly proposes prioritizing projects that incorporate reliable and resilient networks in service of the Commission's ongoing effort to respond to wildfires and other natural disasters.[4] As stated by the Greenlining Institute, "the Commission should also move forward with efforts to combat digital discrimination in broadband service quality and pricing."[5] CalAdvocates similarly suggests that the Commission should require ubiquitous coverage across locations within the geographic area.[6]

Additionally, the Center for Accessible Technology and the Electronic Frontier Foundation propose that the Commission "consider applicants' past service quality performance (to the extent it exists), and de-prioritize projects by prospective subgrantees that have consistently failed to meet the Commission's service quality metrics."[7] Considering applicants'

---

[4] *See* The Utility Reform Network Comments, at 7 (April 17, 2023), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M506/K523/506523001.PDF ("TURN Comments").
[5] Greenling Inst., Oakland Undivided, and California Cmty Found. Comments, at 5 (April 17, 2023), https://efile.cpuc.ca.gov/FPSS/0000192798/1.pdf ("Greenlining Inst. et al. Comments").
[6] *See* Pub. Advocates Office Comments, at 14 (April 17, 2023), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M506/K522/506522671.PDF ("Applying a requirement that applications must propose to serve all eligible locations within the chosen geographic area as a "gatekeeping" criterion, that is, a criterion required to be satisfied for an application to be approved, would prevent an application that fails to do this from being considered a "default winner."") ("CalAdvocates Comments").
[7] Ctr. for Accessible Technology & Elec. Frontier Found. Comments, at 9 (April 17, 2023), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M506/K523/506523096.PDF ("CFAT & EFF Comments").

history in California as well as quality metrics beyond minimum speed alone could help the

Commission prioritize broadband projects that achieve California's broader connectivity goals.

These suggestions offer routes for the Commission to use the BEAD program to address digital

redlining, further reinforcing the need for coordination among ongoing CPUC proceedings.

B. Open access networks could enable future collaboration.

The Commission should prioritize, but not require, open-access last mile and middle mile

networks. As commenters discuss, open-access networks may not be feasible for smaller

providers.[8] At the same time, prioritizing open-access last mile networks over those that are not

would incentivize applicants to leave the door open for future collaborations.[9] For example,

during the pandemic, local governments and community organizations were able to use COVID

relief funding to deploy wireless networks in neighborhoods to allow students to attend class

from home, regardless of whether they had a home broadband subscription. Open-access last

mile networks could enable similar innovative solutions.

C. The State's middle mile network may be not available or cost-effective for all BEAD grantees.

Many commenters support the suggestion that the Commission prioritize applicants who

use the State's open-access middle mile network where feasible.[10] Large portions of the state

remain too far from the state's middle mile network to build last mile service without additional

---

[8] *See* Race Telecomm. Comments at 3 (April 17, 2023),
https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M506/K522/506522897.PDF; AT&T Comments, at 8.

[9] *See* CalAdvocates Comments, at 18; Cmty Legal Serv. Comments, at 8 (April 17, 2023),
https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M506/K522/506522879.PDF; CFAT & EFF, at 15;
Sch., Health, & Libraries Ass'n, at 2 (April 17, 2023),
https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M506/K523/506523210.PDF ("SHLB Comments").

[10] *See* Cmty Legal Serv. Comments, at 11; TURN Comments, at 16; CalAdvocates, at 25 ("The
Commission should incentivize the use of the statewide middle mile project by BEAD Projects. The
Commission may award points to those projects that propose to leverage the statewide middle mile
project, when in reasonable proximity to the project area, as an additional Secondary Criteria").

middle mile deployment. As proposed by CNEIC, "The Commission should allow prospective

subgrantees to seek alternative connections if the state middle mile network is not available or is

not cost-effective."[11] Enabling subgrantees to build additional middle mile segments is necessary

to achieve ubiquitous connectivity across the state. In cases where the Commission awards

BEAD funding to build middle mile segments, it should encourage open-access provisions where

possible.

IV.   THE COMMISSION SHOULD PRIORITIZE BOTH BROADBAND DEPLOYMENT AND DIGITAL INCLUSION INITIATIVES.

While the BEAD program is a historic federal investment in broadband deployment and

digital inclusion, the funding is unlikely to fully address California's need to improve broadband

adoption. Some commenters cite potential concerns about attracting applications if the

Commission includes additional considerations.[12] The BEAD program is designed to support not

only affordable, long-term, high-quality infrastructure, but also the digital inclusion activities

necessary to complement deployment programs.[13] In NTIA's words:

> Participants should integrate digital inclusion throughout the BEAD
> Program. BEAD funds can be used for high-speed internet adoption
> projects, subject to the prioritization scheme laid out in the NOFO,
> if eligible entities have a plan to address deployment to unserved
> and underserved communities. As participants develop the BEAD

---

[11] The Corp. for Educ. Network Initiatives in California Comments at 2, 4-5 (April 17, 2023), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M506/K523/506523430.PDF ("CENIC Comments").

[12] AT&T Mobility, Pacific Bell Tel. Co. dba AT&T California Comments, at 10 (April 17, 2023), http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=506523427 ("AT&T Comments");.

[13] *See* BEAD-DE Alignment Guide, at 6 ("In many of the 13 requirements for the Five-Year Action Plan, there are opportunities to infuse digital inclusion activities to both satisfy requirements for the State Digital Equity Plan and ensure that digital inclusion is a core component of high-speed internet planning.").

Five-Year Action Plan, where appropriate, they should consider where BEAD funds can support broadband adoption projects.[14]

Several commenters suggested specific ways that the Commission can jointly support both digital equity and broadband deployment in California. For example, Small Business Utility Advocates offer, "One factor that should be incorporated is the potential socio-economic impact of each proposal on small businesses and their communities, including job creation, digital literacy, and the potential for economic growth."[15] Additionally, CWA Members "support incorporating prioritization of disadvantaged communities, as measured by the number of low-income households impacted by a project or existing disadvantaged community metrics like Socioeconomic Vulnerability Index ("SEVI") score or SB535 CalEnviroScreen Disadvantaged Community status."[16] Adopting prioritization factors that encourage equitable deployment policies incentivizes applicants to consider the broader socioeconomic impact of BEAD-funded projects, which is consistent with federal and state policy objectives.

Requiring affordable service offerings is one important way to address both access and adoption concurrently. Many commenters support requiring both income-qualified low-income broadband plans and broadly available plans that are affordable for middle-class families.[17] Importantly, the City of San Jose urges the Commission to consider the length of pricing commitments as well as service quality when assessing proposals.[18] In addition to affordability

---

[14] Nat'l Telecomm. and Info. Admin., BEAD-DE Alignment Guide, at 4 (2022), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-09/BEAD-Digital_Equity_Alignment_Guide.pdf ("BEAD-DE Alignment Guide").
[15] Small Bus. Utility Advocates Comments, at 5-6.
[16] CWA Comments, at 20.
[17] *See* CalAdvocates Comments at 27-32; TURN Comments 25-28.
[18] *See* City of San José Comments.

for residents, ensuring that broadband is affordable for small businesses is a crucial component of economic development, especially in rural and hard to reach areas.[19]

Prioritizing projects that address digital inclusion, local economic empowerment, and affordability jointly with broadband deployment could help the Commission focus support on initiatives that address the root causes and consequences of digital inequities.

V. THE COMMISSION SHOULD SOLICIT FURTHER COMMUNITY ENGAGEMENT IN DESIGNING CALIFORNIA'S CHALLENGE PROCESS.

Commenters proposed adopting various processes for California's challenge process, including the CPUC's Federal Funding Account guidance,[20] the RUS process,[21] and crowdsourced data.[22] Recent developments in state and federal mapping policy warrant further opportunity for public input on California's challenge process.

On April 25, 2023, NTIA released its draft model challenge process for state entities, providing opportunity for public comment until May 5, 2023.[23] NCC joined the National Broadband Mapping Coalition in comments requesting additional clarity in NTIA's final

---

[19] Small Bus. Utility Advocates Comments, at 8 ("The challenger should provide evidence that the existing small business broadband service is affordable for small businesses in the area. This may include information on pricing, promotional offers, or comparisons to similar services in other locations.").

[20] *See* CFAT & EFF Comments, at 13; AT&T Comments, at 6.

[21] *See* Winterhaven Tel. Co., The Siskiyou Tel. Co., Cal-Ore Tel. Co., Happy Valley Tel. Co., Volcano Tel. Co., Pinnacles Tel. Co., Calaveras Tel. Co., Ducor Tel. Co., Kerman Tel. Co., Sierra Tel. Company, Inc., Foresthill Tel. Co., Hornitos Tel. Co., The Ponderosa Tel. Co. at 4 (April 17, 2023), http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=506522559 ("Small LEC Comments").

[22] *See* TURN Comments at 10-11; Labor Network for Sustainability, United Steelworkers District 12, United Steelworkers Local 675, Commc'n Workers of America District 9, Jobs with Justice San Francisco Comments at 10 (April 17, 2023), http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=506522994 ("CWA Comments").

[23] NTIA Releases Proposed Guidance on High-Speed Internet Program's State Challenge (April 25, 2023), https://ntia.gov/press-release/2023/ntia-releases-proposed-guidance-high-speed-internet-program-s-state-challenge.

guidance.[24] In addition to the developing state of federal broadband mapping policy, the

Commission announced an updated draft of the Federal Funding Account Map on May 2, 2023.[25]

When NTIA finalizes its state challenge process guidance and the Commission finalizes its

Federal Funding Account map, the Commission should allow the public a future opportunity to

comment on the State's challenge process.

Insights from local leaders in California and examples from other states show that

coordination is key to developing a community-informed challenge process. NTIA suggests

aligning the challenge processes for BEAD and DE programs, which must go beyond merely

examining deployment.[26] As the Greenlining Institute, #OaklandUndivided, and California

Community Foundation explain, building a challenge process that centers on residents'

experiences will require community collaboration:

> As the erroneous data included in FCC Broadband Maps will be
> used as a foundation for the State Broadband Maps, it is critical that
> the Commission creates a separate challenge process that is
> accessible to the public and places the onus back onto internet
> service providers to prove the validity of their submitted service
> data. We recommend that the challenge process is built in
> collaboration with community stakeholders by providing an initial
> draft of the challenge process for community feedback before
> finalizing.[27]

As evidenced by efforts in Hawaii, Ohio, and Oregon, developing relationships with local

stakeholders helps states align broadband policy with residents' lived experiences.[28] Using

---

[24] *See generally* Nat'l Broadband Mapping Coal., et al Comments to NTIA (May 5, 2023),
https://nextcenturycities.org/wp-content/uploads/2021/05/BEAD-Challenge-Process-Comments-National-Broadband-Mapping-Coalition-2.pdf.

[25] *See* California Pub. Utilities Comm'n, *Federal Funding Account Public Map* (May 2, 2023),

[26] BEAD-DE Alignment Guide, at 5 ("Coordinating or sharing outcomes from data collection will be key
to reaching a consensus on where and why gaps in adoption exist.")

[27] Greenlining Inst. et al., at 13.

[28] *See e.g.* Hawaii Office of Commerce and Consumer Affairs, Ookla Open Data (2023),
https://cca.hawaii.gov/broadband/ookla-open-data/; Reid Consulting Group, Achieving Accountability in

validated speed test methodologies, the State could partner with local governments and community organizations to build out a more accurate picture of broadband availability in California.

VI.   SUPPORTING AND RESPECTING TRIBAL SOVEREIGNTY IS AN ESSENTIAL PIECE OF BEAD.

Tribal coordination is an integral piece of the BEAD program. Not only is Tribal coordination encouraged in the BEAD NOFO, as highlighted in TURN's comments, requests for funding for NTIA's Tribal Broadband Connectivity Program exceeded available funding five times over.[29] While Tribal entities are eligible for funds through the DE program, state BEAD program remains an important source of funding for Tribal broadband projects.

As discussed in the Yurok Tribe's comments, Tribal subgrantees should be exempt from some requirements.[30] Unlike private providers, Tribal subgrantees are directly accountable to the communities they serve. Some requirements, like mandatory open access provisions on Tribal lands, undermine Tribal sovereignty.[31]

For similar reasons, when reviewing competing applications on Tribal lands, the Commission should favor applications owned by Tribal Nations, corporations, and utilities, over non-Tribal applicants. As the Yurok Tribe's comments explain,

> Tribal governments are best positioned to advocate for tribal communities' broadband infrastructure needs; therefore, tribal government approval of a project is a strong indicator that a project will be beneficial to tribal communities who are unserved or underserved by existing broadband infrastructure. Furthermore, tribal governments are best positioned to ensure broadband

---

Broadband, https://reidconsultinggroup.com/project-details/achieving-accountability-in-broadband/;
Faster Internet Oregon, https://www.fasterinternetoregon.org/ (last visited May 8, 2023).
[29] TURN Comments, at 29.
[30] Yurok Tribe Comments at 7-8 (April 17, 2023),
https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M506/K522/506522560.PDF.
[31] *Id.*

infrastructure projects lead to equitable workforce development and quality job creation in tribal communities.[32]

VII.   CONCLUSION

Close collaboration with local officials, Tribal leaders, and community organizations is imperative for designing a BEAD program that directly addresses the root causes of the digital divide. In addition to future proceedings, the Commission should solicit feedback from local stakeholders who are directly accountable to residents experiencing digital disparities.

Dated: May 8, 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

---

[32] Yurok Tribe Comments at 4.