ATTACHMENT A
to
Opening Comments of Community Legal Services on Broadband Equity, Access, and Deployment (BEAD) Draft Initial Proposal Volumes I and II

Recommended Edits to California's Draft of the Initial Proposal Volumes I and II

Key:

Plain = text in original Draft Proposal
~~Strikethrough~~ = removed text
<u>Underline</u> = added text

VOLUME I

Page 15:

The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU). <u>Or the broadband service identified is not offered at an affordable price (i.e., $30/month for 100/20 Mbps or $80/month for 1 Gbps symmetrical service).</u>

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4. A speed test performed on a laptop or desktop computer ~~within immediate proximity of the residential gateway,~~ using speedtest.net or other Ookla-powered front ends or M-Lab's speed test services. <u>The laptop or desktop computer must be directly connected to the modem or residential gateway with an ethernet cable. If the challengers affirm they are unable to directly connect their computer with an ethernet cable, the speed test may be performed</u> on a laptop or desktop computer within immediate proximity of the <u>router or</u> residential gateway.

Each speed test measurement must include:
- The time and date the speed test was conducted
- ~~The provider-assigned internet protocol (IP) address, either version 4 or version 6, identifying the residential gateway conducting the test~~
- <u>If the speed test was conducted over wi-fi, indicate the wi-fi protocol in use by (1) the router or residential gateway and (2) the laptop or desktop computer (i.e. 802.11ac or 802.11n). Alternatively, if the challengers affirm they are unable to verify the wi-fi protocols, they must provide the make and model of (1) the router or residential gateway and (2) the laptop or desktop computer.</u>
- <u>A statement indicating that no other laptop, desktop, tablet, phone, or video/audio streaming devices were utilizing the network at the time the tests were conducted. "Smart devices" that utilize a network connection for remote access and use only a minimal about of bandwidth do not need to be disconnected during the speed test.</u>

Each location must conduct three speed tests on three different days; the days do not have to be adjacent. ~~The median of the three tests (i.e., the second highest (or lowest) speed) is used~~ All three tests must show below the required speed to trigger a speed-based (S) challenge, for either upload or download. For example, if a location claims a broadband speed of 100 Mbps/25 Mbps and the three speed tests result in download speed measurements of 105, 102 and 98 Mbps, and three upload speed measurements of 18, ~~26~~ 19 and 17 Mbps, the speed tests qualify the location for a challenge, since the three measured upload speeds marks the location as underserved.

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Subscribers submitting a speed test must indicate the speed tier they are subscribing to. ~~Since~~ For speed tests ~~can only be~~ being used to change the status of locations from "served" to "underserved", only speed tests of subscribers that subscribe to tiers at 100/20 Mbps and above are considered. If the household subscribes to a speed tier of 100/20 Mbps or higher and the speed test yields a speed below 100/20 Mbps, this service offering will not count towards the location being considered served. However, even if a particular service offering is not meeting the speed threshold, the eligibility status of the location may not change. For example, if a location is served by 100 Mbps licensed fixed wireless and 500 Mbps fiber, conducting a speed test on the fixed wireless network that shows an effective speed of 70 Mbps does not change the status of the location from served to underserved.

Appendix 4:

~~UCSF MEDICAL CENTER~~
~~CEDARS-SINAI MEDICAL CENTER~~
~~UC SAN DIEGO MEDICAL CENTER~~
~~RONALD REAGAN UCLA MEDICAL CENTER~~
~~LAC/USC MEDICAL CENTER~~
~~KECK HOSPITAL OF USC~~
~~LOMA LINDA UNIVERSITY MEDICAL CENTER~~
~~SUTTER MEDICAL CENTER – SACRAMENTO~~
~~LAC/HARBOR - UCLA MEDICAL CENTER~~
~~KAISER FOUNDATION HOSPITAL - SANTA CLARA~~

VOLUME II

Page 6:

California has engaged in an extensive effort to identify stakeholders and stakeholder groups, including, but not limited to, conducting community engagement events across

the State with a broad range of communities,; consulting with California Tribes regionally and, upon request, consulting with individual Tribes,; and meeting with carriers and community-based organizations to discuss the Program.

Page 10:

Information regarding Regional-Local Workshops and Tribal Consultations were was shared on CDT's Broadband for All Portal, the CPUC's Events page, and the Broadband for All Eventbrite site for Digital Equity and BEAD Planning Workshops.

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This is a rulemaking proceeding categorized as quasi-legislative, so there are no Ex Parte reporting requirements or restrictions for this proceeding.

Page 13:

Those federal requirements are referenced throughout this document and, for purposes of the CPUC's proposal for structure of the grant program, include the following critical elements, among many others:

Page 14:

"**Provisional awards.** States may issue awards to subgrantees after the Final Proposal required by the BEAD NOFO is submitted to NTIA following administration of the grant program and NTIA has approved (or required changes to) each award.[22]"[1] [2]

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Within the framework of the federal rules, the CPUC seeks to maximize the simplicity of the BEAD grant program given the compressed timeline and the goal of making the program as accessible, fair, and open as possible for a full range of ISPs of all types and sizes, including municipal, county, Tribal, and nonprofit entities. Furthermore, it will be important to keep the program manageable in scale given the significant size and [insert adjective(s) describing the type of complexity indicated] complexity of California, the number of existing and emerging ISPs in the State, and the great diversity of unserved and underserved locations.

California recognizes the challenging underlying economics of deploying broadband to the locations that are currently unserved or underserved; for example, even with a generous grant program, some areas may not attract any applications at all, or may attract

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[1] "A subgrantee or subrecipient is an entity that receives grant funds from an Eligible Entity (state, territory or the District of Columbia) to carry out eligible activities." https://broadbandusa.ntia.doc.gov/sites/default/files/2022-09/BEAD-Frequently-Asked-Questions-%28FAQs%29_Version-2.0.pdf at 9.

[2] It is unclear what this sentence is trying to convey. We suggest that Commission Staff review it and make clarifications if necessary.

only a single application whose costs are not constrained by competition for funds to serve that area. This is ~~so~~ because, even where deployment is fully funded with BEAD funds, it may be economically challenging for a <u>sub</u>grantee[3] to operate and sustain the network because of low revenue opportunity and high operating costs.

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The CPUC is an experienced ~~grant making~~ <u>grantmaking</u> entity and has administered multiple successful broadband grant programs in recent years that reflect its experience managing a fair, open, and competitive process to deploy broadband to unserved and underserved households throughout California.

Fiber-to-the-premises should be prioritized and funded to the extent possible<u>,</u> with alternative technologies being considered where appropriate while taking into account the Extremely High Cost Per Location Threshold

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2. A low-burden grant program that aligns with the considerable demands of the federal BEAD program but <u>that</u> is simultaneously designed to make it feasible for all sizes of entities to compete without facing unreasonable costs or level of effort

Page 20:

If feasible given the limited timeline for the BEAD grant program, the CPUC will allow for reasonable curing <u>of insufficient or unclear applications</u> to seek to ensure an optimal participation level of qualified applicants.[4]

While significant, BEAD funding will not enable deployment of broadband infrastructure to ~~these~~ <u>all</u> unserved and underserved locations in the State if not spent prudently, coordinated effectively, and targeted toward communities most in need.[5]

Page 21:

This issue is of critical importance because of the dual challenges of (1) the need to deploy to as many unserved and underserved locations as possible, and (2) the economic

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[3] "A subgrantee or subrecipient is an entity that receives grant funds from an Eligible Entity (state, territory or the District of Columbia) to carry out eligible activities." https://broadbandusa.ntia.doc.gov/sites/default/files/2022-09/BEAD-Frequently-Asked-Questions-%28FAQs%29_Version-2.0.pdf at 9.

[4] "The Application Phase process will allow a limited curing opportunity by providing additional time for follow-up data requests by the CPUC as necessary." SP Vol. II at 23. "In the event reviewers find the data submitted to be insufficient or unclear, the CPUC may choose to cure submissions by providing applicants with opportunity to clarify or submit additional materials." SP Vol. II at 26.

[5] It is not clear what "these" locations are.

challenge presented by some of the most remote locations, not only for the high cost of construction but also the very high cost of operations relative to potential revenue.

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The EHCPLT is the mechanism NTIA requires that states use to determine the cost at which it is infeasible to fund fiber to eligible locations; above that threshold, alternative, lower-cost technologies can be funded based on the EHCPLT calculation that funding more[6] fiber to those locations would exceed the available BEAD budget. As a result, the EHCPLT enables states to identify the higher-cost locations that are too costly for fiber deployment and where NTIA will allow approved alternative technologies that are less expensive but that still meet BEAD's definition of broadband.

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The application materials will require applicants to (1) establish their qualifications to participate in the BEAD program and successfully complete and operate a BEAD project, and (2) present a compliant, fundable grant application to deploy and operate a communications network that meets the requirements of the CPUC's program.

The project materials will be focused on the proposed network, budget, deployment schedule, and other matters related to construction and operation of the proposed network.

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NTIA's rules for the program explicitly allow for negotiation for a range of purposes, including to reduce or change pricing and to expand or reduce a proposed Project Area.[7]

The CPUC will negotiate pricing, both (1) with respect to locations that received no applications and to which the CPUC would like to attract other applicants, and (2) with respect to locations where the proposals were too costly (and exceed the EHCPLT) and where there exists potential to secure lower pricing.

Applications for a given Project Area exceed the EHCPLT, and the CPUC negotiates with all to secure best and final offers, to bring costs for that Project Area below and the EHCPLT

A grant applicant proposes to serve a number of different Project Areas, and the CPUC negotiates lower pricing with the applicant based on the potential award of multiple aggregated Project Areas

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[6] It is not clear how one would fund "more" fiber to an area to which "it is infeasible to fund fiber."
[7] [Insert appropriate citation(s) to NTIA rules.]

Minimum~~um~~al[8] **BEAD Outlay: up to 15 points**

~~Applicants will be scored based on the grant amount requested and amount of matching funding committed by the applicant. Applicants will earn 10 points for meeting the 25 percent match requirement. Applicants will receive 15 points for a 50 percent match amount.~~

The Commission will calculate the BEAD program outlay per broadband serviceable location for each project area. The most cost-efficient application for each project area will receive 10 points. All other applications will receive a percentage of the 10 points available based on their relative distance from the most cost-efficient proposal. In addition, Applicants will receive 3 points for meeting the 25 percent match requirement, 4 points for a 26%-49% match, and 5 points for a 50% or greater match.

Equity: ~~10~~ 8 points

As an additional prioritization factor for both Priority Broadband Projects and Other Last-Mile Broadband Deployment Projects, applicants will receive up to ~~10~~ 8 points for the number of locations they propose to serve that are located in a disadvantaged[9] or low-income community.[10] ~~One~~ Eight-tenths (.8) of a point will be awarded per 10 percent (rounded down) of the locations in a proposed project that are located in a disadvantaged or low-income community, for a total of ~~10~~ 8 points.

Resilience: ~~10~~ 8 points

As an additional prioritization factor for both Priority Broadband Projects and Other Last-Mile Broadband Deployment Projects, applicants will receive up to ~~10~~ 8 points for the number of locations located in a Tier 2 or Tier 3 High-Fire Threat District. ~~One~~ Eight-tenths (.8) of a point will be awarded per 10 percent (rounded down) of locations in a Tier 2 or Tier 3 High-Fire Threat District, for a total of ~~10~~ 8 points.

Open Access: 4 points

As an additional prioritization factor for both Priority Broadband Projects and Other Last-Mile Broadband Deployment Projects, applicants will receive 4 points for projects that will offer open access wholesale last-mile broadband service for the life of the subsidized network(s), on fair, equal, and neutral terms to all potential retail providers.

Technical Capability: 4 points

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[8] *See* BEAD NOFO at 43, 44.
[9] [Provide definition of "disadvantaged."]
[10] [Provide definition of "low-income community."]

For Other Last-Mile Broadband Deployment Projects only, applicants will be awarded a total of 4 points for offering a plan below the top pricing tier that can achieve 500 Mbps downstream service speed. For every commitment of 100 Mbps slower for the downstream service speed, 1 point will be deducted from the 4-point maximum.

Non-fiber applications will be awarded up to 4 points based on certified speed and latency performance commitments, as well as on length of useful life of the proposed infrastructure and future scalability (as described in the table below)

Minimum downstream / upstream speed (Mbps)	Maximum latency (milliseconds)	Points awarded
1000/250	100	3
400/100	100	2
200/50	100	1
100/20	100	.5

Non-fiber applicants will also be awarded 1 additional point if they certify a useful network life of 10+ years.

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Scoring Criterion	Points available
Primary Criteria (required under NTIA Rules)	
Affordability	40
Labor Standards	20
Minimumal BEAD outlay	15
Primary Criteria subtotal	75
Secondary Criterion (required under NTIA Rules)	
Speed to Deployment	5
Secondary Criteria subtotal	5
Additional Prioritization Factors	
Equity	10 8
Resilience	10 8
Open Access	4
Additional Prioritization Factors subtotal	20
Total	100

Scoring Criterion	Points available
Primary Criteria (required under NTIA Rules)	
Affordability	40
Labor Standards	20
Minim~~um~~al BEAD outlay	15
Primary Criteria subtotal	75
Secondary Criteria (required under NTIA rules)	
Technical Capability	4
Speed to Deployment	1
Secondary Criteria subtotal	5
Additional Prioritization Factors	
Equity	~~10~~ 8
Resilience	~~10~~ 8
Open Access	4
Additional Prioritization Factors subtotal	20
Total	100

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>   This approach is designed to ~~provide~~ ensure that small, public, and Tribal internet service providers are not disadvantaged by the structure of the grant program.

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>   Recognizing that Tribal communities may extend beyond existing formal boundaries of Tribal lands and that many Tribal members do not live within those boundaries . . . .

Page 41 n.36:

>   As a result, the EHCPLT enables states to identify the higher-cost locations that are too costly for fiber deployment and where NTIA will allow approved alternative technologies that are less expensive but still meet BEAD's definition of broadband.

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>   Applicants would, therefore, be aware of the EHCPLT prior to submitting applications and could pursue applications with an understanding of where fiber deployment costs may exceed the EHCPLT.

>   NTIA will require a plan for providing broadband to any location that is excluded from the 100 percent funding commitment per Project Area (as well as for those Project Areas

that receive either no proposal or only proposals that are too costly to be funded within the finite BEAD budget).[11]

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3. Concerns: Are there any omissions or other indications that should raise concerns about the potential subgrantee's's², or its contractors' and subcontractors', track record and commitment to the standards or statutes?

Based on the CPUC's evaluation of these considerations, the applications will be placed into two categories: (1) for those categories that are deemed complete and sufficient and do not raise any concerns, points will be awarded pursuant to the scoring rubric; (2) for those applications that raise concerns based on omissions or other indications, the CPUC will provide clarifying questions to the applicant in writing while affording seven calendar days for the applicant to respond and, upon receipt of the complete and sufficient responses, will then award points pursuant to the scoring rubric.

The applicants' representations in the Workforce Plan section of their applications will become binding commitments upon award of a subgrant, and the subgrantees will be subject to regular reviews to ensure compliance.

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3. Ensure that recruitment efforts by training providers and employers target diverse communities by being a conduit between those entities and groups whose goals include encouraging diverse workforce participation . . . .

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Figure 20 shows the percentage of eligible households by county enrolled in the program.

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The CPUC provides that the State may budget its BEAD allocation in four expense categories: Deployment, Non-Deployment, Administrative, and Programmatic.

Category	Details	Budget percent
Deployment Costs	Sample¹² Subgrantee costs for deployment	96%
Programmatic Expenses	BEAD Planning, Challenge Process, IT Systems to run Challenge and Grant Applications, Subgrantee Selection Process Development and Management	2%

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[11] [Insert appropriate citation(s).]
[12] It is unclear why the word "Sample" would need to be here.

Administrative Expenses	Staffing, travel, day-to-day monitoring and oversight of subgrantees, training staff, subgrantees and public, ongoing stakeholder communications	2%
Non-Deployment Expenses	Workforce program, digital opportunity program supplementation, training and capacity building	0%

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In creating the BEAD program through the Infrastructure Investment and Jobs Act (IIJA), Congress made a once-in-a-lifetime investment in connectivity and digital equity/opportunity.

The CPUC will actively protect this investment by, at a minimum, using the following criteria: risk-based oversight and engagement, distribution of funding on a reimbursement basis, appropriate provisions to claw back funds from subgrantees if needed, timely reporting requirements, and robust subgrantee monitoring.

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The CPUC will also utilize federal reporting mechanisms, such as the U.S. Department of Commerce's Inspector General hotline.