

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

**THE PUBLIC ADVOCATES OFFICE OPENING COMMENTS  
ON THE ASSIGNED ADMINISTRATIVE LAW JUDGE'S  
RULING ISSUING STAFF PROPOSAL**

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**I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS**

Pursuant to the November 7, 2023 *Administrative Law Judge’s Ruling Issuing Staff Proposal* (Ruling) issued in Rulemaking (R.) 23-02-016, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) provides the following Comments on the Ruling’s attached Broadband Equity, Access, and Deployment (BEAD) program draft Initial Proposal, Volumes 1 and 2.

The federal Bipartisan Infrastructure Act (also known as the Infrastructure Investment and Jobs Act of 2021 or the IIJA) requires states and territories participating in the BEAD program to submit draft Initial Proposals to the National Telecommunications and Information Administration (NTIA) for approval to receive an initial 20 percent of their respective BEAD funding allocations.<sup>1</sup> Initial Proposals must “outline[] long-term objectives for deploying broadband, closing the digital divide, and enhancing economic growth and job creation[.]”<sup>2</sup> In particular, Initial Proposals must provide the rules by which the state intends to disburse its BEAD funding allocation to eligible subgrantees for broadband network deployment to unserved and underserved locations.<sup>3</sup> Volume 1 of the Ruling’s draft Initial Proposal proposes rules for determining

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<sup>1</sup> P.L. 117-58 §60102(e)(3) (2021).

<sup>2</sup> P.L. 117-58 §60102(e)(3)(A)(i)(I) (2021).

<sup>3</sup> P.L. 117-58 §60102(e)(3)(A)(i)(IV) and §60102(f) (2021). Upon NTIA approval of its Initial Proposal, the Commission may administer its approved BEAD rules, selecting subgrantees to deploy broadband

location eligibility for BEAD funding, including proposed rules for the Commission’s location eligibility challenge process.<sup>4</sup> Volume 2 of the Ruling’s draft Initial Proposal contains remaining proposed program rules, including proposed rules for the Commission’s subgrantee selection process.<sup>5</sup>

### **Summary of Recommendations**

To ensure Volume 1 and Volume 2 of the Ruling’s draft Initial Proposal aligns with BEAD’s Notice of Funding Opportunity (NOFO) rules and intent, the Commission should make the following changes to the draft Initial Proposal:

- Modify its proposed low-cost broadband service option eligibility requirements to ensure the benefit reaches all low-income Californians.
- Modify its plan to address middle class affordability to include a requirement that funded networks offer a broadband plan that is affordable to middle class Californians.
- The Commission’s Subgrantee Selection Process should fund projects located in unserved areas in high poverty areas and persistent poverty counties before funding projects outside those areas.
- The Commission’s Subgrantee Selection Process should fund projects with greater proportions of

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networks to unserved and underserved locations. The Commission must then provide the results of this process in its Final Proposal to the NTIA. The NTIA will not release the remainder of California’s BEAD allocation unless it approves the Commission’s Final Proposal. P.L. 117-58 §60102(e)(4)(D)(i)(III) (2021). “Unserved locations” are broadband-serviceable location that the Federal Communications Commission’s (FCC) Broadband DATA Maps show as (a) having no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 25 Mbps for downloads; and (ii) a speed of not less than 3 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds. “Underserved location” are broadband-serviceable location that is (a) not an unserved location, and (b) that the Broadband DATA Maps show as lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds. BEAD NOFO at 16, 17.

<sup>4</sup> Administrative Law Judge’s Ruling Issuing Staff Proposal, Attachment A, Nov. 7, 2023 (hereinafter Ruling Issuing Staff Proposal).

<sup>5</sup> Ruling Issuing Staff Proposal, Attachment B.

unserved project locations before funding projects with greater proportions of underserved locations.

- Award points for projects that commit to offering open access on the last mile.
- Award points for projects that commit to ensuring project networks are supported by at least 72 hours of backup power.
- Modify its proposed challenge process rules to clarify its “low speed fixed wireless modification” and to provide sufficient time for challengers to organize their constituencies.
- Adopt census block groups as minimum project units and require projects to serve 100 percent of eligible locations within the proposed project area, with exceptions permitted only as part of the Commission’s Extremely High-Cost Per Location determination; and
- Defer setting its Extremely High-Cost Per Location Threshold until it receives applications for funding.

## II. DISCUSSION

### A. Do the Proposed Rules Comply with Federal Requirements?

The draft Initial Proposal’s rules fail to comply with the federal requirement that the Initial Proposal include a “plan to ensure that *all* consumers have access to *affordable* high-speed internet.”<sup>6</sup> The Commission should modify its proposed eligibility requirements for its “low-cost broadband service option”<sup>7</sup> as described below to ensure that all low-income Californians can afford broadband service. The Commission must also modify its “plan to address middle-class affordability;”<sup>8</sup> lacking measurable goals, tools to achieve them, or any connection to the Commission’s own affordability data, the

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<sup>6</sup> National Telecommunications and Information Administration (NTIA), Broadband Equity, Access, and Deployment Notice of Funding Opportunity at 66 (hereinafter BEAD NOFO), available at <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

<sup>7</sup> The IJA requires all network deployment projects funded by BEAD to offer a low-cost broadband service option for the life of the funded infrastructure. BEAD NOFO at 66-67.

<sup>8</sup> The BEAD NOFO requires each state or territory receiving BEAD funding to propose a “plan to address middle class affordability” in their Initial Proposals. BEAD NOFO at 66.

Commission’s plan in this area fails to ensure affordability, and so violates the BEAD NOFO’s requirements.

**1. The Commission should modify its proposed low-cost broadband service option eligibility requirements to ensure the benefit reaches all low-income Californians.**

The Commission should expand its proposed scope of eligibility for its low-cost broadband service option to include all low-income Californians. The Commission’s proposed definition for its low-cost broadband service option offers terms that will help many Californians afford broadband access; however, the proposed eligibility requirements exclude some low-income Californians, and so fail to effectuate the program’s mandate to ensure “that affordable, reliable, high-speed internet is accessible at every location[.]”<sup>2</sup>

The BEAD NOFO provides a definition for the “eligible subscribers” of low-cost broadband service options, listing a number of ways households may qualify for the low-cost broadband service that all funded networks are required to offer.<sup>10</sup> The definition also provides leeway for the Commission expand upon the eligibility criteria required by the BEAD NOFO, to propose additional eligibility criteria for the NTIA to consider when reviewing the state’s draft Initial Proposal.<sup>11</sup> The Commission should extend this benefit to households that do not qualify under federal standards, but that earn at levels that would classify them as “low-income” under the thresholds developed by the California Department of Housing and Community Development (HCD) (i.e., generally, those earning at or less than 80 percent of a county-based area median income).<sup>12</sup>

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<sup>2</sup> BEAD NOFO at 8.

<sup>10</sup> BEAD NOFO at 12-13, available at <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

<sup>11</sup> BEAD NOFO at 13.

<sup>12</sup> See California Department of Housing and Community Development June 6, 2023 Memorandum, providing 2023 State Income Limits, available at <https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2023.pdf>. HCD “low-income” thresholds are generally the higher of 80 percent of median family income or 80 percent of state non-metropolitan median family income, but HCD may adjust these levels before designating them as the “low-income” threshold. The Commission should

As noted throughout this rulemaking,<sup>13</sup> this expanded income eligibility (based on HCD income limits) more accurately reflects the variable but generally high cost of living in California than does eligibility based on federal poverty guidelines.<sup>14</sup> The Commission’s proposal would mean that a family of three<sup>15</sup> must earn \$49,720 or less to qualify for the low-cost broadband service option.<sup>16</sup> However, in every county in California, a family could earn more than that amount, disqualifying them from broadband access assistance, while still qualifying as low-income under state-specific thresholds for other assistance programs.<sup>17</sup> The range of “low-income” thresholds for families of three in California spans from \$59,400 in counties like Del Norte or Fresno, to \$90,850 in Los Angeles County, to \$134,200 in San Mateo and Marin Counties.<sup>18</sup>

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adopt the thresholds ultimately designated “low-income” by HCD for its low cost broadband service option eligibility range.

<sup>13</sup> See Public Advocates Office (Cal Advocates) Opening Comments on the Draft Five-Year Action Plan in the Broadband Equity Access and Deployment Rulemaking at 6, n.13 (Aug. 7, 2023), *citing* R.23-02-016, *Assigned Commissioner’s Scoping Memo and Ruling*, Attachment 2 - Regional-Local Planning Workshop Summaries at 33 (Jul. 14, 2023) (“Use local and state metrics for poverty instead of federal levels...”); *id.* at 7 (“Change the income threshold requirements to be more reflective of the circumstances faced by individuals with language barriers...”). See also *id.* at 1 (“use area median income (AMI) in lieu of federal poverty guidelines.”) See also The Greenlining Institute, Oakland Undivided, and the California Community Foundation’s Opening Comments on the Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program (hereinafter GL, OU and CCF Opening Comments on the OIR) at 4 (advocating for use of California-specific income thresholds for low-income assistance programs) and Opening Comments of the Public Advocates Office on the Order Instituting Rulemaking to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program (hereinafter Cal Advocates Opening Comments on the OIR) at 28.

<sup>14</sup> Ruling Issuing Staff Proposal, Attachment B at 194.

<sup>15</sup> According to federal census data, the average household size in California from 2017-2021 was 2.92. <https://www.census.gov/quickfacts/CA>. This number is rounded to three in this proposal, allowing for HCD income limits, determined based on number of whole people living in a household, to be directly applied.

<sup>16</sup> Ruling Issuing Staff Proposal, Attachment B at 194.

<sup>17</sup> California Department of Housing and Community Development June 6, 2023 Memorandum, providing 2023 State Income Limits, available at <https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2023.pdf>.

<sup>18</sup> California Department of Housing and Community Development June 6, 2023 Memorandum, providing 2023 State Income Limits, available at <https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2023.pdf>.

Without justification, the Commission’s proposed income eligibility criteria ignores the Commission’s own Environmental and Social Justice Action Plan 2.0 (ESJ Action Plan), which defines “low-income households” as “those with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits.”<sup>19</sup> The Commission’s proposed eligibility criteria fail to remove barriers to access for many low-income Californians across the state, exactly those the Commission’s ESJ Action Plan seeks to assist. Thus, the Commission’s proposal fails to meet the federal BEAD program goal of ensuring “that every resident has access to a reliable, *affordable*, high-speed broadband connection.”<sup>20</sup> To rectify this, the Commission should update its income eligibility parameters for its low-cost broadband service option as proposed in Attachment 1 to this document.

**2. The Commission should modify its plan to address middle class affordability to include a requirement that funded networks offer a broadband plan that is affordable to middle class Californians.**

The Commission’s proposed “plan to address middle class affordability”<sup>21</sup> hews to the letter of the examples provided by the NOFO, but fails to effectively ensure middle class affordability. Particularly given the above concerns with the Commission’s proposed limited scope of eligibility for the low-cost broadband service option, the Commission must modify its plan to address middle class affordability; specifically, it must require BEAD funded networks to provide a generally available (i.e., not income qualified) middle class affordable plan, offering 100 megabits per second (Mbps) download and 20 Mbps upload (100/20 Mbps) for no more than \$84 per month.

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<sup>19</sup> CPUC Environmental and Social Justice Action Plan 2.0 at 74.

<sup>20</sup> BEAD NOFO at 30 (providing requirements for each state or territory’s Initial Proposal, emphasis added), available at <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

<sup>21</sup> BEAD NOFO at 66, describing the requirement that all states and territories administering BEAD funds create a “plan to address middle class affordability.”

The BEAD NOFO requires that each state and territory participating in BEAD prepare and carry out a plan “to ensure that *all* consumers have access to *affordable* high-speed internet.” (emphasis in original).<sup>22</sup> In response, the Commission proposes to (1) “monitor the affordability of available service options within the State” and (2) “encourage providers to offer a range of options that support broadband adoption by residents regardless of income level and reduce the burden on lower-income subscribers.”<sup>23</sup> The Commission further commits to (3) encourage funded ISPs to offer gigabit pricing commensurate with pricing offered for analogous service in other areas; (4) include drops and network equipment as eligible BEAD costs, to be built into grant proposals to avoid inflated subscriber prices; (5) monitor and ensure that awardees make good on their BEAD service commitments; and (6) adopt a BEAD scoring matrix that mandates best pricing and geographic non-discrimination between urban and non-urban areas.<sup>24</sup> For the reasons described below, the combination of these action items is insufficient to ensure affordable broadband service for middle class Californians.

First, the Commission’s proposed plan falls short of ensuring affordable service for middle-class Californians because it fails to take concrete steps towards any measurable benchmarks. While the Commission proposes to “monitor the affordability of available service options” (action item 1),<sup>25</sup> the Commission has not proposed a methodology for such monitoring or proposed actions to take if that monitoring reveals broadband services are not affordable.<sup>26</sup> References to the Commission’s Affordability

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<sup>22</sup> BEAD NOFO at 66 (describing the purpose of a plan to address middle-class affordability).

<sup>23</sup> Ruling Issuing Staff Proposal, Attachment B at 196.

<sup>24</sup> Ruling Issuing Staff Proposal, Attachment B at 198-199. These action items are not numbered in the draft Initial Proposal but are numbered here for clarity.

<sup>25</sup> See Ruling Issuing Staff Proposal, Attachment B at 196.

<sup>26</sup> The Commission’s references to its Affordability Rulemaking (e.g., Ruling Issuing Staff Proposal, Attachment B at 196) are insufficient when the Commission does not explain how it will use the rulemaking in the current context. The Commission has neither established a threshold for what constitutes affordable communications service in its Affordability Rulemaking, nor has it established such a threshold based on that affordability data here. References to the Affordability Rulemaking are circular when decisions in that rulemaking defer to other individual rulemakings as to how affordability data should be used across Commission proceedings. Decision (D.) 22-08-023’s ordering paragraphs 10 and

Rulemaking are meaningless if the Commission does not use the data collected in that rulemaking to adopt program-specific affordability benchmarks and adopt actions that are triggered when benchmarks are exceeded.<sup>27</sup>

The Commission’s analysis for creating an affordability benchmark should resemble the Federal Communications Commission’s (FCC) methodology. The FCC measures the extent to which voice and broadband service expenditures exceed two percent of low-income households’ disposable income.<sup>28</sup> Here, because affordability for middle-class Californians is at issue, the Commission should use the income and cost data collected via its Affordability Rulemaking to measure the extent to which the cost of broadband service exceeds two percent of discretionary household income for middle-class families. “Middle-class” should be defined as those families earning two-thirds to double the area median household income for a family of three.<sup>29,30</sup> Cal Advocates performed this analysis and found that in 2022, in 127 out of California’s 265 Public Use Microdata Areas (PUMAs), the cost of essential communications services exceeded two

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11 authorize the Commission to use the affordability metrics in two Commission rulemakings related to communications, neither of which are here at issue. D.22-08-023 *Implementing the Affordability Metrics* at 87 (Aug. 4, 2022).

<sup>27</sup> Ruling Issuing Staff Proposal, Attachment B at 196.

<sup>28</sup> Federal Communications Commission (FCC) Third Report and Order, Further Report and Order, and Order Upon Reconsideration, In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, and Connect America Fund, FCC 16-38 at ¶408 (Mar. 31, 2016) available at <https://docs.fcc.gov/public/attachments/FCC-16-38A1.pdf>.

<sup>29</sup> While the Commission’s draft Initial Proposal acknowledges that addressing middle-class affordability requires defining “middle-class,” it is unclear why the Commission then states that median household income can serve as a “useful benchmark.” Aside from targeting one income, rather than the range of incomes suggested by “middle-class,” the draft Initial Proposal then does nothing with the proposed “useful benchmark.” It is not mentioned or used again in the document. Ruling Issuing Staff Proposal, Attachment B at 197.

<sup>30</sup> Pew Research Center website, “Are you in the American middle class? Find out with our income calculator,” available at <https://www.pewresearch.org/fact-tank/2020/07/23/are-you-in-the-american-middle-class/>. See also Public Advocates Office Opening Comments on the OIR in R.23-02-016 at 29, (Apr. 17, 2023). According to federal census data, the average household size in California from 2017-2021 was 2.92. <https://www.census.gov/quickfacts/CA> This number is rounded to three in this proposal, allowing for HCD income limits, determined based on number of whole people living in a household, to be directly applied.

percent of discretionary income for those families earning two-thirds of the PUMA’s median discretionary household income.

The Commission’s proposed middle-class affordability plan fails to address the affordability data noted above with concrete tools. “Encouraging” providers to offer gigabit pricing commensurate with pricing offered in other areas (action item 3)<sup>31</sup> ignores the fact that pricing “in other areas” may already be unaffordable for lower middle-class families – as is true in nearly half of California PUMAs, under the two percent standard. “Encouraging” providers to match project rates for gigabit service to rates for gigabit services in urban areas (action item 6)<sup>32</sup> ignores the fact that PUMAs in urban Los Angeles County and urban Alameda County have some of the highest percentages of discretionary income required to afford basic communications services, reaching nearly six and five percent, respectively, for lower-middle class households in 2022.<sup>33</sup>

Merely encouraging providers to offer rates commensurate with urban rates also ignores that providers offer a range of prices even across urban areas, and that these prices should not be assumed to be affordable.<sup>34</sup> Both provisions ignore that providers with end to end fiber projects may offer gigabit service at a relatively lower cost while charging unaffordable rates for “bargain” tiers that may otherwise be more attractive to

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<sup>31</sup> Ruling Issuing Staff Proposal, Attachment B at 198.

<sup>32</sup> Ruling Issuing Staff Proposal, Attachment B at 199.

<sup>33</sup> The CPUC Affordability Team recoded its 2022 Affordability Ratio calculator to provide affordability ratio outputs for households earning 2/3 of the median household income in each PUMA. Affordability ratios are defined in the Affordability Rulemaking as the percentage of discretionary household income households at a given income level would need to pay to afford basic utility service, here defined as voice service and 25/3 Mbps broadband service. D.20-07-032 *Adopting Metrics and Methodologies for Assessing the Relative Affordability of Utility Services* at 2 (Jul. 16, 2020). In 2022, the least affordable PUMA for communications services was the Los Angeles County--LA City (Central/Univ. of Southern California & Exposition Park) PUMA, with an affordability ratio of 5.9 percent. The Alameda County (North Central)--Oakland City (South Central) PUMA was the eighth least affordable, with a, affordability ratio of 4.83 percent for those families earning 2/3 of the PUMA’s median household income.

<sup>34</sup> See California Community Foundation and Digital Equity LA, *Slower and More Expensive - Sounding the Alarm: Disparities in Advertised Pricing for Fast, Reliable Broadband* at 1-2, 20 (2022), available at <https://www.calfund.org/wp-content/uploads/Pricing-Disparities-Report.pdf>.

households struggling to afford broadband service.<sup>35</sup> “Encouraging” providers to do otherwise (action item 2)<sup>36</sup> does not *ensure* that providers will heed the call. Similarly, relying on pricing “encouraged” through scoring criteria ignores that providers may choose to structure projects to earn the majority of points in other scoring categories if it will maximize profit for the broadband network owner. While including drop costs and installation costs as reimbursable project expenses (action item 4)<sup>37</sup> will alleviate cost burdens on some Californians, this provision does not directly impact the ongoing monthly cost of service for all middle-class customers. Having the Commission require that providers perform on BEAD service commitments as an aspect of its plan to ensure middle-class affordability (action item 5)<sup>38</sup> is unnecessary, as the Commission is already required to do this absent the requirement to ensure middle-class affordability. For example, the NTIA already requires BEAD-administering agencies to “enforce applicable rules and laws” by taking action against subgrantees found to be out of compliance.<sup>39</sup> The Commission should do more.

The Commission *can* do more by modifying the draft Initial Proposal. Applying the two percent of household income standard to two-thirds of median household income for a family of three in the lowest earning counties in California (and so targeting the most vulnerable middle-class Californians) yields an affordable rate of roughly \$84 per month.<sup>40</sup> The Commission should require that all BEAD funded networks offer a

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<sup>35</sup> See e.g., Cal Advocates, *Broadband Pricing Trends in California: Implications of broadband pricing in achieving universal access to fixed broadband at 20-21* (2023), available at [230510-cal-advocates-broadband-pricing-trends-in-ca.pdf](#). See also National Digital Inclusion Alliance, *Tier Flattening: AT&T and Verizon Home Customers Pay a High Price for Slow Internet at 2* (Jul. 31, 2018), available at <https://www.digitalinclusion.org/wp-content/uploads/2018/07/NDIA-Tier-Flattening-July-2018.pdf>.

<sup>36</sup> Ruling Issuing Staff Proposal, Attachment B at 196.

<sup>37</sup> Ruling Issuing Staff Proposal, Attachment B at 198.

<sup>38</sup> Ruling Issuing Staff Proposal, Attachment B at 199.

<sup>39</sup> BEAD NOFO at 95.

<sup>40</sup> \$75,400 is the lowest 2023 area median income by county for a family of three in California and is the 2023 area median income for a family of that size in 21 of California’s 58 counties. This methodology is conservative in favor of providers, as the rate is based on 2 percent of all income, rather than 2 percent of discretionary income.

broadband plan for \$84 per month with broadband speeds of 100/20 Mbps for the life of the funded network (subject to the same update provisions as allowed for the low-cost broadband service option).<sup>41</sup> A number of providers already achieve or beat this price point for a 100/20 Mbps broadband plan,<sup>42</sup> indicating that it is achievable on networks that are not subsidized with public funds as BEAD projects are. The Commission has the opportunity and obligation to act to ensure public funds deliver public benefits. If service providers are unable or unwilling to deliver benefits commensurate with the public funds offered, including provision of a baseline broadband plan that is affordable for all middle-class Californians, they should not be awarded funding.

**B. Should the Commission Adopt the Proposed Rules?**<sup>43</sup>

The Commission should adopt the draft Initial Proposal’s rules with the modifications recommended herein and as shown in Attachment 1 to these comments.

**C. Are There Some Proposed Rules that Comply with Federal Requirements but Should be Modified? If Yes, how Would Parties Modify the Proposal? Are There Specific Portions of the Proposal the Commission Should Not Adopt?**<sup>44</sup>

As described below, there are some areas where the draft Initial Proposal complies with federal requirements but should be modified to be clearer or to include concrete mechanisms to achieve program goals.

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<sup>41</sup> Ruling Issuing Staff Proposal, Attachment B at 194.

<sup>42</sup> For example, AT&T offers an “up to” 1 GB symmetric fiber plan (Internet 1000) for \$85 per month, without autopay and paperless billing discount. See e.g., AT&T website, Internet Service Plans, <https://www.att.com/internet/internet-service-plans/>, last accessed Nov. 13, 2023. AT&T states that “[p]ricing for AT&T Fiber plans is straightforward, meaning there is no price increase at 12 months and no equipment fees.” While AT&T’s pricing page cited above does not display advertised upload speed associated with the 1 Gb plan, AT&T reports that its Internet 1000 service provides 1000 Mbps upload speeds here: <https://www.att.com/support/article/u-verse-high-speed-internet/KM1010095>, last accessed Nov. 13, 2023. See also, e.g., the City of San Bruno’s municipal network that offers all-fiber connections delivering 100 Mbps download speeds for \$40 per month. San Bruno Cable website, Current Rate Sheet, available at <https://www.sanbrunocable.com/DocumentCenter/View/2884/Current-Rate-Sheet-Effective-06-01-2023?bidId=>.

<sup>43</sup> Ruling Issuing Staff Proposal at 4, Question 2.

<sup>44</sup> Ruling Issuing Staff Proposal at 4, Question 3.

**1. The Commission should clarify its Subgrantee Selection Process to clearly state how it intends to reconcile prioritization of projects in high poverty areas and persistent poverty counties with prioritization of projects benefiting unserved locations.**

The Commission’s Subgrantee Selection Process should articulate how the Commission intends to prioritize projects located in high poverty areas and persistent poverty counties by stating clearly that projects in these areas will be funded first within their respective service level categorization buckets.<sup>45</sup> The BEAD NOFO requires that,

[t]o the extent that an Eligible Entity demonstrates that there are insufficient funds available to fund deployment to all unserved, underserved, or eligible CAI locations, the Eligible Entity must prioritize projects within each of those categories based on a strong preference for projects in high poverty areas or persistent poverty counties.<sup>46</sup>

The Commission should implement this directive to ensure it grants BEAD funding in a way that does not replicate historical inequities, including redlining. The Commission’s final Five-Year Action Plan strongly suggests that the state has insufficient funds across

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<sup>45</sup> BEAD NOFO at 41, n. 60

For the purposes of this requirement, high poverty areas are areas in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line applicable to a family of the size involved (as determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2)) is higher than the national percentage of such individuals. Persistent poverty counties are counties that have had poverty rates of 20 percent or greater for at least 30 years as calculated by the Economic Research Service in the Department of Agriculture.

The average family size in California is three (see note 25, above). In 2022, the federal poverty threshold determined pursuant to the process noted above was \$23,556 for a family of two adults and one child, and so the 150 percent benchmark is \$35,334. United States Census Bureau website, Poverty Thresholds, table for 2022, available at <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>; see also Office for Assistant Secretary of Planning and Evaluation website, Frequently Asked Questions Related to the Poverty Guidelines and Poverty for support for the interpretation that the federal poverty thresholds are here referenced, rather than the poverty guidelines, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/frequently-asked-questions-related-poverty-guidelines-poverty>, last accessed Nov. 12, 2023.

<sup>46</sup> BEAD NOFO at 41.

all broadband deployment programs, let alone BEAD funds in particular, to achieve universal service with reliable wireline broadband service.<sup>47</sup> However, while likely triggering this required prioritization, the Commission’s draft Initial Proposal does not clearly specify how it intends to conduct this prioritization.<sup>48</sup>

The Commission should clearly state the mechanisms by which it will incorporate this prioritization into its Subgrantee Selection Process. First, the Commission should identify those areas that fall within the NOFO’s definitions for these prioritization areas at the time it publishes its location eligibility map. Further, the Commission’s process to determine its Extremely High Cost Per Location Threshold (the “Threshold”)<sup>49</sup> must take into consideration this prioritization because the projects ultimately selected for funding will be based on this prioritization. If the Commission determines that it does not in fact have sufficient funds to deploy wireline service to all eligible locations, projects that applicants assert (and the Commission substantiates) will serve unserved locations, of which at least 25 percent are located in high poverty areas/persistent poverty counties, should be funded before other projects in each of the Commission’s otherwise-identified prioritization buckets (i.e., unserved service projects and predominantly underserved projects), as described below.

**2. The Commission’s Subgrantee Selection Process should prioritize funding of projects with greater proportions of unserved project locations.**

Given the Commission’s prior statements indicating that it does not believe it has sufficient funding to fund projects to deploy wireline service to all eligible locations, the Commission should prioritize funding for projects that bring badly needed service to

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<sup>47</sup> See California’s Five Year Action Plan at 105, available at the Commission’s website, California Broadband Equity, Access, and Deployment Program, <https://www.cpuc.ca.gov/beadprogram>; direct link to document is here: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/california-bead-five-year-action-plan--final-draft---20230828.pdf>

<sup>48</sup> Ruling Issuing Staff Proposal, Attachment B at 34.

<sup>49</sup> The Commission should base development of its Extremely High-Cost Per Location Threshold on applications filed, as discussed further below.

unserved locations<sup>50</sup> before funding projects that serve predominantly underserved locations.<sup>51</sup> The BEAD NOFO suggests that states review applications based on the projects’ proposed service-level categories – that is, whether the project will primarily serve unserved locations or underserved locations.<sup>52</sup> The Commission should prioritize projects that will primarily serve unserved locations, as these are the locations most in need of basic service access.

The Commission’s methodology for prioritization of unserved locations and projects that serve high poverty areas should be as follows:

- The Commission should first separate those applications that propose to serve a group of eligible locations of which at least 80 percent are unserved. These are referred to as “unserved service projects” by the BEAD NOFO.<sup>53</sup> Of those applications, the Commission should first fund those for which at least 25 percent of the unserved locations are in high-poverty areas or persistent poverty counties. This category should be funded in the order of highest proportion of unserved locations to lowest.
- The Commission should then continue to prioritize unserved locations by funding other eligible unserved service projects, that is, those with at least 80 percent unserved locations, that will serve lower percentages of locations in high poverty areas or persistent poverty counties. This category should be

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<sup>50</sup> The term “unserved location” means a broadband-serviceable location that the Broadband DATA Maps show as (a) having no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 25 Mbps for downloads; and (ii) a speed of not less than 3 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds. BEAD NOFO at 17, internal citations omitted.

<sup>51</sup> The term “underserved location” means a broadband-serviceable location that is (a) not an unserved location, and (b) that the Broadband DATA Maps show as lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds. BEAD NOFO at 16, internal citations omitted.

<sup>52</sup> BEAD NOFO at 16-17. Unserved service projects propose to serve eligible locations of which at least 80 percent are unserved. Underserved service projects propose to serve eligible locations of which 80 percent are underserved.

<sup>53</sup> BEAD NOFO at 17.

funded in the order of highest proportion of unserved locations to lowest.

- The Commission should continue funding eligible projects that propose to serve predominantly (but relatively lower proportions of) unserved locations until no remaining applications propose to serve a proportion of unserved locations of at least 50 percent.
- Once the Commission reaches a point at which there are no more unfunded project applications for which the proportions of unserved locations in the proposed project areas are at least 50 percent, all remaining project applications are predominantly underserved. Because the Commission would then begin funding projects in a new category (i.e., predominantly underserved), the Commission is required by the NOFO to re-prioritize the projects in this bucket that serve high poverty areas.<sup>54</sup> The Commission should fund those predominantly underserved projects with at least 25 percent of locations in high poverty areas or persistent poverty counties first, in the order of greatest proportion of unserved locations to lowest.

**3. The Commission should award points for projects that commit to offering open access on the last mile network elements.**

For the most part, Cal Advocates supports the Commission’s proposed project scoring criteria, particularly the substantial weight afforded to the affordability of 1 Gb and 100/20 Mbps plans.<sup>55</sup> However, the rubric should be slightly modified to award five points to projects that commit to offering open access on the last mile for the life of the

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<sup>54</sup> “To the extent that an Eligible Entity demonstrates that there are insufficient funds available to fund deployment to all unserved, underserved, or eligible CAI locations, the Eligible Entity must prioritize projects within each of those categories based on a strong preference for projects in high poverty areas or persistent poverty counties.” BEAD NOFO at 41, internal citations omitted.

<sup>55</sup> Ruling Issuing Staff Proposal, Attachment B at 30.

funded infrastructure.<sup>56,57</sup> The BEAD NOFO provides certain required secondary criteria for evaluating applications that compete to serve the same locations. It further allows states the flexibility to adopt additional secondary criteria, and provides examples, including awarding points for projects that offer open access on the last mile.<sup>58</sup> The Commission’s draft Initial Proposal suggests that the Commission intends to adopt this criterion, listing “[s]coring criteria that reward open access and open competition on the funded network” as a component of its range of “strategies to ensure openness.”<sup>59</sup> However, this criterion is not ultimately listed in the Commission’s section on project scoring.<sup>60</sup>

Open access on the last mile network would benefit consumers. In an open access marketplace, internet service providers “compete for customers and have incentives to innovate rather than simply locking out competitors with a de facto monopoly.”<sup>61</sup> By adopting this criterion, the Commission would give teeth to its commitment to “ensuring

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<sup>56</sup> To ensure that the weight accorded to secondary criteria does not exceed twenty-five percent of total points awarded, the points awarded for open access on the last mile should come from the points awarded in the equity category, leaving 5 points awarded in the equity category. The BEAD NOFO’s directive that projects proposed with locations in high poverty areas and persistent poverty counties should be prioritized should blunt the impact of decreasing points awarded in the equity category.

<sup>57</sup> Explaining the “Open Access” criterion, the BEAD NOFO states at 44: “NTIA encourages Eligible Entities to adopt selection criteria promoting subgrantees’ provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers.” In defining the term “open access,” the BEAD NOFO provides:

“[O]pen access” refers to an arrangement in which the subgrantee offers nondiscriminatory access to and use of its network on a wholesale basis to other providers seeking to provide broadband service to end-user locations, at just and reasonable wholesale rates for the useful life of the subsidized network assets. For this purpose, “just and reasonable wholesale rates” means rates that include a discount from the provider’s retail rates reflecting the costs that the subgrantee avoids by virtue of not providing retail service to the end user location (including, for example, marketing, billing, and collection-related costs). BEAD NOFO at 14.

<sup>58</sup> BEAD NOFO at 44, 46.

<sup>59</sup> Ruling Issuing Staff Proposal, Attachment B at 17.

<sup>60</sup> Ruling Issuing Staff Proposal, Attachment B at 31-33.

<sup>61</sup> Institute for Local Self Reliance Community Networks webpage, Open Access, <https://communitynets.org/content/open-access>, last accessed Nov. 12, 2023.

structural competition through regulations,”<sup>62</sup> a promise made pursuant to the Commission’s plan to address middle-class affordability, which, as noted above, currently lacks effective goals or tools to achieve them.

**4. The Commission should modify its scoring rubric to award points for reliability if the project proponent commits to ensuring its broadband network is supported by at least 72 hours of backup power.**

The draft Initial Proposal suggests awarding up to 10 points in the “Resiliency” category for the number of project locations located in a Tier 2 or Tier 3 High-Fire Threat District.<sup>63</sup> However, this criterion does not ensure that the projects themselves will be resilient. Instead, the Commission should award points for projects that ensure resiliency by committing to providing at least 72 hours of backup power across their proposed broadband network. This will benefit not only Californians located in high fire threat districts, but Californians across the state that will also need resilient access to communications services over time, as the state as a whole faces increasing threats of natural disasters.

**5. The Commission should modify its proposed challenge process rules to clarify its low speed fixed wireless modification and to provide sufficient time for challengers to organize their constituencies.**

Cal Advocates supports the Commission’s adoption of the Model Challenge Process and the Commission’s adoption of the speed test modification, DSL modification 1, DSL modification 2, and the low-speed fixed wireless modification.<sup>64</sup> The Model Challenge Process provides a clear methodology that has been subject to public input.<sup>65</sup>

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<sup>62</sup> Ruling Issuing Staff Proposal, Attachment B at 196.

<sup>63</sup> Ruling Issuing Staff Proposal, Attachment B at 32.

<sup>64</sup> Ruling Issuing Staff Proposal, Attachment A at 8-10.

<sup>65</sup> See NTIA, Proposed BEAD Challenge Process Guidance at 1 (Apr. 24, 2023), available at [https://www.internetforall.gov/sites/default/files/2023-04/BEAD\\_Model\\_Challenge\\_Process\\_-\\_Public\\_Comment\\_Draft\\_04.24.2023.pdf](https://www.internetforall.gov/sites/default/files/2023-04/BEAD_Model_Challenge_Process_-_Public_Comment_Draft_04.24.2023.pdf).

However, the Commission’s “low-speed fixed wireless modification”<sup>66</sup> lacks information related to the evidence needed to substantiate and rebut a challenge lodged by a fixed wireless provider under this modification. To assist providers and public interest challengers<sup>67</sup> and provide clear guidelines for staff administration, the Commission should modify its draft Initial Proposal to include this information, as shown in Attachment 1 to this document.

The Commission’s draft Initial Proposal’s “low speed fixed wireless modification” classifies all “underserved” locations with service delivered over Licensed Fixed Wireless (LFW) with reported speeds that are lower than or equal to 30/5 Mbps as “unserved.”<sup>68</sup> Given the location-specific nature of the question as to whether LFW reliably delivers served speeds, the draft Initial Proposal allows providers to challenge a location’s classification under this provision.<sup>69</sup> However, the draft Initial Proposal does not describe the evidence needed to substantiate such a challenge or its rebuttal. For each re-classified location that a LFW provider challenges, the Commission should require the LFW provider to supply evidence to support the availability, speed, latency, lack of unreasonable data caps, and technology of the provider’s broadband service. The LFW provider must submit evidence in its challenge for each of these elements to prevent such a classification, similar to the evidence required to rebut an area or multi-dwelling unit challenge.<sup>70</sup>

The Commission should note that a LFW provider challenge under this provision is rebuttable and should detail the evidence needed for such a rebuttal, as shown in Attachment 1 to this document. Allowing for rebuttal of LFW challenges ensures due

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<sup>66</sup> Ruling Issuing Staff Proposal, Attachment A at 9.

<sup>67</sup> The term “public interest challengers” here refers to the non-profit organizations and local governmental units the BEAD NOFO states are eligible challengers for the states’ challenge processes. BEAD NOFO at 9.

<sup>68</sup> Ruling Issuing Staff Proposal, Attachment A at 9-10.

<sup>69</sup> Ruling Issuing Staff Proposal, Attachment A at 10.

<sup>70</sup> Ruling Issuing Staff Proposal, Attachment A at 20.

process by giving the public the opportunity to provide evidence of their experiences with the services at issue; otherwise, the process would at each step depend on information coming solely from providers that have financial interest in preventing additional locations from becoming prioritized for funding.

Finally, the Commission should make all possible efforts to post its approved challenge-process details far in advance of opening the challenge process window. The draft Initial Proposal states that the Commission intends to post “an overview of the challenge process phases, challenge timelines, and instructions on how to submit and rebut a challenge...for at least a week prior to opening the challenge submission window.”<sup>71</sup> Because public interest challengers are not challenging designations on behalf of themselves, but will be required to organize their constituents to provide the appropriate evidence in an approved form for each challenge lodged, the Commission should provide these entities with enough information far enough in advance to allow challengers to train their own staff and organize constituent challenges. The Commission should review closely the comments of those entities who will be acting as public interest challengers and should adjust their proposed information release timeline accordingly.

**D. Reponses to Questions Posed Throughout the Draft Initial Proposal.**<sup>72</sup>

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- 1. The Commission should adopt census block groups as minimum project units and should require projects to serve 100 percent of eligible locations within the proposed project area, with exceptions permitted only as part of the Commission’s Extremely High-Cost Per Location determination.**

The Commission should adopt census block groups (CBG) as the minimum geographic unit for project areas because the relatively smaller minimum geographic unit would allow for greater participation in the BEAD program by smaller providers than a larger minimum geographic unit. The draft Initial Proposal provides two options for the

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<sup>71</sup> Ruling Issuing Staff Proposal, Attachment A at 22.

<sup>72</sup> Ruling Issuing Staff Proposal at 4, Question 4 (asking for responses to “[a]ny additional questions asked in the Staff Proposal.”)

minimum geographic unit to make up full project areas and requests public comment on the appropriate choice: CBGs or a combination of school districts and Tribal lands.<sup>73</sup> In general, “school district” can refer to an elementary school district, a high school district, or unified school districts.<sup>74</sup> Elementary school districts form components of high school district or unified school districts,<sup>75</sup> though the draft Initial Proposal does not specify which type of school district it is considering. In 2022-2023, there were 939 total school districts in California. If only high school and unified school districts are counted, California breaks down into 421 school districts.<sup>76</sup> This data suggests that school districts can be much larger than the 25,607 CBGs that make up California as of the 2020 Census.<sup>77</sup>

Selecting CBGs as the minimum geographic unit for project areas would allow for smaller project areas in more places, and thereby increase flexibility so project proponents can create proposals that reflect their ability and interest to build in their geographic areas of focus. Additional demographic info is also more broadly available on a CBG level than on a school district level. Choosing CBGs as the minimum geographic project unit would ease analysis of project applications and project results, given the abundance of demographic data available on that scale as compared with school district level data.

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<sup>73</sup> Ruling Issuing Staff Proposal, Attachment B at 37-38.

<sup>74</sup> California Department of Education website, Configuration of School Districts, <https://www.cde.ca.gov/re/lr/do/typicalconfigschooldist.asp>, last accessed Nov. 12, 2023.

<sup>75</sup> California Department of Education website, List of School Districts, <https://www.cde.ca.gov/re/lr/do/schooldistrictlist.asp>, last accessed Nov. 12, 2023.

<sup>76</sup> California Department of Education website, List of School Districts, <https://www.cde.ca.gov/re/lr/do/schooldistrictlist.asp>, last accessed Nov. 12, 2023. If providers are allowed to select any combination of elementary school, high school, or unified school district boundaries to create a project area, the Commission would have as much or more difficulty with deconfliction, creating apples to apples project comparisons, as that noted for a CBG based methodology. See Ruling Issuing Staff Proposal, Attachment B at 37.

<sup>77</sup> See United States Census Bureau website, Tallies, [https://www.census.gov/geographies/reference-files/time-series/geo/tallies.html#tract\\_bg\\_block](https://www.census.gov/geographies/reference-files/time-series/geo/tallies.html#tract_bg_block), last accessed Nov. 12, 2023.

The draft Initial Proposal requires applicants to proposed to serve 100 percent of locations in proposed project areas, but requests comment on the extent to which the Commission should allow applicants to propose to serve a lower percentage of locations in a designated project area.<sup>78</sup> Cal Advocates does not oppose the Commission using the proposed format for soliciting information regarding proposed alternatives to 100 percent coverage.<sup>79</sup> However, the Commission should make clear that this information will *only* be used to decrease a project’s scope in cases where (1) bringing fiber to certain project locations would cause the project budget to exceed the Extremely High-Cost Per Location Threshold, *and* (2) neither the subject applicant nor any other competing or nearby applicant is able to bring proposed per-location projects costs for that project area to below the Threshold.<sup>80</sup> Hinging exceptions for the 100 percent coverage rule on the Commission’s analysis of efficiently maximizing end to end fiber projects not only ensures neutral consideration of the public interest, but will prevent replication of other, more insidious forms of profit-motivated location discrimination that could prompt providers to request to exclude a subset of eligible locations from project scopes.

Outside of the Commission’s utilization of its Extremely High Cost Per Location Threshold -- and unless the Commission has received no project applications for a given CBG and has moved on to its “approach for subsequent funding rounds”<sup>81</sup> -- there should be no need to authorize applications that propose to serve fewer locations. This is because in every case, in order to be eligible for funding consideration in the initial application solicitation, applicants will be required to present a plan for serving all eligible locations within the project area.<sup>82</sup> Unless exceptions are needed to maximize the number of locations that are funded with end-to-end fiber coverage, the Commission

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<sup>78</sup> Ruling Issuing Staff Proposal, Attachment B at 38-39.

<sup>79</sup> Ruling Issuing Staff Proposal, Attachment B at 38-39.

<sup>80</sup> See Ruling Issuing Staff Proposal, Attachment B at 43, steps 1-6.

<sup>81</sup> Ruling Issuing Staff Proposal, Attachment B at 40.

<sup>82</sup> Ruling Issuing Staff Proposal, Attachment B at 39, noting this information is “mandatory.”

should only approve funding for projects that will serve 100 percent of locations in the project area.

**2. The Commission should defer setting its Extremely High-Cost Per Location Threshold until it receives applications for funding.**

The draft Initial Proposal seeks comment on when the Commission should set its Extremely High Cost Per Location Threshold: before applications are due (in which case the threshold would be set on Commission modelling) or after receiving applications (in which case the threshold would be set based on an analysis of actual proposed costs).<sup>83</sup> The Commission should set its Threshold after receiving applications. This methodology will enable the Commission to maximize fiber investments based on timely, real-world assessments of the costs and risks of broadband deployment illustrated in the proposals of those who will be constructing networks. Applicants will provide the Commission with the most up to date information on materials and labor costs and the Commission will have a sense of provider appetite for project locations and technologies.

In any event, the Commission is permitted to fund a project regardless of whether its per-location cost exceeds its Extremely High Cost Per Location Threshold,<sup>84</sup> so the Commission has flexibility under either approach. Moreover, as an additional benefit, setting the Threshold based on proposed project costs avoids having to rely on modelling that has not been subject to public input. Indeed, the Commission has not released its proposed modelling for comment, and has not scoped an opportunity to do so into its rulemaking. In any event, the BEAD timeline likely would not allow for additional public comment on this process to be added.

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<sup>83</sup> Ruling Issuing Staff Proposal, Attachment B at 42-44.

<sup>84</sup> BEAD NOFO at 13, noting that an Extremely High Cost per Locations Threshold sets the per-location cost limit above which a state *may* decline to fund an all-fiber project application if use of an alternative technology meeting the BEAD Program's technical requirements would be less expensive, but is not required to do so.

Cal Advocates supports the Commission’s proposed Extremely High Cost Per Location Threshold utilization proposal,<sup>85</sup> subject to the clarification recommended above: namely, that this process should be the *only* circumstance through which the Commission approves a project application proposing to serve less than 100 percent of eligible project locations in a project area. The Commission’s proposed utilization of the Extremely High Cost Per Location Threshold appropriately favors all fiber, 100 percent covered builds, and then appropriately favors ensuring more locations are approved with fiber builds over funding even more locations with non-fiber technologies, which could put those locations out of the running for future funding, while failing to deliver future-proof technologies.

### III. CONCLUSION

To ensure the Commission’s BEAD program delivers affordable broadband service for all Californians, and to ensure prioritization of end-to-end fiber builds to as many unserved locations as possible, the Commission should adopt the recommendations listed above.

Respectfully submitted,

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<sup>85</sup> Ruling Issuing Staff Proposal, Attachment B at 42-44.

**ATTACHMENT 1:  
PROPOSED REDLINES TO THE  
COMMISSION'S DRAFT INITIAL PROPOSAL**

This Attachment 1 to the Public Advocates Office’s (Cal Advocates) November 27, 2023 Opening Comments on the Broadband Equity, Access, and Deployment (BEAD) Rulemaking provides proposed redlines to the California Public Utilities Commission’s (CPUC or Commission) draft Initial Proposal, Volumes 1 and 2, released for public comment on November 7, 2023. Cal Advocates’ proposed redlines focus on the most crucial changes needed to effectuate the requirements and intent of the BEAD NOFO. However, these redlines may not include all areas of the combined 269 pages of the Commission’s draft Initial Proposal that should also be changed to be consistent with these redlines.

Black text is exactly as shown in the source document, internal citations omitted. Blue text with a single underline is new text. ~~Red text that is struck through~~ is removed text. Green text with a double underline has been moved to a new location from its original location in the source text but is otherwise unaltered. Its companion edit, ~~green text with a double underline that is struck through~~, is language shown in its location provided in the original text, but that has been moved, unaltered, and is now shown elsewhere in this attachment as green text with a double underline.

## **RECOMMENDED REDLINES TO ADDRESS CAL ADVOCATES’ CONCERNS WITH THE COMMISSION’S PROPOSED LOW-COST BROADBAND SERVICE OPTION ELIGIBILITY REQUIREMENTS.**

Draft Initial Proposal, Vol. 2 at pages 193-194, internal citations omitted unless new:

The State of California is committed to providing residents with the opportunity to receive low-cost broadband service, while simultaneously recognizing that ISPs have a variety of different plans and may be unable to alter their pricing structure on a large scale. Based on previous experience, it is highly unlikely that ISPs would implement different pricing structures for BEAD-funded areas only, while maintaining other pricing in areas that are not BEAD-funded. That said, the rules adopted by the CPUC for the Federal Funding Account grant program encourage applicants to offer a “generally available low-cost broadband plan” that must cost no more than \$40 per month, 203 resulting in a cost of \$10 with the use of the \$30 ACP subsidy. Due to the critical importance of affordability in achieving the goals of the BEAD program, California will require a Low-Cost Broadband Service Option that results in no cost to ACP-eligible customers, who are among the most vulnerable and highest priority customers for addressing the digital divide.

The CPUC thus proposes to require all subgrantees to offer a service option that meets, at a minimum, the following criteria:

- Will be available to all households that meet the eligibility requirements of the federal Affordable Connectivity Program and to households that have household incomes at or below 80 percent of the statewide median income or with household

[incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093.](#)

- Cost of \$30 per month or less (\$75 per month or less on Tribal lands), inclusive of all government taxes and fees, with application of an annual inflation factor based on the Producer Price Index for the State of California
- Available to households with income equal to or below 200 percent of the federal poverty line [and to households with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093.](#)
- Allows ~~the~~ [ACP-qualifying](#) end users to apply the ACP subsidy to the cost of service and encourages ISPs to ensure that prospective customers are aware of their participation in the ACP
- Meets performance requirements as established by the BEAD program, with download speeds of at least 100 Mbps and upload speeds of at least 20 Mbps
- Delivers typical latency of no more than 100 milliseconds
- Is not subject to data caps, surcharges, or usage-based throttling, and is subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere
- Allows subscribers to upgrade at no cost in the event the provider later offers a low-cost plan with higher speeds (downstream or upstream)
- Does not charge a fee for installation or setup
- Provides a free modem or router
- Does not require a minimum term of service

## RECOMMENDED REDLINES TO ADDRESS CAL ADVOCATES' CONCERN WITH THE COMMISSION'S PROPOSED PLAN TO ADDRESS MIDDLE CLASS AFFORDABILITY

Draft Initial Proposal, Vol. 2 at pages 196-199, internal citations omitted unless new:

This section describes the CPUC's middle-class affordability plan designed to ensure that a BEAD-funded network's service area provides high-quality broadband service to all middle-class households at reasonable prices.

~~The CPUC will continue to monitor the affordability of available service options within the State and encourage providers to offer a range of options that support broadband adoption by residents regardless of income level and reduce the burden on lower income subscribers.~~

Addressing middle-class affordability also requires a definition of middle class. Multiple frameworks exist within established research to accommodate the complexity of the concept, which contains the overlap of factors including income, education, occupation, and geographic location. Here, the Commission adopts the framework developed by the Pew Research Institute, which defines the middle class as those households earning two-thirds to 200 percent of an area's median income.<sup>86</sup>

As discussed above, the CPUC's Rulemaking to Establish a Framework and Processes for Assessing the Affordability of Utility Service (R.18-07-006), initiated in July 2018 and active as of the submission of this Proposal, has established a framework for assessing the affordability of utility services in California, including broadband services.

The Commission defines affordability as the degree to which a representative household is able to pay for an essential utility service charge, given its socioeconomic status. The proceeding establishes minimum essential service levels (25 Mbps downstream and 3 Mbps upstream in the case of broadband), metrics to evaluate affordability as defined by the Commission over time, ~~and how the CPUC will apply the framework in its analysis and proceedings.~~ However, the proceeding does not set a level at which the costs of essential communications services are presumed to be unaffordable in a given area, nor does it require any specific action for the Commission to take with regards to its BEAD rulemaking.

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<sup>86</sup> Pew Research Center website, "Are you in the American middle class? Find out with our income calculator," available at <https://www.pewresearch.org/fact-tank/2020/07/23/are-you-in-the-american-middle-class/>.

Established thresholds for the affordability of other essential utilities have traditionally been set as a percentage of household income based on measures of housing affordability by the Department of Housing and Urban Development (HUD). As noted by the National Academy of Public Administration, the United States Conference of Mayors, and the American Water Works Association, however, considering affordability as a simple percentage of income can disregard differential burdens placed on low-income households.

The Federal Communications Commission measures affordability by measuring the extent to which voice and broadband service expenditures exceed two percent of low-income households' disposable income.<sup>87</sup> The CPUC finds that “ultimately, the ability to pay for a utility service is determined by the numerous financial variables that comprise a household’s socioeconomic status.” ~~In measuring affordability, it will work to monitor the impact of broadband costs on communities at the highest risk of disconnection.~~—The Commission therefore adopts, for the purposes of administering the BEAD program, a middle-class affordability threshold that measures the extent to which the costs of essential communications services exceed 2 percent of discretionary household income for those families earning 2/3 of the median household income in their respective Public Use Microdata Areas (PUMAs), as measured using data collected via the Commission’s Affordability Rulemaking.

Consistent with the CPUC’s finding that “ultimately, the ability to pay for a utility service is determined by the numerous financial variables that comprise a household’s socioeconomic status[,]” and using data and tools created via the Affordability Rulemaking, which take into consideration data aside from just income, including housing and other utility costs,<sup>88</sup> the Commission finds that in 2022, in 127 of California’s 265 Public Use Microdata Areas (PUMAs), the cost of essential communications services exceeded two percent of discretionary income for those families earning two-thirds of the PUMA’s median discretionary household income, i.e., those lowest-earning and so most vulnerable middle class California families. This suggests that, in large parts of California, middle class families may struggle to afford essential broadband services.

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<sup>87</sup> Federal Communications Commission (FCC) Third Report and Order, Further Report and Order, and Order Upon Reconsideration, In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, and Connect America Fund, FCC 16-38 at ¶408 (Mar. 31, 2016) available at <https://docs.fcc.gov/public/attachments/FCC-16-38A1.pdf>.

<sup>88</sup> D.20-07-032 Adopting Metrics and Methodologies for Assessing the Relative Affordability of Utility Services at 16 (Jul. 16, 2020).

Addressing middle class affordability also requires a definition of middle class. Multiple frameworks exist within established research<sup>212</sup> to accommodate the complexity of the concept, which contains the overlap of factors including income, education, occupation, and geographic location.

~~California classifies low-income households according to the federal poverty guidelines published by the U.S. Department of Health and Human Services, but does not have an official definition of middle class. Median household income can serve as a useful benchmark for the State: according to data from the U.S. Census Bureau, the median household income in California was \$84,097 in 2021.~~

However, as recognized by the CPUC's framework, affordability is more than merely the concern of whether residents can afford service. Rather, affordability in the context of middle-income homes is also inclusive of residents who can afford service, in theory, but nonetheless struggle with the financial burden. According to the U.S. Census Bureau's 2021 Current U.S. Population Survey, approximately 3 percent of California residents that do not subscribe to internet service at home reported that the primary reason is that internet service is "not worth the cost." This figure, while not high, highlights the still notable number of California residents that are held back by financial concerns beyond simply being able to afford the service at face value. As such, the broader notion of affordability fundamentally demonstrates the manner in which middle-income households are frequently disincentivized from participating in the digital economy.

To overcome the cost barrier or cost-based disincentives to securing broadband access present for many middle-class Californians, the CPUC will require all BEAD funded projects to offer to all project locations a generally available (i.e., not income qualified) broadband plan offering speeds of 100/20 Mbps with no data caps or other monthly recurring charges for no more than \$84 per month in out of pocket costs to the customer. To ensure the plan is affordable for all middle-class Californians residing in project areas, the \$84 rate for this plan was calculated as 2 percent of two-thirds of the median household income in the lowest earning county in California. Like the required low-cost broadband service option, this plan will be required for the life of the funded infrastructure, subject to increase only upon request and approval by the Commission.

The CPUC will continue to monitor the affordability of available service options within the State and encourage providers to offer a range of options that support broadband adoption by residents regardless of income level and reduce the burden on lower-income subscribers.

[In addition to requiring all BEAD funded providers to offer a middle class affordability plan as outlined above,](#) ~~t~~The CPUC will encourage providers to offer [other plans and](#) price points that accommodate subscribers' ability and desire to pay for reliable, high-speed service through a range of solutions, including but not limited to making publicly available to consumers and monitoring benchmarks for affordability through the publication of its Annual Affordability Report; providing subsidies for broadband service; encouraging providers to extend low-cost service options to all subscribers; and promoting structural competition through regulations, [including awarding points to projects that propose to offer open access on the last mile of BEAD funded projects.](#)

As discussed in Section 5.3, the CPUC will also weight affordability criteria in the scoring of its BEAD grant program. Applicants will receive up to 40 points for a clear and unambiguous commitment to offer a symmetrical 1 Gbps service at \$50 per month to BEAD-funded locations through Priority Broadband Projects, or 100/20 Mbps at \$30 per month to BEAD-funded locations through other last-mile projects, [and, again, in no case will a provider be awarded funding if its proposed 100/20 Mbps plan is not offered for \\$84 or less.](#)

To support increased adoption of broadband, the State must ensure residents have access to reliable service. To that end, the CPUC seeks to effectively address affordability for middle-class subscribers without restricting providers' participation in BEAD—which could lead to higher-cost awards and fewer residents that are served Priority Broadband.

Accordingly, the CPUC plans to [further](#) manage middle-class affordability within the context of the BEAD program by addressing the following areas of risk:

- Small, local providers propose low requested BEAD support but set high subscription costs: The CPUC will encourage ISPs participating in the State BEAD grant program to offer their best price to areas they serve with grant funding for analogous products they offer in other areas, in alignment with the gigabit best offered pricing requirement in the BEAD program rules. (ISPs should include current pricing through the subgrantee selection process, and a rigorous financial proficiency test will be built into the letter of credit and subgrantee selection process.)
- Providers shift drop and installation costs to the consumer to recover capital costs: Grant participation rules will make clear that drops and network equipment are eligible BEAD costs and should be built into grant proposals to avoid inflated subscriber prices. The CPUC expects this risk to be somewhat mitigated by expanding competition in rural areas from 5G home internet and LEO satellite options.

- ~~• Providers refuse to provide service to expensive locations: The CPUC will monitor and ensure that awardees make good on their BEAD service commitments, including not assessing additional fees beyond standard installation fees.~~
- Differential pricing between urban and new project areas: The gigabit best pricing policy mandated in the BEAD program scoring matrix sets requirements around geographic non-discrimination.

The State of California is committed to establishing policies that would ultimately lead to more widespread affordability among middle-income residents. This holistic commitment to expanding the adoption of broadband throughout California necessitates the accommodation and partnership of subgrantees. In doing so, the State increases the likelihood of ISP participation and, in effect, will provide middle-income California residents a genuine opportunity to be fully engaged in the digital world.

## **RECOMMENDED REDLINES TO ADDRESS CAL ADVOCATES' CONCERNS WITH PRIORITIZATION OF FUNDING PROJECTS THAT WILL SERVE UNSERVED LOCATIONS AND PRIORITIZATION OF PROJECTS IN HIGH-POVERTY AREAS AND PERSISTENT POVERTY COUNTIES**

Draft Initial Proposal, Vol. 2 at pages 23-24 and 33-34, internal citations omitted unless new:

### **5.1.4.1 APPLICATION PHASE**

During the Application Phase, the CPUC will accept, review, and score grant applications for specific projects—and will conduct a series of related necessary activities, prior to and following acceptance of the grant applications. The Application Phase will follow full authorization from NTIA based on approval of the outcome of the Challenge Process and of the Initial Proposal Volume II.

Once the CPUC has received NTIA's full authorization, the CPUC will distribute grant materials and begin accepting applications for proposed projects. 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 BEAD application materials will specify the materials and certifications that are required for qualification, together with the format and date for submission. The qualifications materials and certifications will be focused on materials that address financial, managerial, and technical qualifications as well as experience and capacity. 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. The project materials will require applicants to state how many, if any, proposed project locations fall within high-poverty areas or persistent poverty counties, and to provide the data and calculations the applicant used to arrive at the location count required by this provision. The Commission intends to provide map layers illustrating California high-poverty areas and persistent poverty counties with its forthcoming location eligibility map. The project materials will require applicants to state the percentage of eligible project locations that are classified as unserved and the percentage of eligible project locations that are classified as underserved. This information will allow the Commission to prioritize the funding of unserved locations, and, should the Commission determine it does not have sufficient funding to deploy broadband to all BEAD-eligible locations, to prioritize funding locations in high-poverty areas or persistent poverty counties.

With reference to these prioritizations and in concert with the process for utilizing the Extremely High Cost per Location Threshold as described in Section 5.11, if the Commission determines it does not have sufficient funding to deploy broadband to all BEAD-eligible locations, it will fund service project applications in the following order:

- First, the Commission will fund eligible unserved service projects<sup>89</sup> with at least 25 percent of eligible unserved project locations located in high-poverty areas or persistent poverty counties first.
- It will then fund unserved service projects with lower, but non-zero, percentages of eligible unserved locations in high-poverty areas or persistent poverty counties, in the order of highest proportion of total unserved locations to lowest.
- Finally, it will fund eligible projects with no locations in high-poverty areas or persistent poverty counties until no unfunded applications that serve at least 50 percent unserved locations remain or funding is exhausted.
- Because the remaining applications will propose to serve proportionately more underserved locations than unserved locations, the Commission will again prioritize those applications with at least 25 percent of eligible project locations located in high-poverty areas or persistent poverty counties.
- It will then fund predominantly underserved service projects with lower, but non-zero, percentages of eligible locations in high-poverty areas or persistent poverty counties, in the order of highest proportion of total unserved locations to lowest.
- Finally, it will fund predominantly underserved service projects with no locations in high-poverty areas or persistent poverty counties until no unfunded applications remain or funding is exhausted.

Given the rigorous and robust documentary requirements for BEAD, the application process will require evaluating proposals from organizations that meet NTIA's and the State's requirements and are most likely to achieve the objectives of the BEAD program.

The Application Phase process will allow a limited curing opportunity by providing additional time for follow-up data requests by the CPUC as necessary. Both qualification and proposed project materials will be part of each application, acceptable qualification materials will be a prerequisite for the scoring of grant applications. All entities whose qualification materials are determined to be sufficient will also be scored on their project proposals.

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#### 5.4 Prioritization of unserved BSLs, underserved BSLs, and eligible CAIs

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<sup>89</sup> BEAD NOFO at 16-17. Unserved service projects propose to serve eligible locations of which at least 80 percent are unserved. Underserved service projects propose to serve eligible locations of which 80 percent are underserved.

In the Infrastructure Investment and Jobs Act, Congress clearly established that addressing the needs of unserved locations is the first priority of the BEAD program, followed by underserved locations as the second priority, and CAIs as the third. This prioritization is statutorily mandated and confirmed by NTIA's BEAD Notice of Funding Opportunity.

The BEAD priorities also align with the State of California's proposal to utilize the BEAD funds. California's internal modeling suggests that the funds available through BEAD could possibly provide for fiber-to-the-premises to a substantial portion of unserved locations in California. However, the CPUC believes it will be challenging to do so given current inflationary pressures and projected demand for broadband construction labor and materials during the BEAD deployment process. California will work to efficiently utilize BEAD funds to serve as many unserved locations, underserved locations, and CAIs as possible consistent with the BEAD-mandated prioritization. The State will consider how to best leverage existing broadband programs to support California's goals under Broadband for All, which align with the goals for BEAD. The CPUC is in the process of considering how these programs can be used in conjunction with BEAD and other programs to further broadband expansions by municipal and nonprofit entities in areas that have experienced historic disinvestment.

Given this analysis, the CPUC proposes to review applications for BEAD funding with a focus on utilizing the funds available to serve as many qualifying locations as possible consistent with the mandates of the program, [and the process for doing so outlined in Section 5.1.4.1, Application Phase](#), and allowing as much flexibility as possible in defining a Project Area to ensure that the Final Proposal maximizes the number of locations that will be served with BEAD funding. The CPUC reserves the right and opportunity to undertake an additional application round if funds are available to provide broadband to any locations not covered in the initial application round.

In the event that BEAD funds are insufficient to deliver fiber to all locations, the CPUC will prioritize projects to serve unserved and underserved locations located in high-poverty and persistent poverty counties, consistent with the BEAD NOFO [and the process for doing so outlined in Section 5.1.4.1, Application Phase](#), as well as projects to serve locations on Tribal lands.

## **RECOMMENDED REDLINES TO ADDRESS CAL ADVOCATES' PROPOSAL TO AWARD POINTS FOR PROJECTS THAT COMMIT TO OFFERING OPEN ACCESS ON THE LAST MILE OF FUNDED NETWORKS**

Draft Initial Proposal, Vol. 2 at pages 30-32, internal citations omitted unless new. The Commission should ensure that update to Section 5.3.3. Scoring Rubrics have consistent edits with the recommendations made here for Section 5.3.2 before submission to the NTIA.

### **5.3.2 Scoring criteria**

The CPUC's scoring rubric is consistent with NTIA's rules, which specify three primary criteria that together must account for 75 percent of scoring, as well as secondary criteria that are based on California's own public policy priorities.

The CPUC will begin its evaluation of proposals by ensuring that the applicant provided all required materials. Incomplete proposals will not be considered.

#### **Affordability: up to 40 points**

For Priority Broadband Projects: Applications will be scored based on applicants' commitments to offer a symmetrical 1 Gbps service to BEAD-funded locations at \$50 per month, inclusive of all taxes and fees. Full points will be awarded to applications that make this commitment in clear and unambiguous terms, without caveats that compromise the commitment. For every additional \$1 per month that the applicant proposes to price its symmetrical 1 Gbps service, 1 point will be deducted from the 40-point maximum. For Other Last-Mile Broadband Deployment Projects: Applications will be scored based on applicants' commitments to offer 100/20 Mbps to BEAD-funded locations at \$30 per month, inclusive of all fees. Full points will be awarded to applications that make this commitment in clear and unambiguous terms, without caveats that compromise the commitment. For every additional \$1 per month that the applicant proposes to price its 100/20 Mbps service, 1 point will be deducted from the 40-point maximum.

#### **Labor Standards: up to 20 points**

Up to 20 points will be awarded, with 10 points based on (1) a demonstrated history of compliance with federal labor laws; (2) demonstrated commitments to future compliance with federal labor laws; and (3) the quality and contents of labor practice-related items submitted during the Application Phase. Projects on Tribal lands will receive the 10 points for labor standards as long as the project complies with Tribal and applicable federal law concerning labor standards. Additionally, up to 10 points will be awarded to all projects on the basis of workforce capacity building and development commitments, especially those

prioritizing equitable workforce development. New entrants without a lengthy record of labor and employment law compliance will receive points in this category based on specific, concrete commitments to strong labor and employment standards and protections and equitable workforce development commitments going forward. Up to 10 points will be deducted for official labor relations complaints or violations in the five years preceding the date of application.

**Minimum 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.

**Speed to Deployment: 5 points for Priority Broadband Projects and 1 point for Other Last-Mile Broadband Projects**

Applicants must demonstrate that the project will be complete within two years of receiving funds (barring CEQA) to receive points under this criterion. Failure to demonstrate compliance with this timeline, for either Priority Broadband Projects or Other Last-Mile Broadband Projects, will result in zero points.

**Equity: ~~10~~ 5 points**

As an additional prioritization factor for both Priority Broadband Projects and Other Last-Mile Broadband Deployment Projects, applicants will receive up to ~~10~~ 5 points for the number of locations they propose to serve that are located in a disadvantaged or low-income community. One half 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~~ 5 points.

**Promoting Structural Competition: 5 points**

As an additional prioritization factor for both Priority Broadband Projects and Other Last-Mile Broadband Deployment Projects, applicants will receive up to 5 points for committing to offer open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers. No points will be awarded for projects that do not make such a commitment.

**Resilience: 10 points**

As an additional prioritization factor for both Priority Broadband Projects and Other Last-Mile Broadband Deployment Projects, applicants will receive up to 10 points for submitting applications that plan and commit to ensuring 72 hours of backup power across the proposed BEAD funded network. No points will be awarded for applications that do not make such a commitment. ~~the number of locations located in a Tier 2 or Tier 3 High Fire Threat District. One 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 points.~~

**Technical Capability: 4 points**

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.

## **RECOMMENDED REDLINES TO ADDRESS CAL ADVOCATES' CONCERNS WITH THE COMMISSION'S PROPOSED CHALLENGE PROCESS**

Draft Initial Proposal, Vol. 1 at pages 9-10 and 15-17, internal citations omitted unless new. Cal Advocates does not here reproduce the entirety of the Commission's Table of challenge types, evidence examples, and permissible rebuttals (draft Initial Proposal, Vol. 1, at 15); rather, Cal Advocates reproduces only those rows that contain recommended changes.

### **Low-speed fixed wireless modification**

The CPUC will presume the 36,887 locations that the National Broadband Map shows to have available non-qualifying broadband service (i.e., a location that is "underserved") delivered over Licensed Fixed Wireless (LFW) as "unserved" for reported speeds that are lower than or equal to 30/5 Mbps.

As a technical matter, fixed wireless speeds fluctuate heavily; given this, speeds that barely qualify as underserved will likely be below 25/3 service during peak usage times. This is especially true of older fixed wireless deployments that struggle to reach higher speeds and mitigate interference and line of sight issues. In fixed wireless networks, service performance can be affected by a customer's proximity to a base station, the capacity of the cell site, the number of other users connected to the same cell site, the surrounding terrain, and radio frequency interference. Additionally, fixed wireless networks require a clear line-of-sight. Therefore, obstructions, such as trees, can block radio signals and impact the reliability of fixed wireless networks. Poor weather conditions, including rain, can affect the availability and quality of a customer's fixed wireless service.

Furthermore, impartial third parties have found that not all cellular fixed wireless subscribers receive speeds above 25/3 and 'thus did not provide a reasonable basis for its 'fast' or 'high-speed' claims.'" The CPUC has observed that some fixed wireless operators report 25/3 or 100/20 speeds on the National Broadband Map even where their networks frequently reach those speeds only under optimal circumstances and have not been replicated in other testing environments, such as the CPUC's own CalSPEED process. User agreements for leading providers of cellular fixed wireless indicate that users will be deprioritized during periods of network congestion, decreasing the likelihood that service delivered to consumers will meet the claimed thresholds, especially in future years as network utilization increases.

-As a result, this modification will better reflect the locations prioritized for BEAD funding because it will consider the actual speeds of locations while

minimizing the burden on residents and challengers to proactively collect data through the speed test module. - Most of these locations are within areas designated by the CPUC as ESJ Communities, which are predominantly communities of color or low-income communities underrepresented in the policy setting or decision-making process, meaning they may face barriers to engaging in the challenge process, in part due to lack of available high-speed internet infrastructure. It is therefore critical to ensure that these communities are not excluded from BEAD based on exaggerated deployment claims. The CPUC will engage with cellular fixed wireless providers to discuss their service availability and will request that these providers update their data to be used for the CPUC's forthcoming BEAD eligibility map accordingly. To the extent that providers have data demonstrating that [their service is actually available](#), their networks may consistently achieve served speeds [and meet latency requirements](#), [and do not have data caps](#), providers may rebut this classification through the challenge process [using evidence noted in Section 5.5 of this document, particularly the Commission's Table of challenge types, evidence examples, and permissible rebuttals](#). [Rebuttals to provider challenges of this modification will also be allowed, subject to the evidentiary requirements also noted in the Commission's Table of challenge types, evidence examples, and permissible rebuttals](#).

Due to the possibility of California's BEAD allocation being fully committed to deploying service to unserved locations, this modification will also ensure that locations served by low-speed and unreliable cellular fixed wireless are not excluded from eligibility for this critical investment.

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Table of challenge types, evidence examples, and permissible rebuttals

Code	Challenge Type	Description	Specific examples of required evidence	Permissible rebuttals
A	Availability	<p>The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU).</p> <p><a href="#"><u>In the case of a challenge to a location classification made pursuant to the Commission’s low speed fixed wireless modification, a provider must provide evidence substantiating the availability of the technology at the location.</u></a></p>	<p>Screenshot of provider webpage.</p> <p>A service request was refused within the last 180 days (e.g., an email or letter from provider).</p> <p>Lack of suitable infrastructure (e.g., no fiber on pole).</p> <p>A letter or email dated within the last 365 days that a provider failed to schedule a service installation or offer an installation date within 10 business days of a request.</p> <p>A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect this location or that a provider quoted an amount in excess of the provider’s standard installation charge in order to connect service at the location.</p> <p><a href="#"><u>In the case of a challenge to a location classification made</u></a></p>	<p>Provider shows that the location subscribes or has subscribed within the past 12 months, e.g., with a copy of a customer bill. If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability. The provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location.</p> <p><a href="#"><u>In the case of a challenge to a location classification made pursuant to the Commission’s low speed fixed wireless modification, a provider’s challenge is not rebuttable on the basis of availability.</u></a></p>

			<p><a href="#">pursuant to the Commission’s low speed fixed wireless modification, a provider must show that the location subscribes or has subscribed within the past 12 months, e.g., with a copy of a customer bill.</a></p> <p><a href="#">The provider may also submit evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location.</a></p>	
S	Speed	The actual speed of the service tier falls below the unserved or underserved thresholds.	<p>Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests.</p> <p><a href="#">In the case of a challenge to a location classification made pursuant to the Commission’s low speed fixed wireless modification, a provider must submit speed test evidence showing sufficient speed, e.g., from their own network management system.<sup>90</sup></a></p>	<p>Provider has countervailing speed test evidence showing sufficient speed, e.g., from their own network management system.</p> <p><a href="#">In the case of a rebuttal to a challenge to a location classification made pursuant to the Commission’s low speed fixed wireless modification, rebuttals must provide a speed test by subscriber at the subject location, showing the insufficient speed and</a></p>

<sup>90</sup> As described in the NOFO, a provider’s countervailing speed test should show that 80 percent of a provider’s download and upload measurements are at or above 80 percent of the required speed. See Performance Measures Order, 33 FCC Rcd at 6528, para. 51. See BEAD NOFO at 65, n. 80, Section IV.C.2.a

				<a href="#">meeting the requirements for speed tests.</a>
L	Latency	The round-trip latency of the broadband service exceeds 100 ms	Speed test by subscriber, showing the excessive latency.  <a href="#">In the case of a challenge to a location classification made pursuant to the Commission’s low speed fixed wireless modification, a provider must submit speed test evidence showing latency at or below 100 ms, e.g., from their own network management system or the Connect America Fund (CAF) performance measurements.</a>	Provider has countervailing speed test evidence showing latency at or below 100 ms, e.g., from their own network management system or the Connect America Fund (CAF) performance measurements.  <a href="#">In the case of a rebuttal to a challenge to a location classification made pursuant to the Commission’s low speed fixed wireless modification, rebuttals must provide a speed test by subscriber at the subject location, showing excessive latency.</a>
D	Data Caps	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer.	Screenshot of provider webpage.  Service description provided to consumer.  <a href="#">In the case of a challenge to a location classification made pursuant to the Commission’s low speed fixed wireless modification, a provider must submit terms of service showing that it does not impose an unreasonable data cap or offers another plan at</a>	Provider has terms of service showing that it does not impose an unreasonable data cap or offers another plan at the location without an unreasonable cap.  <a href="#">In the case of a challenge to a location classification made pursuant to the Commission’s low speed fixed wireless modification, a permissible rebuttal will provide a screenshot of provider webpage or a service description provided to consumer.</a>

			<a href="#"><u>the location without an unreasonable cap.</u></a>	
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## RECOMMENDED REDLINES TO ADDRESS CAL ADVOCATES' CONCERNS WITH THE COMMISSION'S PLAN TO REQUIRE PROJECTS TO SERVE 100 PERCENT OF ELIGIBLE LOCATIONS IN A PROJECT AREA

Draft Initial Proposal, Vol. 2 at pages 38-39, internal citations omitted unless new.

### Service commitments ~~related to both approaches to Project Area definition~~

~~With respect to the two approaches for defining Project Areas,~~ †The CPUC will require applicants to provide proposed pricing for service to 100 percent of unserved and underserved locations in the Project Area.

~~In addition,~~ †The CPUC ~~is considering and seeks comment on the potential to~~ allow applicants to also propose to serve a lower percentage of unserved and underserved locations in each Project Area. This approach recognizes that, in every Project Area, there may be individual locations that are so remote and hard to reach—with any terrestrial technology—that including those locations in an application may serve to make the area non-viable for applications at a cost that enables complete coverage of locations statewide or may serve to reduce or eliminate the chance of any applications being received for that Project Area. For these reasons, the CPUC ~~would~~ will allow proposed pricing for less than 100 percent of eligible locations in a Project Area, seeking alternative pricing to reach nearly all eligible locations in the Project Area to increase the chances of funding the vast majority of unserved and underserved locations throughout the State with the best technology possible. The CPUC will not approve an application for funding to serve less than 100 percent of eligible locations in a Project Area except in cases in which bringing fiber to certain project locations would cause the project budget to exceed the Extremely High-Cost per Location Threshold and neither the subject applicant nor any other competing or nearby applicant is able to bring proposed per-location projects costs for that project area to below the Extremely High-Cost per Location Threshold.

~~The CPUC thus proposes that applicants could apply as follows:~~

- Applicants will be required to propose a grant amount to serve 100 percent of locations in any Project Area for which they submit an application
- Applicants will also have the option of proposing a grant amount to serve a lower percentage of locations and to provide a list of the locations they propose to remove from their grant obligations, as well as the rationale for the removal

The following is the format in which applicants are allowed to ~~the CPUC would provide the opportunity for applicants to~~ submit alternative applications for a single Project Area based on this approach:

Application Project Area [identification number]	Percentage of eligible locations	Requested grant funds per location	Total requested grant funds for Project Area
	100% (mandatory)	\$_____	\$_____
	[alternative number]% (optional)	\$_____	\$_____

Applicants ~~would~~ will also be required to provide a list of any locations excluded from their service commitment, as well as related mapping data per the CPUC’s specifications, so that applications can be scored and compared to each other.

This approach would allow for efficient comparison of proposals for each Project Area, while creating as much competitive dynamic as possible for well-priced applications for as much as possible of each Project Area. Applicants would have the freedom to propose to serve a Project Area at a lower percentage than 100 percent but will also understand that they may be competing with applications that propose to serve a higher percentage of locations.

The CPUC understands that this may result in proposals that vary significantly. Indeed, that varied pricing is part of the CPUC's goal for this strategy as it will allow for the option of funding proposals to serve many locations in a Project Area if no cost-effective application is received for 100 percent of eligible locations. As a result, this strategy would provide a range of alternative options for how the CPUC can use California’s finite BEAD funds to reach as many eligible California locations as possible in the most efficient and impactful way.

So long as the pricing for 100 percent of locations is viable given the statewide need for funding, that is, unless bringing fiber to certain project locations would cause the project budget to exceed the Extremely High-Cost per Location Threshold and neither the subject applicant nor any other competing or nearby applicant is able to bring proposed per-location projects costs for that project area to below the Extremely High-Cost per Location Threshold, the CPUC will make awards to applications that propose to serve 100 percent of locations. In the event that the CPUC receives two or more identical proposals for identical Project Areas, then the CPUC will select the proposal with the highest score.

## RECOMMENDED REDLINES TO ADDRESS CAL ADVOCATES' CONCERNS WITH THE COMMISSION'S PROPOSED EXTREMELY HIGH COST PER LOCATION THRESHOLD

Draft Initial Proposal, Vol. 2 at pages 41-42, internal citations omitted unless new.

### 5.10 Identifying the Extremely High Cost Per Location Threshold (EHCPLT)

~~The CPUC seeks public comment regarding the process of identifying and acting on the EHCPLT.~~ Consistent with NTIA rules, the CPUC anticipates developing the EHCPLT to determine at what cost per unit (if any) fiber-to-the-premises is too costly to achieve the statutory BEAD goal of achieving 100 percent broadband coverage with the funds provided in the BEAD allocation. Pursuant to the federal requirement as stated in the NOFO “to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible,” CPUC will prioritize an EHCPLT as high as feasible to ensure greater fiber coverage “and maximize use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements.”

~~The CPUC seeks input from parties and other stakeholders on the appropriate timing for establishment of the EHCPLT, and two options are presented below. In addition, the CPUC welcomes proposals of additional options to those proposed below.~~

#### ~~Option 1: Establish EHCPLT based on BEAD applications received~~

~~Under this approach,~~ ~~the~~ CPUC will determine the EHCPLT once it has received all grant applications and will use it to efficiently allocate its BEAD funding based on the applications received. Based on both State and federal goals (and the federal requirement) to fund fiber-to-the-premises wherever possible, the CPUC will prioritize an EHCPLT as high as feasible to ensure greater fiber coverage while also prioritizing the federal statutory goal of complete coverage of unserved locations, followed by underserved locations and Community Anchor Institutions. The EHCPLT will be developed using the proposed grant funding amounts in the applications received and may be adjusted during the Negotiation Phase based on feedback and outcomes from the negotiation process.

#### ~~Option 2: Establish EHCPLT prior to BEAD application window~~

~~Under this approach, the CPUC will utilize cost modeling for BEAD unserved locations, including per location costs for applications received for other CPUC broadband grant programs, to identify an EHCPLT prior to initiating the BEAD grant period. 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. As with Option 1, the CPUC would prioritize an EHCPLT as high as feasible to ensure greater fiber coverage while also prioritizing the federal statutory goal of complete coverage of unserved locations, followed by underserved locations and Community Anchor Institutions.~~