

**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

**OPENING COMMENTS OF NATIONAL DIVERSITY COALITION ON THE
BROADBAND EQUITY, ACCESS AND DEPLOYMENT (BEAD) PROGRAM**

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I. INTRODUCTION

The National Diversity Coalition (“NDC”) is a national non-profit organization including the leadership of our nation’s major African American, Asian, and Latino organizations as well as major minority and women-oriented national nonprofits, and businesses advocating for economic empowerment and financial equality for low-moderate income, minority, and other disadvantaged communities.

Pursuant to the November 7, 2023, Administrative Law Judge’s Ruling Issuing Staff Proposal in the above proceeding, NDC respectfully submits opening comments to the California Public Utilities Commission’s (“Commission”)’s *Broadband Equity Access and Deployment Program (BEAD IP)*.¹

¹ R.23-02-016, Administrative Law Judge Ruling Issuing Staff Proposal on Broadband Equity, Access, and Deployment Program (BEAD Ruling) (7/23/2023)

II. NDC COMMENTS

The ALJ Ruling requests a response to the following question:

Question 3: 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?

NDC's comments to the proposed rules are as follows:

A. NDC recommends that applicants be allowed to draw their own project areas using Census Block Groups to determine the project boundaries.

The staff proposal contains two options for determining the boundaries of project areas. Option 1 allows “applicants define the project areas” and option 2 allows the “project area boundaries are based on established jurisdictional boundaries”.² If the Commission intends to include only one option for the final rules, NDC recommends adopting Option 1, where the applicants are allowed to design the project area by themselves through using a minimum geographical unit of CBG.

Option 1 will be more economically viable and efficient for the applicants. CBG data provides focused information for identifying low-income communities, whereas established political boundaries are not specifically designed to identify demographic information of residents. The option of providing applicants with a choice to design the project areas based on CBG data would enable the commission to provide targeted resources and broadband deployment to unserved and underserved locations in an effective and precise manner.

² BEAD IP-2 at 36

The implementation of project areas based on CBG is more amenable to modification and changes in the negotiation phase, which will assist in obtaining better results for low-income communities. This method will also help resolve conflicts with application, such as overlapping project areas.

The adoption of Option 1 is directly aligned with the goal of the BEAD program funding, which prioritizes implementation of the projects areas that serve and benefit low-income communities in unserved and underserved locations.

NDC cautions that the adoption of Option 2 may have unintended risks of overlapping project area designs from applicants, and result in a long negotiation phase. This could result in substantial delay in the deployment of the broadband in as many unserved and underserved locations as possible in California.

B. NDC recommends Establishing Extremely High Cost Per Location Threshold (ECHPLT) based on BEAD applications received.

The proposed rules provide two options for deciding the appropriate timing to establish ECHPLT. Option 1 provides that ECHPLT is established after the Commission has received all grant applications. Option 2 establishes ECHPLT prior to the BEAD application window.

NDC recommends the commission to adopt Option 1, establishing ECHPLT after receiving all applications for BEAD grants. NDC believes that every grant application should be considered based on the question of whether such grant serves the purpose of achieving the goal of providing broadband one hundred percent (100%) coverage in California and eliminating the digital divide. Any objective determination of ECHPLT prior to receipt of all application, would be contrary to objectives of BEAD, and precludes applicants considering high-cost projects from

BEAD fiber funding, which would be prejudicial against communities where the outcome benefits could justify the costs.

NDC expresses concern that the establishing ECHPLT prior to receiving all applications can disincentivize applicants from creating project designs that may be risky and costly, but nevertheless ensure broadband deployment to unserved and underserved locations. The flexibility of project design along with ECHPLT determined after receiving all applications provides necessary tools to ensure greater fiber coverage to as many places as possible, with federal statutory goal of complete coverage of unserved and underserved locations.³

C. NDC disagrees with the proposed approach of utilizing ECHPLT for BEAD funding.

The draft rules propose the following methodology (i) “commission determining which proposal for 100 percent eligible location in a project area exceed ECHPLT and will consider whether to fund applications for lower percentages”, (ii) “commission will consider whether to fund applications that exceed ECHPLT, where a lower cost non-priority broadband project has been proposed and meets the minimum standards”.⁴

NDC disagrees with the methodology proposed in BEAD IP-2. The Commission’s focus on the asset allocation model and single point factor premised on maximizing fiber installation area in as many areas possible, leaving the most remote and expensive projects to possible alternative technologies or lesser technology solutions such as fixed wireless or and coaxial cable

³ BEAD IP-2 at 42

⁴ BEAD IP-2 at 42

would exacerbate digital divide, undoubtedly affecting the remote low-income households and communities.

NDC asserts that this is incorrect data driven public policy because it omits economic transformation benefit factors from the analysis, which is also an objective of BEAD IP-2 as per section 9.6 of the commission report.⁵ NDC recommends that the Commission include the factor of “economic benefits” of the broadband fiber deployment, if the cost exceeds ECHPLT. The consideration of this factor will only benefit communities, especially low-income communities residing in rural and other difficult terrains such as mountains. For instance, an extreme cost fiber project that enables bringing a remote community fully into digital workforce participation would have multiplier and accelerator effects to the State of California’s economy that would yield a bring more economic benefit more than the cost of implementation; that a lesser technology solution would not leverage.

NDC recommends that the commission consider requiring every proposal for BEAD funding include both a cost of fiber construction and a potential economic benefit that can be mentioned before and after impact statement, preferably including a potential 20-year long-term economic benefits arising from introducing fiber technology to a remote community; and detrimental impact of such community not able to afford the access to high-speed internet in absence of BEAD funding.

NDC also recommends that the commission consider amending section 5.11 implementation methodology to a two-factor linear programming allocation model that fully considers project cost and economic benefits/returns as equal weight factors in BEAD funding

⁵ BEAD IP-2 at 119

allocation analysis. NDC believes this approach will identify the relevant projects for the use of BEAD funding and contribute to a better outcome for effective utilization of the BEAD funding to achieve the federal statutory goals than the current methodology of utilizing ECHPLT provided in the section.

D. NDC recommends a revision in 9.4 of the BEAD IP-2 and recruitment of diverse firms must reflect the supplier diversity goals of CPUC GO 156.

As per the BEAD IP-2, the commission will encourage “women, minority, and veteran-owned businesses to prepare to engage in the BEAD process, and encourages prospective applicants to proactively engage with these potential partners” in relation to the BEAD funding and deployment. However, there is no specific guidelines mentioned in regard to the diversity representation of women, minority, and veteran-owned businesses as a requirement for BEAD funding.

NDC recommends a revision of 9.4 of BEAD IP-2 to incorporate the goals of CPUC GO 156. The commission should mandate that applicants comply with supplier diversity requirements for all BEAD funded projects, in order to encourage the creation of an actual diverse supplier base in the communities where these projects are approved.

Moreover, Section 9.4 should include provisions that require projects to demonstrate how the project will ensure supplier diversity quota complaint outcome for each project; including, but not limited to, programs that will follow a first preference policy to recruit, train and qualify suppliers from the local community of the BEAD project to meet GO 156 compliance quotas. Further, in situations when there are a lack of locally sourced applicants coming from specific diverse backgrounds, the project must demonstrate how it will achieve supplier diversity

outcome compliance using qualified diversity suppliers from other parts of California. Suppliers outside of California should be discouraged.

III. CONCLUSION

NDC appreciates the opportunity to provide opening comments on the Broadband equity, access, and deployment program (BEAD) and its proposed staff rules. NDC supports the proceeding efforts to increase affordability and access to broadband for all Californians, and thereby eliminate digital divide.

Dated: November 27, 2023

Respectfully submitted,

/s/ Olman Valverde

National Diversity Coalition