

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.

FILED
PUBLIC UTILITIES COMMISSION
FEBRUARY 23, 2023
SAN FRANCISCO, CALIFORNIA
RULEMAKING 23-02-016

**COMMENTS OF THE SMALL BUSINESS UTILITY ADVOCATES ON THE
STAFF PROPOSAL**

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I. INTRODUCTION

The Infrastructure Investment and Jobs Act (IIJA), enacted in November 2021, initiated the \$42.45 billion Broadband Equity, Access, and Deployment (BEAD) Program. Administered by the National Telecommunications and Information Administration (NTIA), this program grants approximately \$1.86 billion to California for broadband expansion.

In response to this significant initiative, as well as the Administrative Law Judge’s Ruling Issuing Staff Proposal dated November 7, 2023, Small Business Utilities Comments (SBUA) offers the following comments and insights to help shape the rules and policies governing the BEAD Program, with a particular focus on the vital role of small business – including those that are owned by Black, Indigenous, people of color, and/or women (MWBE) – in its successful implementation.

**II. COMMENTS ON INCLUSION OF SMALL BUSINESSES AND MWBEs IN
BEAD GRANTS AND CONTRACTS**

In its introduction, the Staff Proposal states:

This document describes the process, strategy, and data tracking method(s) that the CPUC will implement to ensure that minority

businesses, women-owned business enterprises, and labor surplus area firms are recruited, used, and retained when possible.¹

SBUA supports and appreciates the Staff Proposal's dedication to recruiting, utilizing, and retaining small business – including labor surplus area firms (LSAF) and MWBEs – as BEAD subgrantees when possible. SBUA also offers the following suggestions to enhance these efforts and ensure the prosperity of these businesses.

A. Identifying Small Businesses and MWBEs

The Staff Proposal does not specify the method for identifying MWBEs, aside from “requir[ing] documentation of whether subgrantees, their partners and contractors qualify as a minority-owned enterprise, women-owned enterprise, or Labor Surplus Firm.”² And while the Commission's own GO 156 process for MWBE designation is valuable and can supply such documentation, it can also be time-consuming and costly for small businesses. This is especially pertinent given the scope and urgency of the work required for the BEAD Program, which encompasses a wide range of businesses, including those not conventionally associated with telecommunications, such as construction, electricians, accountants, and more.³ Many of these non-traditional telecommunications businesses may not have undergone the MWBE certification process under GO 156 due to resource demands.

Recognizing the importance of recruiting qualified MWBEs to ensure a fair and efficient BEAD deployment, the Commission should consider establishing separate

¹ Staff Proposal, Vol. II at 2 (citing Initial Proposal Requirement 13).

² Staff Proposal, Vol. II at 118.

³ Staff Proposal, Vol. II at 111.

verification criteria for qualified MWBE small businesses not covered by the existing verification program through GO 156. For example, the Commission could develop a self-certification program designed specifically for MWBEs with gross revenues below \$5 million that possess the necessary qualifications to be a subgrantee.⁴ This approach aims to streamline MWBE recruitment, while addressing the unique challenges faced by small businesses in becoming certified.⁵ To maintain the integrity of the self-certification process for small business subgrantees, the Commission can implement a validation mechanism.⁶

B. Evaluating Applications From Small Businesses and MWBEs

The Staff Proposal states that, in the subgrantee selection process as it relates to workforce, it may use answers to questions regarding whether subgrantees qualify as an MWBE or LSAF as a tiebreaker in the event that multiple equally qualified and equally scoring applications for the same area are received.⁷ However, SBUA recommends giving preference to applications from MWBEs, small businesses/microbusinesses, or LSAFs instead of using these qualifications as a mere tiebreaker. Doing this would be consistent with the Commission's stated intention to

⁴ California Government Code Section 12100(b)(11) defines "small business" as a business with less than 100 employees and with a gross revenue of less than five million dollars (\$5,000,000). And the California Department of General Services automatically designates any small business as a "micro business" if its gross annual receipts are less than \$5,000,000; or the small business is a manufacturer with 25 or fewer employees. See <https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Certify-or-Re-apply-as-Small-Business-Disabled-Veteran-Business-Enterprise>.

⁵ Small businesses that are LSAFs could also be permitted to self-identify.

⁶ For example, self-certified firms could be subject to random audits.

⁷ Staff Proposal, Vol. II at 118.

promote equitable access and opportunities for MWBEs, small businesses/microbusinesses, and LSAFs in the BEAD Program.

By providing a preference to these underrepresented entities, the Commission will enhance their participation and success in the program. Giving a preference to MWBEs, small businesses/microbusinesses, and LSAFs will help to foster diversity and inclusivity among BEAD Program subgrantees, thereby promoting economic growth and more inclusive broadband deployment. Such a preference mechanism will also demonstrate the Commission's commitment to helping to address historical disparities and promoting economic development throughout California, including in historically unserved and underserved areas.

Several reasons could influence the size of the preference awarded to MWBEs, small businesses/microbusinesses, and LSAFs including: the historical disadvantages faced by the communities in which the subgrantee is based or serves and the economic impact of the work of the subgrantee on local or underserved communities or the broader broadband deployment.

C. Subgrantees Use of MWBEs

SBUA commends the Staff Proposal for including processes, strategies, and data tracking methods to ensure that MWBEs and LSAFs are recruited, used, and retained when possible. These include specific efforts that the Staff Proposals say are meant to help the Commission "identify small businesses and MWBE firms to connect with its funding and contact opportunities."⁸ SBUA urges the Commission to also host special

⁸ Specifically, the Staff Proposal states that the Commission will enhance MWBE listings and collaborate with the California Office of the Small Business Advocate (CalOSBA). Staff Proposal, Vol. II at 130.

events for small businesses and MWBEs designed with the intent to facilitate networking, education, and exchange of information between them and prospective and future subgrantees.

These special events could be modeled after the Commission's Small and Diverse Business Expos and Supplier Diversity En Banc meetings – events that the Commission already has extensive experience hosting. The Commission could ensure that there is a diversity in participants at these special events, making sure that there is a wide range of prospective and future subgrantees at the event and that the event is accessible and inclusive. These special events would likely feel familiar to small and diverse businesses in all fields that directly engage in telecommunications activities (such as telecommunications construction contractors, lineworkers and installers, and ISPs) but may be particularly useful for firms and businesses that are new to these types of events (because, for example, they are not traditionally associated with telecommunications) but that will also be required for the deployment process.

D. Increasing the Capacity of MWBEs

These future special events could also be used to facilitate networking, education, and exchange of information between small businesses and MWBEs themselves. The Staff Proposal proposes that the Commission “[d]ivide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises. This is an excellent idea. And by also promoting partnerships among small businesses and MWBE’s themselves, the Commission can support small businesses and MWBEs leverage the strengths and expertise they have to collectively bid on more

substantial contracts. This would not only encourage small businesses and MWBEs to be used by other subgrantees, but to apply as subgrantees themselves.

III. COMMENTS ON THE EXTREMELY HIGH COST PER LOCATION THRESHOLD

The Staff Proposal presents two options for setting the Extremely High Cost Per Location Threshold (EHCPLT) for fiber-to-the-premises feasibility:

- Option 1: Establish EHCPLT based on BEAD applications received
- Option 2: Establish EHCPLT prior to BEAD application window

SBUA supports Option 2.

A. Option 2 Allows for the Commission to Make a More Comprehensive Cost Assessment

Commission cost modeling for BEAD unserved locations as would be done in Option 2, including per-location costs for applications received for other Commission broadband grant programs, ensures more adequate consideration of the intangible benefits to the public of broadband deployment, such as improved quality of life, community resilience, enhanced public safety. This contrasts with Option 1, which relies on cost calculations from private sector companies that typically omit or inadequately consider factors crucial to the public interest, such as the well-being and safety of broadband users.

While it's true that the Commission's current Total Resource Cost (TRC) calculations may not yet factor in the intangible benefits of broadband deployment, it's important to note that the Commission is actively exploring their inclusion in cost-effectiveness assessments. Additionally, under Option 2, the Commission can

apply the Societal Cost Test (SCT), accounting for a societal discount rate, the avoided social cost of carbon, air quality impacts,⁹ and a greenhouse gas (GHG) adder.

B. Option 2 is More Aligned with the Commission’s Commitment Environmental and Social Justice

Incorporating the costs of negative environmental and health impacts, as well as using a societal discount rate lower than that of private companies when assessing cost-effectiveness, ensures that net present value calculations more accurately reflect the true costs to society of broadband deployment, both now and for future generations. By allowing for this, Option 2 better aligns with Commission’s stated commitment to furthering the principles of environmental and social justice and the interests of all Californians, including those that have been historically underrepresented in the policy setting or decision-making process, subject to a disproportionate impact from one or more environmental hazards, and are likely to experience disparate implementation of environmental regulations and socioeconomic investments in their communities.¹⁰ For these reasons, SBUA urges the Commission to choose Option 2 over Option 1.

⁹ The air quality value used is an average for the state, failing to reflect significant variations of pollutants, particularly the exposure of disadvantaged communities, which are disproportionately exposed to criteria pollutants and other pollutants. The SCT should be further refined to reflect regional air quality variations to more accurately reflect the costs of varying levels of air quality.

¹⁰ These have historically been predominantly communities of color and low-income communities. More specifically, the Commission has identified the following communities to target in its efforts to ensure that its regulatory authority advances equity throughout the state: census tracts that score in the top 25% of CalEnviroScreen 3.0, along with those that score within the highest 5% of CalEnviroScreen 3.0’s Pollution Burden but do not receive an overall CalEnviroScreen score; all Tribal lands; households with incomes below 80 percent of the area median income); and census tracts where aggregated household incomes are less than 80 percent of area or state median income. Commission Environmental and Social Justice (ESJ) Action Plan Version 2.0 (approved April 7, 2022) at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-of-fice/key-issues/esj/esj-action-plan-v2jw.pdf>.

IV. CONCLUSION

By implementing these suggestions, the Commission can help create an inclusive environment where businesses of all sizes and ownership backgrounds can thrive and contribute to more effective and equitable broadband deployment under the BEAD program, thereby enhancing digital accessibility and promoting economic growth for all Californians.

Respectfully submitted,

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