Technical Workshop for Rulemaking 23-02-016, Broadband Equity, Access, and Deployment (BEAD)

Rosenfeld Hearing Room, 1516 9th Street, Sacramento, CA

Webex link:
https://cpuc.webex.com/cpuc/j.php?MTID=m4c3d2b3fb60b57be900eeee5228cdff6

California Public
Utilities Commission

Introductory Remarks

Commissioner Darcie L. Houck

Administrative Law Judge Tom Glegola

Deputy Director for Broadband Maria Ellis

Agenda

- **Welcome and Introduction** (9:30 – 9:35)
- **Overview of BEAD by NTIA** (9:35 – 9:50)
- **Public Comment Opportunity** (9:50 – 10:20)
- **Challenge Process** (10:30 – 12:00)
- **Lunch** (12:00 – 1:00)
- **Project Selection** (1:00 – 2:30)
- **Extremely High Cost Per Location Threshold** (2:45 – 4:00)
- **Wrap-up and Next Steps** (4:00 – 4:15)
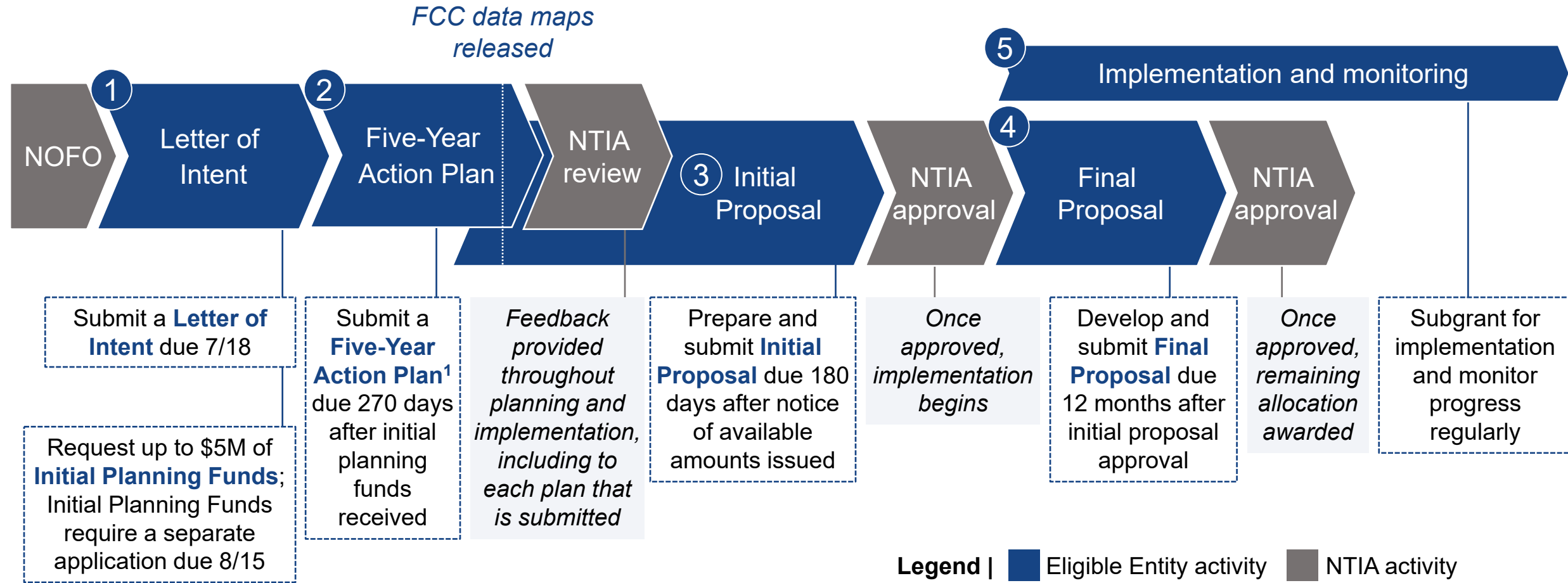
Moderated Panel Discussion
Remote Participation via Webex Chat
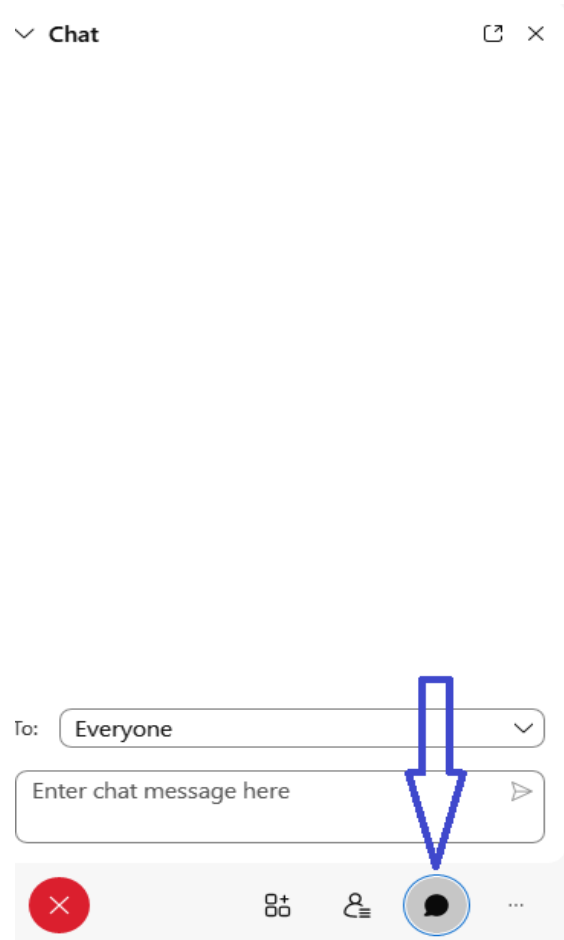
- **Please ask questions in the chat as we go along**
  - Questions will be posed to panelists or staff verbally or responded to in the chat

- **If we do not have a chance to answer your question today, please send additional questions via email to: BEAD@cpuc.ca.gov**

Overview of BEAD by NTIA

Marina MacLatchie, Federal Program Officer

FCC data maps released

1 Letter of Intent

2 Five-Year Action Plan

NTIA review

3 Initial Proposal

NTIA approval

4 Final Proposal

NTIA approval

5 Implementation and monitoring

NOFO

Submit a **Letter of Intent** due 7/18

Request up to $5M of **Initial Planning Funds**; Initial Planning Funds require a separate application due 8/15

Submit a **Five-Year Action Plan[1]** due 270 days after initial planning funds received

Feedback provided throughout planning and implementation, including to each plan that is submitted

Prepare and submit **Initial Proposal** due 180 days after notice of available amounts issued

Once approved, implementation begins

Develop and submit **Final Proposal** due 12 months after initial proposal approval

Once approved, remaining allocation awarded

Subgrant for implementation and monitor progress regularly

Legend | ☐ Eligible Entity activity ☐ NTIA activity

1. Required for entities that receive initial planning funds 2. Must be used for projects in areas with >80% unserved locations or high poverty areas
Note: funding amounts inclusive of all administrative set-asides

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Challenge Process

Ben Menzies, Program and Project Supervisor

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Challenge Process Requirements

- Described in detail at Notice of Funding Opportunity (NOFO) starting at Page 34 and in [Challenge Process Policy Notice](#)

- Must be "fair, evidence-based, transparent, and expeditious"

- Phases must include **publication**, **challenge**, **rebuttal**, and **finalization**

- Open to **local government**, **nonprofits**, and **broadband providers**
  - Residents may participate in gathering data, but must submit challengers through a permissible challenger

- Challengers may challenge the classification of a location as unserved, underserved, served, or Community Anchor Institution status
  - **Challengers may not challenge the fabric**

- NTIA reviews methodology for adjudication and makes all final decisions

Timing Requirements

- **Maximum** 120 calendar days from opening of challenge window to submission
- **Minimum** 14 calendar days for challenges and rebuttals
- **Minimum** 60 calendar days from publishing final map to allocation decisions
- There is no requirement in the NOFO for a project challenge phase – only the eligibility map

Model Challenge Process

- NTIA is encouraging adoption of their [Model Process](#), but deviations may be proposed subject to NTIA approval
- Steps in Model Challenge Process
  - Publication of Initial Map
  - Challenge Phase (30 days)
  - Rebuttal Phase (30 days)
  - Determination Phase (30 days, rolling)
  - NTIA Review
  - Publication of Final Map (at least 60 days before making allocation decisions for subgrantees)

Model Challenge Process Modules

- **DSL Module**: Prior to map publication, locations with "served" speeds based on DSL are modified to show as "underserved"

- **Area/Multiple Dwelling Unit Module**: After a number of challenges in a discrete area is filed, provider must affirmatively demonstrate service to all locations in that same area
  - Area: 6 locations in a Census Block Group
  - Multiple Dwelling Unit: Larger of 3 units or 10% of units listed in the fabric

- **Speed Test Module**: Allows reclassification of "served" locations as "underserved" if data collected pursuant to "rigorous speed test methodologies" demonstrates speeds do not achieve served threshold
  - Note that latest version of Model Challenge Process only allows shift to underserved, not unserved

Speed Test Module Requirements

- Data submitted must include name and street address of customer, certification of speed tier, and data sharing agreement with provider and operators of the challenge process

- Tests must be conducted at most 60 days before challenge period

- Only speed tests on subscriptions above 100/20 Mbps are considered

- Only the **median result of three tests** conducted on three different days is used for the speed-based challenge

- Providers may rebut area speed challenges based on 80/80 rule:
  - 10% of locations in the challenged area are randomly selected
  - 80% of the selected locations must have speeds equaling or exceeding
  - 80% of the served threshold (80/20 Mbps)

De-Duplication of Enforceable Commitments

- Eligibility map may not mark locations as "unserved" or "underserved" if subject to "enforceable federal, state, or local commitment to deploy qualifying broadband" before the Challenge Process

- Enforceable commitments will be identified based on federal, state, and local programs (described in detail at NOFO page 36-37)

- Must meet the technology and speed requirements for broadband

- Enforceable commitments on Tribal Lands only count if there is a legally binding agreement with ISP including a Tribal Government Resolution
  - Can be waived by NTIA Assistant Secretary if necessary to achieve the goals of the program

Questions for Panelists

- What aspects or modules of the Model Challenge Process should be adopted or modified?

- What additional data sources, such as CPUC availability data or demographic data, should be utilized in the Commission's pre-challenge eligibility map?

- What forms of public and stakeholder engagement before the Challenge Process would be most valuable, and when should this engagement occur?

- Are there modifications or additions the Commission should make to the NTIA definition of Community Anchor Institutions?

- How should the Commission structure the required de-duplication process for removing locations with enforceable commitments to deploy broadband from the BEAD eligibility map?

- How should the Commission apply the definition of an enforceable commitment area to Tribal lands? Should the definition of an enforceable commitment be restricted for deployments on Tribal lands to those projects with a Tribal Government Resolution between a Tribal Government and a broadband service provider? What would constitute a Tribal Resolution?

Project Selection

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Project Selection Requirements

- Prioritize complete coverage of unserved locations, then underserved locations, then providing gigabit service to Community Anchor Institutions and funding non-deployment subgrants
- Solicit applications using geographic bases that will achieve complete coverage
- Prioritize fiber deployment as much as feasible
- Prioritize "Reliable broadband technologies" where feasible
- Utilize subgrantee selection scoring criteria aligned with program goals

Scoring Requirements

- **Primary Scoring Criteria** must account for 75% or more of points
    - **Minimum BEAD Program Outlay**: Total BEAD funding required for project
    - **Affordability**: Most affordable total price to customer for 1 gigabit symmetrical service (Priority Broadband Projects) or 100/20 Mbps service (for Other Last-Mile Broadband Deployment Projects)
    - **Fair Labor Practices**: Prioritization based on record and commitment to be in compliance with federal labor and employment laws
- **Secondary Scoring Criteria** cannot count for more than 25% of all points and no Secondary Criterion may count more than any Primary Criterion
    - **Speed to Deployment**: Binding commitment by date certain
    - **Speed of Network**: Only for Other Last-Mile Projects, prioritization based on greater scalability or longer useful lives
    - Other criteria may be defined

Post-Application Activities

- After soliciting applications, CPUC must
  - De-conflict overlapping applications (if necessary) to allow like-for-like comparison of competing proposals
  - Score applications and determine winners for areas with applications
  - Engage prospective subgrantees for any areas that did not receive applications and negotiate necessary inducements to obtain applications
    - This process must be as transparent as possible and remain fair

Questions for Panelists

- If applicants are allowed to construct their own project areas, what mechanisms should be used to:
  - ensure complete coverage of unserved and/or underserved locations, and
  - de-conflict overlapping proposals?
  - If project areas are pre-defined, are there pre-existing geographies, such as counties, Tribal lands, or cities, that should be used, or should project areas be drawn based on clusters of unserved/underserved locations?
- How should the required scoring criteria, including affordability, labor standards, minimum BEAD outlay, speed to deployment, and technical capabilities, be applied to individual projects and weighted within a rubric?
- Are there additional scoring criteria, such as awarding points on the basis of equity or climate resilience, that should be included? How should those points be awarded?
- In the post-application process, how should the Commission prioritize identifying applicants for remaining unserved or underserved locations not included in an application? What inducements should be used to encourage applications for those locations?

Extremely High Cost Per Location Threshold

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Purpose of Threshold

- BEAD rules contain a preference for end-to-end fiber projects, but require that to be balanced with achieving complete coverage

- Serving some locations with end-to-end fiber would require extremely high expenditures, depleting the budget for other locations

- For those areas, "Reliable" non-fiber alternatives are preferred when less costly than fiber

  - "Reliable Broadband Technology" includes cable, DSL, Licensed Fixed Wireless, or a combination of Licensed and Unlicensed Fixed Wireless

- Non-fiber "Reliable" technologies may still be infeasible, and technologies meeting basic technical requirements may be funded

  - Unlicensed Fixed Wireless and/or satellite

Threshold in Practice

- Extremely High Cost Per Location Threshold will be applied to further BEAD program goals of achieving complete coverage within the budgetary constraint

- CPUC is allowed, **but not required,** to not fund applications that exceed the Extremely High Cost Per Location Threshold and consider other technologies to achieve complete coverage

- NTIA has clarified it does not need to be defined in Initial Proposal, but a methodology needs to be described

- Inputs could include cost modeling data, actual application data, or other options

Questions for Panelists

- What inputs should be used to determine the Extremely High Cost Per Location Threshold, such as cost models, application data, or other information?

- How strictly should the Commission apply the Extremely High Cost Per Location Threshold in selecting subgrantees?

- In the Initial Proposal, should the Commission adopt
  - a specific threshold amount,
  - a range of possible thresholds,
  - different thresholds for different parts of the state,
  - A process for identifying the Extremely High Cost Per Location Threshold during the subgrantee selection process,
  - or some other proposal for the Extremely High Cost Per Location Threshold?