INCOMPAS
THE FUTURE OF COMPETITION

1100 G Street, NW, Suite 800
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April 17, 2023

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband, Equity, Access, and Deployment Program

Dear California Public Utilities Commission:

INCOMPAS, the Internet and competitive networks association, hereby files its comments in response to the California Public Utilities Commission's Rulemaking Proceeding regarding the implementation of the Broadband Equity, Access, and Deployment Program (BEAD).

INCOMPAS is the nation's leading advocate for competition and innovation. Our members have been at the forefront of investing in and delivering broadband infrastructure throughout the U.S. in the middle and last mile. They have brought the fastest networks to market, offering consumers and businesses better service and pricing. With their experience building fiber, fixed wireless, and mobile networks in urban, suburban, and rural America, they know both the challenges and opportunities in delivering robust broadband network capability.

INCOMPAS' members have proven that competition works and monopolies fail. Markets with multiple providers, wholesale access and new fiber builders have faster speeds and the lowest prices. Access to competition helps families save and small businesses grow, and we urge the CPUC to build on competition laws and results as it formulates the rules and policies for implementing the BEAD Program.

Our comments below reflect the input our member companies have provided us based on their own experiences and success.

1. **Extremely High-Cost Threshold**. *The NTIA's Notice of Funding Opportunity requires the CPUC to establish an "Extremely High Cost Per Location Threshold" in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements. The NTIA expects the Extremely High Cost Per Location Threshold to be set as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible. How should the Commission define the threshold for locations that constitute "extremely high cost" locations?*

Deploying for the future so that the networks can serve both high-speed fixed and 5G networks is critical, and INCOMPAS is a proponent that fiber serves as the foundation. Every technology in the broadband ecosystem needs access to fiber—including fixed broadband, cable, cellular (mobile & 5G), and satellite.

Building more fiber helps all, and fiber densification throughout the U.S. is critical for winning the race to 5G.

While NTIA in its Notice of Funding Opportunity for the BEAD Program expects the "Extremely High Cost Per Location Threshold" to be set as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible, INCOMPAS also acknowledges that fiber may not be technically and geographically possible in certain locations including unserved and underserved locations in California. Therefore, to address defining the "Extremely High Cost Per Location Threshold," INCOMPAS believes that the U.S. Treasury's final guidance on the American Rescue Plan struck the right balance by encouraging recipients to prioritize investments in fiber infrastructure wherever feasible and also requiring recipients "to design projects to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds" in the last mile.[1] And in those situations where it is not practicable to do so because of the extremely high cost of the project or geography or topography of the area to be served by the project, projects must reliably meet or exceed 100/20 Mbps as the standard and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds.

In defining the threshold, the CPUC should follow Treasury's example and continue to set speeds at a level that spurs competition, by retaining the standard set of at least 100/20 Mbps while also encouraging scalability up to 100/100 Mbps to help deliver reliable home broadband in a time-efficient way that does not leave thousands of Californians on the wrong side of the digital divide. This funding represents an historic opportunity to provide every American with reliable, affordable broadband, so states should set their state-specific "Extremely High Cost Per Location Threshold" judiciously in order to guarantee that the allotted BEAD funds are going towards the appropriate mix of fiber and other cost-effective alternative technologies—such as next generation Fixed Wireless Access solutions—to ensure that all the unserved and underserved families and communities are granted access to high quality broadband.

4. **Selection Among Priority Broadband Projects**. *In addition to the Primary Criteria and Secondary Criterion required in the Notice of Funding Opportunity, which additional prioritization factors should be considered? How should they each be measured, and should they be weighted in prioritization?*

INCOMPAS believes it is critical that this infrastructure investment be made in robust and reliable networks that can offer greater connectivity today and higher speeds in the future, and projects must be able to scale to meet consumer and business demand over time. Indeed, it is important to deploy for today and the future so that the networks can serve both high-speed fixed and 5G networks.

The CPUC should also consider those grantees who can continue to scale and have proven experience meeting their community's needs. This should include successful experience offering broadband internet access service or partnering with entities who do so, serving other businesses, community anchor institutions, residences, and a demonstrated willingness to hire within the community and support the local economy with the BEAD program. Such entities must also be able to financially and technically deliver on the project in a timely fashion.

Regarding additional prioritization factors to evaluate in the awarding of broadband projects, the BEAD program will not achieve the objective of ensuring the availability of affordable, high-quality broadband

[1] Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule, at 39, *available at* https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf.

service in unserved and underserved areas unless the CPUC exercises its authority to adopt rules promoting competition. The networks funded by the BEAD Program will likely be the only broadband facilities in the unserved and underserved areas targeted by that program, and the high entry barriers in those areas make it unlikely that another service provider will deploy network facilities. Customers served by networks funded by the BEAD Program will therefore have no choice of providers. This absence of competition poses a serious threat to ensuring affordable and high-quality services. It is therefore critically important that the CPUC adopt Open Access as a Secondary Criterion for selecting among Priority Broadband Projects.

OPEN ACCESS, WHOLESALE CONDITION

In the Notice of Funding Opportunity ("NOFO") for the BEAD Program,[2] NTIA correctly observed that, "Internet connectivity itself is a necessary, but not sufficient, condition for eradicating the digital divide."[3] Bridging the digital divide requires that broadband is available at an affordable price, that it is tailored to the needs of consumers, small businesses and community anchor institutions, and that those customers are provided the necessary support to address service problems and to understand how to utilize the service to meet their needs.[4] Consistent with these objectives, the NOFO requires that Eligible Entities include a "middle-class affordability plan" in their Initial and Final Proposals. As explained below, prioritizing BEAD last-mile broadband projects that comply with Open Access would enable California to bridge the digital divide and to establish an efficient and effective middle-class affordability plan.

1. The BEAD NOFO Encourages the Adoption of Open Access as a BEAD Funding Selection Criterion.

The core focus of BEAD Program funding is the deployment of Priority Broadband Projects that provide last-mile connectivity, i.e., end-to-end fiber networks.[5] NTIA has granted Eligible Entities flexibility to design a selection process for choosing among multiple proposals for last-mile connectivity in a location or set of locations,[6] but it has defined the criteria that Eligible Entities must and may consider when doing so. The NOFO defines the Primary Criteria (to which Eligible Entities must give the greatest weight), the Secondary Criteria (to which Eligible Entities must also give weight), and Additional Prioritization

[2] *See* NOFO available at https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf.

[3] *See* NOFO at 7.

[4] *See id*. ("Many on the wrong side of [the digital] divide require equipment, digital skills, financial resources, and more to realize the internet's full potential. Those who lack these resources face substantial barriers to digital equity, even in places where fast broadband connections are physically available. This digital divide is particularly acute for communities of color, Tribal nations, and lower-income areas and spans both urban and rural areas of the country").

[5] *See id*. at 42 (defining Priority Broadband Projects).

[6] *See id*. at 40 ("An Eligible Entity may choose its own means of competitively selecting subgrantees for last-mile broadband deployment projects, subject to approval by the Assistant Secretary (during review of the Eligible Entity's Initial Proposal). Each Eligible Entity's subgrantee selection process must, however, incorporate the [the] principles" set forth in the NOFO "to satisfy the Infrastructure Act's mandates and the BEAD Program's goals").

Factors, which Eligible Entities may choose to treat as additional Secondary Criteria. "Open Access" is an Additional Prioritization Factor which NTIA encourages Eligible Entities to adopt as a Secondary Criterion.[7]

The NOFO defines "Open Access" as "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."[8] Just and reasonable wholesale rates mean "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)."[9]

2. Open Access is Easy to Administer

The definition of Open Access in the NOFO is essentially the same as the so-called "avoided cost" discount established pursuant to Sections 251(c)(4) and Section 252(d)(3) of the Communications Act.[10] When implementing those provisions after their adoption in 1996, the FCC established guidelines for setting the discounts,[11] and the state PUCs implemented those guidelines by adopting specific discount percentages applicable in their states. These discount percentages were developed for all retail telecommunications services, a category that includes retail broadband services classified as telecommunications services.[12] The avoided-cost discount percentages established by state PUCs,

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[7] *See id.* 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").

[8] *See id.* at 14.

[9] *See id.*

[10] Section 251(c)(4) requires, among other things, that all incumbent local exchange carriers ("ILECs") offer their retail telecommunications services at "wholesale rates," and Section 252(d)(3) defines wholesale rates as the retail rates minus a percentage discount equal to the costs the ILEC avoids when selling to wholesale customers *See* 47 U.S.C. §§ 251(c)(4), 252(d)(3).

[11] *See* 47 C.F.R. § 51.609 (defining the costs that are avoided when offering services to wholesale customers).

[12] The avoided-cost discount did not apply to broadband services designated as "wholesale" services, such as "access" services and broadband sold to Internet access service providers. *See* 47 C.F.R. § 51.605(b), (c). The FCC under Chairman Ajit Pai forbore from enforcing Sections 251(c)(4) and 252(d)(3) because the legacy telephone services to which it primarily applied at the time were being replaced by other technologies. *See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. 160(c) to Accelerate Investment in Broadband and Next-Generation Networks,* Memorandum Opinion and Order, 34 FCC Rcd 6503 (2019); *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, Report and Order, 35 FCC Rcd 12425 (2019). The forbearance decisions did not address resale of mass market broadband services such as the ones that will be provided via networks subsidized by the BEAD Program. This is because those services were not classified as telecommunications services at the time and were therefore not eligible for the avoided-cost resale discount. Thus, the logic of those orders is not relevant to broadband service.

including the CPUC, are thus suitable for broadband services provided via networks funded by the BEAD Program. To implement the Open Access criterion in the BEAD subgrantee selection process, the CPUC need only require that BEAD Program applicants commit to offering broadband service to wholesale customers at the avoided-cost discount established by the CPUC in the relevant geographic area in the state pursuant to Sections 251(c)(4) and 252(d)(3) of the Communications Act.

In implementing and enforcing Open Access commitments, California can rely on the implementing rules that the FCC adopted for the avoided-cost discount. Sections 51.613 and 51.615 of the FCC's rules address the two issues relevant to broadband that arose in the context of applying the avoided-cost discounts to ILECs under the Communications Act.[13] Section 51.613 clarifies the limited circumstances in which an ILEC was permitted to restrict resale of its retail services (e.g., by prohibiting services solely offered to residential customers from being resold to business customers) and Section 51.615 clarifies how to address services that the ILEC is withdrawing from the market.

Thus, implementing the Open Access criterion requires virtually no expenditure of administrative resources. No ratemaking proceedings are required. No complex consideration of potential implementation issues is required. Indeed, NTIA likely chose the avoided-cost definition of Open Access for this reason. NTIA was well-aware that adopting the avoided-cost discount approach to Open Access offered Eligible Entities an off-the-shelf discount framework that is easy to design and administer.[14]

3. Wholesale-Based Competition Made Possible by Open Access will Enable Eligible Entities to Bridge the Digital Divide.

As mentioned above, there is a significant risk that the BEAD Program will create new broadband monopolies. This is because the Program will subsidize network deployment in unserved and underserved areas where facilities-based competition is unlikely to develop. The absence of competition poses a serious threat to the goal of bridging the digital divide, including middle-class affordability, because subgrantees will have limited incentives to charge efficient prices, to design broadband service offerings to meet the specific needs of unserved and underserved communities including communities of color, Tribal nations, and lower-income, and to provide high-level customer service. One way to address this problem is through government mandates, such as the requirement that subgrantees offer at least one low-cost broadband service option. But government mandates are no substitute for competition. That is why Open Access makes sense. Prioritizing projects where the subgrantee commits to offering broadband services at the avoided-cost discount would help bridge the digital divide by enabling wholesale-based competitors to utilize that discount to offer end users, including middle-class consumers, a choice in broadband providers.

Wholesale-based competitors have spent decades relying on the avoided-cost discount established under the Communications Act to provide telephone service in competition with ILECs. For example, Granite Telecommunications, a member of INCOMPAS, has focused on reselling TDM-based telephone services to government and business customers, as well as residential locations in certain circumstances. Granite's customers include many small businesses, healthcare providers, schools, libraries, and government

[13] *See* 47 C.F.R. §§ 51.613, 51.615.

[14] INCOMPAS explained this in its comments filed with NTIA regarding the BEAD Program implementation. *See* INCOMPAS Comments, Infrastructure Investment and Jobs Act Implementation, NTIA Docket No. Docket No. 220105–0002, at 22 (Feb 4, 2022).

customers in rural areas.[15] Granite is just one of many wholesale-based competitive service providers.[16] Wholesale-based competitors' service offerings have been extremely popular with customers.[17]

These same wholesale-based competitors are ready to provide those benefits to broadband customers, including small businesses, community anchor institutions and likely multi-tenant residential buildings, in the rural areas of California that the BEAD Program will target.[18] Other wholesale-based competitors with different business plans would also likely emerge. These wholesale-based competitors will provide *better quality* services by tailoring their broadband offerings to the specific needs of their customers. This could take many forms. For example, wholesale competitors would likely market broadband with complementary services, such as VoIP, cloud storage, simple billing and usage-tracking options, equipment repair, educational support, training, and other services designed for the specific needs of

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[15] *See* Declaration of Larry Antonellis, Director of Strategic Initiatives for Granite Telecommunications, LLC, filed as an Appendix to Opposition of Granite to USTelecom's Forbearance Petition, FCC WC Docket No. 18-141, at 2, 4, 9-12 (Aug. 6, 2018) ("Antonellis Declaration") (describing Granite's use of resold ILEC TDM-based telephone service as an input to superior-quality services offered to small and large business customers, including health care providers and government customers in rural areas). While not discussed in Mr. Antonellis' declaration, Granite also serves schools and libraries in rural areas using resold ILEC TDM-based telephone service.

[16] Other leading wholesale-based competitors include MetTel, Access One, and Bullseye, among many others. *See* https://www.mettel.net/; https://www.accessoneinc.com/voice-data/dedicated-internet-access/; https://www.bullseyetelecom.com/.

[17] For example, the FCC's data showed that competitive carriers reselling ILEC TDM-based telephone service over copper loops served over 9.5 million access lines in 2017. *See* Reply Comments of Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc., FCC WC Docket No. 18-141, at 13 (filed May 28, 2019). That total has subsequently declined due to factors other than the viability of the wholesale competitor business model (e.g., ILECs' retirement of copper loops and consumers' transition to VoIP), but broadband resale could be just as successful.

[18] The BEAD NOFO defines "community anchor institution" as follows:

> [A]n entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals. An Eligible Entity may propose to NTIA that additional types of institutions should qualify as CAIs within the entity's territory. If so, the Eligible Entity shall explain why it has determined that the institution or type of institution should be treated as such and affirm that the institution or class of institutions facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

NOFO at 11-12.

consumers, small businesses, and community anchor institutions in unserved and underserved areas of California.[19]

Wholesale-based competitors will also likely offer *lower prices*. They could do so by providing the retail-specific functionalities encompassed by the avoided-cost discount more efficiently than the network owner. For example, in the telephone service context, wholesale-based competitors have taken advantage of economies of scale by deploying billing and customers service platforms that support retail service offerings throughout the country.[20] This has enabled them to offer telephone services at lower quality-adjusted prices than ILECs that offer wireline telephone service only within their territories. It seems likely that wholesale-based competitors would do the same for broadband in California.

Wholesale-based competitors cannot, however, offer a viable alternative to the services offered by BEAD Program subgrantees absent Open Access. Firms that control the sole connection to end users in a market consistently refuse to offer services to wholesale customers on reasonable rates, terms, and conditions.[21] This would almost certainly be the case for BEAD Program funding recipients in California. Moreover, wholesale-based competitors have frequently been unable to persuade cable companies and ILECs to offer broadband service at reasonable wholesale prices even in areas where they face one or more facilities-based competitors. Thus, the only way to ensure that consumers, small businesses, and community anchor institutions in California benefit from competition in areas funded by the BEAD Program is to prioritize last-mile broadband projects that provide Open Access.

4. Open Access Enables Eligible Entities to Satisfy the Middle-Class Affordability Requirement

The NOFO states that "each Eligible Entity must include in its Initial and Final Proposals a middle-class affordability plan to ensure that all consumers have access to affordable high-speed internet."[22] Eligible Entities may satisfy this requirement by "assign[ing] especially high weights to selection criteria relating to affordability and/or Open Access in selecting BEAD subgrantees."[23] Thus, Open Access offers an easy-to-administer, highly effective mechanism for satisfying one of the key requirements imposed on Eligible Entities by the NOFO.

5. Open Access Will Not Reduce Prospective Subgrantees' Incentive to Participate in the BEAD Program

Applying the avoided-cost discount will not reduce prospective participants' incentive to seek funding for last-mile broadband projects. Unlike TELRIC, the avoided-cost discount is a "top down" discount. This means that it merely requires that the network owner offer its services to wholesale customers at a

[19] *See* Antonellis Declaration at 2 (describing similar benefits offered to telephone service customers).

[20] *See id*.

[21] *See id.* at 4, 18, 26-27.

[22] *See* NOFO at 66.

[23] *See id.*

discount off the retail prices that the network owner sets.[24] In addition, because the discount reflects the costs that the network owner avoids when selling service at wholesale rather than retail (e.g., marketing, billing, and collection-related costs), network owners incur no meaningful costs when selling to wholesale customers as opposed to retail customers. In fact, William Zarakas, an economic consultant who studied the avoided-cost discount, concluded that it has essentially no effect on the network owner's incentive to invest in the network:

> Resale price discounts under [the avoided-cost provisions] are based on an avoided cost methodology, which ensures that, in addition to other costs, a return on invested capital is included in the resale price. The wholesale discount is intended to reflect the costs of certain retailing activities, including marketing, billing, collection, and other costs, that the ILEC can avoid incurring when leasing its lines to CLECs like Granite. . . . State commissions are charged with determining the appropriate "wholesale discount," which . . . varies across states and is on average about 15.5%. The ILECs therefore do not suffer a below market return on their investments when a business line is leased to a CLEC (via resale obligations) instead of sold directly to an end-user. There is, therefore, no adverse impact on their ability to gain profits or to invest in the construction of new networks or the provision of new services.[25]

Accordingly, there is no basis for concluding that Open Access would undermine a firm's incentive to participate in the BEAD Program.

Real-world experience with Open Access requirements confirms this conclusion. The U.S. Department of Agriculture ("USDA") administers the ReConnect program under which it makes available, among other things, grants to subsidize the deployment of broadband networks in rural areas.[26] Under its selection process, USDA assigns points to applicants that meet specified criteria. Applicants receive extra points if they commit to "offering wholesale broadband services at rates and terms that are reasonable and nondiscriminatory."[27] According USDA staff, of the 305 applications submitted this year for ReConnect broadband grants, 253 (83 percent) included the wholesale (i.e., Open Access) commitment.[28] It follows that giving preference to Open Access networks is unlikely to undermine broad participation in broadband subsidy programs.

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[24] The NOFO requires that Eligible Entities establish a plan for ensuring that subgrantees offer at least one low-cost broadband service option. *See* NOFO at 66-68. It would be appropriate to apply the avoided-cost discount to low-cost broadband service options given that subgrantees would avoid retail-specific costs when making low-cost services available to wholesale customers. Nevertheless, in appropriate circumstances, the CPUC might decide to allow subgrantees to exempt the low-cost broadband service option from the avoided-cost discount.

[25] *See* Declaration of William Zarakas, ¶ 20, filed as Attachment B to the Opposition of Granite to USTelecom Petition for Forbearance, FCC WC Docket No. 18-141 (Aug. 6, 2018).

[26] *See* https://www.usda.gov/reconnect/program-overview.

[27] *See* https://www.usda.gov/reconnect/evaluation-criteria.

[28] These totals were provided by USDA staff via email. Underlying documentation can be provided upon request.

14. *How should the Commission implement other issues for which it has discretion under the BEAD NOFO? Parties should specify the issues, including the statute or rule, and include specific recommendations.*

COMPETITIVE BID PROCESS

To further enable and promote increased competition in both unserved and underserved areas, the CPUC must ensure a competitive, open bid process as required by the IIJA. We urge the CPUC to clearly set forth that the BEAD Program be awarded through a competitive process and must permit competitive broadband and infrastructure providers, as well as others, to participate and that does not tilt the playing-field in a way that discourages participation by private sector entities. A competitive process should also be publicly available, with clear rules from the beginning that also are published and in compliance with NTIA's requirements.

INCOMPAS' members have been successful entering the market in many different types of communities and situations. They have built rural areas where no providers were offering service with no public sector support or funding. They have partnered with towns and cities to deliver fiber-based connectivity for the first time that has transformed communities. INCOMPAS believes that there is no need to preference certain types of entities in the grant process. Rather, transparent deployment and service requirements stated in the grant process will allow all entities to compete that could deliver such service and that taxpayers benefit from a more efficient program when there is competition for it.

INCOMPAS supports the CPUC in fully vetting and reviewing subrecipients to ensure that they have the technical and financial experience to deliver on the grant projects. INCOMPAS also believes that potential recipients should not be discriminated against for being a private sector company. Prioritizing one class of recipient over others is not in the public interest and prevents all applicants from having meaningful and robust opportunities to compete for funding. Recipients should be judged on their ability to meet the requirements of the grant and their proposals, and prioritization of certain types of entities (i.e., non-profits and co-ops) should be strictly forbidden.

REMOVING BARRIERS TO DEPLOYMENT

Speeding up broadband deployment is critical for families and small business who need internet access, and they need it now. INCOMPAS' members consistently face delays in permitting and gaining access to the public rights-of-way. Speed to market is critical to meet needs as quickly as possible for the BEAD Program, and INCOMPAS believes it is necessary to have the CPUC review its guidelines in place that enable faster processing that will allow the deployment of broadband infrastructure more quickly, including small cells and other wireless equipment and fiber that is used by both fixed and mobile providers to connect their networks.

As part of allocating the BEAD Program funds, the CPUC should encourage local authorities to begin reviewing their permitting processes and determine whether they have the resources they need to issue permits quickly. The processes currently followed in certain States create a significant impediment to deployment efforts, and existing processes constitute a barrier to entry so the CPUC should encourage local jurisdictions to expedite permitting, allow for batch permitting, and keep permitting and all other fees low and require that these fees be publicly disclosed, competitively and technology neutral, and non-discriminatory based on actual and direct costs.

And where cities and towns need financial assistance to purchase and implement technology upgrades for speeding permitting processes, such as offering batch permit processing, or they need to hire temporary

staff to handle the number of requests, the CPUC should evaluate these needs and allow for such reasonable costs to be covered by the BEAD Program funding.

It is also critical for the CPUC to encourage cities to evaluate their processes and fees for reasonableness so that project dollars are used efficiently and effectively and will enable more fiber miles to be built. Requiring competitive providers to construct their network entirely underground in areas where existing overhead facilities are available and populated not only elongates any kind of schedule, it also guarantees less fiber miles will be built. INCOMPAS' members also mention the locates process, and the burden this creates for deploying networks. Recognizing the costly delays associated with locates including the ticketing system, marking areas, and gaining access, INCOMPAS suggests that the CPUC work with local authorities to evaluate their locates process to address this barrier to deployment and to help optimize projects for speed and efficiency as part of this new funding.

Another challenge our members often face is accessing the public rights-of-way. Increasing broadband providers' access to public rights-of-way will help spur faster and more efficient deployments to unserved areas- benefiting consumers and businesses waiting for access to next-generation networks. The CPUC must work with those entities that own and/or manage the rights-of-way to extend fair and transparent protections to providers who need access for building out their networks. This includes those entities that own or manage poles, highways, and railroads. INCOMPAS' members have repeatedly faced prohibitions for accessing the pole infrastructure of utility cooperatives who use their monopoly position to deny access to competitors which has disadvantaged rural areas from receiving broadband from a competitive provider.

The CPUC should make clear that any grants awarded for projects are conditioned upon those entities not denying competitors reasonable, fair, and non-discriminatory access to their owned and managed utility poles and conduit. Entities receiving federal grants should not be permitted to engage in anti-competitive activity by excluding competitors from their service territories by denying them access to their poles and conduit that competitors must access in order to provide a competitive alternative.

Finally, the BEAD Program and other broadband investment programs present a historic opportunity for communities large and small, urban and rural, to right the wrongs of the past and build a better future for all Americans. It is not hyperbolic to suggest BEAD projects may be for communities the most important infrastructure activity this century. To help ensure projects are done right and deployed with all deliberate speed, INCOMPAS proposes the CPUC implement a checklist to help guide cities, counties, and all local municipalities. A checklist for broadband success will promote smart, fast, and cost-effective deployment as part of the BEAD Program and demonstrate a willingness to enhance competition and choice.

Suggestions for developing broadband deployment ready guidelines for cities, towns, counties, and local entities include:

- **Streamline:** Implement expedited or streamlined review of zoning and permitting applications that facilitate wireless and fiber deployment, including those that make efficient use of existing infrastructure pursuant to federal law.
- **Transparency:** Establish procedures to allow all forms, applications and documentation related to a project to be reviewed and either approved or denied within 30 days after the application is submitted. Adopt efficient intake procedures, such as batch permitting and electronic submission.

- **New Techniques:** New innovative deployment processes and construction techniques, such as micro-trenching, speed deployment and cut construction time. Investing in faster, future-proof networks that are built to last and enable an "all of the above" deployment strategy.
- **Restoration:** Working together to ensure broadband money is dedicated to internet access, smart street restoration obligations that are in scope with deployment construction projects set at the time of the application, will help communities maximize the benefits of their broadband dollars.
- **Fees:** Limit application fees to the actual, objectively reasonable costs incurred by the jurisdiction to process an application. Limit rights-of-way access fees to actual objectively reasonable cost.

INCOMPAS urges the CPUC to begin the process of including these deployment issues into its discussions on its rules with the implementation process. INCOMPAS' members are seeing significant delays and increase in costs prior to the public sector financing that's now available, and they are concerned that with the additional financial boost afforded by Congress, further delays are likely as those who manage/own the rights-of-way are ill-prepared for the increased demand for requests to access the rights-of-way.

Agencies at the Federal, State, and Local level all need to prepare now and begin discussions of how to avoid costly delays. INCOMPAS recommends identifying where there are current gaps, including training employees, reviewing processes that can be expedited by investing in technological upgrades, and coordinating between agencies/managers of rights-of-way as soon as possible. Better, faster internet will bring more educational opportunities, healthcare options, and attract greater investment to fuel local economic growth. More competition brings consumers and businesses more choice and lower prices.

CONCLUSION

We offer these comments in support of ensuring that the NTIA BEAD Program will lead to investment in broadband infrastructure in areas that are unserved or underserved; that will enable and promote competition that leads to faster speeds, better service, and more affordable pricing; and that will meet the needs of the communities in the long-term.

INCOMPAS looks forward to working together with the CPUC and NTIA on the BEAD Program, and if there is any other opportunity to help contribute and provide your staff with feedback, please let us know. Thank you for your consideration of our comments.

Sincerely,

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