

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner Horvath, Chair

AB 662 (Boerner Horvath) – As Amended March 9, 2023

**SUBJECT:** Federal Broadband Equity, Access, and Deployment Program funds: administration

**SUMMARY:** This bill would require the California Public Utilities Commission (CPUC) to strictly follow federal guidelines established by the National Telecommunications and Information Administration (NTIA) for use of federal Broadband Equity, Access, and Deployment (BEAD) Program funds. Specifically, **this bill:**

- 1) Defines “federal guidelines” to mean guidelines adopted by the National Telecommunications and Information Administration for administration of the program funds.
  - a. Defines “program funds” to mean federal Broadband Equity, Access, and Deployment Program funds.
- 2) Requires the CPUC, in administering the program funds, to use the processes and procedures that are consistent with the federal guidelines.
- 3) Prohibits the CPUC from imposing any additional rules, processes, procedures, prohibitions, funding prioritizations, or eligibility criteria on any applicant that are not consistent with or explicitly required by the federal guidelines.
- 4) Requires the CPUC, in exercising any discretion in adopting rules, to aim to adopt rules, processes, and procedures that accomplish all of the following:
  - a. Simplify the application process and minimize the levels of additional review for applications that otherwise meet the minimum financial, technological, and other requirements of the federal guidelines
  - b. Maximize the availability of federal funds available to California.
  - c. Use the most robust, granular, and accurate broadband availability data.
- 5) Authorizes the CPUC to require applicants to commit to affordability requirements that are consistent with and do not exceed existing affordability requirements set by the CPUC for similar programs as of the enactment of this bill.

**EXISTING LAW:**

- 1) Existing federal law establishes the BEAD Program, under the Administration of the NTIA, to provide \$42.45 billion to expand high-speed internet access by funding planning, infrastructure deployment and adoption programs in all 50 states.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) *BEAD Program Background.* In November 2021, President Joe Biden signed the Infrastructure Investment and Jobs Act (IIJA) into law. Among many other provisions, the law established the Broadband Equity, Access, and Deployment (BEAD) Program, the federal government's most ambitious investment in high-speed, affordable internet to date. BEAD dedicates more than \$42 billion to construct broadband networks, establish subsidies to offset the cost of internet service for lower-income households, and create programs to provide end users with the devices and training they need to use the new and upgraded networks. The BEAD Program also marks the first time the federal government is providing grants to states specifically for these purposes. Recent estimates of California's share of the money have varied, with recent estimates from the California Public Utilities Commission ranging from between \$900-million to \$1.1-billion dollars.

As block grants to states, BEAD includes requirements—such as ongoing engagement with local stakeholders and marginalized communities, higher speed and reliability standards, and data collection to assess usage and impact of program funds—that are designed to correct some shortcomings of prior federal policy and establish consistency across states. Although much of the program design for administration of BEAD funds has been determined by NTIA in their Notice of Funding Opportunity (NOFO), states do have flexibility in implementing the program. For example, states can use their own data for the challenge process and accept different data than the Federal Communications Commission (FCC) to potential challenge provider data. Similarly, states are permitted to adopt their own affordability guidelines that go above and beyond the bare minimum requirements in the NOFO. This could be important for states like California that will likely need additional measures to keep broadband affordable in such a high cost state.

- 2) *The Governor had unilateral power to name CPUC as the administrator of BEAD funds.* Under the statutory framework of the BEAD program, the Governor of each state seeking BEAD funds had the authority to name the state administrator for their state's funds. On July 1, 2022, Governor Gavin Newsom designated the CPUC as the administrator of the BEAD Program for California. While this selection was reasonable considering the CPUC's experience running the California Advanced Services Fund (CASF), the decision did not provide any role for consultation with the Legislature. Furthermore, unlike the CASF program which has a statutory framework to administer CASF funds, no such requirement exists in state law for BEAD. Without legislation, the Legislature is left with no formalized role to shape the future of the BEAD program.

To the extent that NTIA has set clear guidelines for administering the funds, this bill would explicitly require the CPUC to follow those funding requirements. To the extent there is any flexibility in administering the funds, this bill would require the CPUC to implement rules that favor efficiency and simplicity rather than complexity and analysis.

- 3) *5-Year Broadband Plan.* On December 20, 2022, the Biden Administration awarded the CPUC \$4.9 million for BEAD Initial Planning Funds. Pursuant to the BEAD statute, a state that receives Initial Planning Funds must submit to NTIA a Five-Year Action Plan that establishes the state's broadband goals and priorities. The Five-Year Action Plan is intended to provide a foundation for alignment with future aspects of the program, including a final

proposal for using the funds. According to the CPUC, the 5-Year Action plan is due to NTIA at the end of August 2023.

- 4) *CPUC proceeding to establish BEAD rules.* In February the CPUC initiated a new rulemaking process (proceeding), develop rules to determine grant funding, eligibility, and compliance for BEAD Program funds. The proceeding will develop rules that cover a breadth of important issues, such as establishing parameters to define extremely high-cost areas, project prioritization, rules for the application challenge process, establishing applicant match requirements, ministerial review, and other grant requirements. This bill would work in tandem with that process, to ensure the final rules adopted by the CPUC reflect the intent of the Legislature. Enacting requirements for the CPUC to follow in adopting rules for the BEAD program is especially important considering recent experiences with the FFA program. Specifically, some of the processes and procedures adopted by the CPUC – such as the priority areas map – have cost a great deal of time to implement and delayed funding being awarded. Taking lessons learned from that program, this bill would require the CPUC to implement a more simplified application review process that minimizes barriers to awarding funding.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Independent Telephone Companies

##### **Opposition**

None on file

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