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OVERSIGHT HEARING

Digital Equity & the Broadband Equity, Access, and Deployment (BEAD) Program

Tuesday, May 23, 2023

State Capitol, Room 437

9:30 AM

Background:

In recent years, the federal government has enacted significant investments which California has leveraged to support and modernize the state's broadband infrastructure. Most recently, the Infrastructure Investment and Jobs Act (IIJA) established the Digital Equity Act and the Broadband Equity, Access, and Deployment (BEAD) programs. The Digital Equity Act provides \$2.75 billion to establish three distinct grant programs, administered at the federal level, that promote digital equity and inclusion. The BEAD Program, provides \$42.45 billion to expand high-speed internet access by funding planning, infrastructure deployment and adoption programs in all 50 states. Each state's share of the program funds will be determined by the Federal Communications Commission (FCC), with current estimates for California being at least \$900 million up to \$2 billion.

As both the California Department of Technology (CDT) and the California Public Utilities Commission (CPUC) move ahead to plan for California's participation in both programs, legislative oversight is imperative, especially for the BEAD Program. As of the date of this hearing, there has been no formal legislative consultation or input for implementation of the BEAD program. This informational hearing will serve as a venue to hear from the California Public Utilities Commission about their plans for the program and from stakeholders about their priorities for the program design within California.

The Digital Equity Act

The Digital Equity Act was established with the aim of ensuring that all people and communities have the skills, technology, and capacity needed to reap the full benefits of our digital economy. The Digital Equity Act consists of three separate grant programs that will potentially provide millions of dollars to California to advance digital equity within the state. The three programs are summarized below:

- The State Digital Equity Planning Grant Program, which is a \$60 million dollar formula grant program for states to develop digital equity plans.
- The Digital Equity Capacity Building Grant Program is a \$1.44 billion dollar formula grant program for states to fund digital equity projects based on their state digital equity plans.
- The Digital Equity Competitive Grant Program is a \$1.25 billion competitive grant program that will also fund digital equity projects in the states.

In December 2022 the National Telecommunication and Information Administration (NTIA) awarded a \$5 million dollar planning grant to California as part of the Planning Grant Program. Pursuant to AB 2750 (Bonta, Chapter 597 Statutes of 2022), the California Department of Technology is currently undertaking the planning process to develop the State's Digital Equity Plan. As part of the creation of the Statewide Digital Equity Plan, CDT is undertaking various efforts including a statewide planning group, industry working groups, statewide surveys, regional outreach, and statewide public engagement through a series of 20 public meetings. Based on all those efforts, CDT will submit a plan to NTIA for final approval following a 52-week public engagement process.

Broadband Equity, Access and, Deployment (BEAD) Program

Congress established the BEAD Program to address the persistent digital divide in the United States and outlined three associated priorities for use of the funds: building infrastructure, developing broadband action plans, and supporting programs to promote user adoption of new networks. Under the program, individual states (referred to as "eligible entities") will receive a level of funding determined by a formula that relies primarily on the state's proportion of unserved and underserved locations. The unserved locations are determined in accordance with federal broadband maps created by the Federal Communications Commission (FCC).

While BEAD is a federal program, states play the role of awarding funds for projects within their states. Pursuant to the BEAD statute, the Governor in each state has the authority to designate an agency within that state as the recipient of the funds. In California, Governor Newsom has designated the CPUC as the recipient of BEAD funds and the administrator of the program. As the program administrator, the CPUC is to gather public input in an open public proceeding to determine specifically how the BEAD funds will be offered to qualified applicants to build projects. The federal government's Notice of Funding Opportunity (NOFO) for BEAD establishes guidance and requirements for the program design. Additionally, the NOFO provides some discretion to states to implement their own plans for the competitive process of selecting projects, and specific requirements those subgrantees must follow. BEAD includes some mandated requirements such as workforce development and federal fair wages for those building the infrastructure. The CPUC will have discretion to adopt other grant requirements such as affordability standards for low and middle-income households, high-cost thresholds, matching fund requirements, and project area designations.

In advance of awarding grants, the CPUC must submit a Five-Year Action Plan for approval by the NTIA. The plan will establish the state's broadband goals and priorities, and will serve as a comprehensive broadband needs assessment. In December 2022 the Biden Administration awarded a \$5 million initial planning grant to the CPUC to assist with planning. Under BEAD

Program rules, California must submit the Five-Year Action Plan to NTIA within 270 days of receipt of the initial planning grant, which will fall in August 2023.

Issues for Legislative Consideration:

As the Committee becomes better informed on the implementation of the BEAD Program by the CPUC, Members and the public may wish to consider the state's policy objectives on the following elements of the program:

- **Goal of the Program:** While California's existing California Advanced Services Fund program has an overall goal to connect 98% of households in the state, the CPUC has not yet clearly defined what the goal for the BEAD program will be. For example, a goal to connect a certain number of households by a particular date. Without a clear a goal in mind, measuring the CPUC's performance will be difficult.
- **Integration and Coordination between BEAD and CASF:** The California Advanced Services Fund already has two separate programs and stream of funding to support broadband infrastructure deployment within the state, BEAD will be the third. While the Newsom Administration has not expressed any intention to coordinate or integrate the programs, the Committee may wish to consider whether such coordination and integration is possible in order to more effectively manage the various programs administered by the CPUC.
- **Integration with the Statewide Middle-Mile:** While the Statewide Middle-Mile network is not yet operational, to the extent that it will one day exist the Committee may wish to consider to what extent potential projects should be required or encouraged to integrate with the Statewide Middle-Mile. On one hand, it would assist with realizing the goal of the network to connect with last-mile providers. On the other hand, providers might view the Statewide Middle-Mile as an obstacle to accomplishing their proposed project.
- **Five-Year Action Plan Process:** NTIA envisions that implementation of the BEAD Program and the Statewide Digital Equity Plan will happen in tandem, with the Five-Year Action Plan being partly informed through both processes. However, California is unique in that two separate agencies – CDT and CPUC - are lead administrators for each program. Additionally, it's unclear to what extent the state's Digital Equity Plan or the Five-Year Action Plan will be informed by public participation in the CPUC's ongoing rulemaking. Lastly, with the Five-Year Action Plan due to the NTIA by August 2023 it's unclear to what extent pending legislation such as AB 662 (Boerner) of this session can be integrated into the plan.
- **Matching Funds Requirement** – Federal BEAD Program guidelines require a project applicant to match 25% of the grant funds, except in certain very high-cost areas and there is flexibility on the source of matching funds. Given that California has existing streams of funding dedicated to broadband infrastructure, there is potentially flexibility to use existing state funding to help applicants meet the matching fund obligation. For example, utilizing CASF funding would qualify to meet the 25% match requirement. Utilizing state funds as project matching funds could especially benefit smaller internet service providers and applicants that do not have easy access to capital. .
- **BEAD Program Application Review Timelines** – The CPUC's recent performance with administering the California Advanced Services Fund Program raises concerns

about the agency's timeliness. For example, in the entire 2022 calendar year the CPUC did not accept any new applications or award any new broadband infrastructure grants despite a great deal of funds being available for that purpose. Adding a new broadband grant program into the mix may further complicate the agency's ability to effectively and efficiently administer the suite of programs. To avoid delay with the BEAD Program, the Committee may wish to consider the possibility of imposing timelines for reviewing applications and a deadline by which the CPUC should begin to accept new grant application.

- **Project Geographic Level** – Federal guidelines give flexibility to states to solicit proposals from prospective project applicants at the geographic level of their choosing—for example, on a per-location basis, per-census block basis, per-town, per-county or another geographic unit. States may alternatively solicit proposals for project areas they define or ask prospective applicants to define their own proposed project areas. The Committee may wish to consider the geographic designation(s) for projects to best meet the needs of a state as diverse as California.
- **Project Prioritization** – Federal guidelines establish primary and secondary criterion for selecting among competing projects covering the same location, but also give states additional flexibility to impose other prioritization metrics. Mandatory primary criteria include prioritizations for projects requesting proportionally less funding, projects with the lowest cost of service for consumers, and projects incorporating fair labor practices. Mandatory secondary criteria include speed to deployment. While additionally categorizations of prioritization could be beneficial, they could also serve as barriers to participation. Notably, AB 622 (Boerner) of this session would prohibit the CPUC from establishing additional prioritization criterion in the interest of efficiency.
- **Affordability Requirements** – Federal guidelines require each project applicant receiving BEAD Program funding to offer at least one low-cost broadband service option. Additionally, the CPUC is required to propose a plan to address middle-class affordability. While the CPUC will generally have discretion to define what both those terms mean for California, the definitions must be approved by NTIA. Nonetheless, the Committee may wish to consider the different strategies for achieving affordability in California.
- **Workforce and Labor** – Federal guidelines require the CPUC to prioritize projects based on the prospective applicant's demonstrated record of and plans to be in compliance with Federal labor and employment laws. There are also requirements pertaining to workforce development. Additionally, federal guidelines give states the discretion to adopt additional requirements for potential applicants. The Committee may wish to consider whether additional workforce and labor requirements are necessary or appropriate for this program.

In summary, there is much to consider when it comes to implementation of the BEAD program and there are important facts that are still unknown, most obviously the state's allocation of funding. Nonetheless, the CPUC is moving ahead to gather public feedback and prepare the agency to make decisions on the discretionary policies that have been deferred to the state. While the Legislature is not required to take any action on BEAD, the CPUC will likely need to request state funding authorization in the future. In advance of that request, it is imperative for this Committee and the Legislature generally to continue to

be informed and involved as the implementation processes progresses and exercise the Legislature's authority, if needed, to ensure the greatest success of the program.