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.	Rulemaking 23-02-016

COMMENTS OF THE
SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION
ON OIR ON BEAD

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Pursuant to Rule 6.2 of the Commission's Rules of Practice and Procedure and the schedule set in the Order Instituting Rulemaking Proceeding dated February 23, 2023 ("OIR"), the Schools, Health & Libraries Broadband Coalition ("SHLB") hereby files its Comments on the OIR to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program ("BEAD").[1] SHLB is a nonprofit public interest organization with the mission of promoting open, affordable, high-quality broadband for community anchor institutions (CAIs) and their communities. Our membership is comprised of a broad base of organizations including representatives of schools, libraries, health care providers and networks, state broadband offices, private sector companies, state and national research and education networks, and consumer advocates.[2] The SHLB Coalition includes numerous members located in the State of California.

The OIR is soliciting public comments to assist it with developing rules and procedures that would apply to subgrantees who are awarded BEAD funding. SHLB appreciates the ability to provide input on certain questions regarding BEAD implementation to ensure that broadband leaders in the State of California achieve the goal of universal broadband availability and affordability in the next five years. SHLB wishes to ensure that the Commission's BEAD rules reflect issues of importance to our members – community anchor institutions.

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[1] Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program, Rulemaking 23-02-016 (Feb. 23, 2023) (BEAD OIR).
[2] *See* http://shlb.org/about/coalition-members for a complete list of SHLB coalition members.

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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?[3]

The OIR requests comment on which additional prioritization factors should be considered for selection among priority BEAD-funded broadband projects, in addition to the Primary Criteria and Secondary Criterion currently required in the Notice of Funding Opportunity ("NOFO"). Among other factors for consideration, criteria promoting open access wholesale last-mile broadband service is proposed as an additional prioritization factor.[4] SHLB supports the use of open access networks and thus encourages the Commission to allow for and prioritize open access networks as an additional scoring criterion for selection among priority BEAD-funded broadband projects.

Infrastructure deployment is an essential step to ensure widespread broadband access to all Americans. It is equally important that projects supported by BEAD funding also provide affordable and sustainable broadband access solutions to the unique members of the community they serve. One way to accomplish these goals is to incorporate open access networks into project planning. Such networks not only offer an alternative solution to expand broadband services to unserved and underserved communities, but they can benefit the service provider, last-mile customer, and those in between (such as CAIs with the ability to lease out their existing networks).

First, these networks can promote more efficient private investment. For example, when open access networks exist, individual service providers do not need to spend additional capital to build separate, potentially duplicative networks. Such savings can allow them to better focus their expenditures to reach farther into communities.[5] Second, open access networks can promote competitive marketplace offerings. Since the BEAD program subsidizes the deployment of broadband networks in unserved and underserved areas, it is unlikely that such networks will

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[3] BEAD OIR at 6.
[4] *Id*. n.18.
[5] *See* Arnold, Jordan & Sallet, John, *If We Build It, Will They Come? Lessons from Open-Access, Middle-Mile Networks*, Benton Institute for Broadband & Society, 4 (Dec. 1, 2020), https://www.benton.org/sites/default/files/OAMM_networks.pdf.

face facilities-based competition. This creates the risk that BEAD-funded networks will be monopolies with insufficient incentives to provide high-quality services at reasonable prices. Open access can solve this problem. Such networks are designed to enable competition among multiple service providers at the same time. As a result, competition between available retail services and prices is fostered, which can drive prices down, improve service quality, and lead to higher adoption by end-user consumers. This is especially beneficial in rural areas where little to no service offerings are available.

Third, open access networks can promote affordable internet service offerings. It is less expensive for retail service providers to lease capacity on an existing open access network than to build their own network. This cost saving should be reflected in lower prices offered by the providers to consumers. Additionally, resellers have the incentive to attract new customers by tailoring their service offerings to the needs of those who might not otherwise subscribe to broadband service. Fourth, in the case of publicly owned networks, open access networks can foster broader community involvement in solving the broadband needs that are unique to that area. Rather than relying on individual service providers to construct new networks from scratch, existing open access networks allow various community stakeholders to establish partnerships and make choices about future innovation and sustainable solutions.[6]

SHLB finally notes that utilizing open access network solutions allows opportunities for non-traditional broadband service providers to connect unserved and underserved citizens. For example, Research and Education Networks (RENs) are mission-driven non-profit organizations, either at the state and regional level, that support the broadband infrastructure and networking needs of higher education and other community anchor institutions.[7] Many RENs have a long history of deploying open-access middle mile infrastructure to serve these institutions. Such existing networks can be later expanded to address new needs, like reaching beyond a community anchor institution's campus to serve a low-income last-mile customer.

Given the many inherent benefits an open access network may provide, SHLB believes the Commission should encourage and promote the use of such networks. Accordingly, the

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[6] *See* COMMUNITY NETWORKS, A PROJECT OF INSTITUTE FOR LOCAL SELF-RELIANCE, https://muninetworks.org/content/open-access (last visited Apr. 14, 2023).

[7] *See* THEQUILT.NET, https://www.thequilt.net/wp-content/uploads/2022/05/Quilt-Value-of-a-REN-Broadband-Final-05042022.pdf (last visited Apr. 14, 2023).

Commission should prioritize open access networks as an additional scoring criterion for selection among priority BEAD-funded broadband projects, whereby the provision of an open access network results in specific points given to that project (and the absence of such results in zero additional points for the specific consideration of open access).

> **5. Selection Among Other Last-Mile Broadband Deployment 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?[8]**

The OIR further requests comment on which additional prioritization factors should be considered for selection among *other last-mile* broadband deployment projects, in addition to the Primary Criteria and Secondary Criterion currently required in the NOFO. Among factors for consideration, the NOFO again proposes criteria promoting open access wholesale last-mile broadband service as an additional prioritization factor for other last-mile projects.[9] In step with the reasoning given above, SHLB again recommends that the Commission prioritize open access networks as an additional scoring criterion for selecting last-mile BEAD-funded broadband deployment projects. Furthermore, in addition to our previously stated reasons, we note that open access networks allow opportunities for CAIs to connect last-mile customers. For example, a school or library may already have a robust fiber or Point-to-Point fixed wireless network running to the building. In fact, in many unserved and underserved communities, the *only existing broadband infrastructure available* may be that which is located at a CAI. If these facilities are subject to some form of open access/open interconnection, broadband service companies can then extend service (either wired or wireless) from the institution into the surrounding community.[10] This methodology is what SHLB calls deploying broadband "to and through" a CAI. In 2022, SHLB and the Open Technology Institute of New America released an economic study by Dr. Raul Katz demonstrating the economic feasibility of extending wireless

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[8] BEAD OIR, page 6.
[9] *Id*. Fn.19.
[10] For example, a school, library, or community organization can place antennas on the roof of its building to transmit low-cost (often free) wireless signals (using Wi-Fi, CBRS or TV White Spaces spectrum) to the surrounding homes and businesses.

signals from the CAI to the home.[11] His research found that deploying wireless connections "to-and-through" CAIs "can often be the most low-cost and financially sustainable option to connect households in unserved and underserved areas."[12]

Accordingly, SHLB recommends that the Commission prioritize open access networks as an additional scoring criterion for selecting last-mile deployment projects, whereby the provision of an open access network results in specific points given to that project (and the absence of such results in zero additional points for the specific consideration of open access). The Commission should additionally look for ways to incentivize projects that can either leverage a CAI's existing open access network or deploy an upgraded network to an institution that is open to interconnection to then extend services to unserved and underserved locations in the community.[13]

> **6. <u>Challenge Process</u>: States must develop and implement a transparent, evidence-based, fair, and expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by states as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for grant funds. Among other things, the process must allow for challenges regarding whether a particular location is unserved or underserved as defined in the Infrastructure Act and Section I.C of the Notice of Funding Opportunity. What information should be provided by a challenger as a basis for asserting service already exists at a location, or at locations, that disqualify them from being called "unserved?"[14]**

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[11] Dr. Raul Katz, *The To and Through Opportunity: An Economic Analysis of Options to Extend Affordable Broadband to Students and Households Via Anchor Institutions*, THE SCHOOLS, HEALTH & LIBRARIES BROADBAND COALITION & THE WIRELESS FUTURE PROJECT AT THE OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA, (Aug. 2022), https://newamericadotorg.s3.amazonaws.com/documents/Off-Campus-Deployment-Economic-Assessment-final.pdf.

[12] *Id*. at 3.

[13] SHLB also suggests that the Commission should consider providing more flexibility when considering the bandwidth speeds, rather than adhere strictly to the 100Mbps/100Mbps standard. In many urban and rural markets, the biggest impediment to broadband adoption can be the lack of affordable broadband. Wireless projects can often provide more affordable broadband connectivity than fiber projects. Waiving the 100/100 requirement on a case-by-case basis can make more technology options available that will accelerate broadband adoption.

[14] BEAD OIR at 6.

The OIR requests comment on certain information a challenger should provide during the state challenge process associated with BEAD funding. Specifically, the Commission asks for the type of information a challenger must provide to assert that service already exists at a location, thus disqualifying it from being labeled "unserved." When developing its state challenge process and accumulating such information, the Commission should be aware that the Federal Communications Commission's (FCC) National Broadband Maps may inaccurately portray connectivity to many CAIs and multi-family residential housing (MDUs). Accordingly, SHLB strongly urges the Commission to adopt a process that addresses any potential mischaracterization of connectivity to and in CAIs and MDUs and requires additional information from stakeholders, especially for challenges submitted to disqualify such locations from infrastructure opportunities solely based on data from the FCC's Maps.

The FCC's current Broadband Data Collection (BDC) process was created to gather more granular, location-specific broadband availability data.[15] Unfortunately, these efforts currently suffer from similar inaccuracies as the original Form 477 data it was tasked with replacing. Firstly, the BDC does not require ISPs to demonstrate broadband availability to *all housing unit*s in a multifamily residential building. Rather, the FCC's Maps label an MDU as a single broadband serviceable location (BSL), whereby an entire multifamily building can be erroneously deemed served as long as one unit in the building is capable of receiving broadband service. As such, the FCC's Maps do not account for cases where a portion of the building is served, like the business office, while the residential units remain unserved or underserved (for low-income housing, this is often because of neglected wiring infrastructure). This is a particularly large oversight, given that 20-25% of unconnected households nationwide reside in public or multifamily housing, accounting for some of the lowest income and most digitally unserved households.[16]

Secondly, the BSL fabric used to populate the FCC's Maps automatically flags the majority of CAI locations as "false" in the field distinguishing BSL's (ultimately indicating that

[15] The BDC process was created pursuant to the Broadband Deployment Accuracy and Technological Availability (DATA) Act.
[16] *No Home Left Offline, Accelerating Affordable Connectivity Program Adoption, How local action can close the broadband affordability gap*, EDUCATIONSUPERHIGHWAY, https://www.educationsuperhighway.org/wp-content/uploads/No-Home-Left-Offline_Accelerating-ACP-Adoption_2022.pdf

the CAI location is not a broadband serviceable location). The FCC assigned these automatic, non-BSL flags to CAIs *because it assumes that CAIs purchase non-mass-market (enterprise-grade) internet services.*[17] Accordingly, ISPs are not obligated to report service availability to these locations, and many CAIs are either grayed out on the FCC's Map or are reported as "served" even though they only have broadband speeds of 25/3 Mbps. which is below the goal of 1 gigabit of speed for a CAI. Certain CAIs like small libraries, extension offices, churches, and others may in fact receive mass-market internet services akin to those supplied to a residence or business location. SHLB recently commissioned a research study sampling 200 libraries across 20 states, which found that 61% of libraries studied were classified as "not broadband serviceable."[18] As such, the FCC's presumption that all CAIs purchase enterprise-grade service is not only incorrect, but harmful to those institutions that may be overlooked for broadband infrastructure upgrade opportunities. Furthermore, rather than putting the onus on ISPs to report availability data on the CAI locations they know are receiving mass-market services, the FCC is requiring a CAI to initiate a formal challenge process to change its own non-BSL designation.

SHLB believes that the FCC's approach to mapping CAIs conflicts with i) the DATA Act, which requires identification of broadband availability to all "locations,"[19] ii) the IIJA, which indicates that CAIs are only served if they have Gigabit-level broadband service,[20] and iii) the FCC's Third Report and Order which indicates that "to the extent such acquisitions of broadband capacity [by anchor institutions] fall into the category of 'mass market,' then providers must report such data."[21]

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[17] Schools and libraries can participate in the E-rate program, which does make it easier for larger school systems to obtain enterprise grade internet service. However, only about 50% of libraries participate in E-rate, and even those smaller libraries that do participate in E-rate often purchase mass market broadband service. Other types of CAIs do not have the benefit of such a program and should be included on the broadband maps as well.

[18] *See* Colin Rhinesmith, Ph.D., *Missing Pieces: How the FCC's Broadband Map Misrepresents Public Libraries*, https://www.shlb.org/uploads/Policy/National%20BB%20Plan/Rhinesmith_2023_Missing_Pieces%20-%20Jan%2028%202023.pdf

[19] The Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 § 802(b)(1)(A)(i) (2020).

[20] The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60102(a)(1)(E) (2021).

[21] *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, Third Report and Order, WC Docket No. 19-195, WC Docket No. 11-10, 11 Fn.79

Given the potential mischaracterization of connectivity to both CAI and MDU locations, especially when challenges are submitted to disqualify such locations solely based on data from the FCC's Maps, the Commission should adopt a challenge process that requires additional information from stakeholders. Regarding MDUs, SHLB recommends that the Commission require ISPs to provide unit-level connectivity data when challenging the proof of eligibility for MDU projects, especially for locations deemed a priority by Congress and the NTIA, including:

> (1) locations in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line applicable to a family of the size involved (as determined under section 673(2) of the Community Services Block Grant Act) is higher than the national percentage of such individuals or;

> (2) Locations that have a substantial share of unserved households.

Specifically, the Commission should require ISPs to provide the following data regarding MDU eligibility: i) an accurate unit count, ii) highest available speeds, iii) current affordable plan option, iv) unit by unit connectivity status (including type of wiring and usability status), v) total actual capacity currently provisioned to the building, accounting for both infrastructure type and premise equipment and hardware, and vi) artifacts proving that *all* units within a building have the infrastructure necessary to simultaneously qualify as served (100/20Mbps) or under-served (25/3Mbps), as defined by the IIJA.

Regarding CAIs, the NTIA requires states to create an inventory of all CAIs within their jurisdictions that would be eligible for infrastructure funding opportunities under the BEAD program (eligibility being defined by the NTIA as those CAIs lacking access to Gigabit-level broadband service) and to submit this information with its Initial Proposal.[22] To accurately create this inventory, SHLB encourages each state to adopt its *own* granular mapping initiative with a specific effort to identify all CAI locations within its jurisdiction and determine the broadband available to each such location. Data should be aggregated by service providers, third party

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(rel. Jan. 19, 2021) https://www.fcc.gov/document/fcc-takes-next-step-collect-more-precise-broadband-mapping-data.

[22] U.S. Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access and Deployment Program, Notice of Funding Opportunity, 2022, pg. 31, ¶ 6, Washington, DC: Government Printing Office.

stakeholders, consumers, and the CAI itself.[23] When states then make this information available to stakeholders during the state challenge process, the Commission should require any challenger seeking to disqualify a CAI to submit information beyond that shown on the FCC's Maps proving the broadband available to that location, including whether Gigabit-level service is available.

> **8. <u>Statewide Middle Mile</u>: How should the Commission prioritize subgrantee project proposals that plan on utilizing the statewide open-access middle mile network? Should the Commission require applicants proposing to build their own middle mile infrastructure with BEAD funds to make their network open access? In the event the middle mile portion of an application significantly overlaps the statewide middle mile network, should the applicant be required to consult with the California Department of Technology?[24]**

The OIR requests comment regarding statewide open access middle mile networks, including whether an applicant building its own middle mile network should be *required* to make it open access. On the second question, SHLB supports giving a preference for open access networks because of the many benefits they provide for competition and consumers. Similar to the answers given above to question 4, additional scoring points should be given to applicants that propose an open access network design (and the absence of such results in zero additional points for the specific consideration of open access). This will allow for prioritization of open access while recognizing the unique needs and challenges of the most rural or hard-to-reach areas.

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[23] CAIs may have already gathered certain types of mapping data, including where hotspots work and don't work.

[24] BEAD OIR at 7.

WHEREFORE, SHLB respectfully requests the Commission consider its comments in framing the issues in this BEAD rulemaking.

Respectfully submitted,

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