



June 23, 2023

The Honorable Tasha Boerner
California State Assembly
1021 O Street, Suite 4150
Sacramento, CA 95814

RE: Assembly Bill 662 – Oppose Unless Amended
As Amended June 21, 2023

Dear Assemblymember Boerner:

On behalf of the California Alliance for Digital Equity (CADE), a statewide coalition led by the California Community Foundation (CCF), Common Sense Media, the Greenlining Institute, Michelson Center for Public Policy, Media Alliance, NextGen California, #OaklandUndivided, the Rural County Representatives of California (RCRC) and The Children's Partnership, we respectfully submit an Oppose Unless Amended position on your Assembly Bill 662. This measure would constrain the California Public Utilities Commission (CPUC) with respect to implementation of expected federal Broadband Equity, Access, and Deployment (BEAD) Program funding.

As you are aware, the BEAD program, established through the Infrastructure Investment and Jobs Act (IIJA), will allocate a total of \$42.45 billion dollars for the expansion of high-speed internet access throughout the United States. California is estimated to receive anywhere between \$900 million and \$2 billion. This funding is intended to support already initiated state efforts to bridge the digital divide.

Although we appreciate the increased transparency and accountability requirements applied to the CPUC, we have significant concerns regarding how several of the provisions will affect broadband deployment in long unserved and underserved areas of the state. Specifically, this bill:

1. Unnecessarily and prematurely limits the CPUC's ability to create and enforce meaningful requirements with respect to affordability as part of accessing public funds to deploy

infrastructure, thereby preempting efforts to ensure expenditure of taxpayer dollars serves the public interest.¹

2. Establishes unreasonable and arbitrary limits on the CPUC's ability to appropriately and thoroughly review applications for funding, and thereby be responsible stewards of hundreds of millions of taxpayer dollars.²
3. Establishes limits on accessing funding that will have the effect of limiting competition in the broadband marketplace and excluding from eligibility most if not all projects proposed by municipal, nonprofit, and independent providers.³

We respectfully recommend the following amendments to AB 662:

Affordability: The following revisions will ensure that reasonable, yet meaningful, affordability requirements are applied to entities utilizing BEAD funding to deploy broadband infrastructure:

Section 3265.5

(a) The commission shall require, consistent with the federal guidelines, each grant applicant awarded program funds to offer at least one low-cost broadband service option. An applicant shall be deemed to have satisfied this requirement [if the applicant satisfies criteria \(1\) and \(2\) and at least three of criteria \(3\), \(4\), \(5\), and \(6\)](#):

- (1) Offers at least one all-inclusive subscription plan, the price of which shall include all taxes, fees, and charges with no additional nonrecurring costs or fees to the consumer. The commission shall initially set the qualifying price of the all-inclusive plan at no less than thirty dollars (\$30) per month and may annually adjust the price based on increases in the California Consumer Price Index, as calculated by the Department of Finance. [The all-inclusive subscription plan shall provide download speeds of at least 100 megabits per second and typical upload speeds of at least 20 megabits per second,](#) or the performance benchmark for fixed terrestrial broadband service established by the Federal Communications Commission pursuant to Section 706(b) of the federal Communications Act of 1934 (47 U.S.C. Sec. 1302(b)), as amended, [whichever is faster.](#) The all-inclusive subscription plan shall not be subject to data caps, surcharges, or usage-based throttling, and shall be subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the applicant must adhere.*

¹ Section 3266.5

² Section 3266

³ Section 3267.5

- (2) Participates in the California Lifeline Program and the federal Affordable Connectivity Program, or a successor federal program.
 - (3) Offers subscription plans based on nationwide pricing, with choices among multiple tiers of services and prices, and submits the details of those nationwide pricing plans to be publicly available on the Commission website and updated timely as pricing plans change.
 - (4) Offers subscription plans that require no contract or minimum subscription terms, are not subject to data caps, surcharges, or usage-based throttling, and are subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the applicant must adhere.
 - (5) Offers no-cost installation and equipment rental for setting up a home WiFi network to low-income households in the project area. ~~for a period of three years.~~
 - (6) Offers one no-cost device per household to low-income households in the project area that subscribe at any service tier. ~~for a period of three years.~~
- (b) The commission may add other options for an applicant to satisfy subdivision (a), ~~but shall not require an applicant to select from those additional options.~~
- (c) The commission shall develop a plan, consistent with the federal guidelines and Section 3265.5, for addressing middle-class affordability.
- (d) The commission may prioritize the selection of an applicant that commits to more than five of the criteria listed in subdivision (a).
- (e) The commission shall ~~may~~ prioritize the selection of applicants that demonstrate a commitment to addressing middle-class affordability and improve affordability to ensure that networks built using taxpayer dollars are accessible to all Americans.

Timelines: Although we agree that the CPUC must award funding in an expeditious manner, statutory timelines must be reasonable and achievable. Additionally, CPUC application review shot clocks must allow for the holistic review of all applications in order to apply the project scoring rubric. Lastly, a deadline to act should be based on submission of a complete application.

Section 3266

- (a) At least 90 ~~45~~-days before the submission of the initial proposal, the commission shall post a copy of the initial proposal on its internet website and share the initial proposal with the Assembly Committee on Communications and Conveyance and the Senate Committee on Energy, Utilities, and Communications, and establish a mechanism for public feedback.

(b) At least 30 days before submission of the initial proposal, the commission shall post a revised initial proposal reflecting inclusion of feedback from stakeholders on its internet website and share the revised initial proposal with the Assembly Committee on Communications and Conveyance and the Senate Committee on Energy, Utilities, and Communications.

(c)(1) The commission shall determine whether an application is complete and provide written notice to the applicant no later than 30 days following the application deadline. If the commission determines an application is incomplete, the commission shall provide the applicant with a list of incomplete items. The applicant may submit a revised application to address the incomplete items within 30 days following the commission's notice. If the identified deficiencies are not corrected within 30 days following the commission's notice, the application shall not be further considered.

(2)The commission shall review and act on complete applications within 180 days following the application deadline ~~or the date the grant was submitted, whichever occurs first.~~

Matching Funds:

Section 3267.5

Applicants may use state funds to ~~assist an applicant with meeting~~ meet matching fund requirements established by the federal guidelines for use of the program funds. ~~and shall only authorize the use of state funds for that purpose on tribal lands, for projects submitted by or in conjunction with a tribe, or in project areas that exceed the extremely high cost threshold.~~

As a broad matter, CADE is concerned that AB 662 aims to override the transparent and accessible process already underway at the CPUC to determine the rules for the BEAD program.⁴ That process operates with strict rules requiring Parties to state their interests publicly and, on the record, with multiple rounds of published comments and reply comments creating the set of data, arguments, and perspectives that Commissioners must rely on. Bypassing this transparent regulatory process in favor of legislative direction around select details of the program serves to exclude the perspectives of the stakeholders without the resources to engage advocates or other representation in the statehouse, and moves the decision-making behind closed doors - further disadvantaging locally-rooted community and municipal efforts.

⁴ [R2302016 - Proceeding: Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program](#)

Thank you for your consideration. Please feel free to reach us (as representatives of CADE) at the email addresses and phone numbers listed below if we can be a resource to your work.

Sincerely,

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