



November 27, 2023

**Submitted online via webform and via email to <[Advance\\_CBO@state.co.us](mailto:Advance_CBO@state.co.us)>**

Re: Colorado BEAD Initial Proposal Volume II

Dear Colorado Broadband Office,

Communications Workers of America District 7 (CWA) submits these comments regarding Colorado's BEAD Initial Proposal Volume II. CWA submits these comments jointly with International Alliance of Theatrical Stage Employees (IATSE) Local 7, and the Coalition of Black Trade Unionists.

These comments address Deployment Subgrantee Selection (Requirement 8), Labor Standards and Protection (Requirement 11), Workforce Readiness (Requirement 12), and Certification of compliance with BEAD requirements (Requirement 19).

## **I. Deployment Subgrantee Selection (Requirement 8)**

### **A. Fair Labor Practices**

#### **1. The State should allocate a greater proportion of Fair Labor Practices points to forward looking measures that support labor compliance, rather than retroactive measures of past compliance.**

The State's Draft Initial Proposal allocates 100 points, or approximately 15% of the total scoring, to the Fair Labor Practices criteria. Of the 100 points allocated to Fair Labor Practices criteria, 70 are for measures of past compliance (p. 45). CWA recommends that forward looking measures regarding workforce plans should receive a greater point allocation than backwards-looking records of compliance. We recommend that past compliance should be worth 20% of the total points allocated for Fair Labor Practices, and plans for ensuring compliance be allocated 80% of the total points allocated for Fair Labor Practices. Accordingly, if Fair Labor Practices are worth 100 points, we recommend that "record of compliance" be worth 20 points and "plans for compliance" be worth 80 points. Allocating points towards forward looking measures incentivizes applicants to ensure high road labor practices on the project and better promotes an effective program.

#### **2. The State should incorporate additional high road labor factors into its Fair Labor Practices Category.**

The Initial Proposal includes only the minimum factors for record of labor compliance and plan for labor compliance that the BEAD NOFO requires (p. 45). The Initial Proposal also states that “[a]pplications that include the [Fair Labor Practices information] and have no record of past noncompliance with federal labor and employment laws will receive full credit under the Fair Labor Practices scoring criteria” (p. 102). As it is currently stated, this category functions like a gating criteria: many applicants will score full points in this criteria based on past performance, and the scoring does little to affect which projects are awarded or incentivize good performance on funded projects.

This category would be more effective if it functioned to incentivize applicants to incorporate high road labor standards in order to gain a greater score. The State should add additional criteria into its Fair Labor Practices category, including prioritizing applicants that will use a directly hired workforce for broadband deployment, installation, and maintenance; applicants that have robust in-house training programs with established requirements that are tied to uniform and progressive wage scales, job titles, and certifications or skill codes recognized by the industry; applicants that will create jobs with quality wages and benefits in broadband deployment; and applicants that will create jobs with quality wages and benefits in ongoing network operations, after network deployment. CWA also supports prioritizing applicants that will perform broadband deployment, installation, and maintenance work with a locally based workforce. The State could also clarify its prioritization of these forward-looking factors, for example, by clarifying a point value allocated to each factor or describing the consideration each factor will receive. Here is an example of language that addresses these factors:

“An application that proposes more robust standards to ensure and promote ongoing labor compliance will receive greater credit.

a. Safety and Training - An application that describes a more comprehensive in-house training program, for example, a program tied to certifications, titles, and uniform wage scales and/or participation in a labor-management apprenticeship program, will receive greater credit.

b. Job Quality - An application that describes higher wages and more robust benefits will receive greater credit. If Applicant uses a contracted workforce, having a plan to monitor compliance and job quality.

c. Accountability and Subcontracting - An application that commits that a greater proportion of the broadband deployment workforce will be directly employed by the applicant will receive greater credit.

d. Local hire and targeted hire: An application that commits to a high percentage of the workforce that will reside in California and/or includes policies or practices that promote career pathways for local residents and hiring for marginalized communities or the local community, will receive a higher score.

e. Ongoing Network Operations - An application that describes more robust high road practices for the workforce that will perform ongoing customer service, installation, and maintenance work, for example, good jobs, a locally based workforce, and/or a directly hired workforce, will receive greater credit.”

(Communications Workers of America, Broadband Investments that Go the Distance, <https://buildbroadbandbetter.org/system/files/2023-09/CWA-Broadband-High-Road-Labor-Report-2023.pdf>.)

### **3. The point system should allocate a greater percentage of points to Fair Labor Practices.**

CWA recommends that Fair Labor Practices receive a third of the 75% point allocation that the NOFO requires to be allocated to Primary Criteria, in other words, 25% of total point allocation. We view high road labor practices as mutually reinforcing with program considerations of managerial, technical, and financial capacity to execute the project. A higher point allocation for Fair Labor Practices supports multiple program goals. Delaware's Initial Proposal Volume II allocates 25% to Fair Labor Practices.

<https://broadband.delaware.gov/pages/index.shtml?dc=community>. California's Initial Proposal Volume II allocates 20% to Fair Labor Practices. <https://www.cpuc.ca.gov/beadprogram>.

Pennsylvania allocates a combined 25% to labor factors, including 15% to Fair Labor practices and 10% to Equitable workforce development and job quality.

<https://dced.pa.gov/download/volume-ii-of-the-broadband-equity-access-and-deployment-bead-proposal/?wpdmdl=122099>. New York's Initial Proposal allocates 30% to Fair Labor Practices. <https://broadband.ny.gov/broadband-deployment-initial-proposal>.

### **4. Additional information**

Additional information on CWA's recommendations regarding Fair Labor Practices, including context regarding labor trends in the telecommunications industry, is available at

<https://buildbroadbandbetter.org/system/files/2023-09/CWA-Broadband-High-Road-Labor-Report-2023.pdf>.

### **5. Extremely High Cost Per Location Threshold (EHCT)**

CWA highly supports the State's preference for fiber. Fiber is sustainable, scalable, and renewable. It offers greater capacity, predictable performance, lower maintenance costs, and a longer technological lifetime than coaxial cable, satellite, and fixed wireless technologies. While CWA does not oppose the State's proposal to set the EHCT in later stages, CWA urges the State take an approach that lives up to the spirit of the EHCT framework as described in the BEAD NOFO by selecting a number as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible. Other state and federal universal service programs and appropriations-funded broadband grant programs could help fill the remaining connectivity gaps and ensure that everyone can benefit from future-proof fiber technology.

CWA also encourages the State to consider studies of the long-term value of fiber in determining an EHCT. An engineering analysis of fixed wireless technologies by consulting firm CTC Technology and Energy concludes that "fiber represents the most fiscally prudent expenditure of public funds in most circumstances because of its longevity and technical advantages." CTC's cost analysis of fiber and fixed wireless deployments finds that while fiber's

upfront capital costs are higher than those of fixed wireless in many circumstances, the total cost of ownership over 30 years is comparable for fiber and fixed wireless, and fiber provides much higher quality service. The CTC analysis further finds that while fixed wireless technologies will continue to improve, they will not match the performance of fiber optic networks. CWA recommends that the State incorporate a minimum of a 30-year period to evaluate the total cost of ownership of non-FTTP networks as part of its EHCT analysis.

BEAD Program Notice of Funding Opportunity at 13, fn 6.

CTC Technology, "Fixed Wireless Technologies and Their Suitability for Broadband Delivery", 49-51, June 2022, <https://www.benton.org/sites/default/files/FixedWireless.pdf>.

## **6. Network resiliency considerations**

CWA recommends that the State adopt additional network resiliency considerations as part of the Minimal BEAD Program Outlay scoring or as part of the secondary criteria, including for projects that are not Priority Broadband Projects. CWA urges the Office to also incorporate as part of the scoring criteria the six resiliency strategies that the California Public Utilities Commission (CPUC) adopted in its disaster resiliency docket for certain facilities-based wireless and wireline service providers, with the goal of ensuring access to 911 and other government and local community services (e.g. 211 or 311), the ability to receive emergency alerts and notifications, and access to basic Internet browsing. These include:

- a. Implement 72-hour back-up power to support essential communications equipment and minimum service levels for the public
- b. Build and maintain redundant communication networks
- c. Harden communication networks to withstand damage
- d. Network operators should have available temporary facilities (e.g., mobile cell sites, mobile satellite and microwave backhaul, etc.) to restore service to their networks when facilities are damaged or destroyed;
- e. Establish communication and coordination processes with first responders, other public utilities, the Commission, and the general public
- f. Establish preparedness planning for employees and ensure sufficient staffing levels.

California Public Utilities Commission's resiliency decisions: D.20-07-011 (wireless), <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/net-work-resiliency/d2007011-july-16-2020.pdf>, D.21-02-029 (wireline), <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/net-work-resiliency/d2102029-february-18-2021.pdf>.

## **III. Labor Standards and Protection (Requirement 11) and Workforce Readiness (Requirement 12)**

### **A. Subgrantees' plans for ensuring a skilled and credentialed workforce should be available to the public on a website.**

In general, CWA recommends that broadband programs require applicants to disclose information on their workforce plans and practices. Collecting and publicly posting this

information is a simple and low-cost way to promote accountability and high road labor practices. We recommend collecting information regarding workforce and work conditions early, as part of the evaluation process for bids, and that regular reporting of information be incorporated throughout the funding cycle as part of ongoing compliance and monitoring.

All workforce plan information required, including that required under Requirement 11, p. 101, and Requirement 12, p. 113-115, should be part of regular Labor Reporting and should be publicly available on a website. Enforcement is an endemic problem in labor compliance. If the information applicants disclose as part of their skilled and qualified workforce information is posted publicly, the public and worker organizations are able to hold applicants accountable to those commitments and aid in enforcement. The State is already familiar with similar disclosures from ARP programs. For example, the American Rescue Plan State and Local Fiscal Recovery Funds require that recipients publish Recovery Plan Performance Reports, which include workforce practice and labor standard information, on the recipient's website. The Treasury Department recommends that these reports be "accessible within three clicks or fewer from the homepage of the recipient's website." (U.S. Department of the Treasury, Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds.) Just as transparency promotes accountability in other program areas, public disclosure around workforce plans promotes compliance and accountability regarding workforce practices.

#### **B. Subgrantees' workforce representations should be binding commitments.**

CWA recommends that the State consider applicants' and subgrantees' representations regarding workforce plans as material conditions of the grant or otherwise legally binding and enforceable. If an applicant states that it will directly employ a workforce at a certain wage, or commit to a certain percentage of state-based workers, these commitments mean little if they are not binding. Representations around workforce are reflected in multiple parts of the initial proposal, including Requirement 8, Requirement 11, and Requirement 12. CWA recommends that these workforce representations be consolidated into subgrantees' labor reporting requirements, and treated as binding commitments. Both California and Delaware's Initial Proposals require regular reporting on workforce commitments and require that applicant representations regarding workforce are legally binding.

<https://broadband.delaware.gov/pages/index.shtml?dc=community>.

<https://www.cpuc.ca.gov/beadprogram>.

#### **C. The State should require subgrantee information regarding a locally hired workforce and ongoing operational workforce.**

While the State outlines requirements regarding a locally hired workforce, p. 103, the Initial Proposal does not otherwise outline disclosure requirements related to locally based workforce. CWA recommends that the State incorporate information requirements around locally based workforce. CWA also recommends that the State require information regarding an applicants' operational workforce, in other words, the jobs that will be created in order to maintain and

service the network, beyond the initial build, and include disclosure requirements related to the same.

Below is information CWA generally recommends broadband programs incorporate into workforce plan disclosures, including the above recommendations, which may be a resource as the State develops its labor reporting requirements.

- Training and Safety - For each job title that will carry out the proposed work, a description of safety training, certification, and/or licensure requirements. Is there a robust in-house training program with requirements tied to certifications or skill codes, titles, and uniform wage scales? Is there participation in a labor-management apprenticeship program? Is the workforce unionized? Is there a labor-management health and safety committee on the worksite, for which workers select their representatives? How will the applicant ensure that the workforce is appropriately trained?
- Job Quality - For each job title that will carry out the proposed work, a description of wages, wage scales and minimum wage rates, overtime rates, and benefits. Does the applicant pay prevailing wage?
- Local Hire and Targeted Hire - Does the applicant have any policies or programs that encourage career pathways and hiring for marginalized communities or the local community, including any programs for women and people of color? What percent of the existing workforce resides in zip codes determined to be relevant by the agency? Will the applicant commit to ensure that a certain proportion of the workforce will reside in relevant zip codes?
- Accountability and Subcontracting - Will the workforce be directly employed by the applicant? If not, will the applicant subcontract the work to another entity or entities? If the workforce will be subcontracted, the applicant should have to disclose the Workforce Plan for the subcontracted workforce as well and describe how the applicant will ensure any subcontractor is held accountable for labor law compliance and abiding by the commitments in the Workforce Plan.
- Ongoing Maintenance and Operations - For projects where the applicant will be operating the network after the project is completed, does the applicant have an existing workforce to perform the customer service and operations work? Will that workforce be based locally and directly hired by the employer? If those functions will be outsourced, will any of the jobs be overseas? Will the project support high quality jobs?

#### **D. Colorado's Labor Peace Act does not conflict with incorporating high road labor standards and the State should not take an unduly broad reading of the Act.**

As to private sector employers, the Colorado Labor Peace Act functions to require a separate election for union security clauses. In union-represented workplaces, union security clauses are those that make union dues mandatory for all workers. Outside of this requirement regarding union security clauses, the Act has little effect on private sector employers. In *Communications Workers of America v. Western Electric Co.*, 191 Colo. 128, (1976), the Supreme Court of Colorado held that the NLRA preempted the majority of the Colorado Labor Peace Act for private employers, with the exception of the sections regarding union security clauses. The Act also has little effect on the bulk of public sector employers, only regulating labor relations for a

small subset of public sector workers (e.g. bus drivers for RTD, some symphony employees) that are not otherwise carved out by other statutes. Accordingly, here, where the State is contracting with private and public entities for broadband build, the Act does not limit the State's actions in designing its program. If the State believes that specific aspects of the NOFO would be unlawful under the Act, the State should clarify as such in the next version of the Initial Proposal, or eliminate reference to the Act.

#### **IV. "As-built" reporting and inspection requirements (Certification of compliance with BEAD requirements, Requirement 19)**

CWA supports the State's plan to conduct comprehensive monitoring to ensure compliance with program guidelines, including plans for on-site inspections, internal compliance audits, and financial review. CWA further recommends that the State conduct periodic and random site visits, which should include inspections of pole attachments and handholds. CWA also recommends subgrantees submit "as-built" technical documentation, certified by a licensed Professional Engineer, that verifies project completion and demonstrates that the deployed infrastructure, service area, and equipment match those in the approved final application and are capable of delivering the minimum proposed speeds consistently to all potential customers in the project area. Recipients should be required to identify any differences between the network design in the approved final application and the "as-builts," and explain the reasons for the differences and any impacts or changes to the final application resulting from these differences. Subgrantees should also be required to validate the performance characteristics of any deployed infrastructure and equipment that differs from the specifications in the approved final application.

Sincerely,

/s/Sandra Parker

Sandra Parker  
CWA Colorado State Broadband Lead/Organizer