

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**12-09-11
12:59 PM

December 9, 2011

Agenda ID #10915
Quasi-Legislative

TO PARTIES OF RECORD IN RULEMAKING 10-12-008

This is the proposed decision of Commissioner Peevey. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Pulsifer at trp@cpuc.ca.gov and Commissioner Peevey's advisor Carol Brown at cab@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:avs

Attachment

Decision PROPOSED DECISION OF COMMISSIONER PEEVEY
(Mailed 12/9/2011)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Modifications to the California Advanced
Services Fund Including Those Necessary to
Implement Loan Program and Other Provisions
of Recent Legislation.

Rulemaking 10-12-008
(Filed December 16, 2010)

**DECISION IMPLEMENTING BROADBAND GRANT
AND REVOLVING LOAN PROGRAM PROVISIONS**

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DECISION IMPLEMENTING BROADBAND GRANT AND REVOLVING LOAN PROGRAM PROVISIONS

1. Introduction

In this decision, we continue to implement California Advanced Services Fund (CASF) program measures. We first implemented the CASF in Decision (D.) 07-12-045, which inaugurated a program to award grants to support deployment of broadband¹ infrastructure projects offering advanced communications services.

Specifically, in this decision, we implement provisions of Senate Bill (SB) 1040 relating to the Broadband Infrastructure Grant Account (Grant Account) and Revolving Loan (Loan Account) Programs, as explained below.² We adopt updated rules for administering the CASF Grant Account program set forth as Appendix 1. We also adopt initial rules for administering the CASF Revolving Loan Account as set forth as Appendix 2 of this decision.

¹ Broadband refers to the width of frequency bands used to transmit data or voice communications over the Internet. Depending on the width of the frequency band, information can be sent on many different frequencies or channels with broadband concurrently, allowing for advanced services, including video, to be transmitted at much faster speeds than would otherwise be available over a dial-up telephone connection to the Internet.

² SB 1040 is codified at California Public Utilities (Pub .Util.) Code § 281.

As noted in D.07-12-054, promoting the widespread availability of advanced services through deployment of broadband holds tremendous opportunities for consumers, technology providers, and content providers. By encouraging the deployment of advanced communications services in unserved and underserved regions of California, we promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies.³ The CASF program thereby advances universal service policies aimed at bridging the “digital divide” as articulated in Pub. Util. Code § 709(c) and (d).

The Commission first implemented the CASF program in D.07-12-054, establishing procedures to award grants of financial assistance to qualifying broadband deployment projects. The Commission subsequently approved funding for a significant number of qualifying broadband projects under the CASF program.

Prior to SB 1040, the CASF was scheduled to sunset on January 1, 2013. SB 1040 repealed the CASF sunset provision, however, and expanded the program significantly, increasing the CASF fund capacity from \$100 million to \$225 million. The additional funds will be collected in annual \$25 million increments from 2011 through 2015. SB 1040 also created two new accounts, the Rural and Urban Regional Broadband Consortia Grant and the Broadband Infrastructure Revolving Loan accounts. SB 1040 allocated funds as follows to three accounts now established under the CASF:

³ See Pub. Util. Code § 281.

- The Broadband Infrastructure Grant Account (\$100 million);
- The Rural and Urban Regional Broadband Consortia Grant Account (\$10 million) ; and
- The Broadband Infrastructure Revolving Loan Account (\$15 million).⁴

The purpose of the Loan Account is to finance capital costs of broadband facilities not funded by a grant from the Broadband Infrastructure Grant Account. The Commission views the CASF Loan Account as an additional option for applicants to use as supplemental funding to the Grant Account so that a project can more likely be financially feasible and move forward. Research of existing loan programs has also shown that applicants typically do not just apply for a loan if an award is available in the form of combined grant/loan funds. Therefore, the Commission hereby sets up the Loan Account within the CASF program as a supplemental funding venue for qualified projects and applicants under the Grant Account and not as a sole source of funding to a project.

2. Procedural Background

We opened this Order Instituting Rulemaking (OIR) to implement the expanded CASF funding provisions resulting from SB 1040 and to address other possible changes to the CASF program, including changes suggested in a petition by the Commission's Division of Ratepayer Advocates (DRA) to modify D.07-12-054.⁵ Opening comments on issues identified in the OIR were filed

⁴ See *id.* §§ 281(a), (b)(1).

⁵ DRA filed its Petition to Modify D.07-12-054 in R.06-06-028, which is now a closed proceeding. We now resolve the DRA Petition to Modify in this decision.

January 21, 2011, with reply comments filed February 14, 2011. The Assigned Commissioner issued a Scoping Memo on April 19, 2011, determining that no evidentiary hearings were necessary. The record for this rulemaking has been developed through the filing of comments on designated issues.

The first phase of this proceeding focused on implementing the Consortia Grant Account. By D.11-06-038, we implemented measures to receive funding applications and to grant awards from the Consortia Grant Account. In this second phase of the OIR (which is the subject of this decision), we implement revisions to the existing CASF infrastructure grant program and implement the new CASF revolving loan program.

By ruling dated August 15, 2011, the assigned Commissioner issued a draft proposal for revisions to the existing CASF Infrastructure grant program and for initial rules for administering the CASF revolving loan account program. The Commission's Communications Division (CD) formulated the draft proposals, taking into account the comments on the OIR previously filed by parties in this proceeding.

Comments on the draft proposal were filed on September 12, 2011, with reply comments on September 26, 2011. Our adopted rules have been further refined in response to comments.

Parties filing comments included telephone corporations, cable companies, consumer groups, the California Emerging Technology Fund (CETF) regional partners, and other regional and community groups focused on broadband adoption and deployment.⁶ We have further refined the updated adopted rules in Appendix 1 and 2 of this decision in response to parties' comments.

3. Revisions to the CASF Broadband Infrastructure Grant Program

In this decision, we adopt revisions to the existing CASF Broadband Infrastructure Grant program, as summarized below. Our updated adopted guidelines for CASF grant applications are set forth in Appendix 1.

⁶ Telephone corporations offering comments included: Pacific Bell Telephone Company dba AT&T California and its affiliates (AT&T), Verizon California Inc. (Verizon), Frontier Communications of California and its affiliates (Frontier), and the Small Local Exchange Carriers (LECs), consisting of Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Co, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Co, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company and Winterhaven Telephone Company, and DTS of CA, Inc. (DTS), a satellite-based provider that has sought authority to be a Small ILEC in all of the unserved areas of California. The cable companies offering comments included: Cox Communications and Comcast Phone of California, LLC.

The consumer groups offering comments included: DRA, The Utility Reform Network (TURN), and Greenlining Institute.

Comments were also filed by regional groups associated with the CETF, including: the California Partnership for the San Joaquin Valley, the Sierra Economic Development Corporation, the Amador-Tuolumne Community Action Agency, Shepherds Crook Enterprises, the Contra Costa Council, California State University -Monterey Bay, Valley Vision, and the California Center for Rural Policy.

Other regional and community groups offering comments included: the Corporation for Education Network Initiatives in California (CENIC), the Regional Council of Rural Counties, Spiral Internet/Nevada County Connected, and Camino Fiber Network Cooperative, Inc.

3.1. Grant Funding Caps Per Application

The CASF currently provides matching funds of up to 40% of project costs for new broadband infrastructure in unserved and underserved areas, as defined in Resolution (Res.) T-17143. The applicant is responsible for the remaining 60%.

In this decision, we revise the currently applicable CASF funding cap of 40% of project cost, recognizing that some applicants have been unable to secure the 60% matching funds and that funds from the American Recovery and Reinvestment Act (Recovery Act) are no longer available. Existing CASF rules limit funding to broadband infrastructure for areas determined to be unserved or underserved. An area is considered “unserved” if it offers no form of facilities-based broadband, such that Internet connectivity is available only through dial-up service or satellite. An area is considered “underserved” where broadband is available, but no facilities-based provider offers service meeting the benchmark speeds of at least three megabits per second (mbps) download and at least one mbps upload.

3.1.1. Parties' Comments

Most parties support modifying the limits on CASF funding provided. Frontier argues that increasing grants for projects in unserved locations to 70% of total project costs may not be sufficient to justify building broadband infrastructure in extremely rural and high cost areas. Verizon proposes increasing funding in unserved areas to 80% of the estimated costs while reducing funding in underserved areas to 25%. Frontier, AT&T and CENIC support prioritizing unserved areas. AT&T proposes that the Commission avoid allowing competitors to compete with those already providing high speed internet services in underserved areas, arguing that

providing grants and loans for applicants to build duplicative and unnecessary facilities in underserved areas is an inefficient and unfair use of CASF monies.

Camino Fiber Network Cooperative (Camino Fiber) recommends a single grant limit of 65% of project costs for all applicants regardless of whether loan funds are requested. Camino Fiber also proposes a “start up” category, with a maximum cap of 85% of project costs for projects with total costs not exceeding \$5,000,000. Applicants securing the 85% grant funding would be ineligible to concurrently apply for loan funding for the same project.

DRA argues the Commission should not raise the funding cap at this time, but that any increase should be tied to additional requirements designed to reduce prices, increase speed commitments and encourage adoption, including requirements to waive installation fees and to cap rates for a number of years. DRA cautions that increased CASF funding without sufficient oversight provides a temptation for utilities to replace their own capital assets and working cash with a different form of ratepayer-provided funding. DRA expresses concern that CASF applications thus far may have been “cream-skimming” the less-costly or easier upgrades as projects.

Sierra Economic Development Corporation (SEDCorp) argues that a 70% grant *alone* is sufficient incentive even if the applicants must seek debt financing for the remaining 30% of project costs.

CENIC suggests that the Commission consider focusing priority specifically on middle-mile projects for unserved areas and that the Commission consider funding all qualified middle-mile projects before funding other First or Middle Mile projects in underserved areas.

San Joaquin Valley supports increasing the matching grant to 80% for unserved areas and 70% for underserved, since many projects in rural and

high cost areas cannot be financially justified under the recommended 70% funding cap because of the significant up front investment required to deploy the infrastructure and facilities.

3.1.2. Discussion

We shall increase the CASF grant funding limits to a maximum of 70% for unserved areas and 60% for underserved areas. These higher matching grant limits will better promote our goal of making broadband services available to all areas and households within California. The table below shows the percentage of funds that the applicant must supply, depending on whether the applicant also utilizes funds from a matching CASF revolving loan (as discussed further in Section 4 below):

	Infrastructure Grant (% of total project cost)	Broadband Infrastructure Revolving Loan Account (% of total project cost)	Applicant(s) Funds (% of total project cost)
A. With Loan			
Unserved Areas	70%	20%	10%
Underserved areas	60%	20%	20%
B. Without Loan			
Unserved Areas	70%	0%	30%
Underserved areas	60%	0%	40%

The different funding limits between unserved and underserved areas reflect our priority focus on increasing CASF project funding in unserved areas. Increasing the funding percentages beyond these limits, as suggested by certain parties, would unjustly prejudice underserved areas.

We recognize parties' concerns that the small difference in the funding level between unserved and underserved areas may result in duplicative and unnecessary facilities in underserved areas. We will, therefore, only approve grants to areas already funded by CASF (at whatever level between 10% or 40%)

three years after the start of broadband service of the first CASF funded project in order to give the grantee(s) time to realize returns on their investment.

3.2. Funding of Middle-Mile and Backhaul Projects

3.2.1. Parties' Comments

Amador Tuolumne Community Action Agency and Valley Vision both argue that eligible infrastructure projects should include backhaul and backbone networks. Amador Tuolumne Community Action Agency also urges the Commission to identify “target areas” consisting of historically and chronically-unserved communities that would be unlikely to attract future broadband deployment investment interest, and to award points to proposals that specifically service these target areas with cost-effective broadband Internet access.

Verizon asserts that mobile wireless broadband be considered for the purpose of determining whether an area is served, unserved, or underserved, including 3G wireless and 4G services. DRA argues that wireless broadband is not a substitute for hardwired internet connectivity, given the limitations of mobile devices. AT&T opines that funding middle-mile projects would contribute to overbuilding which is an inefficient use of CASF funds.

Both TURN and CENIC support funding middle-mile projects. TURN supports requiring middle-mile project applicants to provide a plan detailing who will connect to their networks. DRA and TURN both request clarification that construction projects related to and necessary for last-mile deployment are eligible for CASF funds.

3.2.2. Discussion

Our adopted revisions to the Infrastructure Grant program do not eliminate funding for projects involving middle-mile, backbone and backhaul.

The funding of construction of middle-mile, backbone and backhaul projects is addressed in Resolution T-17143, at 6 and 7. In a scenario where infrastructure may have to transit both an unserved and underserved area to reach a remote unserved or underserved area, the Commission has agreed that applicants should be allowed to pro-rate costs when projects include facilities in unserved and underserved -- and even served-- areas. Middle-mile facilities are crucial to extending broadband to unserved areas, but the Commission should not be funding “the middle-mile to nowhere.”

Applicants must fully explain the allocation of costs and provide the Commission with a full accounting of that allocation at each funding phase of the project. Applicants for middle-mile projects are required to submit all documentary requirements and will be evaluated based on their compliance with the guidelines and the evaluation criteria applicable to last mile unserved and underserved projects, including submission of proof that the backhaul or backbone construction is an indispensable part of their plan to reach unserved and/or underserved communities and submit a pro-ration of construction cost per Resolution T-17143. We expect applicants to target areas that are unserved and underserved based on the latest available information. Short of listing or specifying these areas, the most current Broadband Availability map, i.e., the California Interactive map on the CASF web site, will provide information to assist the applicant(s) in identifying these areas.

3.3. Definition of Unserved Areas

In this decision, we consider whether to revise the CASF definitions of unserved and underserved areas to conform to the National Telecommunications and Information Administration/Rural Utilities Service definitions.

Alternatively, we consider whether these definitions should be revised based on the goals set forth in the 2008 report of the California Broadband Task Force.

Where there is only one application for an area, the Commission has approved funding for a project that would fall short of the benchmark speeds. (See Res. T-17143 at 3-4, Res. T-17233 at 12, Res. T-17195 at 6.) The Assigned Commissioner's Ruling dated August 15, 2011, (ACR), proposed an increase in the benchmark to a combined speed of 10 mbps to conform to the Federal Communications Commission's Sixth Broadband Deployment Report, which endorsed the minimum speed component of the national broadband availability target of actual speeds of 4 megabits per second (mbps) download and 1 mbps upload proposed in the National Broadband Plan.

We reject parties' recommendations that the definitions of "unserved" and "underserved" areas be changed to an area served by an incumbent carrier's wire center where at least one occupied premise in the ILEC wire center's service area is not served by any form of facilities-based broadband and Internet connectivity is available only through dial-up service or satellite. We find that adopting this definition will result in a duplication of broadband infrastructure and investments in an area or census block group (CBG) that is already served except for that one household.

We will modify the definition of an unserved area as previously adopted in D.07-12-054 as an area that is not served by any form of wireline or wireless facilities-based broadband, such that Internet connectivity is available only through dial-up service. In Resolution T-17143, satellite service was included in the definition of unserved areas, putting it on the same footing as dial-up service.

At that time, we determined that satellite based broadband was more akin to dial-up than to the 3/1 minimum level of service that the Commission wanted to see deployed. The January 2008 California Broadband Task Force (CBTF) report data showed that broadband downstream speed for satellite ranged from 512 through 2 mbps. Other factors that the Commission considered at that time included the cost to consumers to access satellite service, and the unpredictability of the service.

While there has been some improvement in satellite service, the costs to the consumer still ranges from \$60 to \$90 per month (depending on service options and speed plus the cost of the equipment, and in some cases, an activation fee of about \$100); has high latency⁷ problems; is unreliable (drop-outs are common during travel, inclement weather, and during sunspot activity); requires precise equipment positioning, (the narrow-beam highly directional antenna must be accurately pointed to the satellite orbiting overhead); and uses very large and heavy equipment.

In Federal Communications Commission (FCC) OBI Technical Paper No. 1 - Broadband Availability Gap, the FCC noted that broadband-over-satellite is a cost-effective solution for providing broadband services in low-density areas. Next generation satellites which are expected to be launched in 2011 are projected to be able to meet the National Broadband Plan benchmark of 4 mbps

⁷ A High latency problem is due to the signal having to travel to an altitude of 35,786 kilometers (km) (22,236 mi) above sea level (from the equator) out into space to a satellite in geostationary orbit and back to Earth again. The signal delay can be as much as 500 milliseconds to 900 milliseconds, which makes this service unsuitable for applications requiring real-time user input such as online games. Additionally, some satellite Internet providers do not support Virtual Private Network (VPN) due to latency issues.

downstream and 1 mbps upstream. In fact, some satellite operators, notably Via SAT and Hughes Network Systems, LLC, plan to launch high-throughput satellites in 2011 and 2012, and offer 2-10 Mbps upload and 5-25 Mbps download speeds, respectively. The paper points out, however, that in spite of these improvements, problems in latency associated with satellite would still affect the performance of applications requiring real-time user input, such as Voice over Internet Protocol (VoIP) and gaming.

Further, the Recovery Act rules recognized the importance of satellite in the provision of broadband by excluding satellite service in determining whether an area is unserved or underserved but allowing satellite providers to apply for Recovery Act funding.

Based on these current developments in satellite broadband service, we will now consider applications from satellite providers that are certificated as further discussed in Section 3.5 Eligibility to Apply for Grants in this Decision. However, we will not consider as served those areas that have satellite broadband service unless those satellite projects are CASF funded.

3.4. Definitions of Underserved Areas

Under our existing rules, an underserved area is defined as an area where broadband is available, but no facilities-based provider offers service at speeds of at least 3 mbps download and 1 mbps upload. The assigned Commissioner's draft proposal sought comments on revising the definition of an "underserved" area to be where broadband is available, but where no facilities-based provider offers service at combined speeds of at least 10 Mbps.

3.4.1. Parties' Position

Verizon, AT&T and Frontier recommend not changing the speed threshold. AT&T argues that a 10 mbps speed threshold can impede broadband

growth. Verizon argues that increasing the speed threshold would reclassify as “underserved” many areas that currently have a broadband provider offering 3/1 mbps speeds, thereby introducing subsidies to markets that are already served at the expense of funding unserved areas.

TURN, DRA and Spiral Net/Nevada County Connected support the proposed new speeds, however, arguing that the benchmark speeds better reflect the capabilities of broadband networks. Frontier supports a 4 mbps download and 1 mbps upload benchmark, but cautions that some areas may be at risk of not receiving grant applications due to the higher costs to comply with this higher benchmark, unless the grant level increases. Frontier argues that raising the speed requirement may mean the difference between a project being economically feasible or unfeasible.

Small local exchange carriers (LECs) support the use of a combined speed for identifying underserved areas, but argue the benchmark speed should not be based on advertised speeds. Otherwise, an area defined as underserved may be defined as such even if the network infrastructure exists to supply a speed that meets or exceeds the designated threshold. Small LECs argue that the Commission should rely on information from broadband providers about the actual speed capabilities of their networks. If disputes arise regarding the difference between the listed speeds and the speeds that customers actually experience, these issues could be resolved in the context of individual applications.

To ensure that CASF grants do not fund projects where sufficient broadband capabilities already exist, Small LECs propose use of a combined actual upload and download speed of 5 mbps for defining underserved areas, not an advertised threshold of 10 mbps.

Based on data that DRA has gathered, there is a wide variation in costs per household associated with a range of speeds. Thus, DRA urges adoption of a requirement of a minimum speed commitment associated with a per-household cost ceiling in order to better monitor the use of public funds.

AT&T and Verizon propose that mobile wireless broadband be considered for the purpose of determining whether an area is served, unserved or underserved. Small LECs counters that if advanced wireless broadband services are allowed (Verizon's proposal to include 3G and 4G) to test whether an area is "underserved," these advanced wireless services should meet the speed threshold and provide ubiquitous coverage to prove that an area is already served. Small LECs contend that the existence of limited wireless broadband coverage in more populous sectors is not sufficient to make the whole area "served."

Camino Fiber urges the Commission to continue limiting CASF funding to facilities-based services designed to serve fixed premise locations, as mobile wireless internet is a separate and distinct service. Camino Fiber believes that mobile wireless should remain merely a temporary stopgap in areas served by incumbent local exchange carrier (ILEC) wire centers until wireline infrastructure is available to serve to all customer premises with facilities-based broadband and can provide adequate carrying capacity.

3.4.2. Discussion

We adopt a revised speed threshold for underserved areas to require a 6 mbps download and 1.5 mbps upload. This revised speed threshold is an improvement of one tier from the 3 mbps download and 1 mbps upload benchmark in the current program. We also adopt separate thresholds for download and upload speeds, as the existing information on current available speeds distinguishes the download and upload speed.

We had previously considered combined speed of 10 mbps with the intent of approximating the 4 mbps download and 1 mbps upload benchmark target in the National Broadband Plan. This is because actual speeds at that time only delivered approximately 45 – 50% of the advertised speed. However, based on recent findings by the FCC Office of Engineering and Technology and Consumer and Governmental Affairs Measuring Broadband America report, the actual speed delivered exceeds 80% of the advertised speed, i.e., during peak periods, Digital Subscriber Line (DSL)-based services delivered 82% of advertised speed, cable-based-services delivered 93% of advertised speeds, and fiber-to-the-home delivered 114% of advertised speeds.

We adopt advertised speeds of 6 mbps download and 1.5 mbps upload as the benchmark speeds. This is based on an analysis of how the number of households served/underserved/unserved changes, assuming speed tier combinations of at least 6 mbps download/1.5 mbps upload. Using current availability data and the 2010 census numbers at the block level for the calculations, the results for the percentage in each of the 3 categories show that with speeds increased to 6 mbps down and 1.5 mbps up, the underserved

category would increase from .5% to 8.7%, and correspondingly, the served category decreases from 97.3% to 89%, as summarized below:⁸

	3 mbps download/1 mbps upload		6 mbps download/1.5 mbps upload	
	Number	%	Number	%
Available	12,237,906	97.3	11,198,121	89.0
Underserved	62,887	0.5	1,099,883	8.7
Unserved	276,705	2.2	279,494	2.2
Total Households	12,577,498	100.0	12,577,498	100.0

Adopting this threshold as the line between served and underserved moves the bar up one tier in both directions. Thus, we modify the definition of an underserved area as:

An “underserved” area is an area where broadband is available, but no wireline or wireless facilities-based provider offers service at advertised speeds of at least 6 mbps download and 1.5 mbps upload.

3.5. Eligibility to Apply for Grants

In this decision, we also consider whether to revise the eligibility criteria to apply for grants or loans. The Commission, in establishing the CASF in D.07-12-054, limited eligibility for CASF grants to a “telephone corporation” as defined under Pub. Util. Code § 234. CASF funding is thus currently limited to telephone corporations, i.e, entities with a Certificate of Public Convenience and Necessity (CPCN) or wireless carriers who are registered with the Commission, i.e., with Wireless Identification Registration (WIR).

An entity who has a pending CPCN application to provide service as a telephone corporation may submit a request for CASF funding subject to

⁸ Based on analysis from the Center for Economic Development, California State University, Chico.

approval of its CPCN. CASF funding is also available to a consortium as long as the lead financial agent for the consortium is an entity holding a CPCN or a wireless carrier registered with the Commission.

For projects that received funds under the Recovery Act, the CASF provided matching funds of 10% to non-certificated entities as authorized under Assembly Bill (AB) 1555 and D.09-07-020. Roughly 80% of the matching funds are sourced from the Recovery Act, and the applicant is responsible for 10%.

With the Recovery Act funds now fully allocated, entities that are neither holders of a CPCN nor registered wireless carriers are no longer eligible for grants under the CASF. (*See Pub. Util. Code § 281(c)(2).*) Accordingly, in this decision, we address whether entities that are not certificated by or registered with the Commission should be eligible recipients under the Broadband Infrastructure Revolving Loan and/or Grant Account.

3.5.1. Parties' Comments

Several parties argue requiring CASF applicants to obtain a CPCN certificate will create an unnecessary obstacle, thereby limiting the applicant pool, especially reducing the number of smaller providers, and reducing overall the number of viable projects the Commission may fund. One recommendation is to permit any California-registered organization (i.e., nonprofit, government, public company, private company, school system, etc.) to apply for CASF funding because the most logical project applicant to achieve cost-effective deployment of broadband infrastructure in a region may not have a CPCN or be a registered wireless carrier. Amador Tuolumne Community Action Agency and Valley Vision suggest the Commission could require non-carrier applicants to submit an affidavit similar to that utilized for CASF Regional Consortia applicants. Small LECs, however, argue that even if these entities submit

affidavits that they will comply with CASF rules, the Commission will have little legal recourse if these entities do not fulfill grant obligations.

Small LECs argue that the Commission should require that grant recipients be subject to Commission jurisdiction, and agree that non-CPCN or non-WIR holders could partner with a regulated entity.

TURN and DRA suggest that non-CPCN holders be given the opportunity to solicit CASF funding provided that such entities demonstrate the financial, technical and operational capability to successfully construct, operate and maintain a local or regional broadband system and repay any loans received to support the project. However, DRA is concerned that the Commission's jurisdiction may not extend to non-CPCN entities, and has concerns about the associated risks to ratepayers. DRA notes that the application requirements are much more stringent for loan applicants than grant applicants, for example. DRA proposes a Commission review of relevant operational experience and any track record of success by non-CPCN applicants. However, DRA supports extending CASF award eligibility to certain non-CPCN holders only if the Commission adopts more stringent application requirements and transparency provisions.

3.5.2. Discussion

We conclude that existing eligibility requirements restricting CASF grants only to telephone corporations should continue to apply. AB 1555 limited the availability of CASF funding to non-CPCN holders only if these entities were also seeking Recovery Act funding. Since the broadband funding under the Recovery Act has been fully allocated, the opportunity for non-CPCN/non-CPUC registered entities has lapsed. If the CASF program was open from its establishment to non-telephone corporations, there would not have been a need

for the Legislature to enact a separate bill allowing non-CPCN holders to avail themselves of CASF funding in conjunction with their Recovery Act funding.

Our staff's experience with non-CPCN holders has been challenging, with substantial staff time being devoted to help the applicant and/or grantee negotiate the application/grant processes and comply with the conditions attendant to the grant award. However, in spite of the guidance and assistance provided by staff, three applicants decided not to pursue their applications while three approved grants were rescinded as the grantees were unable to secure Recovery Act funding. Given this past experience, we conclude that non-CPCN holders should not be eligible for CASF grants.

In our revision of the CASF Infrastructure Grant program, we introduce new requirements in the application process to identify and eliminate "bad actors" and to ensure that entities that are granted ratepayer monies have the financial and managerial capabilities to construct the broadband infrastructure and operate the facility on a long term basis. Likewise, as most of the CPCN holders also participate in other universal service programs administered by the Commission, it is in their best interest to comply with the conditions attendant to the CASF funding.

3.6. Mapping Information Required from Applicants

As set forth in the August 15, 2011 ACR,⁹ the CASF website will post the most current Broadband Availability maps identifying unserved and underserved areas. The most current Broadband Availability map that the applicant can use in preparing its applications is the CA Broadband Interactive Map on the CASF webpage showing the areas currently served; the existing

providers; the technology available in a particular area, up to street level; the speeds in the areas served; as well as the population in these areas.

3.6.1. Parties' Comments

Sierra Economic Development Corporation (SEDCorp) contends that mapping data resolution to the census block group (CBG) or even census block (CB) level will likely be insufficient to evaluate competing or challenged proposals in a fair manner. SEDCorp thus encourages using greater detail regarding the availability of mapping data (specifically, the designation of served or underserved areas). It requests clarification as to how that data will be used to evaluate project proposals to avoid confusion, frustration, and delay, as was experienced with the earlier program regarding whether a single service in a given area (census block group, census block, etc.) results in that entire area being designated as “served.” SEDCorp recommends that the Commission allow applicants to receive appropriate credit for submitting locally collected data at a finer resolution than census block or street segment in order to “make their case” regarding the new or improved service they propose.

SEDCorp also recommends that applicants submit their assertion of unserved or underserved areas by lists of addresses that are readily mapped with such tools as Google Maps. As stated at the Census Service website, neither the Census Service nor the Postal Service provide cross references between CBGs/CBs and ZIP codes. SEDCorp therefore cautions that such cross references provided by third party vendors may not be accurate due to continual changes to postal routes, etc.

⁹ See ACR Attachment 3, Summary of Changes to the Infrastructure Grant, #5.

3.6.2. Discussion

We recognize that available broadband maps may not precisely reflect the unserved and underserved areas. That is, areas shown as served that are on the fringes of a wire center may not be served at the speeds indicated in the map due to signal degradation and distance from the wire center, as in the case of DSL. However, part of the applicant's submission includes a justification or proof that the area is unserved and underserved. Some grantees under the existing Infrastructure Grant program were able to prove that the area(s) they propose to serve are unserved or underserved by submitting updated maps and/or letters from city/county officials, households and anchor institutions attesting to the lack of broadband service in the proposed area(s) or the low download and upload internet speeds in the area(s), contrary to the information reflected in the Broadband Availability Maps.

We will continue to require applicants to submit shapefiles of their proposed projects so that the proposed area map can be posted on the CASF webpage.

3.7. Estimated Potential Subscriber Size/ Adoption/Affordability Plans and Outreach

3.7.1. Parties' Comments

DRA proposes requiring applicants to submit adoption plans detailing how their proposals will increase broadband adoption and affordability in the areas they propose to serve. DRA recommends the Commission require applicants to explain the steps, discount programs, or other means they will undertake to ensure their estimates are achieved, including marketing and outreach plans. TURN agrees with DRA that addressing affordability and adoption are particularly important. For middle-mile projects, TURN supports requiring applicants to provide a detailed plan showing who will be connecting

to their networks, arguing that middle-mile facilities are crucial to extending broadband to unserved areas, but the Commission should not be funding “the middle-mile to nowhere.”

Verizon opposes the proposals from DRA and TURN, arguing that neither provides new compelling rationale to impose such obligations on program applicants. Verizon argues that the Commission should increase incentives to attract more bidders, not saddle the program with unnecessary burdens.

3.7.2. Discussion

We conclude that the applicant should include a plan to encourage adoption and sustainability of the broadband service in the proposed area. We agree with DRA that the plan should include not only an estimate of the number of customers that the applicant projects will sign-up for service, but also the method of attracting households to sign-up for the service (e.g., marketing plan, outreach, discount programs).

While the consortia participating in the CASF’s Rural and Urban Regional Consortia program potentially can contribute to adoption and sustainability efforts, the applicant should also be able to come up with its own plans towards adoption and sustainability through such avenues as its marketing plan and pricing structures. The consortia can both (a) identify areas where there is no broadband service or where service is available but where broadband speed is less than the benchmark, and (b) assist the grantee in disseminating information on the proposed project and assist applicants in formulating outreach and marketing activities.

We hereby require the submission of an adoption plan as set forth in the adopted guidelines for CASF grant applications in Appendix 1 of this decision.

3.8. Pricing Conditions

3.8.1. Parties' Comments

DRA supports an increase in the CASF funding cap only if the appropriate conditions are imposed on applicants. First, DRA proposes to cap monthly recurring charges for at least two years as a mandatory condition for receiving 40% CASF funding. DRA further proposes that if the Commission increases the funding cap, applicants seeking more than 40% funding should be required to cap monthly recurring charges for more than two years. To accomplish this, a sliding scale could be used with the two-year cap as a minimum standard, incrementally increasing the number of years an applicant's recurring charges are to be capped commensurate with the percentage of project funding requested. DRA believes the Commission should prohibit CASF funding recipients from assessing installation charges or initial service connection fees, regardless of the percentage of matching funds requested.

3.8.2. Discussion

Based on comments received, we will require that monthly recurring charges be fixed for 2 years since the CASF grant will increase from 40% to 60-70%. We will also require applicants to waive installation / initial service connection fees for two years. Thus, the Proposed Pricing conditions will now read:

Proposed Pricing. Proposed (two - years fixed) monthly subscription fee for applicant's proposed broadband service(s). The monthly subscription fee should be the sum of all recurring rates and non-recurring charges (except installation and/or initial

service connection fees) the customer must pay to receive service during the initial two years of service, expressed as a monthly average.

Appendix 1, Section V., 22 Price Commitment Period also provides that: “The required Period of Commitment to which the initial price (listed in Item 21) is applicable for all households within the service area of the project. Minimum price guarantee period for each customer is two years.”

3.9. Financial Eligibility Requirements

It is the Commission’s responsibility to safeguard the use of ratepayers’ monies and to ensure that CASF grants will not result in the construction of an unutilized or uncompleted asset. Thus, to ensure that CASF grants are disbursed only to financially responsible entities, we have included the financial viability criterion in the CASF scoring criteria. The ACR draft proposal included requirements for applicants to submit various financial documents and data to demonstrate applicants’ financial capability.

3.9.1. Parties’ Comments

Frontier recommends that applicants be allowed to submit parent company financial statements since individual subsidiaries may not have audited financial statements. Verizon argues that the proposed financial reporting requirement will eliminate applications for smaller projects. Alternatively, Verizon proposes that this requirement not apply to projects that augment *existing* infrastructure by providing broadband to an underserved or unserved area. For example, Resolution T-17322, which approved a grant for Frontier’s expansion of DSL, is an example of a CASF project that Verizon believes should be exempt from this requirement.

Camino Fiber proposes exempting startups that do not have three years of financial statements. Similarly, SEDCorp supports allowing businesses

to submit financial statements for as many years as the applicant operated, if it has done so for less than three years.

SEDCorp recommends allowing substitution of tax returns prepared by a licensed tax preparer especially for smaller ISPs that do not have CPAs or CPA-audited financial statements.

SEDCorp questions the purpose for requesting annual earnings before interest and taxes (EBIT) projections over five years, especially since complete pro forma income statements are required. SEDCorp, asserts that EBIT is not an effective metric by which to measure the health of a business.

3.9.2. Discussion

We adopt the financial eligibility reporting requirements as set forth in our attached guidelines with certain modifications from the draft version attached to the ACR, as noted below. We discuss the applicable financial documentation and eligibility reporting requirements in further detail in Sec. 4.2.2 below. Similar financial documentation shall be used to evaluate both loan and grant funding requests.¹⁰ To-date in the existing CASF program, the Commission has rescinded several approved projects for various reasons including the applicants' opting out of the project because updated forecasts showed the project to be unviable, the applicants' inability to secure funding for the required 60% match, and -- in the case of CASF/Recovery Act projects -- the applicants' failure to secure Recovery Act funding. The financial requirements that we impose on applicants will hopefully prevent or mitigate this same outcome in the revised Infrastructure Grant program.

¹⁰ See Appendix 1, Attachment B for the CASF Application Checklist.

We will accept financial statements from parent companies in lieu of financial statements from subsidiaries that have no audited financial statements. As discussed further in Sec. 4.2.2., if a parent company financial statement is used to support an applicant's financial viability review, the parent company will be held financially responsible for compliance with the terms and conditions of funds awarded to the applicant. We also recognize that some companies may not have CPA audited statements but have CPA attested financial statements. We will accept CPA attested financial statements in lieu of CPA-audited statements, as reflected in the rules in Appendix 1.¹¹

3.10. Provision for Basic Voice Service Offering

The Commission in D.07-12-054 stated that for purposes of the CASF, basic service is to include any form of voice-grade service, including that offered through a wireless or VoIP service. At a minimum, however, we required that any form of voice grade service offered to satisfy CASF requirements must at least meet FCC standards for E-911 service and battery back-up power supply. At present, we apply this definition of basic service only in the context of carriers seeking to qualify for CASF funding.

¹¹ According to the Auditing Standard Board's Statement on Standards for Attestation Engagements, (SSAE) # 10, attestation standards apply to engagements in which a CPA in public practice is engaged to issue, or does issue, an examination, a review, an agreed-upon procedures report, or an assertion about subject matter that is the responsibility of another party. Attestation standards are an extension of generally accepted auditing standards.

The Commission, in Resolution T-17143, addressed the issue of basic service, as follows:

The Commission reiterates that basic service is not a requirement of CASF. However, applicants must ensure that if voice service (other than basic) is provided, compliance with the FCC's E911 and battery backup requirements are met as discussed infra.

We see no reason for changing this condition.

3.11. Windows for Filing Applications

3.11.1. Parties' Comments

Parties commented on the ACR draft proposal to establish windows for the filing of CASF applications. AT&T supports the use of discreet application windows. Under the process established in Resolution T-17143, providers were required to monitor the Commission's CASF website daily to determine if new applications were posted, making it difficult to schedule the work required to evaluate applications, which had to be done in a very short timeframe (still proposed to be only 14 days). AT&T commends CD's proposal to remedy this problem by establishing transparent application windows for each round of funding. However, it proposes that when Staff review will exceed seven days, Staff should include a notation on the CASF website on Day 7 giving a certain date on which these additional applications will be posted. In this way, all parties will know when new applications will be available for review, and will know exactly when to submit any additional challenges.

Small LECs request more details regarding the application windows described in the ACR proposal, as to whether subsequent windows will commence immediately after the previous window expires.

SEDCorp argues that the disposition of proposals not funded during a given round is unclear. Consequently, it recommends the following re-wording of the Section:

“Projects will be ranked by total score from highest to lowest and funded in rank order to the limit of funds available for that window. Those projects that fall below the funding line for a given window may be resubmitted to the next window for which the project is eligible at the request of the applicant with or without modification/enhancement by the applicant.”

3.11.2. Discussion

We establish separate application window deadlines for unserved and underserved projects, as set forth below.

The first application window shall be for projects in unserved areas. The deadline for filing is April 2, 2012.¹²

The second application window is for projects in underserved areas with broadband service where the existing infrastructure or broadband infrastructure under construction was not partially funded by CASF and broadband speed is less than advertised speeds of 6 mbps download and 1.5 mbps upload. The deadline is July 2, 2012.

The third application window is for projects for underserved areas with broadband service where the existing infrastructure or broadband infrastructure under construction was partially funded by CASF and broadband speed is less than advertised speeds of 6 mbps download and 1.5 mbps upload. Applications under this window will only be entertained three years after the

¹² Applications requesting combined funding from the CASF grant and loan accounts will be processed contingent upon the implementation of the CASF loan program.

start of broadband service of the original CASF funded project. Deadline: October 1, 2012.

To illustrate: applications for unserved areas will be received up to April 2, 2012 and will be evaluated according to the criteria adopted. However, an application submitted after April 2, 2012, will be received but will not be evaluated at the same time as the April 2 submitted applications; it will be considered and evaluated together with applications for unserved areas that are submitted in the second round application window for unserved areas, if another round is opened. This same process will be followed for application windows 2 and 3. The dates specified are, therefore, absolute deadlines.

If an applicant submits an application for an unserved area within the deadline but the application is incomplete and the applicant fails to provide CASF staff with the required information or clarification needed in the evaluation of the project, or if the applicant fails to submit the required information or clarification in a timely manner, its application will be held and staff review will continue during the second round application window for projects in unserved areas. This process will be the same with respect to underserved applications where the applicants fail to timely provide the required documentation/clarification.

Applications submitted on the specified deadline dates will be evaluated, and funding approved based on the evaluation of their proposals in accordance with the schedule in the table on page 17 of Appendix 1, Sec. VI, "Submission and Timelines." The deadline for submit funding requests for each respective window period is identified in the Appendix 1 table as "Day 1."

We concur with AT&T's suggestion that in cases where application information cannot be posted within the seven days established in this decision

because staff is waiting for clarification or needs further information from the applicant(s), staff will include a notation on the CASF website on Day 7 giving a certain date on which these additional applications will be posted.

3.12. Evaluation of Challenges

3.12.1. Parties' Comments

Frontier asks the Commission to provide sufficient information to an applicant in the event that its proposed project is challenged as not being in an unserved or underserved area. Frontier asserts that the applicant should be provided the name of the parties challenging the application and the opportunity to refute those parties' claims. Frontier's experience with the challenges is that the maps are not provided at a low enough level of granularity to provide sufficient information regarding another provider's coverage. When a challenge is made, the applicant should be given the opportunity to verify on its own if alternative coverage is available from another carrier.

SEDCorp supports the Commission's intent to process grant applications within little more than three months, but seeks greater clarification. If challenges to project proposals are to be allowed, SEDCorp strongly recommends that the Commission specify the process and criteria for submittal and evaluation of such challenges in substantial detail. Further, it strongly recommends that the challenger bear the burden of proof for any challenge.

3.12.2. Discussion

We will maintain the current process for challenging an application as to the area being unserved or underserved, as posted on the CASF website FAQ page. It states:

Q: How will challenges to unserved vs. underserved/served areas be reviewed?

A: Any party that challenges a CBG as being served or (for applications for unserved areas) underserved will have to provide documentation that the CBG is in fact already served (e.g., a copy of a customer bill). Commission Staff will then investigate this information, along with the applicant's documentation supporting its assertion that the CBG is unserved. Once Staff makes a final determination, we will notify the applicant of our determination.

If Commission staff determines the challenged CBG to be "served" (for applications for unserved areas) or not underserved (for applications for underserved areas) staff will reject the application. The applicant, however, has the option to submit a modified application in subsequent application rounds, either for the same area (provided that the parts of the CBG that are not "unserved" or underserved are omitted from project cost and budget considerations) or for only those parts of the CBG that are unserved or underserved.

Entities who challenged applications submitted in the existing program must submit maps of their service area(s) as well as addresses to enable CASF staff to verify that the area(s) are already served and not underserved.

We agree with Frontier's recommendation and the necessary clarification is now reflected in Appendix 1, Section VI – Submission and Timelines.

3.13. Fitness Requirements

The ACR draft proposal included an Information Sheet attesting to the fitness of the applicant. In order to receive funding, the applicant must aver that "neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally

appointed, has been sanctioned by the FCC, or any state regulatory agency for failure to comply with any regulatory statute, rule or order, or convicted by any court for any criminal activity.”

3.13.1. Parties' Comments

AT&T and Frontier claim that the proposed fitness disclosures are excessively restrictive and unnecessary. AT&T asserts that the language is too broad, and if taken literally, would exclude from the CASF program every telecommunication company that has ever been sanctioned by this Commission or the FCC.

DRA, however, argues that requiring CASF applicants to state whether they have been convicted of criminal activity or sanctioned by the FCC or a state regulatory agency for failing to comply with the law is not overly restrictive. DRA recommends that the application also instruct applicants to provide details of such sanctions or convictions in order to better assist the Commission in determining which applicants may be “bad actors” or otherwise untrustworthy.

SEDCorp argues that the Commission should adopt the financial industry standard for seeking such declarations and personal financial information, which targets those with a 20% or larger ownership position. The requirement for such data and assurances from those with only a 10% ownership position may become unnecessarily burdensome on both the applicant and the Commission.

Camino Fiber argues that the reference to “broadband only is vague and unclear, particularly given that multiple advanced telecommunications services are delivered via Internet protocol or what is popularly described as

“broadband.” In addition, this item directs applicants to “see instruction 6.” Such instructions are not contained in Appendix A.

3.13.2. Discussion

We shall retain the requirement that applicant must attest as to whether the applicant has ever been sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or convicted by any court for any criminal activity.

The public has a right to know whether an applicant has been convicted for any criminal activity or has failed to comply with any FCC or state statutes, rules, or orders. This information is relevant, in assessing fitness of an applicant. Thus, we require applicants to attest as to whether any such sanctions were imposed within the last 10 years. We adopt the 10% ownership position as a threshold for completing this attestation requirement. This is also the requirement for CPCN applicants. Appendix 1, Attachment A (Pages A-4 and A-5) includes the instructions for completing the information sheet.

3.14. Scoring of Applications

In Resolution T-17143, the Commission adopted criteria for (i) handling multiple competing applications covering the same area, and (ii) ranking projects to allocate the CASF funds if the total amount applied for exceeds \$100 million (the amount available from the CASF). We now address whether we should modify the scoring criteria or weights used to rank projects. We also address whether the criteria should include an industry standard cost and/or a ceiling cost per household, and if so, how they should be determined, and whether they should depend on the proposed technology.

3.14.1. Parties' Comments

While parties offer a wide range of recommendations to consider or exclude when evaluating, the suggestions share some common themes. Many participants expressed their desire to ensure that similar applicants be compared against each other so that the formula was not weighted in favor of certain types of projects (for example, rural, low-population density projects might be at a disadvantage). Small LECs suggest that the formula consider "household served" rather than pure geographic scope as the criterion. Amador Tuolumne Community Action Agency, Valley Vision and DRA each agree on the need to include cost effectiveness in comparing projects. Small LECs support including a measure of the projects financial viability. Amador Tuolumne Community Action Agency, Valley Vision and CENIC all propose rewarding applications that provide or improve Internet access to schools, libraries, hospitals and other anchor institutions.

3.14.2. Discussion

We see the merit in the Small LECs' suggestion and will use number of households in the service area in lieu of service area (in square miles) for scoring. The number of households reflected in the application should be the total households in the area, not the potential customers or households based on the take rate.

Because we recognize the important role broadband plays in anchor institutions such as schools and libraries, an additional five bonus points will be awarded to an applicant who is able to secure letters of endorsements from local government and community organizations.

Broadband as a social benefit is difficult to quantify and would require applicants to submit a cost-benefit analysis. Considering that we have

already imposed new requirements to ensure the viability of the project, we do not consider this a critical factor in the process. The fact that the Legislature directed the Commission to establish the CASF and that the Commission did so demonstrates the importance of broadband service in not only the economic but also the social environment.

In D.11-06-038, we did not include the evaluation of CASF applications as one of the functions of the Consortia Grant Account. Staff, however, may ask the consortia to provide information for purposes of verifying applicants' declaration of the area as being served or underserved or for verifying data relating to the number of households, among others.

3.15. Confidentiality of Information/Transparency

Under the current process for handling CASF applications (established in Resolution T-17143), the Commission only posts CBGs and maps of proposed areas on the CASF website. This information gives the public and other carriers the opportunity to challenge the areas proposed for CASF funding and gives other qualified entities the opportunity to submit counterproposals. However, the identity of the applicant and the technology proposed are not posted. The Commission withholds this information to provide confidentiality for aspects of an application that may be competitively sensitive. (See D.09-07-020 at 9, footnote 6.) Only when staff issues the draft resolution for public comment are the full contents of the application -- i.e., identity of the applicant, the technology proposed, and other information submitted pursuant to Resolution T-17143 -- made available.

3.15.1. Parties' Comments

AT&T and Frontier assert that all CASF application materials except the Information Sheet should be confidential. When applying for a loan or grant,

CD requires applicants to disclose and make public sensitive business information including the proposed pricing of the broadband deployed; length of pricing commitment, and proposed project budgets. Because of the confidential nature of this information, applicants may be dissuaded from taking advantage of the CASF program. To prevent this unintended outcome, they argue that CD should disclose only the “Information Sheet,” since that sheet does not contain any confidential information or trade secrets. The filed Information Sheet will provide information sufficient to allow broadband providers to decide whether to challenge a project, and will give the public constructive notice of proposed projects. Posting only the filed Information Sheet should satisfy CD’s desires for openness and transparency, while at the same time preserving an applicant’s need for confidentiality.

TURN supports the changes in the proposal that would require identification of the applicant’s name as well as requiring Staff to disclose the information that drives the scoring and ultimate selection of grantees. TURN urges the Commission to continue to explore ways to make even more information available to the public, especially to those consumers and organizations residing within the contemplated area being considered for a CASF award.

DRA continues to propose a fully transparent process and recommends that the Commission adopt, in whole, the following procedures:

- Applicants should be required to serve their applications on the service list for this proceeding, and the Communications Division should use its “TD_AR” email list to forward applications more broadly; those served should be allowed to submit comments on applications in accordance with the Rule of Practice and Procedure 2.6 before the

Communications Division issues its Draft Resolutions. Once an application is filed, the public should have written notice and an adequate opportunity to comment on the applicant's identity and ability, plan, the type and location of the project, speeds, project cost, and projected rates;

- The CASF website should also contain information that is sufficiently detailed to allow an evaluation of whether a project should or should not be challenged. The website should reveal how projects were evaluated, scored and ranked by the state decision makers;
- The Commission should make audit data of each funding recipient available so that the public is allowed to comment on audit reporting; and
- Applicants should notify the community of the area where the applicants are seeking funds and inform the community that an application has been submitted to the Commission to provide broadband services in that area. Applicants should seek and encourage dialogue with the local government (and agencies) and the residents of the community. If the proposed scoring criteria are adopted, DRA supports the addition of "bonus points" for including letters of community support for the proposed project.
(At 5-6.)

The Small LECs request that the Commission further clarify the confidentiality standards for information in the application. The Small LECs agree with DRA's perspective that the materials in CASF applications ought to be public to the greatest extent possible without compromising sensitive competitive data. However, given the numerous additional items included in the proposed application, AT&T also raises valid concerns that some of the information requested is competitively sensitive. To provide clarity to the applicants, the Commission should make clear which specific types of items will

be subject to public disclosure. The Small LECs agree with DRA that the public and potential providers affected by proposed projects should have “information sufficiently detailed to allow an evaluation of whether a project should or should not be challenged. The Small LECs further propose that the information include name of provider, technology employed, the specific areas claimed to be unserved or underserved, and the speed target the applicant proposes to meet.

3.15.2. Discussion

The posting of application information is meant to serve as a basis for interested parties to challenge the application as to the area being unserved or underserved. The Information Sheet in Appendix A of Attachment 2 of the ACR does not provide this data. We note that some information in the application appears to be confidential as it contains location of existing infrastructure and routes, which may pose security concerns, as well as marketing plans which may impact the applicants’ revenue stream.

On the other hand, we also recognize that the National Telecommunications and Information Administration’s (NTIA) and the Department of Agriculture’s Rural Utilities Service’s (RUS) disclosure of application information in their public website did not appear to discourage applications for Recovery Act funds.

Thus, we will adopt the information disclosed by the NTIA/RUS in addition to the information we currently disclose on the CASF webpage. The information available to the public will include:

- Applicant’s name;
- Contact person;
- Project title;
- Proposed project and Location (Community/County);

- Project Type (Last Mile or Middle-Mile);
- CASF Funding requested (Amount of Grant/ Amount of Loan);
- Description of the Project;
- Map of the Proposed Project;
- List of Census Block Groups; and
- List of ZIP codes.

We will require applicants to submit this summary with their application. The summary submitted by the applicant will be the information posted on the CASF webpage. Having the applicant prepare the summary for posting removes the burden on staff of determining which portions of the application are deemed confidential. We expect the applicant to work closely with the local government units and community organizations to disseminate this information in the proposed area as part of their marketing and outreach plans. The consortia in the area can also assist in this endeavor.

We will also require the applicant to submit applications as follows:

- Electronically to CASF;
- A hard copy of the application to be mailed to CASF;
and
- A hard copy of the application to be mailed to the
Division of Ratepayer Advocates.

Appendix 1, Section V includes a new item, the submission of a Project Summary. Section VI, Timeline and Submission, is revised to include the submission of a hard copy of the application to the DRA.

3.16. Open Access and Net Neutrality Requirements

3.16.1. Parties' Comments

TURN and DRA argue that the Commission should require that advanced networks constructed with public money be subject to net neutrality and open access requirements consistent with the requirements applied to infrastructure projects receiving funding from the Broadband Technology Opportunities Program (BTOP). Camino Fiber concurs with this assessment. DRA notes that while it is unlikely that more than one provider will emerge to serve remote rural areas with few potential broadband customers, it both defies logic and is counter to the public interest for the Commission to forego the opportunity to require CASF recipients to share their networks where technically feasible. In addition, DRA expects providers to operate in a nondiscriminatory manner and manage the network with transparency.

Small LECs, AT&T and Verizon disagree with the position of TURN, DRA and Camino Fiber. AT&T and Verizon argue that the requirements TURN and DRA propose would saddle the program with unnecessary burdens and discourage carriers from applying for CASF grants. Small LECs argue that even when a CASF grant has contributed to the cost of the facilities / infrastructure, the applicant still owns the facility once it is built. The facilities are not “public” in the sense that they will be owned and managed by the government, even if a government program may have contributed to its construction. Small LECs add that “net neutrality” is an issue that is still being addressed at the federal level, and refers more to a generic set of non-discriminatory commitments regarding the content traveling over broadband-capable facilities. To the extent that the Commission wishes to impose open access and net neutrality, it should be limited to the principles that were included in the recent Recovery Act grants.

3.16.2. Discussion

We decline to implement any open access rules at this time. One of the reasons for the broadband availability gap is service providers' reluctance to provide service in an area because they cannot earn enough revenues to cover the cost of deployment. The CASF provides a portion of the infrastructure cost to reduce the capital costs to be provided by the service providers, thus enabling them to earn a reasonable return on their investment.

While the idea of network sharing may be attractive in theory, in reality it is a complex issue and a complicated undertaking. First, the CASF only provides infrastructure cost not operating or maintenance costs after construction. Opening the CASF-funded network to competitors would dilute the grantees' revenue stream and possibly cause the CASF-funded project to fail. There is a complex administrative component as well: the Commission would be put in the position of regulating the rate service providers charge each other. Moreover, we note that the FCC is addressing broadband at the federal level.

While the Commission may revisit this issue in the future, we note that nothing prohibits a service provider from leasing its own network to another carrier.

3.17. Reduction of CASF Grant Disbursements

3.17.1. Parties' Comments

DRA seeks clarification on the sentence in the ACR "...If the applicant(s) is unable to complete the proposed project within the 24-month timeframe, it must notify the Commission as soon as it becomes aware of this prospect. Payment may be reduced for failure to satisfy this requirement." DRA argues that clarification is needed regarding which requirement is subject to the payment reduction – the requirement to complete within 24 months or the

requirement to notify the Commission as soon as the applicant becomes aware that the deadline will not be met?

If it is the former, DRA believes this conflicts with statement on page 23 of the ACR, which says payment “will be” reduced if 24-month deadline is missed. DRA seeks clarification and details about the implications of projects that are not completed within 24 months, and as to the administrative mechanism by which awards will be reduced or terminated. Since project approval is granted by Commission Resolution, will it be necessary to go through the Resolution process in order to terminate or reduce previously awarded funding, or should the Commission delegate administrative authority to do so to the Director of the Communications Division?

3.17.2. Discussion

We require the applicant to inform the Communications Division if the project will not be completed within the completion date approved in the funding resolution. We note that projects may be delayed due to permitting requirements outside the grantees’ control.

We will modify Appendix 1, Section XI as it pertains to this issue as follows:

In the event that the recipient fails to notify Communications Division of any delays in the project completion and the project fails to meet the approved completion date, the Commission may impose penalties via a resolution.

4. CASF Revolving Loan Program

SB 1040 expanded the CASF to establish the Broadband Infrastructure Revolving Loan Account. Pursuant to Pub .Util. Code § 281(e), funds in the Loan Account “shall be available to finance capital costs of broadband facilities not funded by a grant from the Broadband Infrastructure Grant Account. The

Commission shall periodically set interest rates on the loans based on surveys of existing financial markets.”

The Commission will disburse funds from the CASF Loan Account only as supplemental financing for projects that are also applying for funds from the CASF grant account. The CASF loan account will cover a percentage of the project’s total costs that are not funded by the grant account. Funds in the loan account will not be used to finance stand-alone projects not funded by the grant account.

4.1. Loan Eligibility Requirements

As previously noted, the purpose of the Loan Account is to finance capital costs of broadband facilities not funded by a grant from the Grant Account. SB 1040 established the Loan Account as an additional option for funding supplemental to the Grant Account. Therefore, we hereby establish the Loan Account within the CASF Program as a supplemental funding venue for qualified projects and applicants under the Grant Account and not as a sole source of funding to a project.

We adopt updated applicant and project eligibility criteria for the Grant Account for purposes of qualifying for the CASF loan account. Appendix 1 of this decision outlines the eligibility requirements.

Applicant and project eligibility requirements for the CASF infrastructure grant account and loan account will essentially be the same since both accounts are specifically used to finance capital costs of broadband facilities. Adopting one set of requirements for both accounts will provide an efficient and simplified way for applicants to submit an application and avoid complications in determining what is needed for each type of funding. The Commission will award funds from the Loan Account only as supplemental financing for projects

also applying for funds from the Grant Account. The maximum percentages of project costs to be funded are set forth in Section 3.1.1 above.

4.2. Financial Statement Requirements

In setting up the financial eligibility criteria for applicants, it is the Commission's responsibility to lend to entities that are capable of repaying its loans. Applicants will be required to provide specific financial documents as listed below.

A. CPA-Audited Financial Statements for the last three years, to include:

- Balance Sheet
- Income Statement
- Statement of Cash Flows

B. Pro Forma Financial Forecast over the life term of the loan (i.e., 5 years) that includes a list of assumptions supporting the data. For projects applying for a grant only, the pro forma financial forecast will be over 5 years. Future projections must include the following financial statements:

- Balance Sheet
- Income Statement
- Statement of Cash Flows

C. Annual Earnings Before Income and Tax (EBIT) projection over 5 years.

D. Schedule of all outstanding and planned debt.

E. Collateral documentation, including depreciation schedule.

4.2.1. Parties' Comments

Frontier comments that for applicants that are part of a larger corporate entity, submission of parent company financial statements should be

applicable since individual subsidiaries may not have audited financial statements.

Camino Fiber comments that requirement that the applicants provide CPA audited financial statements for the last three years should be dropped as it would be impractical for startup infrastructure providers. Instead, the requirements should be for current financial statements and, if available, for the prior two years.

Verizon states that the proposal to require financial reports and projections for all projects will likely eliminate applications for smaller projects. Verizon recommends that it be eliminated. They believe this requirement should not apply to projects that augment existing infrastructure to provide broadband to an underserved or unserved area (e.g., Resolution T-17322 which approved a grant for Frontier's expansion of DSL is an example of a CASF project that should be exempt from this requirement).

SEDCorp questions the purpose of requiring annual EBIT projections over five years, especially since complete pro forma income statements must be submitted. SEDCorp claims the use of EBIT as a measure of the financial health can be misleading, especially for technology companies. SEDCorp recommends that applications simply be analyzed to determine their ability to repay debt and to demonstrate a minimum Debt Coverage Ratio of 1.5 for the life of the loan.

SEDCorp also claims that a requirement for 20% equity at the start of a project will not necessarily "ensure" the financial sustainment of an applicant. Cash flow services debt while equity secures the debt, and that greater focus should be placed on analyses of the income and cash flow statements. Camino Fiber believes that the 20% equity requirements should be sustained throughout

the loan. AT&T agrees that the 20% equity requirement should be sustained throughout the term of the loan.

4.2.2. Discussion

We agree that if an applicant is a subsidiary without any audited financial statements, the applicant may submit audited financial statements for its parent company. If the financial statements of the parent company are used in the financial viability review of the subsidiary, however, the parent company will be named in the loan agreement and identified as a financially responsible party for the subsidiary. We acknowledge Camino Fiber comment with regard to start-ups and the availability of CPA-audited financial statements for the last three years. If a newly-formed or start-up entity is applying and does not have CPA-audited or attested financial statements for the last three years, the applicant must provide CPA-audited or attested financial statements for as long as the applicant has been in business.

Earnings before interest and taxes (EBIT) represent an applicant's ability to generate income on their operations which becomes important in determining the financial strength of the applicant and its ability to repay a CASF loan. We shall thus retain the requirement to report EBIT. The EBIT shows how much operating income (before interest and tax expenses) a company has in any given reporting period.

As a related measure of an applicant's ability to service its debt and to repay a CASF loan, we shall also evaluate its Times Interest Earned Ratio (TIER). The TIER is defined as: $EBIT / Interest\ Expense$. The TIER indicates how many times an applicant's earnings can cover its interest expense on a pre-tax basis. We shall require that the applicant to maintain a minimum 1.5 TIER through the life of the CASF loan.

We also impose a 20% equity requirement to help ensure that loans are made to financially viable companies that are capable of repaying the loaned amount in full.¹³ The applicant must demonstrate 20% equity requirement at the time of application and at loan closing. Many parties support retention of the 20% equity requirement. The applicant must sustain the 20% equity requirement throughout the life term of the loan; e.g. five years.

The 20% equity and 1.5 TIER requirements provide a high-level screening of an applicant's financial position and ability to manage the debt servicing of the loan. An applicant must meet the minimum TIER of 1.5 through the life term of the loan. As a general rule, when a company's time interest earned ratio is lower than 1.5, a lender should question its ability to meet interest expenses. If the ratio falls below 1, the company is not producing earnings to cover its interest expenses.

The statement of cash flows combined with all other financial information provided will be used to conduct a detailed financial evaluation of the applicant's financial ability to repay a loan.

The Commission may also ask for documentation of the applicant's outstanding loans, including all loan agreements and security agreements.

The applicant must list and identify all assets used as collateral to secure the loan. The applicant must also include a depreciation schedule that shows the economic life of each asset, equipment, and or facility that is being used as collateral for the loan only.

¹³ Equity equals total assets minus total liabilities in the applicant's balance sheet.

If the financial evaluation requires more information from the applicant that will assist in determining their financial viability, the CD and/or the partnering agency servicing and underwriting the loan will request such additional information (e.g., tax returns).

4.3. Qualifying for Multiple Loans

We adopt parties' recommendation to allow an applicant who has an outstanding CASF loan to apply for a new loan as long as all outstanding CASF loans are current and in good standing. Applicants may have the resources and ability to carry out several projects at the same time.

The financial eligibility requirements set forth in this decision, such as the required TIER of 1.5, will naturally take into account any outstanding loans and therefore mitigate the risk of lending to parties that cannot manage their debt.

4.4. Loan Duration

Setting a fixed repayment period on the loan requires an understanding of the average life of broadband technology and a consensus on how long we ideally want to finance a loan. We set a loan repayment period of 5 years as a cap for the loan term since it provides a long enough term for repayment while remaining within range of the economic life of the equipment being funded.

4.4.1. Parties' Comments

DRA requests clarification on how Commission staff developed the proposed five-year repayment period.

SEDCorp. comments that in keeping up with financial industry standard practice, they recommend tying the repayment period for any loan to the intended purpose for those funds. It is possible that some loan applications can result in amortization periods of less than five years, and provision for such

shorter terms should be made. SEDCorp. also comments that specification of the loan duration begs clarification of the intended life of the loan program. Though the term over which the fund will be initially capitalized is specified in SB 1040, the intended life of the loan program is not specified. They recommend the drafting of additional language that addresses the long-term intent for the loan fund and its consequential management. Much greater detail is needed in the loan guidelines in order to manage the relationships with applicants and borrowers over the entire life of each loan and the continued life of the revolving loan fund.

The Small LECs support DRA and state that the Commission should supply additional details regarding the loan duration and funding availability limitations.

4.4.2. Discussion

We set a maximum loan repayment term of five years since it provides a sufficiently long period for repayment while remaining within range of the economic life of the equipment being funded. Extending a repayment period to more than five years will deplete funds from the account due to a longer duration of repayment of those funds as well as a longer duration of accrued administrative costs to service the loan. A repayment period of more than five years will also constrain the available funds in the revolving account otherwise available for future lending; borrowers repaying the loan in a reasonable amount of time will allow for those funds to become available for lending to finance future projects.

In response to SEDCorp.'s inquiry on the duration of the loan program overall, we note that SB 1040 does not set a cutoff date for the CASF program. SB 1040 states that the collection period starts on January 1, 2011 and

continues through 2015. SB 1040 states that “this bill would extend the operation of these provisions indefinitely.” At this time, an awarded loan will have a loan duration term of five years. A borrower can repay without any pre-payment penalties if it decides to repay in full or at an accelerated rate during the loan term. The Loan Account is a revolving account and therefore monies in the account will become available for lending as outstanding loans principal and interest are paid. Appendix 2 sets forth the details of the loan account and guidelines to applicants.

4.5. Loan Amount Maximum and Minimum

Based on historical data, the minimum CASF grant approved by the Commission has been \$2,420 with a maximum grant approved for \$19,294,717. The range is wide and based on how much money a project requests. The Loan Account is expected to collect a maximum of \$3,000,000 per year over five years, totaling \$15,000,000.

Taking these assumed set amounts into account, we shall require that no individual loan exceed 20% of the available funds in the CASF account. For example, if the loan account in year one has an available fund balance of \$2.5 million, 20% of \$2.5 million is \$500,000. A single loan cannot be greater than \$500,000. We do not adopt a minimum loan amount since our mission is to finance eligible broadband projects in California to expand broadband infrastructure to unserved and underserved areas.

DRA seeks clarification on how parties will know how much is left in the account in order to estimate whether their proposed project would be 20% or less of the entire revolving loan account, which is not to exceed \$15 million over five years. Rather than expecting applicants to calculate 20% of the available funds, we direct CD staff to periodically review and monitor the CASF loan

account balance and communicate what the maximum loan amount for a single loan will be.

The current cap will allow for multiple applicants to access funds from the loan account and avoid the situation of one loan encumbering all available funds in the account. If and when the loan account grows, CD staff will revisit the currently set maximum loan amount and recommend its resetting as appropriate. The Commission will approve any increase in the maximum loan amount via resolution and post the revised maximum loan amount on the CASF website.

4.6. Loan Security

Collateral, such as equipment assets will be required as security for the loan. The loan will be 100% secured. As part of the application, the applicant must include a collateral document that lists and identifies all assets that will secure the loan. The applicant must also submit a depreciation schedule that shows the economic life of each asset, equipment, and facility that are being used as collateral for the loan amount. The collateral identified as security for the CASF loan must not be used as collateral on any other outstanding or future loan. The Commission may require the borrower to execute a security agreement with the Commission.

4.6.1. Parties' Comments

The Small LECs comment that the Commission should not categorically forbid companies from offering assets that are used to secure other loans. This rule would likely prevent all of the Small LECs from participating in the loan aspect of the program, as most if not all of the Small LECs have already encumbered all of their assets with Commission approval as security for their Rural Utilities Service (RUS) loans. Small LECs rely extensively on RUS loans for

their debt needs, and the RUS requires that borrowers secure RUS loan with all of their telephone company assets. The value of the assets encumbered is not necessarily equal to the amounts borrowed from RUS, but the security is nevertheless a requirement of the RUS. The CASF rules should permit the partnering government financial agency to determine an appropriate security for CASF loan that takes into account all relevant outstanding loan obligations. The Commission shall permit second mortgages to be taken on assets used to secure RUS loans, as long as the total amount to be borrowed does not exceed the total value of the assets encumbered.

SEDCorp. in its reply comments support the Small LECs' observation that the assets of many of their members are already encumbered for RUS loans. It argues that there is a clear need to reevaluate the requirements for the collateralization of CASF loans.

4.6.2. Discussion

As a general rule, the collateral identified as security for the CASF loan must not be used as collateral for any other outstanding or future loan. However, we acknowledge Small LECs' concern that they rely extensively on loans from the United States Department of Agriculture's RUS, and that RUS requires its borrowers to secure RUS loans with all of the borrower's telephone company assets. Therefore, we set forth this exception to the general rule above: we will allow CASF loan account applicants to use as collateral assets already used to secure a RUS loan or loans, as long as (1) the total amount borrowed/to be borrowed -- that is, the amount of the outstanding RUS loan(s) plus the amount of the potential CASF loan -- does not exceed the total value of the assets encumbered, and (2) the Commission is able to and does enter into an agreement with RUS where both RUS and the Commission have a first lien position on all

identified collateral based on the amounts of each loan. The depreciation schedule that shows the economic life of each asset, piece of equipment, and facility that is being used as collateral for the CASF loan amount must show (1) the value of each asset that is used to secure the RUS loan(s) and (2) the value used to secure the potential CASF loan. We remind applicants that, as a general rule, the CASF loan can be secured by the assets purchased with the CASF loan funds as well as all other assets that are not used as collateral for other loans.

4.7. Loan Closing

Once a loan is offered and approved via a Resolution, the borrower must sign a loan agreement that contains all the terms and conditions of the loan. If the required parties do not sign a loan agreement, the Commission will not execute the loan and will revoke the loan offer. The borrower cannot withdraw funds without a signed loan agreement in place.

The loan agreement document to be signed by the borrower must include all the loan terms set forth in the decision; such as the amount of the loan, the interest rate, the loan duration, security, fund disbursement, repayment, late payment, and default. Just like any loan documents, the borrower will have the chance to read and review the loan agreement document before signing it.

4.8. Loan Fund Repayment

The ACR proposed repayment terms as follows. The borrower will make all payments on the loan as detailed in the signed loan agreement. Repayment can begin as soon as funds are withdrawn by the borrower. Interest will begin accruing when the first withdrawal of funds is made. It is yet to be determined if repayments will be made on a monthly, quarterly, or annual basis over the term of the loan. Repayments will include interest plus principal on withdrawn funds, amortized over the term of the loan. If repayments are not

received as specified in the loan agreement within five business days after the due date, a late payment charge will be added to the amounts due under the terms of the loan. A loan can be repaid in full at any time during the set loan term; no prepayment penalty will apply.

4.8.1. Parties' Comments

DRA recommends quarterly repayments. Monthly payments would create too much administrative expense, while annual repayment would be too risky, unless an escrow account process is set up for applicants to make incremental deposits and avoid falling short on their total annual payments.

SEDCorp. is unclear whether the proposed repayment process is intended to allow for deferment of payments during the construction period. Most, if not all, project proposals will be dependent on at least part of the revenues to be generated by the connections made as part of a new infrastructure expansion. SEDCorp. recommends clear wording be added to allow for this possibility. They further recommend specification of the "late payment charge" and the insertion of the words "in part or" before the words "in full" in the last sentence.

4.8.2. Discussion

We shall require that loan repayments be made on a monthly basis. Since each loan will be unique in its date of disbursement, a quarterly payment would differ for every loan and add to the cost of administering each repayment. A monthly repayment allows for simpler administration of all loans in that we will know exactly when all loans are due and when late fees apply. Also, a monthly repayment will allow for funds to revolve at a faster pace and become available for re-lending to future applicants.

Repayment on a loan will not allow for deferment of payments (such as payment on principal) during the construction period of the funded project. Repayment on a loan will begin the next immediate month following the withdrawal of any funds. Repayment will include interest plus principal amortized over the term of the loan; i.e. five years. Any subsequent withdrawals will be added to the balance due of the loan and subsequently amortized over the remaining term of the loan. We further emphasize that a loan can be repaid in full or at an accelerated rate during the set loan terms and no prepayment penalty will apply.

With regard to comments on the late-payment charge, the decision adopts the concept of applying a late payment charge if a borrower is late on their monthly payment. The late payment charge amount will be part of the loan agreement document signed by the borrower.

4.9. Role of Loan Partnering Agency

The ACR draft proposal indicated the Commission would select a partnering government agency to assist in performing the financial eligibility review of applicants. The Commission's Communications Division will conduct the technical project eligibility review of applicants but will require the partnering agency to perform the financial eligibility review and loan servicing piece. It is yet to be determined what the total cost to the applicant will be when filing a loan application. It is expected that a reasonable application fee will be charged to loan applicants. The fee could be a fixed amount or a small percentage of the loan amount that the applicant is seeking.

4.9.1. Parties' Comments

Camino Fiber comments that the role of the "partnering governmental agency" needs to be explained. The Small LECs inquire on which

“partnering government financial agency” would be appropriate to review financial viability in connection with CASF loan applications. The Small LECs believe that choosing the right agency and developing clear guidelines to define the relationship with the Commission will be critical to the success of this aspect of the program.

SEDCorp. comments that use of the word “government” implies the intended use of a public entity and begs the method and criteria by which such an entity has or will be selected. SEDCorp. recommends full disclosure as to the proposed approach to administration of the loan program including services to be provided, qualifications of the service provider, and cost and that a procedure be established to select the service provider from the private sector per a standard, open competitive process. Recognizing that the Commission is in the utility business rather than the financing business, this means that the Commission should turn to the best source of information and assistance for design and execution of a financial program, the private financial sector. SEDCorp. further supports the Small LECs’ and Camino Fiber Network’s call for greater clarity about the intended identity, responsibilities and authority of the “partnering government agency.”

SEDCorp. also comments that the brief treatment of the application fee is insufficient to gain a clear understanding of its purpose, use and amount. SEDCorp. strongly recommends that additional wording be added to clarify these points and what happens to the fee if an application is not approved.

4.9.2. Discussion

The Commission does not have an in-house loan servicing and underwriting unit. Thus, the Commission must find another entity with the staff and tools already in place to perform such services. We first look to other public

entities consistent with Section 2.04 of the State Contracting Manual, which states that we should identify the need of the service and evaluate the contract alternatives. If we can obtain the services from the public sector, we will work to partner with an existing public entity to assist in the underwriting and servicing of awarded loans. If we are unsuccessful in partnering with a public entity, we will explore additional options consistent with the State Contracting Manual, including the competitive bidding process.

Loan applicants will pay a reasonable application fee and/or other fees. The application fee could be a fixed amount or a small percentage of the loan amount the applicant is seeking. Fees associated with a loan application will be proposed and approved via a Commission resolution. If the Commission does not approve an application, the application fee for that loan will not be returned to the applicant.

5. Comments on Proposed Decision

The proposed decision of Commissioner Peevey in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. Pursuant to SB 1040, the Broadband Infrastructure Grant and Revolving Loan Accounts provide appropriations for grants and loans to cover the cost of broadband deployment activities as specified by the Commission.

2. Ubiquitous deployment of broadband holds tremendous opportunities for consumers, technology providers, and content providers, and is important to the continued health and economic development in California.

3. The Commission previously adopted measures in D.07-12-054 to implement the CASF infrastructure grant account program to promote advanced communications services within California.

4. In view of the expanded funding for broadband grants and new funding for revolving loans authorized by SB 1040, the Commission undertook to revise the applicable rules for the award and disbursement of CASF grants and to establish initial rules for the newly established CASF revolving loan program.

5. The rules set forth in Appendix 1 and Appendix 2 to this decision provide a fair and effective set of measures to implement the purposes of the expanded CASF program pursuant to SB 1040.

Conclusions of Law

1. The Commission is authorized to implement measures necessary to enable qualifying applicants to seek funding for grants and loans under the CASF program in accordance with the legislative provisions of SB 1040.

2. Consistent with the Commission's jurisdiction over public utilities, the Commission's authority to award grants and loans under the CASF program should be limited to entities classified as telephone corporations, as defined in § 234 of the Pub. Util. Code.

3. The Broadband Infrastructure Grant Account Application Requirements and Guidelines, and the Revolving Loan Account Requirements and Guidelines, attached hereto as Appendix 1 and Appendix 2, respectively, have been developed with appropriate input from parties and should be adopted for

purposes of implementing the revisions to the CASF program addressed in this decision.

O R D E R

IT IS ORDERED that:

1. The Broadband Infrastructure Grant Account Application Requirements and Guidelines, and the Revolving Loan Account Requirements and Guidelines, attached hereto as Appendix 1 and Appendix 2, respectively, are hereby adopted for purposes of the application and administration process for eligible applicants under the California Advanced Services Fund.

2. Eligible applicants are authorized to begin submitting applications for projects in unserved regions pursuant to the filing deadlines adopted in Appendix 1. Subsequent rounds of applications shall be accepted in accordance with the adopted schedule for additional filing windows.

3. Rulemaking 10-12-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.