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**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)

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO**

This ruling adopts the scoping memo, designates the presiding officer, and determines the categorization and need for hearing in this proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure.<sup>1</sup> The Commission adopted an "Order Instituting Rulemaking" to address certain modifications to the California Advanced Services Fund (CASF) program, originally created in Decision 07-12-054. The CASF is designed to increase availability of high-speed communications service (i.e., broadband) in areas of California that are currently unserved or underserved. The CASF accomplishes this purpose through financial assistance for qualifying uses.

**1. Scoping Memo**

This Scoping Memo as set forth below is hereby adopted. As required by Rule 7.1(d), the Order Instituting Rulemaking (OIR) incorporated a "Preliminary

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<sup>1</sup> Subsequent references herein to "rules" pertain to the Commission's Rules of Practice and Procedure, unless noted otherwise.

Scoping Memo.” Opening comments on the OIR were filed on January 21, 2011, and reply comments were filed on February 18, 2011. These comments are considered in the Scoping Memo adopted herein. The assigned Commission has discretion to add or modify issues in finalizing the Scoping Memo, as appropriate. Among other things, the scope of the OIR is to implement Senate Bill (SB) 1040 which repealed statutory provisions for the sunset of the California Advanced Services Fund (CASF) and expanded the program significantly.<sup>2</sup> Specifically, SB 1040 increased CASF capacity from \$100 million to \$225 million, with additional funds to be collected in annual \$25 million increments from 2011 through 2015, and allocated among the following accounts:

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

The Rural and Urban Regional Broadband Consortia and the Broadband Infrastructure Revolving Loan accounts are both new accounts created to address unmet needs under the current program. The scope of this proceeding will address whether, or to what extent, existing CASF procedures and criteria are suitable for administering the new accounts. The scope will also consider other possible changes to the existing CASF program, including those suggested in the

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<sup>2</sup> Prior to enactment of SB 1040, Public Utilities Code Section 281(e) had provided, in essence, that the CASF program would “sunset,” and Section 281 would be repealed, as of January 1, 2013.

petition filed September 13, 2010, by the Commission's Division of Ratepayer Advocates to modify Decision (D.) 07-12-054. The overall objective is to ensure that CASF grants and loans are administered cost-effectively and in accordance with program goals and objectives.

Consistent with Public Utilities Code Section 1701.5, we anticipate this proceeding will be concluded within 18 months of the issuance of this Scoping Memo.

The scope of OIR issues will be bifurcated into two phases. Phase 1 shall focus on implementing the Consortia Grant Fund as soon as possible. An interim decision shall be issued in Phase 1, addressing only Consortia Grant program implementation issues. Parties will have an opportunity to file additional comments on Phase 1 issues pursuant to a separate ruling. A proposed decision in Phase 1 is expected to be mailed during Spring 2011. Prioritizing the resolution of consortia-related issues in this manner is consistent with Ordering Paragraph 6 of the OIR.

The remaining issues in this OIR shall be addressed in a Phase 2. A subsequent Phase 2 proposed decision will be prepared in the latter half of 2011, focusing on remaining issues in this proceeding. After review of comments filed on the OIR, the assigned Commissioner will determine if a further round of comments, or other procedural measures, are warranted prior to issuing a Phase 2 proposed decision on remaining issues in the proceeding.

### **1.1. Issues for Phase 1: Consortia Grant Account Program**

Phase 1 of this proceeding will resolve issues necessary to implement a process to select eligible consortia, and to award and disburse funds for qualifying Consortia Grant activities. The Commission will determine

appropriate criteria for the selection of consortia to receive CASF grants. As prescribed in Code § 281, eligible consortia:

may include, as specified by the commission, representatives of organizations, including, but not limited to, local and regional government, public safety, K-12 education, health care, libraries, higher education, community-based organizations, tourism, parks and recreation, agricultural, and business, and is not required to have as its lead fiscal agent an entity with a certificate of public convenience and necessity.

The Commission, itself, will not organize consortia, but will select eligible consortia for grants based on designated criteria. Certain parties suggest that grants be awarded only to existing consortia. Section 281(d) does not address whether grant money is to go only to existing consortia versus newly formed consortia. The Commission must determine the appropriate selection criteria.

The Commission must determine what constitutes a “consortium” for purposes of awarding grants, including constituent organizations that constitute the consortium. A related issue is whether each individual member organization of a consortium should be identified an “applicant” and/or whether one lead fiscal agent should submit one application or funding request on behalf of the consortium as a whole. A designated individual or individuals should be identified as responsible agents for receipt and disbursement of grant funds under the control of the consortium. Many entities that are not Commission-regulated are eligible to participate in consortia. An eligible consortium is not required to have as its lead fiscal agent a Commission-regulated entity.

(See Pub. Util. Code § 281(d).)

The scope of consortia functions, goals and objectives subject to CASF funding must be determined. SB 1040 does not prescribe specific functions covered under the consortia program, except that the program will “fund the

cost of broadband deployment activities other than the capital cost of facilities, as specified by the commission.” (Pub. Util. Code § 281(d).)

This proceeding must determine the applicable standards or criteria to govern the submission of proposals and determination of appropriate consortia grant amounts. The total consortia program funding appropriation is \$10 million. Standards for allocation of individual grants should be considered in relation to the broadband needs of the regions represented by a given consortium seeking funding.

The scope of the proceeding will consider appropriate administrative controls to provide assurance that funds granted to consortia are administered efficiently and cost-effectively, consistent with the stated purposes and objectives for which the funds are to be used.

The manner and conditions whereby payments are made to a consortium is another issue to be resolved, and whether a consortium should receive progress payments in a manner similar to broadband infrastructure grantees. Appropriate requirements and standards must be developed for documenting that the consortium satisfies specified conditions. If progress payments are made, a schedule for payments must be established, subject to appropriate standards and criteria.

Phase 1 will address how the consortia performance will be reviewed and monitored to ensure efficient and cost-effective disbursement of ratepayer money. Various parties suggest that consortium funding be contingent on approval of an “Action Plan” and “Work Plan” incorporating common “core responsibilities.”

## **1.2. Issues of Phase 2: Remaining OIR Issues Relating to Broadband Infrastructure Grants and Revolving Loan Accounts**

Phase 2 will address remaining issues in the OIR not otherwise resolved in Phase 1. These issues were previously summarized in the OIR, and are adopted for purposes of this Scoping Memo. Phase 2 issues are summarized below, and may be further amended or augmented, as deemed appropriate by the assigned Commissioner.

### **1.2.1. Revolving Loan Account Implementation**

Phase 2 will address implementation of the Broadband Infrastructure Revolving Loan Account “to finance capital costs of broadband facilities not funded by a grant from the Broadband Infrastructure Grant Account.” (§ 281(e).)

Issues to be resolved relating the revolving loan program include:

- Who should be eligible to apply for loans?
- May an eligible entity apply for both a grant and a loan at the same time, with the Commission deciding whether a grant, a loan, or both should be awarded?
- Should there be minimum and maximum amounts for the loan?
- What criteria and standards should be adopted for evaluating loan applications?
- What financial indices or market surveys should be consulted to determine interest rates and when and how to revise the rates?
- Over what period should the loans be repaid?
- What security should be provided?

- As to terms and conditions, are there existing models for revolving loan programs that the Commission should follow?

### **1.2.2. Broadband Infrastructure Grant Funding Criteria**

Phase 2 will consider possible revisions to the CASF Broadband Infrastructure Grant program. Currently, CASF provides funding for construction of broadband infrastructure in unserved and underserved areas, as defined in Resolution (Res.) T-17143. It provides matching funds of 40% of the project capital cost; the applicant is responsible for the remaining 60%. For projects receiving funds under the American Recovery and Reinvestment Act (ARRA), it provides matching funds of 10% of the project capital cost; of the remainder, roughly 80% of the matching funds are sourced from the ARRA, and the applicant is responsible for 10%.

It appears that, with the ARRA funds now fully allocated, entities that are neither holders of a Certificate of Public Convenience and Necessity (CPCN) nor registered wireless carriers are no longer eligible for grants under the Broadband Infrastructure Grant Account. (See Pub. Util. Code § 281(c)(2).) Accordingly, Phase 2 will address whether entities that are not certificated or registered by the Commission should be eligible recipients under the Broadband Infrastructure Revolving Loan and/or Grant Account. Another issue is whether the CASF funding cap of 40% should be increased, considering that some applicants have been unable to secure the 60% matching funds, and funds from the ARRA are no longer available.

Existing CASF rules limit funding to broadband infrastructure for areas determined to be unserved and underserved. An “unserved” area is an area that is not served by any form of facilities-based broadband, such that

Internet connectivity is available only through dial-up service or satellite. An “underserved” area is an area where broadband is available, but no facilities-based provider offers service meeting the benchmark speeds of at least three megabytes per second (mbps) download and at least one mbps upload.

Phase 2 will consider whether the CASF definitions should be revised to conform with the National Telecommunications and Information Administration/Rural Utilities Service definitions of unserved and underserved areas.<sup>3</sup> Alternatively, should the Commission revise these definitions based on the goals set forth in the 2007 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.] Phase 2 will address whether the Commission should increase the benchmark speed to four mbps download and one mbps upload. The increase would conform with the Federal Communications Commission’s Sixth Broadband Deployment Report, which endorsed the minimum speed component of the national broadband availability target proposed in the National Broadband Plan.<sup>4</sup>

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<sup>3</sup> See Federal Register/Vol. 74, No. 130, July 9, 2009, Joint Notice of Funding Availability for the Broadband Technology Opportunities Program (BTOP) and the Broadband Initiatives Program (BIP)

<sup>4</sup> The National Broadband Plan recommends, as a national broadband availability target, that every household in America have access to affordable broadband service offering actual download (i.e., to the customer) speeds of at least four mbps and actual upload (i.e., from the customer) speeds of at least one mbps.

### **1.2.3. Processes Used in Handling Applications**

Under the current CASF process for handling applications (established in Res. T-17143), only census block groups and maps of proposed areas are posted on the CASF website. This affords an opportunity for the public and other carriers to challenge the areas proposed for CASF funding, and for other qualified entities to submit counterproposals. However, the identity of the applicant and the technology proposed are not posted. This information is withheld to provide confidentiality for aspects of an application that may be deemed competitively sensitive. (See D.09-07-020 at 9, Footnote 6.) Only when the draft resolution responding to an application is issued 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 Res. T-17143] made available. Phase 2 will address the following issues:

- Should the process be fully transparent so that applications are made available immediately to the public and are subject to public comment
- Should the Commission require an applicant to provide additional public notice of its application targeted to households in its proposed area?

In Res. 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). Phase 2 will address whether the scoring criteria or weights should be modified.

Phase 2 will address whether the criteria should include an industry standard cost and/or a ceiling cost per household, and if so, how they should they be determined, and whether they should depend on the proposed

technology. Where there is only one application for a proposed area, Phase 2 will consider what other evaluation criteria should be used.

#### **1.2.4. Securing Performance of Commitments**

The Commission is committed to ensure that recipients of funds perform in accordance with the conditions in their grants or loans. Performance bonds and progress payments are two safeguards that the Commission has been using to date in the CASF program. Phase 2 will consider whether the Commission should adopt additional or alternative means of securing performance.

#### **1.2.5. Utilization of Existing Infrastructure and Rights of Way**

The Commission has consistently supported using the public right-of-way and existing infrastructure such as utility poles to facilitate the development of competition and the extension of new or advanced services. (See, e.g., D.98-10-058, 82 CPUC2d 510, 544.) Phase 2 will thus examine the following issues:

- To what extent may resources such as the public right-of-way and existing infrastructure be utilized in deploying broadband to unserved and underserved areas in California? Are these resources currently under-utilized for this purpose?
- Should the Commission promote participation of right-of-way owners such as railroad corporations and Caltrans in broadband deployment, either as partners in such projects, members of consortia, or otherwise?
- What other public or private entities may be able to facilitate broadband deployment? What role should the Commission play in involving such entities?

## **2. Categorization, Designation of Presiding Officer, and Need for Hearings**

Rule 7.1(d) requires that an OIR preliminarily determine the category of the proceeding and the need for hearing. The Commission preliminarily categorized this OIR as quasi-legislative, as defined in Rule 1.3(d), and determined no evidentiary hearings are needed. The OIR directed any party objecting to these preliminary determinations to state objections in opening comments on the OIR. Any request for hearings was to specify: (a) disputed fact(s) at issue; (b) justification for a hearing; (c) what the party would seek to demonstrate through a hearing; and (d) anything else necessary for an informed ruling.

Having considered comments filed on the OIR, this Scoping Memo, among other things, makes a final category determination and designates the presiding officer. The categorization of the proceeding is quasi-legislative in accordance with Rule 7.1, and is appealable pursuant to Rule 7.6. Rule 8.2 (a) applies with respect to ex parte communications. No party requested evidentiary hearings, and no hearings are necessary. Michael R. Peevey is the assigned Commissioner for this proceeding. Administrative Law Judge Thomas R. Pulsifer is the presiding officer.

### **IT IS RULED that:**

1. The scoping memo set forth above is hereby adopted for this proceeding.
2. This proceeding is categorized as quasi-legislative. This determination is appealable pursuant to Rule 7.6.
3. Rule 8.2 (a) applies with respect to ex parte communications.
4. Evidentiary hearings are not needed, subject to review of further comments and possible workshops.

5. The schedule for this proceeding set forth above is adopted.

6. Michael R. Peevey is the assigned Commissioner for this proceeding and Administrative Law Judge Thomas R. Pulsifer is the presiding officer.

Dated April 19, 2011 in San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner