

Decision **PROPOSED DECISION OF COMMISSIONER CHONG**
(Mailed 6/9/2009)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the Review of
the California High Cost Fund B Program.

Rulemaking 06-06-028
(Filed June 29, 2006)

**DECISION ESTABLISHING NEW FILING PLAN
FOR CALIFORNIA ADVANCED SERVICES FUND PROJECTS****1. Introduction establish a**

We hereby new schedule and plan for filing, review, and approval of an additional round of broadband project requests under the “California Advanced Services Fund” (CASF) program. We adopt the new schedule as an overlay to the schedule for review and award of broadband grants under the American Recovery and Reinvestment Act (ARRA), the federal government’s recently enacted economic stimulus plan.¹ As a key part of its program for economic stimulus, ARRA appropriates \$7.2 billion for grants and loans to support broadband deployment on a national level.²

¹ The ARRA, Pub. Law No. 111-5, was signed by President Obama on February 17, 2009.

² Of the total \$7.2 billion, the Rural Utility Service (RUS) is responsible for \$2.5 billion for loans, loan guarantees, and grants. The National Telecommunications Information Administration (NTIA) is responsible for \$4.15 billion for broadband deployment, adoption, and mapping, and another \$650 million related to the digital television transition.

ARRA offers a unique and ground breaking opportunity for California to partner with the federal government and other state agencies in advancing the goal of bridging the digital divide. This decision initiates the next steps to achieve this goal by leveraging the remaining funding from the CASF program together with funding available for broadband deployment under the ARRA.³ By coordinating the process for review, approval, and funding of broadband projects utilizing a combination of CASF and ARRA money, the potential exists to more efficiently maximize the reach of broadband deployment within California.

The ARRA broadband grant program is designed to spur economic stimulus to the national economy while advancing other important technological and social goals, including increasing the levels of high-speed communications subscribership or adoption in low-income, unemployed, rural, aged and otherwise vulnerable communities. The ARRA program also is designed to deploy broadband facilities for public safety agencies, and to stimulate

³ Another potential broadband funding source to supplement ARRA grants for certain qualified entities comes from the California Emerging Technology Fund (CETF). The CETF was created by the Commission in 2005, after the mergers of SBC and AT&T, and Verizon and MCI, respectively. AT&T and Verizon agreed to voluntarily donate a total of \$60 million over five years to help bridge the “digital divide” in California. The CETF is a non profit organization, which is dedicated to making grants to existing community based organizations in California who perform projects consistent with the CETF “digital- divide” goals. Grantees are expected to match the CETF funds in a three to one ratio. The Commission’s President is the Chairman of the CETF’s board. The CETF has been designated by the Governor to assist in the review of the California broadband applications along with the Commission. The CETF Board has voted \$16 million (consisting of \$1 million for the California Telehealth Network and \$15 million for other broadband) to provide matching grants not to exceed 10% of any project’s cost for ARRA applications by California applicants. More information may be obtained at <http://cetfund.org>.

broadband demand, economic growth, and job creation. ARRA is administered through the U.S. Commerce Department's National Telecommunications Information Administration (NTIA), in consultation with the Federal Communications Commission. NTIA has established the Broadband Technology Opportunities Program (BTOP) to provide \$4.7 billion in ARRA grants to accelerate broadband deployment in unserved and underserved areas and to increase the adoption of public computer capacity (e.g., computer centers at community colleges and libraries). The BTOP will provide matching federal funds of up to 80% of the total cost of a qualifying project, with the remaining 20% covered by the project sponsor(s). ARRA also authorizes the U.S. Department of Agriculture Rural Utilities Service (RUS) to make grants and loans for deployment and construction of broadband in areas without service or that lack sufficient high-speed broadband access to facilitate economic development. The RUS has established the Broadband Initiatives Program (BIP) to provide stimulus funding of up to \$2.5 billion for broadband infrastructure projects and broadband subscribership/adoption programs. The BIP is focused on funding broadband infrastructure projects in rural areas where at least 75% of the area is a "rural area," as defined in the NOFA, that lacks sufficient access to high-speed broadband service.

Governor Schwarzenegger is prepared to endorse a package of ARRA applications for NTIA and RUS under processes set forth by those agencies after consultation from various state agencies and broadband organizations. He has asked the California Public Utilities Commission to play a role in this process. This decision sets forth an initial plan to coordinate the processing of ARRA applications with existing state-level CASF and CETF programs.

Governor Schwarzenegger has designated the State Chief Information Officer (CIO) with responsibility to coordinate broadband ARRA grants for California. The CIO has asked the Commission to assist in gathering and prioritizing applications for ARRA grants to bring broadband access to unserved or underserved areas. The CIO has also asked the California Emerging Technology Fund (CETF) to perform a similar gathering and prioritizing of applications that will stimulate the demand for broadband, economic growth, and job creation. The CIO will then consolidate the prioritized applications for submission to NTIA and RUS.

2. Background

In Decision (D.) 07-12-054, we implemented the CASF to encourage broadband deployment by making available high-speed communications service in unserved and underserved areas of California. We allocated \$100 million in grants, to cover a two-year period, to assist in financing qualifying broadband projects through the CASF, by funding up to 40% of qualifying projects. In accordance with D.07-12-054, CASF funding applications are to be accepted until all funds allocated to the CASF have been designated for specific projects, or December 2011, whichever occurs first.⁴ The Commission established two filing windows for projects for unserved and for underserved areas, respectively.

⁴ Out of 54 CASF proposals for unserved and underserved areas that have been submitted, the Commission has approved 25 grants totaling \$9.5 million. Grants for unserved areas amount to \$8.5 million for 13 projects covering an area of approximately 1,108 square miles with the potential to serve approximately 8,300 households. Grants for underserved areas amount to \$1 million for 12 projects covering an area of approximately 34 square miles with the potential to serve approximately 659 households.

Although we have approved funding for various CASF projects to date, we still face the challenge of bridging the digital divide by promoting deployment of broadband in regions of California that still lack access to high-speed communications services.

The CASF was established to support new broadband funding, as a first priority, in areas where no facilities-based provider offers broadband service. A secondary priority was for funding in underserved areas where no facilities-based provider offers broadband service at benchmark download transmission speeds of at least 3 mega bits per second (MBPS) and upload speeds of at least 1 MBPS. By Resolution T-17143, dated June 12, 2008, the Commission adopted filing requirements and scoring criteria for the award of CASF funds, and a timeline for further filings and for final approval of award(s). We reviewed, ranked, and approved qualifying projects based on how well they satisfy prescribed criteria.

After awarding funds to initial rounds of CASF projects, a significant amount of CASF money remains available for further awards. To date, in addition to the \$9.5 million already awarded, there are four pending applications that, if granted, could result in additional grants of up to \$9 million. Assuming the full \$9 million were to be awarded, that would still leave approximately \$80 million for additional CASF grants. Accordingly, the assigned Commissioner pursued additional inquiry as to how best to allocate the remaining CASF money to reach unserved and underserved areas. By ruling dated October 15, 2008, the assigned Commissioner solicited comments as to how the eligibility criteria for CASF funding might be modified to expand the potential range of projects and/or participants eligible to receive CASF money. In particular, the ruling solicited comments on whether entities other than

certificated or registered telecommunications carriers should be allowed to participate in the CASF program. The ruling also solicited comments on whether the level of matching funds should be reduced in order to expand participation in the program. Comments in response to the ruling were filed on November 5, 2008, and reply comments were filed on November 20, 2008. We have considered those comments in preparing this decision.

In view of the potential opportunities for extending broadband as a result of the enactment of ARRA legislation early in 2009, the assigned Commissioner set, as a new priority, the goal of leveraging the remaining CASF resources to provide matching funds to applicants of the NTIA and RUS ARRA programs in order to further extend broadband to remaining unserved and underserved areas. By ruling dated March 13, 2009, the assigned Commissioner served notice of an all-party meeting to consider this issue in cooperation with the California Chief Information Officer and senior representatives of the CETF. The meeting was held on March 23, 2009, as a forum for input from a broad spectrum of interests, including broadband providers, public agencies, community based organizations providing technology assistance, consumer groups, and other interested stakeholders. The Commission gathered useful input on how to integrate and leverage California's existing broadband funding programs into a larger federal broadband program, tapping into the availability of federal stimulus funds, while assisting applicants seeking ARRA grants. We have considered this input in formulating the steps implemented in today's decision.

The March 23, 2009 meeting also addressed the updating of mapping of unserved and underserved areas in light of the \$350 million appropriated in

ARRA to implement the Broadband Data Improvement Act (BDIA).⁵ The CIO and Commission intend to make use of mapping grants from the BDIA to improve and update the mapping of unserved and underserved areas in California. Although applicants have previously documented broadband service only by census block group, we expect that as the quality of mapping data improves, it will become feasible to assess broadband service coverage within a census block group at a more granular level, even down to the individual street level. We believe this more granular approach yields greater accuracy in reflecting unserved and underserved areas.

California has done extensive broadband mapping through its Broadband Task Force in 2006-2007, and the Commission has implemented the Digital Infrastructure and Video Competition Act, which involves the collecting and mapping of broadband availability and subscription data. California also has a major grant from the Federal Communication Commission Rural Healthcare Pilot Project for the California Telehealth Network that will connect between 500 to 860 healthcare sites, many of which are in rural areas of the state.

3. Adopted Process for New Broadband Filings

In order to provide prospective applicants with sufficient lead time to begin formulating broadband funding proposals in coordination with the ARRA program, we hereby establish a filing schedule for the next round of CASF broadband applications to begin July 17, 2009. The adopted schedule is set forth in Appendix 1 of this decision, generally designed to coordinate with the filing window that the federal government has announced as applicable to requests for

⁵ Pub. Law No. 110-385 (2008).

ARRA funding. The schedule in Appendix 1, however, will apply to CASF filings both for unserved and underserved areas, but priority will go toward funding of unserved areas first. Applications received by July 17, 2009 will be prioritized for consideration for approval by the second California Public Utilities Commission (CPUC) agenda meeting in September 2009. Applications submitted between July 18 and August 14, 2009 will receive second priority for consideration for approval at the second CPUC agenda meeting in October 2009. Those applicants with currently pending CASF proposals before the Commission may elect to withdraw their existing applications and to file under the new process adopted in this decision.

The expedited CASF schedule will facilitate timely coordination with the ARRA process. On July 1, 2009, the NTIA and RUS issued a joint Notice of Funds Availability (NOFA) and solicitation of applications for broadband initiatives under ARRA. The NOFA sets forth, among other things, deadlines for applying for federal stimulus funds; application criteria, process, and guidelines; and the state's role in the ARRA application and review process. An overview of the ARRA broadband application provisions is set forth in Appendix 2 of this decision. There will be three cycles during which the NTIA will provide Notice of Funds Availability (NOFA) and then evaluate and fund projects. NTIA has announced the NOFA schedule in its quarterly report to the U.S. Senate.

The initial ARRA grant applications may be submitted to NTIA from July through September 2009, with a decision on the initial awards made by NTIA in the fourth quarter of 2009.

All NTIA funds must be awarded by September 30, 2010, and projects must be completed within two years from the time funds are awarded. In order

to work within this schedule, we hereby authorize prospective broadband applicants to file a new round of CASF project proposals between the period July 17 through August 14, 2009, as set forth under the schedule set forth in Appendix 1 of this decision. We expect to award the first round of CASF grants under this revised schedule by the second Commission meeting in September, 2009. For any pending CASF projects that require additional review extending beyond this date, we shall process them as soon as possible thereafter.

We recognize that the adopted schedule calls for more expedited review and processing than we have applied previously, but this expedited schedule is necessary to ensure that applicants are able to utilize the matching funds provided by the CASF program to support their ARRA funding requests. By coordinating our schedule with the ARRA program in this manner, we seek to maximize the potential synergies in the review and approval process for project funding through both state and federal programs. Although an entity is not required to apply to the CPUC for approval merely to receive ARRA funding, an entity that seeks to obtain matching CASF funds is required to apply to the CPUC through the CASF process. For any projects that are awarded CASF funding in conjunction with an ARRA grant, we shall promptly notify the NTIA and coordinate as necessary, to provide the opportunity for matching ARRA funds to be promptly provided.

For purposes of preparing the next round of CASF filings, applicants not seeking ARRA funds should conform to the CASF eligibility and procedural guidelines that are currently in place.⁶ We recognize that the federal eligibility

⁶ We wish to clarify the rules governing nondisclosure of confidential information contained in CASF filings. Once a CASF application has been submitted to the

Footnote continued on next page

and ranking criteria for awarding ARRA money differs in various respects from the eligibility and ranking criteria that currently apply for awarding CASF money. If applicants seek CASF grants in conjunction with a request for ARRA funding, therefore, such applicants should include in their CASF filings any additional eligibility information called for under the ARRA process. Applicants that intend to seek CASF funds in conjunction with an ARRA filing should consult the NOFA eligibility requirements, summarized in Appendix 2 to ensure that their CASF application contains all of the requisite NOFA information.

In accordance with guidance from the federal agencies, we shall tailor the CASF application process to facilitate submission of CASF-approved projects to the NTIA or RUS for a matching award of federal stimulus funds as to broadband infrastructure projects located in California.⁷ At this point, we shall make a modification relating to the matching funds requirement.

Commission, the broad area proposed to be served will be available on the CPUC web site. All other information contained in the application will be treated as confidential pursuant to General Order 66-C until the Commission issues a resolution awarding grants to successful applicants. After grants have been awarded, any information contained in the applications which falls within an exception in the Public Records Act, Govt. Code §§ 6250 *et seq.* will continue to be treated as confidential.

⁷ As mentioned before, CETF's Board has approved some of its remaining funds to be provided for matching up to 10% of ARRA grants for California broadband projects. The Commission shall focus this round of CASF grants on ARRA related broadband infrastructure projects to serve unserved and underserved areas, while the CETF is focusing on other broadband projects, such as its existing rural consortium broadband projects involving 35 rural California counties and computer adoption, affordability, accessibility projects throughout the state (including urban disadvantaged and rural/remote/tribal settings). Applicants for CASF grants may still apply for non-ARRA related grants under our normal CASF criteria but such non-ARRA related applications will not be put on the expedited processing time frame of the ARRA-related CASF applications.

The current CASF grant program covers up to 40% of broadband infrastructure project costs with the applicant matching with 60%. Under the federal ARRA program, the federal match will be up to 80%. The remaining 20% of project cost could be supported from CASF in whole or in part.

Accordingly, based on these maximum funding levels available through ARRA, we shall correspondingly modify the CASF matching requirements to achieve the maximum leverage from the ARRA program. Specifically, for CASF applicants concurrently applying for ARRA funding, we shall only require such applicants to match up to 10% of the total project cost. We shall match such qualifying projects with an additional 10% of the project cost from CASF money, with ARRA covering the remaining 80% of the project cost. Otherwise, if an applicant does not seek to qualify for funding under the ARRA criteria, we shall continue to apply the previously adopted matching requirements of 40% of total project cost.

If an applicant receives a CASF matching grant of up to 10% contingent upon approval of an award of matching ARRA funds up to 90%, the actual amount of ARRA funding ultimately awarded may be less than what was requested, depending upon a variety of factors. In such situations where ARRA funds are awarded below the amount that the applicant has requested, we shall permit such applicants to reapply with the Commission for additional CASF funding up to a cumulative maximum of 40% of the project cost, or 50% of the requested ARRA funding that was denied, whichever is less. With this provision, applicants seeking both CASF and ARRA funding will not be disadvantaged in qualifying for the maximum available CASF funding merely because of potential funding limits in the ARRA program.

As a starting point for targeting potential ARRA funds, we will rely on the unserved and underserved definitions currently being used today that start with the California Broadband Task Force Maps. However, we note that NTIA definitions for “unserved” and “underserved” areas, as set forth in the NOFA differ from the definitions we have relied upon previously for screening CASF applications.

Our existing definitions of unserved and underserved areas used for CASF filings will continue to be used for screening applications eligible for CASF support in conjunction with a request for ARRA funding. Any projects seeking funds under CASF (and also seeking to apply for ARRA grants) should, therefore, be focused on providing broadband access in “unserved” and “underserved” territories, based on the updated California broadband map from the Commission. In order to ensure that new applications are evaluated based on the most accurate mapping data, we encourage all broadband providers that have not already done so to promptly provide the State CIO with updated mapping data on the areas in which they offer service.

For all projects seeking both CASF and ARRA funds, we shall generally apply the eligibility criteria adopted by the NTIA. To the extent that the NTIA criteria differ from those we have previously applied, the NTIA criteria shall supersede the previously applied CASF criteria in our subsequent ranking and awarding of CASF grants. We expect to focus priority on projects that could not be funded under existing CASF matching funds requirement (with 40% of funds from CASF and 60% from the applicant). While the CASF process should work to assist in prioritizing projects for consideration by the Governor’s office, technology neutral standards in the new law may drive changes in CASF rules. ARRA requires that the applications be granted on a technology neutral basis,

while our current CASF rules and CASF statute⁸ require that the applicant have a certificate of public convenience and necessity (CPCN) or be a registered wireless provider.⁹ The State Legislature is considering amendments Pub. Util. Code § 281 to allow for broadband provider/applicants other than holders of CPCNs and registered wireless providers to be allowed to participate in the CASF program. Absent legislation, we cannot grant CASF funds to an entity with an ARRA application that does not have a CPCN or wireless registration. Nonetheless, for CASF applicants that *do* have a CPCN or wireless registration, we can go ahead and provide 10% CASF matching funds in support of their ARRA applications.

Moreover, if legislation is enacted to lift the CPCN restriction and extend CASF eligibility to all eligible entities on a technology-neutral basis, we will promptly consider whether, and if so, how to conform our CASF review and selection criteria accordingly. Expanding the range of entities eligible to receive CASF money beyond certificated or registered telecommunications carriers raises issues concerning the fitness and technical capabilities of entities that we do not regulate. Appropriate safeguards must be employed to ensure that any non-certificated entities are financially and technically qualified to carry out their

⁸ See Pub. Util. Code §§ 270(a)(7), and 270(b) identifying the California Advanced Services Fund (CASF) as one of the funds created in the State Treasury from “proceeds of rates and [which] are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service.” See also Pub. Util. Code § 281, stating the Commission “shall develop, implement, and administer the California Advanced Services Fund to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, as provided in D.07-12-054.”

obligations as a condition of being awarded CASF money. We will consider how to ensure appropriate enforcement of the conditions on any grants of CASF money to entities that may not be subject to Commission jurisdiction as a telecommunications carrier. In any event, to address concerns about the potential for waste, fraud, and abuse in the administration of the CASF program, applicants who are not certificated or registered by the Commission should still be required to meet eligibility standards, just as required by certificated applicants, such as providing maps, financial and technical information, etc., as warranted to justify their CASF request. These projects, if approved, would be subject to audits, similar to the requirements that will be enacted by NTIA for the BTOP grants.

Other considerations in ARRA may require revisions in our standard of review of CASF applications. Given that the ARRA goals are similar to those under CASF, the application requirements for CASF grants will satisfy many of the potential requirements for an ARRA application. However, CASF applications should include any additional information required for an ARRA grant that is not currently required under our CASF Resolution. One of the goals of ARRA is to stimulate economic growth and create jobs. Therefore, an applicant for an ARRA grant may be required to provide an estimate of the number of potential jobs created under the project. To the extent that the CASF applicant seeks ARRA funding, information required under adopted ARRA

⁹ See D.07-12-054 at 13, and Ordering Paragraph 13.

criteria, such as potential jobs created by the project, should also be provided for our consideration in the CASF application.¹⁰

Therefore, if an applicant is seeking ARRA funding in conjunction with the CASF award, the applicant should provide information in their CASF applications as to how their projects also meet ARRA application requirements. In particular, ARRA projects eligible for matching CASF funds will include those for “middle-mile” projects. As defined in the NOFA, a broadband infrastructure project that does not predominantly provide broadband service to end users or to end-user devices is defined as a “middle-mile” project. Such projects may include interoffice transport, backhaul, Internet connectivity, or special access. In screening eligible CASF applications for any middle-mile projects, we shall use the upload and download speeds specified in our existing CASF unserved and underserved definitions. If an applicant seeks only a CASF grant without concurrently seeking ARRA support as well, we will evaluate the applicant’s project in terms of existing CASF criteria. Those applicants seeking only ARRA funding – with no CASF request – will be provided separate guidance, consistent with the CPUC’s role in relation to that of the State CIO.

In this regard, the Assigned Commissioner will hold a workshop on July 10, 2009, in the Commission’s Auditorium, to discuss the ARRA application process as described by the Notice of Funding Availability (NOFA) and

¹⁰ Additionally, other potential showings that may be relevant for an ARRA grant could include demonstration that the project will increase affordability of and subscribership to service to the greatest number of users in the area; that the project will not receive support for non-recurring costs through any other Federal program for service in the area; and a showing that the applicant is a socially and economically disadvantaged small business concern (as defined by the Small Business Act).

California's role in the process. The workshop will allow California entities to learn more about how to apply for federal stimulus funding for broadband projects under ARRA in light of the NOFA and given the short time period for applications. The window for applications for ARRA funding opens July 14, 2009 at 8:00 a.m. and closes August 14, 2009 at 5:00 p.m. (Eastern Standard Time).

We intend to quickly score and rank the new rounds of CASF applications and award funds in accordance with the applicable project rankings and funding availability.

4. Comments on Proposed Decision

The proposed decision of Commissioner Rachelle B. Chong in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on June 29, 2009 and reply comments were filed on July 6, 2009. We have reviewed all comments on the proposed decision in finalizing this decision. Our focus in this decision is on coordinating the CASF funding process with the federal ARRA stimulus funding program to maximize the dual benefits available under both the state and federal programs. As a result, although parties propose certain modifications in the CASF funding criteria independently of the ARRA program, we defer consideration of such proposed modifications at this time. We may consider additional CASF program modifications in a subsequent decision.

5. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. Pursuant to D.07-12-054, the Commission inaugurated the California Advanced Services Fund whereby eligible entities may obtain funding to help finance the deployment of broadband facilities in regions of California that are not currently being served, or that are underserved.
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. Encouraging deployment of additional broadband services within areas of California that are underserved or not served at all is consistent with universal service policies aimed at enhancing deployment of advanced services and bridging the “digital divide” as articulated in Pub. Util. Code §§ 709(c) and (d).
4. The American Recovery and Reinvestment Act provides for economic stimulus in response to recent contractions in the national economy and includes an appropriation of \$7.2 billion for grants and loans related to broadband deployment and adoption on national level.
5. Under the federal schedule for ARRA grants, there will be three cycles during which the federal agencies will evaluate and fund broadband projects, with the first cycle to cover July through September of 2009, with a decision by the NTIA on initial awards in the fourth quarter of 2009.
6. California is well positioned to attract a significant share of money available through ARRA through the leveraging offered by state-sponsored broadband funding. Specifically, the California Advanced Services Fund and the California Emerging Technologies Fund provide effective tools to promote additional broadband services in this manner.

7. Coordination between the CASF and ARRA programs can be optimized by adopting the schedule set forth in Appendix 1 of this decision which sets forth a schedule for subsequent filing, review, and approval of a new round of broadband requests in a time frame that corresponds with the first segment of the federal schedule under ARRA. In order to ensure timely coordination in utilizing CASF matching funding to support ARRA funding requests, it is necessary to adopt a more expedited processing schedule than has previously been applied.

8. The funding of broadband infrastructure in areas where there may be market failure may be the best way to take into account dramatic advances in telecommunications and information technologies and services, while ensuring the continued effectiveness of the universal service policies set forth by the Legislature.

9. Broadband deployment in California has a direct impact on economic output and employment.

10. California has done extensive broadband mapping through its Broadband Task Force, and has two major broadband programs ongoing: the CETF and the CASF. Advances in quality of mapping are expected to improve the precision identifying areas that are unserved and underserved for purposes of subsequent reviews of broadband requests and challenges to those requests.

Conclusions of Law

1. The goal of advancing the deployment of broadband in unserved and underserved areas of California can best be promoted by coordinating the California Advanced Services Fund program with broadband funding available under the federal government's American Revenue Recovery Act.

2. It is in the public interest to establish a new cycle of filing, review, and approval of broadband requests under the California Advanced Services Fund as set forth in Appendix 1 of this decision, in order to coordinate with the federal government's program for awarding funds under the American Revenue Recovery Act.

3. In view of the additional funding potentially available to qualified applicants under the American Revenue Recovery Act, the matching funding requirements for the California Advanced Services Fund should be modified to require only 10% matching funds from the applicant, with 10% from the CASF, provided that the remaining 80% comes from ARRA.

4. To the extent that standards and criteria adopted by the NTIA for evaluation of ARRA grant requests differ from the standards and criteria adopted for review and evaluation of CASF grant requests, the NTIA standards and criteria should supersede the currently effective CASF standards and criteria to the extent allowed by law.

5. ARRA requires that the applications be granted on a technology neutral basis, while our current CASF rules and CASF statute require that the applicant have a certificate of public convenience and necessity (CPCN) or be a registered wireless provider.

6. The State Legislature is considering amendments Pub. Util. Code § 281 to allow for broadband provider/applicants other than holders of CPCNs and registered wireless providers to be allowed to participate in the CASF program. Absent legislative amendment, current law prohibits granting CASF funds to an entity with an ARRA application that does not have a CPCN or wireless registration.

7. There is no restriction in existing statutes precluding the Commission from revising the matching funds requirement to 10% in order to qualify for a CASF grant for applicants that do possess a CPCN or wireless registration.

8. If the State Legislature enacts laws to allow for broadband provider/applicants other than holders of CPCNs and registered wireless providers to be allowed to participate in the CASF program, the Commission should consider whether, and if so, how to amend its rules accordingly.

9. In any event, to mitigate concerns about the potential for waste, fraud, and abuse in the administration of the CASF program, any future applicants who may not be regulated by the Commission should still be required to meet eligibility standards to justify their CASF request, just as required by certificated or registered telecommunications carrier, such as by providing maps, financial and technical information, etc., as warranted to establish their qualifications to fulfill their CASF commitments.

10. The CASF program may warrant additional tailoring of its provisions in order to promote better coordination with the ARRA program, subject to the release of additional information from the federal agencies as to how the ARRA program is to be administered.

O R D E R

IT IS ORDERED that:

1. A new schedule for the next round for filing, review, and approval is hereby established as set forth in Appendix 1 of this decision for filing, review, and funding of new applications under the California Advanced Services Fund. Any applications that cannot be approved within the timeframe set forth in

Appendix 1 will be considered for approval at the earliest feasible date thereafter.

2. The adopted schedule in Appendix 1 shall apply to filings both for served and unserved areas, but priority will be given to funding unserved areas.

3. A Commission resolution awarding California Advanced Services Fund money for eligible projects filed by July 17, 2009, pursuant to the adopted schedule shall be placed on the Commission's agenda by the second meeting in September 2009, to coordinate with the federal government's schedule for awarding initial American Recovery and Reinvestment Act grant applications. Applications submitted between July 18 and August 14, 2009 will receive second priority for consideration for approval at the second California Public Utilities Commission (CPUC) agenda meeting in October 2009.

4. Applications filed under the new adopted schedule seeking California Advanced Services Fund funding only shall conform to the requirements and eligibility ranking criteria as previously adopted in Commission Resolution T-17143. Applications seeking both California Advanced Services Fund and American Recovery and Reinvestment Act funding shall contain any additional requirements necessary to conform to standards and criteria of the National Telecommunications Information Administration applicable to American Recovery and Reinvestment Act grant proposals. Applicants for California Advanced Services Fund grants that are concurrently seeking American Recovery and Reinvestment Act funding shall only be required to provide a maximum match of 10% of the project cost. Such projects shall be eligible for matching funds of up to 10% of project cost from California Advanced Services Fund money, on the condition that the remaining 80% of project cost is funded by American Recovery and Reinvestment Act money.

5. The Commission's existing definitions of unserved and underserved areas used to screen California Advanced Services Fund filings will continue to be used for screening applications eligible for California Advanced Services Fund support in conjunction with a request for American Recovery and Reinvestment Act funding.

6. Except in the applicability of unserved and underserved definitions, and matching funds limits, the Commission will otherwise apply the federal American Recovery and Reinvestment Act eligibility criteria in selecting, ranking, and awarding funds for applicants seeking both California Advanced Services Fund and American Recovery and Reinvestment Act funding, to the extent consistent with state law.

7. In situations where an applicant receives an award of up to 10% matching California Advanced Services Fund funds, but where matching American Recovery and Reinvestment Act funds are awarded below the amount that the applicant requested, such applicants shall be permitted to reapply with the Commission for additional California Advanced Services Fund funding up to a cumulative maximum of 40% of the broadband project cost, or 50% of the requested American Recovery and Reinvestment Act funding that was denied, whichever is less.

8. Although an entity is not required to apply to the CPUC for approval merely to receive American Recovery and Reinvestment Act funding, an entity that seeks to obtain matching California Advanced Services Fund funds shall be required to apply to the CPUC through the California Advanced Services Fund process.

9. For any projects that are awarded California Advanced Services Fund funding in conjunction with an American Recovery and Reinvestment Act grant,

the Commission will promptly notify the National Telecommunications Information Administration and coordinate as necessary, to provide the opportunity for matching American Recovery and Reinvestment Act funds to be provided.

10. The Commission shall provide further procedural guidance in subsequent rulings or orders to the extent necessary for the coordination of administrative filing processes under the American Recovery and Reinvestment Act program in relation to the California Advanced Services Fund program.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX 1**TIMELINE FOR SUBMISSION AND EVALUATION**

(Column A)	(Column B)	(Column C)	(Column D)
BY	BY	Number of days	Description
I. Unchallenged Proposals			
7/17/2009	8/14/2009		Applicants' window for submission of funding requests
7/28/2009	8/25/2009	7 business days from date of application	Communication Division (CD) to post areas applied for, by Census Block Groups (CBGs) and shapefile, on the Commission's California Advanced Services Fund (CASF) website
8/6/2009	9/03/2009	7 business days from posting on Commission's CASF webpage	Deadline for submitting letter challenges and letters of intent to submit a counter proposal in areas where applications have been received (refer to website posting)
8/21/2009	9/21/2009	25 business days from receipt of application	CD completes evaluation of proposals <i>without</i> challenges and <i>without</i> counter proposals and notifies applicants.
8/25/2009	9/22/2009		For unchallenged or non-counteracted applications, CD submits proposed draft resolution for Commission consideration.
9/24/2009	10/29/2009		Commission meeting date for adoption of Resolution(s) approving funding application(s) without challenges/counter-proposals

II. Challenged Proposals			
7/17/2009	8/14/2009		Applicants' window for submission of funding requests
7/28/2009	8/25/2009	7 business days from date of application	CD to post areas applied for, by CBG's and shapefile, on the Commission's CASF website
8/6/2009	9/3/2009	7 business days from posting on Commission's CASF webpage	Applicants' deadline for submitting letter challenges and letters of intent to submit a counter proposal in areas where applications have been received (refer to website posting)
8/18/2009	9/16/2009	15 business days from posting of CBGs and shapefiles of areas applied for on the CASF website	Applicants' deadline for submitting counter proposals in areas where applications have been received (refer to website posting)
9/23/2009	10/20/2009	25 business days from receipt of counter proposal application	CD completes evaluation of challenged applications and counter-proposals and notifies applicants.
9/25/2009	10/21/2009		CD submits proposed draft resolution for Commission consideration
10/29/2009	11/20/2009		Commission meeting date for adoption of Resolution(s) approving funding application(s) <u>with</u> challenges/counter-proposals

* Applications submitted after July 17 may be considered for approval after the September 24, 2009 Commission meeting. For example, for *unserved* applications submitted on July 18, the resolution approving funding may be adopted in the October 29, 2009 Commission meeting instead of the September 24, 2009 meeting.

(END OF APPENDIX 1)

APPENDIX 2

SUMMARY OF FEDERAL BROADBAND STIMULUS FUND APPLICATION GUIDELINES

The following summary provides an overview of key dates, definitions, and the grant/loan process for federal broadband stimulus funds, but does not include all details or application requirements. For the complete Notice of Funds Availability, please click [here](#).

Background: The American Recovery and Reinvestment Act of 2009 (ARRA) provides the Rural Utilities Service (RUS) and the National Telecommunications and Information Agency (NTIA) with \$7.2 billion for broadband stimulus funding.

- Under ARRA, NTIA has established the Broadband Technology Opportunities Program (BTOP) (\$4.7 billion) and RUS has established the Broadband Initiatives Program (BIP) (\$2.5 billion).
- The BTOP is intended to provide stimulus funding for broadband infrastructure projects and broadband subscribership/adoption programs. The BIP program is focused on funding broadband infrastructure projects in rural areas (where at least 75% of the area is a “rural area” that lacks sufficient access to highspeed broadband service). Both programs have the additional goal of creating economic growth and jobs.

NTIA is also responsible for administering the Broadband Data Improvement Act (BDIA), which provides \$350 million for the purpose of developing and maintaining a broadband inventory map.

Notices of Funds Availability (NOFA) Issued: On July 1, 2009, RUS and NTIA issued the first Joint Notice of Funds Availability (NOFA) establishing the application process, eligibility criteria, key definitions, guidelines, and deadlines for applying for stimulus funds under the BTOP and BIP.

Separately, NTIA also issued a NOFA for the BDIA mapping program on July 1, 2009. Discussion of the NOFA for BDIA is set forth separately at the end of this summary.

Summary of Joint NOFA for BTOP and BIP: NOFA allocates approximately \$4 billion in funding.

- RUS will distribute \$2.325 billion and NTIA will distribute \$1.6 billion.
- The remainder of funds will be distributed pursuant to two subsequent NOFAs. The entire amount of funding will be awarded by September 30, 2010.
- **Application Review Process:** NTIA and RUS will review applications in a two-step process.
 - Step One: NTIA and RUS will review and create a pool of viable and potential applications that meet the eligibility criteria and application guidelines.
 - Step Two: NTIA and RUS will validate the applications and identify the most highly qualified applications. NTIA will send to the Governor's Office of each state a list of its identified pool of applications under consideration for the BTOP during the second step. States may provide a list and prioritization of recommended projects, along with an explanation of why the selected projects meets the greatest needs of the state. States are strongly encouraged to provide mapping and planning data to support their recommendations. States participating in the Broadband Data and Development Grant Program may rely on that submission under that program to fulfill that request. *States have 20 calendar days from the receipt of this list to submit its recommendations to NTIA.*
- **Key Dates for BTOP and BIP Applications:**
 - Application window for grants under the BTOP and BIP pursuant to this NOFA: July 14, 2009 8:00 a.m. (ET)- August 14, 2009 (ET).
 - NTIA and RUS plan to announce awards starting on or about November 7, 2009.
 - Projects advancing to StepTwo - "due diligence" stage - will not be announced before September 14, 2009. Additional information must be submitted by

applicants within 30 days after the applicant has received a request, or by October 15, 2009, whichever is later.

- All awards must be made by September 30, 2010.
- A project must be substantially completed within 2 years from the date of the award, and fully completed by 3 years of the date of the award.
- **Eligible Entities:**
 - States, local governments, agency subdivision, instrumentality, or political subdivision thereof; District of Columbia; territory or possession of the U.S.; Indian tribe; native Hawaiian organization; non-profit foundations or corporations or entities; for-profit corporations; limited liability companies; and cooperative or mutual organizations.
- **Key Definitions:**
 - **BIP:** the Broadband Initiatives Program, administered by the RUS, under ARRA
 - **Broadband:** providing two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users.
 - **BTOP:** the Broadband Technology Opportunities Program, administered by NTIA, under ARRA.
 - **Last Mile project:** any infrastructure project the predominant purpose of which is to provide broadband service to end users or end-user devices (including households, businesses, Community anchor institutions, public safety entities, and critical community facilities).
 - **Middle Mile project:** a broadband infrastructure project that does not predominantly provide broadband service to end-users or to end-user devices, and may include interoffice transport, backhaul, Internet connectivity, or special access.
 - **Public computer center:** a place, including but not limited to community colleges, libraries, schools, youth centers, employment service centers, Native American chapter houses, community centers, senior centers, assistive technology centers for people with disabilities, community health

centers, and Neighborhood Network Centers in public housing developments, that provide broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities and people with disabilities.

- Proposed Funded Service Area: the area (either in all or part of the service area or a new service area) where the applicant is requesting BIP or BTOP funds to provide broadband service pursuant to this NOFA
- Rural Area: any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within:
 - A city, town, or incorporated area that has a population of greater than 20,000; or
 - An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau.
- Service Area: the entire area within which a service provider either offers or intends to offer broadband service and may include the proposed funded service area.
- Underserved Area: a proposed funded service area, composed of one or more contiguous census blocks. A proposed funded service area qualifies as ***underserved for Last Mile projects*** if at least one of the following factors is met:
 - No more than 50 percent of the households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed (set forth in the definition of broadband above);
 - No fixed or mobile broadband service provider advertises broadband transmission speeds of at least three megabits per second (“mbps”) downstream in the proposed funded service area; or
 - The rate of broadband subscribership for the proposed funded service area is 40 percent of households or less.

A proposed funded service area may qualify as ***underserved for Middle Mile projects*** if one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects.

- Unserved area: a proposed funded service area, composed of one or more contiguous census blocks, where at least 90 percent of households in the

proposed funded service area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband transmission speed (set forth in the definition of broadband above). A household has access to broadband service if the household can readily subscribe to that service upon request.

- **NTIA BTOP NOFA Summary:** Purpose is to provide grants for deploying broadband infrastructure in unserved and underserved areas, enhancing broadband capacity at public computer centers, and promoting sustainable broadband adoption projects. This NOFA provides \$1.6 billion available for funding BTOP projects.
 - Broadband infrastructure: \$1.2 billion
 - Public Computer Centers: \$50 million
 - Sustainable broadband adoption: \$150 million
 - National reserve:¹ \$200 million
- **General BTOP Application Requirements:**
 - Project must advance at least one of the statutory purposes for BTOP
 - Awardees will be required to provide documentation of matching funds for at least 20% of the total eligible project cost
 - Applicants must demonstrate that the project could not be implemented but for federal grant assistance
 - A project is only eligible if it demonstrates that its budget is appropriate and costs are reasonable
 - Awards will be issued on a technologically neutral basis
 - Projects are expected to demonstrate ability to be sustained beyond the funding period.
- **BTOP Broadband Infrastructure Specific Requirements:**

¹ The “national reserve” may be used to augment the BTOP funding categories established above, or remain unused for subsequent NOFAs. In any event, all funds will be spent by September 30, 2010.

- Meeting the specific service standards
- Technical feasibility: determined through design and project timeline to be certified by a professional engineer
- Funds for broadband infrastructure are to be used for infrastructure only and not for operating expenses of a project.
- Applicant must agree to nondiscrimination and interconnection requirements:
 - (1) the FCC's Internet Policy Statement (FCC 05-151, adopted August 5, 2005);²
 - (2) not favor any lawful Internet applications and content over others;
 - (3) display any network management policies in a prominent location on the service provider's web page and provide notice to customers of changes to these policies;
 - (4) connect to the public Internet directly or indirectly such that the project is not an entirely private closed network; and
 - (5) offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity, on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and the physical interconnection for the exchange of traffic. *Applicants must disclose their proposed interconnection, nondiscrimination, and network management practices with their applications.*
- Scoring Criteria (100 points total possible): 30 points for project purpose; 25 points for project benefits; 25 points for project viability; and 20 points for project budget and sustainability.
- BTOP Contact: Anthony Wilhelm, Deputy Associate Administrator, Infrastructure Division, Office of Telecommunications and Information Applications, NTIA, DOC, email: btop@ntia.doc.gov

² <http://www.publicknowledge.org/pdf/FCC-05-151A1.pdf>

- **Rural Utilities Service BIP NOFA Summary:** Purpose is to extend loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas:
 - 75% of a funded area must be in a rural area that lacks sufficient access to high speed broadband services
 - Preference for higher percentage of loan funds or 100% loans as opposed to grants
 - Preference for projects that can commence construction promptly and demonstrate technical and financial feasibility, organizational capacity, and compliance with other Administration priorities
 - Grants are for funding applications proposing to exclusively serve remote, unserved, rural areas
 - Loans and loan/grant combinations are available for applications proposing to serve non-remote and underserved rural areas
- Total of \$2.4 billion in program level funding under this NOFA
 - \$1.2 billion in Last Mile projects
 - \$800 million for loans or loan/grants for Middle Mile projects
 - \$325 million available as a national reserve
- Priority for projects that:
 - Give end users a choice of providers;
 - Serve the highest proportion of rural residents that lack access to broadband service;
 - Are projects of current or former RUS borrowers, and
 - Are fully funded and ready to start once Recovery Act funding is received
- Applicants that are intending to serve areas that are at least 75% rural must submit applications to RUS to be considered under BIP. If applicants wish to be considered for BTOP funding, they must complete the additional requirements for NTIA applications. NTIA

may only make awards after RUS has made its determination on any awards through BIP.

- BIP Application Requirements:
 - Meeting the specific service standards
 - Technical feasibility: determined through design and project timeline to be certified by a professional engineer
 - Nondiscrimination and interconnection requirements:
Applicant must agree to the following:
 - (1) the FCC's Internet Policy Statement (FCC 05-151, adopted August 5, 2005);³
 - (2) not favor any lawful Internet applications and content over others;
 - (3) display any network management policies in a prominent location on the service provider's web page and provide notice to customers of changes to these policies;
 - (4) connect to the public Internet directly or indirectly such that the project is not and entirely private closed network; and
 - (5) offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity , on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and the physical interconnection for the exchange of traffic. *Applicants must disclose their proposed interconnection, nondiscrimination, and network management practices with their applications.*
 - BIP will not approve multiple projects with overlapping proposed service areas, the project to be granted funds will be the one with the highest score on the application
 - Applicants must secure and have verification of full funding for their proposed project

³ <http://www.publicknowledge.org/pdf/FCC-05-151A1.pdf>

- Applicants must be able to demonstrate that their proposed project is financially feasible and sustainable
- Scoring Criteria (100 total points): 25 points for project purpose; 25 points for project benefits; 25 points for project viability; 25 points for project budget and sustainability.
- Contact: David J. Villano, Assistant Administrator
Telecommunications Program, Rural Utilities Service, USDA, email: bip@wdc.usda.gov
- **Broadband Mapping NOFA Summary**
 - \$350 million available to fund the State Broadband Data and Development Grant Program authorized by the Broadband Data Improvement Act.⁴ Purpose is to provide grants to eligible entities to develop and implement statewide initiatives to identify and track the adoption/availability of broadband services and develop statewide broadband maps.
 - High priority on developing and maintaining a national broadband map – intent to fund projects gathering data at the address-level on broadband availability, technology, speed, infrastructure, average revenue per user, and spectrum used across the project areas.
 - Successful applicants should propose to provide comprehensive and verifiable data meeting Program standards; workable and sustainable framework for repeated updating of data; a plan for collaboration with state-level agencies, local authorities and other constituencies; feasible projects as demonstrated by reasonable and cost-efficient budget; and timeline for expedient data delivery.
 - NTIA expects grant awards to range between \$1.9 million and \$3.8 million per state for the mapping portion of each project, and up to \$500,000 for the planning portion of each project. The exact size of any award will depend on the specifics of each project, the quality of each project as determined in

⁴ Pub. L. 110-385, 122 Stat. 4096 (to be codified at 47 U.S.C. § 1301 *et seq.*).

NTIA's review, as well as demographic and geographic features unique to each state.

- Key dates for BDIA:
 - Application window opens July 14, 2009 at 8:00 am Eastern Time (ET) and closes August 14, 2009 at 11:59 pm ET.
 - Awards to be made no later than September 30, 2010. Period of performance will be five years from date of award.
 - NTIA will announce awards starting on or about September 15, 2009. Successful applicants must comply with applicable documentation requirements within 60 calendar days of award announcement.
- Eligible Applicants: agency or instrumentality of a state or municipality or other subdivision or agency or instrumentality; a nonprofit organization; or independent agency or commission in which an office of a State is a member on behalf of the State; or the single eligible entity in the State that has been designated by the State to receive a grant.
- Matching Funds: Awardees will be required to provide and document at least 20 percent non-federal matching funds toward the total eligible project cost.
- Confidentiality Requirements: Recipients of grants must treat any information that is a trade secret or commercial or financial information or privileged or confidential matter as confidential and not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the entity.
- Scoring Criteria (100 total points): 30% for data proposed to be provided; 30% for project feasibility; 20% for expedient data delivery; 10% for the process of repeated data updating; and 10% for planning and collaboration.

(END OF APPENDIX 2)