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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Revisions to the California Advanced Services Fund.	Rulemaking 20-08-021

E-MAIL RULING REQUESTING COMMENT ON STAFF PROPOSAL

Dated October 1, 2020, at San Francisco, California.

/s/ JOANNA GUBMAN
Joanna Gubman
Administrative Law Judge

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Sent: Thursday, October 1, 2020 9:20 AM
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Cc: ALJ Docket Office <ALJ_Docket_Office@cpuc.ca.gov>; Process Office <processoffice@cpuc.ca.gov>; ALJ_Support ID <alj_supportid@cpuc.ca.gov>
Subject: R.20-08-021 (CASF): Email Ruling Requesting Comment on Staff Proposal

To all parties to proceeding R.20-08-021 (CASF),

This email ruling directs all parties to R.20-08-021 to file and serve comments and reply comments responsive to the attached staff proposal, *Staff Proposal on State-Federal Broadband Infrastructure Funds Leveraging*.

Parties should comment on the specific questions posed by staff at the start of the proposal document, and on the proposal elements that follow. Comments must be organized in the same order as in the staff proposal. Comments addressing the questions posed by staff must clearly indicate which question they are responding to. Comments on other aspects of the proposal must clearly indicate the section header(s) they relate to.

Comments are due on October 15. Reply comments are due on October 22.

Docket Office shall formally file this ruling.

Joanna Gubman (she/her)
Administrative Law Judge
California Public Utilities Commission
joanna.gubman@cpuc.ca.gov

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ATTACHMENT 1

Staff Proposal on State-Federal Broadband Infrastructure Funds Leveraging

Part 1. Questions to Parties

This staff proposal outlines a suggested process for the use of California Advanced Services Fund (CASF) broadband funding to leverage and maximize federal Rural Digital Opportunity Fund (RDOF) broadband funding.

The Order Instituting Rulemaking in this proceeding included Question 7:

> Leveraging Non-CASF Funds—In June 2020, the Governor signed AB 82, which revised the prohibition that a project funded by the Broadband Infrastructure Grant Account include broadband infrastructure also funded by the federal Connect America Fund program or other similar federal public program.[1]
>
> a) How should the Commission leverage federal funds for broadband deployment? For example, how should CASF leverage Rural Digital Opportunity Fund (RDOF)[2] dollars for California? Staff will issue a report on this topic.
>
> b) How should CASF leverage other federal funding?

This staff proposal serves as the report envisioned in the Order Instituting Rulemaking. The proposal begins with a series of questions to parties, and follows with the proposal details. Commenters should ensure compliance with any applicable Federal Communications Commission (FCC) prohibited communication rules.[3]

1. Background: The staff proposal outlines a process to use state CASF funds to maximize federal RDOF dollars. The proposal suggests waiting on the outcome of federal funds in order to maximize our finite state funds. In the proposal, May 4, 2020 CASF applications that do not get RDOF Phase I funds would remain eligible, and

[1] AB 82, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB82

[2] The FCC's rules prohibit an applicant from communicating certain auction-related information to another applicant from the auction short-form application filing deadline until the post-auction deadline for winning bidders to file long-form applications for support. More specifically, section 1.21002 of the FCC's rules prohibits an applicant in Auction 904 from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies during the prohibition period. See 47 C.F.R. § 21002.

[3] *Id*.

potentially be awarded, CASF funds. The proposal suggests waiting to act on CASF applications with RDOF areas because state funds awarded before the RDOF Phase I auction risk disqualifying areas and reducing the amount of federal funds available in California. CASF funds used to leverage RDOF awards in this proposal are referred to as "kicker" funds.

(a) Should the Commission consider additional aspects, rationale, or interpretation of Public Utilities Code section 281 to facilitate CASF-RDOF leveraging?
(b) Does the proposal accurately capture that state infrastructure awards before RDOF would likely disqualify or remove the state-funded locations from the federal auction?
(c) Should the proposal be modified to better conform with Public Utilities 281(f)(13), which states "This paragraph does not authorize the commission to reject a grant application on the basis that an applicant failed to seek project funding from the Connect America Fund program or another similar federal public program."?

2. Rationale for State-Federal Leveraging: This section outlines a rationale for the proposal related to prudent use of finite state resources and supporting California service providers to maximize non-state funding.

(a) Do additional or other rationales for State-Federal leveraging apply?

3. Proposed Criteria for State Kicker Funds: The proposal suggests criteria for service providers to get state support in addition to RDOF.

(a) Will this proposal work to incentivize additional RDOF bids or deployment than would otherwise occur in the California?
(b) Should different criteria for CASF-RDOF leveraging be considered?
(c) Should the criteria be modified to better support faster deployment?

(d) In light of the proposal to add California requirements on top of RDOF requirements, should fewer or other criteria be considered to simplify complying with state and federal requirements?

(e) Should other approaches to maximizing California RDOF funding be considered? If so, how is another approach better or more effective?

(f) Do additional arguments support the provision of Indefeasible Rights of Use for California Tribes? If not, what alternative criteria or program conditions would be appropriate and why?

3.3 Support Criteria Definitions:

(a) Should the definitions be modified for accuracy or clarity?

4. Additional Benefits for Kicker Qualifying Entities

4.1. Letter of Credit and Financial Support for Kicker Recipients: The proposal includes support for California kicker fund applicants to meet Letter of Credit requirements and secure financing.

(a) Should the Commission consider other financing support for kicker fund applicants?

(b) Should additional requirements or safeguards be included in the support for California kicker fund applicants to meet Letter of Credit requirements and secure financing?

5. Proposed Kicker Budget and Status of May 4, 2020 Applications: The proposal suggests awarding funds for 1) May 4 CASF applications that succeed in an RDOF award; 2) May 4 CASF applicants without RDOF funds; and 3) kicker eligible projects after the Federal Communications Commission announces RDOF awards. Additionally, this section proposes factors the Commission could consider if requests for funding exceed available funding.

(a) Should other prioritization or prioritization factors be considered?
(b) If a grantee (kicker recipient) cannot complete the project within the specified RDOF Phase I timeline, the grantee must notify the Communications Division Director. Should more detail on the form of the notification be specified?

5.1. Action on May 4, 2020 CASF Applications After RDOF Phase I Awards: The proposal suggests waiting to act on May 4, 2020 CASF applications with RDOF-eligible locations until after the FCC makes awards. This is based, in part, on the rationale that awards before RDOF could disqualify the RDOF eligible locations from RDOF, and so forfeit federal funds.

(a) Should a different approach to May 4 CASF Applications be considered?
(b) Should a different approach to RDOF kicker funds be considered?
(c) Should other factors or approaches be considered in evaluating May 4 CASF Applications with RDOF blocks where the CASF Applicant is not awarded RDOF support?

5.2. Requests for Payment: The proposal suggests detailed reporting and substantiation as a basis for a kicker fund request. This is based, in part, on the interest in monitoring and ensuring that providers do not receive state and federal funding for the same expenses.

(a) Should other approaches be considered for payment of kicker funds?
(b) The proposal contemplates penalties in the event a grantee fails to notify the Commission of any delays and the project fails to meet the approved completion date. What criteria should be considered with respect to the imposition of penalties in this section?

6. Timing: the proposal outlines the timing for action on the May 4 applications and kicker funding.

(a) Is the timing outlined in Section 6 appropriate? Why or why not? If not, please suggest an alternative schedule and explain why it is preferable.

7. Proposed Process

7.1. Kicker Process for May 4 Applications and Other RDOF Winners: suggests a staff process to implement the kicker proposal.

(a) Should a different or modified process be considered? If so, how and why?

7.2. Process for May 4 Application Areas Without Kicker Requests: Outlines the suggested process for portions or all of May 4 Applications that do not involve a kicker request.

(b) Should a different or modified process be considered? If so, how and why?

(c) Do commenters have suggestions to better clarify or explain how this process would be implemented?

7.3. Application Window for Nearby CASF-Only Eligible Blocks: The proposal includes a specific opportunity and process for a kicker fund recipient to apply for CASF-only eligible census blocks adjacent to or along the route of the RDOF blocks.

(d) Should the proposed process and opportunity to apply for CASF-only census blocks be adopted?

(e) Should information, items, or criteria be added to the staff review process?

(f) The proposal contemplates a limited set-aside for CASF Applications from RDOF winners for areas near the CASF applicants' RDOF winning bid census blocks. If an amount should be set-aside, what amount should be set-aside for this section of the proposal and why?

8. Reporting: The proposal outlines reporting obligations.

(a) Should other or different reporting be required?

Comments on appendices. The proposal includes four appendices.

- Appendix 1. Kicker Funds Request Information Required from Applicants
- Appendix 2. Letter of State Funding Availability Information Required From Applicants
- Appendix 3. Attestation Information Required from Applicants
- Appendix 4. June 5, 2020 Letter to May 4, 2020 California Advanced Services Fund Infrastructure Applicants

(a) Please provide any recommended changes to the substance or form of the appendices.

Part 2. Staff Proposal on State-Federal Broadband Infrastructure Funds Leveraging

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Executive Summary

This staff proposal outlines a possible framework for the California Public Utilities Commission (Commission or CPUC) Communications Division (hereinafter staff) to support California service providers (hereinafter providers) who are pursuing the

Federal Communications Commission (FCC) Rural Digital Opportunity Fund (RDOF) dollars by 1) providing additional California broadband grant funds to RDOF winning bidders; and 2) assisting providers with financing and in meeting Letter of Credit requirements. These measures are intended to incentivize providers to provide public benefits and to build broadband infrastructure faster. The incentives will be referred to as "kicker" funds in this proposal.

1. Background

1.1. The Rural Digital Opportunity Fund Auction Phase I

The FCC's RDOF program was designed to award up to $20.4 billion nationwide to support broadband services for eligible areas. The FCC will award funding in two phases using a reverse auction process. Phase I, designated Auction 904, opened July 1, 2020 with a $16 billion budget and bidding is scheduled to begin on October 29, 2020. California's 425,533 RDOF Phase I eligible locations are the most of any state in the country.[4] The California maximum for which providers can bid (total reserve price) to provide service to eligible households and small businesses is $2.3 billion. RDOF Phase I funds will be paid to providers that are awarded support in equal payments over 10 years with requirements to build infrastructure within the first six years.[5]

1.2 Commission Engagement and RDOF Phase I

The Commission has actively engaged with the FCC in the RDOF rulemaking.[6] The Commission also sought comments in its California Advanced Services Fund (CASF)

[4] *See* Broadband Federal Funding, https://www.cpuc.ca.gov/communications/federalfunding/ and California RDOF Eligibility Map, https://www.broadbandmap.ca.gov/federalfunding/

[5] *See* Broadband Federal Funding, https://www.cpuc.ca.gov/communications/federalfunding/ and California RDOF Eligibility Map, https://www.broadbandmap.ca.gov/federalfunding/

[6] After the FCC issued its Notice of Proposed Rulemaking on RDOF (rel. August 2, 2019, NPRM), the CPUC engaged in multiple communications on the record of the proceeding. CPUC President Batjer wrote a letter to FCC Chairman Pai (rel. January 22, 2020). The CPUC filed Comments, and Reply Comments; conducted ex parte meetings in Washington among CPUC Commissioners (Guzman Aceves, Randolph, and Shiroma) and staff, and FCC Commissioners (Carr, Rosenworcel, and Starks), FCC Commissioners' Advisors, and staff; and conducted seven ex parte telephonic conferences among staff of CPUC's Communications Division, the Telecommunications Advisor to Commissioner Guzman Aceves, CPUC Legal Division counsel, and FCC staff.

proceeding on the use of state broadband grant funds—the CASF—to leverage federal, state, and local funding.[7]

The FCC January RDOF Report and Order stated that the FCC will exclude census blocks subject to enforceable deployment obligations from RDOF. That is, an area without infrastructure where a provider has an obligation or has been awarded funds to provide service of 25 megabits per second (Mbps) download and 3 Mbps upload or better: "[W]e will exclude those census blocks which have been identified as having been awarded funding through . . . state broadband subsidy programs to provide 25/3 Mbps or better service."[8]

On May 4, 2020, the Communications Division received 54 CASF Infrastructure grant applications for over $500 million—much more than the amount available in the fund. However, even if all 54 CASF infrastructure applications were awarded, the program would not meet the statutory goal of 98% served status within each multi-county consortia region. On June 5, 2020, the Communications Director sent a letter to CASF Infrastructure applicants and the CASF Distribution List stating that not all of the May 4 CASF applications can be funded and encouraging providers to participate in RDOF (the letter is attached).[9]

1.3 Statutory Framework

The CASF statute was amended to enable the leveraging of state and federal funding discussed in this proposal. The CASF Rulemaking (R.12-10-012) requested comment on CASF leveraging of federal funds (March 26 Assigned Commissioner

[7] March 26, 2020 Assigned commissioner ruling in R.12-10-012, https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M330/K052/330052372.PDF

[8] In the Matter of Rural Digital Opportunity Fund; Connect America Fund, Report and Order, WC Docket Nos. 10-90, 19-126, FCC 20-5 (rel. Feb 7, 2020) at para. 13 (RDOF Report and Order), available at https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0; June Rural Digital Opportunity Fund Bidding Procedures Notice, https://www.fcc.gov/document/fcc-adopts-procedures-rural-digital-opportunity-fund-auction-0https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0; see also, June Rural Digital Opportunity Fund Bidding Procedures Notice, available at https://www.fcc.gov/document/fcc-adopts-procedures-rural-digital-opportunity-fund-auction-0.

[9] Letter from Communications Division Director Osborn to May 4 CASF applicants (June 5, 2020), available at https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Service_Provider_Information/California_Advanced_Services_Fund_(CASF)_Program/Letter%20RDOF.pdf (also served on the CASF distribution list).

ruling questions 9-14).[10] The record, developed by the ruling and comments, was the basis for 2020 statutory changes, discussed below, to enable the leveraging in this proposal.

On June 29, 2020, the Governor of California signed Assembly Bill 82 (AB 82, Chapter 14, Statutes of 2020). AB 82 modified the CASF statute (codified at Public Utilities Code section 281) to better enable the use of CASF to leverage RDOF dollars; the Budget Floor report described the statutory changes: "to allow the California Public Utilities Commission to provide matching funds through the California Advanced Services Fund to broadband providers as they pursue funding through the federal Rural Digital Opportunity Fund."[11] AB 82 made two changes to the CASF statute. First, AB 82 added RDOF eligible locations to the definition of unserved:

> For projects funded, in whole or in part, from moneys received from the federal Rural Digital Opportunity Fund, "unserved household" means a household for which no facility-based broadband provider offers broadband service at speeds consistent with the standards established by the Federal Communications Commission pursuant to In the Matter of Rural Digital Opportunity Fund, WC Docket No. 19-126, Report and Order, FCC 20-5 (adopted January 30, 2020, and released February 7, 2020), or as it may be later modified by the Federal Communications Commission. Public Utilities Code section 281(b)(1)(B)(ii).

Second, AB 82 struck a subsection that could limit the ability to combine CASF and RDOF dollars:

> ~~A grant from the Broadband Infrastructure Grant Account shall not include funding for costs of broadband infrastructure already funded by the Connect America Fund program or other similar federal public program that funds that infrastructure. This paragraph does not apply to funding from the federal high-cost support programs that support operations, including High Cost Loop Support (HCLS), Connect America Fund-Broadband Loop Support (CAF-BLS), or the Alternative Connect America Cost Model (A-CAM).~~ California Public Utilities Code section 281(f)(12) (2019).

[10] Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund, Rulemaking 12-10-012, March 26, 2020 Assigned Commissioner Ruling, available at https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M330/K052/330052372.PDF

[11] California Assembly, Floor Report 2020-21 State Budget (Version 3 as of July 1) at page 113, available at https://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/Floor%20Report%20of%20the%202020-21%20Budget%20-%20%20%28updated%20as%20of%20July%201%29.pdf.

The AB 82 modifications enabled leveraging of CASF and RDOF dollars in compliance with other statutory provisions. The other statutory provisions in Public Utilities Code section 281 include—

- Public Utilities Code section 281(b)(2) requirements the Commission shall consider in approving projects. The requirements are not controlling for RDOF support where the FCC approves applications, but can provide guidance;
- Public Utilities Code section 281(f) provisions including 281(f)(1) regarding tech-neutrality;
- Public Utilities Code section 281(f)(4) covering an annual right-of-first refusal;
- Public Utilities Code section 281(f)(5) on minimum build-out requirements;
- Public Utilities Code section 281(f)(1) and 281(f)(7) on eligible entities;
- Public Utilities Code section 281(f)(8) on an opportunity to challenge; (based on an entity already providing service);
- Public Utilities Code section 281(f)(10) on notification processes for Applications;
- Public Utilities Code section 281(f)(11) on allowable expenses;
- Public Utilities Code section 281(f)(12) on the amount of funding; and Public Utilities Code section 281(f)(13) on steps to leverage federal funding.

The kicker process in this proposal is intended to address, in part, these statutory provisions as amended by AB 82. For example, the CPUC provided an opportunity to file an annual right of first refusal on CASF census blocks, and RDOF-eligible census blocks are designated eligible (unserved) by statute. Providers had an opportunity to challenge the FCC RDOF designation of locations and have—and will continue to have for any future CASF applications—an opportunity to challenge any CASF-only census blocks.

Staff put forward this proposal to maximize CASF funding through leveraging federal RDOF dollars in the context of finite CASF funds to reach the Public Utilities Code section 281 goal “to approve funding for infrastructure projects that will provide

broadband access to no less than 98 percent of California households in each consortia region…"

Statute directs the Commission to maximize federal funding. Public Utilities Code section 270(c) states: "The commission, in administering the universal service program funds . . . and in administering state participation in federal universal service programs, is encouraged, consistent with the state's universal service policies and goals, to maximize the amount of federal funding to California participants in the federal programs." The CASF statute, Public Utilities Code section 281(f)(13) includes guidance for ways in which CASF can and should take steps to obtain federal funding:

> The commission may require each infrastructure grant applicant to indicate steps taken to first obtain any available funding from the Connect America Fund program or similar federal public programs that fund broadband infrastructure. This paragraph does not authorize the commission to reject a grant application on the basis that an applicant failed to seek project funding from the Connect America Fund program or another similar federal public program.

On September 2, 2020, the Commission initiated the new CASF rulemaking[12] to continue modifications to the CASF program. Among other issues, the Commission requested comments on how CASF should be used to leverage RDOF broadband funds for California and stated that Staff will issue a report on this topic. This proposal serves as that report.

To implement AB 82 and support California providers, the Commission seeks comments[13] on this state-federal broadband funding "kicker" approach to expedite build out of gigabit-capable broadband infrastructure.

[12] Order Instituting Rulemaking Regarding Revisions to the California Advanced Services Fund, Rulemaking (R.) 20-08-021 (rel. Sept. 2, 2020).

[13] Commenters should consider the FCC's rules that prohibit an applicant from communicating certain auction-related information to another applicant from the auction short-form application filing deadline until the post-auction deadline for winning bidders to file long-form applications for support. More specifically, section 1.21002 of the FCC's rules prohibits an applicant in Auction 904 from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies during the prohibition period. See 47 C.F.R. § 21002.

2. Rationale for State-Federal Leveraging

The rationale for using CASF dollars to leverage RDOF bids is to make providers more competitive, and more likely to bid, in the FCC auctions. This would make California providers more likely to win RDOF support for infrastructure that provides service at higher speeds and bring more non-CASF funding to California in the FCC's nationally competitive reverse auction. Providers who have access to further funding for California's RDOF eligible locations can be more competitive by bidding less in the reverse auction with the knowledge they will be supported by state funds. On a statewide basis therefore, all RDOF Phase I participants bidding for in-state areas will be more likely to win their bids in California.

National experts[14] advising the Commission characterized the benefits of the approach in this proposal as follows:

> Following analysis of the California eligible locations issued by FCC for RDOF Phase I, we believe that if CPUC is able to make available $100 million to $150 million total as an allotment for state funding contributed on an after auction 'kicker' basis, as should be permissible under FCC rules, it will give to bidders for California RDOF Phase I eligible location an incentive to participate in the auction in the 1 Gigabit tier, protection to remain in the auction as the clock drops below 100%, and the impetus to build out in a more expeditious manner than required by the FCC. Based on our analysis, it is likely that every dollar of CPUC funding will leverage more than $4 of FCC funding for the state of California.

Based on this advice this proposal builds on federal-state initiatives from other states.

Federal-state sharing of costs of broadband infrastructure has proven successful in other states, like New York[15] and Pennsylvania.[16] New York's broadband program was announced in early 2016 and focuses on public-private partnerships. The New York program used a regionally-based reverse auction which favored solutions of 100 Mbps or higher for the remaining areas. New York combined federal funding from CAF II for price cap carriers and the FCC granted a waiver for New York so that the CAF II money

[14] https://www.costquest.com/
[15] *See* The NYS Broadband Program Office: https://nysbroadband.ny.gov/
[16] *See* "Governor Wolf Announces Broadband Expansion to Over 9,200 Rural Homes and Businesses," available at https://www.penndot.gov/pages/all-news-details.aspx?newsid=534

could be used by the state program. Winners in CAF II areas had to meet both state and FCC rules. The result of this program was that $170 million of CAF II funding was combined with $200 million of state and private funding to meet the state's goals.

In 2018, Pennsylvania's Governor Wolf announced the Pennsylvania Broadband Investment Incentive Program which allocated $30 million financial assistance to bidders in the Connect America Fund Phase II (Auction 903) in Pennsylvania.[17] The program was a partnership between the Pennsylvania broadband office and the Department of Transportation (PennDOT). PennDOT provided the funding, which was aligned with its strategic goal of supporting intelligent transportation systems, connected vehicle infrastructure, and improving access to PennDOT's facilities. The program used $17 million (of the allocated $30 million) as incentives for three providers, with the most money being awarded to an electric co-operative for fiber optic facilities.

Within the FCC's RDOF rulemaking, the CPUC recommended that the FCC establish rules enabling joint federal-state partnerships.[18] The FCC, acting on a Petitions for Reconsideration of the RDOF order from states cited Pennsylvania Auction 903 approach as an example of state program coordination (in the narrow confines of an FCC reverse auction).[19]

3. Proposed Criteria for State Kicker Funds

The following criteria for providing California state funds from the CASF Infrastructure Account to a provider that has received notification of RDOF (Phase I) funding are proposed below. Staff proposes kicker awards at two levels – Level 1 and Level 2. The kicker awards are incremental, in that to receive a Level 2 award the service provider must also qualify to receive Level 1 support.

[17] The CAF II auction had different rules about overbuilding than the RDOF auction, so this staff proposal is contemplating making awards after Auction 904.

[18] *See generally* Comments of the California Public Utilities Commission, In the Matter of RDOF; CAF, WC Docket Nos. 19-195, 10-90, (filed September 20, 2019) (CPUC Comments)

[19] See, Federal Communications Commission, Order on Reconsideration, In the Matter of RDOF Auction (Auction 904); RDOF; CAF, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, (Released: September 29, 2020), para. 16, *available at* https://docs.fcc.gov/public/attachments/FCC-20-127A1.pdf

Staff intends to publish a list of RDOF Phase I census blocks and proposed levels or dollar amounts of state support once the FCC announces final locations (approximately two weeks before the auction starts). The kicker process is designed to stand on its own, in compliance with Public Utilities Code section 281, and independent from the CASF Infrastructure Account rules in Decision 18-012-018. If adopted, these proposals would have their own processes and requirements as described herein.

3.1. Proposed Level 1 Support Criteria

Level 1 support would provide a CASF kicker of approximately 10%[20] to RDOF awardees[21] (i.e., roughly 10% of the total 10-year RDOF amount per census block group). Kicker percentages are approximate because staff intends to publish specific support amounts by census block and group before RDOF bidding begins. Level 1 support, or match, would be available for RDOF winning providers that commit to the following criteria:

1. Provision of gigabit-capable network infrastructure[22] that includes either of the below open access[23] infrastructure:
    a. last-mile[24]; <u>or</u>
    b. middle-mile[25]; <u>and</u>

2. Service providers which receive kicker funds should use the Commission's Tribal Consultation Policy as guidance for meaningful engagement and discussion regarding service on tribal lands;[26] <u>and</u>

3a. An RDOF winner that accepts kicker funds to build in a census block must meet the RDOF buildout commitment in the census block or return the kicker funds

[20] Specific amounts will be specified: Staff intends to publish a list of RDOF Phase I census blocks and proposed levels or dollar amounts of state support once the FCC announces final locations (approximately two weeks before the auction starts).
[21] As verified by the post-auction FCC public notice.
[22] As defined in section 3.3 below.
[23] As defined in section 3.3 below.
[24] As defined in section 3.3 below.
[25] As defined in section 3.3 below.
[26] *See*, https://www.cpuc.ca.gov/tribal/

with an additional amount consistent with the RDOF non-compliance framework including support recovery of up to 1.75 times the amount awarded;[27] or

3b. An RDOF winner that accepts kicker funds must build to all locations in the awarded project area in the first four years instead of the first six years.

3.2. Proposed Level 2 Support Criteria

Level 2 support would provide a CASF kicker (approximately 10%, for a total 20%) to RDOF awardee census block groups if the provider further commits to either or both of the following:

1. Including the offer of Indefeasible Rights of Use[28] for California Tribes located near (within 10-40 miles) the last mile or middle mile routes; and/or
2. Designation as a Carrier of Last Resort (COLR) in RDOF bid areas (or an Application to provide COLR service, and subsequently being designated to such status).[29]

Kicker amounts of 10% are approximate. Staff intends to publish specific dollar amounts by census block and census block group.

3.3. Support Criteria Definitions

Gigabit-capable network infrastructure – Network infrastructure that has been demonstrated to reliably provide 1,000 megabit per second (Mbps) connections, ideally symmetrical, to all locations in a designated deployment. Staff engineers would evaluate novel or unproven infrastructure capabilities. For example, a fiber to the premises network to all locations in a census block would be meet these requirements.

[27] *See*, RDOF Report and Order, paras. 58-64.
[28] As defined in section 3.3 below.
[29] Carrier of last resort responsibilities and process are defined in D. 96-10-066. The most recent basic service elements can be found in D. 12-12-038.

Indefeasible Rights of Use (IRUs) – Long term leases (e.g., 30 years) for unrestricted access to at least two fiber strands at the nearest point of interconnect. A point of interconnect must be available or constructed at a point on the fiber route which is convenient and possible for Tribal interconnect. The IRU requirement does not require a service provider to construct a spur (fiber infrastructure connection) beyond the point of interconnect.

Last-mile – The portion of the broadband infrastructure installed from the central office, head end, or other interconnection facility to a customer premises.

Middle-mile – The portion of the broadband infrastructure that connects a central office, head end, or other interconnection facility to another central office, head end, or other interconnection facility, and that is not the last mile. Middle mile can be within the census block awarded and between contiguous blocks, in addition to new builds between blocks which are not contiguous.

Open access – Also called neutral host. An open access provider offers non-discriminatory access to multiple providers on equal terms. It is a wholesale model wherein the infrastructure provider makes its network available for multiple last mile providers, who have the billing relationship with the end user.

3.4. Kicker Staff Review Criteria

Staff is assigned the task of reviewing kicker submissions to meet requirements, including the following: ensure entity information is accurate; RDOF awards including census blocks, locations, and award information; budgets, justification, and build plans sufficiently demonstrating that applicant meets the kicker funding criteria in section 4, 4.1, 4.2, and 4.3; and that an attestation with all required information is submitted. Ministerial awards may only be provided if there are CASF funds available. Once funds are expended, no new awards would be made.

4. Additional Benefits for Kicker Qualifying Entities

4.1. Letter of Credit and Financial Support for Kicker Recipients

At the time of the long form application, the RDOF rules require providers to obtain a bank letter of credit equal to the first year of support for the areas which the service provider wins.[30] These letters of credit can be more favorably advanced with a letter describing state funding availability from the Commission, addressed to both the interested bank and to the FCC, for the service provider's infrastructure plans.

Entities who have applied to meet either option of the kicker criteria and want this letter may, to the extent consistent with the RDOF prohibited communication rules[31], confidentially communicate with staff to provide background and details relevant to the Letter of Credit requirements. Staff is then assigned the task of preparing letters detailing California CASF support for RDOF bidders.

Kicker funds may also be used to satisfy Letter of Credit requirements and other financing commitments. For example, staff may assist kicker fund recipients to secure financing in collaboration with other state agencies such as the California Infrastructure and Economic Development Bank (IBank)—such as by executing a Memorandum of Understanding or other collaboration agreement. This support for kicker recipients can help ensure that providers deploy infrastructure in their areas faster.

4.2. Implementation of Financial Support

Staff is assigned the task of providing a letter detailing proposed California kicker support for RDOF applicants. In addition, staff is to collect the necessary documentation to encumber funds, on behalf of other state entities such as IBank, to serve as a reserve to meet Letter of Credit or RDOF funding requirements. Funds would be transferred only when required by the IBank and creditor criteria, and where kicker recipient has

[30] RDOF Report and Order, para. 98.

[31] See NOTICE AND FILING REQUIREMENTS AND OTHER PROCEDURES FOR AUCTION 904 (FCC 20-77), Section G "Prohibited Communications and Compliance with Antitrust Laws" for a discussion of the FCC prohibited communications rules (paras. 146-176); see also 47 C.F.R. § 1.21002.

deployed infrastructure—consistent with their RDOF and CASF obligations—equivalent to the reserve amount.

5. Proposed Kicker Budget and Status of May 4, 2020 Applications

Staff proposes CASF infrastructure funds available to award[32] at the time of the FCC Phase I public notice of award be used for CASF-RDOF kicker funds. The deadlines for Commission May 4 action on CASF Applications that have RDOF overlap/eligible locations would be extended by Executive Director letter (from the current November 13, 2020 deadline for publishing Draft Resolutions recommending an approval).[33] If an Application has not been approved by Ministerial Review or had a Draft Resolution published by the deadline the application is "deemed denied, though it may be eligible for approval the next year."[34] To summarize, the deadline for Commission action on May 4, 2020 applications would be extended by letter to the Executive Director until after FCC RDOF awards are announced in the first quarter of 2021.

This proposal seeks comment on suggests the following factors to prioritize funding if requests exceed available funding (consistent with the June 5, 2020 letter to CASF May 4 applicants encouraging participation in RDOF):

- Whether a project makes a significant contribution to the program goal;[35]
- May 4 CASF applications with RDOF kicker fund requests;
- Kicker fund requests;

[32] Subject to 2021 and 2022 CASF surcharge collections.
[33] *See* May 1, 2020 Executive Director letter extending 2020 deadlines in response to the COVID 19 pandemic, available at https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Postponement%20of%20CASF%20Deadline%202020.pdf
[34] CASF Infrastructure Decision 18-12-018, Appendix 1 "Broadband Infrastructure Account Requirements, Guidelines and Application Materials" section 9, available at https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=250281851.
[35] Public Utilities Code section 281(b)(1)(A) ("The goal of the program is, no later than December 31, 2022, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region…")

- Other May 4 CASF Applications;
- Tribal sovereignty;[36]
- Service to low-income communities;[37] and
- Contribution of non-CASF, outside, or RDOF funding.

5.1. Action on May 4, 2020 CASF Applications After RDOF Phase I Awards

The evaluation and potential awards for 2020 CASF applications that included RDOF eligible locations would be deferred until after the RDOF auction process has concluded for the reasons outlined above.

Situation 1. May 4 CASF Application with RDOF census blocks that wins the RDOF auction for those blocks

May 4, 2020 CASF applications that overlap with RDOF eligible census blocks may request kicker funds for RDOF eligible blocks pursuant to the kicker fund process and criteria in this document.

A CASF Application with RDOF census blocks would need to meet the kicker fund requirements for RDOF eligible funds pursuant to the kicker fund process. For CASF-only census blocks the Application remains eligible for up to 100% of the cost of the May 4 application amount (for the CASF-only census blocks) and would be evaluated pursuant to the general CASF Infrastructure rules in D.18-12-018.

CASF applications are subject to a challenge (opportunity for an existing provider to demonstrate actual levels of service in the project area). The May 4, 2020 applications have already gone through that challenge process. May 4, 2020 CASF applications would not go through an additional challenge process.

[36] Tribal Council support for a provider proposing to provide service on tribal lands and/or Tribal Council recognition that a provider has meaningfully engaged with a tribe.

[37] Median Household Income for community is less than $50,200 (30%). The median income within a Census Block Group having median income less than the CARE standard for a household of four, which will be updated annually. Through May 31, 2019, this value is $50,200. *See* http://www.cpuc.ca.gov/General.aspx?id=976 for CARE program requirements.

Situation 2. May 4 CASF Application with RDOF census blocks that does not win the RDOF auction for those blocks

For a May 4 CASF applicant that is not an RDOF winner, CASF applications would be evaluated on a case-by-case basis pursuant to the CASF infrastructure rules in D.18-12-018. The Commission may consider factors such as the technology proposed to be deployed by an RDOF winner and other factors (see Section 5 above).

5.2. Requests for Payment

The prerequisite for the first kicker payment is a submittal of request documents such as a progress report, invoice, and request for funding to the commission. Subsequent payments would be made at intervals in 2021-2023 in response to submittal of request documents. Payments are based on submitted receipts, invoices and other supporting document showing expenditures incurred for the project in accordance with the approved CASF kicker funding budget included in the kicker application.

If the grantee cannot complete the project within the specified RDOF Phase I timeline, the grantee must notify the Communications Division Director as soon as they become aware that they may not be able to meet the timeline and provide a new project completion timeline.

In the event that the grantee fails to notify the Communications Division of any delays in the project completion and the project fails to meet the approved completion date, the Commission may impose penalties to be adopted in a Commission Resolution (see the Section 3.1 criteria including 1.75x the amount of kicker funds received). Invoices submitted would be subject to a financial audit by the Commission at any time within 3 years of completion of project. If portions of the reimbursements are found to be out of compliance, grantees would be responsible for refunding any disallowed amounts along with appropriate interest at rates determined in accordance with applicable Commission decisions.

6. Timing

Staff intends to provide location-specific support information after the FCC finalizes RDOF-eligible locations, which is anticipated to be approximately two weeks before the auction.[38] The aim would be for the Commission to consider, and potentially adopt, any action on this proposal before the FCC announces RDOF winners. The kicker support itself would not be awarded until after the FCC announces the winners.[39]

Kicker fund support is anticipated to be awarded in years one to three (calendar years 2021-2023) given that CASF funds are currently to be collected by Dec 31, 2022.[40] Staff recognizes that kicker funds awarded sooner are more helpful to RDOF winners.

7. Proposed Process

7.1. Kicker Process for May 4 Applications and Other RDOF Winners

This Proposal contemplates ministerial, staff-driven implementation of the kicker funds program.

Staff would be assigned the task of providing deadlines by which RDOF winning bidders (hereinafter RDOF winners) may request kicker funds.

Winning bidders would request kicker funds by submitting the information required of applicants and supporting material in this proposal to the Communications Division director pursuant to the information requirements in Appendix A.

[38] Staff estimates the FCC will release the final RDOF eligible locations for RDOF Phase I (Auction 904) on approximately October 14, 2020, prior to the October 29, 2020 Phase I auction opening date of Phase I. Staff will identify final RDOF eligible locations on the *California RDOF Eligibility Map* as quickly as possible following the FCC's released by FCC.

[39] If the FCC releases RDOF winners in separate tranches, the CPUC support will be awarded when the bulk of RDOF awards are announced by the FCC.

[40] *See* Public Utilities Code section 281(d).

Staff would be assigned the task to review the letter requests and forms, and to confirm by letter whether the RDOF winners meet the kicker requirements in section 4.

When the above review process is insufficient, staff would be assigned the task of putting a Resolution before the Commission to award or deny kicker funds to RDOF winners.

7.2. Process for May 4 Application Areas Without Kicker Requests

The proposal is that May 4 Applications would be reviewed and acted on pursuant to the CASF process in D.18-12-018. That is, CASF-only blocks that are part of May 4 Applications that qualify for kicker funds and/or May 4 Applications without kicker funds would be handled according to the regular D.18-12-018 rules and processes.

7.3. Application Window for Nearby CASF-Only Eligible Blocks

Staff is assigned the task to open an additional application window for only RDOF winning bidders that request kicker funds to submit CASF applications to serve CASF eligible households (that are not RDOF eligible) in census blocks that are adjacent to census blocks that include, or along the route to census blocks that include, RDOF locations. Staff is to set a window around the time that RDOF winning bidders may request kicker funds.

This proposal contemplates a limited set-aside for CASF Applications from RDOF kicker requesters for areas which are adjacent to the CASF applicants' RDOF winning bid census blocks. The CASF Applications would be evaluated through the CASF process in D.18-12-018. A set-aside would be in addition to any kicker and May 4, 2020 application awards.

8. Reporting

Recipients of CASF-RDOF kicker funds will be required to report the following:

- Buildout status or attainment of service milestones (no less frequently than reported to the FCC).
- Attest to compliance with the RDOF and CASF prohibitions against double-dipping.[41]
- Reporting that identifies specific federal and CASF kicker funds and the census blocks covered by each.

Staff may develop a reporting template to ensure consistent and streamlined submissions.

[41] *See* RDOF Procedures Notice 20-77 (Jun 11, 2020) at para. 119.

Appendix 1. Kicker Funds Request Information Required from Applicants

1. Applicant
    1.1. Entity Contact Information
        1.1.1. Physical mailing address
        1.1.2. Website Address
        1.1.3. Phone Number
    1.2. Kicker Application Contact
        1.2.1. First and Last Name, Title, Physical Mailing Address
        1.2.2. Email Address
        1.2.3. Phone Number
2. Entity information
    2.1. Indicate whether entity holds a Certificate of Public Convenience and Necessity in California
3. Rural Digital Opportunity Fund California Award Information
    3.1. Census blocks, locations, and support amount won in the auction
4. Project and budget information

How the project is eligible and meets specified criteria with supporting documentation.

    4.1. Level 1a. Provision of last-mile or middle-mile fiber optic infrastructure
    4.2. Level 1b. Buildout commitments
    4.3. Level 2.1 Including Indefeasible Rights of Use for California Tribes located near the last mile or middle mile routes; and/or
    4.4. Level 2.2. Designation as a Carrier of Last Resort (COLR) in RDOF bid areas (or an Application to provide COLR service).
5. Supporting documentation
    5.1. Attestation
    5.2. Documentation

The letter must include supporting information such as maps, census blocks and justification for the extra funding that includes a breakdown of costs, i.e., equipment and labor costs (that were not covered by RDOF).

Appendix 2. Letter of State Funding Availability Information Required From Applicants

Kicker Fund Information;

Proposed Financing Description, including proposed amounts

Supporting documents

Request for confidential treatment and supporting documentation

Appendix 3. Attestation Information Required from Applicants

AFFIDAVIT

STATE OF _____

COUNTY OF _____

My name is _____. I am _____(Title) of _____ (Company). My personal knowledge of the facts stated herein has been derived from my employment with _____ (Company).

I swear or affirm that I have personal knowledge of the facts stated in this California Advanced Services Fund Kicker Application (hereinafter Kicker Funds), I am competent to testify to them, and I have the authority to make this Application on behalf of and to bind the Company.

I further swear or affirm that _____ [Name of Applicant] shall fulfill the following requirements:

1. Applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before spending kicker funds.
2. Applicant agrees to comply with all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, including but not limited to, payment of applicable encroachment, permit, and inspection fees.
3. Applicant possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public rights-of-way caused by Applicant.
4. Applicant is not in violation of any final nonappealable California Public Utilities Commission order.

I further swear or affirm that _____ [Name of Company] agrees to comply with all federal and state statutes, rules, and regulations, including, but not limited to, the following:

1. **_____ [Name of Applicant] is a single identifiable entity that is qualified to do business in California and has verifiable assets. This entity shall**

accept service of process, either directly or through an agent, and submit to the jurisdiction of California courts.

I swear or affirm that all of the statements and representations made in this Application are true and correct.

_____

Signature and title

_____

Typed or printed name and title

SUBSCRIBED AND SWORN to before me on the _____ day of _____ ,20____.

Notary Public In and For the State of _____.

My Commission expires: _____

Appendix 4. June 5, 2020 Letter to May 4, 2020 California Advanced Services Fund Infrastructure Applicants

Date: June 5, 2020

To: California Advanced Services Fund (CASF) Distribution and Service Lists; CASF Infrastructure Applicants and Potential Infrastructure Applicants

Re: Federal Communications Commission's Rural Digital Opportunity Fund Option for CASF Infrastructure Applicants

On May 4, 2020, the Communications Division (CD) received 54 applications requesting approximately $533 million in total funding from the California Advanced Services Fund (CASF) Broadband Infrastructure Grant Account. While CD is pleased with the overwhelming response by service providers, the requested amount of funding is more than three times the balance of the remaining CASF funds. Therefore, not all proposed projects will be funded even if all CASF rules and requirements are met.

To address the issue of limited CASF funding, CD strongly urges current and potential CASF infrastructure applicants to apply for funding from the Federal Communications Commission's (FCC) Rural Digital Opportunity Fund (RDOF).

The FCC will award up to $20 billion in RDOF support over a ten-year period for broadband services in eligible areas throughout the United States. The funding will be distributed in two phases using a reverse auction process.

Phase I auction (Auction 904) bidding is expected to start October 29, 2020; the FCC is expected to adopt the May 19 draft order at their June 9 meeting. Phase 1 available funding totals $16.4 billion. Phase 2, which is expected to start in March 2021, will have $4 billion available. It is possible that California's share could be as high as $1.6 billion.[1]

The FCC's proposed Auction 904 Dates and Deadlines are:

Auction Application Tutorial Available (via Internet)	By June 15, 2020
Short-Form Application (FCC Form 183) Filing Window Opens	July 1, 2020; 12:00 noon EDT
Short-Form Application (FCC Form 183) Filing Window Closes	July 15, 2020; 6:00 p.m. EDT

[1] Estimate by CostQuest Associates, February 24, 2020.

Auction Bidding Tutorial Available (via Internet)	By October 14, 2020
Mock Auction Begins	October 26, 2020
Auction Begins	October 29, 2020

Eligible entities must submit a short-form application during the July 1 – July 15 proposed application window to participate in the auction.[2] Submitting a short-form application does not obligate the entity to participate in Auction 904, but failure to submit a timely application will prevent an applicant from participating in the auction. **CD encourages that all current and potential CASF applicants submit a short-form application to the FCC before the July 15 deadline in order to maximize funding for eligible California areas.**

The FCC provides additional information on the Phase I Auction 904 timeline, eligible areas, support term, deployment requirements, and other topics at https://www.fcc.gov/auction/904/factsheet. Further, the FCC released the initial Auction 904 eligible areas on March 17, 2020 at https://www.fcc.gov/reports-research/maps/auction-904-preliminary-eligible-areas/.[3]

CD has developed the following map to identify RDOF census blocks that currently overlap with CASF proposed project census blocks.

- California RDOF Eligible Map: Identifies all RDOF eligible areas in California based on the FCC's initial eligible areas list released on March 17, 2020.

On June 10, 2020, CD will host an interactive online presentation from 10:00AM to 12:00PM (Pacific Time) on RDOF Phase I Auction 904. Michael Janson, the Director of the FCC's Rural Broadband Auctions Task Force will give the presentation and answer questions. The topic is how Internet Service Providers can apply for funding through Auction 904. For information on how to participate, please go to: https://www.cpuc.ca.gov/broadbandfederalfunding/.

If you have any questions or need further information, please contact CASF_Application_Questions@cpuc.ca.gov.

[2] The Auction 904 and short-form application dates are proposals but will be finalized at the FCC's June 9 Open Meeting. *See* https://www.fcc.gov/document/establishing-procedures-rural-digital-opportunity-fund-auction.
[3] The FCC will release revised eligible areas after processing challenges received on the initial eligible areas list.

Sincerely,

/s/ ROBERT OSBORN

Robert Osborn

Director, Communications Division

California Public Utilities Commission

cc: Selena Huang, Program Manager, Communications Division, CPUC

Louise Fischer, Program and Project Supervisor, Communications Division, CPUC

Enrique Gallardo, Legal Counsel, Legal Division, CPUC

END ATTACHMENT 1