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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
Regarding Broadband Infrastructure
Deployment and to Support Service
Providers in the State of California.

Rulemaking 20-09-001

ASSIGNED COMMISSIONER'S RULING

Pursuant to the recently enacted Senate Bill (SB) 156, and the Second Amended Scoping Memorandum and Ruling, issued on August 2, 2021, this Assigned Commissioner's Ruling requests comment on the attached Staff Proposal to implement the Federal Funding Account grant program, now in Phase III of this proceeding. Parties are requested to file and serve comments by October 29, 2021. The deadline for reply comments is November 15, 2021.

1. Background

On July 20, 2021, Governor Gavin Newsom signed SB 156 into law, creating the Federal Funding Account.¹ The Second Amended Scoping Memorandum and Ruling, (Second Amended Scoping Memo) in the instant proceeding, issued on August 2, 2021, adds certain issues associated with the implementation of SB 156 to the scope of this proceeding, including implementation of the Federal Funding Account in Phase III.

¹ SB 156, An act to amend Sections 6547.7 and 53167 of, to add Section 26231 to, and to add Chapter 5.8 (commencing with Section 11549.50) to Part 1 of Division 3 of Title 2 of, the Government Code, to add Section 21080.51 to the Public Resources Code, and to amend Sections 281, 912.2, and 914.7 of, and to add Section 281.2 to, the Public Utilities Code.

Among other items, SB 156 requires the California Public Utilities Commission (Commission) to implement a program using federal moneys to connect unserved and underserved communities by applicable federal deadlines. The program must be consistent with Part 35 of Title 31 of the Code of Federal Regulations (CFR) and any conditions or guidelines applicable to this one-time federal infrastructure funds. The enacted California 2021-2022 Budget allocated two billion dollars (\$2,000,000,000) to the program to fund last-mile broadband infrastructure.² By June 30, 2023, the Commission must allocate one billion dollars (\$1,000,000,000) in urban counties and one billion dollars (\$1,000,000,000) in rural counties.³ The Commission must initially allocate five million dollars (\$5,000,000) in each county.⁴ The Commission must allocate the remaining funds based on each county's proportionate share of households without access to broadband Internet access service with at least 100 megabits per second (Mbps) download speeds.⁵

2. Overview of the American Recovery Plan Act Broadband Guidance

As noted above, SB 156 requires this Commission to implement the Federal Funding Account created by SB 156 consistent with Part 35 of Title 31 of the CFRs. The Secretary of the U.S. Treasury (Treasury) issued an Interim Final Rule (Interim Final Rule), effective May 17, 2021, to implement the Coronavirus State Fiscal Recovery Fund (SLFRF) established under the American Rescue Plan

² See California 2021-2022 Enacted Budget Summary at page 27, available at <http://ebudget.ca.gov/2021-22/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>

³ See Public Utilities Code Section 281(n)(3).

⁴ *Id.*

⁵ See Public Utilities Code Section 281(n)(3)(B)(ii) ("as identified and validated by the Commission, pursuant to the most recent broadband data collection, as of July 1, 2021...").

Act.⁶ Treasury also issued a SLFRF Frequently Asked Questions (FAQ) document to provide additional guidance on how funds should be utilized.⁷

For ease of party reference, key provisions of these documents are listed below, with relevant citations.

Project Eligibility:

- Under the Interim Final Rule, eligible projects are expected to focus on locations that are unserved or underserved. The Interim Final Rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Megabits per second (Mbps) download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. [Interim Final Rule, 86 Fed. Reg. 26805.]
- Treasury interprets “businesses” in this context broadly to include non-residential users of broadband, including private businesses and institutions that serve the public, such as schools, libraries, healthcare facilities, and public safety organizations. [FAQ Question 6.15]

Project Eligibility Discretion:

- Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project. [Interim Final Rule, 86 Fed. Reg. 26804.]
- It suffices that an objective of the project is to provide service to unserved or underserved households or

⁶ The Interim Rule is available here: <https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>.

⁷ The FAQ is available here: <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

businesses. Doing so may involve a holistic approach that provides service to a wider area in order, for *example*, to make the ongoing service of unserved or underserved households or businesses within the service area economical. Unserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funds. [FAQ Question 6.8.]

Build Out Requirement:

- Eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. [Interim Final Rule, 86 Fed. Reg.26804.]
- There may be instances in which it may not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds. [Interim Final Rule, 86 Fed. Reg. 26804, 26823.]

Scalability:

- Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand. [Interim Final Rule, 86 Fed. Reg. 26804.]

Reliably:

- The use of “reliably” in the Interim Final Rule provides recipients with significant discretion to assess whether the households and businesses in the area to be served by a project have access to wireline broadband service that can actually and consistently meet the specified thresholds of at least 25Mbps/3Mbps – *i.e.*, to consider the actual

experience of current wireline broadband customers that subscribe to services at or above the 25 Mbps/3 Mbps threshold. Whether there is a provider serving the area that advertises, or otherwise claims to offer, speeds that meet the 25 Mbps download and 3 Mbps upload speed threshold is not dispositive. [FAQ Question 6.11.]

- When making these assessments, recipients may choose to consider any available data, including but not limited to documentation of existing service performance, federal and/or state-collected broadband data, user speed test results, interviews with residents and business owners, and any other information they deem relevant. In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency or jitter, or deterioration of the existing connections make the user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier). [FAQ Question 6.10.]

Middle Mile:

- Under the Interim Final Rule, recipients may use funds for “middle-mile projects,” but Treasury encourages recipients to focus on projects that will achieve last-mile connections – whether by focusing on funding last-mile projects or by ensuring that funded middle-mile projects have potential or partnered last-mile networks that could or would leverage the middle-mile network. [FAQ Question 6.9.]

Fiber Investment:

- Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application

solutions for all communities. [Interim Final Rule, 86 Fed. Reg. 26805.]

Coordination with other Grant Programs:

- In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources. [Interim Final Rule, 86 Fed. Reg. 26806.]

Affordability:

- Recipients are also encouraged to consider ways to integrate affordability options into their program design. [Interim Final Rule, 86 Fed. Reg. 26806.]

Public Networks

- Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives-- providers with less pressure to turn profits and with a commitment to serving entire communities. [Interim Final Rule, 86 Fed. Reg. 26806.]

National Environmental Policy Act (NEPA)

- NEPA does not apply to Treasury's administration of the Funds. [FAQ Question 6.3.]

Use of Funds:

- Pre-project development uses and costs for broadband projects should be tied to an eligible broadband project or reasonably expected to lead to such a project. For *example*, pre-project costs associated with planning and engineering for an eligible broadband infrastructure build-out is considered an eligible use of funds, as well as technical assistance and evaluations that would reasonably be expected to lead to commencement of an eligible project

(e.g., broadband mapping for the purposes of finding an eligible area for investment). [FAQ Question 6.11.]

- All funds must be obligated within the statutory period between March 3, 2021 and December 31, 2024 and expended to cover such obligations by December 31, 2026. [FAQ Question 6.11.]

3. Staff Proposal Overview

The Staff Proposal outlines new rules for the new California Advanced Services Fund (CASF) Federal Funding Account (FFA) Program adopted in February 2021⁸ to comply with SB 156 in a manner that is consistent with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule. The new rules borrow some elements from the separate, earlier CASF infrastructure rules with significant revisions. The Staff Proposal integrates significant text from Treasury’s Interim Final Rule and FAQ documents. The Staff Proposal has also been informed by broadband grant programs from other states, including Illinois,⁹ Kansas,¹⁰ New York,¹¹ and Wisconsin.¹²

⁸ The CASF rules are available here:

<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M362/K849/362849526.PDF>

⁹ Information on the Illinois program is available here:

<https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx>

¹⁰ Information on the Kansas program is available here:

<https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf>.

¹¹ Information on the New York program is available here:

[https://www.nysac.org/files/BroadbandUpdateReport2017\(1\).pdf](https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf).

¹² Information on the Wisconsin program is available here:

<https://psc.wi.gov/Documents/broadband/5-BF-2022%20ARPA%20Broadband%20Access%20Grant%20Application.pdf>

4. Issues for Public Comment

Parties are requested to file and serve comments on the issues discussed below by October 29, 2021. The deadline for reply comments is November 15, 2021.

1. Compliance with Federal Guidance: SB 156 requires the Commission to adopt program rules that are consistent with Part 35 of Title 31 of the CFRs.
 - Are the rules in the Staff Proposal consistent with Part 35 of Title 31 of the CFRs?
 - What modifications should be made to the Staff Proposal to improve consistency with Part 35 of Title 31 of the CFRs? Please provide an explanation of any suggestions, as well as edits in redline as an attachment to your comments.
2. Priority Project Areas: The Staff Proposal envisions that Communications Division Staff will publish proposed priority project areas that are coordinated with the Commission's obligation to assist in preparing definitive plans for deploying necessary infrastructure in each county, including coordination across contiguous counties. FFA Applicants will apply for grants to offer broadband Internet service to these defined areas.
 - What information should the Communications Division Staff take into consideration in developing these priority areas?
 - Do the criteria in Section 12. Application Objections balance the need to ensure a fair process for an Internet service provider asserting it already serves a proposed priority project area, with the need to award grants in an expeditious manner? Do parties propose additional or different criteria?

3. Coordination with other Grant Programs: There is significant funding available and being considered at the state and federal levels for broadband infrastructure.
 - How can the FFA best coordinate and leverage these other broadband infrastructure funds?
4. Affordability: The Interim Federal Rule encourages recipients to consider ways to integrate affordability options into their program design.
 - How should the Commission define affordability?
 - How should the Commission consider a preference or requirement for affordable offers that are not income-qualified?
 - Should the Commission consider other low-income preferences or requirements as a percentage of the Federal Poverty Level? Or categorical eligibility such as any service connection in a Qualified Census Tract?
 - How should the Commission consider low-income or affordable offers that allow for enrollment based on participation in any California public assistance program?
 - What should be the term for which an affordable or low-income offer is provided and what is the rationale for the term?
 - Is it reasonable to require applicants provide Lifeline services, as well as the Emergency Broadband Benefit, or its successor?
5. Eligible Areas: The Staff Proposal directs the focus of last mile projects to be in unserved areas that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload.
 - How should the Commission consider eligible areas? How should underserved areas be defined and considered?

- What criteria should the Commission use to determine if an area has reliable service?
 - How should the Commission measure what constitutes a significant number of unserved and underserved households?
6. Eligible Entities: The Staff Proposal lists eligible entities (*see* related questions under the IOU Broadband Pilots section of the ruling).
- What information should the Commission consider in the rules to allow flexibility to enable partnerships between entities and providers? For example, a public entity and one or more broadband service providers.
7. Coordination with Statewide Middle Mile Network: SB 156 also creates a statewide middle mile network that must enable last mile connections.
- How can the Commission ensure the FFA grants coordinate and take advantage of the statewide middle mile network that is being built?
8. IOU Broadband Pilots: Phase II in this proceeding seeks to identify a role for the electric Investor-Owned Utilities (IOUs) in deploying broadband Internet access service.
- How can the FFA be utilized to achieve this objective?
 - Should the IOU Fiber Pilots in Phase II be moved into Phase III?
 - How should the Commission consider changes to add flexibility to the rules to facilitate applicants from multiple entities such as partnerships between multiple last mile providers or a middle mile applicant such as an IOU and a last mile provider?
 - How should the Commission consider or identify IOU rights-of-way that would enable last mile connections and work to fund or effectuate deployment in those IOU rights of way even without an IOU and last mile provider partnership?

9. Performance Criteria: Federal SLFRF funds must be obligated between March 3, 2021 and December 31, 2024 and expended to cover such obligations by December 31, 2026.
 - What changes should the Commission consider to the performance criteria to meet the December 31, 2024 obligation or encumbrance and December 31, 2026 expenditure deadlines?
 - How should the Commission measure the serviceable life of the infrastructure? (Section 6.6 of the Staff Proposal)
10. Information Required from Applicants: Treasury published guidance¹³ on federal SLFRF subaward (grantee) reporting.
 - What changes should the Commission consider to the Information Required from Applicants or Semi-Annual and Completion Reporting to better capture and provide information pursuant to the Treasury guidance?
11. Provision of voice and other services: The Interim Final Rule considers a connection that can “originate and receive high-quality voice, data, graphics, and video telecommunications.”¹⁴
 - How should the Commission consider Applicants which propose to provide voice service or other services?
 - What is the industry standard approach to providing this service in a safe and reliable manner?

¹³ Treasury, Compliance and Reporting Guidance State and Local Fiscal Recovery Funds (June 24, 2021 Version 1.1), available at

<https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>

¹⁴ Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Interim Final Rule, 86 Fed. Reg. 26805 (May 17, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

12. Government and Community Support: Applicants must provide letters indicating government or community support.
- How should the Commission consider the requirement for applicants to address how a proposed application furthers the purpose of a Local Government or Tribal technical assistance grant in project areas for which a grant has been awarded?
13. Ministerial review criteria and cutoff: Section 13 outlines criteria for a project to be eligible for ministerial review.
- What other criteria or range of funding should the Commission consider? For example, should the project amount for ministerial review be some amount between \$10-30 million? How should the per location cost criteria be modified and how should this per location cost be considered?
14. Post-Construction Phase: For what time period should after construction requirements remain in place?
- How should the Commission consider post-construction requirements and/or reporting for a period of time? What should they be? How long should the Commission require these requirements and why? For example, the current draft includes notification requirements about potential transfers of control for three years.

IT IS RULED that:

The comment period to respond to this ruling is set forth above.

This order is effective today.

Dated September 23, 2021, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves
Assigned Commissioner