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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

COMMENTS OF THE CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION

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COMMENTS OF THE
CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION

The California Cable and Telecommunications Association ("CCTA")[1] submits these opening comments to the California Public Utilities Commission ("Commission") in response to the *Administrative Law Judge's Ruling* dated September 23, 2021 ("Ruling") soliciting comments on a Staff Proposal to implement the $2 billion Federal Funding Account ("FFA") in the California Advanced Services Fund ("CASF") program.

I. INTRODUCTION

CCTA supports the adoption of rules to ensure that the $2 billion allocated to the FFA within the CASF program is used "to ***expeditiously*** connect ***unserved and underserved communities*** by applicable federal deadlines," as required by Senate Bill ("SB") 156, the Governor's broadband budget bill.[2]

The preferred approach to most expeditiously award FFA grants for last-mile broadband infrastructure projects is to adopt rules that are substantially similar to the Commission's existing

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[1] CCTA is a trade association consisting of cable providers that have collectively invested more than $40 billion in California's broadband infrastructure since 1996 with systems that pass approximately 96 percent of California's homes.

[2] SB 156 (Ch. 112, Stats of 2021), which took effect on July 20, 2021 as an urgency measure.

rules for the CASF Infrastructure Grant Account ("IGA") program.[3] Ensuring consistency between the FFA and IGA rules makes sense for at least three reasons. First, these rules serve essentially the same purpose: funding last-mile broadband infrastructure projects to connect areas of California that do not have a provider offering service at speeds of at least 25 Mbps downstream and 3 Mbps upstream ("25/3 Mbps service").[4] Second, it would eliminate an unnecessary lengthy review of the proposed FFA rules, given that the IGA rules would have needed only slight modification to comply with SB 156. Third, it would promote efficiency and reduce delay because the Commission and potential applicants would generally be required to navigate and implement streamlined and more uniform regulatory requirements.

If the Commission moves forward with the Staff Proposal, which is markedly different from the IGA rules, several significant modifications are essential to ensure that providers will consider participating and that the FFA program will achieve California's goal of funding last-mile projects to connect California's hardest-to-reach communities. These modifications include:

- **Price Commitment** – The Commission should modify the perpetual price commitment rule to align with the two-year period in the IGA rules. The proposed requirement that a FFA grantee never increase the price charged customers for the life of the infrastructure – likely at least 20 years – is economically untenable and would undermine the viability of any FFA-funded project. If adopted as proposed, this rule alone would singlehandedly deter many providers from ever applying for a FFA grant, and for those that do receive grants, this requirement would potentially deter later network upgrades and future maintenance of the funded infrastructure.

- **Funding the Unserved** – The Commission should modify the eligibility-related rules to ensure that FFA grants fund infrastructure in communities that lack 25/3 Mbps service, particularly households that have no service or very slow service, consistent

[3] "Revised CASF Program Guidelines," Appendix A to D.21-03-006 (March 10, 2021).

[4] SB 156 amended Public Utilities Code Section 281(b)(1) to, among other things, adopt an "unserved" standard of 25/3 Mbps service for award of IGA grants. All further section references are to the Public Utilities Code, unless otherwise indicated.

with the "worst first" strategy codified in SB 156.[5] FFA grants should not include funding to cover costs to connect "served" households, consistent with the existing IGA rules and SB 156.

- **Objection Process** – The Commission should modify the Staff Proposal provisions that allow an applicant to dispute the Broadband Map, and allow an existing provider to object to an application proposing a project in a "served" area, to better align with the IGA rules. First, the Commission should determine "served" status on credible and verifiable evidence through a fair and transparent process. The Staff Proposal reflects a bias toward using FFA grants for overbuilding that is contrary to the plain language of the federal regulations and California's policy choice in SB 156 to require that FFA grants connect communities lacking 25/3 Mbps service. Second, the objection process should not be muddled by unnecessary and irrelevant requirements like infrastructure photographs. Third, the Commission should allow for confidential treatment of personally identifiable information and critical infrastructure information submitted in an objection and pursuant to GO 66-D.

Attachment A to these comments sets forth CCTA's proposed redline of the Staff Proposal to address these primary concerns. Adopting these specific and targeted revisions is essential to ensure that the FFA program rules are lawful and reasonable and -- just as important -- that the FFA program will be successful in expeditiously approving last-mile infrastructure projects.

CCTA's redline also includes other proposed changes to the Staff Proposal as discussed in response to questions below.[6]

II. RESPONSES TO QUESTIONS IN RULING

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**

5 *See* Statement of Senator Mike McGuire articulating the "worst first" strategy in SB 156, recording of August 18, 2021, meeting of Middle-Mile Advisory Committee, at 1:02, available at Middle-Mile Past Meeting Resources | CDT (ca.gov).

6 CCTA's recommended changes to the Staff Proposal are set forth in redline in CCTA's Attachment A as required by the Ruling. CCTA reserves the right to submit an updated redline of the Staff Proposal in its reply comments to account for other parties' positions and interpretations of the Staff Proposal.

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.

<u>CCTA'S RESPONSE</u>:

The Commission should modify the Staff Proposal to ensure that FFA rules (i) comply with the SB 156 requirement that the Commission use the FFA funds for last-mile projects to connect areas lacking 25/3 Mbps service, *and* (ii) are consistent with federal regulations and guidelines. Specifically, modifications are needed for Sections 2.2, 3, 9.6, and 12, among others, in order for the Staff Proposal to achieve consistency with these laws, by focusing on "unserved and underserved communities" and California's goal to connect no less than 98 percent of households in each CASF consortia region.

The express language of Public Utilities Code Section 281(n) ("Section 281(n)"), as enacted by SB 156, makes clear that the Commission must use the $2 billion in the FFA for last-mile projects to connect areas that are "unserved and underserved":

> (1) Upon the deposit of state or federal infrastructure moneys into the Federal Funding Account, the commission shall implement a program using those moneys ***to expeditiously connect unserved and underserved communities*** by applicable federal deadlines.
> (2) Projects funded pursuant to this subdivision shall be implemented ***consistent with*** Part 35 of Title 31 of the Code of Federal Regulations and any conditions or guidelines applicable to these one-time federal infrastructure moneys.[7]

The statute further provides that these last-mile projects should be consistent with the applicable federal regulations and guidelines.[8] This is important because the U.S. Treasury regulations implementing the American Rescue Plan Act ("ARPA"), which is part of the $2 billion for the

[7] Section 281(n) (emphasis added).

[8] It is CCTA's understanding that the Ruling and Staff Proposal interprets the statutory reference to "guidelines" to mean the U.S. Treasury's Frequently Asked Questions ("FAQs").

FFA,[9] makes clear that unserved and underserved households and businesses[10] are those that lack 25/3 Mbps service.[11] Of course, the requirement that the state program be consistent with federal regulatory guidelines does not preclude California from making policy choices that establish requirements consistent with its own goals for this historic $6 billion investment in broadband, as long as they are consistent with the requirement that ARPA-funded projects be designed to connect households and businesses lacking 25/3 Mbps service.[12]

The Legislature has also established that FFA funds should be used to connect no less than 98 percent of households in each CASF consortia region. Specifically, Assembly Bill ("AB") 14, which took effect when the Governor signed it on October 8, 2021, includes a legislative finding that "[i]t is the intent of the Legislature that California achieve the goal specified in the Internet for All Now Act of providing broadband access to no less than 98 percent of California households in each California Advanced Services Fund consortia region."[13] Thus, this urgency legislation enacted *after* SB 156 clarified that the goal of connecting no less than 98 percent of households in each consortia region applies to ***all of California's public investment in broadband infrastructure***, including projects funded from the FFA. Moreover, this most recent legislative finding reinforces the earlier statement of legislative intent that the

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9 Budget Act of 2021, Sec. 28, AB 164 (Ch. 84, Stats. 2021).

10 *See* 86 Fed. Reg. 26786 (May 17, 2021), specifically 31 C.F.R. § 35.6(e)(2).

11 31 C.F.R. § 35.3 ("Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.").

12 Governor Newsom's $6 billion broadband plan includes $3.25 billion for a state-owned middle-mile network, $2 billion to set up last-mile broadband connections, $750 million for a loan loss reserve fund to help local governments and nonprofits get financing for broadband infrastructure, and $2 billion that will be collected in CASF surcharges over the next 10 years. *See* Governor Newsom Signs Historic Broadband Legislation to Help Bridge Digital Divide | California Governor.

13 A.B. 14, Sec. 1(c) (Ch. 658, Stats. 2021).

Commission should achieve the 98 percent goal by not using funds in the CASF program "to overbuild" existing broadband infrastructure. Specifically, AB 14 references the Internet for All Now Act, which states the following:

> (c) It is the intent of the Legislature that California achieve the [98 percent goal] by fostering private investment, maximizing California's ability to obtain available federal funds, and administering the California Advanced Services Fund to fund broadband infrastructure where private investments and federal funds are not available and ***not use moneys in that fund to overbuild*** the broadband infrastructure."[14]

Despite these legislative directives, the Staff Proposal is biased toward funding "served" households and diverting funds from unserved locations, which conflicts with California's statutory directives, policy choices and goals. In some instances, the Staff Proposal formulates permissive provisions from the federal FAQs into mandatory rules, which leads to this unfortunate result.[15] For example, the definition of an "eligible project" in Section 4 and language in proposed "Application Item 6 – Project Eligibility" of the Staff Proposal opens the door to include funding in a FFA grant for a potentially unlimited number of "served" households. Nothing in the ARPA regulations *requires* a state to fund households that already have 25/3 Mbps service available. The broadband provisions in ARPA, like those in the predecessor CARES Act, authorize federal funds to deploy broadband infrastructure that will fill a service gap in rural areas that lack 25/3 Mbps service.[16] While the federal provisions do not automatically disqualify any potential overlap, such overlap is disfavored by state law, as described above.

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14 Sec. 2, AB 1665 (Ch. 851, Stats. 2017), as referenced in Sec. 2, AB 14 (emphasis added).

15 As justification, the Staff Proposal quotes extensively from the FAQs, which describe circumstances under which an FFA-funded project *may* include a "served" location. *See* FAQ Question 6.9.

16 31 C.F.R. § 35.3.

In light of the foregoing, CCTA has proposed modifications to the FFA rules that both comply with the express language of Section 281(n) and legislative intent *and* are consistent with federal regulations and guidelines.

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?**

<u>CCTA'S RESPONSE</u>:

CCTA recommends that the Commission revise Section 2.2 of the Staff Proposal to more clearly define eligibility for a FFA grant in line with the clear directive in SB 156 that the Commission implement a program "to expeditiously connect unserved and underserved communities,"[17] which ARPA regulations define as lacking 25/3 Mbps service. To achieve consistency with both SB 156 and ARPA, the starting point for determining FFA grant eligibility must be that the proposed project area is designated as "unserved" on the Broadband Map according to the data collected by the Commission.

While the Commission *may* prioritize among these unserved areas that are "eligible" for FFA funding, it may not propose "priority areas" that would effectively establish an eligibility standard that differs from the statutory 25/3 Mbps unserved standard. Moreover, if this prioritization, as described in the Staff Proposal, is required *before* opening an application window, it would create complexity and delay, contrary to the statutory requirement to "expeditiously" award last-mile FFA grants. Nothing in SB 156, any subsequent legislation,

[17] Section 281(n)(1).

legislative history, or ARPA requires or even references that designation or prioritization of eligible areas be based on staff developing "definitive plans" for deploying "necessary" infrastructure.[18] Thus, CCTA's redline in Attachment A of Section 2.2 provides for Staff to identify all unserved areas, and makes the proposal for Staff to further "publish proposed project areas" as permissive, and not a mandatory requirement to be taken prior to opening an application window.[19]

- **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?**

CCTA'S RESPONSE:

Section 12 of the Staff Proposal must be considered along with Section 9.6, as both relate to the standards that apply to assertions about the "served" status of an area for which an application seeks FFA funding.[20] In addition, both sections must be considered in light of the overarching legislative purpose to ensure that public broadband funds are used to connect unserved households and not used to overbuild existing infrastructure. Attachment A includes limited and targeted modifications to proposed Sections 9 and 12 to ensure that staff determines project funding eligibility based on credible and verifiable information from applicants and

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[18] The Commission's obligation under Section 281(b)(5) to "assist in preparing definitive plans" is part of its mandate to "maximize investments in new, robust, and scalable infrastructure and use California Advanced Services Fund moneys to leverage federal and non-California Advanced Services Fund moneys." This provision has no connection in statute to the separate obligation to expeditiously implement the FFA program.

[19] Moreover, the Legislature's reference to the Commission preparing definitive plans for deploying necessary infrastructure is not specific to the FFA. See Section 281(c).

[20] Section 9.6 allows an applicant to dispute the designation of an area on the Broadband Map as already "served" with 25/3 Mbps service. Section 12 allows an existing provider to object to an application claiming that an area is "unserved" by demonstrating that an existing provider already offers 25/3 Mbps service.

objectors with parity, fairness, and transparency, including provisions to do the following:

- Require that both applicants and objectors submit "credible and verifiable" evidence about served status of a proposed project area with a comparable attestation of the accuracy of all submitted information. The Staff Proposal includes disparate evidentiary standards heavily biased toward determining an area to be unserved (when in fact it actually has service), which is both unfair, unjustified, and contrary to the statutory requirement to fund infrastructure to areas and households that lack 25/3 Mbps service.
- Authorize 30 days, rather than just 21 or 10 days, to submit an objection in recognition of the more lengthy set of objection requirements proposed (as compared to the IGA rules) and need for adequate time to review an anticipated high volume of applications under a new set of complex rules.
- Ensure confidentiality of customers' personally identifying information and critical infrastructure information that is part of an objection submission.
- Eliminate the obligation to submit photos and historical information about pole attachments and permits that is not relevant to the service a provider currently offers (*i.e.*, whether the area is served), and would pose security concerns and practical challenges to timely verifying that a location is served.
- Ensure that any entity has an opportunity to rebut an applicant's dispute of the Broadband Map using similar evidentiary support that an applicant can use.
- Make clarifying and conforming changes to reflect that applications and objections are not *filed* with the CPUC docket office, but rather *submitted* to CPUC staff, consistent with the IGA rules.

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?**

CCTA'S RESPONSE:

California will be best positioned to maximize use of all state and federal broadband funds available now and in the future by having a simple, straight-forward, and, to the extent feasible, uniform set of rules governing last-mile broadband infrastructure grants regardless of the funding stream. Accordingly, the FFA rules should align to the extent possible with the existing IGA rules, which will encourage program participation and increase efficiency in the

Commission's award of funds. Nothing has been presented to suggest why the rules should be different. If new federal broadband funds become available, the Commission can then seamlessly transition to using the new funds without the need for wholesale changes to the grant program. Most significantly, the FFA rules should follow the 25/3 Mbps unserved definition in the ARPA regulations and Section 281.

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?**

<u>CCTA'S RESPONSE</u>:

The FFA rules should be consistent with the IGA rules, which provide that "[a]ll projects shall provide an affordable broadband plan for low-income customers."[21] CCTA supports language in the Staff Proposal recognizing that many low-income service options are currently available, but recommends that the reference to a $15 price be deleted to ensure flexibility and not exclude low-income offers such as the Emergency Broadband Benefit program with a

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21 IGA Rules Section 6.

different existing pricing structure.[22] There is no need to define "affordability" in this proceeding given that this issue is being addressed in R.18-07-006. Nor is there a need to consider other new non-income based programs when multiple low-income broadband programs already are available for FFA grantees to offer eligible customers.

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?**

CCTA'S RESPONSE:

For the reasons discussed above, the Commission should consider an area as eligible for FFA funding if it is designated as "unserved" on the Broadband Map as lacking 25/3 service, or that determination is otherwise made by staff upon review of credible and verifiable information submitted in an applicant's dispute of the Broadband Map or in an objection, as discussed in these comments. CCTA's redline in Attachment A reflects the appropriate modifications to the definitions in Section 4 of the Staff Proposal.

CCTA also proposes modifications to Section 3 (Commission Evaluation of Applications) of the Staff Proposal. As drafted, the Staff Proposal does not indicate how the proposed point system would be used, unlike the IGA rules, which use evaluation criteria to determine a grant funding level. In addition, some of the proposed criteria are basic application requirements, which raises the question of why an applicant would get points for meeting

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22 The Emergency Broadband Program established five potential eligibility criteria that allow a household to receive a set monthly discount on broadband services. *See* Emergency Broadband Benefit | Federal Communications Commission (fcc.gov).

baseline requirements. For those reasons, without further explanation from Commission staff, it is impossible to fully respond to Section 3.

In the absence of further clarity, CCTA's Attachment A proposes that evaluation criteria should be used only when (1) there are competing applications for the same proposed project area or (2) total funds requested exceed available funds. CCTA further proposes incorporating comparative criteria that align with the requirements and priorities in the following applicable statutes, as discussed above:

- SB 156's requirement that FFA grants fund projects to connect areas lacking 25/3 Mbps service.[23]
- SB 156's requirement to allocate funds for projects in rural and urban counties based on the proportionate share of households lacking 100 Mbps download speed service, requiring prioritization of funds toward counties with a lower proportion of served households.[24]
- AB 14's statement of legislative intent that California use public broadband funds to achieve the goal of providing service to at least 98 percent of households in each CASF consortia region.[25]

- **What criteria should the Commission use to determine if an area has reliable service?**

CCTA'S RESPONSE:

The Commission should focus on ensuring that FFA grants are expeditiously awarded to fund infrastructure deployment in communities that have no service, or very slow service. Any determination about the availability of existing 25/3 Mbps service must be based on credible and verifiable evidence, with an opportunity for other entities to rebut. CCTA's proposed changes to the Staff Proposal set out in CCTA's Attachment A reflect these principles.

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23 Section 281(n)(1).

24 Section 281(n)(3).

25 *See supra* notes 13 and 14.

- **How should the Commission measure what constitutes a significant number of unserved and underserved households?**

CCTA'S RESPONSE:

As discussed above, SB 156 requires the Commission to use the $2 billion in the FFA program to expeditiously fund last-mile infrastructure projects in areas that lack 25/3 Mbps service. SB 156 does not contemplate a "served" household exception and does not call for Commission Staff to determine what constitutes a "significant number" of unserved or underserved households. Moreover, the "worst first" strategy enacted in SB 156 requires the Commission to use public funds first to connect areas that have no service or very slow service. AB 14 further states legislative intent that California achieve the goal of providing service to at least 98 percent of households in each CASF consortia region. Accordingly, the Commission should not include funding to cover the costs to connect "served" households in FFA grants. Under the IGA rules, CASF Staff routinely removes from CASF grants the cost of "served" households in a proposed project area, and that practice should continue for FFA grants. The overriding focus must remain on connecting unserved and underserved communities, defined as lacking 25/3 Mbps service.

CCTA's redline in Attachment A includes modifications to the "Eligible Project" definition in Section 4 and related provisions to reflect these principles.

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.**

CCTA'S RESPONSE:

The Commission should adopt the same approach as the existing IGA rules, which allow any entity, including a public agency, to apply for a grant upon a showing of being technically, economically, and operationally qualified and otherwise complying with program requirements.[26] This approach allows multiple entities to be partners in an infrastructure project as long as one member of the partnership is the designated lead party that meets application requirements and signs the consent form agreeing to be accountable for compliance with all terms of the grant.

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?**

CCTA'S RESPONSE:

The Staff Proposal requires staff to determine if middle-mile infrastructure included in a proposed project is "necessary," "needed," or "indispensable" to connect the last-mile households.[27] CCTA's Attachment A includes conforming edits to make all these references "indispensable," to be consistent with the IGA rules.[28] Staff review of whether middle-mile facilities in a proposed project are indispensable includes whether any existing middle-mile facilities are available. If there are none, staff could also consider whether the new state middle-mile network could be utilized to connect the last-mile households in that proposed project.

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?**

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[26] Section 281(f)(7); and IGA Rules Section 4.

[27] These conflicting references are in Section 6, Section 9, and Attachment E of the Staff Proposal.

[28] CCTA's Attachment A also strikes language at the end of Section 7 of the proposed FFA rules that is relevant to staff's responsibility under SB 156 to recommend locations for the state middle-mile network (Government Code § 11549.54b), but is not relevant to review of middle-mile facilities in proposed last-mile projects.

- **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?**

<u>CCTA'S RESPONSE</u>:

CCTA has no comment on this question at this time and reserves the right to respond to other parties' comments in its reply comments.

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?**

<u>CCTA'S RESPONSE</u>:

CCTA addresses the pricing commitment performance criteria below but otherwise has no response at this time regarding how the performance criteria in the Staff Proposal relate to meeting federal deadlines. However, CCTA observes generally that California will have much greater opportunity to encumber and expend all of the available federal funds within the applicable deadlines if the Commission adopts FFA rules that are as simple as possible and closely aligned with the existing IGA rules. Complex new rules with significant differences from the IGA rules will discourage FFA program participation and create unnecessary delay and inefficiencies for applicants and the Commission, thereby creating risk that California will not meet federal deadlines and will therefore forfeit available funds to close the digital divide. Again, because the ultimate goal of the FFA and IGA is the same, it is reasonable and makes sense for the Commission to adopt consistent and streamlined rules to the extent feasible.

- **How should the Commission measure the serviceable life of the infrastructure? (Section 6.6 of the Staff Proposal)**

CCTA'S RESPONSE:

It appears that this question is focused on Section 6.6, regarding Open Access Reporting, for which CCTA has no comment at this time. However, to the extent this question also seeks to address the definition of the term "life of the infrastructure," CCTA objects to the requirement in Sections 8 and 10.11 of the Staff Proposal that an applicant must commit to serve customers in the project area "at prices provided in the application for the life of the infrastructure." This is an unreasonable, draconian requirement that is inconsistent with the "viability" requirement in Section 9.16. It is simply not economically feasible for a provider of any customer service, particularly a capital-intensive service with complex infrastructure and evolving technology that requires ongoing operation, maintenance and upgrade costs, to commit to never increase the price it charges customers for that service for what could be dozens of years. This issue is especially critical in the case of networks owned by government agencies, which would need to raise taxes or sell the network when maintenance, operation, and upgrade costs outweigh revenue, as has been the case for so many of those networks.[29] If adopted, this requirement alone likely would dissuade many otherwise qualified and interested applicants from participating in the program. Or just as bad, any grantee that would agree to this commitment would almost certainly be forced to delay or avoid necessary technology and/or infrastructure upgrades to the detriment of consumers. The two-year price commitment in the IGA should be

[29] *See also, e.g.,* Christopher Yoo and Timothy Pfenninger, *Municipal Fiber in the United States: An Empirical Assessment of Financial Performance* (May 2017), https://www.law.upenn.edu/live/files/6611-report-municipal-fiber-in-the-united-states-an (finding that few government-owned networks earn enough revenue to cover the cost of deployment, even over decades or more of operation).

adopted, as reflected CCTA's Attachment A.[30]

10. **Information Required from Applicants: Treasury published guidance 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?**

CCTA'S RESPONSE:

CCTA has no response to this question at this time and reserves the right to respond to other parties' comments in its reply comments.

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."**
    - **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?**

CCTA'S RESPONSE:

The FFA rules should adopt the language in Section 8.17 of the IGA rules, which requires a grantee to offer voice service that meets federal 911 and backup battery standards. Adopting any different standard for an FFA-funded project should be considered within the CASF proceeding and be applicable to all IGA and FFA grantees.

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?**

CCTA'S RESPONSE:

30 *See* IGA Rules Section 6.

The Commission's overarching consideration for each grant application should be how the proposed project will help California achieve the statutory goal of providing broadband access to no less than 98 of households in each consortia region.

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?**

CCTA'S RESPONSE:

CCTA urges the Commission to align the ministerial review provisions in the Staff Proposal with the IGA rules, which allow ministerial review for proposed projects with a total cost that does not exceed $10 million and a per-household cost that does not exceed $9,300.[31] CCTA is not aware of any rationale for authorizing Staff alone to award $25 million in public funds with no Commission-level decision or accountability.

If the Staff Proposal is adopted as currently drafted, the ministerial review provisions in Section 13 and the final paragraph of Section 3 would conflict and potentially constitute legal error. Section 3 of the Staff Proposal would potentially give staff unfettered discretion to reject any application, determine all funding amounts, and negotiate all grant terms with each applicant. Given the lack of any standards, and significant public funds at stake, these provisions raise serious questions of unlawful delegation of authority to Staff.[32]

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31 *See* IGA Rules Section 12.

32 California courts have established that "[w]hen the Legislature has made clear its intent that one public body or official is to exercise a specified discretionary power, the power is in the nature of a public trust and may not be exercised by others in the absence of statutory authorization." *Bagley v. City of Manhattan Beach* (1976), 18 Cal.3d 22, 24; *California School Employees Association v. Personnel Commission* (1970), 3 Cal.3d 139, 143-44.

CCTA's redline in Attachment A proposes modifications to address these concerns. The redline also proposes modifying the application cycle to be two times each year to give Staff enough time to review and act on all pending applications and eliminate confusion for potential applicants as to which areas remain eligible for a FFA grant.[33]

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.**

CCTA'S RESPONSE:

For the reasons discussed above, CCTA urges the Commission to align the FFA rules with the existing IGA rules governing post-construction requirements and reporting.[34]

III. CONCLUSION

CCTA appreciates the opportunity to comment on the Staff Proposal with the goal of ensuring that the Commission can expeditiously award the $2 billion in the FFA to connect California communities that lack 25/3 Mbps service. CCTA urges the Commission to align FFA rules as much as possible with the existing IGA rules. To comply with statutory requirements, encourage maximum program participation, and ensure success in achieving California's goal of providing broadband access to at least 98 percent of households in each CASF consortia region, CCTA highlights the following as the most essential changes to the Staff Proposal:

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[33] CCTA looks forward to reviewing other parties' comments on how to balance the need for providing enough opportunity for applications to be filed, while also ensuring staff has time both to act on submitted applications and then timely update the Broadband Map for the next round of applications. Potential applicants will be discouraged from undertaking the time and expense of preparing project applications if there is a lack of transparency and uncertainty whether unserved areas remain eligible for grant funding.

[34] *See* IGA Rules Sections 13 and 16.2.

- Adopt a 2-year price commitment
- Only fund projects in unserved communities lacking 25/3 Mbps service
- Adopt standards for determining "served" status based on credible and verifiable evidence

Attachment A sets forth CCTA's proposed redline modifications to the Staff Proposal. CCTA looks forward to reviewing other parties' comments and may update the redline in reply comments to reflect input of other parties.

Respectfully submitted,

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Dated: October 29, 2021

ATTACHMENT A
CCTA Redline of Staff Proposal

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Attachment A:

Federal Funding Account Program Guidelines Staff Proposal

Table of Contents

1. Background and Purpose

This proposal sets out rules for the newly established Federal Funding Account within the California Advanced Services Program

The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the American Rescue Plan Act (ARPA) provides funds to State, territorial, local, and Tribal governments to, among other things, make necessary investments in broadband infrastructure.[1]

On July 20, 2021, Governor Gavin Newsom signed Senate Bill (SB) 156 into law, creating the Federal Funding Account (FFA). SB 156 revises and recasts the California Advanced Services Fund (CASF) program (Cal. Pub. Util. Code § 281), among other things, to establish as the goal of the Broadband Infrastructure Grant Account, rather than the CASF fund, by not later than December 31, 2026, to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households and establishes the Federal Funding Account in the CASF program. The statute directs the Commission to use state or federal infrastructure moneys deposited into the Federal Funding Account to implement a program to expeditiously connect unserved and underserved communities by applicable federal deadlines.[2] SB 156 further provides that until 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. The Commission must initially allocate five million dollars ($5,000,000) in each urban county. The Commission must allocate the remaining moneys based on each county's proportionate share of the households without access to broadband internet access service with at least 100 megabits per second download speeds, as identified and validated by the Commission pursuant to the most recent broadband data collection, as of July 1, 2021.

SB 156 provides that projects funded by the Federal Funding Account shall be implemented consistent with Part 35 of Title 31 of the Code of Federal Regulations and any conditions or guidelines applicable to these one-time federal infrastructure moneys. On May 17, 2021, the United States Treasury Department (Treasury) issued an Interim Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund (SLFRF) established under ARPA. This Interim Final Rule sets out rules and regulations in Part

[1] American Rescue Plan Act of 2021 (ARPA), sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 et seq. Section 9901 of ARPA amended Title VI of the Social Security Act 17 (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds). The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments in responding to the impact of COVID–19, including investment in broadband infrastructure.

[2] Cal. Pub. Util. Code § 281(n)(1).

35 of Title 31 of the Code of Federal Regulations.[3] Treasury also created a SLFRF Frequently Asked Questions (FAQ) document available to provide additional guidance on how funds should be utilized.[4]

On October 8, 2021, Governor Gavin Newsom signed into law SB 4 and Assembly Bill (AB) 14, which included a legislative finding stating that "[i]t is the intent of the Legislature that California achieve the goal specified in the Internet for All Now Act of providing broadband access to no less than 98 percent of California households in each California Advanced Services Fund consortia region." Thus, this subsequently enacted urgency legislation clarified that the goal of connecting no less than 98 percent of households in each consortia region applies to all of California's public investment in broadband infrastructure, including the Federal Funding Account.

Staff utilized these documents collectively to provide the framework for the Federal Funding Account. The following proposed rules are based on SB 156,[5] AB 14, and the federal ARPA SLFRF requirements and guidance.

2. Eligible Areas

Consistent with the Interim Final Rule, eligible "projects are expected to focus on locations that are unserved or underserved. Users are unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 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.[6]" (86 Fed. Reg. 26805).

Consistent with Public Utilities Code Section 281(n), as enacted by SB 156, the Commission is required to award grants from the Federal Funding Account "to expeditiously connect unserved and underserved communities by applicable federal deadlines."

The Treasury Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions (FAQ) provide more detail in response to questions from stakeholders. The FAQ states that "businesses" includes schools, libraries, or other non-residential connections: "The term

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[3] Department of the Treasury, Interim Final Rule, Coronavirus State and Local Fiscal Recovery Funds, 31 C.F.R. Part 35, 86 Fed. Reg. 26786 (May 17, 2021)(Interim Final Rule), available at: https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf.

[4] The Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions as of July 19, 2021, is available here: https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

[5] https://www.cpuc.ca.gov/-/media/cpuc-website/files/uploadedfiles/cpuc_public_website/content/utilities_and_industries/communications_-telecommunications_and_broadband/casf-infrastructurepublished-rules-revised.pdf

[6] Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26805 (May 17, 2021).

"businesses" in this context is interpreted 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."[7]

The FAQ includes answers to questions around the definition of unserved and underserved: "The use of "reliably" in the Interim Final Rule provides 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 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 thresholds is not dispositive."[8]

The FAQ entry goes on to discuss data and processes relevant to application of the unserved and underserved definition: "When making these assessments, applicants 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, applicants may take into account a variety of factors, including whether users 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)."[9]

2.2 Project Identification and Application Process

~~The~~For each application window, the Commission will identify all unserved ~~priority proposed project~~ areas on an updated Broadband Map and initiate a round of grant-making through public announcement. Each public announcement also will include: (1) a list of consortia regions, the current percentage of served households in each consortia region, and whether each consortia region has achieved the 98 percent goal; (2) a list of urban counties in order of proportion of households without access to broadband service at 100 Mbps download speed; and (3) a list of rural counties in order of proportion of households without access to broadband service at 100 Mbps download speed.

[7] See, FAQ Question 6.16 [7/14].
[8] See, FAQ Question 6.11 [6/17].
[9] FAQ Question 6.11 [6/17].

Staff ~~will~~may publish proposed project areas that are coordinated with the Commission's obligation to assist in preparing definitive plans for deploying necessary infrastructure in unserved areas of each county, including coordination across contiguous counties.

These proposed project areas ~~will~~may be developed on a county-by-county basis while accounting for projects that may not fall strictly within county lines. Proposed projects will align with the goal of providing broadband access to no less than 98 percent of California households in each CASF consortia region ~~endeavor~~ to ensure that all unserved communities are served.

~~Potential~~An applicant~~s will have an opportunity to~~ may propose ~~adding or subtracting from the proposed~~an infrastructure grant project in any area designated "unserved" on the Broadband Map, including in the proposed project areas the Staff may publish, and consistent with the eligible area ~~requirements~~provisions.

3. ~~Funding Criteria~~**Build To Speed**

The Interim Final Rule uses specific language around project deployed or build-to speeds: "Eligible projects are expected to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps".[10]

"There may be instances in which it would 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 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."[11]

Commission Evaluation of Applications

The Commission will evaluate eligible project applications and prioritize review and funding for proposed projects that will achieve the goal of providing broadband access to no less than 98 percent of unserved households in each CASF consortia region. In the event of competing applications proposing projects for the same unserved area, or if total funds requested exceed available funds, the Commission shall prioritize projects based on the following criteria in descending order:

a. Proposed projects that will connect the greater number of unserved households in a consortia region that has not met the 98 percent goal.

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[10] See, Interim Final Rule, 86 Fed. Reg. 26804, 26823.

[11] Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26804 (May 17, 2021). See also, Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26823 (May 17, 2021).].

b. Proposed projects that will connect the greater number of unserved households that have no service or very slow service.

c. Proposed projects that are located in an urban county or rural county with a greater proportion, compared to other urban or rural counties respectively, of households without access to broadband internet access service with at least 100 Mbps download speed.

d. Proposed projects that will provide the greater percentage of matching funds.

~~a. Match (10 points). An application will receive credit based on the percentage of matching funds the applicant proposes to invest in its project and the variety of sources of matching funding provided by others.~~

~~b. Project technology choice (10 points). Fiber optic infrastructure, among other technologies, is scalable and enables the next generation of application solutions for all communities. An application proposing to invest in fiber optic infrastructure will receive credit.[12]~~

~~c. Type or Partnership (10 points). Public and tribal entities have less pressure to turn profits and provide service with a commitment to serving entire communities. An application proposing to build a broadband network owned, operated by, or affiliated with, or in partnership with local governments, non- profits, or Tribe, and cooperatives will receive credit.[13]~~

~~d. Service affordability (10 points). An application that integrates two or moreat least one affordability options will receive credit (i.e., affordable offer, low income plan, California LifeLine, federal Lifeline, and/or the Emergency Broadband Benefit or its successor).[14]~~

~~e. Existing broadband service need (340 points). An application proposing to serve locations with the least access or slowest speed and the highest need, as identified by the Commission's Communications Division, will receive credit. The Communications Division will publish proposed project areas that meet this criteria and 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.[15]~~

~~[12] Interim Rule, 86 Fed. Reg. 26786, 26805.~~

~~[13] Interim Rule, 86 Fed. Reg. 26786, 26806.~~

~~[14] Interim Rule, 86 Fed. Reg. 26786, 26806.~~

~~[15] Public Utilities Code Section 281 (b)(5)(C). See also, Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26804 (May 17, 2021).~~

f. ~~Applicant capacity and performance (10 points). An application that demonstrates the financial, technical, and operational capacity to execute the project successfully and completely in the timeframe will receive credit.~~

g. ~~Technology Network and Budget (10 points). An application that demonstrates a well-planned project with a reasonable budget that shows it will deliver speeds and service proposed and be sufficiently robust to meet increasing demand for bandwidth will receive credit.~~

~~The Commission reserves the right to reject any application as filed, and determine the terms of a grant award, including the award amount, with the selected applicant prior to offering the grant. If negotiations cannot be concluded successfully with an applicant, as determined solely by the Commission, the Commission may withdraw its award offer.~~The Communications Division Staff shall make recommendations to the Commission for disposition of each application through either a resolution or ministerial review with consideration of any objections submitted and consistent with all of the guidelines herein.

4. Definitions

"Application" means any application requesting funding for a proposed infrastructure project, including any amendment to an application, and any request for additional funds for a project that has already been awarded a grant.

"Broadband Map" means the California Interactive Broadband Map (available at http://www.broadbandmap.ca.gov/) showing served status and eligibility, maintained by the Commission or successor map showing Federal Funding Account eligibility and/or proposed project areas.

"Location" means an individual, serviceable location that is identified by street address (if one exists) and latitude/longitude coordinates, as well as potential subscriber type.

"Eligible Project" means an area consisting~~containing a significant number~~ of unserved and underserved households and that is not within an area with an existing wireline broadband grant. Eligible projects must be designed to be capable of offering wireline broadband service at or above 100/100 Mbps, or 100/20 Mbps if symmetrical service is not practicable.

“Low-income areas” means areas identified by the median income within a Census Block Group having median income less than the California Alternate Rates for Energy (CARE) standard for a household of 4, which will be updated annually. Through May 31, 2021, this value is $52,400.[16]

“Low-income customers” are households with incomes that would qualify for CARE pursuant to Pub. Util. Code §739.1(a) and D.16-11-022 at 18 (or as updated in a successor decision). As noted above, for a household of four the income threshold is $52,400 through May 31, 2021. The threshold is updated regularly in the CARE proceeding, A.19-11-003, et. al.

“Low-income plans” are subscriptions specifically targeted for low-income subscribers ~~costing no more than $15 per month~~, consistent with the ~~Funding~~Performance Criteria Section of this document.

An “unserved” area and “underserved” area means an area for which no wireline broadband provider reliably offers broadband service at speeds of at least 25 Mbps downstream and 3 Mbps upstream to the entire community.[17]

5. Eligible Entities

The following entities are eligible for a FFA grant:

- Entities with a Certificate of Public Convenience and Necessity (CPCN) that qualify as a “telephone corporation” as defined under Public Utilities (Pub. Util.) Code section 234; or
- Non-telephone corporations that are facilities-based broadband service providers; or
- Local governmental agencies; or
- Electric utilities; or
- Tribes.

[16] The Commission’s CARE program standard applies per household. We assume a household size of four persons. https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/care-fera-program

[17] To determine if an area is unserved, the Commission will rely on the Broadband Map, data from a variety of services, including broadband deployment data, subscriber data, crowdsourced data, service quality data, and qualitative data.

6. Middle Mile Funding under the Federal Funding Account Last Mile Program

Consistent with the Interim Final Rule, ~~recipients~~an applicant may ~~use payments from the Funds for "~~ propose projects that include middle-mile ~~projects,"~~infrastructure, but ~~recipients~~applicants are encouraged to focus on projects that will achieve last-mile connections, especially in a consortia region that has not achieved the 98 percent goal—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.[18]

For proposed projects that ~~include~~request funding for middle-mile infrastructure, the staff will evaluate and verify that the proposed middle-mile infrastructure is ~~needed~~ indispensable to achieve the last-mile connections. Additionally, the Commission will evaluate whether the proposed middle mile infrastructure can be provided by or incorporated into the statewide middle mile network.

~~Staff will verify if existing middle-mile infrastructure in a proposed project area is sufficient, reasonably affordable, and open-access prior to granting or making a recommendation to the Commission to grant a proposed project~~.

6.1 Open Access

For projects awarded FFA funding to deploy middle-mile infrastructure, the middle-mile segment(s) shall be deemed open access for the duration of the lifetime of that infrastructure. Open access requires that FFA funded middle-mile infrastructure be made available to provide nondiscriminatory interconnection and internet access at reasonable and equal terms to any communications service provider that wishes to interconnect with that infrastructure, wherever technically feasible.[19]

6.2 Interconnection

FFA grant recipients subject to the open access requirement must provide open access at any technically feasible interconnection point in the network. Interconnection may be infeasible in some locations. Providers must make a good-faith effort to find a technically feasible solution where possible.

Interconnection includes, at a minimum, the physical interconnection of the FFA recipient's facilities to a requesting party's facilities for the exchange of traffic. Service offerings may include,

[18] ARPA Frequently Asked Questions Guidance Question 6.9.

[19] *See*, *e.g.*, BroadbandUSA, Fact Sheet: Broadband Technology Opportunities Program, Nondiscrimination and Interconnection Obligations (Nov. 10, 2010), *available* at https://www2.ntia.doc.gov/files/Interconnection_Nondiscrimination_11_10_10_FINAL.pdf.

but not be limited to, lease of dark fiber, local transmission services, transport, and dedicated Internet access services.

Examples of feasible location types include:

- any previously defined interconnection points;
- new and existing network exchange locations;
- splice points; and
- where wireline infrastructure has been damaged and repairs have been made or are planned to be within 500 meters of an unserved community.

Consistent with the requirement to negotiate in good faith, the FFA grant recipient must provide information detailing the FFA-funded infrastructure to parties requesting interconnection such as route maps, interconnection points, splice points, and type of fiber.

FFA grant recipients must make all reasonable efforts to allow requesting parties to interconnect and procure transport service or wholesale a direct connection. In addition, FFA grant recipients must provide requesting parties with an ability to connect to the Internet irrespective of whether the FFA grant recipient connects to the Internet directly or indirectly.

6.3 Interconnection with Statewide Open-Access Middle Mile Network

Projects will interconnect with the statewide open-access middle mile network, where and when feasible.

6.4 Interconnection and Pricing

Pricing, and terms and conditions for other providers to interconnect with FFA-funded middle mile shall be just, reasonable, ~~,~~and nondiscriminatory.

Grant recipients must offer tiered pricing and a range of options to fit different business models. The service levels must be equivalent for similarly situated entities such as Wholesale (ISP) / Government / Public Anchor Institution / etc. Pricing, tariffs, and the framework identifying standard terms and conditions must be provided to the Commission's Communications Division as part of the FFA application for middle-mile funding and may be updated by the grantee from time to time. Terms and conditions should address essential elements of network operations such as cybersecurity, circuit provisioning, network outages, future capital investment costs, and operations and maintenance costs.

Grant recipients shall negotiate in good faith with all requesting parties (i.e., public, private, non-profit, or other parties) making a bona fide request for interconnection or wholesale services.[20] Reasonable prices, terms, and conditions for last-mile provider access to middle-mile infrastructure may vary depending on local circumstances such as physical and network conditions, or the types of services and service levels requested by the last-mile provider.

6.5 Open Access Decision Enforcement

In the event that the FFA grant recipient fails to comply with the open access requirement (for middle mile funded by the FFA) in accordance with the terms of approval granted by the Commission, or in the event that the FFA grant recipient does not negotiate in good faith with a requesting party, the requesting party may file a complaint with the Commission.

6.6 Open Access Reporting

For the life of the middle-mile infrastructure, the FFA grant recipient must provide, in its confidential annual report to the Commission, a detailing of the number of interconnection requests and executed service agreements. The report must include: date of request, requesting party, location of requested interconnection, service requested, outcome of request, pricing, tariffs (if applicable), and terms and conditions.

7. Performance Criteria

At a minimum, all FFA projects must meet the performance criteria outlined below:

a. Project Completion: All CEQA-exempt projects must be completed within 12 months, and all other projects shall be completed within 24 months after receiving authorization to construct.

b. Pricing: All applicants shall commit to serve customers in the project area at the prices provided in the application for a period of two years from the date that service is offered ~~the life of the infrastructure~~.

c. Speeds: All households in the proposed project areas must be offered a broadband Internet service plan with speeds of at least 100 Mbps download and 100 Mbps upload, or speeds of at least 100 Mbps download and 20 Mbps upload if applicable.

d. Latency: All projects shall provide service at no higher than 100 ms of latency.

[20] *See* FCC 04-164 Report and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (FCC Docket No.: CC 01-338). https://www.fcc.gov/document/review- section-251-unbundling-obligations-incumbent-local-2

e. Data Caps: Data caps are disfavored. If including a data cap an applicant must include a justification about how the cap does not limit reliability of the connection to the users. In any event, data caps shall provide a minimum of 1000 GBs per month.

f. Affordability: All projects shall provide an affordable broadband plan, as defined in the Definitions, for low-income customers, such as California LifeLine, federal Lifeline service ~~and~~ or the Emergency Broadband Benefit, or its successor.

8. Reimbursable Expenses

The costs the Commission may reimburse are as follows:

a. `Costs directly related to the deployment of infrastructure;

b. Costs to lease access to property or for Internet backhaul services for a period not to exceed five years; and

c. Costs incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.

d. Costs incurred during the period beginning March 3, 2021 and ending December 31, 2024.21

Additionally, administrative expenses directly related to the project shall be capped at 2 percent of the grant amount and a maximum of 15 percent contingency on direct infrastructure costs.[22]

9. Information Required from Applicants

A single application must be submitted by each applicant for any eligible project areas. Non-contiguous project areas may be considered as a single project. Applicants proposing projects with middle-mile infrastructure must show that it is indispensable for accessing the last-mile infrastructure and must commit to open access requirements. In order to be reviewed, all applications must include the items listed below.

9.1 Application Item 1 – Project Summary (Distributed Publicly)

[21] 31C.F.R. 35.5(a), FAQ Question 4.7)

[22] We define administrative costs as "indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with Commission administrative and regulatory requirements related to the grant itself." Applicants seeking additional funds will require a Commission exemption included in a draft resolution.

The applicant must submit a Project Summary, which Communications Division Staff will post on the website. The applicant also must submit the Project Summary to the CASF Distribution List. The summary must include the following information:

- Company/Applicant's name.
- CPCN/U-Number or pending CPCN application number.[23]
- Contact person.
- Project title.
- Named project location (Community/County).
- Project type (Last-mile or Hybrid Last-mile/Middle-mile).
- Amount of FFA grant funding requested and project cost.
- Map of the proposed project area.
- The number of unserved households the project will serve.
- The maximum Mbps downstream and upstream speed currently offered to households.
- Median Household Income of the project area.
- The number of businesses, anchor institutions and public safety locations in the project area that will receive new or improved service.
- A description of the major infrastructure to be deployed: miles of planned fiber, Central Offices used, number of remote terminals/fiber huts to be built, and if an Indefeasible Right of Use (IRU) is used.
- Estimated breakdown of aerial and underground installation.
- Major equipment expenses (e.g., number of routers, modems, etc.).

[23] A CPCN or WIR authority is not necessary to apply for or be awarded an FFA grant. CPCN and WIR information is available at www.cpuc.ca.gov/General.aspx?id=1019

- Estimated project plan with major milestones and construction timeline.

- Description of proposed broadband project plan for which FFA funding is being requested, including the type of technology to be provided in the proposed service areas:

    - Download speed capabilities of proposed facilities.

    - Upload speed capabilities of proposed facilities.

    - The project description will provide enough construction detail to enable a preliminary indication of the need for a California Environmental Quality Act (CEQA) review and if proposed project areas contain any environmentally sensitive areas. For example, when trenching is required, the applicant will state and describe the manner in which the site is to be restored, post-trenching.

    - Identification of the leveraging of existing available facilities.

    - A statement of whether the applicant is disputing the Broadband Map depiction of served status.

    - A statement of whether the applicant is seeking Ministerial Review and, if so, information that the application meets all requirements for Ministerial Review.

    - An explanation of why any Middle Mile facilities in the proposed project are ~~necessary~~indispensable for accessing the proposed last-mile infrastructure.

    - A statement accepting the open access requirements for any Middle Mile facilities in the proposed project.

9.2 Application Item 2 – Applicant Entity Information

The applicant must provide the following information, as necessary:

- Information Sheet (Attachment A to this document) with a Certificate of Good Standing issued by the Secretary of State;

- Organizational Chart, Company History, and Statement of Readiness to Build, Manage, and Operate Broadband;

- Key Contact Information (Name, Title, Address, Email Address, and Phone number);

- Key Company Officers.

9.3 Application Item 3 – Description of the Applicant's Current Broadband Infrastructure and Existing Infrastructure in the Area

The applicant must provide:

- A description of the provider's current broadband infrastructure and service within five miles of the proposed project;

- A description of other providers' infrastructure within the project area which can be leased, purchased or accessed via interconnection.

9.4 Application Item 4 – Project Location Data

The applicant must provide the following:

- The geographic location of all households and housing units. This information will be provided in a plain-text, comma-separated values (CSV format) file, or kmz/kml file or shapefile, that contains geo-located street address information, including latitude and longitude coordinates.24 Additional information about how to format this item is available on the FFA website.

- The geographic location of the project related key network equipment, such as router facilities, remote terminals, network interconnection, etc. Additional information about how to format this item is available on the CASF webpage.

- The specific geographic boundary of the project area within which all project locations will fall (shapefile or .kml).

9.5 Application Item 5 - Median Income

The applicant must report the median household income for each Census Block Group (CBG) that intersects the project area. The California Broadband Map (h ttp://www.broadbandmap.ca.gov/) includes census derived population and income data and information regarding existing service

[24] There are a several possibilities for acquiring geolocated street address level data. This document from USAC provides an overview of geolocation methods: https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/HUBBGeolocationMethods.pdf.

providers and their reported service speeds. Using the census block group layer data return, the medium income and CBG code can be obtained. For reference, CBG codes are formatted as follows:

- CBG(s) must be based on the latest decennial census. CBG(s) must be in a twelve digit format, as follows:[25]

State	County	Tract	Block Group
2 digits	3 digits	6 digits	1 digit

9.6 Application Item 6 – Project Eligibility

The applicant must rely on the unserved project areas published by the Communications Division or the unserved areas designated on the Broadband Map to identify project eligibility, as discussed in Section 1 of these Program Rules. The applicant must:

- Provide an assertion that the applicant reviewed the wireline served status on the Broadband Map and determined that the broadband project area proposed is eligible.

- Credible and verifiable ~~E~~evidence may be used to dispute the Broadband Map depictions of served status, ~~including~~such as the following:

    - The applicant may provide CalSPEED tests to show actual speeds or denials of service or other public feedback as evidence on unserved status. The Commission's public feedback tools are available on the Communications Division website: .

    - The applicant may provide other crowdsourced speed test data from other platforms, such as Ookla.

    - The applicant may present data contesting the reliability of service provided by existing providers (e.g., service quality information).

    - The applicant may provide qualitative information (e.g., interviews and testimonial from the impacted community).

    - Other 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

[25] For example, a census block in the town of Fort Bidwell in Modoc County is 060490040001.

owners, data that addresses 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).

If an applicant submits evidence disputing the Broadband Map, any existing service provider in the disputed area will have the opportunity to rebut the applicant's evidence by presenting any of the evidentiary factors presented in this section. ~~If served households are included in a project, the application must include the rationale for why providing service to these households is essential to the project.~~

9.7 Application Item 7 - Deployment Schedule

The applicant must provide:

- A schedule for obtaining necessary permits prior to construction. The schedule must include the timeline required for the California Environmental Quality Act (CEQA) review, as applicable.

- A schedule for project construction following receipt of permits, to complete the project within 24 months, or within 12 months if the project is categorically exempt from CEQA. The schedule needs to identify and describe construction milestones and include start and end dates for each milestone.

- If the applicant is unable to construct and complete the proposed project within the approved timeline, it must notify Staff as soon as it becomes aware and explain reasons for the delay and when the project will be completed.

9.8 Application Item 8 - Proposed Project Expenditures

The applicant must provide:

- Identification of expense categories; direct and or indirect expenses;

- Identification of direct expenses; equipment/materials, labor/construction wages and permitting/CEQA review;

- Identification of individual cost elements and their cost amount with associated costs for last-mile and middle-mile infrastructure separated. The applicant must identify all the equipment to be funded by the FFA by category, (buildings, poles, network and access equipment, operating equipment, customer premise equipment, materials), and the type of equipment (new building, prefabricated building, rehab of existing building, poles, modification of poles, broadband switching equipment, cable, etc.);

- Identification of allocated indirect costs; General and Administrative expenses, such as repair & maintenance expenses for equipment and facilities, utilities, rent of equipment and facilities, administrative costs, indirect materials and supplies, insurance on equipment & machinery, indirect labor and contract supervisory wages, production period interest expense;

- Administrative expenses, including executive salaries, are limited to 15 percent of the total grant amount. We define administrative costs as indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with Commission administrative and regulatory requirements related to the grant itself.

9.9 Application Item 9 – Economic Life of All Assets to be Funded

The applicant must identify all the equipment to be funded by category (buildings, outside plant, poles, network and access equipment, operating equipment, customer premise equipment), the type of equipment (new building, prefabricated building, rehab of existing building, new poles, modification of existing poles, broadband switching equipment, office furniture and fixture, etc.), and the estimated useful life (10, 15, 20, etc. years).

9.10 Application Item 10 – Letter of Credit Requirement

An eligible applicant that does not hold a CPCN or a franchise issued by the Commission is required to submit a Letter of Credit. The Letter of Credit must be irrevocable and will permit the Commission to immediately reclaim any funds provided in the event of non-compliance with the Commission's rules or requirements. The applicant must provide a letter of credit covering the full FFA grant amount issued to the applicant. The letter of credit must be valid throughout its entire 24-month project construction period.

9.11 Application Item 11 – Pricing Commitment

Applicants must submit the fixed monthly service subscription rates that it will offer to all consumers for two years from the date service is offered~~the useful life of the infrastructure being deployed~~. To encourage adoption, installation charges must be waived during the two-year commitment period. The applicant shall identify in its application:

- Fixed monthly service level subscription rates.
- Waived installation/service connection charges.
- Specify any commitments and/or requirements that the customer must accept in order to receive equipment, such as return of equipment.
- Low-income broadband plan detailing prices, data caps and speeds to be offered. Applicants must provide Lifeline service and the Emergency Broadband Benefit, or its successor. At minimum, the low-income broadband plan must meet all FFA performance criteria.

Applicants requesting funding for middle-mile infrastructure must submit a framework identifying open access offerings including tiered pricing structures and the standard terms and conditions that will be available to entities requesting interconnection.

9.12 Application Item 12 – Marketing/Outreach Plan

The applicant must provide a plan to encourage subscription of the broadband service in the project location. The submission shall explain the marketing and outreach plans the applicant will employ to attract residents to sign up for service during the pricing commitment period.

9.13 Application Item 13 – Government and Community Support

The applicant may submit endorsements or letters of support from state and local government, community groups, and anchor institutions supporting the deployment of the broadband infrastructure.

9.14 Application Item 14 – Funding Sources

The applicant must identify each applicable project funding source, such as; loans, financial contributions from the service provider, public or private broadband adoption or deployment program funds, and federal and state grants or loans.

9.15 Application Item 15 - Financial Qualifications

The following must be submitted by applicant regarding the company:

- CPA Audited/Attested Financial Statements for the last three years:
    - Balance Sheet
    - Income Statement

    - Statement of Cash Flows

- Pro Forma Financial Forecast for a five-year period, including a list of assumptions supporting the forecast. Projections must include:

    - Balance Sheet

    - Income Statement

    - Statement of Cash Flows

- Five-year annual EBIT (Earnings Before Income and Tax) projection for the company.

CPA Audited or Attested Financial Statements will be accepted from parent companies in lieu of financial statements from subsidiaries that have no audited or attested financial statements. If applicant has been in existence for less than three years, financial statements for as long as applicant has been in existence, e.g. one or two years, will be considered.

An applicant relying on funding from a publicly traded affiliate or parent company may provide its Securities and Exchange Committee filings, including financial statements.

9.16 Application Item 16 – Project Viability

The applicant must provide a five-year projected project business plan showing project grant funding, profitability, revenues, and expenses. That plan must include an annual EBIT for the project. The project viability forecast must include projected revenue from customers, showing changes in subscriptions and service rates and charges through the pricing commitment period and the period thereafter, years three through five, as applicable.

9.17 Application Item 17 – Providing Voice Service

The applicant must provide information about the following:

- Availability of voice service that meets California and FCC requirements for 9-1-1 service

- Deployment plans for applicable Federal and state requirements for battery back-up;

9.18 Application Item 18 – CEQA Attestation

The applicant must provide information about their project demonstrating how CEQA compliance is to be obtained. The applicant shall attest that they have contacted the Commission's Energy

Division CEQA section in advance of the filing and have consulted with CEQA Staff regarding the process of developing and filing a Proponent's Environmental Assessment (PEA) or other CEQA documents and are aware of their responsibilities if their proposed project is not exempt from CEQA. Information on PEA and CEQA requirements is available on the Commission's website at: www.cpuc.ca.gov/ceqa.

9.19 Application Item 19 – Application Checklist

An applicant must complete the Program Application Checklist Form and attach it to each project proposal. (See Attachment B to this document.)

9.20 Application Item 20 – Affidavit

Applicants must submit an affidavit, under penalty of perjury, that to the best of their knowledge all the statements and representations made in the application information submitted is true and correct. (See Attachment C to this document.)

10. Submission and Timelines

Applications are due on ~~a quarterly basis (i.e., January 1,~~ April 1~~, July 1,~~ and October 1~~)~~. CD Staff will post Application Summaries and Maps to CPUC website and notify CASF Distribution List within 10 days of receiving each application. The deadline to submit objections to any applications will be ~~10~~30 days ~~there~~after this posting and notification. In the event any date falls on a weekend or holiday, the deadline is the next business day.

Applicants should electronically ~~file~~submit their completed applications at http://www.cpuc.ca.gov/puc/ and mail a separate hard copy to the Communications Division, Attn: California Advanced Services Program, and mail another hard copy to the Public Advocates Office at the CPUC. Since applications are not filed with the Commission's Docket Office, they will not be assigned proceeding number(s).

11. Posting of Applications

The Commission will post a list of all pending applications, objection deadlines, and notices of amendments to pending applications on the FFA webpage. The Commission already has a CASF distribution list of interested parties, and will continue to notify the distribution list of interested parties for any FFA applications. The Commission will ~~endeavor to~~ serve applications and any amendments to an application for project funding to those on the service list and post on the FFA webpage at least 30 days before publishing the corresponding draft resolution.

12. Application Objections

The Commission will provide a period during which interested persons may review the grant applications that have been submitted and ~~file~~submit written comments objecting to an application under review. The Commission will consider these ~~comments~~objections in reviewing the application. Any party that objects to a proposed area as already served must provide ~~definitive~~credible and verifiable evidence that the area is in fact already served.

An objection must identify and discuss an error of fact, or policy or statutory requirement that the application has contravened. ~~Comments~~ Objections must be submitted no later than ~~21~~30 ~~calendar~~ days, or a different date set by Staff and posted on the FFA web page, from when the ~~entity~~ Staff serves notice of the application on the CASF Distribution List. ~~Comments~~Objections ~~filed~~submitted after the deadline will be deemed denied. ~~Comments~~ Objections must be ~~filed~~submitted with the Commission and served on the CASF Distribution List.

Consistent with the Interim Final Rule, ~~grant recipients~~applicants should avoid ~~investing~~proposing projects in locations that have existing agreements to build reliable wireline broadband 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.[26] An objection asserting an existing agreement to build such a wireline service should provide evidence of the existing agreement, any infrastructure grant award, and plans indicating the construction route, service area boundaries, and other pertinent construction details.

Consistent with the Interim Final Rule, it "suffices that an objective of a project is to provide service to unserved or underserved households or 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."[27] As such, an entire project is not automatically disqualified by proposing to provide service to served households, but a grant award may not include funding for the costs of served locations in a proposed project. An objection asserting existing wireline communications infrastructure meets or exceeds the 25/3 Mbps unserved definition may still be provided. These objections must include the following to be considered:

- An affidavit, under penalty of perjury, that to the best of their knowledge all the statements and representations made in the objection submitted are ~~attestation that all information provided is~~ true and accurate~~ in accordance with the Rule 1 of the Commission's Rules of Practice and Procedure~~.
    - ~~A~~An attestation that the households identified in (a) are offered service and have the capability to reliably receive minimum speeds of 25 Mbps download and 3 Mbps upload.

[26] Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26806 (May 17, 2021).
[27] See, FAQ Question 6.9.

- The geographic location of all households it serves in the area(s) for which the objection is filed. This information must be provided in a plain-text, comma-separated values (CSV) file, that contains geo-located street address information, including latitude and longitude coordinates.

- The number of subscribers and the level of service subscribed to in the area being disputed. Additionally, Commission staff may request billing statement information to verify subscribership. Th~~is~~e address information and level of broadband service subscribed shall be submitted unredacted to the Commission under seal.

- ~~For plans to build in the Project Area, pPermits, easements, or pole attachment applications submitted and approved when infrastructure was built.~~

- ~~For existing infrastructure, pPictures of provider infrastructure in the area (i.e., wires, huts, vaults, etc.).~~

- ~~Comments~~Objections that do not meet these requirements will be deemed denied. The Commission will only accept public ~~comment~~objections, except that confidential information, such as personally identifying information, trade secrets, and critical infrastructure information, may be submitted under seal with a request for confidential treatment, as allowed under General Order 66-D. Subject to the exceptions herein, ~~C~~criticism of applications based upon confidential and other non-public service data will not be given weight in the evaluation process.

An applicant may submit a public respon~~d~~se to any objection filed by an interested party within 14 days. A response to an objection must provide a public notice on the CASF Distribution List.

Communications Division Staff will review this information, along with the applicant's documentation, as it develops its recommendations to the Commission for the disposition of each application. A grant award may not include funding for the costs of served locations in a proposed project. An applicant shall be provided the option of removing served locations from a proposed project after Staff review of any objection.

13. Ministerial Review

The Commission delegates to Communications Division Staff the authority to approve applications, including determinations of funding, that meet all of the following criteria:

1. Applicant meets the program eligibility requirements.

2. The application has not received objections or Staff has determined that the project area is unserved.
3. The total grant does not exceed $~~25~~10,000,000.
4. The project must be California Environmental Quality Act (CEQA)-exempt, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution.
5. There must be no competing applications for the same project area in the same application period.
6. Costs per household are low, proposed project costs $9,300 per household or less.

Applications not meeting these criteria may only be approved by the Commission via resolution.

Ministerial Process	Resolution Process
Maximum Cost per location of $9,300	Does not meet all criteria under Ministerial Process
Maximum Grant Amount: $~~25~~10,000,000	
Must be CEQA-exempt, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution. No objection or Staff determines that project area is unserved	

14. Semi-Annual and Completion Reporting

Grantees are required to file progress reports on a bi-annual basis. These reports will be publicly posted by the Commission. Progress reports are due on March 1 and September 1 of each year. In the event either date falls on a weekend or holiday, the reports are due the following business day. Progress reports shall contain the following:

- Description of project accomplishments during this period.
- Identification of project milestones and the percent complete to date. If the percent completed is different from the estimated target milestones from the FFA

application, it is necessary to provide a narrative description explaining what occurred.

- Major construction milestones (including a reporting on all CEQA mitigation implementation and monitoring activities, if CEQA review was required), date of completion of each task/milestone as well as problems/issues encountered, and actions taken to resolve these issues/problems during construction (including CEQA compliance, if applicable).

- Description of any challenges or issues and any risks faced during this past quarter in achieving planned progress on the project, including environmental compliance and permitting challenges if applicable.

- Description of significant project milestones or accomplishments planned for next quarter.

- Subscribership information to date.

- Certification that each progress report is true and correct, under penalty of perjury.

Grantees also must submit completion reports prior to receiving the final payment. These reports shall contain the following:

- Comparison of approved versus actual costs of construction.

- Description of the project, including any changes in the project construction and alignment, if applicable.

- Milestones and completion dates for each milestone.

- Number of paying subscribers enrolled in the service provided by the funded construction and number of low-income or affordable plan customers enrolled.

- Final date of completion of the project, problems/issues encountered since last semi-annual report and actions taken to resolve these issues/problems during construction (and comprehensive reporting on CEQA mitigation compliance, if applicable).

- Speed test data at the address level for the project area, including:

    - Test results for download and upload speeds;

        - A representative sample of speed test results at dispersed locations in the project area, including locations at the edge of the project area; number of tests will vary based on project;
            - Maps and associated data of speed test locations and results in a .kmz/ .kml file, shapefile, or .csv spreadsheet.
            - A screenshot of results of CalSPEED speed tests, which can be accessed at http://calspeed.org/index.html. [28]
        - An attestation that all locations within the project area are offered service at minimum speeds of 100 Mbps download and 100 Mbps upload or higher or 100 Mbps download and 20 Mbps if applicable.
- Maps and associated data of all locations served
        - The geographic coordinates of all locations that are served. This information will be provided in a plain-text, comma-separated values (.csv) file, or .kmz/ .kml file or shapefile that contains geo-located street address information, including latitude and longitude, as well as census block code (GEOID);
        - Projected subscribers versus actual subscribers (by subscriber type), as of the date of the completion report;
        - The actual number of current subscribers by subscriber type and subscriber speed;
        - The potential number of subscribers of each type that could be served using the FFA project's existing facilities at the same minimum defined speed;
        - Both the number of low-income customers in the project area and the number of low-income customers subscribing to low-income plans;
        - Identification of the number of served locations in the project area that have broadband availability at or above the aforementioned minimum speeds ("Take Rate").
- Documentation of advertisements, billing inserts and marketing information, by speed tier and prices.

[28] The technically available speed at the location shall be tested, not a customer's subscribed speed.

- Open access interconnections (if applicable).

    - The number of interconnection requests and executed service agreements.

15. Payment

Requests for payments may be submitted as the project is progressively deployed. The prerequisite for first payment is the submittal of a progress report to the Commission showing that at least 10 percent of the project has been completed. Subsequent payments are made at the following deadlines: 35 percent completion, 60 percent completion, 85 percent completion and 100 percent completion. The final 15 percent payment request (from 85 to 100 percent) will not be paid without an approved completion report. Payments are based on submitted receipts, invoices and other supporting documentation showing expenditures incurred for the project in accordance with the approved FFA funding budget included in the FFA grantee's application.

If an application also meets the ministerial review criteria, a provider with a CPCN or franchise that wishes to front the full costs of a project in exchange for reduced reporting burdens may request an alternative payment structure. The one-time payment request must include a project completion report and receipts/invoices of major equipment and materials purchased, with labor costs and other items being line items reflecting the remaining total amounts charged to FFA. Staff must conduct a site visit to confirm project completion prior to authorizing payment and these reimbursements are still subject to audit.

Grantees shall submit the final request for payment within 90 days after completion of the project. If the grantee cannot complete the project within the 24-month timeline, the grantee shall notify the Commission as soon as they become aware that they may not be able to meet the timeline and provide a new project completion date.

In the event that the recipient 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. This may include rescinding the grant. Invoices submitted will be subject to a financial audit by the Commission at any time within 3 years of completion of project. If portions of reimbursements are found to be out of compliance, Grantees will be responsible for refunding any disallowed amounts along with appropriate interest at rates determined in accordance with applicable Commission decisions.

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.[29]

Projects that are not progressing must be quickly dissolved to free up funds and eligible areas for alternate applicants. As such, projects must demonstrate progress toward meeting grant objectives

[29] The technically available speed at the location shall be tested, not a customer's subscribed speed.

on the 12- or 24-month timeline, as applicable. On an annual basis, Communications Division Staff will place a resolution before the Commission with recommendations from Staff as to whether the applications that have not demonstrated substantial progress should be modified, revised, or rescinded.

16. CEQA Payment

CEQA consultant costs shall be paid directly by the Commission to the contractor. Following award of a grant the Energy Division CEQA Section Staff will obtain a contractor to review the CEQA documents for the project. The FFA will pay directly the project's CEQA PEA preparation costs, but those costs will be identified as costs associated with the grant and will have no effect on the applicable shares of grantee assigned and program supported total project costs.

The applicant may file with the Energy Division's CEQA Section a completed CEQA review conducted by another agency acting as the Lead Agency pursuant to CEQA. Should this occur, grantees may request funds to pay for preparation of a PEA.

17. Execution and Performance

Staff and the grant recipient shall determine a project start date after the grant recipient has obtained all approvals, including permits and pole attachment approvals, commonly ~~30~~60 days after approval of the resolution or ministerial review approval. Should the recipient or Contractor fail to commence work at the agreed upon time without good cause shown, the Commission, upon five days written notice to the FFA recipient, reserves the right to terminate the award.

In the event that the FFA recipient fails to complete the project, in accordance with the terms of approval granted by the Commission, the FFA recipient must reimburse some or all of the CASF funds that it has received. The FFA grant recipient must complete all performance under the award on or before the termination date of the award.

Failure of an applicant to comply with the Commission's Order or grant agreement, as amended, or required by the U.S. Treasury Department may result in cancellation of the award. The Commission or the Recipient may terminate a grant award, at any time at its sole discretion by delivering ten (10) days written notice to the applicant/grant award recipient. In the event that the applicant terminates the grant award, for any reason whatsoever, it will refund to the Commission within 30 days of said termination, all payments made hereunder by the Commission to the applicant for work not completed or not accepted by the Commission. Such termination will require written notice to that effect that is delivered by the applicant to the Commission not less than ten (10) days prior to said termination.

Grant recipients shall provide for compliance with the American Rescue Plan Act and all other applicable federal statutes, regulations, and executive orders.[30]

18. Construction Phase

A grantee must notify the Commission within five days of determining that the grantee is planning to sell or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in writing of its intent to sell or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and ownership to comply with the requirements of the FFA award and required by the U.S. Treasury Department. The new entity shall agree in writing to such. The grantee shall provide the Commission with any necessary documents requested in its review of the transfer. This will include all documents that are generally required of all entities applying for the FFA grants. The grantee shall not transfer FFA funds or the built portion of the project to the new entity prior to Commission approval via a resolution/order. If the Commission does not provide approval, it will rescind the grant.

Pursuant to P.U. Code 281(l), grantees must report monthly to the commission all of the following information throughout the construction phase:

(A) The name and contractor's license number of each licensed contractor and subcontractor undertaking a contract or subcontract in excess of twenty-five thousand dollars ($25,000) to perform work on a project funded or financed pursuant to this section.

(B) The location where a contractor or subcontractor described in subparagraph (A) will be performing that work.

(C) The anticipated dates when that work will be performed.

The Commission will, on a monthly basis, post the information reported pursuant to this subdivision on the commission's FFA internet website.

19. Post-Construction Phase

For three years after project completion, a grantee must notify the Commission within five days of determining that the grantee is planning to sell or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in writing of their intent to sell or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and

[30] See, Interim Final Rule 31 C.F.R. § 35.9, 86 Fed. Reg. 26786, 26823.

ownership to comply with the requirements of the FFA grant and requirements of the U.S. Treasury Department. The new entity shall agree in writing to such.

20. Audit Compliance Changes

All applicants are required to sign a consent form agreeing to the terms and conditions of the Federal Funding Account. These will be stated either in the Resolution approving the project, or in a letter sent by Staff to the successful applicant. The agreement will provide the name of the applicant, names of officers and members, and must be signed by the applicant. The proposed wording of the consent form is in Attachment D to this document.

21. Penalties

Non-telephone corporation grantees must agree to the following language in the affidavit found in Attachment C to this document.