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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.

R.20-09-001  
(Filed September 10, 2020)

**OPENING COMMENTS OF AT&T CALIFORNIA (U 1001 C) ON  
STAFF PROPOSAL TO IMPLEMENT THE FEDERAL FUNDING ACCOUNT GRANT  
PROGRAM PURSUANT TO THE ASSIGNED COMMISSIONER'S RULING  
ISSUED SEPTEMBER 23, 2021**

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## **TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>DISCUSSION .....</b>	<b>3</b>
	A. Compliance with Federal Guidance.....	3
	B. Priority Project Areas.....	6
	C. Coordination with Other Grant Programs.....	8
	D. Affordability .....	9
	E. Eligible Areas.....	11
	F. Eligible Entities.....	12
	G. Coordination with Statewide Middle Mile Network .....	13
	H. IOU Fiber Pilots.....	13
	I. Performance Criteria.....	14
	J. Information Required from Applicants.....	16
	K. Provision of Voice and Other Services.....	16
	L. Government and Community Support.....	17
	M. Ministerial Review Criteria.....	17
	N. Post-Construction Phase .....	18
<b>III.</b>	<b>CONCLUSION .....</b>	<b>19</b>

Pursuant to the schedule in the Assigned Commissioner’s Ruling (“Ruling”) issued on September 23, 2021 in the above-captioned proceeding, Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) (“AT&T”) submits these opening comments responding to the issues for public comment and to the Federal Funding Account Program Guidelines Staff Proposal (“Staff Proposal”) appended to the Ruling as Attachment A.

## **I. INTRODUCTION**

In Senate Bill 156 (“SB 156”)<sup>1</sup> signed into law by Governor Gavin Newsom on July 20, 2021, the Legislature created the Federal Funding Account (“FFA”) to distribute two billion dollars to connect unserved and underserved communities by deadlines established by the U.S. government. Pursuant to this legislation, the Commission is required to expeditiously connect unserved and underserved communities through a program managed within the California Advanced Services Fund (“CASF”) and consistent with Part 35 of Title 31 of the Code of Federal Regulations and any conditions or guidelines applicable to these federal infrastructure moneys.<sup>2</sup>

Implementation of the FFA and CASF revisions in Phase 3 of this proceeding presents a once in a generation opportunity for the Commission, Staff, and providers to work together to establish a framework to meet the ambitious objectives of obligating funds by December 31, 2024 and spending funds by December 31, 2026. AT&T looks forward to working with the Commission to close the digital divide through the provision of high-quality

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<sup>1</sup> Senate Bill 156, Chapter 112 (Cal. Stat. 2021).

<sup>2</sup> California P.U. Code Section 281(n)(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).

advanced communications services to Californians. To address the digital divide, AT&T currently offers a discounted wireline broadband service called “Access from AT&T” available at \$10 per month.<sup>3</sup> AT&T also makes its fiber broadband service, offered at different speeds, more affordable by participating in government subsidy programs, such as the Emergency Broadband Benefit (“EBB”).<sup>4</sup> For example, the EBB covers the cost of the monthly fee for the AT&T Fiber 300 Mbps plan for eligible customers. No data caps apply to AT&T broadband service provided over fiber, and AT&T uses nationwide rate plans, meaning that all mobile and fixed broadband service options offered are available at the same prices for AT&T customers.<sup>5</sup>

To further bridge the digital divide, AT&T commends the Staff for its thoughtful proposal and offers these comments with the objective of establishing guidelines to achieve its goal of distributing the funds over an abbreviated time period. In these opening comments, AT&T addresses the issues for public comment set forth in Section 4 of the Ruling and the Staff Proposal.

AT&T encourages the Commission to adopt program guidelines which are consistent with Part 35 of Title 31 of the Code of Federal Regulations (“CFRs”), align with the federal guidance released by the Treasury Department as set forth in the Interim Final Rules (“IFR”),<sup>6</sup>

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<sup>3</sup> Qualifying households and those participating in the Supplemental Nutrition Assistance Program can participate in the Access program. In locations where it is available, AT&T currently assigns eligible customers the fastest speed tier available up to 25Mbps download speeds. Program details are at [att.com/access](http://att.com/access).

<sup>4</sup> Under the EBB program, eligible new and existing AT&T customers can temporarily receive a benefit of up to \$50 per month towards either home broadband or broadband delivered by wireless. Those on qualifying tribal lands can save up to \$75 per month. Details of all eligible plans from AT&T can be found at [att.com/ebb](http://att.com/ebb).

<sup>5</sup> More information regarding current AT&T Fiber offers is available at: <https://www.att.com/internet/fiber.html>.

<sup>6</sup> See 31 CFR Part 35 RIN 1505-AC77 Coronavirus State and Local Fiscal Recovery Funds, TREASURY.GOV available at: <https://home.treasury.gov/system/files/136/FRF-Interim-Final-Rule.pdf>; and Coronavirus State and Local Fiscal Recovery Funds FAQs (“Treasury FAQ”), TREASURY.GOV (July 19, 2021) available at: <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

and in so doing, streamline and simplify<sup>7</sup> the CASF Program Guidelines.<sup>8</sup> AT&T proposes the Commission enhance the ministerial review process to increase the per-household and maximum grant amount, allow for streamlined provider applications, and a simplified reimbursement process following project completion.

AT&T also recommends the Commission support affordability options that include nationwide broadband offers and other plans not tethered to the infrastructure life cycle. Lastly, AT&T encourages the Commission to streamline the complexity and frequency of provider reporting obligations. AT&T's proposals will not only help enable effective distribution of the authorized FFA funds in California, but also allow nationwide providers to leverage existing product development, back-office systems, and reporting processes to provide timely and consistent reporting.

## **II. DISCUSSION**

### **A. Compliance with Federal Guidance**

#### **Question 1. Are the rules in the Staff Proposal consistent with Part 35 of Title 31 of the CFRs?**

The Staff Proposal is generally consistent with the federal guidance released by the U.S. Treasury Department and focuses on aligning important aspects of the program with the IFR in areas that include deployment speed, eligible areas, and focusing on last-mile

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<sup>7</sup> AT&T has long advocated before the Commission for streamlined CASF guidelines, including application and reimbursement guidelines, to encourage program participation and accelerate the deployment and reimbursement process. *See Opening Comments of AT&T on Phase II Proposal*, Rulemaking (R.) 12-10-012, (April 16, 2018); *Reply Comments of AT&T on Phase II Proposal*, Rulemaking (R.) 12-10-012, (May 1, 2018); *Comments of AT&T on the Assigned Commissioner Ruling Setting Workshops and Seeking Comment on Eligibility For and Prioritization of Broadband Infrastructure Funds From the California Advanced Services Fund*, Rulemaking (R.) 12-10-012, (Aug. 8, 2018); *Comments of AT&T on the Assigned Commissioner's March 26, 2020 Ruling Requesting Comments On Broadband Infrastructure Rules and Application Windows – Question 1*, (April 9, 2020.)

<sup>8</sup> Ruling, Attachment A – Staff Proposal.

connections. Both the federal guidance and the Staff Proposal acknowledge the known technical and economic difficulties of deploying broadband to various locations and, thus, incorporate certain flexibilities to support efficient, scalable, and contiguous network deployments. AT&T also strongly supports the adoption of federal guidance provisions which will enable both small and mass-market project proposals.

**What modifications should be made to the Staff Proposal to improve consistency with Part 35 of Title 31 of the CFRs? Please provide an explanation of any suggestions, as well as edits in redline as an attachment to your comments.**

By following federal guidelines, the Commission will attract more participants and allow for streamlined processes. To that end, AT&T recommends program modifications as reflected in the redline of Attachment A filed with these opening comments (“Appendix A”) and as discussed below. Other than ensuring compliance with the overall program budget, the Commission should refrain from imposing caps on the size of grants on a county basis. Competitive grant application processes provide inherent incentives for reasonable project proposals. Funding caps could result in inefficient network deployments and unnecessarily limit the number of homes reached by funded deployments. Additionally, the Staff Proposal should be modified to explicitly state that FFA grants should be made in coordination with existing federal programs, but cannot be used to fulfill fixed or mobile broadband deployment merger commitments.

To reduce the differences between the Staff Proposal and the requirements of the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) in order to streamline processes and maximize participation, AT&T suggests several modifications to minimize administrative burdens for the Commission and providers and to expand the ministerial review process.

Streamlined measures will allow the Commission to meet the program objectives of obligating funds by December 31, 2024 and spending funds by December 31, 2026.<sup>9</sup>

Of paramount concern with the Staff Proposal is Application Item 8, *Proposed Project Expenditures* and corresponding reporting and audit terms. The proposed guidelines would require applicants to submit detailed and itemized time and material information at the time of the application is submitted. These documentation requirements are onerous and, in many instances, so burdensome that in the past, providers subject to similar guidelines declined to bid or have foregone reimbursement. This level of detail is out of step with the reality of the purchasing environment that exists today and with the time allotted to prepare and submit proposals to meet SLFRF deadlines. Providers enter contracts for equipment, facilities, and services by volume to obtain better pricing and supply multiple projects at a time. As a result, it is burdensome to produce project-specific receipts. The Commission should accept cost information from bulk purchase orders.

AT&T recommends the Commission eliminate potentially redundant and vague application requirements from project plans. In many cases, the level of detail is not necessary to determine the reasonableness of the proposal, and the network design work needed to produce this detail is expensive and time consuming to produce, especially at the application stage when there is no assurance that funds will be awarded and the project will move forward. Where the applicant has identified the anticipated expenditures for the project area, including a budget for time and materials and the project-build deadline, the following application items should be eliminated.

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<sup>9</sup>AT&T respectfully urges the Commission to simplify and streamline the procedures for awarding, administering, and reporting. Each of these factors have contributed to program complexity and prevented the CASF fund from realizing robust provider participation.

- Major equipment expenses are unnecessary detail that is redundant with the general description of major infrastructure requirement. Further, the illustrative equipment listed are not “major equipment,” but customer premises equipment selected by the subscriber.
- Item 9.9 “Economic Life of All Assets to be Funded” should be deleted as irrelevant and unnecessary.

The Staff Proposal Application Item 7, *Deployment Schedule*, recommends a project construction timeline of 12 months beginning after receipt of permits for CEQA-exempt projects and 24 months for projects requiring CEQA compliance. A 12-month construction timeline, even for CEQA-exempt projects, is too short and is inconsistent with federal guidance.

The SLFRF requirement to commit funding by December 31, 2024 and complete expenditures by December 31, 2026 reflects a more realistic minimum construction timeframe of two years.

Finally, AT&T supports the Commission in establishing and adhering to timelines related to CASF applications. Predictable timelines are beneficial because applicants will understand where they are in the process and can plan accordingly for investments as well as for supply chain and labor issues. This clarity to providers will assist in efficient deployment of broadband facilities.

## **B. Priority Project Areas**

### **Question 2. What information should the Communications Division Staff take into consideration in developing these priority areas?**

AT&T supports the Staff Proposal’s process for identifying priority project areas which contemplates that Staff will identify project areas on a county-by-county basis by applying criteria that support the objective of “deploying necessary infrastructure in each county, including coordination across contiguous counties” and “endeavor[ing] to ensure that all unserved communities are served.” AT&T further understands this process may be used to support applications proposing small or mass-market broadband deployments that may stretch beyond county lines for an efficient, contiguous network.

Pursuant to the IFR, applicants should be permitted to propose project areas that include locations in addition to the unserved and/or underserved locations, and the Staff Proposal similarly grants providers flexibility in “adding or subtracting from the proposed project area consistent with the eligible area requirements.”<sup>10</sup> This flexibility is critical for cost effective and time efficient deployment projects and consistent with federal guidance recognizing the need for a “holistic approach” to deployments.

AT&T would augment the proposal to encourage the Commission to share the internal metrics used to identify project areas and publish the results with sufficient notice so that providers can better identify projects and submit applications. Further, the Commission should undertake to update such project areas on a rolling basis to reflect approved applications. Once such a definitive list is established, submitting and reviewing applications for those areas should be easier and move more quickly, given that applicants and the Commission will have a clear line of sight on the priority areas.

**Do the criteria in Section 12. Application Objections balance the need to ensure a fair process for an Internet service provider asserting it already serves a proposed priority project area, with the need to award grants in an expeditious manner? Do parties propose additional or different criteria?**

In Section 12, the Staff Proposal suggests a process to permit parties to object to a grant application under review. Such a process is workable if the rules define specific requirements placed on the objector to provide detailed evidence of an area already served or demonstrate the area will be served by a different entity via another state or federal broadband program. An applicant may respond to any objection filed by an interested party within 14 days, but the burden of proof should be on the objector. Section 12, consistent with federal guidance,

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<sup>10</sup> See Treasury FAQ, Question 6.9 (“Unserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funds” (emphasis in original)).

recognizes that “unserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funds.”<sup>11</sup> As a result, the Staff Proposal concludes that “a project is not disqualified by proposing to provide service to served households.”<sup>12</sup> AT&T supports the proposed process for objections. It strikes the right balance of ensuring objections are supported by detailed evidence, while also recognizing some project areas in an application may contain served areas due to economic feasibility and building an efficient, contiguous network.

### **C. Coordination with Other Grant Programs**

#### **Question 3. How can the FFA best coordinate and leverage these other broadband infrastructure funds?**

The Commission’s focus on gaining economic efficiencies through coordination with other programs is well placed, and the Commission should leverage existing federal broadband deployment programs, such as ReConnect<sup>13</sup> and the FCC’s Rural Digital Opportunity Fund (“RDOF”)<sup>14</sup> to the extent possible. However, a single provider should not be able to receive funding from two programs to deploy the same service in the same area. Given the time it takes for the FCC to approve RDOF funding, it may not be reasonable to assume that a provisional winner of the RDOF Phase I auction will ultimately be authorized to receive funding and/or deploy broadband in a timeframe consistent with state goals. The IFR appears to accommodate this potential situation by specifying that a commitment to fully deploy at least 100/20 Mbps

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<sup>11</sup> Staff Proposal at A-24 (citing Treasury Guidance) (emphasis in original).

<sup>12</sup> *Id.* at A-24.

<sup>13</sup> For information on the U.S. Dept. of Agriculture ReConnect Loan and Grant program, see [www.usda.gov/reconnect](http://www.usda.gov/reconnect).

<sup>14</sup> For information on the Federal Communications Commission Rural Digital Opportunity Fund, see [www.fcc.gov/auction/90r](http://www.fcc.gov/auction/90r).

service by December 31, 2024 could be treated differently from commitments that may not be fully met until 2025 or beyond.

FFA funds could be used to augment service expected to be deployed from a federal program. For example, a CAF II auction support recipient required to deploy 100/20 Mbps service with USF funds could use FFA funds to enhance broadband speeds to 1 Gbps to all or part of the same service area. By contrast, if an RDOF auction winner is receiving USF funding to deploy Gigabit broadband to 100 locations, the same carrier should not be able to seek FFA to deploy Gigabit broadband to the same 100 locations. Most importantly, FFA funds should not be used to enable a company to meet any existing or future voluntarily agreed upon merger or other government agreements to deploy fixed or mobile broadband. Allowing these voluntary commitments to be satisfied through government funding would disadvantage consumers and undermine the providers' commitments to address the very harms their transactions were anticipated to cause and which they promised to mitigate.

#### **D. Affordability**

**Question 4. 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 to provide Lifeline services, as well as the Emergency Broadband Benefit, or its successor?**

Consistent with the IFR, AT&T supports the Staff Proposal to encourage applicants to the FFA to commit to participate in the Emergency Broadband Benefit ("EBB")<sup>14</sup> or its successor. If a provider participates in the EBB, it should not also be mandatory to participate in the federal or state Lifeline programs. In addition, participation in the federal Lifeline programs under current

rules would require a provider to become an Eligible Telecommunications Carrier, which Treasury does not require, and which would likely deter many providers from participating in the FFA.

Providers should also be encouraged to develop offers for broadband service that is affordable for most consumers on limited budgets, with eligibility established via an income or program-based qualification process. This qualification process should be easy to administer for both the consumer and the provider, but nonetheless provide a suitable safeguard so that providers are encouraged to make the low-income offer as robust as possible. If providers are required to participate in the EBB and to have a low-income appropriate offer, consumers should be able to use either option or both to assist them in subscribing to the broadband plan most suited to their needs.

Notwithstanding its support for high-quality and affordable broadband, AT&T recommends the Commission reject the proposed requirement to provide services at an agreed-upon rate for the life of the infrastructure. First, under the current CASF Guidelines, providers are required to provide a rate for two years, and given the rapid evolution of technology and competition, this is a reasonable period of time. AT&T would support the inclusion of a two-year service agreement term in the Staff Proposal or a term commensurate with FFA oversight. Alternatively, the Commission should support affordability options that include providers offering nationwide broadband offers that rely upon a nationally-available rate plan commensurate with the FFA oversight terms. However, mandating static pricing tethered to the infrastructure life cycle is not reasonable, necessary, or contemplated by SB 156.

Regulation of broadband service prices, even if limited to CASF-funded broadband services, to promote affordability – whether the services are inputs to broadband services, such

as transport services, or retail prices of services consumers ultimately pay for broadband service in a competitive market – would potentially damage California’s broadband market and discourage investment. Broadband service is a fiercely-competitive and rapidly-growing market driven by consumer demand and technological innovation. Any form of state regulation of this dynamic market will have a chilling effect on investment and growth. Regulation of broadband service in any form would also be unlawful and would be tied up in costly judicial proceedings for years and divert resources from more productive uses, including expeditiously distributing FFA funds.<sup>15</sup>

#### **E. Eligible Areas**

**Question 5. How should the Commission consider eligible areas? How should underserved areas be defined and considered? What criteria should the Commission use to determine if an area has reliable service? How should the Commission measure what constitutes a significant number of unserved and underserved households?**

The Staff Proposal is consistent with the IFR in that eligible projects are expected to focus on locations that are unserved or underserved. The Staff Proposal reiterates important clarifications made by the Treasury Department in a FAQ document that recognizes discretion for potential FFA applicants in assessing whether locations in a proposed project area are “reliably” served, including use of available wide-ranging data for making these assessments. For similar reasons noted above regarding Priority Project Areas, AT&T agrees with the adoption of this Treasury guidance as it is consistent with the “holistic approach” that best supports efficient and contiguous network deployments.<sup>16</sup>

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<sup>15</sup> *Reply Comments of AT&T California (U 1001 C) on Assigned Commissioner’s Ruling Dated August 6, 2021 Re Middle-Mile Broadband Network*, Rulemaking (R.) 20-09-001, at 9-12 (Sept. 21, 2021). *See MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218 (1994).

<sup>16</sup> *See also* Treasury FAQ, Question 6.9 (“Unserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funding”(emphasis in original)).

The Staff Proposal also suggests that the Commission will rely on the California Interactive Broadband Map to identify locations lacking 25/3 Mbps.<sup>17</sup> AT&T urges the Commission to utilize the forthcoming FCC broadband map for FFA funding as soon as it is available. The FCC's new map relies on the best available broadband data and maintains consistency with future broadband programs anticipated to use the new FCC map, or to utilize compatible formatting and allow the use of such a map as an alternative. At a minimum, all FFA fund recipients should be required to submit data to the new FCC map to ensure that new deployment is appropriately recognized.

Regardless of the mapping data used, the FFA should ensure the project areas, as well as eligible areas, are defined to offer flexibility for broad and comprehensive project applications to support an efficient and contiguous network deployment. This holistic approach will best support FFA applicants to submit projects for single mass-market broadband deployments.

#### **F. Eligible Entities**

##### **Question 6. What information should the Commission consider in the rules to allow flexibility to enable partnerships between entities and providers?**

AT&T supports enabling partnerships between entities and providers as an effective mechanism to achieve the program goals. In reviewing applications from eligible entities, the Commission should consider that as compared to the public sector, the private sector or public/private partnerships are better positioned financially and technically to match government funds, absorb cost overruns, and to provide the ongoing network investments and management needed to ensure the use of robust cybersecurity practices and ensure networks do not become obsolete.

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<sup>17</sup> Staff Proposal at A-17.

## **G. Coordination with Statewide Middle Mile Network**

### **Question 7. How can the Commission ensure the FFA grants coordinate and take advantage of the statewide middle mile network that is being built?**

The Commission should prioritize and expedite the identification of last-mile projects so that a list of areas to be funded through the FFA can be considered as a basis to prioritize middle-mile projects. To the extent coordination between last-mile and middle-mile deployment is needed, use of the state's middle-mile network should not be imposed on FFA grantees so that the grantee can consider other more economical or operationally feasible options to expedite the completion of the project so that unserved areas can be offered broadband services more expeditiously.<sup>18</sup> Applicants interested in participating in the FFA must undertake complex business planning to ensure their applications present the most efficient and cost-effective build considering the location of existing facilities and service agreements. They cannot wait for a statewide network to be operational before conducting such analysis, nor should coordination with that network force a provider into an inefficient deployment. If an applicant applies and receives both last-mile and middle-mile funding from FFA, they also should not be required to use the state's middle-mile network.

## **H. IOU Fiber Pilots**

### **Question 8. How can the FFA be utilizing to achieve this objective? Should the IOU Fiber Pilots in Phase II be moved into Phase III? How should the Commission consider changes to add flexibility to the rules to facilitate applicants from multiple entities such as**

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<sup>18</sup> AT&T has extensively discussed its concerns regarding middle-mile requirements in its comments submitted in this proceeding. See *Opening Comments of AT&T California (U 1001 C) on Assigned Commissioner's Ruling Dated August 6, 2021 Regarding Middle-Mile Broadband Network Rulemaking* (R.) 20-09-001 (Sept. 3, 2021); *Reply Comments of AT&T California (U 1001 C) on Assigned Commissioner's Ruling Dated August 6, 2021, Regarding Middle-Mile Broadband Network, Rulemaking* (R.) 20-09-001 (Sept. 21, 2021); *Opening Comments of AT&T California (U 1001 C) on E-Mail Ruling Ordering Additional Comments as Part of the Middle-Mile Data Collection, Rulemaking* (R.) 20-09-001 (Oct. 1, 2021); *Reply Comments of AT&T California (U 1001 C) on E-Mail Ruling Ordering Additional Comments as Part of the Middle-Mile Data Collection, Rulemaking* (R.) 20-09-001 (Oct. 15, 2021).

**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?**

AT&T supports the Commission's efforts to consider different opportunities to accelerate the deployment of fiber and wireless infrastructure, particularly in rural and tribal areas. For example, as noted in comments previously filed in this proceeding, the voluntary sharing of assets could be facilitated by revising the Commission's processes related to California Public Utilities Code Section 851 requirements, which impose significant regulatory hurdles to certain sharing of public utility assets. AT&T encourages the Commission to explore whether Section 851 reform would further asset sharing.<sup>19</sup>

## **I. Performance Criteria**

**Question 9. What changes should the Commission consider to the performance criteria to meet the December 31, 2024 obligation or encumbrance and December 31, 2026 expenditure deadlines? How should the Commission measure the serviceable life of the infrastructure?**

The Staff Proposal's minimum performance criteria for FFA projects include recommended speed and latency performance criteria consistent with the IFR and the program objections. The criteria also set affordability parameters, addressed above in Section D. The Staff Proposal regarding pricing (subsection (b)) seeks to require unreasonably lengthy commitments by applicants to serve customers in the project area by linking the pricing commitment to "the life of the infrastructure." The Staff Proposal invites comment on defining how "life of the infrastructure" should be measured. Such an undertaking will not only divert time and resources from the awarding of FFA grants, but it is also unnecessary.

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<sup>19</sup> *Reply Comments of Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) on Phase II-A Pilot Proposals*, Rulemaking (R.) 20-09-001, at 2-3 (Sept. 13, 2021).

Rather than determine how to measure the “life of infrastructure,” the Commission should modify the Staff Proposal to require applicants to commit to providing services in the project area at the price in the application for a period of two years, as with the current CASF program. Alternatively, the Staff Proposal could accept provider commitments to maintain a nationwide broadband plan offer for the project area, such as the AT&T Fiber offer available at the same rate to consumers in markets across nation.<sup>20</sup>

As written, the Staff Proposal contemplating “life of the infrastructure” pricing commitments could prevent providers from responding to future market and financial conditions in a way that enables them to continue to operate, maintain, and upgrade the network by limiting their ability to generate adequate revenue. This could also discourage technology improvements over time and innovations. While federal SLFRF funds will offset a portion of the significant capital cost of deploying a new fiber network, they do not cover the significant ongoing cost of offering broadband service. The Treasury Department recognizes that entities distributing ARP SLFRF funding for broadband deployment should consider a provider’s need to make rational business decisions to ensure the long-term economic viability of the project.<sup>21</sup> Subjecting providers to a price control of unknown, but potentially very lengthy, duration conflicts with this stated goal. AT&T encourages the Commission to modify the minimum FFA Performance Criteria to reflect these practical and economic realities.

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<sup>20</sup> More information regarding current AT&T Fiber offers is available at: <https://www.att.com/internet/fiber.html>.

<sup>21</sup> Treasury FAQ, Question 6.9.

## **J. Information Required from Applicants**

### **Question 10. 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?**

The Staff Proposal Section 10, *Submission of Timelines*, contemplates applications on a quarterly schedule. AT&T supports this timeline to help increase the speed of the distribution of funds. It will be incumbent upon the Commission to act quickly to review, approve, or deny the applications as well as to update project area maps to ensure potential applicants have the most current information.

With respect to Section 14, *Semi-Annual and Completion Reporting*, the Staff Proposal should set the reporting frequency to quarterly or annual reporting, or alternatively, to reports only on completion for projects approved via the ministerial review process. This cadence would provide the Commission the information required to provide reasonable oversight, but ease the cumbersome burden of monthly reporting. Given the aggressive timelines for FFA projects and the proposed need to promptly ask for extensions when unexpected circumstances arise, the Commission is likely to quickly become aware of any project that is falling behind schedule. For projects that are on schedule, the annual reports will give the Commission a sufficient mid-point update on progress.

## **K. Provision of Voice and Other Services**

### **Question 11. 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?**

The Commission should not require an Applicant to “provide voice” or score an applicant who specifies that it will “provide voice” any higher than any other applicant. The SLFRF is intended to support the deployment of robust wireline broadband networks and is not a substitute for the role of an Eligible Telecommunications Carriers. Furthermore, a broadband connection

that reliably provides the 100 Mbps symmetrical (or 100/20 Mbps) speeds and 100 ms latency required by the SLFRF guidance will be capable of allowing a consumer to use any of the readily available VoIP services. The Commission should refrain, however, from requiring specific standards beyond the minimum speed thresholds.

#### **L. Government and Community Support**

**Question 12. 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?**

The Staff Proposal provides applicants “*may* submit endorsements or letters of support from state and local government, community groups, and anchor institutions supporting the deployment of the broadband infrastructure” (emphasis added). As a nationwide broadband provider, AT&T engages with communities across the country to provide the best level of service and to understand the unique community priorities. It is important, however, to mitigate the politicization of the FFA application evaluation process, and while evidence of some community support may be helpful, the various technical deployment requirements and number of projected locations to be served should not be outweighed by such concerns.

#### **M. Ministerial Review Criteria**

Ministerial review is an essential tool for the Commission to expeditiously implement the CASF program. AT&T recommends the Commission increase the monetary eligibility per household and maximum grant amount thresholds and augment the program to add criteria to streamline the application, reporting, and reimbursement process for providers. Given the accelerated distribution timeline, AT&T proposes increasing the monetary thresholds to support total project amounts of up to seventy-five million dollars.

AT&T further recommends the Commission augment the ministerial program to establish a process whereby an applicant, who commits to bring broadband at a per-household cost at or

below the threshold and provides a general project time and material estimates, would be relieved of specific application and reporting requirements and instead paid upon completion. Under this proposed process, once the applicant is awarded the project, the applicant can shift its focus on meeting the construction commitments, and not on documentation. Construction costs may trend higher or lower depending on the particular location, but by agreeing upon the project area household and maximum project grant at the outset, the provider would shoulder the risk, and detailed reporting and itemized receipts would be superfluous.

This streamlined proposal gives the parties certainty on the timing, reimbursement, and expense of construction. Such a payment arrangement would be an alternative payment structure as contemplated by the Staff Proposal Section 15. Removal of the administrative burdens of providing detailed and itemized expense documentation under this process should lead to more applications with low per-household costs, allowing the FFA allocated funds to go farther faster to the benefit more consumers. The applications submitted pursuant to this augmented process should likewise be streamlined, along the lines of the proposals outline in Section A.

#### **N. Post-Construction Phase**

**Question 14. 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?**

Because the SLFRF program requires all funds to be expended by December 31, 2026, any post-construction requirements associated with receiving a FFA grant, including notification of transfers of control, should extend for no longer than four years or until December 31, 2030.<sup>22</sup> This oversight period is sufficient to ensure providers meet deployment standards.

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<sup>22</sup> See *SLFRF Compliance and Reporting Guidance*, TREASURY.GOV (June 24, 2021) available at: <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

### III. CONCLUSION

Implementation of CASF revisions presents a significant opportunity for providers, Staff, and the Commission to work towards a common goal of devoting two billion dollars to bridge the digital divide. The modifications to the Staff Proposal submitted by AT&T will help to achieve this ambitious goal through simplified processes aligned with federal guidelines, the creation of strong incentives for providers to participate, and faster and more extensive deployment of broadband services. AT&T appreciates the opportunity to comment and looks forward to continued participation in this proceeding.

Date: October 29, 2021

Respectfully submitted,

/s/

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# APPENDIX A



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## **Attachment A:**

Federal Funding Account Program Guidelines Staff Proposal

## Table of Contents

1.	Background and Purpose .....	4
2.	Eligible Areas .....	5
3.	Funding Criteria.....	7
4.	Definitions.....	8
5.	Eligible Entities .....	9
6.	Middle Mile Funding under the Federal Funding Account Last Mile Program.....	10
6.1.	Open Access .....	10
6.2.	Interconnection .....	11
6.3.	Interconnection with Statewide Open-Access Middle Mile Network .....	11
6.4.	Interconnection and Pricing .....	12
6.5.	Open Access Decision Enforcement .....	12
6.6.	Open Access Reporting.....	12
7.	Performance Criteria .....	13
8.	Reimbursable Expenses .....	13
9.	Information Required from Applicants.....	14
9.1.	Application Item 1 – Project Summary (Distributed Publicly) .....	14
9.2.	Application Item 2 – Applicant Entity Information .....	16
9.3.	Application Item 3 – Description of the Applicant’s Current Broadband Infrastructure and Existing Infrastructure in the Area .	16
9.4.	Application Item 4 – Project Location Data .....	16
9.5.	Application Item 5 - Median Income .....	17
9.6.	Application Item 6 – Project Eligibility.....	17
9.7.	Application Item 7 - Deployment Schedule.....	18
9.8.	Application Item 8 - Proposed Project Expenditures .....	18
9.9.	Application Item 9 – Economic Life of All Assets to be Funded .....	19
9.10.	Application Item 10 – Letter of Credit Requirement.....	19
9.11.	Application Item 11 – Pricing Commitment.....	20
9.12.	Application Item 12 – Marketing/Outreach Plan.....	20
9.13.	Application Item 13 – Government and Community Support .....	20
9.14.	Application Item 14 – Funding Sources .....	20
9.15.	Application Item 15 - Financial Qualifications.....	21
9.16.	Application Item 16 – Project Viability .....	21
9.17.	Application Item 17 – Providing Voice Service.....	21
9.18.	Application Item 18 – CEQA Attestation .....	22
9.19.	Application Item 19 – Application Checklist.....	22
9.20.	Application Item 20 – Affidavit .....	22
10.	Submission and Timelines.....	22

11.	Posting of Applications.....	22
12.	Application Objections.....	23
13.	Ministerial Review.....	25
14.	Semi-Annual and Completion Reporting .....	25
15.	Payment.....	28
16.	CEQA Payment.....	29
17.	Execution and Performance .....	29
18.	Construction Phase.....	30
19.	Post-Construction Phase.....	31
20.	Audit Compliance Changes .....	31
21.	Penalties .....	31

## **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.<sup>1</sup>

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.<sup>2</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> Cal. Pub. Util. Code § 281(n)(1).

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

Staff utilized these documents collectively to provide the framework for the Federal Funding Account. The following proposed rules are based on SB 156<sup>5</sup> 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.”<sup>6</sup> (86 Fed. Reg. 26805).

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 “businesses” in this context is interpreted broadly to include non-residential users of broadband, including

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<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> [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](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)

<sup>6</sup> Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26805 (May 17, 2021).

private businesses and institutions that serve the public, such as schools, libraries, healthcare facilities, and public safety organizations.”<sup>7</sup>

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.”<sup>8</sup>

In response to questions seeking clarification of how to interpret the guidance that a project “be designed to” provide service to unserved and underserved households, the FAQ states that “Designing infrastructure investments to provide service to unserved or underserved households or businesses means prioritizing deployment of infrastructure that will bring service to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed. To meet this requirement, states and localities should use funds to deploy broadband infrastructure projects whose objective is to provide service to unserved or underserved households or businesses. These unserved or underserved households or businesses do not need to be the only ones in the service area funded by the project.” In response to another question of whether every household must be unserved or underserved, the FAQ reiterates this point by responding “No. It suffices that an objective of the 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. “

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).”<sup>9</sup>

## **2.2 Project Identification and Application Process**

The Commission will identify priority proposed project areas and initiate a round of grant-making through public announcement.

Staff will publish proposed 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.

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<sup>7</sup> See, FAQ Question 6.16 [7/14].

<sup>8</sup> See, FAQ Question 6.11 [6/17].

<sup>9</sup> FAQ Question 6.11 [6/17].

The proposed project areas will be developed on a county-by-county basis while accounting for projects that may not fall strictly within county lines. Proposed projects will endeavor to ensure that all unserved communities are served.

Potential applicants will have an opportunity to propose adding or subtracting from the proposed project area consistent with the eligible area requirements.

### **3. Funding Criteria**

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”.<sup>10</sup>

“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.”<sup>11</sup>

### **Commission Evaluation of Applications**

The Commission will evaluate eligible project applications based on the following criteria:

- 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 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.<sup>12</sup>

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<sup>10</sup> See, Interim Final Rule, 86 Fed. Reg. 26804, 26823.

<sup>11</sup> 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).].

<sup>12</sup> Interim Rule, 86 Fed. Reg. 26786, 26805.

- 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 local governments, non- profits, Tribe, and co-operatives will receive credit.<sup>13</sup>
- d. Service affordability (10 points). An application that integrates ~~two or more~~ at least one of the affordability options will receive credit (i.e., affordable offer, low income plan, California LifeLine, federal Lifeline, and/or the Emergency Broadband Benefitor its successor).<sup>14</sup>
- e. Existing broadband service need (40 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 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.<sup>15</sup>
- 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.

#### **4. Definitions**

“Broadband Map” means the California Interactive Broadband Map (available at

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<sup>13</sup> Interim Rule, 86 Fed. Reg. 26786, 26806.

<sup>14</sup> Interim Rule, 86 Fed. Reg. 26786, 26806.

<sup>15</sup> 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).

<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; or the FCC's Broadband DATA maps, once they are available.

"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 containing a significant number of unserved and underserved households and that is not within area with an existing wireline broadband grant for the provision of at least 100/20 Mbps broadband service. Eligible projects must 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.<sup>16</sup>

"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 costing no more than \$15 per month, consistent with the Funding Criteria Section of this document.

An "unserved" 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.<sup>17</sup>

## 5. Eligible Entities

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<sup>16</sup> 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>

<sup>17</sup> To determine if an area is unserved, the Commission will rely on data from a variety of services, including the FCC's forthcoming Broadband DATA maps, once they are available; broadband deployment data; subscriber data; crowdsourced data; service quality data;

| and or qualitative data.

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.

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

Consistent with the Interim Final Rule, recipients may use payments from the Funds for “middle-mile projects,” but recipients are encouraged to focus on projects that will achieve last-mile connections – whether by focusing on funding last-mile projects or by ensuring that funded middle-mile projects have potential or partnered last-mile networks that could or would leverage the middle-mile network.<sup>18</sup>

For projects that include funding for middle-mile infrastructure, the staff will evaluate and verify that the proposed middle-mile infrastructure is needed 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

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<sup>18</sup> ARPA Frequently Asked Questions Guidance Question 6.9.

interconnection and internet access at reasonable and equal terms to any communications service provider that wishes to interconnect with that infrastructure, wherever technically feasible.<sup>19</sup>

## 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, 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 may interconnect with the statewide open-access middle mile network,

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<sup>19</sup> 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](https://www2.ntia.doc.gov/files/Interconnection_Nondiscrimination_11_10_10_FINAL.pdf).

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.<sup>20</sup> 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

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<sup>20</sup> 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>

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 ~~182~~ 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 minimum of two years, ~~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.
- 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, California LifeLine, ~~federal Lifeline~~, and the Emergency Broadband Benefit Program, 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 or obligated during the period beginning March 3, 2021 and ending December 31, 2024.<sup>21</sup>

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.<sup>22</sup>

## **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)**

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.<sup>23</sup>
- 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.

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<sup>21</sup> 31C.F.R. 35.5(a), FAQ Question 4.7)

<sup>22</sup> 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.

<sup>23</sup> 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](http://www.cpuc.ca.gov/General.aspx?id=1019)

- Map of the proposed project area.
- The number of unserved and/or underserved households the project will serve.
- The maximum Mbps downstream and upstream speed currently offered to households, if known.
- Median Household Income of the project area.
- The number of businesses, anchor institutions and public safety locations in the project area to which ~~that will receive~~ new or improved service will become available.
- 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.).~~
- 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 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, if known.

## **9.4. Application Item 4 – Project Location Data**

The applicant must provide the following:

- The geographic location of all households and housing units that are believed to be within the project area based on the best information available at the time of application. 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 and the name and version of the commercial software used to generate geocodes if the application is submitted prior to the release of the Broadband DATA Fabric.<sup>24</sup> 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

<sup>24</sup> 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>.

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 (<http://www.broadbandmap.ca.gov/>) includes census derived population and income data and information regarding existing service providers and their reported service speeds. Using the census block group layer data return, the median 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:<sup>25</sup>

<u>State</u>	<u>County</u>	<u>Tract</u>	<u>Block Group</u>
2 digits	3 digits	6 digits	1 digit

### 9.6. Application Item 6 - Project Eligibility

The applicant ~~should~~must rely on the project areas published by the Communications Division ~~or the Broadband Map to~~ as the initial basis for identifying project ~~areas eligibility~~, as discussed in Section 1 of these Program Rules. The applicant ~~must~~ may adjust the published project areas and describe the rationale for doing so by:

- Provide an assertion that the applicant reviewed the wireline served status on the Broadband Map and determined to the best of their ability that the broadband project area proposed is eligible.
- Evidence may be used to dispute the Broadband Map depictions of served status, including 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:  
<https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/broadband-mapping-program/broadband-availability-public-feedback>.
  - The applicant may provide other crowdsourced speed test data from other platforms, such as Ookla; or data from the FCC's Broadband DATA maps, when they are available.
  - The applicant may present data contesting the reliability of service

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<sup>25</sup> For example, a census block in the town of Fort Bidwell in Modoc County is 060490040001.

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 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 served households are included in a project, consistent with Treasury guidance, the application must include the rationale for why providing service to these households is in the public interest. ~~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 ~~18~~ 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 project cost elements and their cost amount with associated costs for last-mile and middle-mile infrastructure separated across the project area. The applicant must identify all the types of 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.); For facilities, equipment, and services purchased by the applicant on a bulk or volume basis, applicant may provide a reasonable allocation of cost elements for those elements.
- 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 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 ~~the useful life of the infrastructure~~ a two year period being deployed ~~or indicate it has as part of generally available nationwide service offering.~~ - To encourage adoption, installation charges must be waived during the first year that service is made available. ~~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

For non CPCN holders, ~~the~~ 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

For non CPCN holders, 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.

### 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

An applicant is not required to offer voice service as part of its proposed projects. If it does propose to offer voice service as part of a proposed project, 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](http://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. The deadline to submit objections to any applications will be 10 days thereafter. In the event any date falls on a weekend or holiday, the deadline is the next business day.

Applicants should electronically file 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 written comments objecting to an application under review. The Commission will consider these comments in reviewing the application. Any party that objects to a proposed area as already served must provide definitive evidence and bears the burden of proof 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 must be submitted no later than 21 calendar days, or a different date set by Staff, from when the entity serves notice of the application on the CASF Distribution List. Comments filed after the deadline will be deemed denied. Comments must be filed with the Commission and served on the CASF Distribution List.

Consistent with the Interim Final Rule, grant recipients should avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.<sup>26</sup> An objection asserting an existing agreement to build such a wireline service should provide evidence of the existing agreement, 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

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<sup>26</sup> Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26806 (May 17, 2021).

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.”<sup>27</sup>As such, a project is not disqualified by proposing to provide service to served households. 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 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.
- 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. This information shall be submitted unredacted to the Commission under seal.
- Permits, easements, or pole attachment applications submit and approved when infrastructure was built.
- Pictures of provider infrastructure in the area (i.e., wires, huts, vaults, etc.).

Comments that do not meet these requirements will be deemed denied. The Commission will only accept public comments. Criticism of applications based upon confidential and other non-public service data will not be given weight in the evaluation process.

An applicant may respond 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

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<sup>27</sup> See, FAQ Question 6.9.

Commission for the disposition of each application.

### 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 eligible under the Treasury guidance.~~unserved.~~
3. The total grant does not exceed \$~~2575~~,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 lowreasonable.~~proposed project costs \$9,300 per household or less.~~
- ~~6.7.~~ Applicants that agree to payment upon completion are relieved of specific application and reporting requirements.

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

Ministerial Process	Resolution Process
<del>Maximum Cost per location of \$9,300</del>	Does not meet all criteria under Ministerial Process
Maximum Grant Amount: \$ <del>7525</del> ,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.	

### 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 a representative, statistically valid, sample of subscriber locations at dispersed locations in the project area, including locations at the edge of the project areas. The number of tests will vary based on projectthe project area, including:. Reports shall include
  - Test results for download and upload speeds;
  - ~~A representative sample of address-level 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 technical description of the speed testing system implemented in the project area and the methodology used to create the sample and conduct the testing. If CalSPEED speed testing is used, provide Aa screenshot of results of CalSPEED speed tests, which can be accessed at <http://calspeed.org/index.html>.<sup>28</sup>
  - 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

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<sup>28</sup> ~~The technically available speed at the location shall be tested, not a customer's subscribed speed.~~

plans in the project area;

- Identification of the number of served locations in the project area that have broadband availability at or above the aforementioned minimum speeds.
- Documentation of advertisements, billing inserts and marketing information, by speed tier and prices.
- 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 that wishes to front the full costs of a project in exchange for reduced reporting burdens or agrees to complete a project within 12 months from the award of the project 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.<sup>29</sup>

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 on the ~~12~~18- 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, commonly 30 days after approval of the

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<sup>29</sup> See, FAQ Question 6.11.

resolution or ministerial review approval. Should the recipient or Contractor fail to commence work at the agreed upon time, 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.<sup>30</sup>

## **18. Construction Phase**

A grantee must notify the Commission within five business 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 business 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

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<sup>30</sup> See, Interim Final Rule 31 C.F.R. § 35.9, 86 Fed. Reg. 26786, 26823.

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~~four years or until December 31, 2030 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 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.

## ***ATTACHMENTS***

*The following attachments provide guidance to staff on information to require in Federal Funding Account program forms.*

*ATTACHMENT A*

**Guidance to Staff on Information Sheet to be submitted by Applicants Requesting  
for Program Funding**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
CALIFORNIA**

1. Application of:

Name of Applicant

for Program Funding pursuant to Decision\_\_\_\_\_

(Insert the full legal name of applicant in blank above; see instruction 1; attach fictitious names, if any)

Street address:

Telephone: (     )

Fax No.: (     )

E-Mail:

2. Applicant is:  
(Check only one;  
see instruction 2.)

A corporation (attach good standing certificate)

☐

A general partnership (attach good standing certificate)

☐

A limited liability partnership (attach good standing certificate)

☐

A limited liability company (attach good standing certificate)

☐

A general partnership

☐

A sole proprietor

☐

A trust

☐

Other (describe)

☐

Attach name, street address, and telephone number of  
applicant's registered agent for service of process

**Attach list of the names, titles, and street addresses of all**

	<b>officers and directors, general partners, trustees, members, or other persons authorized to conduct the business of applicant at a similar level</b> <i>Attach list of all affiliated entities (see instruction 2)</i>
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3. Legal domicile of applicant is:	California <input type="checkbox"/>
	Other (identify): <input type="checkbox"/>
<i>(Check only one; see instruction 3.)</i>	

4. Applicant will provide service:	In specific portions only (attach description and map) <input type="checkbox"/>
<i>(Check only one; see instruction 5.)</i>	

5. Applicant will provide broadband service only	True <input type="checkbox"/>
	Not true <input type="checkbox"/>
<i>(Check only one; see instruction 6.)</i>	

6. For the past 10 years, no affiliate, officer, director, general partner, or	True <input type="checkbox"/>
	Not true <input type="checkbox"/>
<p>person owning more than 10% of applicant, or anyone acting in such a capacity whether or not formally appointed, held one of these positions with any company that filed for bankruptcy or has been found either criminally or civilly liable by a court of appropriate jurisdiction for a violation of § 17000 et seq. of the California Business and Professions Code or for any actions which involved misrepresentations to consumers, and to the best of applicant's knowledge, is not currently under investigation for similar violations.</p> <p><i>(Check only one; see instruction 2.)</i></p>	

7. To the best of applicant's knowledge, neither	True <input type="checkbox"/>
	Not true <input type="checkbox"/>
applicant, any affiliate, officer, director, partner, nor owner of more than 10% of	

applicant, or any person acting in such capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission, or any state regulatory agency for failure to comply with any regulatory statute, rule or order, or convicted by any court for any criminal activity for the past 10 years.

8. Applicant has the required financial capability and technical	True	<input type="checkbox"/>
	Not true	<input type="checkbox"/>
expertise to build a broadband infrastructure and operate and maintain a broadband service.		

I hereby declare under penalty of perjury under the laws of the State of California that the forgoing information, and all attachments, are true, correct, and complete to the best of my knowledge and belief after due inquiry, and that I am authorized to make this application on behalf of the applicant named above.

**Signed:** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**Street Address:**

**Telephone Number:**

**Fax Number:**

**Email:**

**Principal Place of Business (if different from address on page 1).**

**Street Address:**

**City:**

**State:**

**ZIP Code:**

**Telephone Number:**

**Instructions:**

1. Enter the legal name of applicant exactly as it appears on its articles or certificate of corporation or similar charter document.
2. Specify the type of applicant's organization. Applicant must provide a Good Standing Certificate which is available from the office of the Secretary of State of the State of California and should be dated of a date not more than 60 days prior to the date of filing the application. An original certificate must be attached to the manually signed copy of the application. An affiliated entity is any entity under common control with applicant. Common control exists if the same individuals or entities have the direct or indirect power to determine the action of applicant and such entity through the right to vote shares, by contract or agreement, or otherwise. Note whether any such entity is a reporting company for purposes of the Securities Exchange Act of 1934, as amended.
3. For individuals, domicile is the place of legal residence; for entities, it is the state of incorporation or organization.
4. Specify the exact area for which authority is requested, i.e., Community and County.
5. Indicate whether the applicant will be providing broadband service only.

**Items 2, 6 and 7 are subject to confirmation by the Commission through the conduct of background check(s). For numbers 6 and 7, attach detailed description, if applicable.**

6. Detailed information should be provided for the past 10 years, if applicable.
7. Detailed Information should be provided for the past 10 years, if applicable.
8. Attach audited balance sheet for the most recent fiscal year and an unaudited balance sheet as of the most recent fiscal quarter, a bank statement as of the month prior to the date of filing the application, or a third-party undertaking to

provide the required amounts on behalf of applicant. If the balance sheet shows current liabilities in excess of current assets or negative equity, explain how applicant will be able to maintain sufficient liquidity for its first year of operations. Attach detailed summary, if applicable.

Material changes in the entries for this application, such as discontinuing operation or bankruptcy, or change of name (DBA), change of address, telephone, fax number or E-mail address should be reported by a letter to the CPUC, Director of the Communications Division, 505 Van Ness Avenue, San Francisco, CA 94102.

## ATTACHMENT B

### GUIDANCE TO STAFF ON INFORMATION TO REQUIRE IN A PROGRAM APPLICATION CHECKLIST

(Required for EACH proposed project)

To assist the Commission in verifying the completeness of your proposal, mark the box to the left of each item submitted. Please note that the Checklist is intended only as an aid for applicants and Staff. Necessary information for many of these items can only be found in the Program Rules.

		1. Project Summary (This is the only section that will be released publicly, and may duplicate information collected elsewhere. All other items are considered confidential and will not be released publicly)
		Basic Project/Applicant Information, including: <ul style="list-style-type: none"> <li>• Company/Applicant's Name</li> <li>• CPCN/U-Number or WIR or pending CPCN/WIR application number, if applicable</li> <li>• Contact person</li> <li>• Project title</li> <li>• Named Project Location (community/county)</li> <li>• Project Type (Last-mile or hybrid last-mile/middle mile)</li> <li>• Amount of program grant funding requested and project cost</li> </ul>
		Map of the proposed project area
		The number of unserved households with no-service and the number of unserved households with slow-service for which the project will provide service
		If the project is requesting dial-up-only funding, it must state the number of households with dial-up-only service and the number of other program-eligible locations
		The maximum Mbps downstream and upstream speed currently offered to households, <u>if known</u>
		Median household income of the project area
		The number of businesses, anchor institutions and public safety locations in the project area <u>to which that will receive</u> new or improved service <u>will become available</u>
		A description of the major infrastructure to be deployed
		Estimated breakdown of aerial and underground installation

		Major equipment expenses
		Estimated construction timeline
		<p>Description of proposed broadband project plan for which program funding is being requested, including the type of technology to be provided in the proposed service areas:</p> <ul style="list-style-type: none"> <li>• Download speed capabilities of proposed facilities.</li> <li>• Upload speed capabilities of proposed facilities.</li> <li>• Sufficient construction detail to enable a preliminary indication of the need for a California Environmental Quality Act (CEQA) review and if proposed project areas contains any environmentally sensitive areas.</li> <li>• Identification of the leveraging of existing available facilities</li> <li>• A statement of whether the applicant is disputing the Broadband Map depiction of served status.</li> <li>• A statement of whether the applicant is seeking Ministerial Review and, if so, information that the application meets all requirements for Ministerial Review.</li> <li>• An explanation of why any Middle Mile facilities in the proposed project are “indispensable” for accessing the proposed last-mile infrastructure.</li> <li>• A statement accepting open access requirements for any Middle Mile facilities in the proposed project</li> </ul>
		2. Applicant Entity Information
		Information Sheet 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
		3. Description of the Applicant’s Current Broadband Infrastructure and Existing Infrastructure in the Area
		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, <u>if known</u>

	4. Project Location Data
	The geographic location of <del>all</del> households and housing units <u>that are believed to be within the project area based on the best information available at the time of application</u> . This information will be provided in a plain-text, comma-separated values (CSV format) file, that contains geo-located street address information, including latitude and longitude coordinates <u>and the name and version of the commercial software used to generate geocodes if the application is submitted prior to the release of the Broadband DATA Fabric</u> .
	The geographic location of the project related key network equipment, such as; DSLAMs, wireless towers, router facilities, remote terminals, network interconnection, etcetera.
	The specific geographic boundary of the project area within which all household and housing unit project locations will fall (.shp or .kml).
	5. Median Income
	The median household income for each census block group (CBG) that intersects the project area.
	6. Project Eligibility
	An assertion that the applicant reviewed the available data on the Broadband Map and determined <u>to the best of their ability</u> that the broadband project area proposed is eligible.
	7. Deployment Schedule
	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 <del>12-</del> <u>18 months</u> if the project is categorically exempt from CEQA.
	8. Proposed Project Expenditures
	Identification of expense categories (direct or indirect)
	Identification of direct expenses
	Identification of individual cost elements and their cost amount.
	Identification of allocated indirect costs
	9. Economic Life of All Assets to be Funded
	The applicant must identify all the equipment to be funded by the program by category, the type of equipment, and the estimated useful life
	10. Letter of Credit Requirement

		An eligible applicant that does not hold a CPCN issued by the Commission is required to submit a Letter of Credit.
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	11. Pricing Commitment
	Fixed monthly service level subscription rates
	Acknowledgement that any installation/service connection charges will be waived
	any commitments and/or requirements that the customer must accept in order to receive equipment during the commitment period, such as return of equipment
	Low-income broadband plan detailing prices and speeds to be offered. At minimum, the low-income broadband plan must meet all program performance criteria
	12. Marketing/Outreach Plan
	The applicant must provide a plan to encourage subscription of the broadband service in the project location.
	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.
	14. Funding Sources
	The applicant must identify each applicable project funding source.
	15. Financial Qualifications
	CPA Audited/Attested Financial Statements for the last three years, including: <ul style="list-style-type: none"> <li>• Balance Sheet</li> <li>• Income Statement</li> <li>• Statement of Cash Flows</li> </ul>
	Pro Forma Financial Forecast for a five-year period, including: <ul style="list-style-type: none"> <li>• Balance Sheet</li> <li>• Income Statement</li> <li>• Statement of Cash Flows</li> </ul>
	Five-year annual EBIT (Earnings Before Income and Tax) projection for the company
	16. Project Viability
	The applicant must provide a five-year projected project business plan showing project profitability, revenues, and expenses.
	17. Providing Voice Service, <u>If Applicable</u>
	The applicant must provide information about the following: <ul style="list-style-type: none"> <li>• Availability of voice service that meets FCC standards for E-911 service and battery back-up;</li> <li>• Listing of types of voice services offered; and</li> </ul>

		<ul style="list-style-type: none"> <li>• Timeframe of voice offering(s).</li> </ul>
		18. CEQA Attestation
		The applicant must provide information about their project demonstrating how CEQA compliance is to be obtained.
		19. Application Checklist
		This is the Application Checklist; please check the boxes as you complete the sections, and include the complete Checklist with your application.
		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.

Submit completed applications online at website TBD  
with hard copies mailed separately to:

Communications Division  
**Attn:** California Advanced Services Fund  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102

Public Advocates Office at the CPUC  
**Re:** California Advanced Services Fund  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102

**ATTACHMENT C**  
**Guidance to Staff on Information to Require for Telephone Corporations**  
**NOTARIZED AFFIDAVIT**

Name of Carrier/Company \_\_\_\_\_  
Utility Identification Number \_\_\_\_\_ or \_\_\_\_\_ check here if Application for  
CPCN is pending and the CPUC assigned application no., if available.  
My name is \_\_\_\_\_. I am \_\_\_\_\_ (Title) of  
\_\_\_\_\_ (Company). My personal knowledge of the facts stated  
herein has been derived from my employment with \_\_\_\_\_  
(Company)

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

I further swear or affirm that \_\_\_\_\_ [Name of Carrier/Company]  
agrees to comply with all federal and state statutes, rules, and regulations, covering  
broadband services and state contractual rules and regulations, if granted funding from  
the California Advanced Services Fund.

I swear and affirm that I agree to comply with Rules 1.11 and 2.2 of the California Public  
Utilities Commission's rules of practice and Procedure.

I swear or affirm, under penalty of perjury, and under Rule 1.1 of the California Public  
Utilities Commission's Rules of Practice and Procedure, that, to the best of my  
knowledge, all of the statements and representations made in this Application are true  
and correct.

\_\_\_\_\_  
Signature and title

\_\_\_\_\_  
Type or print name and title

**SUBSCRIBED AND SWORN** to before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public In and For the State of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**Guidance to Staff on Information to Require**  
**Non-Telephone Corporations**  
**NOTARIZED AFFIDAVIT**

Name of Carrier/Company \_\_\_\_\_  
Utility Identification Number \_\_\_\_\_ or \_\_\_\_\_ check here if Application for  
CPCN is pending and the CPUC assigned application no., if available.  
My name is \_\_\_\_\_. I am \_\_\_\_\_ (Title) of  
\_\_\_\_\_ (Company). My personal knowledge of the facts stated  
herein has been derived from my employment with \_\_\_\_\_  
(Company)

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

I further swear or affirm that \_\_\_\_\_ [Name of Carrier/Company]  
agrees to comply with all federal and state statutes, rules, and regulations, covering  
broadband services and state contractual rules and regulations, if granted funding from  
the California Advanced Services Fund.

I swear and affirm that I agree to comply with Rules 1.11 and 2.2 of the California Public  
Utilities Commission's rules of practice and Procedure.

I swear or affirm, under penalty of perjury, and under Rule 1.1 of the California Public  
Utilities Commission's Rules of Practice and Procedure, that, to the best of my  
knowledge, all of the statements and representations made in this Application are true  
and correct.

If [Grantee Name] violates the terms and conditions of a program award or other  
program and project compliance requirements, it shall be subject to Public Utilities  
Code Sections 2108 and 2111. The Commission may impose the maximum penalties  
allowed under Public Utilities Code Sections 2108 and 2111 for failure to meet the  
program and project compliance requirements, as determined by the Commission.

\_\_\_\_\_  
Signature and title

\_\_\_\_\_  
Type or print name and title

**SUBSCRIBED AND SWORN** to before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public In and For the State of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

## **ATTACHMENT D**

### **Guidance to Staff on Information to Require in a Program CONSENT FORM**

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



Name of Grantee: \_\_\_\_\_

The Grantee identified above acknowledges receipt of either a Resolution or a letter from Commission Staff approving a grant under the Ministerial Review process. The Grantee agrees to comply with all grant terms, conditions, and requirements set forth in Resolution T-\_\_\_\_\_ or letter \_\_\_\_\_, as well as all program rules, including those in the Broadband Infrastructure Accounts Requirements, Guidelines and Application Materials.



Undersigned representative of \_\_\_\_\_ [Name of Grantee] is duly authorized to execute this Consent Form on behalf of the Grantee and to bind the Grantee to the terms, conditions, and requirements set forth in California Public Utilities Commission Resolution T-\_\_\_\_\_ or the letter referenced above.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_

Organization or Name of Company: \_\_\_\_\_  
\_\_\_\_\_

Business Address (include street address, suite/apt. number, city, state, and ZIP Code):  
\_\_\_\_\_

Telephone Number (include area code): (\_\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

**ATTACHMENT E**  
**Guidance to Staff on Information for a**  
**SAMPLE OPEN ACCESS REQUIREMENT**

The Middle-Mile infrastructure is eligible for a program grant. Staff determined the middle-mile infrastructure is indispensable to serving the proposed project areas and thus eligible for program Funding. The program funded portion of the middle-mile fiber network shall be made available for access to any communications service provider seeking interconnection. The grantee shall provide nondiscriminatory interconnection and internet access at reasonable and equal terms at any technically feasible interconnection point along the network. Further, the grantee must make all reasonable efforts to allow requesting parties to interconnect and procure transport service or wholesale a direct connection.

An interconnection that would exceed current or reasonably anticipated capacity limitations is not considered technically feasible. The grantee shall provide feasible interconnection points along the middle-mile network, which may include previously defined interconnection points, new and existing network exchange locations, and splice points. The grantee shall provide information detailing the fiber infrastructure to parties requesting to procure dark fiber including, but not limited to, fiber route maps, interconnection points, splice points, and type of fiber. In addition, the grantee must provide requesting parties with an ability to connect to the Internet irrespective of whether the program recipient connects to the Internet directly or indirectly.

Pricing and terms and conditions for interconnection shall be reasonable, equal, and nondiscriminatory. The grantee must offer tiered pricing or a range of options to fit different business models; offerings must be the same for all similarly situated interconnected entities such as Wholesale (ISP) / Government / Public Anchor Institution. Terms and conditions may include any essential elements of network operations such as cybersecurity, circuit provisioning, network outages, future capital investment costs, and operations and maintenance costs. Program recipients must negotiate in good faith with all requesting parties (i.e., public, private, non-profit, or other parties) making a bona fide request for interconnection services.

In the event that the program recipient does not negotiate in good faith with a party requesting open access, the requesting party may file a complaint with the Commission.

**Annual Reporting**

For the serviceable life of the middle-mile infrastructure, a grantee 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.