

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking Regarding
Revisions to the California Advanced
Services Fund.

Rulemaking 20-08-021

**OPENING COMMENTS OF THE PUBLIC ADVOCATES OFFICE
ON THE PROPOSED DECISION ADOPTING MODIFICATIONS TO
CALIFORNIA ADVANCED SERVICES FUND BROADBAND
INFRASTRUCTURE GRANT ACCOUNT**

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SUBJECT INDEX OF RECOMMENDED CHANGES

(Rule 14.3(b))

Subject

Pages in Proposed Decision (PD)

Require, not encourage, that all grant recipients participate in the federal Affordable Connectivity Program (ACP), as supported by the proceeding record and the PD itself.	PD at 12 PD, Attachment 1, at A-5 & A-15
Modify PD Attachment 1, section 8.11 related to Pricing Commitments, to ensure consistency with the Performance Criteria (section 6) and to avoid confusion.	PD, Attachment 1, at A-23

I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these Opening Comments on the *Proposed Decision Adopting Modifications to California Advanced Services Fund Broadband Infrastructure Grant Account* (PD).¹

Cal Advocates strongly supports the PD and applauds its adoption of program rules that will deploy broadband where it is most needed and support provision of broadband service that is affordable to customers, especially low-income customers. Specifically, the PD includes a requirement for all grant recipients to offer a low-income broadband plan² and incentivizes grant applicants to offer this low-income broadband plan with an out-of-pocket cost for eligible customers of \$15/month or less.³ The Commission's adoption of this low-income broadband plan requirement would improve affordability of broadband service for low-income Californians.

In addition, the PD expands the definitions of low-income areas and low-income customers⁴ to ones that are consistent with the Commission's Environmental and Social Justice Action Plan⁵ and account for the high cost of living in the state. The PD's definitions of low-income areas and low-income customers are an important step for deploying broadband in areas that have been left behind and expand eligibility for low-income households to sign-up for affordable broadband service offerings. Collectively, these programmatic changes will ensure that California Advanced Services

¹ *Proposed Decision Adopting Modifications to California Advanced Services Fund Broadband Infrastructure Grant Account*, R. 20-08-021, September 30, 2022 (PD).

² PD, Attachment 1, at A-15.

³ PD, Attachment 1, at A-5 and A-30. Projects serving low-income areas and offering \$15/month or less low-income plans are eligible for up to 10% additional funding, and \$15/month or less plans is required for Ministerial Review.

⁴ PD, Attachment 1, at A-18.

⁵ Environmental & Social Justice Action Plan Version 2.0 at 74.

Fund (CASF) Broadband Infrastructure Grant Account (Infrastructure Account) monies advance the state goal of achieving universal broadband adoption.⁶

To facilitate effective implementation of the modified CASF Infrastructure Account, the Commission should correct the following technical errors in the PD as explained in Section II below and summarized here:

- Require, not encourage, that all grant recipients participate in the federal Affordable Connectivity Program (ACP), as supported by the proceeding record and the PD itself.
- Clarify additional technical errors in the Pricing Commitment section for accuracy.

II. DISCUSSION

A. **The Commission should require, not encourage, all grantees to participate in the federal ACP.**

The PD contains a technical error of inconsistent statements regarding grantees' participation in the ACP. The 'Revised CASF Program Guidelines' (Attachment 1 to the PD) section on Pricing Commitment (8.11) states that "all projects shall participate in the Affordable Connectivity Program (ACP)...,"⁷ which is inconsistent with the Funding Criteria section (2.2) that lists voluntary participation in the ACP as one of three possible avenues to secure an additional 10% funding for projects with low-income households.⁸ To address this inconsistency, the Commission should require that all grantees participate in the ACP. Requiring all grantees to participate in ACP is supported by the record of this proceeding,⁹ comports with similar requirements in other publicly funded broadband

⁶ See Executive Order N-73-20, available at: <https://www.gov.ca.gov/wp-content/uploads/2020/08/8.14.20-EO-N-73-20.pdf>, last accessed October 12, 2022.

⁷ PD, Attachment 1, at A-23.

⁸ PD, Attachment 1, at A-5-A-6, as well as PD at 12.

⁹ PD at 23 noting that the CASF Infrastructure Account Staff Proposal required all projects to participate in the ACP; *see also* PD at 24, noting that "Verizon.... expresses agreement with specifying that applicants must participate in the ACP program." It is also worth noting that a number of service providers did not oppose the requirement for grantees to participate in the ACP (e.g., Frontier Staff Proposal Opening Comments at 1; Small LECs Staff Proposal Opening Comments at 4).

infrastructure grant programs,¹⁰ and will improve affordability of broadband service for customers.

To ensure the PD and Attachment 1 are consistent in requiring participation in the ACP, the Commission should modify the PD and Attachment 1 as follows (underline indicates addition and strikethrough indicates removal):

- On Page 12 of the PD, the Commission should eliminate the erroneous reference to optional ACP participation: “We further modify the proposed rule in agreement with TURN’s suggestion to specify that the \$15 limit applies to subscribers’ co-pay, or out-of-pocket expense. ~~Further, we add a third option, for applicants to participate in the Affordable Connectivity Plan (or a broadband program that provides commensurate benefits), as articulated in Section 6 (Performance Criteria) of the staff proposal.~~”
- Under section 6 Performance Criteria of Attachment 1, Commission should add a new criterion to the list of performance criteria on page A-15: “Affordable Connectivity Program Participation: ‘All projects shall participate in the Affordable Connectivity Program (ACP) or otherwise provide access to a broad-based low-income broadband program to all qualifying customers in the proposed service area of the broadband infrastructure, that provides benefits to households commensurate with those provided under the ACP. Should the ACP program end, the Commission will identify a successor low-income subsidy program in which participants must participate.’”¹¹
- Under section 2.2 Funding Criteria of Attachment 1, Commission should modify the list of options to gain an additional 10% funding on p. A-5: “Low-income service – Projects with low-income households that (1) offer California LifeLine and/or federal Lifeline service to low-income customers, or (2) offer a low-income broadband plan for no more than \$15/month co-pay (i.e., out-of-pocket expense), ~~or (3) participate in the Affordable~~

¹⁰ *Decision Adopting Federal Funding Account Rules*, D.22-04-055, R. 20-09-001, April 21, 2022, at 64.

¹¹ PD, Attachment 1, at A-23. Please note that the quoted language includes an erroneous reference to “broad-based low-income broadband plan” which should be “broad-based low-income broadband program” since the ACP is a program that offers a subsidy that can be applied to any plan.

~~Connectivity Plan (ACP) or otherwise provide access to a broad-based affordability program for low-income customers in the proposed service area of the broadband infrastructure, that provides benefits to households commensurate with those provided under the ACP,~~ for a guaranteed minimum of five (5) years shall be eligible for an additional 10 percent funding. ~~Should the ACP end, the Commission will identify a successor low-income subsidy program in its place.”~~

- The Commission should also modify the “Summary of Funding Criteria” table on p. A-6 should to match this revision:

Maximum Funding Level: 100%
Baseline for Eligible Projects in areas with no internet connectivity: 100% of total construction costs ⁴
Baseline for Eligible Projects in areas with internet connectivity: 60% of total construction costs
<p style="text-align: center;">Low Income: Up to + 40% of total construction costs</p> <ul style="list-style-type: none"> • Project area is a low-income area, as defined in Section 3 (Definitions) (30%). • For a guaranteed minimum of five (5) years, applicant: <ul style="list-style-type: none"> (1) offers California LifeLine and/or federal Lifeline service to low-income customers; or (2) offers a low-income broadband plan for no more than \$15/month co-pay; or (3) participates in the Affordable Connectivity Plan or otherwise provides access to a broad-based affordability program with commensurate benefits (10%).⁵
<p style="text-align: center;">PU Code Sec 281 (f)(11) Criteria: ± 10% per criterion, up to ± 20% of total construction costs</p> <ul style="list-style-type: none"> • Inaccessible location (10%) • Uses existing outside plant infrastructure (10%) • Makes a significant contribution to the program goal (10%)

⁵ The California LifeLine and/or federal Lifeline service offering ~~and/or the ACP (or a program with commensurate benefits)~~ must be offered throughout the entire project area and must meet all of the CASF performance criteria.

B. The Commission should address other technical errors for accuracy

The Commission should modify PD Attachment 1, section 8.11 related to the Pricing Commitments,¹² to ensure consistency with the Performance Criteria (section 6) and to avoid confusion. Since the PD requires all grantees to provide a low-income broadband plan and the Performance Criteria in section 6 states that “data caps are strongly disfavored,”¹³ the following edit to the Pricing Commitment section (8.11) is necessary (underline indicates addition and strikethrough indicates removal):

The applicant shall identify in its application: ~~Any~~ Low-income broadband plan(s), detailing prices, data allowances and speeds to be offered.

Additionally, a subsequent edit in section 8.11 is necessary to avoid confusion between low-income broadband *plans* and the ACP, which is a *program* offering a subsidy to eligible households that can be applied to *any* plan.¹⁴ The Commission should revise section 8.11 as follows (underline indicates addition and strikethrough indicates removal):

All projects shall participate in the Affordable Connectivity Program (ACP) or otherwise provide access to a broad-based low-income broadband ~~plan~~ program to all qualifying customers in the proposed service area of the broadband infrastructure, that provides benefits to households commensurate with those provided under the ACP. Should the ACP program end, the Commission will identify a successor low-income subsidy program participants must participate in.¹⁵

III. CONCLUSION

Cal Advocates strongly supports the PD and its requirement that all grant recipients offer a low-income broadband plan. To promote effective implementation of

¹² PD, Attachment 1, at A-23.

¹³ PD, Attachment 1, at A-14.

¹⁴ See Affordable Connectivity Program public website, available at: <https://www.fcc.gov/acp>, last accessed 10/12/2022.

¹⁵ PD, Attachment 1, at A-23.

the updated rules, the Commission should make the recommended corrections discussed in these opening comments.

Respectfully submitted,

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