



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

FILED

10/25/22

04:59 PM

R2008021

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

Rulemaking 20-08-021
(Filed August 27, 2020)

**REPLY COMMENTS OF RURAL COUNTY REPRESENTATIVES OF
CALIFORNIA, MEDIA ALLIANCE, COMMON SENSE, AND
CALIFORNIA COMMUNITY FOUNDATION ON THE STAFF
PROPOSAL FOR BROADBAND LOAN LOSS RESERVE FUND
PROGRAM**

Tracy Rhine
Senior Policy Advocate
Rural County Representatives of California
1215 K Street, Suite 1650, Sacramento, CA 95814
Tel: (916) 447-4806

Dated: October 24, 2022

E-mail: trhine@rcrcnet.org

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

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

Rulemaking 20-08-021
(Filed August 27, 2020)

**REPLY COMMENTS OF RURAL COUNTY REPRESENTATIVES OF
CALIFORNIA, MEDIA ALLIANCE, COMMON SENSE, AND
CALIFORNIA COMMUNITY FOUNDATION ON THE STAFF
PROPOSAL FOR BROADBAND LOAN LOSS RESERVE FUND
PROGRAM**

I. Introduction

In accordance with Rule 6.2 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure (“Rules”), the Rural County Representatives of California (RCRC), Media Alliance, Common Sense, and California Community Foundation (the “Community Opportunity Coalition”) hereby submit these reply comments to the Order Instituting Rulemaking 20-08-021 (“Rulemaking”) per the Assigned Commissioner’s ruling dated September 16, 2022. RCRC is an association of thirty- nine rural California counties and its Board of Directors is comprised of elected supervisors from those member counties. RCRC was granted party status on September 15, 2020. Media Alliance is a Bay Area democratic communications advocate, whose members include professional and citizen journalists and community-based media and communications professionals who work with media. Media

Alliance members are concerned with communications rights, especially at the intersects of class, race and marginalized communities. Media Alliance was granted party status on October 18, 2022. Common Sense represents the interests of children and families and was granted party status on October 13, 2022. California Community Foundation leads positive systemic change that strengthens communities and improves quality of life across Los Angeles County and is the fifth largest foundation of any kind in California, in terms of total annual giving. California Community Foundation was granted party status February 10, 2022.

II. Comments

Recently enacted legislation¹ and associated Commission Decisions have unambiguously established the state's intention to not only allow local agencies² to take an active role in bringing high-quality internet to their respective communities, but further incentivizing deployment of municipal broadband networks through funding programs such as the Broadband Loan Loss Reserve Fund (BLLRF) program. Over 15 years of state subsidization³ of incumbent Internet Service Providers (ISPs) for broadband deployment has not bridged the digital divide and has continued the historic disparities in service, leaving behind rural regions and less affluent urban, suburban, and exurban areas of the state. While nonprofits and local governments may not be well situated to operate a broadband network in all cases, they are, however, fundamentally positioned to determine how to best meet the needs of their community. The programs established through Senate Bill 156 allow local governments to be eligible for new federal funded last mile grant monies (Federal Funding Account⁴), existing broadband infrastructure grant funding (California Advanced Services Fund Broadband Infrastructure Grant Account), and financing assistance through this program, the BLLRF. Each of these funding sources, with associated policy changes made, have created a mesh of opportunities for communities, through nonprofits and local agencies, to bring reliable and affordable internet connectivity to their respective residents.

¹ Senate Bill 156 (Chapter 112, Statutes of 2021), Senate Bill 4 (Chapter 671, Statutes of 2021), Assembly Bill 14 (Chapter 658, Statutes of 2021).

² As Defined in Government Code section 53167(e).

³ Primarily through the California Advanced Serves Fund established in 2007, D.07-012-054.

⁴ D.22-04-055

The BLLRF program is necessary to bridge the funding gap for communities that have been left unserved or underserved by traditional internet service providers. Many of these regions are either in high-cost build areas, necessitating both grant funding and private financing for construction, or in more urbanized areas with “digital donuts” that lack affordable and/or adequate connectivity, yet are surrounded by served households. Both types of communities are intended to be served through the BLLRF program, as evidenced by the divergent structure of this funding mechanism to others included in SB 156⁵. Our Reply Comments herein focus on creating a financing structure that will best enable local agencies and nonprofits to meet the broadband service needs of these marginalized communities that have long been ignored by or underserved by incumbent ISPs. The goals of the BLLRF program should not be protecting existing monopoly or duopoly service areas, nor protecting market share for incumbent providers; as discussed below, existing proprietary assets in a given area does not equate to affordable, high quality, reliable internet connectivity access to all residents of that community. Instead, the BLLRF rules should serve the goal of enabling local agencies and nonprofits to responsibly and responsively fill gaps and ensure equitable access to fast, reliable, and affordable broadband in their communities, irrespective of the preferences of incumbent providers.

A. Open Access Infrastructure

As outlined in our Opening Comments, projects utilizing the BLLRF must be open access. Requiring all infrastructure to be open access will give service providers equal ability to provide service to end users. Not only does this structure provide customers greater choice in services, but addresses core comments from the California Cable & Telecommunications Association (CCTA) that the Commission must “continue to protect the competitive environment and ensure a level playing field for all BLLRF fund recipients and their competitors.”⁶ Simply put, an open-access model – which the Commission has required in multiple recent Decisions⁷ – would ensure a truly competitive environment, without the artificial favoritism to incumbents proposed by CCTA.

⁵ The Federal Funding Account and the Local Agency Technical Assistance program are both grant funding programs. BLLRF is a financing enhancement program intended to leverage public monies for private investment.

⁶ Page 5, Opening Comments of CCTA, October 14, 2022.

⁷ See, e.g., D.22-04-055 (“Adopting Federal Funding Account Rules”) and D.21-01-003 (“Establishing Process for the California Advanced Services Fund to Leverage the Federal Rural Digital Opportunity Fund”).

B. Public Ownership of Assets

We agree with UNITE-LA and Cal Advocates that infrastructure constructed utilizing the BLLRF program must remain in public ownership, as referenced in our Opening Comments. We believe keeping public investments and assets in the hands of public entities is a “prudent stewardship of public funds” as recommended by CCTA (page 2 of Opening Comments).

C. Private Public Partnerships

The National Diversity Coalition's (NDC) comments appear to propose making BLRRF support to any arrangement that styles itself a "partnership," so long as the resulting network "provide[s] affordable service to unserved customers."⁸ Such an approach clearly disserves the basic purposes of SB 156, which are to support public and nonprofit agencies in building their own broadband networks for the public benefit, not simply to provide another subsidy to the same for-profit providers that have historically failed low-income and rural communities. As indicated in our opening comments, and supported by the comments of the Public Advocates Officer and UNITE-LA, "partnerships" with for-profit entities should be eligible for Loan Loss Program support only if the resulting network is owned and controlled by an eligible public or nonprofit entity.⁹

D. Funding for All Projects

The BLLRF authorizing statute intentionally did not require funding be limited to projects that serve wholly unserved areas. These monies are intended to leverage public funding for private investment -as an additive to the Federal Funding Account, the California Advanced Services Fund programs, middle mile and future investments of the Broadband Equity, Access and Deployment program. Limiting BLLRF program funding to only unserved areas – utilizing

⁸ One of NDC's cited examples, "Wire 3 Holdings, Inc.'s project providing fiber optic network to two counties in Florida," appears to be a purely private for-profit venture, in which the public "partnership" appears to consist merely of generalized "local support" to "help us navigate local regulatory and permitting processes." See <<https://media.cmsmax.com/oegrqqmvsqseut6si7n6p/an-introduction-to-wire-3.pdf>>. This type of arrangement should clearly be ineligible for Loan Loss Program support.

⁹ Moreover, as articulated in the California Debt and Investment Advisory Commission Issue Brief, *Privatization vs. Public-Private Partnerships: A Comparative Analysis* cited in our opening comments, public ownership of the underlying asset is one key difference between true partnerships and privatization – and it cannot reasonably be argued that Senate Bill 156 was ever intended to promote privatization.

the restrictive 25Mbps/3Mbps definition of “unserved” – would create a new generation of digital divide, as households with aging technology that provides less than 100Mbps symmetrical are left behind with no ability to upgrade. Although California just recently changed the definition of unserved to 25Mbps/3Mbps for the purposes of Commission broadband deployment funding, the antiquated threshold was established by the Federal Communications Commission (FCC) seven years ago. The federal Infrastructure, Investment and Jobs Act defines unserved at less than 100Mbps/20Mbps, for the purposes of its funding programs, and FCC Chairwoman Rosenworcel issued a notice of inquiry proposing to increase the threshold to 100/20, noting,

“The 25/3 metric isn’t just behind the times, it’s a harmful one because it masks the extent to which low-income neighborhoods and rural communities are being left behind and left offline. That’s why we need to raise the standard for minimum broadband speeds now and while also aiming even higher for the future, because we need to set big goals if we want everyone everywhere to have a fair shot at 21st century success.”

Technology needs are changing quickly and limiting all programs in this unprecedented surge of state and federal investment to a benchmark established in 2015, would be shortsighted.

Additionally, to directly address CCTA’s concerns about financing projects in areas where there is already “existing competition,”¹⁰ BLLRF funded builds, in practicality, will include served locations as ancillary to the project objectives – to provide service to those not adequately served. Investors will not invest in projects that include large served areas, as pointed out by CCTA,¹¹ as these projects pose a greater funding risk “because the presence of competition increases risk of that local government’s new entry project could default.” The market itself will determine its appetite for this type of investment. Therefore, CCTA’s suggested language to cap Loan Loss Reserve and Debt Service Reserve Fund to five percent in areas without broadband “need” is unnecessary and actively harmful to those communities served by one provider that offers inadequate or unaffordable service.¹² The inclusion of “served” areas may be necessary to ensure that some projects in less populated areas remain

¹⁰ Page 5, CCTA comments, October 14, 2022

¹¹ Page 5, CCTA comments, October 14, 2022

¹² Five percent coverage loan loss coverage provides no meaningful protection for investors, and will have negligible, if any, impact on interest rates. Phrased differently, such a limitation would be economically equivalent to denying access to BLLRF support in most cases.

feasible. (This would be true even if the definition of “served” included only those areas with truly adequate service, such as 100/20 – and it is doubly true when “served” is defined to include areas with antiquated and inadequate 25/3 service.)

Moreover, in recent weeks two independent studies have documented patterns in advertised pricing on the part of two of California’s largest incumbent providers that raise important questions regarding the true level of access some communities counted as “served” have in practice.

CCF released a report on October 13, 2022, that included dozens of examples in Los Angeles County of advertised pricing for high-speed service that is as much as \$40 per month more expensive in high-poverty neighborhoods than in nearby low-poverty neighborhoods.¹³ The low-income neighborhoods subject to higher advertised pricing also generally have the lowest rates of home broadband adoption, despite being technically “served” by at least one incumbent provider.

The Markup, in collaboration with the Associated Press, released a report on October 19, 2022, reporting on their analysis of more than 800,000 advertised home internet offers in 38 cities across the country, including Los Angeles (Dollars to Megabits, You May Be Paying 400 Times As Much As Your Neighbor for Internet Service at <https://themarkup.org/still-loading/2022/10/19/dollars-to-megabits-you-may-be-paying-400-times-as-much-as-your-neighbor-for-internet-service>). Their findings echo those in the CCF report:

“The neighborhoods offered the worst deals, had lower median incomes in nine out of 10 cities in the analysis. In two-thirds of the cities where The Markup had enough data to compare, the providers gave the worst offers to the least-White neighborhoods.”¹⁴

The study found that in Los Angeles, AT&T advertised slow internet to 50% of households in poor neighborhoods, but only 28.9% of households in upper-income neighborhoods, and that

¹³ Attachment A: Slower and More Expensive | Sounding the Alarm: Disparities in Advertised Pricing for Fast, Reliable Broadband

¹⁴ Still Loading: Dollars to Megabits, You May Be Paying 400 Times As Much As Your Neighbor for Internet Service at <https://themarkup.org/still-loading/2022/10/19/dollars-to-megabits-you-may-be-paying-400-times-as-much-as-your-neighbor-for-internet-service#in-most-cities-poorer-neighborhoods-were-offered-worse-internet-plans-more-often>

they charged the same price for slow and fast internet service. The study also found that in Los Angeles, the neighborhoods most likely to be offered slow internet at high prices were the same as those who had been deemed “hazardous” in the now-illegal redlining maps of the 1940s.¹⁵

Therefore, recommendations to limit the BLLRF funds to projects in “unserved” areas should be wholly rejected.

E. Credit Enhancement Coverage

As indicated in our opening comments, the "coverage" percentages set forth in the staff proposal, and supported by some commenters, are wholly inadequate to serve the purposes of the BLLRF Program. Given the relative novelty of broadband system revenue bonds - particularly for systems that serve low-income and rural areas - investors will require substantial coverage ratios in order to meaningfully mitigate lending risks, and thus reduce interest rates to affordable levels.

Financial industry professionals with direct experience with such borrowings have consistently advised that for the "Loan Loss Reserve" component, up to 100% principal coverage will often be required for a rated (i.e., investment grade, and thus economically viable) bond issuance. For the "Debt Service Reserve" component, these professionals have similarly advised that the BLLRF-funded debt service reserve must be sufficient to guarantee principal and interest payments until the first "call" date - typically at 10 years - when the bond may be refinanced and "worked out" in the event that revenues are insufficient to cover the debt service.

Further demonstration of the high levels of coverage required to finance emerging industries may be seen in two comparable programs operated by the California State Treasurer. The California Capital Access Program (CalCAP) program, which provides loan loss reserve support for financings of pollution control, seismic safety, and similar projects, "may provide up to 100% coverage on certain loan defaults." (See, e.g. <https://www.treasurer.ca.gov/cpcf/calcap/arb/summary.asp>. See also California Code of Regulations, title 4, section 8074, subdivision (d).) Similarly, the Property Assessed Clean Energy (PACE) Loss Reserve Program, which supports PACE financing for energy or water

¹⁵ https://github.com/the-markup/investigation-isp/blob/main/data/output/tables/table1_disparities_by_city.csv

efficiency and clean energy home improvements, provides coverage for the for the entire amount of eligible losses. (See California Code of Regulations, title 4, section 10083.)

Moreover, the U.S. Department of Energy "Loan Loss Reserve Funds and Other Credit Enhancements" materials cited in the staff proposal themselves recommend much higher coverage ratios for individual borrowings, noting that "the higher end of the range, 80% to 100%, is typical." (See <https://www.energy.gov/eere/slsc/loan-loss-reserve-fund-risk-sharing-formula> and https://www.energy.gov/sites/default/files/2014/05/f15/basic_concepts_clean_energy_unsecured_lending_llr.pdf).

For all of these reasons, the comments supporting the staff proposal's coverage ratios, and similarly low coverage amounts that will not support meaningful interest-rate reductions, should be rejected.

F. Application Prioritization and Review

We support instituting a properly constructed application and project prioritization scheme for the entirety of the funding program, as follows:

- Project Technology Choice (up to 10 points). Applications must invest in fiber optic infrastructure to receive priority, except for any portion(s) of the proposed network where deploying fiber is technically infeasible. Fiber optic infrastructure is scalable and enables the next generation of application solutions for all communities. Applications utilizing only fiber optic infrastructure shall receive the full 10 points.
- Offers Affordability Program (up to 10 points). An application that participates in the Affordable Connectivity Program (ACP) or provides access to a broad-based low-income affordability program in the proposed service area that provides benefits to households commensurate to the ACP. Should the ACP end, the CPUC will identify a successor low-income subsidy program

- Existing Broadband Service Need (up to 20 points). Applications will receive priority points based on the percentage of unserved and underserved households within the project areas as follows: Up to 10 points may be awarded to projects proposing to serve areas wholly or partly unserved by a wireline provider that reliably offers 100 Mbps download and 100 Mbps upload service, based upon the percentage of households within the area that do not have available service at those speeds. An additional 10 points may be awarded if the project proposes to serve areas wholly or partly unserved by a wireline provider that reliably offers 25 Mbps download and 10 Mbps upload service, based upon the percentage of households within the area that do not have available service at those speeds. (For example, a project serving an area in which 50% of the households are entirely unserved, and the remaining 50% have service that is more than 25/3, but less than 100/100, would receive 15 points; whereas an entirely unserved area would receive 20 points.)
- Impact (up to 10 points). An application may receive up to 10 points, based upon the extent to which the credit guarantee makes obtaining financing possible that would not otherwise be feasible without the guarantee, as determined by the Financing Contractor.

CCTA recommendation that a minimum of 40 points should be necessary to qualify for funding should be rejected as this is simply an attempt to construct artificial barriers to nonprofits and local governments deploying broadband services to communities in need. Likewise, the suggestion by CCTA to limit principal coverage to five percent of the total amount of the project loan amount¹⁶ for areas without a broadband need, will block efforts by applicants to bring open access networks to marginalized communities and should be rejected. As addressed in detail in Response D, total coverage is needed to satisfy the market and bring investments to

¹⁶ Page 6, CCTA Opening Comments, October 14, 2022.

these areas. Further, we strongly disagree with all suggestions, like those in Opening Comments by the National Diversity Coalition (NDC) and Cal Advocates, implying that those projects that provide the lowest risk should be prioritized. These suggestions precisely backwards, and overlook the fundamental purpose of the BLLRF. The BLLRF is intended to secure funding for projects that, without financial guarantees, would not be feasible, and therefore are a high risk. This program is the only chance for these areas of the state to receive much needed connectivity that is fast, reliable, and affordable.

If the Commission establishes an application prioritization framework as outlined above, we support the recommendation by Cal Advocate to institute quarterly review of applications to ensure that applications are assessed holistically.

G. Permitting and Public Right of Way Access to ISPs

In Opening Comments CCTA recommends that in areas where a service provider has already deployed their networks, the Commission ensure a “fair competitive environment” by requiring BLLRF awardee government agencies to “level” the playing field. CCTA suggests that local agencies must provide the same terms for broadband deployment for private, for-profit ISPs as they have for themselves, such as equal access to the Public Right of Way (PROW) or equivalent expedited permitting. This argument is based on the ongoing assertion that local government processes represent significant obstacles to broadband deployment. However, no specific examples are provided that establish a nexus between unserved areas and these types of local government barriers. Additionally, these comments ignore the competitive aspects of an open access network - where the local government is not competition, but merely a facilitator of internet connectivity by ISPs. CCTA ostensibly wants competition, but only on its own terms.

CCTA’s comments misleadingly likens managing one’s own property (the PROW) to allowing a third party to use your property. For instance, public entities do not typically need to obtain an encroachment permit for work done on its own property. Applying that to an ISP, or any third party, ignores the requirements of government to protect the health and safety of its residents. Permitting requirements are in place to ensure that third party users of public property do so in a manner that aligns with important standards, such as health and safety requirements.

Similarly, public entities – like any property owner – typically do not charge themselves rent for use of their own property. Applying supposedly “level” treatment to private parties would require the public property owner to either artificially inflate its own costs (and thus the rates it charges the very system users BLLRF is intended to aid), or to provide CCTA’s members with a public subsidy (without any service guarantee in return).

At its core, CCTA’s argument falsely equates equality and equity, and demands that David level the field for Goliath. Treating a public agency providing public services differently from a profit-motivated private network provider is not discrimination. Publicly-owned networks are owned and managed by agencies that are ultimately accountable to the voters – and to receive BLLRF will further incorporate affordability and accessibility features as noted above. CCTA wants private providers to be given equal benefits without making any of these commitments. This would not truly be equal, and would certainly not be equitable. This proposal should be rejected in full.

H. Matching Funds

As discussed in our Opening Comments, and consistent with the Opening Comments of the Yurok Tribe, requiring matching funds as prerequisite undermines the intent of the BLLRF Program to support local governments and nonprofits in securing competitively termed financing for local broadband deployment that would otherwise be infeasible. A funding match requirement would continue to disadvantage the very communities most in need of investment and advantage more affluent communities that have the capacity to provide local funds (e.g., through special assessments) or secure more competitive financing. Therefore, the Commission should reject recommendations from NDC and others to require matching funds.

I. Performance Criteria

We support the Opening Comments that recommend including performance criteria consistent with those outlined in the Federal Funding Account Decision.

J. Affordability

We agree with The Utility Reform Network (TURN) and Cal Advocates on clarifying low cost and low-income broadband plans, and would support requirements that echo those in the

Decision Adopting Federal Funding Account Rules: Up to 10 points for applications that integrate the California LifeLine or federal Lifeline program; Up to 10 points for applications that include pricing commitments for 10 years, including Consumer Price Index adjustments; Up to 20 points for applications to include one plan offering speeds of at least 50 Mbps download AND 20 Mbps upload for no more than \$40 per month, including Consumer Price Index adjustments.¹⁷

K. Irrevocable Letter of Credit

We support Opening Comments from the Yurok Tribe allowing use of BLLRF credit enhancement to be utilized to secure an Irrevocable Letter of Credit¹⁸ that may be needed to draw down additional federal grant funding, or to support private financing.

L. Reporting

The recommendation by Cal advocates to require BLLRF awardees to report number of subscribers seems reasonable and appropriate and we support its inclusion into the rules.

Dated: October 24, 2022

Respectfully submitted,

/s/ Tracy Rhine

Tracy Rhine

Senior Policy Advocate

Rural County Representatives of California

Tel: (916) 447-4806

E-mail: trhine@rcrcnet.org

¹⁷ Decision Adopting Federal Funding Account Rules (D2204055), at page 40.

¹⁸ Page 9, Yurok Tribe Opening Comments, October 14, 2022.