

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

FILED
PUBLIC UTILITIES COMMISSION
AUGUST 27, 2020
SAN FRANCISCO, CALIFORNIA
RULEMAKING 20-08-021

ORDER INSTITUTING RULEMAKING**Summary**

The California Public Utilities Commission (Commission) initiates this rulemaking to continue modifications to the California Advanced Service Fund (CASF) program. All unresolved matters in Rulemaking (R.) 12-10-012 will be transferred to this proceeding, wherein we take notice of the existing record developed in R.12-10-012. We also propose to implement programmatic changes and adopt rules that will maximize broadband infrastructure deployment and leverage multiple funding sources to better meet the goals of the program. We recognize that there are pending bills in the Legislature regarding the CASF program.¹ Should the Legislature act, we then plan to issue draft rules that implement the legislation.

1. Background

The Commission established the CASF in Decision (D.) 07-12-054 and the Legislature subsequently codified the program in statute to spur the deployment

¹ For example, SB 1130 (Gonzalez) and AB 570 (Aguiar-Curry).

of broadband facilities in unserved and underserved areas of California.² The program has been revised via multiple bills and Commission decisions.³ Currently, the statutory goal of the CASF program is to provide broadband access to 98 percent of households in each consortia region by December 31, 2022.⁴

On October 25, 2012, the Commission opened Rulemaking (R.) 12-10-012 to revise the eligibility requirements for participation in the CASF and consider modifications to the program.

In 2017, Assembly Bill (AB) 1665⁵ revised the CASF program, including extending the goal of providing broadband access to 98 percent of households in each consortia region by 2022. In addition, AB 1665 revised the eligibility requirements for the Infrastructure Account and the Public Housing Account, established a Right of First Refusal process, created the Line Extension program and Broadband Adoption Account, and eliminated the Infrastructure Loan Account.

To implement provisions of AB 1665, in February 2018, the Commission revised the scope of R.12-10-012 to implement programmatic changes to the CASF and bifurcated the proceeding into two phases.⁶ Phase I addressed issues

² Cal. Pub. Util. Code § 281; Interim Opinion Implementing California Advanced Services Fund D.07-12-054, December 21, 2007 at 2; See also Finding of Fact 3.

³ More background and historical information about the CASF is available at <https://www.cpuc.ca.gov/casf/>.

⁴ Pub. Util. Code, § 281 (b) (1) (A).

⁵ Ch. 851, Stats. 2017. AB 1665 is codified at Pub. Util. Code, § 281.

⁶ Amended Scoping Memo and Ruling, February 14, 2018.

on the Broadband Adoption, Public Housing, and Loan Accounts. The Commission held workshops/public forums throughout the state, to solicit input on the implementation of the program changes, learn of existing carrier commitments, and develop partnerships for regional solutions. On June 21, 2018, the Commission issued D.18-06-032 to implement changes and revised requirements and guidelines for the Broadband Adoption, Public Housing, and Loan Accounts. As required by Assembly Bill (AB) 1665, D.18-06-032 set requirements and guidelines to prioritize applications for communities with low broadband access, low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption.

Phase II addressed issues on the Broadband Infrastructure Grant Account, Line Extension Program, and Rural and Urban Regional Broadband Consortia Grant Account. First, the Commission issued D.18-10-032 on October 31, 2018 to implement changes and revise requirements and guidelines for the Rural and Urban Regional Broadband Consortia Grant Account. On December 20, 2018, the Commission issued D.18-12-018 to implement changes to the Broadband Infrastructure Grant Account. The changes included the following topics: project eligibility, application challenges, determining funding levels, reimbursing grantees, a new ministerial review process whereby staff may approve certain projects, and establishing additional minimum performance standards for grantees. On March 1, 2019, the Commission issued D.19-02-008 to revise the Broadband Adoption Account based on the Commission's experience with the first round of applications received August 31, 2018. The revisions

included setting an award cap per application cycle, clarifying eligible reimbursement costs, and modifying application deadlines.

As required by AB 1665, the Commission implemented the Line Extension Program in D.19-04-022, issued May 3, 2019. The implementation addressed project eligibility, application challenges, determining funding levels, reimbursement, a ministerial review process, and establishing additional minimum performance.

On March 26, 2020, the Assigned Commissioner issued an Assigned Commissioner Ruling (ACR)⁷ requesting information on potential changes to program rules, including changes as a result of the COVID-19 pandemic. Specifically, the ACR requested comments on: 1) CASF actions to consider in response to COVID-19; 2) Closing R.12-10-12 and opening a new rulemaking; 3) Opening a second application window in 2020 for CASF Infrastructure Grant applications in Connect America Fund II (CAF II) census blocks; 4) Authorizing Staff to establish additional Infrastructure Application Deadlines in 2020 and future years; 5) Leveraging federal, state and local funding programs such as the Federal Communication Commission's Rural Digital Opportunity Fund (RDOF); 6) Establishing a rolling application window for 2.5 GHz spectrum deployments in Tribal areas; 7) Creating a waiver process and revising Ministerial Review rules; 8) Revisions to the cost reimbursement process, invoicing and payment processing; and 9) Changes related to the CASF Line Extension Program.

⁷ Assigned Commissioner Ruling Requesting Comments on Broadband Infrastructure Rules and Application Windows [R.12-10-012] March 26, 2020.

Legislative changes to enable CASF to be used to leverage federal Rural Digital Opportunity Fund dollars were passed in AB 82 (Chapter 14, Statutes of 2020), which became law June 29, 2020.

The Commission issued D.20-08-005 on August 11, 2020 to authorize Communications Division (CD) Staff to set additional application windows and timelines for the Broadband Infrastructure Grant Account. In addition, the decision authorized Staff to utilize CASF State Operations to provide technical assistance for Tribes and implemented programmatic changes to the Broadband Public Housing Account rules and guidelines set forth in D.18-06-032. Finally, the decision stated that R.12-10-012 will remain open until September 10, 2020.

2. Preliminary Scoping Memo

The scope of this new rulemaking will address unresolved issues, as previously identified in R.12-10-012, necessary to make programmatic changes to the CASF program, including new methods of private public partnerships, allowing and incentivizing the use of existing infrastructure, leveraging federal and other non-CASF funding, and establishing various strategies for investing in low income households and communities for infrastructure and adoption program goals. The preliminary scope of issues in the proceeding is set forth below, and may be changed by the Assigned Commissioner's scoping memo (*See* Commission's Rules of Practice and Procedure, Rule 7.3).

a. Issues

- 1) Broadband Infrastructure Grant Account—Should the Commission make changes to application requirements and

guidelines, challenge process/criteria, deployment schedule,⁸ the ministerial review process, performance criteria, or project monitoring rules? If so, what kind of modifications and why?

- 2) Form 477— Should the Commission make changes to Broadband Infrastructure Grant Account application and project completion requirements, so that applicants provide all the information found on Form 477, but do not provide Form 477, in order to avoid potential allegations that the Federal Communication Commission’s (FCC) rules and regulations concerning disclosure of Form 477 apply.
- 3) Line Extension Program— Should the Commission make changes to application requirements and guidelines and eligibility? If so, what kind of modifications and why?
- 4) Rural and Urban Regional Broadband Consortia Grant Account—Should the Commission make modifications to application requirements and guidelines, allowable activities and eligibility? If so, what kind of modifications and why?
- 5) Broadband Public Housing Account—Should the Commission make further modifications to eligibility requirements and the challenge process, if funding continues? If so, what kind of modifications and why?
- 6) Broadband Adoption Account Account—Should the Commission make further modifications to application requirements and guidelines such as the ministerial review process, reimbursement limitations, and performance criteria, if funding remains? If so, what kind of modifications and why?
- 7) Leveraging Non-CASF Funds—In June 2020, the Governor signed AB 82, which revised the prohibition that a project funded

⁸ See e.g. Section 8.7. Application Item 7 - Deployment Schedule:
[https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications -
Telecommunications and Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.
pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf)

by the Broadband Infrastructure Grant Account include broadband infrastructure also funded by the federal Connect America Fund program or other similar federal public program.⁹

- a) How should the Commission leverage federal funds for broadband deployment? For example, how should CASF leverage Rural Digital Opportunity Fund (RDOF)¹⁰ dollars for California? Staff will issue a report on this topic.
 - b) How should CASF leverage other federal funding?
- 8) California Interactive Broadband Map¹¹—How should the Commission improve and update the Map so that it is comprehensive and timely for the Broadband Infrastructure Grant application deadlines? Should CASF applicants and challengers be required to submit data to the Commission before applying or challenging CASF projects?
- 9) Open Access—Should all CASF projects be required to provide open access (where a working definition of open access is making capacity available on non-discriminatory, reasonable, and equal terms)? Why or why not?
- 10) Strategies for Investing in Tribal Lands and Communities—What should the Commission do to establish strategies to encourage broadband deployment and adoption in Tribal Lands and communities in advancement of program goals?

⁹ AB 82, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB82.

¹⁰ The FCC's rules prohibit an applicant from communicating certain auction-related information to another applicant from the auction short-form application filing deadline until the post-auction deadline for winning bidders to file long-form applications for support. More specifically, section 1.21002 of the FCC's rules prohibits an applicant in Auction 904 from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies during the prohibition period. See 47 C.F.R. § 21002.

¹¹ <https://www.broadbandmap.ca.gov/>.

- 11) Strategies for Investing in Low Income Households and Communities—What should the Commission do to establish strategies to encourage broadband deployment and adoption in low income households and communities in advancement of program goals?
- 12) COVID/Unforeseen Response—What should the Commission do, if anything, differently in light of COVID or unforeseen circumstances consistent with the CASF program goals?

The precise issues to be addressed and the process for addressing those issues will be set forth in an Assigned Commissioner’s Scoping Memo.

b. Categorization; *Ex Parte* Communications; Need for Hearing

The Commission’s Rules of Practice and Procedure Rule 7.1(d)¹² require that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is quasi-legislative as defined in Rule 1.3(d), because our consideration and approval of this matter would establish policy or rules affecting a class of regulated utilities. Accordingly, *ex parte* communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Commission’s Rules of Practice and Procedure.

We are also required to preliminarily determine if hearings are necessary. It appears that issues may be resolved through comments without the need for evidentiary hearings. In the event that an evidentiary hearing becomes necessary, the assigned Commissioner or Administrative Law Judge will issue a ruling that sets forth the process that will be used, and the scheduled to be followed.

¹² All references to Rules are to the Commission’s Rules of Practice and Procedure.

Any person who objects to the preliminary categorization of this rulemaking as quasi-legislative or to the preliminary hearing determination shall state any objections and material facts they believe require a hearing in their responses to the questions herein. After considering any comments on the preliminary categorization or preliminary hearing determination, the assigned Commissioner will issue a scoping ruling making a final category and hearing determination; this final determination as to categorization is subject to appeal as specified in Rule 7.6(a).

c. Preliminary Schedule

The following is the procedural schedule that we anticipate will be followed for this OIR.

SCHEDULE

EVENT	DATE
Comments on OIR filed and served	10 days from OIR
Reply comments on OIR filed and served	~15 days from OIR
Scoping memo	~30-45 days from OIR
[INFORMATION GATHERING: Workshops / Staff White Paper / Party Proposals / etc.	TBD
Opening Comments filed and served	30 days from Information Gathering or Scoping Memo
Reply comments filed and served	30 days from opening comments
Proposed Decision	No later than 90 days from reply comments

EVENT	DATE
Commission Decision	No sooner than 30 days after the Proposed Decision

The Assigned Commissioner or the assigned Administrative Law Judge (ALJ) may change the schedule to promote efficient and fair administration of this proceeding. The schedule for the remainder of the proceeding will be adopted in the Assigned Commissioner’s Scoping Memo.

It is the Commission’s intent to complete this proceeding within 18 months of the date this decision is adopted. This deadline may be extended by order of the Commission. (Public Utilities Code, § 1701.5(a).)

If there are any workshops in this proceeding, notice of such workshops will be posted on the Commission’s Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

3. Participation in this Rulemaking

Entities on the service list for R.12-10-012 and other interested persons are invited to participate in this rulemaking. Therefore, the initial service list for this rulemaking will be the service list of R.12-10-012 and the Commission’s CASF Distribution List. However, receipt of this OIR does not confer party status or place any person who has received such service on the Official Service List for this proceeding. Entities who wish to establish Party status in this rulemaking should follow the procedures described in Rules 1.4 and 1.9(f) of the Commission’s Rules of Practice and Procedure.

4. Service of OIR

In addition, in the interest of broad notice, this OIR will be served on the official service lists for the following proceedings or Commission service lists:

- R.12-10-012
- The Commission's CASF Distribution List

Service of the OIR does not confer party status or place any person who has received such service on the Official Service List for this proceeding.

Instructions for obtaining party status or being placed on the official service list are given below.

5. Filing and Service of Comments and Other Documents

Filing and service of comments and other documents in the proceeding are governed by the rules contained in Article 1 of the Commission's Rules of Practice and Procedure. (See particularly Rules 1.5 through 1.10 and 1.13.)

6. Addition to Official Service List

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding. (*See* Rule 1.9(f).) The request must be sent to the Process Office by e-mail (process_office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the Docket Number of this rulemaking in the request.

Persons who file responsive comments thereby become parties to the proceeding (see Rule 1.4(a)(2)) and will be added to the “Parties” category of the official service list upon such filing. *In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the “Information Only” category as described above; they will be removed from that category upon obtaining party status.*

4. Subscription Service

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission’s website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at <http://subscribecpuc.cpuc.ca.gov/>.

5. Intervenor Compensation

Pursuant to Rule 17.1 of the Commission’s Rules of Practice and Procedure, a party that intends to seek intervenor compensation must file and serve a notice of intent to claim compensation within 30 days after the prehearing conference. Parties new to participating in Commission proceedings may contact the Commission’s Public Advisor.

6. Public Advisor

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov. The TTY number is (866) 836-7825.

O R D E R

IT IS ORDERED that:

1. This Order Instituting Rulemaking is adopted pursuant to Rule 6.1 of the Commission's Rules of Practice and Procedure.
2. The preliminary categorization is quasi-legislative.
3. The preliminary determination is that a hearing is not needed.
4. The preliminary scope of issues is as stated above Section 3.
5. The Executive Director will cause this Order Instituting Rulemaking to be served on the service lists for Commission proceeding Rulemaking 12-10-012 and the Commission's CASF Distribution List.
6. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file its notice of intent to claim intervenor compensation within 30 days of the filing of reply comments, except that notice may be filed within 30 days of a prehearing conference in the event that one is held. (*See* Rule 17.1(a)(2).)
7. *Ex parte* communications in this Rulemaking are governed by Rule 8.3(a) of the Commission's Rules of Practice and Procedure.

This order is effective today.

Dated August 27, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners