

Decision **PROPOSED DECISION OF COMMISSIONER HOUCK** (Mailed 1/21/2022)

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

**DECISION ESTABLISHING LOCAL AGENCY
TECHNICAL ASSISTANCE GRANT PROGRAM**

Summary

This decision establishes a Local Agency Technical Assistance grant program to provide funding to eligible local agencies and sovereign tribal governments, as defined in this decision, for work product(s) associated with advancing the goal of the California Advanced Services Fund.

1. Background

On September 16, 2021, the assigned Commissioner issued an amended scoping memo outlining various changes to the California Advanced Services Fund (CASF) program approved as part of the Budget Act of 2021 and Senate Bill (SB) 156 (Stats. 2021, Chap. 84 and 112). Among other things, the state legislature provided for \$50 million to facilitate completion of the statewide broadband middle-mile network and last mile projects, the formation of municipal entities and agreements for financing broadband infrastructure and to fund projects, distribute grants, or fund support costs associated with these projects, among

other allowable uses.¹ The Commission intends to authorize a total of \$50 million in funds for technical assistance under a new tribal and local agency technical assistance program. The amended scoping memo included and invited comments on a Commission Communications Division Staff Proposal (staff proposal) for this new program.

Rural County Representatives of California (RCRC), the Public Advocate's Office of the California Public Utilities Commission (Cal Advocates), National Diversity Coalition (NDC), Central Coast Broadband Consortium (CCBC), County of Santa Clara (Santa Clara), and The Utility Reform Network (TURN) timely filed comments on the staff proposal. On October 14, 2021, the Yurok Tribe, California Emerging Technology Fund (CETF), NDC, and TURN filed reply comments.

2. Authority

The Commission's authority under California Public Utilities Code Section 281, as amended by SB 156, includes the provision of technical assistance and California Advanced Services Fund grants such as those for the Public Housing and Federal Funding Accounts. California Public Utilities Code Section 281(b)(5)(A) specifies activities including but not limited to "[p]roviding technical assistance to local governments and providers" that lead to or are likely to lead to equitable high-speed last-mile connection.

¹ Section 35 (Item 8660-062-8506 of Section 2.00) of the Budget Act of 2021 provides: "Funds appropriated in this item may be used to fund projects, distribute grants, or fund support costs associated with the program." See also the CPUC fact sheet on Last-Mile Broadband funding: https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/telecommunications/broadband--fact-sheet_083021.pdf.

3. Staff Proposal

The staff proposal bases the proposed Local Agency Technical Assistance (LATA) program, in large part, on the Commission's Tribal Technical Assistance program, with certain modifications to account for a broader group of eligible applicants/grant recipients and specified requirements to align with federal rules applicable to Coronavirus State and Local Fiscal Recovery Funds, which the proposed program is intended to leverage. The staff proposal includes a broader and more diverse range of activities that would be eligible for reimbursement, and includes a requirement for applicants with overlapping jurisdictions to demonstrate coordination between and among each other to minimize duplication of funding and efforts. The staff proposal would fold the Tribal Technical Assistance program into the new LATA program, and dedicate a portion of the new program's budget to funding projects from tribal applicants.

4. Establishment of Local Agency Technical Assistance Program

The Commission establishes and adopts program requirements for a Local Agency Technical Assistance program, as detailed in Attachment 1 of this decision. In summary, we adopt most aspects of the staff proposal, with modifications discussed herein. We address parties' comments on the staff proposal insofar as they relate to specific modifications we adopt.

4.1. The Local Agency Technical Assistance Program Will Not Absorb the Tribal Technical Assistance Program

Most parties do not explicitly address the proposal to fold the Tribal Technical Assistance program into the LATA program. TURN, however, urges the Commission to consider maintaining the Tribal Technical Assistance program as separate from the LATA program, given the additional program

requirements contemplated for the LATA program. In reply comments, the Yurok Tribe supports TURN's suggestion.

The Commission intends to minimize barriers for tribes to pursue broadband deployment through the Tribal Technical Assistance program, while also making funds available to tribes under the LATA program for additional and/or more costly work product(s), such as environmental reviews. Therefore, we agree with TURN's and the Yurok Tribe's recommendation and do not adopt the proposal to fold the Tribal Technical Assistance program into the LATA program. Eligible tribal governments have the option to apply for technical assistance grants under either program, pursuant to each program's respective rules and application requirements.

4.1.1. Dedicated Funds for Eligible Tribal Applicants

The staff proposal proposes to set aside ten percent of the funding allocated to the program, plus the remaining Tribal Technical Assistance program budget balance on the date the Commission adopts the LATA program rules, to tribal grantees. Parties responding to this element of the staff proposal are generally supportive of setting aside funds for tribal grantees, and emphasize that this set-aside should be a floor and not a ceiling for the amount of funds available for tribal grantees. The Commission agrees, and adopts Guidelines as set forth in Attachment 1 that direct Commission staff to initially set aside ten percent of the funding allocated to LATA grants for tribal grantees. The Guidelines state that staff may further set aside up to ten percent of then-remaining funds for tribal grantees in the event that all funds previously set aside for tribal grantees have been encumbered.

4.2. Definition of Technical Assistance

Parties that address the staff proposal's definition of technical assistance are generally supportive; NDC and Santa Clara emphasize that the staff proposal indicates the activities identified in the definition are not framed as an exhaustive list of eligible activities. Even so, CCBC, RCRC and TURN recommend adding specific activities to the proposed definition. We agree in large part with the additions suggested by RCRC and TURN. The Commission therefore adopts guidelines that include needs assessments, broadband strategic plans, and consultants and community-based organization services secured to complete reimbursable work product(s) within the definition of technical assistance in Section 3.A, while also clarifying that the identified activities are not intended to represent the entirety of activities that meet the definition of technical assistance.

CCBC's recommended addition of comprehensive regional plans is supported by CETF, which also recommends we add Metropolitan Planning Organizations (MPO) to the proposed definition of local agency. Although both of these recommendations merit consideration, the Commission elects not to adopt them at this time in favor of maintaining more local entities in the primary role of grant recipients, while encouraging and requiring demonstration of coordination among geographically overlapping jurisdictions. Broader entities such as MPOs will not be precluded from participating in such coordination efforts and providing input into local agencies' grant applications and subsequent work product(s).

4.2.1. Staff Hours Will Be Eligible For Reimbursement, Provided They Are Incremental to Grantees' Pre-grant Award Scope of Work

The staff proposal specifies that technical assistance does not include staff hours, although up to 15 percent of the total requested reimbursement may be used for the local agency's administrative costs (as defined in the staff proposal) associated with completing reimbursable work products.

NDC, RCRC and Santa Clara recommend permitting reimbursement of staff hours related to reimbursable activities to varying extents; in reply comments, TURN and the Yurok Tribe generally agree. CCBC supports reimbursement of staff hours subject to certain conditions, including that Commission staff determines such work is outside the normal scope of the local agency's activities.

We agree that local agency staff hours dedicated to reimbursable activities should be eligible for reimbursement, provided that such work is incremental to a local agency's normal, or pre-grant, scope of activities. The Commission therefore replaces "normal" with "pre-grant award" to make clear that grant funds are intended to go toward work that would not be performed in the absence of grant funds.

The Commission will require applicants to attest that staff hours for which they will request reimbursement are incremental to their pre-grant award scope of work. Additionally, applications that request reimbursement for staff hours must include hourly rates and estimates of staff hours that will be dedicated to specific reimbursable work product(s), and grant recipients will need to track staff time spent on specific reimbursable work product(s) in order to receive reimbursement for staff hours.

4.3. Definition of “Sovereign Tribal Government”

In response to the staff proposal’s definition of “local agency,” the Yurok Tribe recommends adding wholly-owned tribal corporations, tribal non-profits, and tribal utilities with proof of authorization to apply from the respective tribe’s council or other governing body. We agree that such entities should be eligible to apply for and receive LATA funding, as their revenue base serves in lieu of the tax base that other types of eligible applicants possess.² The Commission therefore adopts the proposed definition of “sovereign tribal government” to include the Yurok Tribe’s recommendation of wholly-owned tribal corporations, tribal non-profits, and tribal utility companies with proof of authorization to apply by the respective Tribe’s Council or other governing body.

4.4. Clarification of Overlapping Jurisdictions

Parties commenting on the staff proposal’s requirement for separate local agencies operating in the same geographic jurisdiction to demonstrate collaboration were generally supportive of this requirement, though NDC recommends clarifying that tribal jurisdictions are not overlapping jurisdictions for the purposes of the LATA program. Similarly, TURN states that it is unclear what circumstances would present overlapping jurisdictions among sovereign tribal governments. The Commission agrees with NDC. The Guidelines set forth in Attachment 1 of this decision clarify that sovereign tribal governments do not constitute overlapping jurisdictions for purposes of the LATA program.

² See, e.g., Tribal Business Structure Handbook, 2008 Edition; a Tribal Self-Governance Project of the Tulalip Tribes, sponsored and published by the United States Department of the Interior Office of the Assistant Secretary – Indian Affairs. url: https://www.irs.gov/pub/irs-tege/tribal_business_structure_handbook.pdf (accessed November 15, 2021), at II-5 – II-6 and III-1 – III-2.

In response to NDC's comments, which recommend that cities and counties not be counted as overlapping jurisdictions, we agree it is reasonable to enable staff to approve applications from cities located in counties that have pending applications or applicable grant awards, and applications from counties that include cities with pending applications or applicable grant awards, provided that such applicants' support letters describe the coordination that occurred between the city and county to prevent duplication of efforts. The Commission adopts language in the Guidelines set forth at Attachment 1 of this decision that reflect this recommendation.

In response to CCBC's comments, which address situations of agencies with overlapping competencies or responsibilities (*e.g.*, a city and a school district), we clarify that our intent is not to prevent each such agency from applying to the LATA program. We do however find good reason to require demonstration of collaboration among such entities to ensure efficient use of resources, as detailed in the Guidelines set forth at Attachment 1 of this decision and reflected in the previously issued staff proposal.

4.5. Applications Requesting No More than \$500,000 per Local Agency, per Fiscal Year will be Eligible for Ministerial Review and Approval

Party comments varied on the proposed maximum award amount that should be awarded to each local agency per fiscal year, via ministerial review and approval. CCBC, RCRC and TURN generally support the staff proposal, which set this amount at \$150,000. NDC recommends we set a higher maximum amount, and require data about projects requesting amounts greater than \$150,000, to justify the higher amount requested. Santa Clara recommends setting a range of award caps based on the number of unserved households in

the jurisdiction and the award history of the applicant and other applicants applying in the same cycle, with a maximum of one million dollars per agency per year. RCRC recommends that, if the Commission sets a range, it should be based on the proportion of unserved locations in the jurisdiction and not on population size or density. In considering a maximum award amount (per local agency, per fiscal year) eligible for ministerial review and approval, the intent is to enable Commission staff to review and approve applications through a transparent set of objective criteria, to the extent feasible. The Commission also recognizes that certain eligible work products, notably environmental reviews, may cost as much as \$500,000, and that the cost of such work product(s) may not depend on either the number or the proportion of unserved households in a jurisdiction. Given our determination to make funds available for potentially more costly work products such as environmental reviews, it is reasonable to set the threshold amount for applications that may be approved ministerially to an amount that more closely approximates the cost of this type of eligible work product. The Commission determines to increase the proposed maximum amount (per local agency, per fiscal year) eligible for ministerial review and approval to \$500,000. In making this change, staff may, but are not required to, approve every application that meets the minimum requirements for ministerial review and approval. If, for example, an application meets all ministerial review criteria and requests \$500,000 for work product(s) that are reasonably expected to cost less than \$500,000, the Commission reserves discretion to address such an application through the resolution process.

Further, given the size of ministerially awarded grants and potential costs involved with certain reimbursable activities, the Commission further intends to periodically review and adjust the program via resolution, including the scope of

reimbursable activities, to ensure that the funds are efficiently and effectively disbursed.

To confirm, and as detailed in Attachment 1 of this decision, applications meeting the following conditions will be eligible for ministerial review and approval:

1. Applicant requests a grant not exceeding \$500,000 per local agency per fiscal year.
2. The Commission has not received a separate application for Local Agency Technical Assistance from an agency with a jurisdiction overlapping that of the subject application during the current application period or within the prior year, unless such application(s) was denied. This limitation does not apply to:
 - a. applications from sovereign tribal governments.
 - b. applications from cities located in counties that have pending applications or applicable grant awards, or to applications from counties that include cities with pending applications or applicable grant awards, provided that such applicants' support letters describe the coordination that occurred between the city and county to prevent duplication of efforts.
3. The application meets all the other requirements of a Local Agency Technical Assistance grant included in Sections 4, 5, 6, and 7 of the program requirements, as detailed in Attachment 1 of this decision.

4.6. Modification to Review Process for Applications Not Eligible for Ministerial Review and Approval

NDC notes that some of the evaluation criteria listed in the resolution review process appear nebulous, and further notes that some of the criteria should be considered for all applications. For instance, NDC states, it is unclear what "evaluation of proposed reimbursable work product(s)" entails and

whether the same kind of evaluation should also occur under ministerial review. We emphasize here that the criteria for ministerial review and approval are intended to enable staff to approve applications that meet the minimum requirements, as specified in Section 8 of the Guidelines set out in Attachment 1. Applications that satisfy general Application Requirements (Section 6) but do not meet the Ministerial Review funding criteria may only be approved by the Commission via resolution, a discretionary review rather than ministerial.

Upon further consideration and review of the program rules applicable to the Tribal Technical Assistance program, and in light of the fact that the Commission will set a maximum award amount (per local agency, per year) eligible for ministerial review and approval of \$500,000, we find it is not necessary, and moreover not conducive to the type of evaluation(s) required, to identify scoring criteria for applications not eligible for ministerial review and approval. Applications not meeting the requirements for ministerial approval may require qualitative evaluation, which may not align with assigning a numerical score. Moreover, there may be other factors, beyond those identified in the staff proposal, that impact the potential value of a project proposal. These other factors may also not align with a scoring rubric. For instance, a standardized metric such as the total grant amount per number of households to be served (expressed as dollars per household), while informative, would not account for other important factors such as the size of the relevant area, and thus it would be prohibitively difficult to assign a numerical score. For applications that the Commission will review for approval via resolution, the Commission determines to maintain flexibility in evaluating whether and how to approve such applications.

4.7. Modification to Completion Requirement to Demonstrate Advancement of CASF Program Goal

Cal Advocates recommends the addition of a completion reporting requirement so that work products clearly identify broadband infrastructure deployment projects that will help achieve the CASF deployment goal. In reply comments, CETF and TURN support Cal Advocates' recommendation. Noting that the staff proposal includes a requirement for a signed completion form, we agree with the intent of Cal Advocates' recommendation and therefore adopt guidelines that require demonstration that the reimbursable work product(s) identify broadband infrastructure deployment projects that will help achieve the CASF deployment goal, and identification of the area(s) where the applicant intends to deploy broadband based on the reimbursable work product(s), as part of signed completion forms under the LATA program.

4.8. Additional Guideline Provisions

The Commission Guidelines set out in Attachment 1 include the following items that were not part of the staff proposal:

- In Section 2 (Amount Available for Grants), clarify the funding source for the total amount of \$50 million that the Commission determines to allocate to the LATA program.
- Modify Section 7 (Submission Timeline and Requirements) to provide that Commission staff will provide program information, including how to submit applications and where to obtain information about the program, via an email notice to the service list of this proceeding.
- Specify that staff may propose changes to the LATA program guidelines and requirements via resolution. As this is a new program that will be administered by Commission staff, it is reasonable to enable staff to propose changes to the program requirements, which will be subject to Commission approval. The Commission intends

to monitor and evaluate LATA applications and awards to ensure equitable distribution of funding in accordance with the Environmental and Social Justice Action Plan.

5. Actions for Advancing the Environmental and Social Justice Action Plan

RCRC recommends the Commission allow for periodic reimbursements for some categories of activities, noting that smaller jurisdictions may be unable to absorb expenses for up to two years. In reply comments, CETF and NDC support this recommendation; TURN notes that some tribes structured their Tribal Technical Assistance program applications in such a way as to receive funding for multiple awards (each with shorter timelines than two years), and encourages local agencies to do the same under the LATA program. The Commission confirms TURN's observation: LATA applicants may identify reimbursable work product(s) with timeframes shorter than two years, where feasible, in their applications.

TURN recommends that Commission staff analyze a number of available data sets to identify and then conduct targeted outreach to specific unserved communities about the LATA program. The Commission generally agrees with TURN's recommendation, and Commission staff is in the process of conducting analysis and developing an outreach plan with the objective of engaging and facilitating participation by communities with the greatest proportion of unserved and underserved households in not only the LATA program, but more generally in all Commission programs aimed at eliminating California's digital divide. The Commission intends to monitor, evaluate and adjust outreach efforts to ensure alignment with the Environmental and Social Justice Action Plan.

6. Comments on Proposed Decision

The proposed decision of Commissioner Darcie L. Houck in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on February 10, 2022 by San Diego Association of Governments; NDC; Charter Communications Operating, LLC (Charter); Southern California Association of Governments; CETF; Los Angeles County Economic Development Corporation; and UNITE-LA, Inc. Reply comments were filed on February 15, 2022 by NDC, TURN, California Community Foundation, Yurok Tribe, and The Greenlining Institute.

We have modified the proposed decision in response to party comments, as summarized here:

- Clarification that the specific activities identified as meeting the definition of technical assistance are not intended to be an exhaustive list.
- Clarification that tribes can apply for and receive funds through both the Tribal Technical Assistance program and the LATA program established by this decision.
- Clarification that all applications that meet the Application Requirements (Section 6 of the Guidelines) but do not meet the Criteria for Ministerial Review (Section 8 of the Guidelines) may be approved via the resolution process.
- Addition of a requirement that applications describe specific steps the applicant has taken, and/or will take, to meaningfully address disparities in access to and adoption of advanced communications services; and confirmation that the Commission intends to monitor and evaluate both outreach efforts and LATA applications and awards to ensure equitable distribution of funding in accordance with the Commission's Environmental and Social Justice Action Plan. Although we agree with TURN that the LATA program must center equity and bridging the digital

divide, we are not prepared at this time to use equity as a review criterion, as we have not articulated a reasonable criterion or standard of review, so adopting such a criterion would necessitate review of every application through the resolution process. The Commission may revise program guidelines to better ensure alignment with the Environmental and Social Justice Action Plan.

We decline to make further revisions requested by parties, as either unnecessary or unwarranted at this time. With respect to Charter's recommendation to specify that network operators should be excluded from participation as contractors, we acknowledge the validity of Charter's concern, and we confirm the Commission's intent is that LATA funds be used to engage entities that do not have a financial interest in the work product for which funds are granted. The Commission will review any such applications with greater scrutiny to ensure responsible and effective use of LATA funds.

7. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Valerie U. Kao is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

The Budget Act of 2021 provides for the Commission to allocate funds for technical assistance to eligible local agencies to facilitate deployment of high-quality advanced communications services to all Californians.

The assigned Commissioner provided notice of and opportunity to comment on a staff proposal to establish a local agency technical assistance program, modeled after the Tribal Technical Assistance program, in this proceeding.

The staff proposal would fold the Tribal Technical Assistance program into the new LATA program, and dedicate a portion of the new program's budget to funding projects from tribal applicants.

The Guidelines maintain the Tribal Technical Assistance program as separate from the LATA program

Eligible tribal governments have the option to apply for technical assistance grants under either the Tribal Technical Assistance program or the new LATA program, pursuant to each program's respective rules and application requirements.

Commission staff will review and approve applications through a transparent set of objective criteria, to the extent feasible.

Conclusions of Law

It is reasonable to establish a local agency technical assistance program, as detailed in Attachment 1 of this decision, to facilitate deployment of high-quality advanced communications services to all Californians.

The Commission's Communications Division staff should have the authority to prepare resolutions that propose administrative changes to the LATA program guidelines and requirements, as detailed in Attachment 1 of this decision, and present these resolutions to the full Commission for a vote.

O R D E R

IT IS ORDERED that:

1. The California Public Utilities Commission establishes a new local agency technical assistance program to facilitate deployment of high-quality advanced communications services to all Californians. Program details, including budget and application guidelines and requirements, are adopted as articulated in Attachment 1 of this decision.

2. California Public Utilities Commission Communications Division staff is assigned the task to make administrative changes to the Local Agency Technical Assistance program rules via resolution for full Commission review and approval of those changes.

3. Rulemaking 20-08-021 remains open.

This order is effective today.

Dated _____, at San Francisco, California