

Decision **PROPOSED DECISION OF COMMISSIONER ALICE REYNOLDS**  
(Mailed 3/2/2022)

**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.

Rulemaking 20-09-001

**DECISION ADOPTING FEDERAL FUNDING ACCOUNT RULES**

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## **Appendix A – Revised Federal Funding Account Grant Program Rules**

## **DECISION ADOPTING FEDERAL FUNDING ACCOUNT RULES**

### **Summary**

This decision adopts rules for the Federal Funding Account (FFA) created by Senate Bill (SB) 156 and funded through the federal American Rescue Plan Act of 2021 (Public Law No. 117-2), and the rules issued by the U.S. Treasury Department. The FFA is a new two-billion-dollar grant program focused on building broadband Internet infrastructure to communities without access to Internet service at sufficient and reliable speeds. The rules adopted in this decision include, among other items, the following subjects: project eligibility, application objections, allocating FFA funding between rural and urban counties, reimbursing grantees, a ministerial review process whereby Communications Division Staff may approve certain projects, and minimum performance standards for grantees.

This proceeding remains open.

### **1. Factual and Procedural Background**

The California Public Utilities Commission (Commission) initiated the Broadband for All proceeding to set the strategic direction and changes necessary to expeditiously deploy reliable, fast, and affordable broadband Internet access services that connect all Californians.

#### **1.1. Procedural Background**

Governor Gavin Newsom issued Executive Order N-73-20 on August 14, 2020, directing state agencies to accomplish 15 specific actions to help bridge the digital divide, including ordering state agencies to pursue a minimum broadband speed goal of 100 Mbps download to guide infrastructure investments and program implementation to benefit all Californians.

On September 10, 2020, this Commission opened this Rulemaking to set the strategic direction and make the changes necessary to expeditiously deploy reliable, fast, and affordable broadband Internet access services that connect all Californians. As stated above, this proceeding will explore near-term and medium-term actions to achieve this goal.

A prehearing conference (PHC) was held on November 10, 2020, to discuss the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters, as necessary.

On December 28, 2020, the assigned Commissioner issued a Scoping Memorandum and Ruling (Scoping Memo) that divided this proceeding into three phases.

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARPA),<sup>1</sup> also called the COVID-19 Stimulus Package or American Rescue Plan, which appropriated funds for states to deploy last-mile broadband Internet networks. This law requires funds be expended by the end of 2024 and projects to be completed by the end of 2026.

On July 20, 2021, Governor Newsom signed SB 156 into law, creating the Federal Funding Account,<sup>2</sup> with this Commission being responsible for implementing the new grant program. The Second Amended Scoping Memorandum and Ruling, (Second Amended Scoping Memo) in the instant proceeding, issued on August 2, 2021, adds certain issues associated with the

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<sup>1</sup> Public Law No. 117-2.

<sup>2</sup> SB 156, An act to amend Sections 6547.7 and 53167 of, to add Section 26231 to, and to add Chapter 5.8 (commencing with Section 11549.50) to Part 1 of Division 3 of Title 2 of, the Government Code, to add Section 21080.51 to the Public Resources Code, and to amend Sections 281, 912.2, and 914.7 of, and to add Section 281.2 to, the Public Utilities Code.

implementation of SB 156 to the scope of this proceeding, including implementation of the Federal Funding Account in Phase III.

On September 23, 2021, the Assigned Commissioner issued a ruling requesting comment on a Staff Proposal for the rules that would implement the Federal Funding Account grant program (ACR). On October 29, 2021, the following parties filed and served comments on this proposal: AARP California (AARP); Pacific Bell Telephone Company dba AT&T California (AT&T); Borrego Springs Revitalization Committee; Central Coast Broadband Consortium (CCBC); California Cable and Telecommunications Association (CCTA); Corporation for Education Network Initiatives In California (CENIC); California Emerging Technology Fund (CETF); Center for Accessible Technology (CforAT); City and County of San Francisco (San Francisco); Coachella Valley Association of Governments (CVAG); Comcast Phone of California, LLC (Comcast); County of Los Angeles; County of Santa Clara (Santa Clara); Communications Workers of America, District 9 (CWA); Frederick L. Pilot; Frontier Communications of the Southwest Inc., Frontier California Inc., and Citizens Telecommunications Company of California Inc. (Frontier); Geolinks; Greenlining Institute; Joint Wireless Internet Service Providers (WISPs);<sup>3</sup> Los Angeles County Economic Development Corporation (LAEDC); Next Century Cities (NCC); National Diversity Coalition (NDC); The Public Advocates Office at the California Public Utilities Commission (Cal Advocates); Rural County Representatives of California (RCRC); San Diego Association of Governments (SANDAG) Small Business Utility Advocates (SBUA); Southern California Association of Governments (SCAG); Southern California Edison Company (SCE); San Diego

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<sup>3</sup> DigitalPath, Inc. (U 1151 C), Cal.net, Inc. (U 7309 C), ShastaBeam, Etheric Communications, LLC, Velocity Communications, Inc. (U 1653 C) and Jefferson State Broadband d/b/a Com-Pair

Gas & Electric Company (SDG&E); Small Local Exchange Carriers (LECs);<sup>4</sup> LCB Communications LLC and South Valley Internet (LCB Communications and South Valley Internet); The Utility Reform Network (TURN); UNITE-LA; and Cellco Partnership (U 3001 C) and MCImetro Access Transmission Services LLC (U 5253 C) (collectively, "Verizon").

On November 15, 2021, the following parties filed and served reply comments to this proposal: AARP; AT&T; CCTA; CENIC; CETF; CforAT; Frederick L Pilot; Frontier; Geolinks; Mono County; NDC; Cal Advocates; SBUA; SCE; Small LECs; TURN; Utility Consumers' Action Network (UCAN); and Verizon.

On November 10, 2021, the assigned ALJ issued a ruling requesting comment on the proposed apportionment of funds for the Federal Funding Account grant program. The following parties filed and served comments on November 30, 2021: County of Los Angeles; RCRC; Small LECs; CCTA; SANDAG; County of Santa Clara; TURN; UNITE-LA, Inc; CETF; SBUA; LAEDC; County of Mendocino; NDC; UCAN; North Bay North Coast Broadband Consortium; The #OaklandUndivided Coalition; SCAG; and Frederick L. Pilot.

On December 10, 2021, the following parties filed and served reply comments: UCAN; San Francisco; Cal Advocates; NDC; SBUA; TURN; North Bay North Coast Broadband Consortium; CCTA; Central Coast Broadband Consortium; and CETF.

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<sup>4</sup> The Siskiyou Telephone Company, Volcano Telephone Company, Foresthill Telephone Co. The Ponderosa Telephone Co., Winterhaven Telephone Company, Calaveras Telephone Company, Happy Valley Telephone Company, Ducor Telephone Company, Pinnacles Telephone Co., Cal-Ore Telephone Co., Sierra Telephone Company, Inc., Hornitos Telephone Company, Kerman Telephone Co.



## **1.2. Factual Background**

Communities across California face a multitude of barriers for the deployment of resilient and accessible broadband networks. Broadband Internet access and service in urban communities varies by neighborhood. Rural areas of the state often lack the infrastructure for sufficient wireline and wireless broadband Internet access service. The COVID-19 pandemic has highlighted the extent to which broadband access is essential for public safety, public health and welfare, education, and economic resilience, adding greater urgency to developing new strategies and expand on existing successful measures to deploy reliable networks with affordable service.

## **2. Jurisdiction**

Among other items, SB 156 requires the Commission to implement a program (Program) using federal funds to connect unserved and underserved communities by applicable federal deadlines. The Program must be consistent with Part 35 of Title 31 of the Code of Federal Regulations (CFR) and any conditions or guidelines applicable to this one-time federal infrastructure funds.

The enacted California 2021-2022 Budget allocates two billion dollars (\$2,000,000,000) to the Program to fund the deployment of last-mile broadband infrastructure.<sup>5</sup> By 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.<sup>6</sup> The Commission must initially allocate five million dollars (\$5,000,000) in each county.<sup>7</sup> The Commission must allocate the remaining funds

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<sup>5</sup> See California 2021-2022 Enacted Budget Summary at page 27, available at <http://ebudget.ca.gov/2021-22/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>

<sup>6</sup> See Public Utilities Code Section 281(n)(3).

<sup>7</sup> *Id.*

based on each county's proportionate share of households without access to broadband Internet access service with at least 100 megabits per second (Mbps) download speeds.<sup>8</sup>

The Secretary of the U.S. Treasury Department (Treasury) issued an Interim Final Rule (Interim Final Rule), effective May 17, 2021, to implement the Coronavirus State Fiscal Recovery Fund (SLFRF) established under the American Rescue Plan Act.<sup>9</sup> Treasury also issued a SLFRF Frequently Asked Questions (FAQ) document to provide additional guidance on how funds should be utilized.<sup>10</sup> Treasury issued its Final Rule (Final Rule) on January 6, 2022,<sup>11</sup> adopting many of the provisions in the Interim Final Rule, with some amendments. The Final Rule is effective April 1, 2022.

### **3. Issues Before the Commission**

The Second Amended Scoping Memo adds a new Phase III to this proceeding. Phase III includes two separate tasks: 1) the collection of public comments that will assist with the development of the locations for the statewide open-access middle mile network; and 2) the adoption of rules for the Federal Funding Account. The scope of this decision is the development of the rules governing the Federal Funding Account (FFA), focused on last-mile Internet connections, including whether the Commission should adopt the Staff Proposal or refine it. Additionally, the September 23, 2021 ACR asked for comment on the questions and issues discussed below:

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<sup>8</sup> See Public Utilities Code Section 281(n)(3)(B)(ii) ("as identified and validated by the Commission, pursuant to the most recent broadband data collection, as of July 1, 2021...").

<sup>9</sup> The Interim Rule is available at: <https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>.

<sup>10</sup> The FAQ is available here: <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

<sup>11</sup> See 87 Fed. Reg. 4338-4454 (January 27, 2022).

1. Compliance with Federal Guidance: SB 156 requires the Commission to adopt program rules that are consistent with Part 35 of Title 31 of the CFRs.
  - Are the rules in the Staff Proposal consistent with Part 35 of Title 31 of the CFRs?
  - 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.
2. Priority Project Areas: The Staff Proposal envisions that Communications Division (CD) Staff will publish proposed priority 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. FFA Applicants will apply for grants to offer broadband Internet service to these defined areas.
  - What information should the CD Staff take into consideration in developing these 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?
3. Coordination with other Grant Programs: There is significant funding available and being considered at the state and federal levels for broadband infrastructure.
  - How can the FFA best coordinate and leverage these other broadband infrastructure funds?
4. Affordability: The Interim Rule encourages recipients to consider ways to integrate affordability options into their program design.
  - 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 provide Lifeline<sup>12</sup> services, as well as the Emergency Broadband Benefit, or its successor?
5. Eligible Areas: The Staff Proposal directs the focus of last mile projects to be in unserved areas that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload.
- 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?

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<sup>12</sup> Note we refer to the “California LifeLine Program” either as the California LifeLine Program or as “LifeLine,” while the federal program is referred to as Lifeline.

6. Eligible Entities: The Staff Proposal lists eligible entities (see related questions under the IOU Broadband Pilots section of the ruling).
  - What information should the Commission consider in the rules to allow flexibility to enable partnerships between entities and providers? For example, a public entity and one or more broadband service providers.
7. Coordination with Statewide Middle Mile Network: SB 156 also creates a statewide middle mile network that must enable last mile connections.
  - How can the Commission ensure the FFA grants coordinate and take advantage of the statewide middle mile network that is being built?
8. IOU Broadband Pilots: Phase II in this proceeding seeks to identify a role for the electric Investor-Owned Utilities (IOUs) in deploying broadband Internet access service.
  - How can the FFA be utilized 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 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?
9. Performance Criteria: Federal SLFRF funds must be obligated between March 3, 2021 and December 31, 2024 and expended to cover such obligations by December 31, 2026.
  - 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? (Section 6.6 of the Staff Proposal)

10. Information Required from Applicants: Treasury published guidance<sup>13</sup> on federal SLFRF subaward (grantee) reporting.

- 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?

11. Provision of voice and other services: The Interim Final Rule considers a connection that can “originate and receive high-quality voice, data, graphics, and video telecommunications.”<sup>14</sup>

- 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?

12. Government and Community Support: Applicants must provide letters indicating government or community support.

- How should the Commission consider the requirement for applicants to address how a proposed application furthers the purpose of a Local Government or Tribal

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<sup>13</sup> Treasury, Compliance and Reporting Guidance State and Local Fiscal Recovery Funds (June 24, 2021 Version 1.1), available at

<https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>

<sup>14</sup> Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Interim Final Rule, 86 Fed. Reg. 26805 (May 17, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

technical assistance grant in project areas for which a grant has been awarded?

13. Ministerial review criteria and cutoff: Section 13 outlines criteria for a project to be eligible for ministerial review.

- What other criteria or range of funding should the Commission consider? For example, should the project amount for ministerial review be some amount between \$10-30 million? How should the per location cost criteria be modified and how should this per location cost be considered?

14. Post-Construction Phase: For what time period should after construction requirements remain in place?

- 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? For example, the current draft includes notification requirements about potential transfers of control for three years.

#### **4. Eligible Areas**

Consistent with federal rules, the ACR proposes to define eligible areas as locations (households and businesses)<sup>15</sup> that lack access to a wireline Internet service connection capable of reliably<sup>16</sup> delivering minimum speeds of 25 Mbps download and 3 Mbps upload.

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<sup>15</sup> The term “business” includes non-residential users of broadband, such as private businesses and institutions that serve the public, such as schools, libraries, healthcare facilities, and public safety organizations.

<sup>16</sup> 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.

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).

The ACR asks:

- 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?

#### **4.1. Party Positions**

There is a lack of consensus among parties regarding how the Commission should determine if an area is eligible for FFA grants and how the Commission should interpret federal rules that give it broad discretion. Some parties support the proposed rules in the ACR. Others oppose the proposed rules, or even disagree with federal rules, either the Interim rule or the Final Rule. Many parties recommend revisions to the proposed rules.



Parties propose several alternative methods by which the Commission should determine if an area is eligible for a FFA grant. AARP, LAEDC, RCRC, and Comcast support relying on the 25/3 Mbps speed threshold. Cal Advocates recommends defining unserved areas as areas without reliable access to Internet service at 25/3 Mbps. TURN, RCRC, and CCTA specifically support a blanket determination that wireline Internet service is reliable. Frederick L. Pilot suggests that all areas lacking last-mile fiber Internet service should be eligible for FFA grants, with the Commission adopting a rebuttable presumption that most areas outside heavily urban locations do not have last-mile fiber. Joint WISPs support relying on the 25/3 Mbps speed threshold to determine eligibility, but also note that the proposal ignores locations with existing fixed wireless service, including Commission-approved CASF projects.

Coachella Valley Association of Governments (CVAG) asserts that eligible areas should be defined as those without access to 100 Mbps and that “underserved” areas should be defined as those areas that have less than three service providers that do not provide wireline service at speeds of 100 Mbps. NDC proposes defining “unserved” areas as not having any 25/3 Mbps minimum service available and “underserved” areas as not having affordable 25/3 Mbps minimum service available. SANDAG recommends using a 100/20 Mbps threshold to determine unserved versus underserved areas. UNITE-LA recommends considering underserved areas as areas where a large portion of households that do not have broadband Internet service. In determining eligibility, CforAT asserts the Commission should avoid defining “unserved or underserved” as a specific percentage threshold and should instead evaluate specific areas on a case-by-case basis and consider any available information about delivered speeds that are lower than advertised speeds,

without setting a statistical mandate on what must be provided. RCRC opposes using separate definitions for unserved and underserved. Joint WISPs recommend defining an area as underserved or unserved only if more than half, and preferably 75 percent or more of the households in the area do not have access to the minimum speeds associated with the definitions of unserved or underserved. NDC recommends the Commission distinguish between “unserved” and “underserved” areas and to not use the terms interchangeably, as done in the IFR.

AT&T and CETF support prohibiting FFA grants in areas where an ISP (fixed or mobile) must deploy broadband as part of a merger commitment.<sup>17</sup>

Cal Advocates, CCTA and Joint WISPs assert that in instances where an application proposes to deploy infrastructure in mostly served areas, the Commission should pro-rate funding so that the FFA grant is mostly funding unserved households. South Valley Internet urges the Commission to allow projects that surround wider area than unserved if it is necessary to make a project more economic.

Parties also disagree on how the Commission should determine if existing service is reliable. Borrego Springs Revitalization Committee asserts the Commission must account for reliability when determining if an area is unserved. CforAT argues the Commission should not take ISPs’ claims of service at face value, as some state terms of service in a manner that does not guarantee that service (*e.g.*, speeds delivered up to a specific amount), and instead adopt an expansive definition of what areas are eligible for FFA grants, since the proposed rules allow for parties to object to specific applications. TURN proposes

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<sup>17</sup> Per Pub. Util. Code §§ 851 and 854, the Commission approves transfers of control of public utilities, including many licensed telecommunications service providers in California.

reviewing an ISP's ability to meet service quality standards in GO 133-D to determine reliability. NDC supports using the factors set out in FAQ 6.11, but also advise using customer complaints about outages, slower speeds than advertised, billing and related complaints. Santa Clara County recommends the Commission use retail service reports made by a "primary wireline provider" and exclude all reports by wholesale/secondary wireline providers, including middle mile providers. Joint WISPs oppose measuring reliable service using CalSPEED, asserts the application measures what speed a customer subscribes to, not what is available. LAEDC suggests the Commission establish a forum to collect first-hand experience from residents, as there often is a disconnect between what providers say and customers experience and collect granular data as lack of publicly available data is limiting and prevents decision-making. SBUA proposes monitoring performance metrics, such as System Average Interruption Frequency Index, System Average Interruption Duration Index, and the Momentary Average Interruption Frequency Index, as well as customer-centric indices such Customers Experiencing Long Interruption Durations, Customers Experiencing Multiple Interruptions, Customers Experiencing Multiple Momentary interruptions, and the Customers Experiencing Multiple Sustained Interruptions and Momentary Interruptions Events index provides an overall performance indicator.

Comcast, Joint WISPs, Geolinks, and CCTA argue the proposed rules would allocate funds to served areas, at odds with FFA and CASF program goals of building infrastructure to connect households that are truly unserved. San Francisco asserts the proposed eligibility requirements are contrary to Treasury's guidance and could exclude prematurely areas that deserve support. Comcast also argues that SB 156 does not empower or require the Commission to

determine reliability of service in specific areas, and the FFA can meet federal guidelines by focusing on whether areas have speeds of 25/3. Comcast also contends that the CASF program does not include staff's subjective determination of whether an area has "reliable" service and that if this determination is warranted, the Commission should examine RDOF tiers of service for guidance. Comcast asserts SB 156 does not call for a measurement of what constitutes a significant number of unserved and underserved households, but instead requires a proportional distribution of funds based on share of households without broadband access to at least 100 Mbps, and that the definition of "Eligible Project" should be modified to remove the "a significant number of" modifier because SB 156 has no such qualifier for FFA eligibility.

CETF strongly disagrees with CCTA's claims that the Staff Proposal is "biased toward funding 'served' households" and constitutes "overbuilding," noting "as set forth below, that the Staff Proposal definition of an "eligible project" does require "significant" unserved and underserved households to be served in an eligible project.

Frontier urges the Commission to not adopt expansive rules addressing eligible areas, and instead focus on applications that will serve either unserved or underserved locations.

CVAG recommends determining reliable service using a map of existing infrastructure and the capabilities of it complemented by speed test data and use data on service quality, such as complaints. San Francisco also argues that the Commission should not rely solely on the Broadband Map to determine eligibility, that the Commission should not place the burden on applicants to dispute the Broadband Map, and that applicants should be allowed to

demonstrate that any areas they are proposing to serve are eligible and to supply any available supporting data.

Parties also do not agree on how the Commission should define or measure what constitutes a “significant” number of unserved and underserved households. CVAG recommends determining a “significant” number of unserved and underserved households by measuring the number of households lacking 100 Mbps in relation to a defined geographic area and then choosing a percentage threshold of households in that region that would constitute a “significant” number of unserved and underserved households. Santa Clara County recommends that the Commission consider 10 percent of households in a census tract being unserved as the threshold for significant unserved, as that is slightly lower than the statewide average, and would direct funds to the areas most in need of assistance without unduly restricting the ability of any region to obtain funding. LAEDC opines the Commission should give equal consideration to the percentage of unserved/underserved and total number of households unserved/underserved, which is especially relevant for urban areas where multiple generations of family living in one household, and utilize both a macro and micro analysis of communities to take into account the economic demographics of different populations, including employment levels and median income, to determine the financial challenges contributing to low broadband adoption rates. CETF recommends that a single unserved household is “significant” if that resident or business desires broadband service. RCRC cautions the Commission regarding the effort to define a “significant number” of unserved and underserved households, noting that some areas are unserved because of low population density making cost of service infeasible, and that adding other qualifiers will enable entities to ignore these areas and residents.

Parties offer additional proposals for Commission consideration. Beyond the 25/3 Mbps speed threshold, SANDAG urges the Commission to consider areas impacted by affordability, age, and people with disabilities, and to be flexible, in defining the speed threshold for served status, as 25/3 Mbps rapidly is becoming obsolete. NCC asserts the eligibility criteria should also include digital equity and economic development, and that FFA funds should support local digital equity efforts and economic development to further broadband goals. The Small LECs ask that prior to awarding a FFA grant within a service area of a Small LECs, that the Commission to reach out to the specific Small LEC company regarding its capital improvement plans to make sure FFA projects will not be overbuilt on soon to be deployed network upgrades by Small LECs. AT&T urges this Commission to utilize the forthcoming FCC broadband map for FFA funding as soon as it is available.

CETF suggests the Commission delete the “Low Income Areas” definition, as it is not used anywhere in the Staff Proposal.

#### **4.2. Discussion**

The Final Rule broadens FFA funding eligibility to broadband Internet infrastructure that is “designed to provide service to households and businesses with an identified need, as determined by the recipient, for such infrastructure[.]”<sup>18</sup> This change provides the Commission with significant discretion for developing program eligibility requirements. The Final Rule also encourages recipients “to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed, as [...] those

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<sup>18</sup> 87 Fed. Reg. 4452 (January 27, 2022).

without such service constitute hard-to-reach areas in need of subsidized broadband deployment.”<sup>19</sup>

We adopt the definition of unserved area in the Staff Proposal and add other modifications and guidance that are consistent with the Final Rule. We adopt the presumption that locations lacking access to reliable wireline broadband Internet service are in need of this service.

While we do not adopt the proposal that only Internet service offered with fiber infrastructure be deemed reliable, the Commission adopts a rebuttable presumption that legacy networks cannot provide reliable Internet service at speeds of 25Mbps download and 3 Mbps upload. Specifically, areas with Internet service provided only by legacy technologies such as copper telephone lines (typically using Digital Subscriber Line technology) or older versions of cable system technology (DOCSIS 2.0 or earlier) are eligible for funding. ISPs and other interested individuals wishing to rebut this presumption must demonstrate that all locations have access to speeds of at least 25 Mbps download and 3 Mbps upload. Speed tests from terminals, cabinets and at other locations that are not end users are not sufficient. Our determination of what wireline technologies offer reliable service is consistent with the Final Rule, which found that these legacy technologies typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber.

We also adopt the proposed rule that applicants may provide data that contests the reliability of non-legacy wireline providers that claim to provide served speeds. Applications contesting the reliability of an area identified as

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<sup>19</sup> 87 Fed. Reg. 4420 (January 27, 2022).

being served will be reviewed by CD Staff and considered by the Commission's Resolution process.

In response to CETF's recommendation, we remove "low-income areas" from the definitions section of the proposed rules since we are not using that term as part of our rules.

The Final Rule departs significantly from the Interim Rule. The Final Rule focuses on "need" in determining whether an area is not served, instead of solely determining speed served status by relying on speed thresholds; it also encourages a different speed threshold, as well as introducing the concept of gap networks, among other items. In the interest of adopting FFA rules expeditiously, and thereby accepting grant applications sooner, the Commission adopts these rules on an interim basis. We anticipate developing the record further, so as to address the new concepts and higher speed thresholds adopted in the Final Rule.

## **5. Project Identification and Prioritization**

The ACR proposes a process where the Commission identifies priority proposed project areas and initiates a round of grant-making through public announcements. Under the proposal, CD 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.

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.

The ACR also requests comment on what information CD Staff should take into consideration in developing these priority areas; whether the proposed Application Objection process balances 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; and whether parties propose additional or different criteria.

### **5.1. Party Positions**

Parties disagree both over whether the Commission should adopt the proposed prioritization process, or even if it should adopt priorities.

AT&T in general supports the proposed process for identifying priority project areas, though both it and CETF recommend the Commission identify projects on a countywide basis and prioritize the counties with the most unserved and underserved locations by issuing Requests for Partnerships or Requests for Proposals for specific unserved locations. AT&T and CCBC support the Commission publicly releasing the data used to determine priority areas. TURN contends the Commission should not solely rely on the proposed Ministerial Review to develop priority projects and instead use information received in this proceeding and related proceedings to narrow locations to priority areas.

CCTA and Comcast oppose the proposed prioritization process, arguing it would create an eligibility standard that differs from the 25 Mbps download and 3 Mbps upload unserved standard adopted for the separate Broadband

Infrastructure Grant Account.<sup>20</sup> Comcast argues that if CD Staff will be determining priority areas, the Commission should clarify that unserved and underserved will be prioritized. Frontier also does not support the Commission identifying priority areas, arguing that there is not enough time to undertake the task. Instead, Frontier asserts the Commission should evaluate every proposal addressing if the areas are unserved or underserved for consistency with federal requirements.

AARP, CforAT, SBUA, SCAG, UNITE-LA, Cal Advocates, Los Angeles County, Santa Clara County, and Coachella Valley Association of Governments all offer different metrics and terminologies that lead to prioritization of historically unserved or underserved communities,<sup>21</sup> with the focus on characteristics or demographics like lower-income census tracts, racial indicators, rural and Tribal lands, areas prone to natural disasters, communities with high concentration of at-risk youth/students or seniors, where residents have higher risks of poor health. Cal Advocates recommends prioritizing “marginalized communities,” a specific term that includes tribal areas, Environmental and Social Justice (ESJ) communities based on Cal EnviroScreen scores, areas classified as “C - Definitely Declining or “D - Hazardous” according to Homeowner’s Loan Corporation maps, and low-income areas, as defined in the

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<sup>20</sup> For clarity, Pub. Util. Code § 281 (b)(1)(B)(ii) reads, in part “For purposes of the Broadband Infrastructure Grant Account, both of the following definitions apply:... ‘unserved area’ means an area for which there is no facility-based broadband provider offering at least one tier of broadband service at speeds of at least 25 Mbps downstream, 3 Mbps upstream, and a latency that is sufficiently low to allow real-time interactive applications, considering updated federal and state broadband mapping data.”

<sup>21</sup> For clarification, we use the term “historically unserved or underserved” in this context to distinguish from the definitions of unserved and underserved that define FFA grant eligibility (or CASF Infrastructure grant eligibility).

FFA Staff Proposal. Cal Advocates also recommends prioritizing projects in areas without access to Internet service at speeds of 10/1 Mbps. AT&T does not support these proposals, asserting that a formula that requires analyses of income, demographics, or environmental characteristics will add complexity and uncertainty to the grant-making process.

Frederick L. Pilot recommends prioritizing areas lacking 25/3 Mbps and those that rely primarily on wireless service. LCB Communications and South Valley Internet encourage prioritizing counties with unserved areas before underserved areas. NDC and AT&T contend the prioritization should focus first on connecting residential households, then anchor institutions over retail or commercial businesses. SBUA suggests the Commission consider the needs of small businesses, diverse businesses, tribal areas, and underserved populations in counties with high unserved households. CVAG recommends prioritizing areas based on access to middle mile projects that can facilitate last mile and by reduce costs, unserved/underserved areas that have secured funds for last mile connections, areas with shovel ready projects can help meet strict federal spending guidelines. SBUA supports including counties where 33 percent or more have insufficient access to middle mile.

San Francisco, LAEDC, and SANDAG ask the Commission to work closely with communities to identify priority areas, including working with local governments, as well as other groups like and CASF Consortia. SCAG recommends the Commission work with Caltrans, CTCs, MPOs, local agencies and ISPs for additional data and input, due to lack of granular data. AARP suggests including adoption data into the determination of whether an area is served. LAEDC recommends using the most recent and granular broadband

availability data for counties, as well as user speed tests, and interviews with residents and businesses.

## **5.2. Discussion**

The Commission adopts the Staff Proposal with clarifications of how priority areas are defined and identified.

“Priority Area” means an area with a high density of unserved locations, analyzed on a county basis, that makes a substantial contribution to meeting the state’s broadband deployment objectives, as identified by CD Staff. A grant applicant may add or subtract to priority areas, which will be verified by the CD Staff. The priority areas will be coordinated with the Commission’s obligation to assist in preparing definitive plans for deploying necessary infrastructure in each county, including coordination across contiguous counties.

CD Staff will publish the priority areas, which are a subset of the eligible unserved areas, on the Commission website. This publication will include details such as median household income, disadvantaged community status, and other measures of broadband need and digital equity. Consideration of disadvantaged communities in scoring as discussed later on in this decision. CD Staff will provide notice that the priority areas have been published, at a minimum, on the service list for this proceeding, the service list for the CASF proceeding,<sup>22</sup> and the CASF Distribution List that CD Staff maintains. CD Staff may update the priority areas as other broadband data becomes available.

## **6. IOU Fiber Pilots**

A key portion of this proceeding prior to the enactment of SB 156 involved examining whether there is a role for the electric Investor-Owned Utilities (IOUs)

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<sup>22</sup> R. 20-08-021.

in deploying broadband Internet access service. This included the IOUs organizing a workshop and presenting project ideas. The ACR request comments on the following questions:

- How can the FFA be utilized 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 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?

### **6.1. Party Positions**

Parties offer a number of competing positions on the IOU Fiber Pilots.

Frederick L Pilot recommends that if IOUs wish to be wholesale network operators, then the Commission should adopt rules to facilitate that, while also encouraging the IOUs to partner with public entities. SBUA supports using FFA funding to leverage the electric IOUs' in-depth expertise in developing "reliable and cost-effective network grids which connect last-mile circuits to the backbone network" their "extensive rights-of-way and experience working within regulatory requirements and local permitting and related requirements, and their expertise in marketing, provisioning, delivering, billing, and offering customer support to their ratepayers."

CforAT, SDG&E, and RCRC support moving the IOU Fiber Pilots to a separate phase of this proceeding, to allow more time to create viable projects.

AT&T notes that the voluntary sharing of assets could be facilitated by revising the Commission's processes related to Pub. Util. Code § 851.

CWA asserts that telecommunications service providers are best equipped and experienced to build and maintain broadband networks, not IOUs, as the IOUs must focus on preventing wildfires and have little interest in deploying broadband.

SANDAG proposes that the Commission become a clearinghouse to help collect and share data that could inform broadband investments and facilitate partnerships between last mile, middle mile, and IOU partners. CETF notes that, at a workshop during Phase I of this proceeding, the IOUs presented some information about areas where they have available dark fiber and recommends that this information be made accessible to potential middle-mile providers and CENIC. CETF also suggests that Staff should contact a designated IOU contact that serves a specific community to discuss whether the IOU may have facilities to help bring middle mile facilities to the community.

SCE asserts that ISPs should only be permitted access to IOU rights-of-way after the Commission makes a determination on eligibility under the Commission's ROW rules, as ISPs are not currently eligible, arguing that it would be unfair to allow them nondiscriminatory access without first vetting them. If the Commission determines ISPs should have nondiscriminatory access, they should request access via Pole License Agreements, similar to how CLECs, CMRS, and similar telecommunications services providers currently operate. SDG&E supports using FFA funds to enable ISPs to partner with utilities to address service gaps, though SDG&E asserts that telecommunications providers wanting to use SDG&E facilities for last-mile broadband Internet service, via joint trenching or pole attachment, would be required to obtain their own land

rights and the Commission cannot authorize a utility to do more than what their land rights allow under the law and cannot grant land rights to third parties to IOU electric infrastructure. Verizon recommends the Commission require the IOUs to provide access to their streetlight poles at regulated approved rates, which will ensure that last mile projects are built without substantial delays at a reasonable cost.

## **6.2. Discussion**

At this time, we decline to adopt specific requirements regarding the IOU Fiber Pilots. As discussed in the Eligible Entities section, we adopt rules making the IOUs eligible for FFA grants.<sup>23</sup> It is possible that some of the proposals the IOUs have worked on as part of this proceeding may be eligible for FFA funds. We encourage the IOUs to enter into partnerships to deploy broadband infrastructure and assist applicants with the deployment of broadband networks using utility support structures. We may still examine other ways to leverage IOU fiber as part of another decision or phase of this proceeding.

## **7. Apportionment of Funds**

On November 10, 2021, the assigned ALJ issued a ruling requiring comments on the apportionment of funds for the FFA. Pub. Util. Code §§281(n)(3)(A) and 281(n)(3)(B) respectively direct this Commission to spend \$2 billion on broadband Internet infrastructure projects, with \$1 billion allocated to projects in urban counties and \$1 billion allocated to projects in rural counties. The Commission initially must allocate \$5 million for projects in each county and then allocate the remaining funds in the respective urban or rural allocation, based on each county's proportionate share of households without access to

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<sup>23</sup> Although IOUs are eligible for FFA grants, this decision does not change other rules outside the scope of this proceeding that may impact an IOU's ability to participate.

broadband Internet access service speeds of at least 100 megabits per second download.

Because the Legislature largely left this determination to the Commission, and various federal and state agencies use different definitions and/or methodologies to determine whether a county or another geographic area is “rural” or “urban,” the November 10, 2021 assigned ALJ ruling includes three different options for parties to comment on, as well as a request to propose alternatives. The ruling proposed to define rural and urban in a manner similar to how the federal Office of Management and Budget (OMB), with “urban” counties being the same as “metropolitan” counties and “rural” counties the same as “nonmetropolitan” counties. Two additional options include relying on the U.S. Census Bureau’s determinations and one where individual counties self-identify as rural, as is the case with the membership of the Rural County Representatives of California (RCRC), an association representing California’s small, rural counties that includes 37 member counties.

### **7.1. Party Positions**

Parties disagree on whether the Commission should adopt the three methods contained in the assigned ALJ ruling. Several parties offered alternative proposals. Additionally, some parties modified their positions during reply comments.

In their opening comments the following four parties express support for using the OMB method: County of Mendocino, NDC, North Bay/North Coast Broadband Consortia (NBNCBC), and UCAN. CCTA and the Small LECs support using U.S. Census Bureau designations. Nine parties support designating rural counties as those that have self-identified through their membership in RCRC: County of Los Angeles, Santa Clara, Frederick L. Pilot,



LAEDC, #OaklandUndivided Coalition, SANDAG, SBUA, SCAG, and UNITE-LA. Five parties propose alternatives: CETF, Santa Clara, Frederick L. Pilot, RCRC, and TURN.

CETF discusses the defects of relying on each of the alternatives in the ruling. CETF asserts that while government programs typically choose to utilize the OMB or U.S. Census Bureau definitions, those definitions do not address the actual issues that result in lack of broadband, such as geographic challenges (terrain, geography), lack of middle-mile or Internet Point of Presence facilities, lack of electricity, extreme poverty, a large percentage of low-income households on the outlying county. Relying on RCRC membership reduces the amount of money available to the most rural and remote counties, with sparse populations and little middle-mile facilities, or with persistent poverty and economic challenges. CETF recommends that counties with the highest number of unserved and underserved households at speeds of 100 Mbps download, with significant socioeconomic factors indicating high poverty and unemployment, or a stagnant economy, with a high average cost of construction to reach unserved households, should be deemed “rural” and thus be apportioned additional funding.

RCRC identifies flaws with each method contained in the ruling, including arguments that the U.S. Census methodology is based on outdated population data to determine areas that meet “rural” and “urban” definitions, that relying on RCRC membership results in vastly disparate funding allocations across the rural counties, disadvantaging the 21 most rural and least populated jurisdictions, and that the OMB method creates a similarly inequitable outcome for those 16 more populated rural counties that would need to compete with exponentially larger and more resourced urban counties. RCRC proposes a

hybrid method that uses the definition of “rural” as set forth in the OMB model, which allocates \$1 billion to those 21 described “rural” counties, and then divides the 37 remaining counties in the “urban” category into 16 “small urban counties” and 21 “large urban counties.” The “small urban” and “large urban” categories would receive pro-rata allocations of the \$1 billion in funding based on the number of counties in the group. The “small urban” group would receive 16/37<sup>th</sup> of the total, \$432,432,432, and the “large urban” group would receive 21/37<sup>th</sup> of the total, \$567,567,567.

TURN recommends against using any of the three methods contained in the ruling, arguing that all three rely on a single metric and, as such, are flawed. Instead, TURN recommends using those methods in conjunction with other methodologies to foster equity in dividing FFA funds. TURN reviewed seven different methodologies to create its proposed method of classification, concluding:

Six of these methodologies had complete consensus regarding 41 of the 58 California county designations. TURN recommends the Commission adopted the consensus designation for these counties as urban or rural, which leaves 17 counties that did not have complete consensus. However, of these 17 remaining counties, eleven counties would have had complete consensus across the six methodologies but for the Rural Counties Representatives of California Membership Methodology. TURN recommends the Commission adopt the near complete consensus designations for these eleven counties, leaving only six counties left to be designated. For each of these six counties, their unserved residents primarily reside in rural areas of each county. Therefore, TURN

recommends these last six counties be considered rural for the purposes of the Federal Funding Account.<sup>24</sup>

NBNCBC urges the Commission to use a methodology that prioritizes serving unserved and underserved areas with the least access, that reflects the use of a tiered system based on current broadband availability in each county and the number of households required to reach 98 percent served. A tiered system could be used. In addition, NBNCBC suggests the Commission base the analysis or methodology on data that is more accurate, by measuring broadband availability at a granular level, such as by household or similar metrics. NBNCBC further suggests the Commission should consider the alignment of the state's open access middle-mile network deployment plans with the Federal Funding apportionment to ensure both initiatives are successful and supplement each other.

In their reply comments, San Francisco and Cal Advocates also express support for using the method where counties have self-identified.

SBUA supports CETF's proposed alternative. CCBC and RCRC support the RCRC hybrid alternative. NDC, TURN, and UCAN support TURN's proposal.

AT&T urges the Commission to refrain from imposing caps on the size of grants on a county basis.

## **7.2. Discussion**

Instead of adopting any of the options for determining which counties are rural and which are urban put forward in the assigned ALJ ruling, we adopt

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<sup>24</sup> The seven methodologies come from the United States Census Bureau, the White House Office of Management and Budget, the United States Department of Agriculture, the United States Department of Health and Human Services, the Pew Research Center, the California State Association of Counties, and the Rural County Representatives of California.

TURN's proposal, as it is the most rigorous, and attempts to arrive at a consensus by relying on seven different approaches, instead of one. The TURN proposal appropriately balances the two most significant competing realities of broadband Internet infrastructure: rural areas typically have higher constructions costs -- due to more rugged terrain, poles with greater failure rates, and lower population density -- while urban areas have the highest number of unserved households.<sup>25</sup>

*Table 1. Rural County Allocations*

<b>Rural Counties (27)</b>			
<b>Population Unserved</b>		<b>County</b>	<b>Allocation = \$5 million + \$5,419.76554 per unserved resident<sup>26</sup></b>
1	367	Alpine	\$6,989,053.95
2	9,632	Amador	\$57,203,181.68
3	4,761	Calaveras	\$30,803,503.74
4	4,419	Colusa	\$28,949,943.92
5	976	Del Norte	\$10,289,691.17
6	19,716	El Dorado	\$111,856,097.39
7	3,704	Glenn	\$25,074,811.56
8	10,063	Humboldt	\$59,539,100.63
9	1,517	Inyo	\$13,221,784.32
10	6,031	Kings	\$37,686,605.97
11	4,324	Lake	\$28,435,066.19
12	3,673	Lassen	\$24,906,798.83
13	11,362	Madera	\$66,579,376.07
14	6,613	Mariposa	\$40,840,909.52
15	9,674	Mendocino	\$57,430,811.83
16	3,493	Modoc	\$23,931,241.03
17	1,033	Mono	\$10,598,617.80

<sup>25</sup> According to data as of December 31, 2019, Los Angeles County and Orange County have 60,752 and 53,039 unserved households without access to speeds of 100 Mbps respectively.

<sup>26</sup> Allocation per unserved resident =  $(\$1B - [(\$5M/\text{county}) \times (27 \text{ counties})]) / (159,601 \text{ unserved residents})$ .

18	12,891	Nevada	\$74,866,197.58
19	6,879	Plumas	\$42,282,567.15
20	1,003	San Benito	\$10,436,024.84
21	1,385	Sierra	\$12,506,375.27
22	7,526	Siskiyou	\$45,789,155.45
23	2,841	Sutter	\$20,397,553.90
24	12,879	Tehama	\$74,801,160.39
25	4,551	Trinity	\$29,665,352.97
26	1,946	Tuolumne	\$15,546,863.74
27	6,342	Yuba	\$39,372,153.05
<b>TOTAL</b>	<b>159,601</b>		<b>\$999,999,999.95</b>

Table 2. Urban County Allocations

Urban Counties (31)			
	Population Unserved	County	Allocation = \$5 million + \$1,640.37218 per unserved resident <sup>27</sup>
1	11,898	Alameda	\$24,517,148.20
2	8,657	Butte	\$19,200,701.96
3	6,772	Contra Costa	\$16,108,600.40
4	34,236	Fresno	\$61,159,781.95
5	5,458	Imperial	\$13,953,151.36
6	16,038	Kern	\$31,308,289.02
7	60,752	Los Angeles	\$104,655,890.68
8	3,987	Marin	\$11,540,163.88
9	13,571	Merced	\$27,261,490.85
10	7,484	Monterey	\$17,276,545.40
11	3,478	Napa	\$10,705,214.44
12	53,039	Orange	\$92,003,700.06
13	15,397	Placer	\$30,256,810.46
14	27,820	Riverside	\$50,635,154.05
15	20,552	Sacramento	\$38,712,929.04
16	33,335	San Bernardino	\$59,681,806.62
17	46,512	San Diego	\$81,296,990.84

<sup>27</sup> Allocation per unserved resident =  $(\$1B - [(\$5M/\text{county}) \times (31 \text{ counties})]) / (515,127 \text{ unserved residents})$ .

18	3,288	San Francisco	\$10,393,543.73
19	14,896	San Joaquin	\$29,434,983.99
20	10,575	San Luis Obispo	\$22,346,935.80
21	3,307	San Mateo	\$10,424,710.80
22	6,627	Santa Barbara	\$15,870,746.44
23	18,907	Santa Clara	\$36,014,516.81
24	3,245	Santa Cruz	\$10,323,007.72
25	16,729	Shasta	\$32,441,786.20
26	7,320	Solano	\$17,007,524.36
27	8,677	Sonoma	\$19,233,509.41
28	12,407	Stanislaus	\$25,352,097.64
29	24,463	Tulare	\$45,128,424.64
30	9,365	Ventura	\$20,362,085.47
31	6,335	Yolo	\$15,391,757.76
<b>TOTAL</b>	<b>515,127</b>		<b>\$999,999,999.97</b>

## 8. Application Evaluation Criteria

Consistent with federal rules, the ACR proposed that approved projects must deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps.<sup>28</sup>

The ACR also proposes the following evaluation criteria for project applications:

- 10 points for applications with matching funds;
- 10 points for applications proposing fiber optic infrastructure;

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<sup>28</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.

- 10 points for an application proposing to build a broadband network owned, operated by, or affiliated with local governments, non-profits, Tribe, and cooperatives;
- 10 points for applications that integrate two or more affordability options (*e.g.*, affordable offer, low-income plan, California LifeLine, federal Lifeline, and/or the Emergency Broadband Benefit or its successor);<sup>29</sup>
- 40 points for an application proposing to serve an area identified by the Commission's Communications Division;<sup>30</sup>
- 10 points for applications that demonstrates the financial, technical, and operational capacity to execute the project successfully and complete on time; and
- 10 points for applications that demonstrate 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 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.

### **8.1. Party Positions**

Parties propose a number of changes to the evaluation criteria.

CENIC notes the proposed evaluation criteria do not indicate how point values will be awarded to applicants and appear to award points on an all or nothing basis.

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<sup>29</sup> Interim Rule, 86 Fed. Reg. 26786, 26806.

<sup>30</sup> Pub. Util. Code § 281 (b)(5)(C). *See also*, Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26804 (May 17, 2021).

GeoLink, Joint WISPs, and Verizon support eliminating the 10-point preference for fiber. Verizon supports reducing or eliminating the 10-point preference provided to partnerships with local government, Tribes, nonprofit entities, and cooperatives, asserting that the Commission should grant preference or credits based on a track record of successful broadband deployment, on entities proven ability to construct and manage broadband infrastructure. While TURN supports providing funding criteria for these partnerships, TURN urges the Commission be cautious about expending significant time or resources to try to incentivize private providers to participate in this realm and should closely review the proposed partnership to ensure that the public agency is a true partner in the project. LAEDC and TURN oppose requiring applicants find matching or additional funds for FFA projects, as these may preclude smaller, but nonetheless vital projects.

Cal Advocates and RCRC support awarding additional points to proposed projects in areas without access to broadband Internet service at speeds of 10/1 Mbps, and to applications proposing to serve marginalized communities. RCRC further suggests prioritizing areas lacking sufficient mobile wireless coverage as these areas typically prone to natural disasters. GeoLinks proposes making additional points available for applicants that leverage federal funding from other grant programs.

Greenlining Institute recommends increasing the number of points offered for affordability from up to ten points to up to 15. SANDAG suggests the Commission add additional credit or weight for the affordability requirement to ensure affordable options are thoughtfully integrated. Until such time as the Commission revises LifeLine to include broadband Internet service plans, Cal Advocates proposes that the Commission award FFA applicants for participation



in LifeLine and up to ten points for offering two or more affordable options including Lifeline and EBB. San Francisco proposes the Commission award additional points to projects owned or operated by local government or non-profits, as these entities have a longer-term perspective than private companies, with more points for local governments over non-profits. CWA asserts the Commission should not give municipal broadband Internet networks preferential treatment. Rather, CWA argues that, with greater oversight and accountability, private companies are best for network deployment, having economies of scale and skilled workforces, while municipal and nonprofit broadband Internet network builds are not scalable, and often work best in small localities that own and operate an electric utility. CWA concedes, however, that public-private partnerships are a fast and efficient manner to deploy fiber to the home.

CCTA asserts that, as drafted, the Staff Proposal does not indicate how the proposed point system would be used and that some of the proposed criteria are basic application requirements. CCTA proposes an evaluation process that is only used when either: 1) there are competing applications for the same proposed project area, or 2) the total amount of funds requested in applications exceeds available funds. CCTA contends its proposed process would prioritize proposed projects that will connect the greater number of unserved households in a consortia region that has not met the 98 percent goal; proposed projects that will connect the greater number of unserved households that have no service or very slow service; proposed projects that are located in an urban county or rural county with a greater proportion, compared to other urban or rural counties respectively, of households without access to broadband internet access service

with at least 100 Mbps download speed; and proposed projects that will provide the greater percentage of matching funds.

CCBC recommends the Commission focus more explicitly on reviewing applications in six months.

Frederick L Pilot and SANDAG propose that the Commission prioritize last mile projects that leverage the state-owned middle mile infrastructure or give those applications additional credit.

## **8.2. Discussion**

We adopt the evaluation criteria in the Staff Proposal with modifications. To begin, we revise the point totals to reflect that applicants may receive up to the amount specified.

We decline to eliminate the proposal to award up to 10 points for applicants that propose to offer Internet service using fiber. The Final Rule explicitly encourages fiber projects. Awarding 10 points to fiber projects aligns with that goal.

We modify the 10 points provided for offering affordable plans or participating in low-income subsidy programs to reflect updated guidance from the Treasury in the Final Rule. In an effort to incent local governments to participate in this program, we also increase the amount of points available for broadband networks operated by municipalities, Tribes, non-profits and cooperatives and reduce the amount for priority projects identified by the Commission's Communications Division by 10 points. We also add two incentives for applicants to offer longer-term pricing commitments and affordable plans. The evaluation criteria for project applications, as modified, are:

- Up to 10 points for applications with matching funds;

- Up to 10 points for applications proposing fiber optic infrastructure;
- Up to 20 points for an application proposing to build a broadband network owned, operated by, or affiliated with local governments, non- profits, Tribe, and cooperatives;
- Up to 10 points for applications that integrate the California LifeLine or federal Lifeline program;<sup>31</sup>
- 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;
- Up to 20 points for an application proposing to serve an area identified by the Commission's Communications Division;<sup>32</sup>
- Up to 10 points for applications that demonstrate the financial, technical, and operational capacity to execute the project successfully and complete it on time;
- Up to 10 points for applications that demonstrate 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; and
- Up to 10 points for applications that propose to leverage the statewide open-access middle mile network, unless not in reasonable proximity to the network.

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<sup>31</sup> Interim Rule, 86 Fed. Reg. 26786, 26806.

<sup>32</sup> Public Utilities Code § 281 (b)(5)(C). See also, Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26804 (May 17, 2021).

## **9. Leveraging Other Funds**

The ACR requests comments on how the FFA can best coordinate and leverage other broadband infrastructure funds.

### **9.1. Party Positions**

Parties do not agree on how, or necessarily even if, FFA rules should leverage other broadband infrastructure funds.

CforAT, SANDAG and CVAG support leveraging state and federal funds to connect the largest number of households possible. CVAG recommends the Commission prioritize projects that have secured funds for last mile connections. AT&T supports allowing matching funds for FFA grants provided an ISP is not able to “double dip” and receive funding from two programs to deploy the same service in the same area. SBUA supports leveraging grant programs that target digital equity and economic benefits for low-income, unserved, underserved, disadvantaged customers, including small and diversified businesses, such as the federal Small Business Administration and California’s and Governor’s Office of Business and Economic Development programs, though FFA applicants should use these programs before FFA when applicable. SCAG encourages coordination with the California Department of Housing (HCD) and the United States Department of Housing and Urban Development (HUD).

LAEDC recommends coordination between local and state agencies, as well as CASF regional consortia. SCAG recommends partnerships with other agencies, private sector, and non-profits that can assist in the application process, including metropolitan planning organizations like SCAG. NCC and TURN support the Commission facilitating information sharing on FFA and other programs.

SDG&E encourages the leveraging of existing infrastructure, including through joint trenching agreements.

The Small LECs assert that projects awarded under FFA should not compete with projects granted from other Commission-related programs, or other new grant programs contemplated by SB 156, and that projects under the FFA program should be prioritized because the funding is available for a short period of time.

CCTA, Comcast, and Frontier recommend that FFA rules should align, to the extent possible, with the existing CASF Infrastructure Grant rules, to encourage program participation and increase efficiency, though Frontier asks the Commission to not prioritize applications based on percentage of matched funding the applicant proposes. Instead of leveraging federal and state funds, Comcast also appears to suggest the Commission devise program rules for line extension to unserved areas that are consistent with the FFA program and the CASF program.

## **9.2. Discussion**

The Final Rule provides additional guidance for the Commission on how to address instances in which existing funds from other broadband infrastructure programs have been allocated to improve service in a proposed project area:

to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds

will not be used for costs that will be reimbursed by the other federal or state funding streams.<sup>33</sup>

Consistent with the Final Rule, grant applications that propose to combine FFA funds with funds from a separate broadband infrastructure grant program will be permitted. Applicants must detail how these funds address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Applicants must itemize project costs, detail how funds will not be used for costs that will be reimbursed by the other federal or state funding streams and explain the public benefit that additional funds will provide. This will help prevent duplication of funding and help meet the requirement in the Final Rule that SLFRF funds are being used to address a need in the area and will not cover the same costs reimbursed by other grants. Applications seeking to leverage additional funds are not eligible for ministerial review and must be approved by the Commission by resolution.

Locations with existing enforceable federal or state funding commitments to deploy reliable wireline service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed will not be included in the locations Communications Division identifies as being eligible for funding. These commitments must be public and demonstrable. If a grant application proposes to serve locations with an enforceable commitment, the grant must be approved by Commission Resolution.

## **10. Eligible Entities**

The ACR proposes the following entities as eligible recipients of a FFA grant:

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<sup>33</sup> 87 Fed. Reg. 4422 (January 27, 2022).

- 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.<sup>34</sup>

The ACR also asks for recommendations regarding what information the Commission should consider in the rules to allow flexibility to enable partnerships between entities and providers, including public entities and one or more broadband Internet service providers.

### **10.1. Party Positions**

AT&T supports enabling partnerships between entities and providers as an effective mechanism to achieve the program goals. NCC recommends defining eligible entities in broad terms to include a range of innovative approaches that communities may use to improve connectivity. CCTA urges the Commission to adopt the same approach as the existing CASF Infrastructure Grant Account, which allow any entity, including a public agency, to apply for a grant upon a showing of being technically, economically, and operationally qualified and otherwise complying with program requirements, and permits partnerships as long as one member of the partnership is the designated lead

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<sup>34</sup> On April 6, 2018, a Tribal Consultation Policy was formally adopted by the California Public Utilities Commission (Commission). The Commission’s Tribal Consultation Policy defines “California Native American tribe” as a Native American Tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. (See Public Resources Code Section 21073.) California Native American Tribes include both federally recognized and non-federally recognized Tribes.

party that meets application requirements and signs the consent form agreeing to be accountable for compliance with all terms of the grant.

RCRC supports creating alternative rules for municipalities and tribal governments creating open access last mile networks. SBUA also supports encouraging public-private partnerships, though the organization cautions that public-private partnerships can lead to challenges when the private entity is granted public right of way (ROW). To avoid this, the CPUC should not grant public ROW to other last mile providers which are not also provided to utilities with the same ROW and special conditions. SANDAG urges the Commission to expand eligibility to metropolitan planning organizations (like SANDAG and SCAG), regional transportation planning agencies, broadband consortia, as well as educational institutions, community-based organizations or cooperatives that may want funding to partner with an ISP. CETF and UNITE-LA propose expanding eligibility to anchor institutions, such as school districts, library systems and rural telehealth providers or their consortiums, as well as nonprofit organizations dedicated to providing broadband Internet access service to an unserved or underserved community.

SDG&E supports the proposal to include utilities as eligible entities for FFA grants, especially so the companies may partner with other stakeholders to leverage existing and future utility infrastructure. SDG&E also recommends the Commission expand eligibility to allow for multiple grant recipients to partner with last-mile providers. Frederick L. Pilot proposes the Commission adopt rules that facilitate IOUs wishing to be wholesale network operators offering dark fiber services to retail service providers.

Several parties, including Geolinks, Joint WISPs, CETF, Santa Clara County, CETF, and Verizon urge the Commission to consider wireless service



providers that use new spectrum to deliver Internet access through Citizens Broadband Radio Service (CBRS) and satellite, asserting that the Interim Final Rule does not limit FFA projects to fiber. Joint WISPs also recommend that the proposed rules be updated prior to the Commission adopting them in the event the interim SLFRF rule is updated, or that the rules only apply to funds made available through SB 156 and ARPA, as future funding from the State or Federal government may have different requirements.

Frederick L Pilot supports the Commission adopting rules that encourage public entities as wholesale network operators, given the traditional role of public entities as owners and operators of critical infrastructure and the 30–50-year life of fiber infrastructure that supports ownership stable public entities can provide. NCC suggests the Commission could defer to municipalities and provide local leaders with policy mechanisms and educational tools needed to hold providers accountable for commitments made during the funding application process, including model contracts, peer-to-peer collaboration, and enforcement from the Commission could provide important balance that also maintains ample room for innovation. RCRC opposes requiring entities that do not hold CPCNs provide a letter of credit, asserting that it will add costs and discourage public entities from building networks, and that municipalities can demonstrate fiscal responsibility by other means, as it is rare for them to go bankrupt but private entities do so regularly.

## **10.2. Discussion**

We revise the list of eligible entities to include non-profits and cooperatives in response to parties' comments. This enables flexibility in the type of partnerships and is consistent with the "Type of Partnership" criterion under Evaluation of Applications section of the Staff Proposal.

The Commission encourages partnerships between various organizations to build out capacity for broadband infrastructure deployment, though the Commission also must balance that with the need to ensure accountability for program funds. Designating the member of a partnership that will be deploying the broadband infrastructure as the lead party for the grant facilitates accountability and compliance with all grant requirements.

If public entities or Tribal governments seek exemptions from specific program rules to accommodate the creation of open access last mile networks, these entities must detail the exemptions they seek in their applications. Given that these applications seek to deviate from Commission rules, they will not be eligible for ministerial review.

With these revisions, the Commission adopts this rule.

#### **11. Funding of Middle Mile Infrastructure**

Consistent with federal rules, the ACR proposes to allow “middle-mile projects,” though recipients are encouraged to focus on projects that will achieve last-mile connections – whether by focusing on 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.

For projects that include funding for middle-mile infrastructure, Staff will evaluate and verify that the proposed middle-mile infrastructure is needed to achieve the last-mile connections. 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. Additionally, the Commission will evaluate whether the proposed middle mile infrastructure can be provided by or incorporated into the statewide middle mile network.

The ACR asks parties to recommend ways the Commission can ensure that FFA grants coordinate and take advantage of the statewide middle mile network authorized in SB 156.

### **11.1. Party Positions**

CCTA recommends the Commission require that FFA projects requesting funds for middle mile infrastructure demonstrate that the infrastructure is “indispensable” to be consistent with the CASF Infrastructure Grant Account rules. As part of its review, CD Staff would examine if existing middle-mile facilities are available. If there are none, CD Staff could also consider whether the new state middle- mile network could be utilized to connect the last-mile households in that proposed project.

TURN asserts that the existence of a FFA last-mile applicant that indicates middle-mile facilities are indispensable serves two purposes: (1) it would highlight where middle-mile either does not exist or is not accessible with sufficient capacity; and (2) it would demonstrate that state-wide middle-mile is necessary for last-mile providers to interconnect. If the state-owned middle-mile can provide service to the proposed FFA last-mile project, the FFA funds would not need to expend funds on middle-mile service to serve that project and therefore save FFA funds for additional last-mile projects. Thus, TURN proposes that Staff use information obtained from CASF Infrastructure Grant Account projects and FFA projects that requests funding for indispensable middle mile as an indication that affordable middle mile, with sufficient capacity, does not exist.

SANDAG suggests the Commission allow last mile deployments to also fund complementary middle mile infrastructure to fill in gaps overlooked by statewide middle mile.

Frederick L Pilot and SANDAG propose that the Commission prioritize last mile projects that leverage the state-owned middle mile infrastructure or give those applications additional credit. AT&T, Comcast, Verizon, and San Francisco urge the Commission to not require FFA grantees to use the State's middle-mile network, so grantees may consider other options that may be more economical or operationally feasible and expedite the completion of the project more expeditiously.

CETF, South Valley Internet, and CVAG recommend that the Commission closely coordinate middle-mile connectivity with the California Department of Technology (CDT) and CENIC. Joint WISPs and SANDAG suggest the Commission create a central clearinghouse or database to track permit applications and store public construction locations and scheduling plans, as well as other data on middle- and last-mile investments. Joint WISPs urge the Commission to direct middle-mile and last-mile developers to cooperate in using conduit and trenching to minimize total expenditures and community disruption.

## **11.2. Discussion**

The Commission will award FFA funding to last-mile applications that also propose to include middle-mile infrastructure that is necessary, and not near the statewide middle-mile network. For projects that include funding for middle-mile infrastructure, CD Staff will evaluate and verify that the proposed middle-mile infrastructure is needed to achieve the last-mile connections. CD Staff will verify if existing middle-mile infrastructure in a proposed project area has sufficient capacity, is reasonably affordable, and is open-access prior to granting or making a recommendation to the Commission to grant a proposed

project. CD Staff will post guidance regarding specifications for middle-mile infrastructure funded through FFA on its website.

Additionally, the Commission will evaluate whether the proposed middle-mile infrastructure can be provided by the statewide middle-mile network. Proposed middle-mile infrastructure will be coordinated with the California Department of Technology (CDT) and the Third-Party Administrator to ensure it complements the statewide open-access middle mile network.

As suggested by Frederick L Pilot and SANDAG, the Commission will include whether last-mile projects propose to leverage the state-owned middle mile infrastructure as part of the application evaluation. Applicants will receive up to 10 points. However, if a proposed project is not in a geographic location that will benefit from the statewide open-access middle-mile network, an applicant may still receive credit.

## **12. Open Access**

The ACR proposes several open access requirements for FFA grants.

First, middle-mile segments built using an FFA grant must be open access for the lifetime of that infrastructure, meaning that the grantee owning the infrastructure must offer nondiscriminatory interconnection and Internet access at reasonable and equal terms to any telecommunications service provider that wishes to interconnect with that infrastructure, wherever technically feasible. Additionally, the ACR proposes that pricing, terms, and conditions for other providers to interconnect shall be just, reasonable, and nondiscriminatory. FFA grant recipients must offer tiered pricing and a range of options to fit different business models, including similarly situated entities, such as a wholesale ISP, a government, and public anchor institutions (*e.g.*, a university or hospital). 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. 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.

The ACR also proposes that the Commission require FFA grant recipients to 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>35</sup> In the event that the FFA grant recipient fails to comply with the open access requirement 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.

Finally, the ACR proposes to require FFA grant recipients to submit a confidential annual report for the life of the middle-mile infrastructure, 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.

### **12.1. Party Positions**

Los Angeles County asserts that all middle-mile funding should support publicly owned and open-access fiber and be available to low-income areas where many either do not have broadband or pay too much for it, given the

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<sup>35</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.

County's goal to connect as many people as possible utilizing county-owned infrastructure to extend service to unconnected households. SCAG asserts open-access middle mile can decrease costs and combined open-access middle mile and last mile can promote competition and private investments, with cost savings that can be directed towards lowering subscription fees. Frederick L. Pilot opines that Commission should favor a wholesale network operator model with open-access last mile fiber. RCRC supports creating alternative rules for municipalities and tribal governments creating open access last mile networks."

CETF supports the proposal for including the open access information in an annual report.

## **12.2. Discussion**

We adopt the proposed open-access requirements, with the clarification that our open access requirement for FFA grantees includes the requirement to provide dark fiber services.

## **13. Minimum Performance Criteria**

The ACR proposes that all FFA projects meet the following minimum performance criteria:

- All projects exempt from the California Environmental Quality Act (CEQA) must be completed within 12 months, and all other projects shall be completed within 24 months after receiving authorization to construct.
- All applicants must commit to serve customers in the project area at the prices provided in the application for the life of the infrastructure.
- 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.

- All projects must provide service at no higher than 100 ms of latency.
- 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.
- All projects must provide an affordable broadband plan, as defined in the Definitions, for low-income customers, California LifeLine, federal Lifeline service and the Emergency Broadband Benefit, or its successor.

The ACR also asks, if the Commission should consider applicants that propose to provide voice service or other services and what industry standards for safe and reliable service should the Commission adopt.

### **13.1. Party Positions**

Parties propose several changes to the proposed minimum performance standards.

AT&T and CETF assert a 12-month construction timeline, even for CEQA-exempt projects, is too short and is inconsistent with federal guidance, and instead recommends a minimum construction timeframe of two years. San Francisco recommends at least 36 months for CEQA exempt projects and 48 months for non-exempt projects.

Verizon contends the Commission should recognize that 100 Mbps download and 20 Mbps upload is sufficient for projects that are using technologies other than fiber. CforAT opposes creating a blanket exception for projects using wireless technology, arguing that it would set a lower standard for one technology, especially in light of arguments raised by various wireless Internet service providers that there is wireless technology capable of symmetrical 100 Mbps speeds.



The Small LECs support requiring that any infrastructure funded by FFA grants include voice service offerings using that infrastructure. CCTA supports the proposed rule requiring an FFA grantee to offer voice service that meets federal 911 and backup battery standards. AT&T and Comcast argue the Commission should not require an FFA applicant to provide voice service or score an applicant that specifies it will provide voice any higher than any other applicant. Frontier favors the requirement of offering voice service, including VoIP, but does not support requiring battery backup. Joint WISPs note that fixed wireless service can provide voice service. TURN supports the Staff Proposal, though it suggests the Commission require applicants to describe existing obligations or legal requirements to offer voice, and that applicants distinguish between minimum service standards for performance facility, compared with services that will be offered over those facilities. TURN does not favor a blanket requirement that all applicants offer a voice service to qualify for funding, unless the applicant has preexisting obligations or a regulatory requirement to offer voice service.

TURN proposes the Commission award extra points or additional funding for applicants that agree to participate in state and federal LifeLine programs or CTF discounts or commit to offering an affordable voice service the same or better than existing state and Federal Communications Commission public purpose programs. Cal Advocates recommends the Commission set minimum annual low-income enrollment targets for FFA grantees and increase the target on an annual basis (for example, the Commission could set a target of 20 percent enrollment of low-income households in year one and then increase it by 20 percent each consecutive year).

CWA supports adopting appropriate labor standards that ensure both applicants and any of their subcontractors commit to high-road employment practices.<sup>36</sup> CWA also urges the Commission to require recipients to provide a project workforce continuity plan as contemplated in the Treasury guidance. CWA also recommends the Commission lower the threshold for providing prevailing wage certification or a project employment and local impact report from \$10 million to \$2 million for infrastructure projects.

CCTA and Comcast object to the proposed requirement that an FFA grantee commit to serve customers in the project area at the prices provided in the application for the life of the infrastructure, and instead suggest making the requirement for two years. CETF recommends making the requirement for three of four years.

CforAT urges the Commission to ensure that any measurement of the serviceable life of the infrastructure include the expectation that providers are regularly and effectively maintaining their networks. Santa Clara County

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<sup>36</sup> See CWA's Opening Comments on ACR at 10. CWA urges the Commission to give preference to applicants who can demonstrate that the workforce performing the contract will meet the following criteria:

- High standards of safety training, certification, and/or licensure for all relevant workers, for example, OSHA 10, OSHA 30, confined space, traffic control, or other training, as relevant depending on title and work, and exemplary workplace safety practices;
- Professional certifications and/or in-house training to ensure that deployment is done at a high standard;
- In-house training programs with established requirements tied to certifications, titles, and/or uniform wage scales;
- Locally-based workforce that supports job pipelines for traditionally marginalized communities;
- Relevant work will be performed by a directly employed workforce or employer has policies and/or practices to ensure that any employees of contractors used meet the criteria as described above;
- No recent violations of Occupational Safety and Health Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and state labor and employment laws.

recommends measuring serviceable life for wireline connections by the pole, conduit or other structure hosting the wire, or using the estimates provided by the FCC (projected life for conduit systems is 50-60 years), an audit of AT&T Nevada (50-year financial life of conduit) or the American Wood Protection Association (estimates wood poles useful life of 44.5 years). SBUA recommends measuring an infrastructure's serviceable life against its ability to offer 100 Mbps symmetrical speeds -- if the infrastructure is not technically capable of delivering those speeds or meet reliability criteria, it should no longer be considered serviceable.

Frederick L. Pilot encourages the Commission to reduce the latency standard to reflect the low latency fiber networks offer.

### **13.2. Discussion**

Given the concerns various ISPs raise, we shorten the pricing commitment from the life of the infrastructure for services to five years with the option to adjust in accordance with the Consumer Price Index. Applicants must commit that the prices they propose to charge will not exceed the amount provided in their applications. Prices may be lowered without Commission approval, but may not be increased to more than the committed pricing. As noted in Section 8, applicants that commit to offering prices for a ten-year period, with the option to adjust in accordance with the Consumer Price Index, will receive up to an additional ten points. We also revise this requirement to provide grant recipients with the ability to file a request to waive this requirement with the Communications Division, should the need to raise their prices in the future arise.

In response to concerns raised by AT&T, CETF, and San Francisco, we extend the construction deadline for CEQA-exempt projects from 12 months to

18 months. In addition, FFA grant recipients may request an extension of time as needed, though grantees must be aware of the deadlines in federal statute.

Additionally, as part of the annual resolution process, providers may receive an extension of time. The shorter deadlines reflect the Commission's obligation to ensure these funds are expended in the time allotted by the federal government.

There is an urgency with which these funds must – and can – be expended. If an applicant demonstrates an inability to perform, the Commission must identify this with sufficient time to allocate funds to other projects or applicants before the funds are rescinded by the federal government.

Statute requires FFA projects to pay prevailing wages.<sup>37</sup> In response to CWA's request, we add that to the list of minimum performance requirements.

#### **14. Affordability**

The Interim Federal Rule encourages integrating affordability into the design of this program. With that in mind, the ACR requests comment on the following questions.

- 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?

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<sup>37</sup> California Labor Code, § 1720.

- 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 provide Lifeline services, as well as the Emergency Broadband Benefit, or its successor?

#### **14.1. Party Positions**

Parties offer different options for defining affordability. AARP recommends the Commission calculate an “acceptable broadband burden” that considers the cost of equipment and any monthly fees, as well as decreases in the price of Internet service, and supports prioritizing non-commercial providers as a way to lower prices and to encourage adoption. AARP also notes that affordability is affected by time spent on applying for subsidized broadband. San Francisco recommends the Commission consider offering free or low-cost options for qualifying low-income consumers, and also ensuring long-term commitments from ISPs to making affordable services available. CVAG proposes the Commission define affordability as a percentage of household income, and should reflect an area’s Median Income, similar to how affordable housing is defined (not more than 30 percent of gross income towards housing costs). CforAT recommends including an affordability factor in the Commission’s evaluation of applications and using the definition and metrics of affordability adopted in the Commission’s affordability docket.<sup>38</sup> SCAG contends that open-access to middle mile infrastructure can decrease costs and, when combined with open-access to last mile, can promote competition and private investments, allowing cost savings to be directed towards lowering subscription prices.

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<sup>38</sup> R.18-07-006.

LAEDC advocates for an affordability threshold that is “no higher than the FCC’s 2 percent threshold “and preferably lower to lessen the likelihood of low-income households having to cut other essential expenses to be able to afford Internet access. SBUA supports using the definition adopted in D.20-07-032, which defines affordability “as the degree to which a representative household is able to pay for an essential utility service charge, given its socioeconomic status.” SBUA recommends applying the three metrics specified in that decision: 1) the affordability ratio, 2) the hours at minimum wage, and 3) the socioeconomic vulnerability index, with goals also set for small businesses and diverse businesses. NCC encourages the Commission to adopt a broad definition of affordability to overcome barriers to access and adoption issues and also asserts that supporting community-backed initiatives like publicly owned networks will improve both the availability and the affordability of Internet service.

TURN proposes that the Commission identify needs of low-income communities where the lack of affordable voice and broadband communications services created a barrier to access, establish minimum standards for services offered over these facilities, and create benchmarks and ranges of affordable rates for services offered over the infrastructure built with this funding.

Some parties propose specific monthly rates for affordable service. TURN supports using the current CASF rates and terms as a useful benchmark, though TURN also asserts that the Commission should not look strictly at market rates of existing middle-mile services as a benchmark or definition of affordability. Cal Advocates supports requiring grantees to offer a low-income plan for \$15 per month, which offers speeds of at least 100 Mbps download and 20 Mbps upload, and 100 Mbps symmetrical if the project will offer plans at those speeds. NCC

contends that free and low-cost options, as well as adoption support, are necessary to ensure that all Californians can get online and that even \$10-\$15 per month may be too expensive for some individuals. Greenlining Institute proposes to define an affordable Internet service plan as one that provides service at \$10 per month at speeds sufficient for an entire household to connect to telehealth, teleworking, and remote learning. Currently, Greenlining Institute asserts this should be set at a minimum 50 Mbps, with speeds increasing as societal usage needs increase over time (Greenlining Institute estimates that an average internet user will need 150-500 Mbps download/100 Mbps upload speeds by 2025) and that the offer must be stand alone, without bundles. AT&T and Frontier oppose the proposal to require FFA grantees provide Internet service at an agreed-upon price for the life of the infrastructure. AT&T supports a two-year service agreement term in the Staff Proposal, or a term commensurate with FFA oversight. The Small LECs request an exemption for rate-of-return regulated utilities that specify they do not have to offer a particular rate for retail broadband to access FFA funding, arguing these companies should not be required to offer Internet access service at a loss.

AARP argues the Commission needs to regulate price and service subsidization; otherwise, AARP asserts that prices will continue to increase in non-competitive markets. CCTA opposes the proposal to require FFA grantees to offer a low-income Internet service plan for \$15 a month, asserting it will allow flexibility and not exclude low-income offers, such as the EBB program, with a different existing structure.

CETF and CforAT support the proposal. CforAT and San Francisco recommend the Commission award more points to applications that offer to

charge less. CETF also recommends that we require providers not to levy additional charges for the modem or for installation.

Comcast recommends the Commission adopt a requirement similar to the CASF Infrastructure Grant Account rules, which require all projects to “provide an affordable broadband plan,” but which do not define an “affordable broadband plan.” Instead, the rules require “low-income plans” that cost no more than \$15 per month.

Cal Advocates proposes that, to support enrollment to affordable plans, the Commission require all providers to partner with community-based organizations, local schools, and local governments administering low-income plans.

SCAG recommends an affordable rate of \$20 per month or free service for individuals residing in government-subsidized housing, and to waive the cost of installation and any fees.

CCTA contends there is no need to define “affordability” in this proceeding, given that this issue is being addressed in R.18-07-006. RCRC supports making broadband Internet services affordable but asserts the proposal’s affordability requirements aren’t achievable for networks operated by municipal agencies, and requests that the Commission consider a separate affordability metric for those types of networks. The Small LECs recommend the Commission prioritize deploying broadband Internet infrastructure now, and grapple with affordability issues later.

Several parties recommend using criteria besides income to determine affordability. AARP supports criteria such as for households with long-term health monitoring and health care requirements. SCAG recommends using criteria such as household poverty rates, neighborhood median income,



concentration of public housing, social service recipients, or a “predefined income hierarchy.” Greenlining Institute proposes that the alternative to income-qualified offers should be qualification via enrollment in a public benefits program, as well as using census tract qualification based on the affordability and social economic vulnerability of a census tract. In this same vein, the Commission should mirror the program eligibility from the California LifeLine program to provide the most options for California consumers. Santa Clara County recommends that, if the Commission limits eligibility, it should use criteria that do not require additional documentation to be submitted or complex verification processes, as these are barriers for low-income households. Comcast opposes giving preference to affordable offers that are not income-qualified, asserting this can lead providers to market-based pricing aimed at consumers otherwise unwilling to subscribe. Comcast also asserts that giving such a preference would be outside the Commission’s authority and would be preempted by federal law.

AARP supports categorical eligibility for households in a qualified census tract and could even extend that to ESJ and Tribal communities. San Francisco asserts there is too much variance among the residents within a census tract (both very low-income individuals and individuals with very high income can be located within the same tract) for that geographic span to be used accurately.

Regarding how to consider low-income offers based on participation in low-income programs, AARP, Cal Advocates, CVAG, LAEDC, SANDAG, SCAG, and CforAT support making customers that participate in any California public assistance program automatically eligible for affordable offers. These programs can include, among others, Temporary Assistance for Needy Families, Cash Aid,

Medi-Cal, and Cal-Fresh/SNAP, CalWORKs, and individuals receiving Section 8 vouchers and or other public housing benefits.

Regarding the term length of affordable offerings, AARP and SANDAG support an indefinite term, while CVAG recommends at least two years, and LAEDC contends the affordable plans should be for as long as practically possible.

Several parties support requiring FFA grantees to participate in some low-income program. AARP, CETF, NCC, SBUA, and CforAT support requiring FFA grantees to offer a low-income plan, like LifeLine providers or EBB recipients must. Comcast opposes the requirement to offer LifeLine service, but not EBB, and recommends including other qualifying programs targeting low-income customers, such as Comcast's Internet Essentials. Cal Advocates suggests the Commission not require FFA grant recipients to offer LifeLine until after the Commission revises the California LifeLine program to include standalone broadband plans. AT&T asserts that if a provider participates in the EBB, it should not also be required to participate in the federal Lifeline or state LifeLine programs. In addition, participation in the federal Lifeline program under current rules would require a provider to become an Eligible Telecommunications Carrier, which Treasury's Final Rule does not require, and which would likely deter many providers from participating in the FFA.

#### **14.2. Discussion**

The Final Rule finds that "a project cannot be considered a necessary investment in broadband infrastructure if it is not affordable to the population the project would serve," and requires:<sup>39</sup> 1) grantees to participate, for the life of

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<sup>39</sup> 87 Fed. Reg. 4418 (January 27, 2022).

the infrastructure, in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP;<sup>40</sup> 2) that services include at least one low-cost option offered without data usage caps, and at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning;<sup>41</sup> and 3) that recipients report speed, pricing, and any data allowance information as part of mandatory reporting to Treasury.<sup>42</sup>

We require FFA grantees to participate in the federal ACP or otherwise provide access to a broad-based affordability program to low-income consumers. We revise the application evaluation criteria to reflect that this is no longer optional. We also revise the application evaluation criteria to provide grantees that participate or commit to participating in the federal Lifeline program or the California LifeLine program 10 points. This is in recognition that these public programs provide access to vital telecommunications services, in addition to the ACP.

We encourage all applicants to include a generally available low-cost broadband plan. Applications will receive 20 additional points for offering a generally available low-cost broadband plan for the life of the infrastructure that includes the following minimum standards:

- Must not include data usage caps;

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<sup>40</sup> *Id.* at 4418, 4421.

<sup>41</sup> 87 Fed. Reg. 4408 (January 27, 2022).

<sup>42</sup> *Id.*

- Must offer speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning, which is defined as 50/20 Mbps;
- Must be no more than \$40 per month;
- The grantee must not charge for installation or setup;
- The grantee must provide a free modem or router; and
- The service does not require a minimum term.

Grant recipients have the option to adjust the \$40 per month plan in accordance with the Consumer Price Index. Grant recipients also may submit a request to the Communications Division to waive or modify these requirements in the future, should the need to adjust these requirements arise. The Commission will update these requirements as needed. Since applications that receive lower scores reflect a reduced commitment to provide public benefits, CD Staff may make recommendations to the Commission via resolution to reduce the percentage of public funding, commensurate with the reduced public benefit.

Qualifying low-income households may apply the ACP to a grantee's low-cost offer. The Infrastructure Act includes the requirement that a provider participating in the ACP "shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the Participating provider, at the same terms available to households that are not eligible households."<sup>43</sup> The FCC ACP rules implementing this requirement specify that a household qualifying for the ACP may apply the benefit to "any broadband internet plan that a provider currently offers to new customers."<sup>44</sup> For

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<sup>43</sup> 47 U.S.C. § 1752(b)(7).

<sup>44</sup> Affordable Connectivity Program Emergency Broadband Benefit, Report and Order and Further Notice of Proposed Rulemaking, Federal Communications Commission (Jan. 21, 2022), para. 94, <https://docs.fcc.gov/public/attachments/FCC-22-2A1.pdf> (accessed Jan. 28, 2022).

a qualifying household applying the ACP \$30 non-Tribal benefit to a low-cost broadband plan the resulting price would be around \$10—consistent with commenters noting plans with a price in the range of \$5-15 would make broadband that meets “an adequate minimum level of service”<sup>45</sup> more accessible to low-income households.

We decline to adopt a definition for “affordability” in this decision that is different from the Commission proceeding dedicated to this matter. D.20-07-032 defines affordability as “the impact of essential utility service charges on a household’s ability to pay for non-discretionary expenses.”<sup>46</sup> We decline to adopt specific requirements about whether the low-cost \$40 amount includes other provider-imposed charges such as administrative fees or regulatory cost recovery charges, though the Commission will continue to watch for anti-consumer behavior in the implementation of low-cost broadband plans, and track federal and state dockets including the FCC broadband label docket<sup>47</sup> and Commission surcharge proceeding<sup>48</sup> for relevant consumer protections and other requirements.

## **15. Reimbursable Expenses**

The ACR proposes that the Commission reimburse the following costs:

- Costs directly related to the deployment of infrastructure;

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<sup>45</sup> 87 Fed. Reg. 4408 (January 27, 2022).

<sup>46</sup> See Appendix A at 6.

<sup>47</sup> See Empowering Broadband Consumers Through Transparency, CG Docket No. 22-2, Notice of Proposed Rulemaking, Federal Communications Commission (Jan. 27, 2022), <https://docs.fcc.gov/public/attachments/FCC-22-7A1.pdf> (access Jan. 28, 2022).

<sup>48</sup> See Order Instituting Rulemaking to Update Surcharge Mechanisms to Ensure Equity and Transparency of Fees, Taxes and Surcharges Assessed on Customers of Telecommunications Services in California, Rulemaking 21-03-002 (Mar. 4, 2021).

- Costs to lease access to property or for Internet backhaul services for a period not to exceed five years; and
- Costs incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.

Per federal rules, the Commission will reimburse costs incurred during the period beginning March 3, 2021 and ending December 31, 2024. Additionally, administrative expenses directly related to the project shall be capped at two percent of the grant amount and a maximum of 15 percent contingency on direct infrastructure costs.<sup>49</sup>

### **15.1. Party Positions**

Several parties suggest revisions to the proposed rules regarding what expenses FFA funds will reimburse. CENIC recommends the Commission reimburse approved grantees for Costs associated with the development of their grants. CETF urges the Commission to increase the cap on administrative expenses in the range of eight to twelve percent, asserting that limiting administrative expenses to two percent is too low. CETF does not support the 15 percent contingency on direct infrastructure costs, given the materials and supply costs for broadband is going up. SANDAG, CETF, Santa Clara County and Frederick L. Pilot encourage the Commission to allow technical support to eligible applicants.

### **15.2. Discussion**

We adopt the Staff Proposal without modification. It is imprudent to reimburse applicants for the cost of developing their application, particularly if

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<sup>49</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.

the applications are not viable or successful. Further, the Commission envisions providing assistance directly to potential applicants, as well as making funds available for technical assistance grants to eligible local agencies and sovereign Tribal governments.

#### **16. Information Required from Applicants**

In summary, the ACR proposes requiring applicants to submit separate applications for any eligible project. Non-contiguous project areas may be considered as a single project. In order to be reviewed, all applications must include:

- A public project summary;
- Specific information Applicant Entity Information;
- A description of the provider's current broadband infrastructure and service within five miles of the proposed project and a description of other providers' infrastructure within the project area;
- The geographic location of all households and housing units and project related key network equipment;
- The median household income for each Census Block Group (CBG) that intersects the project area;
- An assertion that the applicant reviewed the wireline served status on the Broadband Map and determined that the broadband project area proposed is eligible, or the applicant will provide evidence to dispute that the area is served;
- A detailed deployment schedule;
- A detailed budget showing proposed project expenditures;
- A listing of all the equipment to be funded and the estimated useful life;
- A Letter of Credit if the applicant does not hold a CPCN;
- A pricing commitment;

- Marketing/Outreach plans;
- Government and community support;
- Funding sources for expenses not covered by the grant;
- Financial qualifications;
- A project viability forecast; and
- The following information:
  - Availability of voice service that meets California and FCC requirements for 9-1-1 service battery back-up;
  - Deployment plans for applicable Federal and state requirements;
  - A CEQA Attestation;
  - The Program Application Checklist Form; and
  - An affidavit.

Full details on each of the items listed above are in Attachment A of the ACR on pages 14-22.

### **16.1. Party Positions**

AT&T asserts that providing major equipment expenses in an application are unnecessary details 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. Additionally, AT&T argues that Item 9.9 “Economic Life of All Assets to be Funded” should be deleted as irrelevant and unnecessary.

TURN urges the Commission to require applicants to include a “roadmap” or detailed explanation of how the applicant will use funding related to project expenses and associated timelines that are currently required, as well as an explanation for why CASF Infrastructure Grant account funds would not be more appropriate source of funds for upgrades.



Verizon supports requiring a FFA applicant to disclose other grants or public funds it has already received or expects to receive.

CETF recommends that the required Marketing/Outreach Plan be “in-language” when serving a population that is limited-English speaking, where applicable, and that the Marketing/Outreach Plan include a requirement to advertise affirmatively in a prominent fashion, affordable broadband offers.

Regarding the requirement for evidence of community support, AT&T and CCTA caution the Commission against weighing that support more heavily than the various technical deployment requirements. RCRC recommends requiring community support. San Francisco suggest requiring applications to include a letter of support from the executive of the jurisdiction (local or county) that would be served by project, with the letter containing sufficient details to ensure community leaders understand the scope of the proposed project. CETF counters that the proposal is not a requirement.

## **16.2. Discussion**

The final adopted requirements, including all details regarding the information applicants must provide, are contained in Appendix A. We make the following refinements:

- As identified by AT&T, we correct the examples of major equipment expenses;
- We clarify the process by which an applicant would propose revising the area for which they are requesting funding;
- We revise the pricing commitment requirement to be consistent with the affordability requirements adopted in this decision;
- We revise the funding sources application item so that it is consistent with the requirements on leveraging other funds adopted in this decision;

- We clarify that newly formed organizations applying for funding should submit financial statements of the parent or sponsoring organizations, including an explanation of the relationship between those organizations;
- We remove the requirement that an application include the checklist, as applications will be filed online; and
- Local and Tribal governments are exempt from the requirement to obtain a letter of credit, provided they can demonstrate administrative capability and expertise in financial administration; demonstrate relationships with financial advisors; in-house or contracted expertise in evaluating broadband infrastructure project feasibility; and demonstrate relationships with, and support from, experienced public or nonprofit broadband system operators. These types of applications must be approved by Commission resolution.

## **17. Application Submission Timelines**

The ACR proposes that the Commission accept FFA applications on a quarterly basis (i.e., January 1, April 1, July 1, and October 1). Applicants should electronically file complete 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 Commission. Since applications are not filed with the Commission's Docket Office, they will not be assigned proceeding number(s).

### **17.1. Party Positions**

Frontier and AT&T support quarterly application windows. SANDAG urges the Commission to allow applicants enough time to find appropriate ISP partners to avoid precluding public entities from participating. CCTA recommends two application cycles each year to allow enough time to review and act on all pending applications and eliminate confusion for potential applicants as to which areas remain eligible for a FFA grant.

**17.2. Discussion**

We revise the proposed rules to no longer require mailed hard-copy applications. At the beginning of each application cycle, CD Staff will serve instructions regarding how to file electronic applications on the service list for this proceeding, the service list for the CASF proceeding, and the CASF Distribution List. CD Staff will announce application submission and other deadlines. Applications should be due every six months and staff will target to review applications in no more than six months. Organizations will have 14 days, inclusive of holidays and weekends, to file objections to applications.

**18. Posting of Applications**

The ACR proposes that CD Staff post a list of all pending FFA applications, objection deadlines, and notices of amendments to pending applications on the FFA webpage. CD Staff also will serve notice of the applications, deadlines and amendments on the existing CASF Distribution List, given the number of interested individuals and entities that already are part of that list. CD Staff will post Application Summaries and Maps to the Commission website and notify CASF Distribution List within 10 days after the application submission deadline. The deadline to submit objections to any applications will be 10 days after the notice is served. In the event any date falls on a weekend or holiday, the deadline is the next business day.

The Commission will endeavor to serve notice of applications and any amendments to an application for project funding to those on the service list for this proceeding, the service list for the CASF proceeding, and the CASF Distribution List, and post on the FFA webpage at least 30 days before publishing the corresponding draft resolution.

**18.1. Party Positions**

No parties filed comments on this proposal.

**18.2. Discussion**

The Commission adopts this proposal.

**19. Application Objections**

The ACR proposes to provide a period during which interested persons may review FFA grant applications 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 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 from when the entity serves notice of the application on the CASF Distribution List, or a different date set by CD Staff. 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. 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 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>50</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 information to be considered:

- An attestation that all information provided is true and accurate in accordance with Rule 1 of the Commission’s Rules of Practice and Procedure;
- An attestation that the households identified 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 plaintext, 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; and
- Pictures of provider infrastructure in the area (i.e., wires, huts, vaults, etc.).

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<sup>50</sup> See, FAQ Question 6.9.

The ACR proposed that comments that do not meet these requirements be deemed denied, that the Commission will only accept public comments and that objections based upon confidential and other non-public service data 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.

CD Staff will review this information, along with the applicant's documentation, as it develops its recommendations to the Commission for the disposition of each application.

#### **19.1. Party Positions**

TURN asserts that the Broadband Map does not necessarily demonstrate minimum speeds at any given time, and that both applicants and objectors should be required to submit evidence (speed, jitter, and latency tests) to determine if the broadband availability provides 25/3 Mbps at all times. CCTA contends the Commission should require that both applicants and objectors submit "credible and verifiable" evidence about served status of a proposed project area with a comparable attestation of the accuracy of all submitted information. CCTA argues the Staff Proposal includes disparate evidentiary standards heavily biased toward determining an area to be unserved, which it declares is unfair, unjustified, and contrary to statute. SANDAG contends that if an entity wants to contest an application, it should be that entity's responsibility to show the project area is served and has widespread adoption by providing households subscribed, service quality and service costs.

Regarding objector deadlines, Comcast and CCTA note the inconsistency in the Staff Proposal (Section 10 allows 10 days and Section 12 allows 21 days),

and assert that neither of 10 days nor 21 days is sufficient time for ISPs to prepare objections, given the expected high volume of applications, and instead ask that the deadline for submitting objections be at least 30 days. CforAT generally supports the proposal to allow objections, though it asserts that a 21-day objection period may allow some ISPs to upgrade service and block applications. To avoid this, CforAT recommends the Commission require the objecting ISP to show served households at the time the application is filed and have a high-ranking executive attest to that fact.

CCTA and Comcast support eliminating the requirements that objections must include permits, easements, or pole attachment applications and pictures as evidence for disputing unserved status, arguing these requirements are unnecessary and would disadvantage objectors due to the time involved in collecting that information. Comcast requests the Commission allow objectors to submit competing speed tests to challenge CalSPEED as well as qualitative information (e.g., community interviews and testimony re served speeds).

CforAT supports the proposal to use only information that is available to the public. CCTA and Comcast argue the Commission should ensure the confidentiality of customers' personally identifying information and critical infrastructure information that is included in an objection. Joint WISPs contend the information provided by an objector should remain confidential or released information should be redacted.

Comcast opposes the requirement to include a Rule 1 attestation in an objection, asserting it is unnecessary.

SBUA recommends the Commission prohibit formal objections to wireless broadband applications in locations where geography, topography, or cost prohibitive implementation may render wireline broadband impractical.

CETF notes that a weblink to the CASF Distribution List should be provided at the end of the second paragraph where it is referenced.

### **19.2. Discussion**

The Commission adopts the proposed rules on application objections with revisions updating the language to reflect the Final Rule.

We note that federal rules grant the Commission broad discretion to implement these rules. We disagree with CCTA's argument that the proposed rules for application objections are heavily biased towards determining an area to be unserved. That contention ignores the fact that the initial determination of whether an area is served or unserved is based entirely on the data an ISP submits to the Commission as part of its annual broadband data collection. If an area is eligible, at least initially, it means either that an ISP did not indicate that it served the area in question at served speeds, or CD Staff was unable to validate the data the ISP submitted.

We revise the objection requirements to also require an attestation asserting that households are offered broadband service at speeds of 100/20 Mbps or 100/100 Mbps. This more robust information (on whether a location is offered 25/3 Mbps, 100/20 Mbps, or 100/100 Mbps) will allow the Commission to better understand broadband service in a given community.

With our revisions, objections must include the following information:

- An attestation that all information provided is true and accurate in accordance with Rule 1 of the Commission's Rules of Practice and Procedure;
- An attestation that the households or locations identified are offered service and have the capability to reliably receive minimum speeds of 25 Mbps download and 3 Mbps upload by a wireline service provider;



- An attestation as to whether or not the households or locations identified are offered service and have the capability to reliably receive speeds of at least 100 Mbps download and 100 Mbps upload or, or at least 100 Mbps download and 20 Mbps upload and information on why provision of 100 Mbps upload is not practicable.
- The geographic location of all households or locations it serves in the area(s) for which the objection is filed. This information must be provided in a plaintext, 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, including customer billing statements to verify subscribership. Unredacted customer bills shall be filed under seal and kept confidential; and
- At least two of the following: (1) permits, (2) easements, or (3) pole attachment applications submit and approved when infrastructure was built; and (4) pictures of provider infrastructure in the area (*e.g.*, wires, huts, vaults, etc.).<sup>51</sup>

In response to comments from Comcast, noting the inconsistencies with the amount of time provided to submit objections, we revise program rules to allow objectors 14 days to file their objections. In the event the fourteenth day falls on a weekend day or holiday, objections are due the next business day. While some parties suggest 30 days would be more reasonable, we find that the accelerated timeline to expend ARPA funds necessitates a shorter timeframe.

We dismiss CCTA's opinion that the Commission is required to keep much of the data supplied as part of an application objection confidential. CCTA contends that the Commission should clarify that customer bills, service

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<sup>51</sup> An example to meet the picture requirement is a street-view image using Google Maps that contains poles that the objector has fiber attached.

locations, pole attachment applications and permits, and granular subscriber data will be afforded confidential treatment and that any customer bills provided to staff can be redacted as needed to comply with state (and federal) customer privacy requirements.<sup>52</sup> Below we discuss each issue, relying on statute and previous Commission decisions.

Regarding whether or not to disclose pole attachment applications/agreements, the Commission concluded the following in D.21-10-019:

It is reasonable to conclude that the five major pole owners and/or attachers have not demonstrated that the attachment data required by this decision is confidential, trade secret protect, privileged, exempt from disclosure from Section V (Nondisclosure of the Commission's Right-of-Way Rules), or protected from disclosure by national security concerns. Any of the five major pole owners and/or attachers may renew their request to prevent the disclosure of their data attachment information by filing a motion and provide the necessary granular information and declaration to support the confidentiality request.<sup>53</sup>

We adopt the same rebuttable presumption here, allowing ISPs objecting to a FFA application relying on a pole attachment application to file a motion for confidential treatment and provide the necessary granular information and declaration to support that request, in accordance with the Commission rules regarding confidential submissions. When the Commission reaches a determination on those motions as part of Investigation (I.) 17-06-027 and I.17-06-028, those rules will apply here.

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<sup>52</sup> *Comments of the California Cable and Telecommunications Association on Proposed Decision*, filed March 22, 2022, at 11-12.

<sup>53</sup> Conclusion of Law 21.

While customer bills must be kept confidential because those documents contain Customer Proprietary Network Information (CPNI), an ArcGIS-compatible file containing serviceable addresses/locations, or a map displaying this data, does not. These files do not include the name of the resident at the address, if they subscribe to Internet service, the ISP they subscribe to, how much their monthly bills are, their data usage or search history, or other information that may constitute CPNI. Permits also do not contain CPNI. Thus, we see no reason to not disclose this information based on that claim.

In D.20-12-021, the Commission analyzed in great detail a number of claims by telecommunications services providers regarding information that must remain confidential and other information that may be disclosed. One recurring theme throughout that decision is that information already in the public domain does not receive confidential treatment, as it does not meet the definition of a trade secret,<sup>54</sup> nor does it meet the definition of “critical infrastructure information.”<sup>55</sup> Permits generally are already in the public domain. Deployment/serviceable address data also is in the public domain. The California Broadband Availability Map provides the census blocks where an ISP claims to offer service. Therefore, we see no reason to not disclose permits and broadband deployment/serviceable address information relying on their status as trade secrets or critical infrastructure information, since they do not meet the definition of either category.

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<sup>54</sup> See D.20-12-021 at 21.

<sup>55</sup> *Id* at 29. For a thorough discussion of the applicable laws related to public access to government records and requirements for confidential treatment of information submitted by utilities, see D.20-12-021, at pp. 9-19. See also pp. 18-35 for an overview of the applicable standards governing confidentiality claims based on personal customer information, trade secret privileges, the Critical Infrastructure Information Act of 2002, and the California Public Records Act balancing test under Gov. Code § 6255(a).

One exception to our finding is that the number of subscribers provided by an ISP objecting to a FFA application may be submitted with a request for confidential treatment pursuant to the requirements of General Order (GO) 66-D. The Commission would need to analyze this data in greater detail, including if this information meets the definition of trade secret, before ordering its disclosure.

## **20. Ministerial Review**

The ACR proposes that the Commission delegate to CD Staff the authority to approve applications, including determinations of funding, that meet all of the following criteria:

1. The applicant meets the program eligibility requirements;
2. The application has not received objections or CD Staff has determined that the project area is unserved;
3. The total grant does not exceed \$25,000,000;
4. The project is exempt from CEQA, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution;
5. There are no competing applications for the same project area in the same application period; and
6. The proposed project costs \$9,300 per household or less.

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

### **20.1. Party Positions**

Parties disagree on the overall grant limit for ministerial review. AT&T suggests the Commission increase the monetary eligibility per household and maximum grant amount thresholds to \$75 million dollars. CETF recommends increasing the cap to \$100 million. CCTA and Comcast urge the Commission to reduce the overall grant amount threshold to \$10 million. CCTA also supports

reducing the per-household cost to not exceed \$9,300, to align with CASF Infrastructure Grant Account criteria. CETF and Santa Clara County support increasing the per household cap to \$15,000 per household, to account for the increase in the cost for materials and labor. South Valley Internet and LCB Communications suggest increasing the cap to \$13,000 per household.

CCTA also claims Section 3 of the Staff Proposal would potentially give CD Staff unfettered discretion to reject any application, determine all funding amounts, and negotiate all grant terms with each applicant and raises serious questions of unlawful delegation of authority to CD Staff. RCRC asks the Commission to not require a per-household cost projection as an evaluation point for application review or approval, arguing it will disadvantage low-density rural areas that have historically lacked adequate service, given that the least served areas will have a very high per-household costs and need FFA subsidization. RCRC asserts these areas will require ministerial review as the projects will likely take the longest to build

AT&T 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.

## **20.2. Discussion**

The Commission adopts the ministerial review rules with the following additions:

- Applications that propose to leverage funding from other state or federal programs may not be approved by ministerial review;

- Applications with proposed project areas that overlap areas with existing commitments to provide broadband Internet service that is reliable and offer speeds of 100/20 Mbps may not be approved by ministerial review;
- Applications that propose project areas that include areas that have been identified by CD Staff as having an existing provider that offers 25/3 Mbps wireline service (*e.g.*, projects designed to improve economies of scale of existing projects, or areas in which the existing provider does not provide reliable service) may not be approved by ministerial review; and
- Applications that request a waiver of any program requirement may not be approved by ministerial review.

With these revisions, the Commission delegates to CD Staff the authority to approve applications that meet the requirements of the Ministerial Review section in the adopted rules. We firmly dismiss CCTA's opinion that the proposed or adopted rules represent an unlawful delegation of authority to CD Staff. The Commission has previously found that industry division staff may approve applications and other filings after the Commission adopts a specific standard for approval,<sup>56</sup> including other public purpose programs, such as the CASF Infrastructure Account. Further, we note the area of significant concern to providers, including the cable companies that are members of CCTA, is the initial determination of project area eligibility, which has been ministerial in CASF for many years. A ministerial review process will help meet the short deadlines set by federal law.

## **21. Reporting Requirements**

The ACR proposes to require grantees to file progress reports on a bi-annual basis. These reports will be publicly posted by the Commission. Progress

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<sup>56</sup> See D.09-05-020 at 2-3; D.07-09-018 at 18, n.34; D.18-12-018 at 25-26, Conclusion of Law 2.

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.

Details on the information the progress reports shall include are found in Appendix A.

Grantees also must submit completion reports prior to receiving the final payment. Details on the information to include in project completion reports are in Appendix A.

Pursuant to Pub. Util. 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; and
- (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.

### **21.1. Party Positions**

Parties disagree on the frequency of reporting requirements. Frederick L. Pilot supports the semiannual reporting requirement. AT&T recommends the reporting frequency either be quarterly, annually, or only on upon completion for projects approved via the ministerial review process. Cal Advocates urges the Commission to require progress reports, not just completion reports. Verizon and Frontier urges the Commission to avoid onerous reporting requirements and instead adopt minimal requirements that

comply with federal laws on FFA. Verizon recommends the Commission delete proposed categories of information such as the number of paying subscribers enrolled in the service, number of low-income or affordable plan customers enrolled. Verizon also suggests the Commission provide flexibility in the speed measurements for the speed tests, similar to what the FCC has recognized that the range of speed thresholds may be met for speed tests in the Connect America Fund program and allow 80 percent of speed tests. Verizon also asserts that some of the information contained in the reports are “competitively sensitive,” such as the number of paying subscribers, and therefore the reports should not be made public on the Commission’s website.

Cal Advocates recommends the Commission require FFA grant recipients to file a Tier 2 Advice Letter on an annual basis to report on the following items:

- the number of customers that have been notified of the low-income plans and the form of notifications used;
- the number of customers that have signed up for the plans; and
- the number of customers that have cancelled their plans, until four years after the recipients have met the enrollment targets.

If a grant recipient cannot meet its enrollment target, Cal Advocates recommends the Commission require it to meet with the California LifeLine Administrator to discuss how to meet the target. If the grant recipient still fails to meet them, it should be penalized via resolution. Also, Cal Advocates supports requiring FFA grant recipients to provide to the Commission a web link with information on the affordable plan. The web link should provide all information on the plan, ways to sign up, and necessary forms.



CETF suggests that for items such as commitments on rates, affordable broadband plan, open access, and marketing/outreach a brief annual report could be filed where the grantee reports on its compliance with its commitments and signs it under penalty of perjury.

Santa Clara County recommend continuing reporting requirements for affordability and price commitments should last for the life of the longest commitment attached to a project.

SBUA asserts post-construction requirements should not have an end date and reporting should be maintained, arguing this will encourage broadband providers to maintain quality of service.

## **21.2. Discussion**

Treasury's Final Rule requires that grant recipients report speed, pricing, and any data allowance information.<sup>57</sup> As such, FFA grantees will be required to report annually to the Commission's Communications Division the speed, pricing, and any data allowance information on all of their plans.

In addition, to address concerns raised by parties regarding the need for information on the subscribership and availability of affordable and income-qualified plans, we require recipients to report on the number of customers subscribed to the ACP, income-qualified and low-cost plans. We also require grant recipients to include in their report a web link with information on their income-qualified and affordable plans. The web link should provide all information on the plan, ways to sign up, and necessary forms.

In response to comments filed by Cal Advocates, we clarify in Appendix A that grant recipients must report the number of customers enrolled in low-

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<sup>57</sup> 87 FR 4418.

income broadband plans. We define low-income broadband plans as income-qualified broadband plans offered to low-income customers.<sup>58</sup> We also clarify that grantees must submit project progress reports on a quarterly basis to be consistent with the Final Rule.

## **22. Payment**

The ACR proposes to allow FFA grantees to make requests for payment 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 milestones: 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 must be 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 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.

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<sup>58</sup> As defined in the Appendix, "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.

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.

If the recipient fails to notify CD Staff of any delays in the project completion and the project fails to meet the approved completion date, the Commission may impose penalties by resolution. This may include rescinding the grant. Invoices submitted will be subject to a financial audit by the Commission at any time within three 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.

Per federal rules, 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>59</sup>

In the event approved FFA projects have not made substantial progress in constructing the proposed infrastructure, the ACR proposes that on an annual basis, CD Staff draft a resolution for Commission approval that recommends modifications, revisions, and rescissions of grants not demonstrating substantial progress.

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<sup>59</sup> See, FAQ Question 6.11.

**22.1. Party Positions**

AT&T asserts it is burdensome for grantees to produce project-specific receipts and urges the Commission to accept cost information from bulk purchase orders.

**22.2. Discussion**

The Commission adopts the proposed rules with the clarification that CD Staff will provide a template for payments that is consistent with the Treasury's Final Rule and this Decision. The Commission believes it is important to have project specific expenses, though it will endeavor to be flexible, in reviewing project expenditures, depending on the project and circumstances.

**23. CEQA Payments**

The ACR proposes that the Commission directly pay CEQA consultant costs. 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.

**23.1. Party Positions**

No party filed comments.

**23.2. Discussion**

The Commission adopts this proposal.

**24. Execution, Performance and Grant Termination**

The ACR proposes that CD Staff and the grantee shall determine the project start date after the grant recipient has obtained all approvals. Should the recipient or its 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.

If 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 funds that it has received. The FFA grantee must complete all performance under the award on or before the termination date of the award.

Failure of a grantee to comply with the terms of the grant, provided in this decision, and the US Treasury Final Rule, in the Commission's Order approving the grant, or in the grant Agreement included as part of projects approved by CD Staff using its ministerial review authority, may result in cancellation of the award. The Commission or the Recipient may terminate a grant award, at any time by delivering 10 days written notice to the applicant/grant award recipient. If the applicant terminates the grant award, for any reason, it will refund to the Commission within 30 days of the termination, all payments made by the Commission to the applicant for work not completed or not accepted by the Commission. No less than 10 days before the termination, the applicant must notify the Commission in writing.

Grant recipients shall comply with the ARPA and all other applicable federal statutes, regulations, and executive orders.

**24.1. Party Positions**

Frontier argues the Commission should not adopt the proposal to allow the de-funding of approved projects, as some projects may encounter permitting

and other delays not under an applicant's control and makes applying less attractive.

#### **24.2. Discussion**

We revise the proposed rule to reflect that CD Staff will notify a grant recipient of its intent to prepare for Commission approval a draft resolution that would rescind a FFA grant due to nonperformance.

We decline to adopt Frontier's recommendation for practical reasons. Given federal time limits, the Commission must be aware of delays FFA grantees encounter. In some instances, Commission staff may be able to assist the recipient in moving the project forward. However, a logical consequence of projects that are not moving forward is that the Commission must repurpose those funds before they are rescinded by the Treasury. The Commission does not have the luxury of being overly patient with FFA grantees, since that may mean losing federal funds – and not being able to reimburse FFA grantees.

#### **25. Transfer of Grant and/or Assets Built Using Grant Funding**

The ACR proposes that prior to construction under the grant, and for up to three years 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 its intent to sell or transfer company assets within five days of becoming aware of these plans. Both the grantee and the new entity shall file an affidavit, stating that the new entity will comply with the requirements of the FFA award the Treasury Department, as well as other appropriate documentation, if any, requested by CD Staff. 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. If the Commission does not provide approval, it will rescind the grant.

### **25.1. Party Positions**

CETF recommends the Commission require reporting only on transfer or sale of the assets for three years. To CETF, the issue is whether the applicant built the system with the intent to “flip it” for a profit. On commitments such as rates, affordable broadband plan, open access commitment, marketing/outreach commitment, a brief annual report could be filed where the grantee reports on its compliance with its commitments and signs it under penalty of perjury.

Cal Advocates proposes that the Commission require FFA grantees to obtain a waiver to sell FFA-funded infrastructure, and any sale should be subject to gain-on-sale requirements. Cal Advocates asserts that to ensure public interest when FFA funded infrastructure is sold, a waiver should hinge on the three requirements that were adopted for the Broadband Technology Opportunities Program: the transaction is for adequate consideration; the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such sale or lease; and the transaction would be in the best interests of those served by the project. Cal Advocates also argues that, in the case of depreciable assets, the Commission should receive 100 percent of the gains-on-sale, consistent with gain-on-sale regulations established in D.06-05-041. In the case of non-depreciable assets, Cal Advocates proposes that the Commission receive a percentage of the total gains-on-sale equal to the percentage of the grant’s contribution relative to the total project cost. Cal Advocates also supports any proceeds from asset sales that revert to the Commission through this gain-on-sale rule should be deposited in the CASF Infrastructure Grant Account.

AT&T recommends that because the SLFRF program requires all funds to be expended by December 31, 2026, that 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, at the latest, until December 31, 2030.

## **25.2. Discussion**

Provisions ensuring a sale or transfer is in the public interest are reasonable and make clear the Commission's expectations for grant recipients in such instances. In addition to these provisions, the Commission will require any grant recipients to file a Tier 2 Advice Letter with the following information: purchase price; copy of the agreement; binding agreement from the purchaser or lessee to fulfill the terms and conditions relating to the project after such sale or lease; and explanation as to how the transaction would be in the best interests of those served by the project. These provisions are in addition to – and do not supersede – existing laws, including but not limited to Pub. Util. Code §§ 851 and 854, that direct how the Commission addresses transfers of control.

## **26. Audit Compliance**

The ACR proposes to require all applicants 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.

### **26.1. Party Positions**

No party filed comments.

### **26.2. Discussion**

The Commission adopts this proposal with a revision clarifying that all recipients of federally funded grants exceeding \$750,000 will need to include a budget for a federal audit, consistent with the Final Rule.



## **27. Conclusion**

The Commission adopts the revised rules contained in Appendix A. The revised rules exclude the application template and some application guidance from FFA Program Rules. The Commission delegates to CD Staff that authority to prepare and revise those documents as needed.

## **28. Comments on Proposed Decision**

The proposed decision of Commission President Alice Reynolds 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. The following parties filed comments on March 22, 2022: AARP; AT&T; CCTA; CSAC; CforAT; Charter and Time Warner; City and County of San Francisco; Foothill De Anza Community College District; Frontier Communications; Great Public Schools Now (GPSN); NDC;

Placer County; Cal Advocates; RCRC; SBUA; the Small LECs; UCAN; Verizon Wireless (Cellco Partnership); and the Yurok Tribe. On March 28, 2022, the following parties filed reply comments: AT&T; CCTA; CETF; CforAT; Charter-Time Warner; Frontier Communications; NDC; Cal Advocates; SBUA; the Small LECs; TURN; and Verizon Wireless (Cellco Partnership).

Several parties ask the Commission to revise its allocation of funding between urban and rural counties, to pick another method for allocating the funding, or to use different data. To begin, statute specifies the data this Commission must use when determining each county's "proportionate share of... households without access to broadband internet access service with at least 100 megabits per second download..."<sup>60</sup> We recognize, as do several parties, that

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<sup>60</sup> Pub. Util. Code §§ 281(n)(3)(A)(ii) and 281(n)(3)(B)(ii).

there is not a perfect way to divide the funds in a manner that also is consistent with statute. We believe the method we choose is the most reasoned and reflects the reality that more unserved households are in urban counties than in rural counties, while building or extending broadband networks in rural counties general costs more than in urban. As CSAC also notes, there are additional funding opportunities available for last mile broadband investments, including other programs that were expanded or newly created by SB 156, such as the Broadband Infrastructure Grant Program, the Broadband Loan Loss Reserve Fund, and the Broadband Public Housing Account. In addition, California will be eligible for additional federal funding as part of the Infrastructure Investment and Jobs Act, as well as future rounds of the Rural Digital Opportunity Fund. These programs do not have the short deadlines attached with FFA funds, and will provide additional opportunities for local governments, advocates, and providers to receive funding necessary to provide service to all unserved communities in the state.

In response to comments and reply comments, especially those filed by several ISPs, , in opposition to both the proposed ten-year price commitment requirement and the affordable low-cost broadband plan requirement, we revise both of these requirements, as well as the application scoring criteria. We require FFA grantees to include in their applications a commitment to not increase pricing for a five-year period for their existing service plans. As several parties note, ISP offerings change with time, and speeds offered should increase substantially over those offered today, including new multi-gigabit services that become feasible with new protocols, infrastructure and standards, or modes of delivering service. Thus, this requirement does not apply to substantially different plans, since an ISP may not know at the time of its application if it will

be offering that plan. We also wish to incent applicants to commit to a longer pricing commitment of ten years, and will provide those applications with up to an additional ten points. The Commission has no intention of this requirement hampering the ability of applicants to develop sustainable networks. Should an externality arise beyond the grant recipient's control (*e.g.*, inflation), they may seek a modification of this requirement with the Commission's Communications Division. Waivers must be approved by the Commission as part of the resolution process. Since applications that receive lower scores reflect a reduced commitment to provide public benefits, staff may make recommendations to the Commission via resolution to reduce the percentage of public funding commensurate with the reduced public benefit.

We remove the requirement to offer an affordable low-cost broadband plan. Applications proposing plans that offer speeds of at least 50 Mbps download and 50 Mbps upload for no more than \$40 per month will receive 20 additional points. These applicants may offer plans with higher speeds or at a lower cost. FFA grantees have the option to adjust plans in accordance with the Consumer Price Index.

In response to concerns raised by parties regarding the impact on affordable broadband service should the ACP program end, as well as on FFA grantees, the Commission will identify a successor low-income subsidy program that FFA grantees must participate in.

In response to comments from the Yurok Tribe, we clarify that California tribal governments, as well as their wholly-owned tribal corporations and tribal non-profits, are the sole entities that may receive credit in the "Type of Partnership" category for applications proposing to build a broadband network owned, operated by, or affiliated with a California tribal government, their

wholly-owned tribal corporations or tribal non-profit organization, on tribal lands. In response to the concerns raised by the Yurok Tribe, and consistent with Commission practice, applicants seeking to offer service on tribals lands are strongly encouraged to consult with those tribes ahead of filing their applications. We also modify our performance requirements of FFA grantees offering service on tribal lands to mandate consultation with those tribes after FFA grant approval. If a Tribe and other entities apply for the same proposed funding area which includes Tribal land, then special consideration will be given to the Tribal applicant.

RCRC requests the Commission establish a “Public Right of First Refusal” process for local governments with identified plans to deploy broadband services in a priority area, asserting the proposed FFA program requirements place public providers at a disadvantage. For example, since local governments typically do not have CPCNs, the proposed rules would require local governments to acquire a letter of credit for the entire project cost, a significant expenditure. RCRC also contends that local governments are disadvantaged by the proposed ministerial review process, as their applications are unlikely to be eligible for ministerial review. To ensure a more level playing field for local governments seeking to offer broadband service, we adopt two revisions. First, we adopt RCRC’s proposal to require “local governments to demonstrate administrative capability and expertise in financial administration; demonstrate relationships with financial advisors; in-house or contracted expertise in evaluating broadband infrastructure project feasibility; and demonstrate relationships with, and support from, experienced public or nonprofit broadband system operators.” We apply this exemption to Tribal governments as well. These criteria are similar to CPCN approval requirements, though, like when the

Commission grants a CPCN application, it cannot be granted by CD Staff. Second, we clarify that we do not intend for the ministerial review process to provide an applicant with an advantage over other applicants, and that Communications Division will ensure that all applications are reviewed holistically (*e.g.*, applications within a county). With this in mind, applications eligible for ministerial review may still be referred to the Commission for consideration such as when multiple entities have taken steps to provide service in the same county.

Various parties recommend the Communications Division include analysis of disadvantaged communities in the development of the priority areas. These parties also encourage the Commission to give priority to projects that propose to serve disadvantaged communities. The program rules are revised to require Communications Division to include demographic information, such as the number of low-income households, or disadvantaged community status, in developing priority areas. In addition, the scoring criteria are updated to consider disadvantaged communities as part of the “Existing broadband service need” criteria.

In response to comments filed by CCTA, we clarify that ISPs objecting to a FFA application must submit unredacted customer bills for CD Staff to review, and because customer bills contain personally identifiable information, this information will be kept confidential, in accordance with the Commission’s confidentiality rules. We also revise the rules to indicate that a carrier may request confidential treatment pursuant to requirements of GO 66-D as to the number of subscribers an ISP has in a proposed project area that is included in a FFA application objection. Appropriately redacted information must still be provided as part of the public objection process. In addition, we revise the

objection process to provide some flexibility for how objectors may document claims of proof of existing infrastructure.

In response to comments filed by Cal Advocates, we clarify in the Appendix that grant recipients must report the number of customers enrolled in low-income broadband plans (*i.e.*, income qualified plans). We define low-income broadband plans as income-qualified broadband plans offered to low-income customers. We also clarify that grantees must submit project progress reports on a quarterly basis to be consistent with the Final Rule.

In response to CCTA's opinion that "the geographic location of all households or locations (that an ISP objecting to a FFA application must provide)" is confidential information, as well as permits and pole attachment applications, we clarify and revise this decision and the rules in Appendix A to make clear that an ISP objecting to a FFA application must provide deployment data on the locations where it offers service in a given project area, and this information will be disclosed. Further, permits submitted as part of an application objection will be disclosed. This is consistent with statute, and Commission rules and practices, including those articulated in G.O. 66-D or D.20-12-021. We align our determination on the confidentiality of pole attachment applications with that in D.21-10-019. We revise this decision at pages 78-81, and add new conclusions of law 8-11, to reflect the information that the Commission may disclose and that which may submitted under a request for confidentiality under GO 66-D.

## **29. Assignment of Proceeding**

Commission President Alice Reynolds is the assigned Commissioner and Thomas J. Glegola is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. On August 14, 2020, Governor Gavin Newsom issued Executive Order N-73-20, directing state agencies to accomplish 15 specific actions to help bridge the digital divide, including ordering state agencies to pursue a minimum broadband speed goal of 100 Mbps download to guide infrastructure investments and program implementation to benefit all Californians.

2. On September 10, 2020, this Commission opened this Rulemaking to set the strategic direction and changes necessary to expeditiously deploy reliable, fast, and affordable broadband Internet access services that connect all Californians.

3. On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (Public Law No. 117-2), also called the COVID-19 Stimulus Package or American Rescue Plan, which established the Coronavirus State Fiscal Recovery Fund (SLFRF), which appropriated funds for states to deploy last-mile broadband Internet networks.

4. The Secretary of the U.S. Treasury Department (Treasury) issued an Interim Final Rule effective May 17, 2021, to implement SLFRF. Treasury also issued a SLFRF Frequently Asked Questions (FAQ) document to provide additional guidance on how funds should be utilized. Treasury issued its Final Rule on January 6, 2022, which was published in the Federal Register on January 27, 2022. The Final Rule is effective April 1, 2022.

5. On July 20, 2021, Governor Newsom signed SB 156 into law, creating the Federal Funding Account, with this Commission being responsible for implementing the new grant program.

6. SB 156 appropriates two billion dollars in SLFRF funds into the new Federal Funding Account (FFA).

7. SB 156 and the Final Rule permit the construction of a new state-owned and operated statewide middle-mile network.

8. The Second Amended Scoping Memorandum and Ruling in the instant proceeding, issued on August 2, 2021, adds implementation of the FFA to Phase III of this proceeding.

9. On September 23, 2021, the Assigned Commissioner issued a ruling requesting comment on a Staff Proposal for the rules that would implement the Federal Funding Account grant program (ACR).

10. The Final Rule grants this Commission broad discretion to determine what areas are eligible, how to define reliable service, and what information to require from entities objecting to an application, among other items.

11. The Final Rule identifies that legacy network technologies, such as copper telephone lines and early versions of cable system technology, may not provide reliable service because they typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber-optic networks.

12. The Final Rule requires grant recipients to build broadband infrastructure that reliably delivers or exceeds symmetrical upload and download speeds of 100 Mbps unless it is not practicable because of the geography, topography, or excessive costs associated with such a project. In these instances, the Final Rule require projects to deliver 100 Mbps download and at least 20 Mbps and be scalable to provide higher upload speeds.

13. The Final Rule encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives, finding that these networks have less pressure to generate profits and a commitment to serve entire communities.



14. The Final Rule requires grant recipients to participate in the Federal Communications Commission's Affordable Connectivity Program or offer an equivalent program, as well as offer a low-cost broadband plan.

15. All SLFRF funds must be awarded within the statutory period between March 3, 2021 and December 31, 2024 and expended to cover such obligations by December 31, 2026.

16. ISPs have two opportunities to demonstrate whether a specific geographic area is served, based on data submitted by ISPs to the Commission, which Communications Division Staff validates, and the application objection process adopted herein.

### **Conclusions of Law**

1. The rules, application requirements and guidelines for the Federal Funding Account, as set forth in Appendix A, are consistent with federal statute, the Treasury Final Rule and state statute and should be approved.

2. Initially limiting funds to areas of the state that do not have access to reliable 25 Mbps download and 3 Mbps upload connection is reasonable, given the significant need for high-speed, reliable and affordable wireline broadband service in the state.

3. It is reasonable to allow lower build out requirements for grant recipients proposing projects in which delivering symmetrical speeds of 100 Mbps is impracticable because of the geography, topography, or excessive costs associated with such a project.

4. The Final Rule encourages program eligibility determinations as well as program funding to be limited to reliable wireline broadband infrastructure.

5. The Final Rule encourages recipients to prioritize investments in fiber optic infrastructure, finding that such advanced technology enables the next

generation of application solutions for all communities, can deliver superior, reliable performance, and is generally most scalable to meet future needs.

6. This decision complies with directives of Pub. Util. Code §§ 281(n)(3)(A) and §§ 281(n)(3)(B) respectively which direct the Commission to spend \$2 billion on broadband Internet infrastructure projects, with \$1 billion allocated to projects in urban counties and \$1 billion allocated to projects in rural counties, requiring the Commission to allocate initially \$5 million for projects in each county and then allocate the remaining funds in the respective urban or rural allocation, based on each county's proportionate share of households without access to broadband Internet access service speeds of at least 100 megabits per second download.

7. The application objection rules adopted in this decision, including the 21-day submission deadline and the information requirements of applicants and application objectors, balance the need to award grants expeditiously against the potential for committing funds to unnecessary projects and should be approved.

8. In D.20-12-021, the Commission analyzed, at great length, information that meets the definitions of trade secret and critical infrastructure information.

9. ISP deployment data, also called serviceable address data, as well as permits, do not contain customer proprietary network information (CPNI). ISP deployment data, also called serviceable address data, and permits are already in the public domain, and therefore do not meet the definitions of a trade secret or critical infrastructure information.

10. In D.21-10-019, the Commission found that carriers did not satisfy their burden of demonstrating that pole attachment data warranted confidential treatment, but still allowed any of the five major pole owners and/or attachers to

file a motion seeking confidential treatment and provide the necessary granular information and declaration to support their confidentiality request.

11. This Commission has the authority to delegate to Staff the ministerial review of Federal Funding Account applications meeting the criteria specified in the Ministerial Review Section of this Decision and in Appendix A, and it is reasonable that it do so in the context of this proceeding.

12. The new state owned and operated statewide middle-mile network authorized by SB 156 will not reach all parts of the state, making it necessary to use some Federal Funding Account grant funds on middle-mile infrastructure.

13. The Commission should adopt the Federal Funding Account rules, as revised in this decision.

## **O R D E R**

### **IT IS ORDERED** that:

1. The revised Federal Funding Account rules contained in Appendix A are adopted.

2. The Commission delegates to Communications Division Staff the authority to develop application submission guidance and templates for applicants and interested individuals that are consistent with this Decision and with the U.S. Treasury Department's Final Rule.

3. The Commission delegates to Communications Division Staff the authority to approve applications meeting the ministerial review requirements contained in Appendix A and consistent with this decision. Applications that do not meet the ministerial review requirements may only be approved by Commission resolution.

4. The Commission delegates to Communications Division Staff the authority to establish application deadlines for the Federal Funding Account approved by this decision.

5. Rulemaking 20-09-001 remains open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## **APPENDIX A**

### **Revised Federal Funding Account Grant Program Rules**