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**PROPOSED DECISION**

Agenda ID #21909 (Rev.1)

Quasi-Legislative

11/2/2023 Item #57

Decision **PROPOSED DECISION OF COMMISSIONER HOUCK**  
(Mailed 9/28 /2023)

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

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

Rulemaking 20-08-021

**DECISION ADDRESSING STAFF PROPOSAL ON  
ESTABLISHMENT OF A BROADBAND  
LOAN LOSS RESERVE FUND**

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**DECISION ADDRESSING STAFF PROPOSAL ON  
ESTABLISHMENT OF A BROADBAND  
LOAN LOSS RESERVE FUND**

**Summary**

This decision adopts requirements and guidelines for the establishment and administration of a Broadband Loan Loss Reserve Fund.

This proceeding remains open.

**1. Procedural and Factual Background**

On September 2, 2020, the California Public Utilities Commission (Commission) initiated the instant Order Instituting Rulemaking (OIR) to continue modifications to the California Advanced Services Fund (CASF) program. All unresolved matters in Rulemaking (R.) 12-10-012 were transferred to this proceeding, as well as the existing record developed in R.12-10-012. The September 2 OIR summarized the legislative, procedural, and substantive background of the proceeding. The initial scoping memo, issued October 26, 2020, identified the proceeding scope as encompassing potential modifications to the CASF program, which includes the Broadband Infrastructure Grant Account, Line Extension Program, Rural and Urban Regional Broadband Consortium Grant Account, Broadband Public Housing Account, Broadband Adoption Account, and Tribal Technical Assistance programs.

In July 2021, California Governor Gavin Newsom signed Senate Bill 156 (Stats. 2021, Ch. 84 and 112) and Assembly Bill 164 (Budget Act of 2021), which, among other things, created a Broadband Loan Loss Reserve Fund (hereafter referred to as Loan Loss Program, or LLP) in the California State Treasury.

750 million dollars was appropriated to fund costs related to the financing of broadband infrastructure deployment by local government agencies, nonprofit

organizations and Tribal governments.<sup>1</sup> California Public Utilities (Pub. Util.) Code Section 281.2 specifies that such costs include, but are not limited to, payment of the costs of debt issuance, obtaining credit enhancement, and establishment and funding of reserves for the payment of principal and interest on the debt.<sup>2</sup> Pub. Util. Code Section 281.2 further specifies that the Commission may establish, among other things, eligibility requirements, financing terms and conditions and allocation criteria for infrastructure projects deployed using financing supported in whole or in part by funds allocated to the LLP.

The assigned Commissioner's second amended scoping memo, issued March 1, 2022, invited responses to initial questions regarding eligibility requirements, financing terms and conditions, and other considerations for administration of the LLP. The Commission received timely responses from National Diversity Coalition (NDC), Inland Empire Regional Broadband Consortium, California Emerging Technology Fund, California Broadband & Video Association (CalBroadband),<sup>3</sup> the Public Advocate's Office of the Public Utilities Commission (Cal Advocates), and Rural County Representatives of California (RCRC); and timely reply comments from Center for Accessible Technology (CforAT), Cal Advocates, CalBroadband, and National Diversity Coalition (NDC).

On September 26, 2022, the assigned Commissioner issued a ruling inviting comments on a staff proposal for requirements and guidelines that

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<sup>1</sup> California State Budget 2021-2022, <http://ebudget.ca.gov/2021-22/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf> (accessed on July 12, 2023), at 26-27.

<sup>2</sup> Unless specified otherwise, all further references to Code(s) are to California statute.

<sup>3</sup> On March 13, 2023, the California Cable & Telecommunications Association ("CCTA") provided notice of party name (and email address) change, from California Cable & Telecommunications Association to California Broadband & Video Association.

would govern staff's administration of the LLP. The Commission received timely responses from the Yurok Tribe, NDC, Cal Advocates, CBV&A, The Utility Reform Network (TURN), RCRC, and UNITE-LA, Inc.; and timely reply comments from NDC, Cal Advocates, CalBroadband, TURN, and CforAT and Electronic Frontier Foundation (jointly).

Commission staff reviewed parties' comments and conducted further research and analysis to develop a revised proposal to fulfill the statutory requirements of the LLP. On June 21, 2023, the assigned Commissioner issued a ruling inviting comments on a revised staff proposal for establishment and administration of the LLP. The Commission received timely comments from NDC, CalBroadband and RCRC; and timely reply comments from NDC, CalBroadband, RCRC and CforAT. Section 2 of this decision addresses party comments to the revised staff proposal as they relate to the requirements and guidelines we adopt for the LLP.

### **1.1. Submission Date**

This matter was submitted on July 20, 2023 upon receipt of reply comments to the June 21, 2023 ruling.

## **2. Issues Before the Commission**

The main issue addressed by this decision is whether to adopt the revised staff proposal for establishment and administration of the LLP. This decision adopts the revised staff proposal with modifications discussed herein. The adopted version of the revised staff proposal, which is modified to serve as the LLP requirements and guidelines, is included with this decision as Attachment 1.

### **2.1. Guiding Operational and Program Principles**

Section 1 of the revised staff proposal, regarding the background and purpose of the LLP, proposes guiding operational and program principles that

will direct staff's administration of the LLP. The proposed operational and program principles identify the objectives of the LLP and of staff's administration of the LLP. The first proposed operational principle states that the "LLP should be optimized for effective utilization of limited funding to achieve the most extensive broadband deployment in conjunction with other applicable state and federal funding." In comments to the June 21, 2023 ruling, RCRC urges the Commission to "ensure that proposed [Federal Funding Account, or FFA] projects that indicate an intention to also apply for LLP are reviewed with a partnership between the two programs," and provides specific examples of potential coordination with the FFA.<sup>4</sup> The Commission acknowledges RCRC's comments but notes they are more appropriately addressed in Rulemaking (R.) 20-09-001, the rulemaking in which the FFA requirements and guidelines were developed.

CalBroadband raises a more fundamental issue with the implicit provision that LLP support would be available for both served and unserved (as well as underserved) locations, asserting "projects in competitive markets may be more likely to default."<sup>5</sup> Relatedly, NDC recommends that all applications be required to target at least some unserved locations.<sup>6</sup> In reply comments, RCRC counters CalBroadband's assertion as "patently untrue," and elaborates that "[c]apturing adjacent underserved locations may be the only way to utilize state and federal

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<sup>4</sup> *Opening Comments of the Rural County Representatives of California to the Assigned Commissioner's Ruling Inviting Comments on Staff Proposal for Broadband Loan Loss Reserve Fund*, filed July 10, 2023 (RCRC comments) at 7.

<sup>5</sup> *Opening Comments of the California Broadband & Video Association on the Assigned Commissioner's Ruling Inviting Comments on Staff Proposal for Broadband Loan Loss Reserve Fund*, filed July 10, 2023 (CalBroadband comments) at 5.

<sup>6</sup> *Opening Comments of the National Diversity Coalition on Phase IIA Revised Staff Proposal for Broadband Loan Loss Reserve Fund Program Guidelines*, filed July 10, 2023 (NDC comments) at 6.

investments to reach the hardest to serve customers as intended and ultimately deploy broadband projects that would not otherwise be financially viable to be financially feasible.”<sup>7</sup> CforAT observes that connecting unserved and underserved communities is the statutory goal of the Broadband Infrastructure Grant Account but not of the entire CASF program, suggesting the Commission has broader flexibility with which to determine eligibility for LLP support.<sup>8</sup>

The Commission agrees that it is reasonable to permit and enable LLP support for projects that would deploy broadband infrastructure to serve unserved as well as underserved and served locations, as restricting LLP support to unserved locations, only, may render projects financially unviable. We favor enabling applicants to identify and pursue financially viable projects, which may involve a diversity of locations to be targeted. We decline to consider CalBroadband’s recommendations to restrict LLP support to unserved locations and NDC’s recommendation to require all projects to target at least some unserved locations. We will still prioritize projects that target a higher proportion of unserved locations, as discussed in Section 2.6 of this decision. This decision adopts Sections 1.1 and 1.2 of the revised staff proposal, with some modifications suggested by RCRC, for inclusion in the final requirements and guidelines of the LLP.

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<sup>7</sup> *Reply Comments of the Rural County Representatives of California on Revised Staff Proposal for Broadband Loan Loss Reserve Fund*, filed July 20, 2023 (RCRC reply comments) at 3.

<sup>8</sup> *Reply Comments of Center for Accessible Technology on Assigned Commissioner’s Ruling Inviting Comments on Staff Proposal for Broadband Loan Loss Reserve Fund*, filed July 20, 2023 (CforAT reply comments) at 2.

## **2.2. Ownership of Infrastructure and Governance**

Section 5 of the revised staff proposal, regarding eligible entities, proposes that privately-owned projects not be eligible for LLP support. The staff proposal allows public-private partnerships, but infrastructure supported by the LLP must be owned by a public agency or non-profit organization. CalBroadband advocates to allow for projects in which infrastructure is owned by a private entity, asserting that failure to do so would lead to “suboptimal projects that do not account for local circumstances.”<sup>9</sup> RCRC counters CalBroadband’s recommendation and argument, asserting “local governments are the closest entities to the community, and government representatives and their respective families are part of the community and best able to know the local needs and circumstances.” More fundamentally, RCRC observes that Loan Loss Reserve Program (LLP) funding is only available to municipalities and non-profit organizations, and the resulting infrastructure should therefore provide the best, most affordable options for end users, which is a core ethos of public and non-profit functions.<sup>10</sup> CforAT asserts CalBroadband’s request is “fundamentally inappropriate.”<sup>11</sup>

The Commission agrees that infrastructure supported by the LLP should be owned by a local or tribal government agency (as defined in the revised staff proposal) or non-profit organization, as the public benefit purpose of LLP-supported infrastructure is most aligned with the purpose of local or tribal government agencies and non-profit organizations. This decision therefore

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<sup>9</sup> CalBroadband comments at 10-11.

<sup>10</sup> RCRC reply comments at 7-8.

<sup>11</sup> CforAT reply comments at 8.



adopts Section 5 of the revised staff proposal for inclusion in the final requirements and guidelines of the LLP.

### **2.3. Debt Service Reserve (DSR) Provisions**

#### **2.3.1. Repayment of DSR**

Section 6.1.2 of the revised staff proposal states that the LLP DSR must be repaid before any broadband revenues can be allocated to bond holders (under the applicable bond indenture). In comments to the June 21, 2023 ruling, RCRC proposes specifying that the DSR must be repaid immediately after debt service, cautioning that repaying the LLP before making debt service payments would simply trigger further DSR draws (and LLP replenishment) to meet those debt service payments.<sup>12</sup> The Commission agrees with RCRC's rationale and therefore makes this modification in the LLP requirements and guidelines adopted by this decision.

#### **2.3.2. Financial Consultant**

Section 6.10 of the revised staff proposal states, in the event a project is facing financial difficulties, the bond issuer (or awardee) will be required to hire a consultant to evaluate the project and make recommendations to the borrower's management. Following deliberations with Commission staff, the borrower would be required to implement recommendations that are determined likely to improve the project's financial stability. CalBroadband recommends requiring borrowers to submit a timeline for payments to the Commission if a project faces financial difficulties or where there is a default.<sup>13</sup> RCRC offers specific revisions to require trustees' concurrence with any

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<sup>12</sup> RCRC comments, Attachment 1.

<sup>13</sup> CalBroadband comments at 14.

recommendations to be implemented, and to make clear that awardees are not required to bailout or subsidize broadband projects with non-broadband revenues.<sup>14</sup> The Commission agrees with CalBroadband that appropriate safeguards are necessary, but finds a requirement for a payment timeline unnecessarily rigid. Instead, this decision modifies Section 6.10 of the staff proposal to require the bond issuer/borrower to hire a consultant under specified circumstances, including RCRC's recommendation to specify a timeframe of 12 months within which the borrower has not fully repaid any draws on the DSR. In response to RCRC's comments, this decision confirms that borrowers will not be required to subsidize broadband projects with non-broadband revenues, although we find reason to permit this in cases where the borrower wishes to do so. We further modify Section 6.10 of the revised staff proposal to specify that Commission staff will discuss and determine remedies for revenue shortfalls with trustees, as suggested by RCRC. These modifications are included in Section 6.10 of the LLP requirements and guidelines adopted by this decision.

#### **2.4. LLP Provisions**

Section 6 of the revised staff proposal also proposes measures to safeguard the DSR Guarantee (Section 6.1) and permitting of funds to be reserved for multiple bond issuances (Section 6.3). Here, the Commission acknowledges RCRC's urging that "any funds within Fund 3411 that have been reserved by applicants are invested in accordance with the IRS' yield restriction rules", *i.e.*, securities that are themselves tax-exempt and not subject to alternative

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<sup>14</sup> RCRC comments at 8 and Attachment 1.

minimum tax, to avoid interest rate arbitrage.<sup>15</sup> Commission staff will manage the DSR Guarantee in accordance with applicable rules and requirements.

#### **2.4.1. Safeguarding the DSR Guarantee**

Section 6.1 of the revised staff proposal describes how the DSR will be drawn upon and replenished from the DSR Guarantee. In the event the DSR Guarantee is not immediately repaid, the liability to the DSR Guarantee would accrue interest equivalent to the prime rate plus five percent, to act as a deterrent on draws. RCRC recommends revisions that would provide three months before interest starts to accrue and calculate interest “at the rate earned by the Pooled Money Investment Account at the time of the replenishment.” RCRC asserts interest rates “should be kept low to avoid additional debt burdens...[Punitive] interest rates add further financial strain to a system already in distress.”<sup>16</sup> The Commission agrees that interest accrued on any liability to the DSR Guarantee should not be excessively punitive. The Commission prefers to base interest on the prime rate as opposed to the rate earned by the Pooled Money Investment Account, which may be lower than the prime rate but can vary from day to day.<sup>17</sup> In response to RCRC’s comments, this decision modifies Section 6.1 of the revised staff proposal to provide three months before interest starts to accrue, and to set interest at the prime rate plus one percent (instead of the additional five percent).<sup>18</sup>

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<sup>15</sup> RCRC comments at 10.

<sup>16</sup> RCRC comments at 9 and Attachment 1.

<sup>17</sup> See Pooled Money Investment Account program description, url: <https://www.treasurer.ca.gov/pmia-laif/pmia/program.asp>.

<sup>18</sup> See What is the prime rate, and does the Federal Reserve set the prime rate? url: [https://www.federalreserve.gov/faqs/credit\\_12846.htm](https://www.federalreserve.gov/faqs/credit_12846.htm)

#### **2.4.2. Bond Issuance for Multiple Projects**

Section 6.3 of the revised staff proposal specifies that applicants will be able to reserve funds to provide new credit enhancements for multiple projects. Funds would be awarded on a per-application and per project basis and would require a new application for each reservation. RCRC and CforAT support this provision; RCRC suggests that having the revenues from multiple diverse projects pledged to a single bond issue may increase investor confidence and reduce interest rates.<sup>19</sup> NDC does not explicitly address this provision but, relatedly, states the Commission should consider limiting the number of times an entity may apply each year for the same project area(s) and/or not allowing any entity to reapply in consecutive application cycles for the same project area(s). NDC argues that this would discourage applicants from initially requesting more funding than is reasonable and then, if denied, reducing the request incrementally.

We agree with RCRC's reasoning and therefore adopt Section 6.3 of the revised staff proposal for inclusion in the LLP requirements and guidelines. With respect to NDC's suggestions, this decision does not find it necessary, at this time, to impose such limitations on applicants, though the Commission may consider these or similar provisions based on activity during the first several application cycles.

#### **2.5. LLP Program Design: Funding "Tranches" or Application Cycles**

Section 7.3 of the revised staff proposal describes two potential models for staff to accept and review applications. For both approaches, funds would be

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<sup>19</sup> RCRC comments at 6.

available in two different tracks, a General Market track and an Equity track, the latter of which would be limited to projects with three fourths or more of the project area in “priority communities,” as defined. The tranche approach would accept applications three times per year for each track and applicants could apply for any level of support up to 100 percent of bond principal. The stepped approach would offer bond coverage in increasing proportions for each step (*e.g.*, 40 percent in Step 1, 60 percent in Step 2, *etc.*), and repeat this cycle annually. Applicants could apply for coverage up to the maximum amount of coverage available in a step; if approved, funds would be reserved for the project. Tracks would not have their funding rebalanced between steps, which means that a given track could be fully reserved during the first step and therefore not open to new applications until the following program year.

All parties support the tranche approach. NDC and RCRC recommend against the stepped approach, arguing it would delay and possibly prevent consideration of projects that would connect more unserved areas but may also require higher levels of coverage. RCRC also asserts the stepped approach is generally unworkable.<sup>20</sup> This decision adopts the tranche approach in light of parties’ support and, for administrative simplicity and acknowledging comments against it, declines to pursue the stepped approach. The adopted requirements and guidelines and this decision hereafter refer to application cycles (or cycles) in place of tranches.

Parties addressed several other key elements relating to the process for receiving and reviewing applications, which we also address in this section.

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<sup>20</sup> RCRC comments at 3.

The June 21, 2023 ruling asked whether the LLP should limit how much funding may be allocated to support a single project, and/or a single applicant within each step or application cycle. RCRC advocates against such a limit, emphasizing that the Commission should have discretion to “utilize LLP funding to support the hardest to finance broadband projects.”<sup>21</sup> In reply comments, CforAT supports RCRC’s position. CalBroadband does not explicitly support such a limit, however it recommends providing a level of support equivalent to the percentage of the project that will extend broadband infrastructure to unserved locations. This decision declines to limit the amount of funds that may be allocated to a single project or a single applicant within an application cycle. We agree that the Commission should retain flexibility to determine the amount of support to provide to a given project, and therefore also decline CalBroadband’s recommendation for basing the amount of support on a project’s percentage of unserved locations.

The June 21, 2023 ruling also asked, in the event that LLP funds are extinguished/fully reserved within an application cycle, whether the LLP should use any remaining funds to offer partial coverage for an otherwise-eligible application. RCRC advises against offering partial coverage, asserting that awarding less coverage than the requested amount will not meet the project needs. Instead, RCRC recommends, any remaining funds should be “rolled over” or transferred to the next application cycle in the same track until all funding is utilized. This decision agrees with RCRC’s reasoning and therefore determines that funds remaining in a given track at the end of an application cycle will be transferred to, and made available to provide support in, the next application

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<sup>21</sup> RCRC comments at 6.

cycle for the same track. Applications that meet the minimum requirements but are not fully funded in a given cycle will be automatically entered into the next cycle. These provisions are included in Section 7.2 of the adopted LLP requirements and guidelines.

## **2.6. Project Prioritization**

Section 7.4 of the revised staff proposal specifies that staff would employ a prioritization process in the event that the LLP receives more applications for funding within a cycle than is available. The first factor staff would consider in the prioritization process is an application's coverage amount. An application that requests a lower coverage amount would be prioritized over an otherwise identical application. Applications would be further prioritized based on the amount of project funding provided by other sources (*e.g.*, CPUC grant programs), whether the bond terms provide for refinancing or "rolling off" the LLP's commitment within 10 years, and whether the project offers a low-income broadband plan to customers.

To varying degrees, RCRC, NDC and CalBroadband all emphasize the importance of prioritizing projects that will extend broadband infrastructure to unserved locations. Along with its recommendation to restrict LLP support to unserved locations (addressed in Section 2.1 of this decision), CalBroadband advocates for prioritizing projects in areas that lack access to high-speed broadband.<sup>22</sup> NDC generally agrees, asserting the proportion of unserved customers targeted is the most important prioritization factor and should be prioritized from the beginning (*i.e.*, not only in the event that applications request an amount greater than available funds in a given cycle), and that all

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<sup>22</sup> CalBroadband comments at 3-4.

projects that utilize LLP support should be required to target at least some unserved locations.<sup>23</sup> NDC identifies several additional factors by which staff should prioritize projects, including whether a project will deploy future-proof, scalable fiber technology. RCRC also identifies an additional factor for prioritization, stressing that the coverage amount should not be the only factor for determining project priority, and further suggests a specific scoring rubric for its proposed criteria.<sup>24</sup>

The Commission acknowledges that the revised staff proposal identifies several factors for determining project priority, and agrees that the requested coverage amount should not be the sole basis for determining the project priority. Other factors reflecting important policy objectives merit consideration. The Commission also agrees with NDC's recommendation to apply the prioritization scoring criteria to all projects in a given cycle, rather than only in the event that applications request more funds than are available in that cycle. In practical terms, the scoring criteria will be used to evaluate a project relative to other projects under review during the same application cycle, and will be most consequential in situations where applications request more funds than are available in a given cycle. All applications will initially be reviewed for completeness; complete applications will then be scored according to the scoring criteria and rubric for purposes of relative prioritization for LLP support. Scored applications will also be reviewed for technical and operational viability. In a scenario where all applications determined to be viable request a total amount that is less than the amount available in a given cycle, staff will recommend

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<sup>23</sup> NDC comments at 6.

<sup>24</sup> RCRC comments at 3-5.



Commission approval of all of those applications (regardless of their scores). In a scenario where all applications determined to be viable request a total amount that is greater than the amount available in a given cycle, staff will use the application scores to determine which applications to recommend for Commission approval, and which applications to transfer to the subsequent application cycle.

Because the scoring criteria will only be useful for prioritization purposes, we find it reasonable to establish scoring criteria and a scoring rubric that will be relatively simple to administer; the criteria and rubric recommended by RCRC, while helpful, may overly complicate staff's review.<sup>25</sup> This decision adopts scoring criteria and a scoring rubric that will prioritize applications based on the percentage of coverage requested (applications requesting lower coverage will be scored higher than applications requesting higher coverage), whether the applicant's project aims to benefit unserved locations, whether the provider will offer a generally available low-cost plan, and whether the project will invest in fiber optic infrastructure. These criteria align with the adopted guiding principles, specifically to manage a wide range of credit risk profiles, and to support extensive broadband deployment with "future-proof" technology. Section 7.4 of the adopted LLP requirements and guidelines details the specific criteria and rubric by which eligible projects will be scored.

#### **2.6.1. Allocation of Funds Within each Cycle and Provisions for Equity Track Projects**

Section 7.3.1 of the revised staff proposal describes how, under the application cycle (or tranche) approach, funds would be allocated in each cycle.

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<sup>25</sup> RCRC comments, Attachment 1.

Question 12 of the June 21, 2023 ruling invited comments on whether the LLP should allow Equity track applicants to reserve General Market funds, in the event those funds are not reserved by General Market applicants. In alignment with their recommendations to prioritize projects that target unserved locations, RCRC advocates that projects eligible for the Equity track should also be eligible for LLP support via the General Market track, and further that “priority communities” should have prioritized eligibility across the LLP. CalBroadband recommends including “Disadvantaged Communities or Unserved Communities” in the proposed definition of “priority communities,” and allocating 75 percent of available funds to the Equity track.

The Commission has an interest in optimizing the use of LLP support for broadband infrastructure deployment to unserved locations, and therefore agrees with prioritizing LLP support for Equity track-eligible projects. Such projects will also be eligible and prioritized for support in the General Market track. Specifically, if there is insufficient funding to support all qualified Equity track projects within a given cycle, Equity track projects not supported from available funds in the Equity track will be eligible and prioritized for LLP support through the General Market track in that same cycle. Section 7.2 of the adopted LLP requirements and guidelines reflect these provisions.

The Commission further finds it reasonable to remove references to “priority communities” and instead rely on the designations of Disadvantaged Communities and Low-Income Areas in the Federal Funding Account map.<sup>26</sup>

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<sup>26</sup> Federal Funding Account map, uniform resource locator ([url](https://federalfundingaccountmap.vetro.io/map)): <https://federalfundingaccountmap.vetro.io/map>. A representation of eligible communities may be viewed by selecting the “Disadvantaged Communities” layer and the “Low-Income Areas” layer.

In comments to the proposed decision, TURN recommends allocating ten percent of LLP support to be available exclusively to Sovereign Tribal Governments, similar to how a portion of funds are dedicated to eligible tribal applicants in the Local Agency Technical Assistance program. TURN notes that the Yurok Tribe previously advocated for a tribal set aside in its October 14, 2022 comments to the initial staff proposal. In reply comments to the proposed decision, NDC agrees with TURN's recommendation and notes that its October 24, 2022 reply comments to the initial staff proposal also supported such a provision. The Commission agrees it is reasonable to set aside a portion of LLP support to be available exclusively to Tribes, as recommended by the Yurok Tribe and TURN. We modify the revised staff proposal to allocate available LLP support in each application cycle as follows: 50 percent for Equity track applications, 10 percent for Sovereign Tribal Government applications, and 40 percent for General Market applications.

## **2.7. Project Service Standards**

Section 8.1 of the revised staff proposal specifies the minimum service standards that eligible LLP projects should be designed to offer, including symmetrical speeds at or above 100 megabits per second download and upload, wherever feasible, plus sufficient surplus capacity to remain competitive in the future without major refurbishment upgrades. Further, providers would be required to offer a low-income broadband plan to customers through participation in the Affordable Connectivity Plan or a successor program and open access middle-mile infrastructure requirements.

NDC supports the proposed requirement to offer a low-income broadband plan, and also advocates for projects to offer a generally available low-cost or

affordable broadband plan.<sup>27</sup> The Commission declines NDC's recommendation to require all projects to offer a generally available low-cost or affordable broadband plan, as doing so may risk projects' financial viability, however eligible projects that offer a generally available low-cost plan will be prioritized over (otherwise identical) projects that do not offer such a plan, as discussed in Section 2.6 of this decision.

Related to the requirement for open access middle-mile infrastructure, RCRC recommends that all projects utilizing LLP funding should be open-access infrastructure. CalBroadband raises a competitive neutrality concern and suggests the LLP require that LLP recipients attest they will not exercise permitting or any other authority "in a manner that favors their own broadband networks or otherwise discriminates against other providers."<sup>28</sup> In reply comments, RCRC points out that CalBroadband offers no specific examples of such discrimination and suggests more generally that CalBroadband's stated concern is misplaced, explaining that permitting requirements ensure third party use of public property meets important public purpose standards, including health and safety requirements. CforAT raises similar arguments against CalBroadband's comments.<sup>29</sup> The Commission also finds no evidence of CalBroadband's expressed concern; further, the issue of fair and competitive access to rights of way is more appropriately addressed in R.20-09-001 (Broadband for All) and/or R.17-06-028 (the Commission's proceeding on communications providers' access to utility poles and conduit). With respect to RCRC's recommendation for open-access infrastructure, the Commission agrees

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<sup>27</sup> NDC comments at 8.

<sup>28</sup> CalBroadband comments at 11-12.

<sup>29</sup> CforAT reply comments at 7.

that middle-mile infrastructure should be open-access and therefore maintains this element of the revised staff proposal. The Commission has not, however, required last-mile infrastructure to be open-access and we do not see a compelling reason for such a requirement in the LLP. This decision adopts Section 8.1 of the revised staff proposal for inclusion in the LLP requirements and guidelines.

## **2.8. Credit Guarantee Benefit Estimate**

Section 9.2 of the revised staff proposal identifies all the items of information that will be required as part of an application for LLP support. Application Item 19, regarding bond terms, includes an estimate of the bond interest rate with and without LLP credit enhancement. RCRC asks the Commission to consider the necessity of requiring the opinion of a “disinterested,” or independent, municipal advisor, suggesting the opinion of a registered municipal advisor should be sufficient.<sup>30</sup> The Commission prefers that an independent municipal advisor perform the estimate of the bond interest rate, to maintain as much independence in the assessment of the financial offering as possible. This decision adopts Section 9.2 of the revised staff proposal for inclusion in the LLP requirements and guidelines.

## **2.9. Form of Guarantee**

Section 9.3 of the revised staff proposal states that staff will specify the form of guarantee to be provided for a given project and specifies that the form of guarantee will be non-negotiable. In comments to the June 21, 2023 ruling, RCRC proposes to remove the provision that the form of guarantee be non-negotiable, stating bond counsel and other participants in the bond

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<sup>30</sup> RCRC comments at 4-5.

transaction should have some ability to suggest technical revisions to integrate the guarantee into the framework of the larger transaction. Providing any opportunity for modifications to the form of guarantee, even purely technical revisions, will increase the cost of issuance. Further, the form of guarantee is simply for an approved amount of collateral; it is unclear why/under what circumstances there would be a need to make such modifications. In the interest of minimizing the cost of issuance, it is reasonable to maintain the form of guarantee as non-negotiable. This decision adopts Section 9.3 of the revised staff proposal for inclusion in the LLP requirements and guidelines.

#### **2.10. Outreach**

Section 10 of the revised staff proposal, regarding outreach, specifies that staff will work with other state agencies and partners to coordinate outreach to eligible entities in the state, and that staff will monitor and evaluate outreach efforts to ensure alignment with the CPUC's Environmental and Social Justice Action Plan. NDC asserts that Commission staff should reach out to community based organizations (CBO) and Tribal Governments/Tribal Organizations to tell them about the LLP, and should be available to provide support to local and tribal government agencies to help with the application process, answer questions, explain evaluation criteria, etc.<sup>31</sup> In reply comments, CforAT supports NDC's recommendation to engage CBOs, local government agencies and community members.<sup>32</sup> The Commission agrees with NDC's recommendation for staff to reach out to CBOs and Tribal Governments/Tribal Organizations to inform them about the LLP; this decision modifies Section 10 of the revised staff

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<sup>31</sup> NDC comments at 17.

<sup>32</sup> CforAT reply comments at 11.

proposal to incorporate this element into staff's planned outreach. Commission staff will be available to explain the application process (including evaluation criteria) and address applicants' questions.

### **2.11. Reporting**

Section 11 of the revised staff proposal, regarding reporting requirements, includes requirements for bi-annual progress, completion and incident reporting. Parties either do not address or express general agreement with the proposed reporting requirements. NDC notes that the revised staff proposal omits a requirement, which was included in the original staff proposal, for biannual financial reporting for the duration of time that LLP funds are encumbered by the applicant, and asserts such reporting should be required for at least three years after the project deployment is complete.<sup>33</sup> In reply comments, CforAT recommends that speed test data reporting include both peak and off-peak timing testing requirements.<sup>34</sup> The Commission agrees with CforAT's recommendation. With respect to NDC's comments, we confirm that biannual reporting on project progress will be required; for completion reporting, most standard bond indentures require financial reporting, therefore such reporting is not necessary as part of administering the LLP. This decision modifies Section 11 of the revised staff proposal to include peak and off-peak timing testing requirements, for inclusion in the final requirements and guidelines of the LLP.

### **3. Next Steps and Program Information**

Following Commission approval of this decision, staff will post the LLP application form as well as a standardized form of guarantee and any other

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<sup>33</sup> NDC comments at 14-16.

<sup>34</sup> CforAT reply comments at 10.

necessary documents, to the Commission's LLP webpage.<sup>35</sup> Staff may find it necessary or reasonable to propose modifications to certain aspects of the LLP requirements and guidelines, for instance based on application activity and/or staff's experience with administering the program. The Commission finds it reasonable to authorize staff to propose modifications to the adopted LLP requirements and guidelines via a draft resolution. Any such draft resolution must be served on the service list of this proceeding and the CASF distribution list so that interested entities will have notice and opportunity to comment before the Commission considers the draft resolution.

The Commission's LLP webpage is accessible at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/broadband-implementation-for-california/loan-loss-reserve-fund>. The following information will be provided and maintained:

- About the Program, or basic program information;
- Funding Focus, or purpose of the Broadband Loan Loss Reserve Fund;
- Timing of Program Start and Application Window;
- Application Resources, including the LLP application form;
- LLP Requirements and Guidelines;
- Application Process; and
- Resources and More Information.

With respect to comments from CalBroadband, requesting that the source and amount of funding be made available and updated at least monthly and

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<sup>35</sup> To the extent unanticipated issues arise concerning the standardized form of guarantee, staff may submit a draft resolution requesting specific approval of the standardized form of guarantee by the Commission.



especially prior to deadlines for each cycle,<sup>36</sup> Commission staff will endeavor to provide accurate and timely updates on the amount of funding available in each track.

#### **4. Summary of Public Comment**

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

The Commission received public comments regarding the Staff Proposed LLP on October 14, 2022 and July 10, 2023. Public comments recommended that the primary focus of the LLP be to provide credit enhancements that will induce private lending institutions to provide affordable financing; that staff should directly solicit input from lenders and municipal financial advisors; and private for-profit companies should not have any access to the LLP, regardless of any public partnership. Public comments also asked to reassess the DSR repayment seniority, arguing this may impact the marketability of bonds issued with the credit enhancement feature; and whether the Staff Proposed LLP’s scope is limited to offering credit enhancement for broadband revenue-backed bonds, noting the commenter’s desire for more accessible opportunities for a more marketable bond security without the need for General Fund exposure.

#### **5. Comments on Proposed Decision**

The proposed decision of Commissioner Darcie L. Houck in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities

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<sup>36</sup> CalBroadband comments at 15-16.

Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. On October 18, 2023, CforAT, NDC, RCRC, CalBroadband, and TURN filed comments; and on October 23, 2023, NDC, TURN, CforAT, CalBroadband filed reply comments.

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

- Modified the sequence of terms included in Section 3 (Definitions) of the LLP requirements and guidelines, and corrected a typographical error in Section 4 (Responsible Entities) of the LLP requirements and guidelines.<sup>37</sup>
- Clarified that the DSR Guarantee must be repaid immediately after debt service, and before any broadband revenues can otherwise be allocated to bond holders (under the applicable bond indenture), in recognition that debt service is itself an allocation of revenues to bondholders.<sup>38</sup>
- In the LLP requirements and guidelines, included a definition for "eligible debt" to identify the types of financial instruments that the DSR may support, and substituted this term for references to bonds and loans in the LLP requirements and guidelines.<sup>39</sup>

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<sup>37</sup> *Opening Comments of the National Diversity Coalition on the Proposed Decision of Commissioner Houck Addressing Staff Proposal on Establishment of a Broadband Loan Loss Reserve Fund*, filed October 18, 2023, at 4-5.

<sup>38</sup> *Opening Comments of the Rural County Representatives of California on the Proposed Decision Addressing Staff Proposal on Establishment of a Broadband Loan Loss Reserve Fund*, filed October 18, 2023, at 6.

<sup>39</sup> *Opening Comments of The Utility Reform Network on the Proposed Decision Addressing Staff Proposal on Establishment of a Broadband Loan Loss Reserve Fund*, filed October 18, 2023 (TURN opening comments), at 2-3.

- Modified the allocation of LLP support available in each application cycle so that 50 percent will be available to Equity track applications, 10 percent to Sovereign Tribal Government applicants, and 40 percent to General Market applications.<sup>40</sup>
- In the LLP requirements and guidelines, included “Tribal areas,” in recognition that Disadvantaged Communities (as currently specified by the California Environmental Protection Agency) is limited to areas under control of federally recognized Tribes.<sup>41</sup>
- In the LLP requirements and guidelines, clarified that applicants proposing to serve Tribal areas must include evidence of support from the applicable Sovereign Tribal Government(s).<sup>42</sup>

We decline to make further revisions requested by parties, as either unnecessary or unwarranted at this time.

## **6. Assignment of Proceeding**

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

## **Findings of Fact**

1. Restricting LLP support to unserved locations may render projects financially unviable.

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<sup>40</sup> TURN opening comments, at 11; and *Reply Comments of the National Diversity Coalition on the Proposed Decision of Commissioner Houck Addressing Staff Proposal on Establishment of a Broadband Loan Loss Reserve Fund*, filed October 23, 2023, at 3-4.

<sup>41</sup> TURN opening comments, at 5-6. The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment designates disadvantaged communities for purposes of implementing Senate Bill 535 (Stats. 2012, Ch. 830).

<sup>42</sup> *Reply Comments of The Utility Reform Network on the Proposed Decision Addressing Staff Proposal on Establishment of a Broadband Loan Loss Reserve Fund*, filed October 23, 2023, at 1-2.

2. The public benefit purpose of LLP-supported infrastructure is most aligned with the purpose of public agencies and non-profit organizations.

3. Requiring repayment of the DSR before debt service payments would simply trigger further DSR draws to meet those debt service payments.

4. Requiring the bond issuer/borrower to hire a consultant, under specified circumstances indicating a risk of insolvency, provides an appropriate safeguard for the DSR.

5. In the event the DSR Guarantee is not repaid after three months, setting interest for draws on the DSR based on the prime rate will be less volatile than if based on the Pooled Money Investment Account.

6. Setting interest at the prime rate plus one percent is not excessively punitive.

7. The tranche approach, as described in the revised staff proposal, will not delay or prevent consideration of projects that may require higher levels of coverage but would connect more unserved locations; the tranche approach also provides a simpler means to administer the LLP in comparison to the stepped approach.

8. Awarding less coverage than the requested amount will not meet project needs.

9. The scoring criteria and rubric will be most consequential in situations where applications request more funds than are available in a given cycle.

10. Making LLP support available to Equity track-eligible projects through both the Equity and General Market tracks will optimize the use of LLP support for broadband infrastructure deployment to unserved locations.

11. Requiring an independent municipal advisor will maximize independence in the assessment of the financial offering.

12. Providing any opportunity for modifications to the form of guarantee will increase the cost of issuance.

13. Staff may find it necessary or reasonable to propose modifications to the LLP requirements and guidelines, for instance based on application activity and/or staff's experience with administering the program.

### **Conclusions of Law**

1. It is reasonable to permit and enable LLP support for projects that would deploy broadband infrastructure to serve unserved as well as underserved and served locations.

2. It is reasonable to require that infrastructure supported by the LLP be owned by a public agency or non-profit organization.

3. It is reasonable to provide that the DSR must be repaid immediately after debt service, but before any broadband revenues can otherwise be allocated to bond holders under the applicable bond indenture.

4. In certain circumstances indicating a risk of insolvency, it is reasonable to require the bond issuer/borrower to hire a consultant, and to provide for trustees to discuss and determine remedies for revenue shortfalls with Commission staff.

5. In the event the DSR Guarantee is not repaid after three months, it is reasonable to set interest for draws on the DSR at the prime rate plus one percent.

6. It is reasonable to provide for multiple application cycles within a calendar year, with LLP support allocated to both the Equity and the General Market tracks in each application cycle, and to permit applications for any level of support (up to 100 percent of bond principal).

7. It is reasonable to transfer any remaining funds from a given track's application cycle to the subsequent application cycle, and to consider eligible applications that are not fully funded in a prior application cycle without requiring re-submission of those applications.

8. It is reasonable to establish scoring criteria and a rubric that will be relatively simple to administer.

9. It is reasonable to provide that projects eligible for the Equity track will also be eligible and prioritized for support in the General Market track.

10. To maximize independence in the assessment of the financial offering, it is reasonable to require that an independent municipal advisor perform the estimate of the bond interest rate.

11. To minimize the cost of issuance, it is reasonable to maintain that the form of guarantee will be non-negotiable.

12. It is reasonable to establish LLP requirements and guidelines as detailed in Attachment 1 of this decision.

13. It is reasonable to authorize staff to propose modifications to the LLP requirements and guidelines via a draft resolution.

## **O R D E R**

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

1. The Loan Loss Program requirements and guidelines included with this decision as Attachment 1 are adopted.

2. Commission staff is authorized to propose modifications to the Loan Loss Program requirements and guidelines via a draft resolution.

3. Commission staff must provide notice of any draft resolution to the service list of this proceeding and the California Advanced Services Fund distribution list.

4. Rulemaking 20-08-021 remains open.

This order is effective today.

Dated \_\_\_\_\_ 2023, Sacramento, California.