

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

Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund Including Those Necessary to Implement Loan Program and Other Provisions of Recent Legislation.

FILED  
PUBLIC UTILITIES COMMISSION  
DECEMBER 16, 2010  
SAN FRANCISCO OFFICE  
RULEMAKING 10-12-008

**ORDER INSTITUTING RULEMAKING****1. Introduction**

On September 25, 2010, Governor Schwarzenegger signed into law Senate Bill 1040. This emergency legislation amended Section 281 of the Public Utilities Code. As amended, Section 281 extends and modifies the California Advanced Services Fund which is part of a program that the Commission had previously established for the purpose of encouraging deployment of “broadband” communications infrastructure to all Californians. This rulemaking is instituted to implement the provisions of the Senate Bill 1040, such as the increased overall funding for the program and the new consortia grant and broadband infrastructure revolving loan accounts. The rulemaking will also address other possible changes to the program, including those suggested in a pending petition by the Commission’s Division of Ratepayer Advocates to modify one of the Commission’s earlier decisions regarding the fund (Decision 07-12-054).

## **2. Background**

### **2.1. Beginning of the California Advanced Services Fund (CASF)**

The Commission created the CASF in Decision (D.) 07-12-054. The specific purpose of the CASF is to increase availability of high-speed communications service (what is commonly called “broadband”) in areas of California that are currently unserved or underserved. The CASF accomplishes this purpose through financial assistance to qualifying projects.

To be eligible for a CASF grant, a project sponsor had to be a “telephone corporation” under the Public Utilities Code. In effect, this requirement limited eligibility to carriers holding a certificate of public convenience and necessity (CPCN) from the Commission and to wireless carriers registered with the Commission. Also, a CASF grant was limited to cover non-recurring or construction costs of a project, and was capped at 40% of such costs. The Commission initially limited CASF funding to \$100 million and set January 1, 2013 as the CASF sunset date.

Top priority in awarding CASF grants is given to projects in unserved areas or areas where no facilities-based provider offers broadband service. To the extent money is still available, CASF grants are also awarded to projects in “underserved areas,” that is, areas where no facilities-based provider offers service at a download transmission speed of at best three megabits per second (mbps) and an upload speed of at least one mbps. By Resolution T-17143 (June 12, 2008), the Commission adopted filing requirements and scoring criteria for applications seeking CASF grants.

## **2.2. Interaction with the ARRA**

The American Recovery and Reinvestment Act (ARRA) provided an opportunity to dovetail California and federal efforts to encourage broadband deployment.<sup>1</sup> Among many other programs, the ARRA appropriates over \$7 billion for loans and grants to support broadband deployment on a national level.

The federal funds are channeled through two agencies. The Rural Utility Service (RUS) is responsible for \$2.5 billion for loans, loan guarantees, and grants. The National Telecommunications Information Administration (NTIA) is responsible for \$4.15 billion for broadband deployment, adoption, and mapping and another \$650 million related to the digital television transition. The bulk of this money is targeted to broadband construction and deployment in areas that are either without service or lack sufficient high-speed broadband access to facilitate economic development. For a qualifying project, the ARRA would provide up to 80% of the total cost, with the remaining 20% to be covered by the project sponsor.

California responded swiftly to coordinate the CASF with the federal broadband efforts. First, Assembly Bill (AB) 1555 (Perez) amended Public Utilities Code Section 281, effective July 29, 2009.<sup>2</sup> For the sole purpose of providing matching funds pursuant to the ARRA, AB 1555 provided that any entity eligible for ARRA funding would also be eligible to apply to participate in

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<sup>1</sup> The ARRA (Pub. Law No. 111-5) is a far-reaching economic stimulus plan; it was signed by President Obama on February 17, 2009.

<sup>2</sup> Section 281 was amended in 2008, following and complementing the Commission's establishment of the CASF in D.07-12-054. This statute, among other things, provides for the handling of moneys for purposes of the CASF.

the CASF program. (*See* Pub. Util. Code § 281(c)(2).) In effect, AB 1555 enabled an entity that was neither a CPCN holder nor a registered wireless carrier to seek a CASF grant in conjunction with an ARRA grant, provided that the entity otherwise met the other eligibility requirements of the CASF program.

Second, in D.09-07-020, the Commission modified the CASF eligibility criteria to accommodate applicants also seeking ARRA funding. For such applicants, D.09-07-020 provides for a grant of 10% of the project's capital costs, which presumes funding of 80% of these costs through an ARRA grant and applicant responsibility for the remaining 10%. Also in D.09-07-020, the Commission adopted a new schedule for filing, service, and approval of applications as an "overlay" to the ARRA process.

### **2.3. Extension and Expansion of the CASF**

Prior to enactment of Senate Bill (SB) 1040, Public Utilities Code Section 281(e) provided, in essence, that the CASF program would "sunset," and Section 281 would be repealed, as of January 1, 2013. However, SB 1040 repealed the sunset provision and expanded the program significantly.

In principal part, SB 1040 increased the size of the CASF from \$100 million to \$225 million. The additional \$125 million, to be collected in annual \$25 million increments from calendar year 2011 through calendar year 2015, is allocated to three accounts: the Broadband Infrastructure Grant Account (\$100 million); the Rural and Urban Regional Broadband Consortia Grant Account (\$10 million); and the Broadband Infrastructure Revolving Loan Account (\$15 million). Besides the additional sums to be collected, the latter two accounts are intended to address needs that are unmet under the current CASF program. Specifically, the Consortia Grant Account is "to fund the cost of broadband deployment activities other than the capital cost of facilities, as specified by the commission."

(Pub. Util. Code § 281(d).) The Revolving Loan Account is “to finance capital costs of broadband facilities not funded by a grant from the Broadband Infrastructure Grant Account.” (Pub. Util. Code § 281(e).)

### **3. Discussion**

SB 1040 provides opportunities and challenges for the CASF. Now is the logical time to re-think the program in light of current circumstances. On the one hand, the Commission will administer new accounts and additional money under the CASF, on the other hand, federal money (at least through the ARRA) is exhausted, having been fully allocated. Moreover, the Commission and interested parties here had over two years’ experience with the CASF program. It is important that we learn from that experience going forward.

Accordingly, in section 4 below, we pose a series of questions, together with an accompanying narrative intended to give a more detailed context than the broad overview provided in the background section above. To further assist the parties, the Appendix to this order reports on CASF Funding Status, with an analysis of applications and awards as of October 14, 2010.

### **4. Consideration of Modification to the CASF Program**

Parties to this rulemaking are asked to focus their opening and reply comments on the questions posed below.

#### **4.1. Potential Program Changes Responding to Legislation**

SB 1040, which was signed into law by Governor Schwarzenegger on September 25, 2010, establishes three accounts under the CASF:

- The Broadband Infrastructure Grant Account;
- The Rural and Urban Regional Broadband Consortia Account; and

- The Broadband Infrastructure Revolving Loan Account.

Both the Rural and Urban Regional Broadband Consortia and the Broadband Infrastructure Revolving Loan accounts are entirely new accounts under the CASF. Are existing CASF procedures and criteria suitable for administering these new accounts? The following questions focus on characteristics of the new accounts for which the existing CASF procedures and criteria may not be adequate.

#### **4.1.1. Funds for Consortia**

The Rural and Regional Broadband Consortia Account provides funds for grants to eligible consortia to cover the cost of deployment activities other than the capital costs of facilities.

- What eligibility criteria should the Commission apply in selecting representatives/groups to be part of a consortium? For example, should prior experience with technology, prior experience working with community groups, and/or other factors be considered? How much weight should each criterion be given?
- What role should the Rural and Regional Consortia take in broadband deployment? What goals or objectives are appropriate for a consortium?
- What costs and activities should be eligible for funding?
- How should payments to a consortium be made? For example, should a consortium receive progress payments, similar to infrastructure grantees? (See Res. T-17143.) What documentation should be required as condition of payment?

#### **4.1.2. Loans**

The Broadband Infrastructure Revolving Loan Account provides loans for capital costs of broadband facilities not funded by a grant from the Broadband

Infrastructure Grant Account. Interest rate is to be determined by the Commission based on surveys of existing financial markets.

- Who should be eligible to apply for loans?
- May an eligible entity apply for both a grant and a loan at the same time, with the Commission deciding whether a grant, a loan, or both should be awarded?
- Should there be minimum and maximum amounts for the loan?
- What criteria and standards should be adopted for evaluating loan applications?
- What financial indices should be consulted to determine interest rates and when and how to revise the rates?
- Over what period should the loans be repaid?
- What security should be provided?
- As to terms and conditions, are there existing models for revolving loan programs that the Commission should follow?

#### **4.1.3. Entities That Are Not Commission-Regulated**

It appears that, with the ARRA funds now fully allocated, entities that are neither CPCN holders nor registered wireless carriers are no longer eligible for grants under the Broadband Infrastructure Grant Account. (*See* Pub. Util. Code § 281(c)(2).)

- Would/should entities that are not regulated by the Commission be eligible recipients under the Broadband Infrastructure Revolving Loan Account?

Many entities that are not Commission-regulated are eligible to participate in consortia, and an eligible consortium is not required to have as its lead fiscal agent a Commission-regulated entity. (*See* Pub. Util. Code § 281(d).)

- To ensure appropriate accountability, what requirements should the Commission adopt for a fiscal agent or other consortium member that is not Commission-regulated?

#### **4.2. Other Potential Changes for the Existing CASF Infrastructure Grant Program**

We have now had two years of experience implementing the CASF grant program. We have monitored the projects approved for funding, and applicants' and recipients' compliance with program requirements. We have had the benefit of comments from parties on draft resolutions. Finally we have had suggestions made in the Petition for Modification (filed Sept. 13, 2010), by the Division of Ratepayer Advocates (DRA), to which several parties have responded (and DRA has replied to the responses). This extensive background prompts us to revisit the existing CASF process, requirements, and criteria. The following questions and proposals are drawn from our experience and the input received.

##### **4.2.1. Eligible Applicants; Available Funding**

Currently, CASF provides funding for construction of broadband infrastructure in unserved and underserved areas, as defined in Res. T-17143. It provides matching funds of 40% of the project capital cost; the applicant is responsible for the remaining 60%. For projects receiving funds under the ARRA, it provides matching funds of 10% of the project capital cost; of the remainder, roughly 80% of the matching funds are sourced from the ARRA, and the applicant is responsible for 10%. Under existing rules:

- 40% CASF funding is open to any of the following: [i] a CPCN holder; [ii] a wireless carrier that is registered with the Commission; [iii] an entity that has a pending CPCN application (the award is subject to the approval of its CPCN); or (iv) a consortium, provided that the consortium's financial agent is an entity holding a CPCN



or a wireless carrier registered with the Commission.  
(See D.07-12-054 and Res. T-17143.)

- 10% CASF funding is open to an entity other than a CPCN holder or a registered wireless carrier, provided that the entity is also applying for ARRA funding (See AB 1555 [Ch. 24, Stats 2009], D.09-07-020, and Res. T-17143.)
- Because ARRA funding has now been fully allocated, should CASF funding opportunities still be offered to non-CPCN holders or non-registered wireless carriers?
- Should the CASF funding cap of 40% be increased, considering that [i] some applicants have been unable to secure the 60% matching funds, and [ii] funds from the ARRA are no longer available?

#### **4.2.2. Definition of Unserved and Underserved Areas**

Existing CASF rules limit funding to broadband infrastructure for areas determined to be unserved and underserved. An “unserved” area is an area that is not served by any form of facilities-based broadband, such that Internet connectivity is available only through dial-up service or satellite. An “underserved” area is an area where broadband is available, but no facilities-based provider offers service meeting the benchmark speeds of at least three mbps download and at least one mbps upload.

Under the ARRA, “unserved” and “underserved” are defined as follows:

Unserved area: a proposed funded service area, composed of one or more contiguous census blocks, where at least 90% of households in the area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the benchmark transmission speeds (above). A household has access to broadband service if the household can readily subscribe to that service on request.

Underserved area: a proposed funded service area composed of one or more contiguous census blocks. It may be either a “Last Mile” or “Middle Mile” project.

A proposed funded service area qualifies as underserved for “Last Mile” projects if at least one of the following factors is met:

- No more than 50% of the households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the benchmark transmission speeds (above);
- No fixed or mobile broadband service provider advertises broadband transmission speeds of at least three mbps downstream in the proposed funded service area; or
- The rate of broadband subscribership for the proposed funded service area is 40% of households or less.

A proposed funded service area may qualify as underserved for “Middle Mile” projects if one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects.

- Should the CASF definitions be revised to conform with the NTIA/RUS definitions of unserved and underserved areas [Federal Register/Vol. 74, No. 130, July 9, 2009, Joint Notice of Funding Availability for the Broadband Technology Opportunities Program (BTOP) and the Broadband Initiatives Program (BIP)]? Alternatively, should the Commission revise these definitions based on the goals set forth in the 2007 report of the California Broadband Task Force?

#### **4.2.3. More Transparency in Handling Applications**

Under the current application process (established in Res. T-17143), only the census block groups and maps of proposed areas are posted on the CASF website. This affords an opportunity for the public and other carriers to challenge the areas proposed for CASF funding, and for other qualified entities to submit counterproposals. However, the applicant and the technology

proposed are not posted. The purpose of withholding this information is to provide a level of confidentiality for aspects of an application that may be competitively sensitive. (See D.09-07-020 at 9, footnote 6.) Only when the draft resolution responding to an application is issued for public comment are the full contents of the application [identity of the applicant, the technology proposed, and other information submitted pursuant to Res. T-17143] made available.

DRA, in its petition, proposes a fully transparent process, in which applications are made available immediately to the public and are subject to public comment.

- o Should the process be fully transparent as proposed by DRA?
- o Should the Commission require an applicant to provide additional public notice of its application targeted to households in its proposed area (as suggested by The Utility Reform Network in responding to DRA's petition)?

#### **4.2.4. Criteria for Handling Applications**

##### **1) Multiple Competing Applications**

In Res. T-17143, the Commission adopted the following criteria for (i) handling multiple competing applications covering the same area, and (ii) ranking projects to allocate the CASF funds if the total amount applied for exceeds \$100 million (the amount available from the CASF).

<u>Criterion</u>	<u>Weight (Points)</u>
i) Funds Requested per Potential Customer	40
ii) Speed	20
iii) Service Area	15
iv) Timeliness of Completion of Project	5
v) Pricing	10
vi) Guaranteed Pricing Period	5

vii) Low-Income Areas	5
<b>TOTAL:</b>	<hr/> 100

- Should the scoring criteria or weights be modified? (We note that the scoring criteria have so far only been applied once.)

## **2) Single Application for a Proposed Area**

Where there is only one application for an area, the Commission has been willing to approve funding for a project that would fall short of the benchmark speeds. [See Res. T-17143 at 3-4, Res. T-17233 at 12, Res. T-17195 at 6.]

- Should the Commission increase the benchmark speed to four mbps download and one mbps upload? The increase would conform with the Federal Communications Commission's Sixth Broadband Deployment Report, which endorsed the minimum speed component of the national broadband availability target proposed in the National Broadband Plan.<sup>3</sup>
- Should the Commission revise the criteria to include an industry standard cost and/or a ceiling cost per household? If so, how should the industry standard and ceiling cost per household be determined? Should the industry standard or ceiling cost depend on the proposed technology?
- Where there is only one application for a proposed area, what other criteria should be used in evaluating the application?

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<sup>3</sup> The National Broadband Plan recommends, as a national broadband availability target, that every household in America have access to affordable broadband service offering actual download (i.e., to the customer) speeds of at least four mbps and actual upload (i.e., from the customer) speeds of at least one mbps.

#### **4.2.5. Open Access and Net Neutrality**

In its petition, DRA proposes that as a condition for receiving a CASF grant, the recipient should be required to open its network to competitive providers.

- Should the Commission require a recipient to share its CASF-funded network with competitive providers?

#### **4.2.6. Adoption/Affordability**

An applicant is required to submit the projected number of households that will benefit from the deployment of broadband in the area proposed. The existing program, however, does not require the applicant to submit a plan to encourage adoption or to offer an affordable monthly rate in the proposed area.

- Should a CASF applicant be required to submit a plan for encouraging adoption in the area proposed?
- Should there be a cap on monthly rates and/or should installation and other charges be waived for a specified period?

#### **4.2.7. Performance Bond**

A performance bond is required if an applicant's 60% matching funds do not come from its own capital budget but are obtained from outside financing sources. Some recipients have had difficulty in obtaining the performance bond, causing a delay in their project start date.

- Should the Commission modify its performance bond requirements, or provide alternatives, to minimize delays but ensure performance? Should the performance bond requirement be replaced with another form of "security?" If so, what?

#### **4.2.8. Information and Documentation Requirements**

Resolutions T-17143 and 17233 list the information and documentation that an applicant must submit during the application process and that a recipient must submit after funding approval.

- Should an applicant be required to provide additional information to demonstrate the technical and financial soundness of a proposed project? For example, NTIA/RUS [Federal Register/Vol. 74, No. 130, July 9, 2009, Joint Notice of Funding Availability for the BTOP and the BIP] require much additional information, such as the following:
  - Resumes of key management personnel;
  - Description of the applicant's readiness to manage a broadband services network;
  - Organizational chart showing any parent organization, subsidiaries, and affiliates;
  - Itemized budget of the costs of the project, including the ratio of loans to grants, and any other source of funding;
  - Explanation of how the cost per household is determined; if applicable, explanation of why the project cost is relatively higher on a per household basis in the proposed area compared to other areas using the same or similar technology;
  - Financial analysis and projections (income statement, cash flow, balance sheet, etc., and assumptions used) on the sustainability of the project, including subscriber data and adoption rates; and
  - Description and schematic diagram of proposed plan and network design, including location of infrastructure and facilities (backbone and access line locations, primary tower, repeater tower, antenna placements, etc.).

### **4.3. Issues Common to the Existing CASF Program and the Expanded CASF Program Under SB 1040**

#### **4.3.1. Securing Performance**

The State is spending large sums of money in grants and loans to support broadband deployment in unserved and underserved areas. The effectiveness of these grants and loans in achieving these goals is a clear concern in the Commission's decisions, as well as in the statute. (*See* Pub. Util. Code § 281(f).) The Commission therefore is committed to ensure that grantees and loan recipients perform in accordance with the conditions in their grants and loans. Performance bonds and progress payments are two safeguards that the Commission has been using to date in the CASF program.

- Should the Commission adopt additional or alternative means of securing performance? If so, please describe fully.
- Are appropriate performance bonds available for purposes of the CASF projects? Are there further steps the Commission should take with respect to the availability of performance bonds? If so, please describe fully.

#### **4.3.2. Utilizing Existing Right-of-Way and Existing Infrastructure**

In the context of rules to govern the rapidly evolving telecommunications industry, The Commission has consistently supported using the public right-of-way and existing infrastructure such as utility poles to facilitate the development of competition and the extension of new or advanced services. (*See, e.g.,* D.98-10-058, 82 CPUC2d 510, 544.)

- To what extent may resources such as the public right-of-way and existing infrastructure be utilized in deploying broadband to unserved and underserved areas in California? Are these resources currently under-utilized for this purpose? If so, please describe fully.

- Should the Commission promote participation of right-of-way owners such as railroad corporations and Caltrans in broadband deployment, either as partners in such projects, members of consortia, or otherwise?
- What other public or private entities may be able to facilitate broadband deployment? What role should the Commission play in involving such entities?

## **5. Preliminary Scoping Memo**

As required by Rule 7.1(d) of the Commission's Rules of Practice and Procedure (Rules), we provide a Preliminary Scoping Memo for this rulemaking. In sections 2-4 above, we broadly summarized the subject matter of this rulemaking and listed the issues and proposals under consideration. In addition to responding to these issues and proposals, commenters may offer suggestions of their own or modifications to the proposals; the assigned Commission has discretion to add the suggestions or modifications in finalizing the Scoping Memo and may provide for further comment, as appropriate.

Rule 7.1(d) also requires that an Order Instituting Rulemaking preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is quasi-legislative as defined in Rule 1.3(d). We anticipate that the issues in this proceeding may be resolved through comments without the need for evidentiary hearings.

Anyone who objects to the preliminary categorization of this rulemaking as "quasi-legislative," or to the preliminary hearing determination, must state the objections in opening comments to this rulemaking. If the person believes hearings are necessary, the comments must state: (a) the specific disputed fact for which hearing is sought; (b) justification for the hearing (e.g., why the fact is material); (c) what the party would seek to demonstrate through a hearing; and



(d) anything else necessary for the purpose of making an informed ruling on the request for hearing. After considering any comments on the preliminary scoping memo, the assigned Commissioner will issue a Scoping Memo that, among other things, will make a final category determination; this determination is subject to appeal as specified in Rule 7.6(a).

Opening comments are due 30 days after the Order Instituting Rulemaking is mailed, and reply comments are due 15 days thereafter. The assigned Commissioner or assigned Administrative Law Judge may, if it appears useful, convene a prehearing conference following the opening and reply comments.

Given the legislative mandate to encourage deployment of advanced communication services to all Californians, we will focus initially on the Consortia Fund issue (see section 4.1.1) in order to begin implementing SB 1040 as soon as possible. We urge parties interested in commenting on the Consortia to present their perspectives in the opening and reply comments. Shortly thereafter, we intend to issue an interim decision resolving the consortia-related issues.

Consistent with Public Utilities Code Section 1701.5, we anticipate this proceeding will be concluded within 18 months of the issuance of the Scoping Memo.

## **6. Participation in this Rulemaking**

Our initial service list for this rulemaking will be the most recent service list in R.06-06-028, which is the docket in which we issued our earlier decisions (notably, D.07-12-054 and D.09-07-020) implementing the CASF. However, receipt of this Order Instituting Rulemaking does not in itself confer party status. Any person or entity seeking party status must follow the instructions below.

You may participate actively in this rulemaking or merely monitor it. In either case, by acting within 20 days of the date of mailing of this Order Instituting Rulemaking, you will ensure that you will receive all documents served in the proceeding. Our Process Office will publish the official service list at our website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)), and will update the list as necessary.

### **6.1 During the First 20 Days**

Within 20 days of the publication of this Order Instituting Rulemaking, anyone may ask to be added to the official service list. Send your request to the Process Office. You may use e-mail ([process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Include the following information:

- Docket Number of this rulemaking;
- Name (and party represented, if applicable);
- Postal Address;
- Telephone Number;
- E-mail Address; and
- Desired Status (Party, State Service, or Information Only).<sup>4</sup>

### **6.2 After the First 20 Days**

If you want to become a party after the first 20 days, you may do so by filing and serving timely comments in the rulemaking (Rule 1.4(a)(2)), or by making an oral motion (Rule 1.4(a)(3)), or by filing a written motion (Rule 1.4(a)(4)). If you make an oral or written motion, you must also comply

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<sup>4</sup> If you want to file comments or otherwise actively participate, choose “Party” status. If you do not want to actively participate but want to follow events and filings as they occur, choose “State Service” status if you are an employee of the State of California; otherwise, choose “Information Only” status.

with Rule 1.4(b). These rules are in the Commission's Rules of Practice and Procedure, which you can read at the Commission's website.

If you want to be added to the official service list as a non-party (that is, as State Service or Information Only), follow the instructions in section 6.1 above.

### **6.3 Updating Information**

Once you are on the official service list, you must ensure that the information you have provided is up-to-date. To change your postal address, telephone number, e-mail address, or the name of your representative, send the change to the Process Office by letter or e-mail, and send a copy to everyone on the official service list.

### **6.4 Serving and Filing Documents**

When you serve a document, use the official service list published at the Commission's website as of the date of service. You must comply with Rules 1.9 and 1.10 when you serve a document to be filed with the Commission's Docket Office. If you are a party to this rulemaking, you must serve by e-mail any person (whether Party, State Service, or Information Only) on the official service list who has provided an e-mail address.

The Commission encourages electronic filing and e-mail service in this rulemaking. You may find information about electronic filing at <http://www.cpuc.ca.gov/PUC/efiling>. E-mail service is governed by Rule 1.10. If you use e-mail service, you must also provide a paper copy to the assigned Commissioner and Administrative Law Judge. The electronic copy should be in Microsoft Word or Excel formats to the extent possible. The paper copy should be double-sided. E-mail service of documents must occur no later than 5:00 p.m. on the date that service is scheduled to occur.

If you have questions about the Commission's filing and service procedures, contact the Docket Office ([docket\\_office@cpuc.ca.gov](mailto:docket_office@cpuc.ca.gov)).

### **6.5 Subscription Service**

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

### **6.6 Public Advisor**

Anyone interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390, or [e-mailpublic.advisor@cpuc.ca.gov](mailto:e-mailpublic.advisor@cpuc.ca.gov); or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail [public.advisor.la@cpuc.ca.gov](mailto:public.advisor.la@cpuc.ca.gov). The TTY number is (866) 836-7825.

### **6.7 Intervenor Compensation**

Any party that expects to claim intervenor compensation for its participation in this rulemaking must file its notice of intent to claim intervenor compensation no later than 30 days of the mailing of this Order Instituting Rulemaking.

### **6.8 Ex Parte Communications**

Pursuant to Rule 8.2(a), ex parte communications in this rulemaking are allowed without restriction or reporting requirement.

**O R D E R**

**IT IS ORDERED** that:

1. A rulemaking is instituted to consider modifications to the California Advanced Services Fund, including but not limited to those necessary to implement Public Utilities Code Section 281 as recently amended by Senate Bill 1040, and those suggested by the Division of Ratepayer Advocates in its Petition for Modification of Decision 07-12-054.

2. The Executive Director will cause this Order Instituting Rulemaking to be served on the initial service list, which consists of the most recent service list in Rulemaking 06-06-028.

3. Within 20 days from the date of mailing of this Order Instituting Rulemaking, any person or representative of an entity interested in participating in this rulemaking may ask, by letter or e-mail to the Commission's Process Office (505 Van Ness Avenue, San Francisco, California 94102, or [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) to be placed on the official service list as party to this rulemaking. Alternatively, the person or representative may request State Service or Information Only status. The letter or e-mail must include all information specified in section 6.1 of this Order Instituting Rulemaking.

4. To be placed on the official service list after more than 20 days have elapsed from the date of mailing of this Order Instituting Rulemaking, or to update information previously provided for purposes of the official service list, the person or representative must follow the instructions set forth in section 6.2 or 6.3 of this Order Instituting Rulemaking.

5. The category of this rulemaking is preliminarily determined to be "quasi-legislative," and it is preliminarily determined that no hearings are necessary. Anyone objecting to the preliminary categorization of this

rulemaking as “quasi-legislative,” or to the preliminary determination that evidentiary hearings are not necessary, must state the objections in opening comments, as specified in Ordering Paragraph 7 below.

6. Given the legislative mandate to encourage deployment of advanced communication services to all Californians, we will focus initially on the Consortia Fund issue (see section 4.1.1) in order to begin implementing Senate Bill 1040 as soon as possible. We urge parties interested in commenting on the Consortia to present their perspectives in the opening and reply comments. Shortly thereafter, we intend to issue an interim decision resolving the consortia-related issues.

7. Interested parties are invited to file comments responsive to Ordering Paragraph 1 and to the discussion in sections 2-4 of this Order Instituting Rulemaking. Comments must conform to the requirements of the Commission’s Rules of Practice and Procedure. Opening comments must be filed within 30 days following mailing of the Order Instituting Rulemaking and reply comments within 15 days thereafter.

8. The assigned Administrative Law Judge will conduct or schedule events so as to carry out the Commission’s policy and direction as set forth in this Order Instituting Rulemaking. The assigned Administrative Law Judge, in consultation with the assigned Commissioner, may make additions or adjustments to the schedule and official service list for this proceeding, as appropriate. The assigned Commissioner or assigned Administrative Law Judge may set a prehearing conference if it is determined that one should be held.

9. The petition of the Division of Ratepayer Advocates for modification of Decision 07-12-054, the responses to the petition, and the reply to the responses (all of which were electronically filed in Rulemaking 06-06-028) are incorporated

by reference into the record of the rulemaking instituted by today's order. These documents may be freely referred to in subsequent filings as if originally filed in this rulemaking.

10. Any party that expects to request intervenor compensation for its participation in this rulemaking must file its notice of intent to claim intervenor compensation, in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, within 30 days of the mailing of this Order Instituting Rulemaking.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners

**APPENDIX**  
**CASF Funding Status as of October 14, 2010**

As of October 14, 2010, CASF awards amount to \$57.87 million for 41 projects covering 15,161 square miles and benefiting 318,788 households.

- Unserved areas : \$4.91 million for 15 projects covering 3,236 square miles and benefiting 27,427 households
- Underserved areas: \$52.96 million for 26 projects covering 11,925 square miles and benefiting 291,361 households

Of the 89 project applications received, 49 projects were approved for funding. Of these 49 projects, approval was subsequently rescinded for eight projects for the following reasons:

- 1 applicant was unable to secure the required 60% matching funds;
- 5 applicants were unable to secure ARRA funding;
- 1 applicant decided not to construct the project; and
- 1 applicant decided to construct the project using their own funds.

Of the remaining 41 projects, 30 of these projects are receiving matching CASF grants of up to 40% of project costs, while 11 are receiving matching grants of about 10% of project costs to supplement ARRA grants.

**SUMMARY OF CASF APPLICATIONS APPROVED, DENIED, AND RESCINDED**

	<b>Total Applications Received</b>	<b>89</b>		
<b>I.</b>	<b>40 % Funding</b>			
	Applications Received	<b>58</b>		
	Funded		31	
	Funding Rescinded		-1	
	Not Funded			27
	<b>40% Matching Funded Projects as of October 14, 2010</b>		<b>30</b>	
<b>II.</b>	<b>10% Funding</b>			
	Applications Received	<b>31</b>		
	Funded		18	
	Funding Rescinded		-7	
	Not Funded			13
	<b>10% Matching Funded Projects as of October 14, 2010</b>		<b>11</b>	
	<b>TOTAL FUNDED PROJECTS</b>		<b>41</b>	

**(END OF APPENDIX)**