

**DRAFT**

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

**Communications Division  
Carrier Oversight and Programs Branch \***

**RESOLUTION T-17335  
August 18, 2011**

**R E S O L U T I O N**

**Resolution T-17335. Approval of the California Advanced Services Fund Expense Budget for Fiscal Year 2012-13 (July 1, 2012 through June 30, 2013) to Comply with the Requirements of Public Utilities Code Section 270.**

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**Summary**

This resolution adopts a California Advanced Services Fund (CASF) expense budget of \$40 million for Fiscal Year (FY) 2012-13.

**Background**

In Decision (D.) 07-12-054 dated December 20, 2007, the Commission created a new public purpose program, California Advanced Services Fund (CASF), to encourage the deployment of broadband services in unserved and underserved areas, by funding 40% of the project cost through a one time infrastructure grant. The Commission allocated one hundred million dollars to the program to be funded by a surcharge of 0.25% beginning January 1, 2008, assessed on revenues collected from end-users for intrastate telecommunications services, coincident with a 0.25% reduction in the California High Cost Fund-B surcharge to reflect reductions in support provided by that program. The Commission further ordered that prior to any CASF disbursements, the Commission would seek statutory authority to add the CASF as one of the funds the State Treasury is authorized to handle and to seek statutory authority for (1) specific direction to telephone corporations for remitting CASF collections and (2) the Commission's use of the funds.

Chapter 393, Statutes of 2008 (SB 1193, Padilla) amended Sections 270 and 281 of the Public Utilities (PU) Code by establishing the CASF through January 1, 2013, subject to

the same fiscal and financial restrictions applicable to the six (6) existing universal service funds.<sup>1</sup>

Section 281 (a) of the PU Code requires the Commission to develop, implement, and administer the CASF to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and substantial social benefits of advanced information and communications technologies, as provided in Commission Decision 07-12-054.

Further, Section 270 (b) of the PU Code states that moneys in the universal service funds are proceeds of rates and are held in trust for the benefit of ratepayers. Funds may only be used for the purposes for which the funds were created and upon appropriation in the annual Budget Act.

On September 25, 2010, Governor Schwarzenegger signed SB 1040 (Chapter 317, Stats 2010), which expanded the CASF and increased the CASF appropriation from \$100 million to \$225 million. The increase of \$125 million to be collected after January 1, 2011 is allocated to the following accounts: \$100 million to the Broadband Infrastructure Grant Account, \$10 million to the Rural and Urban Regional Broadband Consortia Grant Account, and \$15 million to the Broadband Infrastructure Revolving Loan Account. The \$125 million is funded by a surcharge assessed on revenues collected from end-users and collected at \$25 million a year beginning calendar year 2011.

## **Discussion**

In this Resolution, the Communications Division (CD) proposes a CASF expense budget of \$40 million for FY 2012-13 to cover Broadband Infrastructure grants, Consortia grants, Broadband Infrastructure loans, and costs for administering and managing the CASF.

Since the CASF program is authorized to collect \$25 million a year to fund the three accounts, CD prorated the revenue for each account in accordance with SB 1040's distribution of the additional allocation of \$125 million to the three accounts. Thus, 80% or \$20 million of the \$25 million yearly revenue collection is allocated to the Infrastructure Grant Account, 8% or \$2 million of the \$25 million yearly revenue collection is allocated to Consortia Grant Account, and 12% or \$3 million of the \$25 million yearly revenue collection is allocated to the Infrastructure Revolving Loan Account. With the exception of loan underwriting costs and travel costs, costs for administering the CASF are also prorated among the three accounts based on this percentage allocation. Loan underwriting costs are charged exclusively to the

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<sup>1</sup> The other six (6) universal service funds are: the California High Cost Fund -A Administrative Committee Fund (CHCF-A), the California High Cost Fund -B Administrative Committee Fund (CHCF-B), the California Teleconnect Fund Administrative Committee Fund (CTF), the Universal Lifeline Telephone Service Trust Administrative Committee Fund (ULTS), the Deaf and Disabled Telecommunications Program Administrative Committee Fund (DDTP), and the Payphone Service Providers Committee Fund.

Broadband Infrastructure Revolving Loan Account, and travel costs are charged to the Infrastructure Grant Account and the Consortia Grant Account.

Details and distribution of the administrative costs are:

Items	Total Costs	Infrastructure Grant Account	Consortia Grant Account	Revolving Loan Account
Prorated %		80%	8%	12%
CPUC Staff Costs	\$678,784	\$543,027	\$54,303	\$81,454
Travel (65% is charged to the Consortia grant account and 35% to the Infrastructure grant account)	\$40,000	\$14,000	\$26,000	\$0
Loan underwriting and servicing (to be charged 100% to Loan account)	\$600,000	\$0	\$0	\$600,000
Information Technology Costs	\$8,500	\$6,800	\$680	\$1,020
Inter-agency Costs	\$332,412	\$265,930	\$26,593	\$39,889
Audit	\$100,000	\$80,000	\$8,000	\$12,000
<b>Total Administrative Costs</b>	<b>\$1,759,696</b>	<b>\$909,757</b>	<b>\$115,576</b>	<b>\$734,364</b>

Administrative costs for each account are then deducted from the corresponding revenue of each account to determine the amount of infrastructure/consortia grants and infrastructure loans available for the fiscal year.

A summary of the FY 2012-13 expense budget is shown below.

Infrastructure Grants *	\$34,090,243
Current year	\$19,090,243
Payment of prior years' awards	\$15,000,000
Consortia Grants	\$1,884,424
Loans	\$2,265,636
CPUC Staff Costs	\$678,784
Travel	\$40,000
Loan underwriting and servicing	\$600,000
Information Technology	\$8,500
Inter-agency Costs	\$332,412
Audit	\$100,000
<b>TOTAL</b>	<b>\$40,000,000</b>
* includes prior year payables estimated at \$15 million using revenues already in the CASF as of December 2010.	

### Infrastructure Grants

The Broadband Infrastructure Grant Account provides funds to qualified applicants to finance a fixed percentage of the total construction or capital costs of broadband infrastructure in unserved and underserved areas of California.

Infrastructure grant payments for 2012-13 are estimated at \$34.090 million with \$19.090 million allocated for this year's projects and \$15 million allocated for payment of prior years' grants. The \$19.090 million estimate for current infrastructure grants represents the prorated revenue allocated to this account pursuant to SB 1040 less the Infrastructure Grant Account's share of the CASF's administrative costs (\$20 million less \$909,757). The \$15 million estimate covers the reimbursement costs for prior years' approved projects. Since the Commission had adopted in Resolution T-17143 a reimbursement billing method to reimburse CASF grantees, this amount would provide funds to pay prior year projects expected to be completed in 2012 - 2013.

### Consortia Grants

Funds in the Rural and Urban Regional Broadband Consortia Grant Account are made available for grants to eligible consortia to finance the cost of broadband deployment activities other than the capital cost of facilities.

The budget for Consortia grants is \$1,884,424 after deducting administrative expenses of \$115,576 from the \$2 million revenue allocated to this account by SB 1040.

### Infrastructure Revolving Loans

The Broadband Infrastructure Revolving Loan Account is intended to finance capital costs of broadband facilities not funded by a grant from the Broadband Infrastructure Grant Account.

The budget for revolving loans is set at \$2,265,636 after deducting administrative expenses of \$734,364 from the \$3 million allocated to this account by SB 1040.

### CPUC Staff Costs

The amount of \$678,784 represents the estimated CPUC staff costs associated with the administration of the CASF program. Several divisions within CPUC are responsible for different aspects of the program. While the Communications Division is primarily responsible for the program, the Information and Management Services Division and the Legal Division also provide staff resources to the program. The amount budgeted for this item is based on projected personnel allocation.

### Travel Costs

It is estimated that \$40,000 will be required to fund CASF staff's attendance in the Consortia Learning Summit<sup>2</sup>, meetings with the Rural and Urban Regional Broadband Consortia, and inspection of on-going and completed infrastructure projects.

### Loan Underwriting and Servicing

An external agency will need to perform the financial eligibility review of loan applications, processing, and servicing of loans since the Commission does not have the staff or expertise to perform these functions. The amount of \$600,000 is budgeted to cover costs pertaining to the external agency's financial eligibility review and loan servicing fees.

### Information Technology Costs

The CPUC has established electronic filing for CASF surcharge remittances and electronic filing for grants and loans. The amount of \$8,500 is allocated for programming, operation, and maintenance of this electronic filing system.

### Interagency Costs

These costs represent CASF's contribution to the statewide administrative cost of central service agencies such as Department of Finance, Office of the State Controller, State Personnel Board, and Legislature. For FY 2012-13, this is estimated at \$332,412.

### Audit Fees

Section 281 (f) (1) of the PU Code requires that the Commission conduct an interim and final financial and performance audit of the implementation and effectiveness of the CASF to ensure that funds have been expended in accordance with the approved terms of the grant awards and loan agreements and this section. The Commission is required to submit to the Legislature its interim findings by April 1, 2011, and its final findings by April 1, 2017.

Although the Commission had already conducted a financial and performance audit and submitted an interim report to the Legislature in April 2011, auditing of CASF projects is an on-going activity. Thus, the amount of \$100,000 is budgeted for the audit of completed projects.

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<sup>2</sup> In D.11-06-038, the Commission directed Communications Division to schedule and host on at least on an annual basis a Regional Consortia Learning Community Summit to enable the various regional and rural urban consortia to exchange ideas and information, lessons learned and best practices to achieve common broadband adoption and deployment goals.

## Conclusion

Upon consideration of the above and the fact that administrative costs represent only 4% of the total budget, we believe the CASF Expense Budget of \$40 million is reasonable and should be adopted.

## Comments

In compliance with PU Code § 311 (g), a Notice of Availability was e-mailed on July 19, 2011 to parties on the service list of R.10-12-008 informing these parties that the draft of this Resolution is available at the Commission's website <http://www.cpuc.ca.gov/> and is available for public comments. In addition, CD informed these parties of the subsequent availability of the conformed resolution, when adopted by the Commission, at the Commission's website as indicated above.

### *Comments Submitted*

On August 3, 2011, the Division of Ratepayer Advocates (DRA) submitted comments addressing the following points:

- The draft resolution departs from the procedural model employed by the Commission to allocate funds as the past processes permitted the Commission to distribute funds for administrative purposes and to make awards on a case to case basis.
- The inclusion of an expense budget is premature at this time as the Decision (D) 07-12-054 or resolutions adopted thereafter did not order the Communications Division to provide an annual budget.
- DRA recommends the rejection of the resolution as this time as there is an open docket to review and revise CASF program requirements.
- DRA recommends that the Commission delay the drawing or acquisition of funds related to the Loan Account until the Commission has developed and adopted a Loan Program. DRA opines that it is premature at this time to forecast expenses without a comprehensive framework of rules and procedures governing that account.

On August 3, 2011, Sierra Economic Development Corporation (SEDCorp) submitted the following comments:

- The statement that "Infrastructure Revolving Loans" are "intended to finance capital costs not funded by a grant from the Broadband Infrastructure Grant Account" should not be used to describe the Loan Program, because the Commission has not yet determined the eligibility criteria for the Program.

- The recommended allocations for Loan Underwriting and Audit seem to be extraordinarily high.

*Commission's Responses to Comments Submitted*

We disagree with DRA's comments that the draft resolution departs from CASF procedural fund allocation and award model, is untimely, and not necessary as there is no Commission decision or resolution ordering the preparation of an annual budget. To clarify any confusion, we note that the CASF budget discussed in this Resolution has been prepared consistent with the provision of Section 270 (b) of the Public Utilities Code for telecommunications' which states that:

(b) Moneys in the funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service. Moneys in the funds may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act or upon supplemental appropriation.

After the Commission approves the CASF expense budget (and all other public program expense budgets) for FY 2012-13, the Commission submits this to the Department of Finance (DOF) for inclusion in the Governor's proposed budget for FY 2012-13. The non-inclusion of a program's budget in the Governor's proposed and eventually California's Budget Act for FY 2012-13 means that the program has no appropriation for the year, has no authority to spend and thus, will render the program inoperable.

When the program budget is included in the Annual Budget Act, the program is authorized to spend or disburse moneys up to the appropriation limit as reflected in the Annual Budget Act.

We also disagree with DRA that we should reject this resolution since there is an open docket to review and revise CASF program requirements or establish a Loan Program. As discussed above, the budget for FY 2012-13 has to be submitted to the DOF for inclusion in the Governor's proposed budget for FY 2012-13. The timeframe for submission to the DOF is September of this year. Without a budget and appropriation authority, the CASF program cannot continue operating. All activities relating to the program will stop including payment for completed projects, and the construction of on-going projects as CASF will not be able to reimburse grantees for their expense.<sup>3</sup>

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<sup>3</sup> Section IX, Appendix A of Resolution T-17143 provides the payment to CASF grantees on a progress billing basis at 25% completion intervals, i.e. 25, 50, 75 and 100%.

While this Resolution provides necessary budget and appropriation authority for the CASF program, it does not prejudge CASF program requirements under review in the current Order Instituting Rulemaking (OIR) R.10-12-008, instituted to implement the provisions of the Senate Bill 1040 and address possible changes to the program.

An Assigned Commissioner's Ruling soliciting parties comments on the Proposed Implementation Plan for the Broadband Infrastructure Revolving Loan Account and the Proposed Revisions to the Infrastructure Grant Account Application Requirements and Guidelines will be issued shortly. Implementation of the Revolving Loan Account is expected in FY 2012-13.

No disbursement of funds from the Infrastructure Revolving Loan Account can be made until the Commission approves the implementation guidelines, the Legislature enacts the State Budget Act for FY 2012-13 incorporating the CASF Expense budget, and the Commission approves funding / loan awards through a resolution.

We see no reason to adjust this Resolution in response to SEDCorp's comment that the statement that "Infrastructure Revolving Loans" are "intended to finance capital costs not funded by a grant from the Broadband Infrastructure Grant Account" should not be used to describe the Loan Program as the Commission has not yet determined the eligibility criteria for the Program.

The intent of the Infrastructure Revolving Loan Account is clearly stated in Section 281 (e) of the PU Code:

(e) Moneys in the Broadband Infrastructure Revolving Loan Account shall be available to finance capital costs of broadband facilities not funded by a grant from the Broadband Infrastructure Grant Account. The commission shall periodically set interest rates on the loans based on surveys of existing financial markets.

Finally, we address SEDCorp's comment that the recommended allocations for Loan Underwriting and Audit seem to be extraordinarily high. We point out that the allocation for loan servicing is in line with information obtained from another government financial institution with an inter-agency agreement to perform loan underwriting and servicing for another State agency. In such cases, we have found loan servicing fee equivalent to 8/10 of 1% of the outstanding balance and technical assistance fee. In addition, the amount of \$600,000 is only an estimate and is meant for budgetary purposes only. If the actual contracted amount is less than \$600,000, only the



actual amount will be spent by the program. Likewise, the allocation for audit fees is only an estimate for budgetary purposes only. Accordingly, we do not find it necessary to change this Resolution in response to these comments.

## Findings

1. In Decision (D.) 07-12-054 dated December 20, 2007, the Commission created a new public purpose program, California Advanced Services Fund, to encourage the deployment of broadband services in unserved and underserved areas.
2. Chapter 393, Statutes of 2008 (SB 1193, Padilla) amended Sections 270 and 281 of the Public Utilities Code (PU Code) by establishing the California Advanced Services Fund through January 1, 2013, subject to the same fiscal and financial restrictions applicable to the six (6) existing universal service funds.
3. Section 281 (a) of the PU Code requires the Commission to develop, implement, and administer the California Advanced Services Fund to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and substantial social benefits of advanced information and communications technologies, as provided in Commission Decision 07-12-054.
4. PU Code § 270 (b) requires that moneys in the California Advanced Services Fund may only be disbursed pursuant to §§ 270 and 281 and upon appropriation in the annual Budget Act.
5. On September 25, 2010, Governor Schwarzenegger signed SB 1040 (Chapter 317, Stats 2010), which expanded the CASF and increased the CASF appropriation from \$100 million to \$225 million. The increase of \$125 million to be collected after January 1, 2011 is allocated to the following accounts: \$100 million to the Broadband Infrastructure Grant Account, \$10 million to the Rural and Urban Regional Broadband Consortia Grant Account, and \$15 million to the Broadband Infrastructure Revolving Loan Account. The \$125 million is funded by a surcharge assessed on revenues collected from end-users and collected at \$25 million a year beginning calendar year 2011.

The Communications Division (CD) proposes a California Advanced Services Fund Fiscal Year 2012-13 expense budget of \$40 million broken down into:

Infrastructure Grants *	\$34,090,243
Current year	\$19,090,243
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<b>TOTAL</b>	<b>\$40,000,000</b>
* includes prior year payables estimated at \$15 million using revenues already in the CASF as of December 2010.	

7. CD's proposed Fiscal Year 2012-13 expense budget of \$40 million, as set forth in this resolution, is reasonable and should be adopted.

8. A Notice of Availability was e-mailed to the parties of record in R.10-12-008, on July 19, 2011, advising parties of the availability of this draft resolution and the conformed resolution, when adopted by the Commission, on the Commission's web-site: <http://www.cpuc.ca.gov/>.

9. On August 3, 2011, the Division of Ratepayer Advocates and Sierra Economic Development Corporation submitted comments on the draft resolution. The Commission has not found it necessary to modify this Resolution in response to these comments.

**THEREFORE, IT IS ORDERED that:**

1. The Fiscal Year 2012-13 California Advanced Services Fund expense budget of \$40 million, as set forth in this resolution, is adopted.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on August 18, 2011. The following Commissioners approved it:

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PAUL CLANON  
Executive Director