

Decision 07-12-054 December 20, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the Review of
the California High Cost Fund B Program.

Rulemaking 06-06-028
(Filed June 29, 2006)

**INTERIM OPINION IMPLEMENTING
CALIFORNIA ADVANCED SERVICES FUND**

TABLE OF CONTENTS

Title	Page
INTERIM OPINION IMPLEMENTING CALIFORNIA ADVANCED SERVICES FUND	2
1. Introduction.....	2
2. Legal Basis for Adopting the CASF to Advance Broadband Deployment.....	9
A. Parties’ Position.....	9
B. Discussion	11
3. Total Funds Allocated to the CASF Program.....	21
A. Parties’ Positions	22
B. Discussion	23
4. Scope of the CASF Program.....	26
5. Process for Administering the CASF Program	27
A. Schedule for Processing of Applications.....	27
1. Parties’ Positions.....	27
2. Discussion.....	28
B. Requirements to Support Applications for Broadband Funding.....	29
1. Parties’ Position	29
2. Discussion.....	30
C. “Telephone Corporation” Eligibility Requirements.....	34
1. Parties’ Positions.....	34
2. Discussion.....	34
D. Requirement to Offer Residential Voice Service	36
1. Parties’ Positions.....	36
2. Discussion.....	36
E. Broadband “Project” Definition.....	38
1. Parties’ Positions.....	38
2. Discussion.....	39
F. Minimum Broadband Speed Eligibility Standards.....	39
1. Parties’ Positions.....	39
2. Discussion.....	40
G. Timing Requirements for Build-out of Broadband Facilities.....	42
1. Parties’ Positions.....	42
2. Discussion.....	42
H. Matching Funds Requirements.....	43
1. Parties’ Positions.....	43
2. Discussion.....	43

Title	Page
I. Geographic Area(s) Eligible for CASF Project Funding	44
1. Parties' Positions.....	44
2. Discussion.....	46
J. Commitment to Serve	47
K. Cost Categories Eligible for Funding.....	48
L. Financial Qualifications to Complete Broadband Commitments	48
M. Disbursement of CASF Awards	50
N. Requirements for Audit, Verification of Proper Use of Funds	50
6. Comments on Proposed Decision.....	51
7. Assignment of Proceeding	51
Findings of Fact.....	51
Conclusions of Law	57
INTERIM ORDER.....	59

**INTERIM OPINION IMPLEMENTING
CALIFORNIA ADVANCED SERVICES FUND**

1. Introduction

In today's decision, we build on the initiatives begun in Decision (D.) 07-09-020 to continue our universal service commitment by assuring the widespread availability of high-quality telecommunication services to all Californians. This decision will also promote economic growth, job creation, and the substantial social benefits by ensuring the rapid implementation of advanced information and communications technologies through adequate long-term investment in the necessary infrastructure throughout the state, and not just in urban areas. Pursuant to Pub. Util. Code § 739.3, the CHCF-B program is part of a broader framework to meet universal telephone service goals throughout California.¹ As our next priority, as discussed in D.07-09-020, we hereby create funding to encourage deployment of broadband facilities for use in provisioning advanced telecommunications (as well as voice) service in unserved and underserved areas of California. We designate this allocation of money as the "California Advanced Services Fund" (CASF), to be awarded as explained below.

¹ The CHCF-B program supports "universal service" goals by ensuring that basic telephone service remains affordable in high cost areas within the service territories of the major incumbent local exchange carriers (ILECs).

The CASF will serve as a valuable tool to spur deployment of broadband facilities in unserved and underserved areas of California by providing \$100 million in funding over a two year period to qualifying projects. Our first priority shall be to consider funding for areas where no facilities-based provider offers broadband service. To the extent that CASF funds remain after granting projects in unserved areas, we shall next consider funding for underserved areas in which no facilities-based provider offers broadband service at the benchmark download transmission speeds of 3 million bits per second (MBPS) and upload speed of 1 MBPS. A deadline of June 2, 2008 is set for submission of CASF funding requests. We shall review, rank, and select qualifying projects for CASF funding based on how well they satisfy prescribed criteria, to be finalized through a subsequent workshop and approved by Commission resolution.

Beginning January 1, 2008, a 0.25% surcharge will be collected through retail telecommunications customers' bills to fund the CASF. Funding for the CASF program will not increase customers' total surcharges, however, since the CASF surcharge will be offset by an equal reduction in the CHCF-B surcharge. In order to achieve the most efficient administrative mechanism and appropriate fiscal controls appropriate statutory authority must be put in place consistent with our authority as a basis for disbursing CASF money. Therefore, prior to any CASF disbursements, we shall first seek enactment of legislation to add the CASF as one of the funds authorized for handling by the State Treasury. We shall likewise seek legislation for specific direction to carriers for remitting CASF collections and for use of the funds by the Commission. Such legislation is not required however, to begin implementation of processes for surcharge collection and for eligible providers to submit proposals seeking CASF funding of broadband deployment, as adopted in this order.

Broadband infrastructure is critical to the economic health and welfare of the state and its citizens.² Broadband deployment will be a key measure of success in our information economy and is crucial to future productivity growth of the State. California is home to the leading centers for entertainment and high technology. We cannot and should not wait years for a national solution to alter the downward trend of the United States' ranking for broadband availability.³ Ubiquitous deployment of broadband is widely regarded as holding tremendous opportunities for consumers, technology providers, and content providers.

Basic telephone service is being provided on an ever increasing basis via broadband technologies, in addition to wireless and satellite technologies. Telecommunications service and usage patterns have been shifting for some time as consumers switch voice calls from traditional landline phones to wireless and VoIP networks. The number of wired telephone lines has been dropping between 3% to 5% for several years,⁴ while the number of wireless and VoIP lines

² Pub. Util. Code § 709, Executive Order S-23-06 of Governor Arnold Schwarzenegger, Telecommunications Act of 1996, Pub. L. 104-104, Feb. 8, 1996, 110 Stat. 56, at § 706, 47 U.S.C. § 157, *Connecting California*, California Public Utilities Commission Telecommunication Division Broadband Report Update, September 20, 2006, *The Effects of Broadband Deployment on Output and Employment: A Cross-sectional Analysis of U.S. Data*, by Robert Crandall, William Lehr and Robert Litan, The Brookings Institution, Issues in Economic Policy, July 2007, Broadband for All? Gaps in California's Broadband Adoption and Availability, Public Policy Institute of California, rel. July 10, 2007.

³ The United States is ranked 15th in broadband subscribers per 100 inhabitants, Organization for Economic Co-operation and Development (OECD) Broadband Statistics to December 2006, rel. April 2007, available at <http://www.oecd.org/sti/ict/broadband>.

⁴ Federal Communications Commission *Trends in Telephone Service* at Table 7.4, rel. Feb. 9, 2007.

has increased. Nearly 77% of Americans were wireless phone subscribers by the close of 2006,⁵ and 12.8% had only wireless telephones in 2006,⁶ and millions of businesses, schools, banks and government offices are projected to migrate from legacy landline telephone services to broadband services over the next five years. In California, the number of landline telephones decreased by 2.39 million from end-of-year 2001 to June 2006, while the number of wireless subscribers in California increased by 13.34 million to 27.52 million,⁷ and the number of advanced service subscribers increased by 7.76 million to 9.4 million.⁸

The shift in communication volumes from fixed wireline phone service to wireless and VoIP services has been rapid and dynamic as users became used to the convenience, cost and mobility advantages of wireless, bundled long distance and local calling plans, and the very low domestic and international calling rates (sometimes offered free) of VoIP. The average U.S. wireline toll minutes of use (MOUs) have dropped almost 30% since 2000,⁹ while U.S. wireless interstate

⁵ CTIA's Wireless Industry Indices: 1985 - 2006.

⁶ Center for Disease Control, Wireless Substitution: Early Release of Estimates Based on Data From the National Health Interview Survey, rel. May 2007.

⁷ Local Telephone Competition: Status as of June 30, 2006, Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, January 2007, downloaded from http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-270133A1.pdf, Tables 9 (CLEC Lines), 10 (ILEC lines), and 14 (wireless).

⁸ High-Speed Services for Internet Access: Status as of June 30, 2006, Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, January 2007, downloaded from http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf, Table 10.

⁹ Federal Communications Commission *Trends in Telephone Service* at Table 10.2, rel. Feb. 9, 2007.

MOUs per user grew more than 25% during the same period. The percentage of interstate minutes has increased from 16% to 28% of all wireless minutes.¹⁰ These changes in calling patterns are reflected in ILEC line losses.

Telecommunication services are starting to migrate to broadband because of the greater flexibility, efficiency and redundancy that can be achieved. In other words, in a broadband environment, voice service is simply one of many data streams flowing over the broadband connection.¹¹ In our Uniform Regulatory Frameworks proceeding (URF), we noted the historic practice of finding that each telecommunications service constitutes a separate “market” is no longer a relevant factor for analyzing or explaining the dynamics of today’s technologically diverse voice communications environment.¹² Instead, we found that the voice market today consists of a rich mix of wireline telephony, wireless telephony, voice over Internet protocol (VoIP), and satellite voice offerings.¹³

Accordingly, it would be imprudent to continue to only support legacy networks of incumbent local exchange carriers through the universal service programs due to the fact that voice service is being provided on an increasing basis using advanced technologies such as VoIP and wireless technologies

¹⁰ Federal Communications Commission *Trends in Telephone Service* at Table 11.4, rel. Feb. 9, 2007.

¹¹ *See, e.g.*, New Zealand Telecommunications Service Obligations Regulatory Framework – Ministry of Economic Development Discussion Document at §5.4 (August 2007) (Requesting comment on the obligations of Telecom New Zealand will be after it converts to an all broadband network within the next five years). *See also*, Pub. Util. Code § 871.7(c) (Commission shall investigate “feasibility of ... incorporating two-way voice, video, and data service as components of basic service.”).

¹² D.06-08-030, *mimeo.* at 264, COL 15.

¹³ *Id.*

including broadband systems.¹⁴ Limiting universal service support to particular technologies skews competitive forces, and in some cases, inadvertently may discourage consumers in some areas from receiving advanced communication services and the economic and social benefits that flow from such services. This Commission must recognize and incorporate new technologies as it administers its universal service obligations so that we can continue to meet the goals of the Legislature for telecommunications in California.

As explained in D.07-09-020, promoting deployment of additional broadband within areas that are not served at all or underserved is consistent with universal service policies aimed at bridging the “digital divide” as articulated in Pub. Util. Code §§ 709(c) and (d). While we believe that solutions to the digital divide are best driven by market forces within the telecommunications and internet industry, the public sector has a role to play as well, particularly where in some places in California, the market has failed to bring advanced communications to it. The first and most important public role is to identify and remove unnecessary regulations or barriers in the way of broadband deployment and adoption. The second role is to identify appropriate public policies to provide significant assistance in overcoming broadband deployment obstacles should market forces fail, while increasing the rate of use of advanced telecommunication services.

To that end, we hereby establish a process for promoting broadband deployment in unserved and underserved areas of California through the CASF

¹⁴ National Cable & Telecommunications Assn. v. Brand X Internet Services, 545 U.S. 967 (2005) (Upholding FCC determination that high-speed transmission used to provide

Footnote continued on next page

program, as prescribed below. An Assigned Commissioner's Ruling (ACR), issued on September 12, 2007, solicited comments relating to the implementation of the CASF to pay for some of the infrastructure costs of broadband facilities in California's unserved or underserved areas. In order to provide a funding source for the CASF, we solicited comments as to whether and how a portion of the already collected and appropriated B-Fund contributions could meet this purpose or whether other Commission authority could serve as the basis for independent funding. Opening comments were filed on September 26, 2007, and reply comments were filed on October 3, 2007. We have reviewed those comments and reply comments, and taken them into account in preparing this order.

Comments were filed by the major ILECs: Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon), SureWest Telephone (SureWest), and by the Small LECs.¹⁵ Comments were also filed by Sprint Nextel (Sprint), the California Cable and Telecommunications Association and Time Warner Telecom of California, L.P (CCTA/Time Warner), Omnipoint Communications, Inc. (dba T-Mobile), The Division of Ratepayer Advocates (DRA), and The Utility Reform Network (TURN).

cable modem service is a functionally integrated component of that service, and "changed market conditions warrant different [regulatory] treatment.").

¹⁵ The Small LECs joining in the comments consist of Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Global Valley Networks, Inc. Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, Ponderosa Telephone Company, Sierra Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

The CASF shall be administered on a technology neutral basis by the Commission, with the goal of providing infrastructure support to extend broadband coverage as defined herein to unserved and underserved areas of California, with priority given to *unserved* areas. As explained in detail below, we define an unserved area as any service region in which no facilities-based provider offers any level of broadband service such that internet connectivity can only be achieved through dial-up service. We likewise define an underserved area in which no facilities-based provider offers broadband service at the benchmark transmission speeds of at least 3MPS upload and 1 MBPS download. Accordingly, we hereby establish a CASF to promote these goals, as set forth below.

2. Legal Basis for Adopting the CASF to Advance Broadband Deployment

A. Parties' Position

Various parties express concerns with respect to creating the CASF for promoting broadband deployment. These concerns were first raised in comments on the Proposed Decision in Phase I of this proceeding.¹⁶ Parties expressed similar concerns in comments filed in response to the ACR dated September 12, 2007.

Parties generally agree that increased deployment of broadband capabilities in unserved and underserved areas is desirable, but question whether the CASF is an appropriate vehicle to achieve that purpose. Various

¹⁶ AT&T Comments on the Proposed Decision at 23, Sprint Nextel Comments on the Proposed Decision at 9, SureWest Comments on the Proposed Decision at 6-7, TWTC Comments on the Proposed Decision at 4, Verizon Comments on the Proposed Decision at 18.

parties also express concern as to the Commission's legal authority to fund the CASF, either within the B-Fund or as an independent program, and recommend obtaining explicit direction from the Legislature in order to most effectively address the Commission's objectives.¹⁷

TURN and T-Mobile directly oppose creation of the CASF as a component of the CHCF-B as unlawful. TURN argues that in all sections of the Pub. Util. Code relating to subsidies for various aspects of universal service, there is a prohibition against use of, appropriation or transfer of the money from one fund to another fund or entity. TURN argues, for example, that money deposited into the B-Fund can only be used to support the provision of "basic service" within "high cost" areas by "telephone corporations."

T-Mobile argues that the CHCF-B was specifically created in D.96-10-066 to support a local rate structure for affordable basic residential service in high cost areas, but does not authorize the use of B-Fund money to help carriers underwrite broadband deployment even if theoretically usable to deliver basic voice communications. T-Mobile argues that because broadband is not currently defined as a component of universal service, the CHCF-B cannot be used to subsidize its deployment.

Under current rules, certain voice communications providers (including wireless carriers) are categorically precluded from providing basic service and thus becoming Carriers of Last Resort (COLRs). T-Mobile believes that providing explicit broadband subsidies only to certain carriers could have the

¹⁷ DRA Comments at 1-2; Small LEC Comments at 2-3; CCTA/Time Warner Comments at 1, 3 -4, SureWest Comments at 2, Verizon Comments at 3; T-Mobile Comments at 11; TURN Comments at 3 Sprint Comments at 2 and 13, Verizon Comments at 1.

unintended consequence of providing the sorts of subsidies that D.07-09-020 was designed to eliminate. T-Mobile also raises the concern that creation of the CASF could undermine competition and distort market forces by supporting the delivery of voice communications using only one type of technology (*i.e.*, broadband). T-Mobile also argues that broadband technology seems to be growing rapidly without explicit carrier subsidies, and that it is not clear that such a subsidy program is an appropriate or necessary means of promoting further deployment.

Sprint states that until more precise Commission guidance is provided concerning exactly what the CASF will fund, in what amounts, and subject to what conditions, there are too many unknowns to comment definitively on the merits of a CASF program. Sprint argues that before embarking on the CASF subsidy program, the Commission needs more reliable data about the availability of broadband, and where and why it is not available.

Sprint argues that private enterprise will prove to be more efficient and effective than government subsidies, such as through the CASF, in delivering the telecommunications services consumers most want and need. Various parties further argue that the Commission should obtain explicit legislative authority before proceeding with implementation of a CASF program.¹⁸

B. Discussion

We conclude that the California Constitution and existing California Public Utilities statutes provide the requisite authority for the Commission to support

¹⁸ CCTA and TWCT Opening Comments on the CASF ACR at 3, TURN Opening Comments on the CASF ACR at 8, Sprint Nextel Opening Comments on the CASF ACR at 5, SureWest Reply Comments at 1.

broadband deployment under the approach we adopt in this order.¹⁹

Accordingly, we establish the CASF as a new and independent universal service program. We consider the CASF to be a complement to the CHCF-B and our other universal service programs, most of which were established by this Commission prior to legislation.²⁰ The CASF will promote universal service goals, but will not be a diversion or transfer of existing funds because we are going to collect it beginning in 2008 and are not using CHCF-B monies as previously proposed. CASF funds will be collected separately than for the CHCF-B, but will utilize similar administrative mechanisms for gathering the CASF as the CHCF-B.

As discussed *infra*, we conclude that limited funding towards deployment of broadband facilities in unserved and underserved areas of California is necessary. We choose to use our authority under the California Constitution and Pub. Util. Code including § 701 to establish the CASF. We note that funds to be

¹⁹ Cal. Const. Article XII, Pub. Util. Code including § 701.

²⁰ See *Pacific Tel. & Tel. Co.* (1968), D.74917, 69 CPUC 53, *Gen. Tel. Co. of Cal.* (1969), D.75873, 69 CPUC 601 (creation of Lifeline service), codified in The Moore Universal Telephone Service Act (1984), Article 8 of the Pub. Util. Code commencing with § 871; See Resolution T-9865 (1978), Decision 90642 (1979), (first steps toward formally establishing a program to provide specialized, supplemental equipment to hearing-impaired customers at subsidized rates), codified in Pub. Util. Code § 2831 (SB 597 chaptered in 1979), as amended to Pub. Util. Code § 2881; See *Investigation into Implementation of the Recommendations of the Commission's Telecommunications Infrastructure Report* (1994), I.94-02-001, 1994 Cal. PUC LEXIS 3 (initiating proceeding based on Commission's report to the Governor, *Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure* (Nov. 1993), that would lead to creation of California Teleconnect Fund based on AB 3643 (Stats. 1994, Chapter 278)); See *Investigation into the operations, practices and regulation of coin and coinless customer-owned pay telephone service* (1990), D.90-06-018, 36 CPUC2d 446.

used by the CASF will be collected and appropriated using mechanisms consistent with Legislative direction related to existing universal service programs.²¹

In order to achieve a more efficient administrative mechanism, we shall have an account set up in the State Treasury for the CASF. This will also ensure appropriate state treasury controls are in place and followed consistent with our Constitutional authority. To establish these controls and administrative efficiencies we shall seek an amendment to the Pub. Util. Code § 270 to add the California Advanced Services Fund to those handled by the State Treasury. We shall also seek to add a new section within Chapter 1.5 to provide specific direction to carriers for remitting CASF collections and use of the funds by the Commission.²² Such legislation is not necessary to begin the collection of funds by carriers nor is it necessary to begin the process within the Commission to receive and evaluate proposed bids for CASF purposes.

²¹ While we do not find this issue applicable to the creation of the CASF pursuant to this decision, we strongly disagree with parties that would limit our ability to update existing universal service programs. We specifically disagree with AT&T and Verizon arguments that Pub. Util. Code §§ 270(b) and 270(c) prohibit the expansion of existing programs. AT&T Comments on the Proposed Decision at 23, Verizon Comments on the Proposed Decision at 18. Such a reading of the statute would lead to absurd results. The programs covered by Section 270 cover a myriad of topics and issues. Advances in technology and other factors have led to changes, including expansions of the programs since they were created. The Commission has taken both formal and informal actions to adapt the programs to changed circumstances. *See, e.g.*, D.05-04-026 (expanding Lifeline eligibility criteria), CPUC Report to the Legislature on the California Teleconnect Fund, May 2005 (outlining numerous improvements to Teleconnect implemented by the Commission); *see also* Pub. Util. Code § 276.5. AT&T and Verizon are incorrect that the Commission may not institute any improvements or changes to the existing programs.

²² As with other universal service programs within California, the CASF will operate as a cost reimbursement program.

All revenues collected by telephone corporations in rates authorized by the Commission to fund the CASF program shall be submitted pursuant to a schedule established by the Commission. All revenues collected prior to the issuance of the schedule by the Commission shall be held by the telephone corporations, and accounted for in the CASF memorandum account, together with accrued interest. Upon the issuance of the schedule by the Commission, or other Commission directive, all revenues collected and any associated interest shall be transferred to the State Controller for deposit.

Universal service is defined as an “evolving level of telecommunications services ... taking into account advances in telecommunications and information technologies and services.”²³ Providing cost reimbursement towards deployment of broadband facilities in unserved and underserved areas of California is necessary to meet the objectives of universal service. It is incontrovertible that the telecommunications market is fundamentally changing in terms of providers and technologies for reasons stated previously in this decision and in our URF decision; it is further incontrovertible that parts of the state are not receiving the benefits of these changes to their detriment due to outdated universal service mechanisms. We believe that our current mechanisms may be contributing to the so called “digital divide” inadvertently by discouraging infrastructure investment in parts of the state (*e.g.*, rural, inner city, low income areas and to people with disabilities) due to reimbursements for operating costs that only may be awarded to one technology due to outdated

²³ 47 U.S.C. § 254(c)(1). In using this definition of universal service for California, we do not seek to redefine nor do we intend the same meaning as our reference to basic service. Cf., D.95-07-050, *mimeo.* at p. 15.

mechanisms. The funding of broadband infrastructure may be the best way to take into account advances in telecommunications and information technologies and services and ensure the continued effectiveness of the universal service policies set forth by the state Legislature. We believe our action today is bolstered by California's telecommunication principles as set forth by the Legislature in Pub. Util. Code § 709:

The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

- (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians.
- (b) To focus efforts on providing educational institutions, health care institutions, community-based organizations, and governmental institutions with access to advanced telecommunications services in recognition of their economic and societal impact.
- (c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.
- (d) To assist in bridging the "digital divide" by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.
- (e) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.
- (f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.

- (g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.
- (h) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.²⁴

Pub. Util. Code § 709(c) identifies as one of the policies for telecommunications in California, the following: “To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.” Pub. Util. Code § 709 (d) further identifies as a goal: “To assist in bridging the “digital divide” by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.”

We have previously taken steps to promote the ubiquitous availability of broadband and advanced services in California, and to enhance broadband connectivity, by establishing the California Emerging Technology Fund (CETF) in conjunction with approval of the mergers of SBC/AT&T and Verizon/MCI.²⁵

²⁴ Pub. Util. Code § 709.

²⁵ See D.05-11-028, *mimeo.* at 76-80, 106-107, OP 1; D.05-11-029, *mimeo.* at 95-99, 125-126, OP 3. In conjunction with the California Broadband Task Force established by the Governor, CETF is a non profit organization that is engaging in an important broadband mapping project to help governmental agencies including the CPUC determine where the broadband gaps are located. Further, CETF is in the process of making significant grants of approximately \$20 million to various non profit organizations who will be working to make broadband available, affordable and relevant in terms of applications in the rural, low income, and disadvantaged areas, and

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The implementation of the CASF, as adopted in this order, provides an opportunity to take a further important step toward promoting access to state-of-the-art communications and information technologies. Broadband development generates productivity and growth in numerous Internet-related industries in California including e-learning, telemedicine, e-government, software development, video production, and music entertainment among others. These productivity benefits spill over to the economy at large as well, and will result in significant expansion of employment in California.²⁶ A recent study by the Brookings Institution has quantified just how important broadband deployment is to the people of California, “for every one percentage point increase in broadband penetration in a state, employment is projected to increase by 0.2% to 0.3% per year.”²⁷

to people with disabilities. This work by the CETF goes hand in glove with the work of this Commission, in that the PUC’s efforts go towards providing all Californians with access to broadband, while CETF’s efforts encompass broader work, including affordability (e.g., placing donated, refurbished personal computers in underserved communities through community centers or placing them in affordable housing), applications (e.g., training new users on computers and assisting them in finding content that is useful and relevant to their lives), and accessibility (ensuring persons with disabilities have access to technology).

²⁶ Academic research has established significant and substantial benefits of increased broadband deployment. *See infra*.

²⁷ *The Effects of Broadband Deployment on Output and Employment: A Cross-sectional Analysis of U.S. Data*, by Robert Crandall, William Lehr and Robert Litan, The Brookings Institution, Issues in Economic Policy, July 2007. *See also, The Economic Effects of Increased Broadband Use in California*, by Kristin Van Gaasbeck, Stephen Perez, Ryan Sharp, Helen Schaubmayer, Angela Owens, Lindsay Cox, Sacramento Regional Research Institute, November 2007 (with a 3.8 annual percentage point increase in the proportion of the adult population using broadband, California could see a net cumulative gain of 1.8 million jobs and \$132 billion of payroll over the next 10 years), available at <http://www.srri.net/>.

Governor Schwarzenegger has recognized the need for California to play a leading role in the deployment of broadband. Executive Order S-23-06 issued in November, 2006, established a California Broadband Task Force to “identify opportunities for increased broadband adoption, and enable the creation and deployment of new advanced communication technologies.”²⁸

In addition, California is beginning to develop the mechanisms for identifying and gathering certain useful broadband data as the technology and industry continue to evolve. The California Legislature last year enacted the Digital Infrastructure and Video Competition Act (DIVCA) (AB 2987, Ch. 700, Stats 2006) requiring that certain broadband providers – those that obtain a state-issued video franchise from the Commission – submit to the Commission broadband subscribership information and data about homes passed at the census tract level. In this context, the Legislature ordered build-out requirements to ensure service was made available to *all* Californians, particularly low income and rural citizens.²⁹ Legislative direction appropriately recognizes that development of new technologies high-speed services, and infrastructure deployment should be encouraged.³⁰

²⁸ Executive Order S-23-06 of Governor Arnold Schwarzenegger.

²⁹ Pub. Util. Code § 5890.

³⁰ Pub. Util. Code § 709.6(c) (“Encourages the provision of advanced, high-speed digital telecommunications services to the public.”), Pub. Util. Code § 709.7 (California High Speed Internet Access Act of 1999), Pub. Util. Code § 5810(a)(2)(E) (“DIVCA legislation should [c]omplement efforts to increase investment in broadband infrastructure and close the digital divide.”), *see also*, Pub. Util. Code §§ 709(c) (“encourage the development and deployment of new technologies and ... the ubiquitous availability of a wide choice of state-of-the-art services.”), 709(e) (“rapid implementation of advanced information and communications technologies by adequate long-term investment in the

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In addition to the specific direction enunciated by the California Legislature in the Public Utilities Code,³¹ the federal Telecommunications Act requires:

The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.³²

Given the comparatively slow historic deployment of broadband services in California during this decade,³³ the importance of broadband to the financial health of the state,³⁴ and the direction of the Legislature “to encourage the development of new technologies,”³⁵ we find that action is warranted to encourage more rapid deployment. For this purpose, we find it is appropriate to dedicate limited funding to the deployment of broadband facilities in unserved and underserved areas of California for the specific purpose of closing the digital divide. We find that market failure has resulted in some portions of the state

necessary infrastructure.”), Pub. Util. Code §5810(a)(1) (“increasing competition for video and broadband services is a matter of statewide concern”).

³¹ *Id.*

³² Telecommunications Act of 1996, Pub. L. 104-104, Feb. 8, 1996, 110 Stat. 56, at § 706. See also 47 U.S.C. § 157 (“It shall be the policy of the United States to encourage the provision of new technologies and services to the public.”).

³³ *Connecting California*, California Public Utilities Commission Telecommunication Division Broadband Report Update, September 20, 2006 (broadband connections have increased at an average rate of 49% for the U.S. and 40% for California for the same time period).

³⁴ Executive Order S-23-06 of Governor Arnold Schwarzenegger.

³⁵ Pub. Util. Code § 709(c).

being unserved or underserved by providers,³⁶ and this justifies our ground breaking action today. The allocation of money to the CASF program will provide important incentives to advance – from a critical timing point of view – rural areas in California obtaining advanced telecommunications services including voice services. The CASF will accelerate broadband deployment more rapidly than if we simply left market forces to deliver such services. Given the rural and remote nature of some of these areas which result in high costs to install advanced communications systems, we in fact do not have confidence that broadband services will be deployed throughout the state absent this type of infrastructure program. Further, we emphasize that voice services ride on broadband infrastructure as an application, thus provisioning broadband in all areas of the state does tie in directly to our universal goals relating to voice service.³⁷ Trends do show voice services are migrating to new technologies, as discussed *infra*.

An important goal of universal service policy is to ensure that all citizens have access to critical communications technologies. A suitable, competitively neutral, and broad-based program targeted toward broadband infrastructure is critical to ensuring a fair and equitable local rate support structure in all areas of the state. The CASF will “promote the goals of universal telephone service and

³⁶ These areas are primarily rural and remote areas but also in some low income and disadvantaged communities.

³⁷ The Commission notes that the federal universal service mechanisms are also moving toward supporting broadband services. *See* Federal-State Joint Board on Universal Service Statement on Long Term, Comprehensive High-Cost Universal Service Reform, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-3, rel. September 6, 2007 (proposing new broadband and mobility funds for unserved areas of the nation, separate from the legacy high cost fund).

... reduce any disparity in the rates charged by those companies.” Accordingly, consistent with our goal of promoting universal service, we shall require that voice service is available as one of the components of any broadband service funded through the CASF program. Accordingly, any recipient of CASF funds shall be required to ensure voice service is available in the service area(s) covered by the broadband deployment.³⁸

The Legislature and Governor have both clearly proclaimed the importance of high-quality telecommunications and advanced information and communication technologies. Thus, in order to effectuate our universal service obligations under Pub. Util. Code §§ 709 and 739.3, and §§ 254 and 706 of the Telecommunications Act, we find it appropriate to offer incentives for broadband infrastructure in unserved and underserved areas of the state on a going forward basis. Accordingly, we hereby implement funding of broadband infrastructure in unserved and underserved areas through the CASF, as prescribed below.³⁹

3. Total Funds Allocated to the CASF Program

In D.07-09-020, we directed that effective January 1, 2008, the B-Fund surcharge be lowered to reflect the reduced level of subsidy draw resulting from raising the high cost threshold eligible for B-Fund support. We stated that

³⁸ This requirement may be met through the availability of third-party voice applications.

³⁹ Pursuant to our authority under Article XII of the California Constitution and Pub. Util. Code § 701. We note that almost all of the existing universal service programs in California began in a similar manner where the Commission initiated the program under its plenary authority and the Legislature often, but not always, has later provided the statutory parameters of the program. *See* Pub. Util. Code §§ 270-280, 739.3, 2881-2881.2.

maintaining an increased B-Fund contribution surcharge until January 1, 2008 was necessary as the phase-in of the new benchmark does not begin until that date. Therefore, we refrained from lowering the B-Fund surcharge until that time. In this interim order, we likewise determine whether, or to what extent, the existing B-Fund surcharge should be changed, and how we can collect and allocate funds toward the CASF. We have reviewed the comments filed in this phase of the proceeding concerning the merits of such an approach and the size of the CASF.

A. Parties' Positions

AT&T argues that the determination of the appropriate overall amount of funding that should be provided through the CASF depends upon the program parameters (*e.g.*, broadband transmission speeds, lead time for construction deployment, and topographies and populations of proposed service areas).and the demand for funds based upon those parameters. AT&T suggests that the Commission collect funds as needed based upon applications received and expenditures paid over time.

Verizon argues that the size of the CASF should be limited to excess funds beyond those needed to support basic services in high cost areas, consistent with the principle in D.07-09-020 that consumers are entitled to relief from excessive burdens of B-Fund subsidies without delay. Verizon believes that the reduction of the B-Fund surcharge from 1.3% to 0.5%, as ordered in D.07-09-020, however, may leave no surplus to fund the CASF. Based on the premise that any surplus in the B-Fund is likely to be limited, Verizon argues that funding criteria should narrowly target support to unserved areas so as to benefit the most potential customers.

Verizon provides a “rough estimate” of between \$50-\$80 million for the potential range of CASF subsidies that may be requested, based on 2006 census estimates of 12.2 million California housing units multiplied by an 8% factor for unserved housing units, using FCC statistics.

Sprint states that if any surplus remains in the B-Fund after taking into account the reduced surcharge collections and subsidy support levels as ordered in D.07-09-020, the California State Assembly appears to point toward the need for refunds to be paid to ratepayers who supplied the funds in the first place.⁴⁰ Sprint argues that the Commission should in any event, first conduct the research necessary to determine the appropriate design of a successful program and determine the appropriate total pool of funds to be designated for CASF subsidies prior to soliciting any applications.

B. Discussion

We shall allocate to the CASF \$100 million. Beginning January 1, 2008, the CASF shall be collected using the same surcharge mechanism as the CHCF-B, with collected funds allocated half to the CASF and half to the CHCF-B.⁴¹ The CASF allocation represents our estimate of the amount of funds collected by half of the 0.5% surcharge over a two-year period. Consequently, the surcharge applicable to the CHCF-B will be 0.25% and the surcharge applicable to the CASF will be likewise be 0.25%. Such an allocation will begin with the surcharge

⁴⁰ Sprint Reply Comments at 14, citing *Assembly of the State of California v. Public Utilities Commission* (1995) 12 Cal. 4th 87 (State Assembly).

⁴¹ Carriers are hereby granted discretion to either use the same surcharge line on customer bills for both the CHCF-B and the CASF, or may establish a new surcharge line for CASF separate from the CHCF-B. If the same surcharge line is used for both CHCF-B and CASF, the carrier should clearly explain that it is collecting for both funds via that line item in an appropriate place on the bill.

revenues collected after January 1, 2008.⁴² We consider \$100 million to provide an appropriate amount of initial funding for the CASF, given its purpose as a limited funding source to augment the deployment of broadband in unserved and underserved areas. We believe that a specific amount of funding is superior option to an “as needed” amount as it limits the overall collection and allows for better oversight by the Commission of the proposed projects. We also believe that Verizon’s “rough estimate” is a reasonable basis upon which to base the initial funding component for unserved areas and include an additional support amount to ensure that underserved areas also receive funding.

As soon as practical, carriers shall rename the surcharge description on the bill to reflect both the California High Cost Fund-B and the California Advanced Services Fund. Where these line items are explained by the carriers, they shall describe that a portion of the line item is being directed toward the CHCF-B and a portion toward the CASF. As the CASF collection will be in place for a limited time and to avoid unnecessary costs, we do not direct carriers to create a new line item for CASF, but carriers may do so if they choose.⁴³

Carriers, however, shall each be required to establish a memorandum account tracking system for recording receipts of the 0.25% surcharge revenues

⁴² This \$100 million takes into account the revisions to the originally forecasted CHCF-B claim amount as adopted in our Resolution T-17103 due to the CHCF-B modifications we adopted in D.07-09-020. Those modifications include reductions in surcharge revenues collected after January 1, 2008 and reduced draws on the B-fund as a result of raising the high-cost threshold to \$36 per line, to be phased in by July 1, 2009.

⁴³ Should the CASF surcharge be extended by the Commission a separate surcharge line item will be required consistent with past Commission practice. *See*, D.96-10-066 at OP 10, which required that the California Teleconnect Fund surcharge be given separate line item treatment separate from the B-Fund.

applicable to the CASF. The CASF memorandum account shall accrue monthly interest on the accumulated balance at the applicable short-term commercial paper rate. Carriers shall retain custody of all surcharge revenues collected and tracked in the CASF memorandum account until the Commission provides further direction concerning the disposition of CASF funds.

To the extent that the total amount of claims for CASF support exceed the total pool of funds that we have allocated, we shall first rank Applicants' proposed projects in terms of how well they satisfy the selection criteria and award funds to the most qualified applicants in accordance with those rankings. We shall first award CASF funds to qualifying projects for unserved areas only. If any CASF funds remain after unserved areas have been funded, we shall consider awarding funding proposals for underserved areas, as well. If unserved and underserved areas remain after the initial two-year period of the surcharge, the Commission may choose to continue the CASF surcharge for another limited fund amount to ensure the benefits of advanced services are made available to all of California.

In comments on the Proposed Decision, AT&T states that redirecting half of the funds collected through the 0.5% B-Fund surcharge to the CASF will result in a deficit to meet B-Fund obligations over two years.⁴⁴ The 0.5% surcharge adopted in D.07-09-020 was based on having a CHCF-B balance of approximately 2.5 to 3 times the monthly payment rate at the end of 2008. The 0.25% allocation

⁴⁴ AT&T Comments on the PD at 12-14.

to the CHCF-B for 2008 continues to meet this goal.⁴⁵ More than \$30 million is projected to be available at the end of 2008 for CHCF-B purposes.⁴⁶ Additional changes in the CHCF-B program may occur before January 2009 that may lead to a change in its associated surcharge rate. As all of the surcharge amounts are continuously evaluated and adjusted at least annually, a revision to the surcharge attributable to the CHCF-B may occur in 2009 to ensure continued sufficiency of CHCF-B funds.

Likewise, the 0.25% surcharge allocated to the CASF will continue in effect until the \$100 million appropriation has been collected. We estimate that a two-year period will be required to collect this sum. Once the \$100 million in CASF funding has been collected, however, we shall make the appropriate adjustment in the surcharge.

4. Scope of the CASF Program

As envisioned in D.07-09-020, the CASF will be a limited source of matching funds to build advanced infrastructure in unserved and underserved areas of California. We expect to consult with the California Emerging Technology Fund to help identify such unserved and underserved areas of California. CETF has provided some updated broadband maps to the Governor's Broadband Task Force, which we believe will be instructive to our goal at hand.

⁴⁵ Prudent management of the CHCF-B would not have the Commission retain the large balance currently available, but would seek to reduce the fund to a manageable and sufficient level as quickly as possible.

⁴⁶ January 2009 payments project to be approximately \$10 million.

5. Process for Administering the CASF Program

By ACR dated September 12, 2007, we solicited comments regarding the development of a process whereby applicants may qualify for funding to be used to deploy broadband in high cost areas that are not currently being served or that are underserved. In Appendix 3 of D.07-09-020, we presented a tentative process for administering CASF applications. In this decision, we finalize the process for administration of broadband deployment funding under the CASF program.

A. Schedule for Processing of Applications

We hereby authorize eligible candidates applying for funding under the CASF program to submit proposals pursuant to the schedule and process below.

1. Parties' Positions

AT&T and Verizon propose setting a single deadline for the filing of all proposals rather than opening a 60-day window during which additional proposals could be filed. Verizon argues that opening a 60-day window would delay and complicate the process unnecessarily. Given the size of the more rural CBGs, Verizon believes that proposed funding projects within the same CBG may not overlap. Alternatively, Verizon suggests that the process be separated into a phase where interest in grants for particular CBGs be solicited. Where two or more parties express an interest in such a case, a filing timeline could be set such that parties submit simultaneous confidential proposals.

Sprint argues that the "single deadline" approach for filings is feasible only if the Commission clearly defines in advance what standards should apply to CASF requests, and delineates the areas in which funding will be supported. Otherwise, Sprint argues, the Commission could receive a "flurry" of proposals that are not actually comparable in any rational manner.

2. Discussion

We hereby set a deadline of June 2, 2008, for the submission of initial proposals by parties seeking CASF funds. Proposals shall be submitted to the attention of the Director of the Communications Division. We shall post on the Commission's website the names of entities that have submitted a proposal for CASF funding, together with the location that is proposed to be served. All other information in the CASF submission shall be kept confidential. Interested parties shall have a 30-day period after notice of the proposals is posted on the website within which to make general responses to any CASF proposal. We shall provide a period of up to 45 days, however, for any party to make a response to a CASF proposal which presents a counteroffer to match an applicant's proposed deployment commitment, either under more favorable terms, or through a lower requested CASF award. Such counteroffers must provide requisite supporting information for comparison of its claims with those made by the original party. Proposals made within each month after June 2, 2008 shall be treated as if made at the same time for evaluation purposes, and will be accepted until all of the funds allocated to the CASF have been designated or until December 2011. The Commission will begin an evaluation of the effectiveness of the initial awards under CASF no later than July 1, 2010.

CASF funding proposals will be reviewed based upon how well they meet the criteria for selection as set forth below, and, where applicable, compared with any competing claims to match the deployment offer under superior terms. Such criteria should be evaluated on a competitively neutral basis. As stated above, we shall first award CASF funds for projects covering unserved areas only. Only if CASF funds remain after unserved areas have been funded, we shall then consider awards for underserved areas. To the extent that the total amount of

CASF funds requested exceeds the available pool of funds that we have allotted for this program, we shall award the funds based upon a ranking of applicants' projects. Those projects that are ranked the highest based upon our assessment of selection criteria will be awarded the available funds.

B. Requirements to Support Applications for Broadband Funding

Clear and objective CASF program guidelines must be established so that applicants can understand the selection priorities under which applications will be reviewed and funds awarded.

1. Parties' Position

AT&T proposes that project plans specify the type of facilities to be deployed, the geographic areas and estimated number of subscribers to be covered, total project cost, the amount of CASF support sought, and the amount of applicant's own funds to be used.

Verizon proposes that proposals for CASF money be required to meet specific criteria, with a "point value" assigned to each criterion, designed to measure those deployment projects that will maximize the benefits from awarding funding. Verizon points to features adopted in a similar grant process implemented last year by the State of Idaho⁴⁷ as a possible model for consideration in designing the CASF program, including requirements for applicants to identify and document the following:

- source, amount, and availability of matching funds;
- number of potential new subscribers;

⁴⁷ The "Rural Broadband Investment Program," under which \$5 million was made available for rural broadband project pursuant to Senate Bill 1498, was enacted by the Idaho Legislature and signed into law on April 12, 2006.

- marketing plan;
- detailed startup costs to be funded by the grant; and
- proposed budget

As a primary selection criterion for a CASF award, Verizon points to program cost per potential subscriber. In order to provide for consistent evaluation of multiple applications, Verizon notes that a standardized definition of the term “potential subscriber” is necessary. An inflated figure applied by an applicant for “potential subscribers” could skew a project comparison.

Verizon suggests that applicants be able to apply for grants seeking less than a 50% matching of the project costs and calculate only the matching portion sought in the cost per potential subscriber.

Verizon argues that funding awards should not be made based upon the applicant’s retail price per MBPS. Verizon argues that broadband pricing is not done on a standardized industry scale, but is a dynamic process that changes frequently based on regional or national considerations. Moreover, specific service features can vary between providers.

In addition, the Idaho program mandates that applicants who fail to deliver broadband services as specified in an approved project will be required to repay grant funds.

2. Discussion

Any service provider seeking CASF funding shall be required to submit the following data to the Commission, for each proposed broadband project, subject to appropriate and mutually agreed upon confidentiality provisions consistent with the requirements below:

- (1) Description of the service provider’s current broadband infrastructure and map of current service area by census block group;

- (2) Description of proposed broadband project plan for which CASF funding is being requested, including download and upload speed capabilities of proposed facilities. Minimum speed standards targeted should be 3 MBPS download and 1 MBPS upload.
- (3) Geographic locations by census block group where broadband facilities will be deployed. Boundaries of the specific area to be served by the project, with map by census block group, along with a verifiable showing that the area is unserved or underserved;
- (4) Estimated number of potential new broadband subscribers.
- (5) Schedule for deployment, with commitment to complete build out within 24 months of the approval of the application. The schedule shall identify major construction milestones that can be verified by Commission staff.
- (6) Proposed budget for the project, with a detailed breakdown of cost elements, and including source, amount, and availability of matching funds to be supplied by applicant, and the CASF funds requested. At least 60% matching funds must be supplied by applicant, or via some other funding source such as a grant from a foundation.
- (7) Proposed retail price per MBPS for new broadband service.
- (8) Minimum period of commitment to offer broadband services to all households within the service area of the project, and
- (9) Financial qualifications to meet commitments.

We shall require a separate showing for each proposed broadband project. For this purpose, we define a single broadband project as deployment encompassing a single contiguous group of CBGs. Applicants may seek funding

for more than one project within a single application, but must provide separate supporting documentation for each project.

We shall review CASF project proposals and make funding determinations based at least on the following factors: price per MBPS offered to customers, overall size of the request, matching funds, time for implementation, priority for unserved areas over underserved areas.

As a basis to develop a more definitive protocol for evaluating proposed projects to receive CASF funding, we direct staff to convene a technical workshop. The workshop will provide parties an opportunity to offer input on the relevant criteria and the related scoring to be assigned to each of the criteria. Upon the conclusion of the workshop, we shall finalize a template of criteria and related scoring to be used in the evaluation of CASF project proposals to be funded. We will adopt an explicit “point” scoring for evaluating specific criteria, as suggested by Verizon. We will qualitatively evaluate the various proposals in a relative ranking so that the available pool of CASF money is allocated to those projects expected to provide the greatest broadband deployment at affordable rates, providing the transmission speeds we have designated. Commission staff shall propose the scoring criteria prior to the workshop designed to evaluate the proposed scoring criteria. The Commission shall approve in a resolution the final proposed scoring criteria and proposal submission template.

Funding determinations shall be made based on how well applicants satisfy the final criteria ordered by the Commission. These criteria may include the price per MBPS offered to customers, overall size of the funding request, meeting the matching fund requirement, financial qualifications, meeting our minimum speed requirements, and time for implementation. We reiterate that

broadband projects for unserved areas shall be evaluated and processed first before considering any proposals for underserved areas.

DRA argues that the CASF recipient should be required to offer a pricing commitment for broadband services on a stand-alone basis for a full five-year period. TURN likewise raises the concern that a CASF recipient could effectively raise the overall price of broadband service by creating bundles which combine broadband with other services. We believe that DRA and TURN raise a valid concern regarding the Commission's ability to monitor and/or enforce a CASF recipient's voluntary pricing commitments for broadband. Therefore, in order to ensure that CASF recipients can be held accountable for commitments regarding the affordability of broadband services, we shall require that any voluntary broadband pricing commitments be offered to customers on a standalone basis. We acknowledge that this Commission does not have jurisdiction over broadband rates; in no way does our action suggest that we are in any way setting or mandating a specific broadband price.

In developing and ranking criteria on a point-scoring system, DRA also argues that priority should be given to projects to serve areas in which there is demand for high-speed broadband, but which is less likely to be served through market forces alone. DRA believes that demographic measures should be used to identify whether an area is considered "uneconomic" and thus less likely to be served without public funding. We consider this issue to be appropriate for consideration in the workshop that is to be convened for the development of a scoring system for the ranking of projects by relevant criteria. We direct staff to include consideration of this criterion in the workshop agenda to develop a scoring system for evaluating proposed broadband projects eligible for CASF funding.

A reasonable amount of funding may be distributed at various stages of construction upon completion of specific milestones, as explained further in Sec. M below. The recipient must show full completion of the project in order to obtain full funding.

**C. “Telephone Corporation”
Eligibility Requirements**

1. Parties’ Positions

AT&T, Verizon, and SureWest argue that recipients of CASF money should be limited to entities that qualify as “telephone corporations” under Sec. 234, excluding those telephone corporations (*i.e.*, the “small LECs”) whose broadband deployment costs are subject to rate-of-return regulation. AT&T argues that such companies can already recover their broadband deployment costs by including such deployment costs in their rate base as authorized by the Commission.

CCTA/Time Warner argue that in order to promote competitive neutrality, eligibility to participate in the CASF program should be extended to all entities offering broadband services, not just “telephone corporations.”

2. Discussion

In order to administer the program within the statutory framework we adopt herein and maximize the effectiveness of Commission oversight, CASF funding shall be limited to a “telephone corporation” as defined under Pub. Util. Code § 234.⁴⁸ Certain parties object to restricting CASF awards only to “telephone corporations” with a CPCN, arguing that such a restriction unfairly excludes potential recipients that could offer broadband, but are not “telephone

⁴⁸ See, Pub. Util. Code §§ 233 and 234.

corporations.” We consider the CPCN requirement necessary in order to ensure that the Commission has jurisdiction to control against waste, fraud, and abuse in our administration of the CASF program. Thus, we shall retain the requirement that CASF funding be limited to “telephone corporations” with a CPCN.

If an entity has an application pending for approval of a CPCN to provide service as a “telephone corporation,” we shall permit the entity to submit a proposal for CASF funding subject to subsequent approval of the CPCN to provide service as a “telephone corporation.” CASF funding may be provided to a consortium as long as the lead financial agent for the consortium is an entity with a CPCN.

The certificated entity awarded CASF funding will be held responsible for compliance with all Commission requirements set forth as conditions of receiving CASF funding. Thus, even if the certificated entity relies upon one or more affiliates to carry out its commitments for the deployment of broadband facilities and services, the certificated entity shall remain legally responsible for any failure of its affiliates to fully meet those commitments.

We recognize that providers of wireless telecommunications services within California are not required to obtain a CPCN with the Commission, but are still subject to “Wireless Identification Registration”. (See D.94-10-032, Ordering Paragraphs 1 and 4). We shall consider wireless carriers registered with the Commission to be eligible to seek CASF funding on the same basis as other telecommunications carriers with an active CPCN. In any event, by accepting CASF funding, any carrier comes under the Commission’s jurisdiction with respect to monitoring and enforcement of any conditions attached to approval of the CASF funding.

Funding not directed for use for broadband deployment by January 1, 2010, may be used to fund advanced broadband services at download speeds greater than 3 MBPS. The CASF program may well serve as a precursor to a reverse auction process which we are exploring as a possible way to meet our universal service goals on a forward-looking basis.

**D. Requirement to Offer
Residential Voice Service**

1. Parties' Positions

Under the Commission's current definition of "basic residential service," adopted in D.96-10-066, however, providers of wireless service or broadband VoIP would be excluded from participation in the CASF program. AT&T and Sprint both argue that the current definition of "basic service" is too restrictive and is not technology-neutral. Sprint argues that CASF eligibility should not require provision of "basic residential service" as currently defined, but should simply require that any CASF-funded broadband service be capable of supporting "voice" service.

DRA supports a more inclusive definition that is more reflective of today's technology and competitive environment.

2. Discussion

The purpose of the B fund is "to provide for transfer payments to telephone corporations providing local exchange services in high cost areas in the state to create fair and equitable local rate structures." In D.96-10-066, (the universal service decision), the Commission established the B fund. The Commission made a commitment to ensure that basic residential telephone service be made available throughout California and that the rates for such service remain affordable. The decision adopted rules pertaining to how universal service was to be carried out in California as the local exchange

telephone markets were opened to competing carriers pursuant to changes contained in the Telecommunications Act of 1996.

In D.96-10-066, the Commission limited the scope of the CHCF-B to carriers providing residential local exchange service in high-cost areas. (See D.96-10-066, Ordering Paragraphs 7 and 8.) The Commission has entertained the issue whether to expand the definition on basic residential service to include broadband services in the past, but declined to expand the definition at that time. For example, the Commission noted in D.95-07-050, that one potential problem with developing incentives to promote the deployment of advanced technologies is that this Commission's jurisdiction is limited to public utilities. Many of the advanced services being developed and offered today require hardware, software, and other components, in addition to the information that is provided to the end user. The Commission can formulate incentives with respect to the telecommunication services that are utilized, but cannot order incentives or impose assessments on the other non-regulated companies that are coming together to offer these services.

Because the CASF is created to ensure the continued availability of voice communications throughout California, we shall require that eligible recipients also make available a basic voice service to customers within the service area of the broadband deployment subject to the CASF award. We agree that the definition of basic service needs to be modified for purposes of the CASF program to include any form of voice-grade service, including that offered by a wireless or VoIP provider. At least within the context of eligibility for awards of CASF money, we hereby adopt such modification, expanding the definition of

qualifying “basic service”⁴⁹ to include any form of voice-grade service, including that offered through a wireless or VoIP service. At a minimum, however, we shall require that any form of voice grade service offered to satisfy CASF requirements must at least meet FCC standards for E-911 service and battery back-up power supply.

At present, we apply this redefinition of “basic service” only in the context of carriers seeking to qualify for CASF funding. We recognize that the possible redefinition of “basic service” within the context of the B-Fund program is also before us as in Phase II of this rulemaking. As we address how to redefine basic service to provide for participation in the B-Fund program on a technology-neutral basis, we shall consider any implications of the expanded definition of basic service being adopted in this order.

E. Broadband “Project” Definition

1. Parties’ Positions

As a basis for supporting an application for CASF support for a broadband project, parameters must be specified regarding what actually constitutes a separate “project.” Verizon suggests, for example, that contiguous census block

⁴⁹ We do not modify “basic service” as adopted in D.96-10-066, at this time, to include broadband (as we do not evaluate whether broadband is essential for participation in society; substantial majority, 65%, of residential customers subscribe to the service based on availability, promotion of the service, customer education, and marketing and use; whether the benefits outweigh the costs; and need for Commission intervention). We do note that the 9.4 million broadband connections reported by the FCC appears to translate to approximately 7.3 million residential connections in California (59% of the households in the state). (See, D.06-08-030, *mimeo.* at p.254, FOF 43 (broadband is available to most Californians).) As the existing “basic service” requirements are met in all COLR service areas, the services and applications required under the CASF are additive to the overall communication offerings within the state and do not reduce the level of service to any consumer.

groups (CBGs) served by a single switching facility could be deemed to constitute a single “project” unless an applicant could demonstrate some economies of scale achieved in combining a group of CBGs that include more than a single switching center. Alternatively, Verizon suggests that applicants could identify another rationale for grouping CBGs (*e.g.*, installation of required transport facilities).

2. Discussion

We decline to adopt a project definition based upon CBGs served by a single switch. We conclude that a more technology-neutral approach is to define a project in terms of CBGs. A single broadband project shall consist of a group of contiguous CBGs, or applicable portions of a CBG, in which service is to be offered. We recognize that service may be feasible for only a portion of a CBG since broadband networks may not match CBG boundaries. Accordingly, we shall permit proposed broadband service areas to cover only certain designated portions of a CBG. The funding proposal must be specific, however, as to what portions of a CBG will be served by the broadband project, so that we may verify that any broadband service commitments are honored.

F. Minimum Broadband Speed Eligibility Standards

1. Parties’ Positions

In D.07-09-020, we solicited comments on a CASF award process whereby priority would be given first to areas not served by facilities capable of providing 3 MBPS download and 1 MBPS upload speeds, and second, to underserved areas (defined as areas with only one facilities-based provider capable of providing those speeds to all customers).

Verizon argues, however, that it is unclear that a minimum speed requirement of 3MBPS downstream and 1 MBPS upstream is an appropriate

threshold for prioritizing applicants' funding proposals. Verizon argues that providing 3 MBPS service to customers served by long loops will require costly upgrades, and that a slower speed threshold would expand the potential subscriber base for CASF funding, thus reducing the cost per potential subscriber in more rural areas with lower population density.

AT&T argues that the 3 MBPS/1MBPS speeds may provide capabilities useful in the future, but are currently well beyond those available to or needed by most Californians. AT&T argues that a much slower speed threshold should be used which reflects the current competitive market offerings.

Sprint argues that unless there is incontrovertible evidence of a market failure, the Commission should let the market decide, rather than intervening with a subsidy program that picks winners and losers through government subsidies.

2. Discussion

We shall adopt the 3 MBPS/1MBPS (3/1) speed standards as the benchmark for evaluating proposals. We believe that such speeds provide a minimum necessary to effectively work from home. We adopt these speeds to help ensure telecommuting is an option in all areas of the state.⁵⁰ Both faster and

⁵⁰ Telecommuting has special significance for residents of remote areas or workers constrained by child or elder care needs. National Academy of Sciences 2002 Report at 117. Telecommunications can reduce and even eliminate barriers imposed by distance. These distance barriers not only contribute to travel costs but also to the time required to cover even short distances. Telecommuting also eliminates further contributions to air pollution as staying at home consumes three times less energy than commuting to work. *See, Broadband Services: Economic and Environmental Benefits* by Joseph P. Fuhr Jr. and Stephen B. Pociask (rel. Oct. 31, 2007), (suggests that if broadband adoption became widespread, there could be a significant reduction in greenhouse gas emissions,

Footnote continued on next page

slower standards have been argued for by parties. We find compelling the arguments that a minimum upload speed of 1 MPBS is necessary for effective telecommuting. While we decline to establish our initial benchmark at the higher level, a speed greater than the 1 MBPS minimum should be the goal for California. We note that the goal set by the Governor is for California to do nothing less than lead the nation in broadband deployment. Further, we note that in California, Verizon uses 1 MB and 3 MB files to show on-line comparisons between dial-up and different broadband speeds.⁵¹

While we are sympathetic to arguments that we adopt significantly faster speed benchmarks,⁵² we believe that the 3/1 standards represent a reasonable balance at the onset of this program. As a majority of the state has some level of broadband service available to it, we are designing this program to reach those areas of the state that have dial-up internet connectivity, and then to the extent feasible those areas that do not meet the 3/1 benchmark. A slower speed benchmark would not challenge providers nor would it be a significant improvement to California consumers. A faster speed may prove to be unachievable without significantly more support. We believe that the 3/1 benchmark provides a reasonable balance of technology, engineering, and cost.

equaling 1 billion tons over the course of 10 years.) available at <http://www.aci-citizenresearch.org/Final%20Green%20Benefits.pdf>.

⁵¹ See Verizon Speed Comparison, available at <http://www22.verizon.com/content/consumersdsl/explore/speed+comparison/spe+d+comparison.htm>.

⁵² See, e.g., TURN Comments on Interim Opinion Implementing California Advanced Services Fund at pp. 6-9.

In addition, proposals for the same area that offer a higher speed than the 3/1 benchmark minimums will be weighted more favorably, while those offering slower speeds will be ranked lower relative to competing applications for funding, but may be funded. We think this method addresses the arguments of commenting parties for flexibility.

In ranking requests for funding, however, we define an area as “unserved” if no facilities-based provider already offers any level of broadband service such that internet connectivity can only be achieved through a dial-up service.

G. Timing Requirements for Build-out of Broadband Facilities

1. Parties’ Positions

AT&T argues that the applicant should state the expected (and maximum) period of time anticipated for deployment, long with specific milestones which must be verified by Commission staff. AT&T argues that all deployments should be required to be completed within two years of approval, subject to extension based on a showing that uncontrollable factors were involved.

Verizon proposes that up to an 18-month period be allowed from the date of a CASF award to the completion of a broadband deployment project, with additional flexibility for circumstances beyond the carrier’s control. Verizon argues that such a timing criteria is necessary in order to attract a sufficient number of applicants. Verizon argues that the degree of complexity built into the application process and Commission regulation of the deployment process will impact the number of applicants and the timing required for deployment.

2. Discussion

We shall generally expect applicants to provide a commitment of no longer than 24 months within which to complete a given broadband deployment project. Where two applicants are competing for CASF funding with projects

that are otherwise similar, preference will be given to the project that commits to a more rapid completion schedule.

In the case of authorization for granting video franchises for broadband projects pursuant to DIVCA, we required that an applicant must provide an expected date of deployment for the entirety of each noncontiguous grouping or region included in its proposed video service area footprint. In similar fashion, we shall require that CASF applicants provide a separate schedule for deployment for each noncontiguous grouping or region that constitutes a separate “project.” The Commission believes providing incentives for broadband facilities in a more rapid time frame serves the goals of deploying broadband facilities sooner and in a more comprehensive manner to unserved and underserved areas.

H. Matching Funds Requirements

1. Parties’ Positions

Parties generally agree that some level of matching funds must be provided by applicants as a condition of receiving a CASF award. Sprint proposes that CASF recipients be required to provide at least 80% of the funds for any CASF project. AT&T and Verizon suggest a requirement of at least 50% matching funding by each CASF recipient.

2. Discussion

We shall require that applicants provide a minimum of 60% matching funds as a prerequisite to consideration of their application for CASF funds. By requiring matching funding of at least 60% of the project cost, we provide an appropriate incentive for applicants to seek CASF money only for projects that are economically viable. To the extent that an applicant commits to provide greater than a 60% share of the budget for the proposed broadband project, that

applicant's proposal will receive a higher preference in being granted a CASF award.

**I. Geographic Area(s) Eligible
for CASF Project Funding**

1. Parties' Positions

In D.07-09-020, we sought comments on the use of CBGs for identifying the geographic scope of a broadband project eligible for CASF funding. Verizon argues that because CBGs vary in size and more rural CBGs tend to be quite large, funded projects cannot necessarily be expected to extend broadband throughout a given CBG. Moreover, service areas may bisect CBGs. For these reasons, Verizon argues that CBG boundaries should not serve as project boundaries.

Verizon argues that funding should target only areas where broadband does not currently exist, where opportunities for funding and cooperative partnerships are maximized, and where funds will have the greatest impact. Verizon argues that areas that already have wireline broadband availability, even if service is offered at speeds below 3 MBPS, should not be eligible for funding.

To assist in researching unserved area characteristics, various parties propose making available to applicants that the maps of broadband availability that are being constructed as part of the California Broadband Task Force efforts. CCTA/Time Warner states that it is unknown at this time as to how many unserved areas exist within the service territories of the major ILECs. AT&T, CCTA/Time Warner, SureWest, Verizon, and DRA all recommend waiting for the results from the Governor's Broadband Task Force before determining the parameters of the CASF program.

By identifying unserved areas utilizing the mapping from the Broadband Task Force, Verizon argues, the Commission could then assess projects at the appropriate level of detail to evaluate competing proposals. DRA likewise argues that without such mapping data, valid questions can be raised as to whether there is actually a need to subsidize broadband infrastructure.

Verizon argues that applicants should not be expected to make a verifiable showing that an area under consideration for CASF subsidies is “unserved.” Sprint argues that if an applicant seeks funding based on its belief that an area is “unserved,” however, competing carriers should have at least 60 days in which to demonstrate that an area currently is being served.

AT&T proposes that “unserved areas” be defined as areas where service is not currently available at 200 Kbps in either direction (or alternatively, a standard of 500 Kbps could be used based on the minimum reporting speed used in the California Task Force). AT&T proposes that the CASF not subsidize deployment in areas where there is already at least one provider.

DRA asks the Commission to clarify what constitutes an “unserved” area. DRA questions whether an area is to be deemed “unserved” only by considering the services and service providers applicable for a CASF subsidy. Should the unserved areas only be those designated as “uneconomic” or currently classified as “high cost” areas? AT&T disagrees with restricting CASF funding only to those areas that are currently designated as “high cost” under the B-Fund program. AT&T argues that currently designated “high cost” areas are based on an outdated analysis of basic service costs under a definition that excludes broadband service.

2. Discussion

We shall require that each service provider requesting CASF funding shall bear the responsibility to assess whether a proposed project is in an area that is currently not being served by any level of broadband. In the event that an applicant erroneously asserts that a proposed project will cover an area that is currently unserved, opposing parties will have the opportunity to challenge such assertions in filing responses to the proposal, as discussed above, and to refute such claims with their own data as to other broadband service that may already be available in the service area.

Priority in granting applications shall be directed first to awarding CASF funds to projects in areas not served by any level of broadband facilities. We shall consider as a secondary priority, awarding funds to projects targeting an underserved area (*e.g.*, an area with no facilities-based provider capable of providing broadband at speeds of at least 3 MBPS download and 1 MBPS upload).

We agree that an “unserved” area should only be defined as pertaining to broadband services and service providers applicable for a CASF subsidy. CASF funding will not be restricted only to those areas currently designated as “high cost” for purposes of basic service support. Such “high cost” designations are based upon outdated data that was compiled over 10 years ago, based upon legacy wireline technology.

We shall not restrict the eligible areas for CASF funding only to the major ILEC service territories currently covered by the B-Fund. We shall also permit CASF applications that seek to deploy broadband in areas served by the Small LECs within their incumbent service territories, assuming other requirements are met.

J. Commitment to Serve

AT&T proposes that the applicant should commit to offer the supported broadband service upon completion of the deployment to all households within the area defined by the application, for a minimum period specified by the Commission, such as five years. AT&T also proposes that the applicant should also make a voluntary commitment as to the price of supported services. AT&T argues, however, that the Commission should not impose a price cap or pricing schedule, as such a requirement would be a step backward from the deregulatory direction adopted in the URF proceeding.

We shall impose a requirement that as a condition of receiving a CASF award, the recipient must make a commitment for a five-year period from the date construction is completed to offer broadband service to any residential household or small commercial business within the service territory covered by the deployment. Should a recipient accept the funding and then fail to offer service throughout the proposed service area, the Commission shall recover the CASF funding in proportion to the area that was not actually served. The Commission shall also investigate whether a Rule 1.1 violation occurred. We agree that it would be inappropriate for the Commission to impose any price caps on broadband services given our recent URF decision and the traditionally unregulated broadband market place. We will, however, evaluate funding requests by considering the prices at which applicants propose to offer broadband service. Those with lower prices pledged for a particular time frame on a voluntary basis will receive more favorable consideration. Affordability of broadband service is a key factor as to the Digital Divide, particularly for low-income, disadvantaged, senior, and disability communities. Thus, we believe that affordability is an appropriate criterion to apply in ranking the

projects as a basis for selecting projects to be allocated CASF money. We shall require recipients to honor the voluntary pricing commitments set forth in their proposals as a condition of receiving funding.

K. Cost Categories Eligible for Funding

Verizon believes that the CASF should be limited to funding capital deployment, not the cost of operating and maintaining the broadband network. We agree with this limitation. Funding awards will be limited only to capital funding. The disbursement of CASF funds will only be provided for authorized capital spending on approved broadband deployment projects, and shall not be used to pay for any operating or maintenance expenses.

L. Financial Qualifications to Complete Broadband Commitments

We shall require applicants to provide financial statements demonstrating their fitness and ability to provide the requisite share of funds necessary to construct and deploy the broadband facilities being proposed. As specified in Rule 2.3 of the Commission's Rules of Practice and Procedure, applicant shall provide a balance sheet as of the latest available date, together with an income statement covering period from close of last year for which an annual report has been filed with the Commission to the date of the balance sheet attached to the application.

Applicants may also propose to post a performance bond, if deemed necessary to provide requisite assurance that applicant has the financial resources to complete the broadband project. While a performance bond may be necessary in certain cases, such as for a new provider with no financial track record, AT&T argues that the requirement for a performance bond be reduced or eliminated for carriers with established service records or credit ratings.

On a case-by-case basis, an evaluation will be made of the need to require an applicant to post a bond to provide adequate financial safeguards, and reasonable certainty that the broadband project can be completed, or that funds can be retrieved from the applicant in event of nonperformance.

We note that under DIVCA, local governmental entities are tasked with determining the “time, place, and manner” of a state video franchise holder’s use of the local rights-of-way.⁵³ In overseeing time, place and manner of this use, local entities may issue rights-of-way permits, and these local permits may require further security instruments to ensure that a state video franchise holder fulfills locally regulated obligations.⁵⁴ Locally required security instruments can best take into account size and scope of a state video franchise holder’s local construction and operations. Similar considerations apply to the CASF proposals that we will evaluate. In any event, a performance bond may be required for recipients if deemed necessary to provide adequate assurance that CASF funds will be properly spent.

⁵³ CAL. PUB. UTIL. CODE § 5840(e)(1)(C) (providing that a state video franchise holder must comply with “all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, including, but not limited to, payment of applicable encroachment, permit, and inspection fees”). *See also id.* at § 5885(a) (“The local entity shall allow the holder of a state franchise under this division to install, construct, and maintain a network within public rights-of-way under the same time, place, and manner as the provisions governing telephone corporations under applicable state and federal law, including, but not limited to, the provisions of Section 7901.1.”).

⁵⁴ *Id.* at § 5840(e)(1)(C) (recognizing that state video franchise holders must abide by lawful local regulations regarding “the time, place, and manner of using the public rights-of-way”).

M. Disbursement of CASF Awards

Once a CASF application is approved, we shall delegate the administration of disbursements of funds to the Commission Staff. CASF disbursements shall be made on an installment basis, corresponding with the degree of progress toward completion of the approved broadband project. An initial disbursement of 25 % of the total CASF award shall be made upon Applicant's submission to Commission staff of a progress report, with supporting documentation showing that Applicant has completed 25 % of the total approved broadband project. Supporting documentation shall be provided in the form of invoices, and other relevant documentation, showing the expenditures incurred for the project. Staff reserves the option to require additional supporting information or verification from the applicant as a basis for authorizing any disbursement of CASF funds.

Subsequent CASF disbursements shall be made upon Applicant's subsequent submissions of documentation showing completion of 50%, 75% and 100%, respectively, of the total project. A project completion report shall be required in order for the final payment installment to be made. If an applicant fails to complete the broadband project in accordance with the terms of approval granted by the Commission, the applicant may be required to forfeit some or all CASF funds that it has received.

N. Requirements for Audit, Verification of Proper Use of Funds

CASF recipients will be subject to specific audit or related verification requirements to verify that funds are spent in accordance with Commission requirements. AT&T argues that any audits should be conducted after completion of projects, or at defined intervals, such as fiscal year-end, so that the recipient can plan its schedule in advance. AT&T argues that the Commission

should adopt procedures for recovery of funds that are disbursed in violation of any provision under Commission rules or applicable state or federal law.

Verizon proposes that applicants awarded CASF funding be required to submit a project completion report at the conclusion of the project. This report would ensure that the broadband-capable facilities were installed and that the CBG could be reclassified as one offering broadband. Verizon argues that extensive audit, verification, and other requirements are unnecessary given the nature of competitive markets and the fact that applicants will be matching at least 50% of the project costs.

We reserve the right to conduct any necessary audit, verification, and discovery as deemed necessary to ensure that CASF funds are spent in accordance with any Commission authorizations, and as a basis to promote compliance and enforcement of Commission directives.

6. Comments on Proposed Decision

The proposed decision of Commissioner Rachelle B. Chong in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 10, 2007 and reply comments were filed on December 17, 2007. We have considered the comments and taken them into account in finalizing this order.

7. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. Pursuant to D.07-09-020, parties were provided notice and opportunity to comment as to the merits and manner by which a mechanism could be

implemented for eligible parties to qualify for funding to deploy broadband facilities in regions of California that are not currently being served, or that are underserved.

2. Ubiquitous deployment of broadband holds tremendous opportunities for consumers, technology providers, and content providers, and is important to the continued health and economic development in California.

3. Promoting deployment of additional broadband services within areas of California that are underserved or not served at all is consistent with universal service policies aimed at enhancing deployment of advanced services and bridging the “digital divide” as articulated in Pub. Util. Code §§ 709(c) and (d).

4. The creation of a California Advanced Services Fund would provide an effective tool to promote additional broadband services in regions that are not served or are underserved consistent with Pub. Util. Code §§ 709(c) and (d).

5. The California Advanced Services Fund will complement the CHCF-B, and help to promote universal service goals, but will not divert or transfer CHCF-B funds as the CASF funds collection will be collected separately from the CHCF-B.

6. The funding of broadband infrastructure in areas where there may be market failure may be the best way to take into account dramatic advances in telecommunications and information technologies and services, while ensuring the continued effectiveness of the universal service policies set forth by the Legislature.

7. Broadband deployment in California has a direct impact on economic output and employment.

8. A 0.25% surcharge for CHCF-B for 2008 is projected to provide a balance greater than 2.5 times the monthly payment rate at the end of 2008, and will provide sufficient funds for CHCF-B purposes in 2008.

9. Surcharge amounts are continuously evaluated and adjusted at least annually, and a revision to the surcharge attributable to the CHCF-B may occur in 2009 to ensure continued sufficiency of CHCF-B funds.

10. The 0.5% CHCF-B surcharge should be redesignated to gather funds for both the CHCF-B and the CASF. Carriers are granted the discretion to use the same surcharge line on customer bills for both the CHCF-B and the CASF so long as that surcharge description reflects both funds, or alternatively, carriers have the discretion to create a new surcharge line just for the CASF. In the future, the Commission could require a separate CASF surcharge but we find it is not necessary at this time as the CHCF-B mechanism is available, works well, and is the least cost alternative.

11. The programs covered by Section 270, *et. seq.* cover a myriad of topics and issues. The Commission has taken both formal and informal actions to adapt the programs to changed circumstances due to advances in technology and other factors have led to changes, including expansions of the programs since they were created.

12. The Commission has authority under Article XII of the California Constitution and Pub. Util. Code including § 701 to establish the California Advanced Services Fund.

13. Providing funding for deployment of broadband facilities in unserved and underserved areas of California is necessary to meet the objectives of universal service.

14. Legislative direction recognizes that broadband services are and will be used to deliver universal telephone service now and in the future.

15. The Legislature and Governor have both clearly proclaimed the importance of high-quality telecommunications and advanced information and communication technologies.

16. All funds will be collected and appropriated consistent with Legislative direction related to existing universal service programs.

17. An amendment to the Pub. Util. Code § 270 to add the California Advanced Services Fund to those handled by the State Treasury is appropriate.

18. A new section within Chapter 1.5 of the Public Utilities Code to provide specific direction to carriers for remitting CASF collections and use of the funds by the Commission is appropriate.

19. Legislation is not necessary to begin the collection of funds by carriers nor is it necessary to begin the process within the Commission to receive and evaluate proposed bids for CASF purposes.

20. It is appropriate to dedicate limited funding into the deployment of broadband facilities in unserved and underserved areas of California.

21. The California Advanced Services Fund will accelerate broadband deployment in California more rapidly than market forces alone.

22. The initial allocation to the California Advanced Services Fund of \$100 million is a reasonable amount to promote the goals set forth in this order. The \$100 million is to be collected using a 0.25% surcharge allocation over approximately a two year period beginning on January 1, 2008

23. The submission of funding proposals to the Director of the Commission's Communications Division would be an appropriate procedural vehicle for seeking CASF funding support for a proposed area that is currently unserved or underserved by broadband services.

24. Commission staff will hold a workshop to develop the application process, and final evaluation criteria, with the final evaluation criteria, and funding request template to be approved by a Commission resolution

25. The initial deadline for the submission of proposals by parties seeking CASF awards will be of June 2, 2008.

26. California Advanced Services Fund allocations shall be limited to a "telephone corporation" as defined under Pub. Util. Code § 234.

27. For an adequate basis to evaluate CASF proposals, it reasonable to require each proposed project to provide the following data to the Commission, for each proposed broadband project, subject to appropriate confidentiality provisions:

- a. Description of the provider's current broadband infrastructure and map of current service area by census block group;
- b. Description of proposed broadband project plan for which CASF funding is being requested, including download and upload speed capabilities of proposed facilities. Minimum benchmark speed standards shall be 3 MBPS download and 1 MBPS upload.
- c. Geographic locations by census block group where broadband facilities will be deployed. Boundaries of the specific area to be served by the project, with map by census block group, along with a verifiable showing that the area is unserved or underserved;
- d. Estimated number of potential new broadband subscribers.
- e. Schedule for deployment, with commitment to complete build out within 18-24 months of the grant of the application. Schedule shall identify major construction milestones that can be verified by Commission staff.
- f. Proposed budget for the project, with a detailed breakdown of cost elements, and including source, amount, and availability of matching funds to be supplied

by applicant, and the CASF funds requested. At least 60% matching funds must be supplied by applicant.

- g. Proposed retail price per MBPS for new broadband service.
- h. Period of commitment to offer broadband services to all households within the service area of the project, and
- i. Financial qualifications to meet commitments.

28. Recipients must also offer a basic voice service to customers within the service area of the broadband deployment subject to the CASF award.

29. For purposes of awards of California Advanced Services Fund support, we expand the definition of qualifying “basic service” to include any form of voice-grade service, including that offered through a wireless or VoIP service.

30. A single broadband project shall consist of facilities designed to serve a group of contiguous CBGs (or portions of CBGs, where applicable) in which service is to be offered.

31. The following definition is reasonable to adopt as the benchmark for evaluating applications, and as a threshold for defining whether an area is unserved or underserved by broadband facilities. If an area is not served by any form of broadband, such that internet connectivity is available only through dial-up service, that area is unserved. Where area is served by broadband, but where no facilities-based provider offers service at speeds of at least 3 MBPS download and 1 MBPS upload, that area is considered underserved.

32. A broadband project must be completed within 24 months to receive California Advanced Services Fund awards.

33. Adequate assurance of the applicant’s financial qualifications sufficient to assure the Commission of its ability to complete the project shall be submitted with the application or obtained by the Commission prior to the award of any project under the California Advanced Services Fund.

34. California Advanced Services Fund awards will not be restricted only to those areas currently designated as “high cost” for purposes of basic service support.

35. We shall not restrict the eligible areas for California Advanced Services Fund awards only to the major ILEC service territories currently covered by the B-Fund.

36. As a condition of receiving a California Advanced Services Fund award, the recipient should, for a five-year period, offer broadband service to any residential household or small commercial business within the service territory covered by the deployment.

37. Evaluation of requests will consider the prices at which applicants propose to offer broadband service and award will be conditioned on the applicant honoring voluntary pricing commitments.

38. California Advanced Services awards will only be provided for authorized capital projects on approved broadband deployment projects, and shall not be used to pay for general operating or maintenance expenses.

39. Administration of the disbursement of California Advanced Services Funds is delegated to the Commission Staff to be administered consistent with the payment schedules and conditions herein.

40. California Advanced Services Fund recipients will be subject to specific audit or related verification requirements to verify that funds are spent in accordance with Commission requirements.

Conclusions of Law

1. Existing statutes provide the requisite authority for the Commission to support funding of broadband deployment under the approach adopted in this order.

2. Encouraging deployment of broadband through a CASF program will help to promote universal service goals, but is not a diversion or transfer from the CHCF-B to a separate fund.

3. Article XII of the California Constitution and the Pub. Util. Code, including § 701, provide sufficient legal authority for the Commission to establish the California Advanced Services Fund.

4. Limited funding for deployment of broadband facilities in unserved and underserved areas of California is necessary to meet the objectives of universal service and is within the prescribed purpose of the Pub. Util. Code.

5. The Legislature and Governor have found the availability of high-quality telecommunications and advanced information and communication technologies important for the future prosperity of California.

6. The funds to be used by the CASF will be collected as part of the redesignated CHCF-B and CASF surcharge beginning on January 1, 2008. Carriers may use the same surcharge line on customer bills for both the CHCF-B and CASF.

7. Pub. Util. Code §§ 270(b) and 270(c) do not prohibit the expansion of existing programs.

8. The CASF is not a transfer or diversion of funds to another fund or entity but is the creation of a new program.

9. An amendment to the Pub. Util. Code § 270 to add the California Advanced Services Fund to those handled by the State Treasury is appropriate.

10. A new section within Chapter 1.5 of the Public Utilities Code to provide specific direction to carriers for remitting CASF collections and use of the funds by the Commission is appropriate.

11. Legislation is not necessary to begin the collection of funds by carriers through use of the current surcharge mechanism, as ordered below, nor is legislation necessary to begin the process within the Commission to receive and evaluate proposed bids for CASF purposes.

12. California Advanced Services Fund allocations shall be limited to a "telephone corporation" as defined under Pub. Util. Code § 234.

13. The definition of qualifying "basic service" for the purposes of the California Advanced Services Fund only is modified to include any form of voice-grade service, including that offered through a wireless or VoIP service.

14. Subject to the final evaluation criteria, the Commission may award California Advanced Services Fund support to any certificated entity that proposes to build broadband infrastructure anywhere in the state.

15. The criteria for evaluation and selection of CASF proposals should be competitively neutral.

INTERIM ORDER

IT IS ORDERED that:

1. An allocation of \$100 million is hereby designated for support of broadband deployment projects in accordance with the principles and processes under the "California Advanced Services Fund" (CASF) program, as adopted herewith.

2. On and after January 1, 2008, this CASF allocation shall be collected using the same surcharge mechanism as the CHCF-B, with the collected funds allocated half to the CASF and half to the CHCF-B.

3. This program shall be funded through the California Advanced Services Fund, and will be set initially at \$ 50 million per year,

- a. All telecommunications carriers are required to charge all end users, the California Advanced Services Fund surcharge, as set by the Commission, except for ULTS billings, coin-sent paid calling, debit card messages, one-way radio paging, usage charges to COPTs, customers receiving services under existing contracts, and directory advertising.
 - b. The California Advanced Services Fund surcharge is set at 0.25%, and shall be collected from end users beginning with the billing cycle that begins on January 1, 2008. All telecommunications carriers shall each establish a memorandum account tracking system for recording collections of the 0.25% surcharge revenues applicable to the CASF beginning January 1, 2008. The CASF memorandum account shall accrue monthly interest on the accumulated balance at the applicable short-term commercial paper rate.
 - c. The California Advanced Services Fund surcharge may appear as a separate line item on a customer's bill or may be combined with the CHCF-B surcharge in 2008 and 2009 if the CHCF-B line item is renamed to reflect both the CHCF-B and the CASF.
 - d. Effective with the billing cycle that begins January 1, 2008, wherever the surcharge line items are explained by the telecommunications carriers, all telecommunications carriers shall describe that a portion of the line item is being directed toward the CHCF-B and a portion toward the CASF.
 - e. The Communications Division shall monitor the estimate of the size of the fund and shall inform the Commission as to whether any adjustments are needed in accordance with the text of this decision.
4. All revenues collected by telephone corporations in rates authorized by the Commission to fund the CASF program shall be submitted pursuant to a schedule established by the Commission. All revenues collected prior to the

issuance of the schedule by the Commission shall be held by the telephone corporations and accounted for in the CASF memorandum account, together with accrued interest. Upon the issuance of the schedule by the Commission, or other Commission directive, all revenues collected and any associated interest shall be transferred to the State Controller for deposit.

5. A process is hereby adopted for the submission of proposals by qualified telephone corporations, as set forth in the ordering paragraphs below, to seek funding available through the California Advanced Services Fund,

6. Eligible parties are hereby authorized to submit proposals to the attention of the Director of the Communications Division, due on June 2, 2008, to request funding for broadband deployment in accordance with the standards, and selection criteria set forth in this order.

7. A separate showing shall be required for each proposed broadband project. For this purpose, a single broadband project is defined as deployment encompassing a single contiguous group of CBGs (or portions of CBGs, as applicable). Parties may seek funding for more than one project within a single submission, but must provide separate supporting documentation for each project.

8. Responses to funding requests shall be due 30 business days after receipt by the Communications Division, except that responses that present a counteroffer to meet the proposed broadband commitment under different terms shall be due 45 business days after the proposal is submitted.

9. CASF funding proposals submitted after June 2, 2008 will be accepted, but will be reviewed under a lower priority, and subject to the availability of remaining CASF funds funding is approved for project proposals that meet the June 2, 2008 deadline.

10. Requests for CASF awards and disbursement of funds for that purpose shall be made pursuant to the standards and criteria adopted herein.

11. Consistent with the timelines discussed in Finding of Fact 25, Communications Division staff shall convene a technical workshop at which parties will be provided the opportunity to give input on the development of scoring criteria. Following the workshop, further guidance will be provided to parties concerning how specific selection criteria will be scored.

12. The Commission shall approve the final criteria and project proposal template to be used to evaluate and award CASF funds in a resolution. The scoring criteria shall include consideration of ranking for “uneconomic” areas that are less likely to be served without public funds. The approved criteria and scoring standards shall be made public in time for parties to take them into account in preparing their proposals. Individual awards of CASF funding shall also be authorized by separate Commission resolution.

13. CASF funding shall be limited to entities with a certificate of public convenience and necessity (CPCN) that qualify as a “telephone corporation” as defined under Pub. Util. Code § 234, except that wireless carriers registered with the Commission need not obtain a CPCN to qualify for CASF funding.

14. If an entity has an application pending for approval of a CPCN application to provide service as a “telephone corporation,” the entity may submit a request for a CASF award subject to subsequent approval of the CPCN to provide service as a “telephone corporation.”

15. CASF funding may be provided to a consortium as long as the lead financial agent for the consortium is an entity with a CPCN.

16. For purposes of qualifying for a CASF award, an eligible “telephone corporation” must also make available voice grade service along with the

proposed provision of broadband. Any such voice service offering must, at minimum, meet FCC standards for E-911 service and battery back-up supply.

17. Each party seeking CASF funding shall bear the responsibility to assess whether a proposed project is in an area that is currently not being served based on the standards adopted herein. In the event that a party erroneously asserts that a proposed project will cover an area that is currently unserved, opposing parties will have the opportunity to challenge such assertions by filing responses to the application.

18. As a condition of receiving a CASF award, the recipient must make a commitment for a five-year period to offer broadband service to any residential household or small commercial customer within the service territory covered by the deployment. Any voluntary broadband pricing commitments shall be made available to customers on a stand-alone basis.

19. CASF recipients will be subject to specific audit or related verification requirements to verify that funds are spent in accordance with Commission requirements.

20. An initial disbursement of 25% of the total CASF award shall be made upon Applicant's submission to Commission staff of a progress report, with supporting documentation showing that Applicant has completed 25% of the total approved broadband project. Supporting documentation shall be provided in the form of invoices, and other relevant documentation, showing the expenditures incurred for the project. Staff may require additional supporting information or verification from the applicant as a basis for disbursement of CASF funds.

21. Subsequent CASF disbursements shall be made only upon a recipient's submissions of documentation showing completion of 50%, 75% and 100%,

respectively, of the total project costs, including engineering, planning, and material procurement costs. A project completion report shall be required before the final payment installment is made.

22. Failure to comply with the conditions of approval of any CASF award, or to complete the broadband project in accordance with the terms of approval granted by the Commission, shall constitute grounds warranting forfeiture of some or all of the CASF award and reimbursement of such award to the Commission.

This order is effective today.

Dated December 20, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

