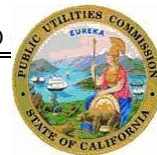


**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**Agenda ID #12692 1-06-14  
Quasi-Legislative 12:12 PM

January 6, 2014

## TO PARTIES OF RECORD IN RULEMAKING 12-10-012

This is the proposed decision of Commissioner Michael R. Peevey. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's February 5, 2014 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ DOROTHY J. DUDA, for  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:dc3

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**

(Mailed 1/6/2014)

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

Order Instituting Rulemaking to Consider  
Modifications to the California Advanced  
Services Fund.

Rulemaking 12-10-012  
(Filed October 25, 2012)

**DECISION IMPLEMENTING REVISED ELIGIBILITY CRITERIA FOR THE  
CALIFORNIA ADVANCED SERVICES FUND PROGRAM**

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**INTERIM PROPOSED DECISION IMPLEMENTING REVISED ELIGIBILITY CRITERIA FOR THE CALIFORNIA ADVANCED SERVICES FUND PROGRAM****1. Introduction**

The California Advanced Services Fund (CASF) was first implemented in Decision (D.) 07-12-054, which inaugurated a program to award grants to support deployment of broadband infrastructure projects offering high-quality advanced communications services<sup>1</sup> that will promote economic growth, job creation, and substantial social benefits. In this decision, the California Public Utilities Commission (Commission or CPUC) implements revised eligibility rules for the CASF program and with it, additional safeguards for non-telephone corporations<sup>2</sup> applying for CASF funding to ensure that ratepayer funds are protected. Specifically, we implement Senate Bill (SB) 740 which permits non-telephone corporations to apply to participate in the CASF program.<sup>3</sup>

On October 25, 2012, the Commission issued an Order Instituting Rulemaking (R.) 12-10-012 (OIR) proposing to change the CASF applicant eligibility rules to allow non-telephone corporations to apply for CASF grants and loans. The Commission acknowledged in the OIR that it would need a legislative amendment because the rules governing eligibility for the CASF are in

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<sup>1</sup> Broadband refers to the width of frequency bands used to transmit data or voice communications over the Internet. Depending on the width of the frequency band, information can be sent on many different frequencies or channels with broadband concurrently, allowing for advanced services, including video, to be transmitted at much faster speeds than would otherwise be available over a dial-up telephone connection to the Internet.

<sup>2</sup> Entities that do not hold a Certificate of Public Convenience and Necessity or a Wireless Identification Registration.

<sup>3</sup> SB 740 (Padilla) Stats. 2013 Ch. 522, amending Cal. Pub. Util. Code § 281.

statute.<sup>4</sup> The passage of SB 740 makes the discussion of whether or not we should change the applicant eligibility rules moot.

In the OIR, the Commission discussed what possible safeguards it should implement since non-telephone corporations are not subject to the Commission's regulatory authority.<sup>5</sup> In the past, the Commission had permitted non-telephone corporations to participate in the CASF program, subject to a variety of safeguards, if they had obtained American Recovery and Reinvestment Act funds.<sup>6</sup> On March 18, 2013, the Administrative Law Judge (ALJ) assigned to the proceeding issued a Ruling to supplement the record on safeguards.<sup>7</sup> A number of parties provided comments on this issue. However, Communications Division (CD) Staff still found that additional research was necessary to make a determination on the issue of safeguards, particularly on whether it was feasible for entities to obtain a post-construction phase compliance bond from a surety company. The results of Staff's research can be found in Appendix 3.

Based on the record and CD Staff's independent research, we conclude that non-telephone corporations will be required to obtain a performance bond for the construction phase of the project in order to ensure completion of the CASF grant funded project. In order to ensure that non-telephone corporations

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<sup>4</sup> OIR to Consider Modifications to the California Advanced Services Fund R.12-10-012, November 11, 2012 at 4.

<sup>5</sup> *Id.* at 20-22.

<sup>6</sup> Decision Establishing New Filing Plan for CASF Projects D.09-07-020, July 7, 2009 at 18-19.

<sup>7</sup> ALJ's Ruling Soliciting Additional Comment on Issues Identified in OIR 12-10-012, March 18, 2013.

comply with the other requirements of the CASF program, in both the construction and post-construction phase of the project, the Commission will rely on its ability to invoke the penalty provisions of Pub. Util. Code § 2111.<sup>8</sup>

## **2. Procedural Background**

The Commission established the California Advanced Services Fund (CASF) in Decision (D.) 07-12-054 and the Legislature subsequently codified the CASF in order to spur the deployment of broadband facilities in unserved and underserved areas of California.<sup>9</sup> The CASF provides financial support in the form of grants for broadband infrastructure projects selected through an application and scoring process. In addition, it provides support to rural and urban regional broadband consortia to fund activities that are intended to facilitate broadband deployment other than funding the capital costs of specific deployment projects. The CASF also provides loans to finance the capital costs of broadband facilities not funded by a CASF grant.<sup>10</sup>

In D.07-12-054, the Commission limited eligibility for CASF support to telephone corporations as defined by Pub. Util. Code § 234, i.e., entities that hold either a Certificate of Public Convenience and Necessity (CPCN) or a Wireless Identification Registration (WIR). In adopting this requirement, the Commission stated: “we consider the CPCN requirement necessary in order to ensure that the Commission has jurisdiction to control against waste, fraud and abuse in our

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<sup>8</sup> Unless otherwise noted, all statutory references are to the Cal. Pub. Util. Code.

<sup>9</sup> Cal. Pub. Util. Code § 281; Interim Opinion Implementing CASF D.07-12-054, December 21, 2007 at 2; *See* also Finding of Fact 3.

<sup>10</sup> Cal. Pub. Util. Code § 281(e); D.12-02-015 at 46.

administration of the program.”<sup>11</sup> In Resolution T-17143 the Commission adopted specific application requirements, timelines and scoring criteria for parties seeking CASF project grants. The resolution confirmed that eligibility for CASF grants was limited to entities holding either a CPCN or WIR but did not rule out reconsidering the issue in the future if the CASF had surplus funds or if other circumstances justified reconsideration of the issue.<sup>12</sup>

The restriction on eligibility for CASF funding to telephone corporations was subsequently reflected in statute when the Legislature codified the CASF.<sup>13</sup> With the passage of the American Recovery and Reinvestment Act (ARRA) in February of 2009, which provided grants to both telephone corporations and other entities for the construction of broadband facilities, the Commission saw the opportunity to leverage existing CASF funds by providing CASF matching grants to ARRA grantees for the unfunded portion of ARRA grants.

In D.09-07-020, the Commission determined that it would consider modifying the CASF eligibility requirements to provide CASF support to ARRA grantees which were not telephone corporations, contingent upon the Legislature’s passage of an existing bill that would give the Commission the required authority to modify eligibility.<sup>14</sup> The Commission noted that expanding the range of entities eligible to receive CASF funds beyond certificated or registered telecommunications carriers would raise issues about the fitness and

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<sup>11</sup> D.07-12-054 at 35.

<sup>12</sup> Resolution T-17143 at 19.

<sup>13</sup> Senate Bill (SB) 1193 (Padilla) Stats. 2008 Ch. 393, amending Cal. Pub. Util. Code §§ 270 and 281.

<sup>14</sup> D.09-07-020 at 13-14.

technical capabilities of entities the Commission does not regulate. Therefore, it stated that the Commission would need to implement appropriate safeguards to ensure that any non-certificated entities were financially and technically qualified to meet CASF program requirements as a condition of receiving CASF money.<sup>15</sup>

In July of 2009, the Legislature enacted Assembly Bill (AB) 1555, which gave the Commission authority to provide CASF matching grants to ARRA grantees that are not telephone corporations if those entities met the requirements of the Commission's CASF program.<sup>16</sup> Subsequently, the Commission issued Resolution T-17233, which adopted specific rules governing the participation of non-certificated or registered entities in the CASF program, taking into account the concerns the Commission expressed in D.09-07-020. In order to ensure the financial, technical and managerial competence of those CASF applicants which the Commission did not regulate, the Commission imposed additional requirements on them, including: the submission of information sufficient to conduct a thorough background check; an affidavit agreeing to comply with specific Commission rules; an agreement to allow the Commission to inspect the applicant's accounts, books, papers, and documents related to the application and award of CASF funds; and a mandatory performance bond.<sup>17</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> Cal. Pub. Util. Code § 281(c)(2). In fact, AB 1555 required that such entities be allowed to apply for CASF support.

<sup>17</sup> Resolution T-17233 at 4-6. *See also* Appendix 2 and 3.



In D.12-02-015, the Commission concluded that since broadband funding under ARRA had been fully allocated, the opportunity for non-certificated or non-registered entities to participate in the CASF program had expired. Therefore, if the Commission wished to allow these entities to be eligible for CASF funds prospectively, the Commission reasoned that it would need further legislative authority.

However, the Commission decided not to pursue this authority for the following reasons. First, it cited reports by Communications Division (CD) Staff that non-certificated or registered entities that had applied for CASF funds in conjunction with ARRA grants had required significant assistance from the Staff to negotiate the application and grant processes.<sup>18</sup> Moreover, the Commission noted that few grants had been issued to these entities because they had failed to obtain ARRA grants.<sup>19</sup> Finally, the Commission recognized that it might not have a regulatory mechanism to enforce its resolutions awarding grants to non-certificated entities, and that the Commission “does not have the same capabilities to oversee and ensure the proper use of ratepayer funds by unregistered entities” as it does with entities holding a CPCN or WIR.<sup>20</sup> Based on these facts and continued concerns about the ability to properly oversee CASF program participants the Commission does not regulate, the Commission

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<sup>18</sup> D.12-02-015 at 21-22

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 22.

concluded that retaining the program eligibility restrictions adopted in D.07-12-054 was appropriate.<sup>21</sup>

In an OIR issued on October 25, 2012, we asked whether, based on a review of the CASF, we should expand eligibility for the program.<sup>22</sup> Our review of the program found that there is a need for more last mile projects in unserved and underserved areas of the State, which are often located in rural areas where the cost to deploy broadband is high because of low population density and rough terrain.<sup>23</sup> We were also alerted to the proliferation of entities using new technologies that may be uniquely suited to provide cost effective broadband service in high cost rural areas of the State, but are not considered telephone corporations.<sup>24</sup> Since the Commission does not traditionally regulate non-telephone corporations, this rulemaking also considers safeguards to prevent the waste, fraud and abuse of ratepayer monies. Parties filed opening comments on issues identified in the OIR on December 3, 2012, and filed reply comments on December 18, 2012.

After reviewing the comments, the ALJ issued a Ruling on March 18, 2013, seeking additional comments from interested parties in order to supplement the record on the issue of safeguards.<sup>25</sup> Parties filed opening comments on April 9, 2013, and filed reply comments on April 23, 2013.

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<sup>21</sup> *Id.*

<sup>22</sup> R.12-10-012 at 21-22.

<sup>23</sup> *Id.* at 15.

<sup>24</sup> *Id.* at 16-17.

<sup>25</sup> ALJ's Ruling Soliciting Additional Comment on Issues Identified in OIR 12-10-012, March 18, 2013.

The OIR acknowledged that any change in applicant eligibility requirements was contingent upon legislative action because the CASF requirements are defined in statute. Thus, the Commission sought a legislative amendment to expand eligibility through SB 740. Through the legislative process, this bill was amended several times and ultimately its passage resulted in several changes to the CASF program, including applicant eligibility. Such changes include the following:

1. A program goal to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households by no later than December 31, 2015.
2. Authorization for the Commission to collect an additional \$90 million which will be deposited into the Broadband Infrastructure Grant Account, supplementing the original \$200 million authorized for CASF broadband infrastructure grants.
3. Eligibility of entities that are not telephone corporations to apply for a CASF program grant to provide broadband access to unserved or underserved households. Such entities shall meet the CASF eligibility requirements and comply with program requirements. These requirements shall include all of the following:
  - a. Entities must provide last-mile broadband access to households that are unserved by an existing facilities-based broadband provider and only receive funding to provide broadband access to households that are unserved or underserved, as defined in Commission D.12-02-015
  - b. Funding for a CASF project proposing to provide broadband access to an underserved household shall not be approved until after any existing facilities-based provider has had an opportunity to demonstrate to the Commission that it will, within a

reasonable timeframe, upgrade existing service. An existing facilities-based provider may, but is not required to, apply for funding to make that upgrade.

c. A local governmental agency may be eligible for an infrastructure grant only if the infrastructure project is for an unserved household or business, the Commission has conducted an open application process, and no other eligible entity applied.<sup>26</sup>

Additionally, during the 2013-2014 legislative session, the Legislature passed AB 1299.<sup>27</sup> AB 1299 created an additional account under the CASF program called the Broadband Public Housing Account to support the deployment of broadband infrastructure and adoption programs in eligible publicly supported communities.<sup>28</sup> These efforts will be funded through \$20 million from the CASF Broadband Infrastructure Grant Account and \$5 million from the Broadband Revolving Loan Account, respectively.<sup>29</sup>

This decision implements the applicant eligibility provisions and the safeguard provisions proposed through the initial OIR and the ALJ's Ruling, taking into account the comments previously filed by parties in this proceeding on the OIR and the ALJ's Ruling and CD Staff's independent research on performance bonds.

A revised scoping memo will be issued after this decision in order to implement the additional issues raised by SB 740 and AB 1299 and to revise the

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<sup>26</sup> SB 740 (Padilla) Stats. 2013 Ch. 522, amending Cal. Pub. Util. Code § 281.

<sup>27</sup> SB 1299 (Bradford) Stats. 2013 Ch. 507, amending Cal. Pub. Util. Code § 281.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

procedural schedule. The revised scoping memo creates two additional phases; the first to implement new timelines for CASF applications, to permit existing facilities-based provider to exercise their “right-of-first refusal” to upgrade existing service in underserved areas and to permit local government entities to submit CASF applications, and the second to implement rules for the Broadband Public Housing Account.

### **3. Revisions to the CASF Broadband Infrastructure Grant Program**

In this decision, we adopt revisions to the existing CASF Broadband Infrastructure Grant program, as summarized below.

#### **3.1. Eligibility**

Previously, only telephone corporations were eligible to apply to participate in the CASF program. This eligibility was created by statute under Cal. Pub. Util. Code § 281 and a legislative change was required to expand eligibility. In the OIR, we proposed using the National Telecommunications and Information Administration’s (NTIA) definition of a facilities-based broadband service provider, which the NTIA generally defines as any entity providing internet access service or middle mile transport, over its own fixed or wireless facilities to residences, businesses, or other institutions.<sup>30</sup> The Commission

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<sup>30</sup> The NTIA’s detailed definition can be found on pages 1 and 2 of the technical appendix of the NTIA’s Notice of Availability of Funds for the State Broadband Data and Development Grant Program at <http://www.dhSES.ny.gov/ocs/broadband/documents/nofa-with-technical-appendix-and-clarifications.pdf>.

requested comments on this issue<sup>31</sup> and parties expressed both support and opposition to changing the applicant eligibility requirement.

Parallel to this Rulemaking, the Commission sought legislation to amend Cal. Pub. Util. Code § 281 which statutorily defines the eligibility requirements of the CASF. SB 740, which went into effect October 3, 2013, achieved that result. Cal. Pub. Util. Code § 281 now permits “... an entity that is not a telephone corporation to apply to participate in the program administered by the Commission ... to provide access to broadband to an unserved or underserved household, as defined by the commission in D.12-02-015, if the entity otherwise meets the eligibility requirements and complies with program requirements established by the commission.”<sup>32</sup> Based on this language, the statute permits the Commission to adopt the NTIA definition of a broadband service provider to determine applicant eligibility. The Legislature’s passage of SB 740 means that we do not need further comment on this issue.

However, we note that some categories of eligible entities will have greater restrictions on how they may participate because of additional provisions in SB 740. For example, existing facilities-based providers in underserved areas will have a right of first refusal against an entity proposing to serve that area using CASF program funds.<sup>33</sup> These issues will be discussed in greater detail in the revised scoping memo.

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<sup>31</sup> R. 12-10-012 at 19.

<sup>32</sup> 740 (Padilla) Stats. 2013 Ch. 522, amending Cal. Pub. Util. Code §281.

<sup>33</sup> *Id.*

### 3.2. Performance Bonds

In the OIR, we asked parties to comment on the safeguards that would be necessary if the applicant eligibility requirements were modified to permit non-telephone corporations to participate since the Commission does not have the same tools at its disposal to secure compliance from unregulated entities as it does with regulated entities. In doing so, we asked commenters to take into account the need to strike a balance between the Commission's and Legislature's policy goals with respect to the CASF program and protecting ratepayer money from waste, fraud, and abuse.<sup>34</sup> Any safeguards the Commission imposes involve costs and constraints which, if not properly considered, may preclude the ability to bring broadband to some parts of California.<sup>35</sup> Thus, in making these comments, we asked parties to discuss how each of the safeguards proposed balances these competing objectives.<sup>36</sup> Specifically, we asked whether the specific rules adopted in Resolution T-17233 which were applied to non-certificated ARRA grantees, are adequate for this purpose.<sup>37</sup> One of the rules adopted in Resolution T-17233 as a safeguard required non-telephone corporation grantees to obtain a performance bond.<sup>38</sup>

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<sup>34</sup> R.12-10-012 at 22.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Resolution T-17233 can be found on the Commission's website at: [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_RESOLUTION/109345.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_RESOLUTION/109345.PDF).

In the subsequent ALJ Ruling, we asked for more comment on the issue of safeguards, including the use of performance bonds.<sup>39</sup> We asked specifically: (1) whether it is necessary to require non-telephone corporations to maintain a performance bond equal to the full amount of a CASF grant once a funded project has been completed; and (2) how to structure a bifurcated bond requirement - one for the construction period and another for the post-construction period.<sup>40</sup>

In this decision we discuss whether to implement a performance bond requirement and if so, how we should structure a performance bond.

### **3.2.1. Parties' Position**

Many parties support using a performance bond, as the Commission did when it permitted ARRA funded grantees, which were not telephone corporations, to nonetheless participate in the CASF.<sup>41</sup> However, The Utility Reform Network (TURN) and the Institute for Local Self Reliance (ILSR) suggest that we waive the performance bond requirement for governmental entities.<sup>42</sup>

In response to the ALJ's Ruling asking for additional comments on this issue, the California Cable & Telecommunications Association (CCTA) and the Small Local Exchange Carriers (Small LECs) agreed with the concept of a

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<sup>39</sup> ALJ's Ruling Soliciting Additional Comment on Issues Identified in OIR 12-10-012, March 18, 2013 at 3-7.

<sup>40</sup> *Id.*

<sup>41</sup> CCTA Opening Comments on ALJ Ruling at 2; Office of Rate Advocates (ORA) Opening Comments on ALJ Ruling at 8; Small LECs Opening Comments on ALJ Ruling at 3; TURN Opening Comments on ALJ Ruling at 7.

<sup>42</sup> TURN Opening Comments on ALJ Ruling at 2; ILSR Reply Comments on ALJ Ruling at 7.



bifurcated bond requirement but only if the grantee could not obtain a performance bond covering post project construction obligations<sup>43</sup> Additionally, the Small LECs suggested that if the Commission elects to use a bifurcated bond, they would support reducing the amount of the post-construction bond to the minimum performance bond level currently imposed on Non-Dominant Interexchange Carriers, which is \$25,000 or 10% of intrastate revenues, whichever is greater.<sup>44</sup> Because CASF-funded projects may include revenues from interstate or unregulated services, the Small LECs support the use of \$25,000 rather than a percentage of intrastate revenues.<sup>45</sup>

TURN makes a similar comment, suggesting that we should first require applicants to attempt to obtain a bond for the full project amount for five years to cover both the construction period and the post-construction period, but if the applicants could not obtain one, then the Commission should permit them to obtain a bifurcated bond with a lesser bond required after construction.<sup>46</sup> TURN also suggests that the Commission consider a different requirement for local governments.<sup>47</sup> In its reply comments, TURN attempts to strike a balance between the amount proposed by CCTA and the Office of Ratepayer Advocates

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<sup>43</sup> CCTA Opening Comments on ALJ Ruling at 2-3; Small LECs Opening Comments on ALJ Ruling at 2-3.

<sup>44</sup> Small LECs Opening Comments on ALJ Ruling at 2-3.

<sup>45</sup> *Id.*

<sup>46</sup> TURN Opening Comments on ALJ Ruling at 2-3.

<sup>47</sup> *Id.* at 3-4.

(ORA)<sup>48</sup> by suggesting a bifurcated bond with a post-construction bond that is 25% of the total grant amount.<sup>49</sup>

ORA opposes the idea of reducing the bond amount in the post-construction phase.<sup>50</sup> Rather, it suggests that grantees should obtain a bond in the full amount for the entirety of the three years after construction, during which time the Commission would be able to audit the awardee's books and records.<sup>51</sup> However, ORA states that if the Commission were to require a bond of a lesser amount during the post-construction phase, it should be at least 50% of the total grant amount in order to enforce the post-construction requirements of the program.<sup>52</sup> ORA also suggests that other scenarios, such as bankruptcy and transfer of company ownership or attendant assets, should be considered before the bond amount is reduced in the post-construction phase.<sup>53</sup> In its reply comments, ORA elaborates that the bond should be variable depending on the value of the project rather than a flat rate and thus a percentage, such as 50%, should be used rather than a flat rate.<sup>54</sup>

Unfortunately, no parties commented on how a bifurcated bond requirement should be structured since it would be necessary to ensure that an

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<sup>48</sup> Formerly Division of Ratepayer Advocates (DRA)

<sup>49</sup> *Id.* at 2-3.

<sup>50</sup> ORA Opening Comments on ALJ Ruling at 3-4.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> ORA Reply Comments on ALJ's Ruling at 4.

awardee has obtained or absolutely could obtain both bonds before any funds are dispersed.

### **3.2.2. Discussion - Construction Phase Bond/Performance Bond**

We shall implement a performance bond requirement for non-telephone corporations to ensure complete construction of the project. Many commenters agree with continuing to use this safeguard. We disagree with TURN and ILSR and implement this requirement for all participants, including government entities.

We reiterate that this bond is meant to ensure that the project is completed in accordance with the approved grant. Although previous bonds included some language regarding compliance with CASF program requirements, based on Staff's research, we will remove this language to ensure that the bond we seek is more aligned with a standard performance bond. We believe that this will alleviate some of the difficulties non-telephone corporations previously encountered when attempting to obtain a bond. Instead, we will enforce compliance measures using the Commission's authority to reduce or withhold payment during this phase of the project. We will also reserve the authority to enforce compliance measures using the Commission's enforcement authority pursuant to Public Utilities Code Section 2111, as discussed in Section 3.4 below.

All grantees must currently comply with a number of requirements during the construction phase. We plan to enforce all existing requirements on newly eligible non-telephone corporations. However, in response to ORA's concern about sales and transfers of assets, we also add the following obligation, which will be enforced outside of the bond requirement as mentioned above.

Grantees must notify the Commission within five days of determining that the grantee is planning to sale or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in writing of their intent to sale or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and ownership to meet the requirements and compliance of the CASF award. The new entity shall agree in writing to such. The grantee shall provide the Commission with any necessary documents requested in its review of the transfer. This will include all documents that are generally required of all entities applying for the CASF grants and loans. The grantee shall not transfer CASF funds or the built out portion of the project to the new entity prior to Commission approval via a Resolution. If the Commission does not provide approval, it will rescind the grant or loan.

### **3.2.3. Discussion - Post-Construction Phase Bond/ Compliance Bond**

The Commission will not require a compliance bond during the post-construction phase of the project from newly eligible non-telephone corporations.

Some commenters seemed to question whether unregulated entities would actually have trouble obtaining a bond for the post-construction phase. However, we asked these questions in light of our past experiences where two unregulated providers, which had obtained CASF grants after receiving ARRA funds, subsequently decided to obtain a CPCN because of their difficulties in obtaining a bond. In one case, the provider acquired the CPCN of one of its affiliates because it found it was unable to obtain a performance bond that covered both the construction and post-construction requirements of the

program. The difficulty it experienced was attributable to the type of obligations the Commission was asking sureties to take on in the form of a bond, rather than the financial viability of the provider. For example, the Commission requested that the provider maintain a bond in the full amount of the grant even after the project was completed.

Prior to issuing the ALJ's Ruling, CD Staff reached out to two surety companies, which had attempted to secure bonds for the two non-CPCN providers that had participated in the CASF after receiving ARRA grants in 2010. Based on these conversations, Staff learned that the Commission would need to use a bifurcated bond requirement because the obligations during the construction phase and the post-construction phase are separate and unique from each other. Therefore, a bonding requirement that covered the entire length of the project would require a performance bond during the construction phase and a compliance bond in the post-construction phase.

For this reason, we asked how such a bifurcated bond requirement should be structured in the ALJ Ruling. However, we did not receive any comments on this issue. Based on the lack of comments and our past experiences, Staff conducted independent research on how a bifurcated bond requirement might be structured. For more information on this issue please see a review of Staff's research in Appendix 3.

As Staff continued to research how the compliance bond requirement could be structured, Staff realized that this too seemed problematic. Staff learned that because of the variability in the grant amounts awarded, because the compliance requirements are unique to the CASF program, rather than industry standards and because it is difficult to assign a value to each requirement, which

is necessary for a surety to determine the level of risk it is exposing itself to, grantees may not be able to obtain a compliance bond.

Based on the comments we received from parties and Staff's independent research, we will not require grantees to obtain a compliance bond in the post-construction phase. Rather, the Commission will rely on its ability to impose penalties against non-telephone corporations in order to enforce non-compliance with Commission rules in the post-construction phase, as discussed in Section 3.3.

The compliance measures that the Commission will seek to enforce against non-telephone corporations during the post-construction phase are listed below. We note that current participants in the CASF program are already required to meet some of these compliance measures.

1. The grantee must carry out the adoption plan submitted as part of its application to encourage adoption of broadband service in the proposed project area(s). The plan includes the total number of households the applicant estimates will sign up for the service (the take rate) and the marketing or outreach plans the applicant will employ to attract households to sign up for the service.
2. The grantee must commit to a price plan to provide broadband service to all households within the project area for at least two years. If the grantee commits to a price commitment plan for a longer period of time in its application, it must provide the price commitment for the period it specifies.
3. The Commission has the right to conduct any necessary audit, verification, and discovery for up to three years after the completion of project construction to ensure that grantees spent CASF funds were in accordance with Commission rules and requirements. To this end, the

Commission will have access to the grantees' invoices for up to three years after completion of project construction.

4. If a grantee provides voice services in the project area, it must meet the FCC standards for E-911 service and battery backup.
5. A grantee must agree to respond to all CD Staff data requests. This may include how many households within the proposed project area have subscribed to the project's deployed broadband service.
6. A grantee must submit a copy of its Federal Form 477 data directly to the Commission, under General Order 66-C, when it submits its data to the Federal Communications Commission (FCC) for a five year period after project completion.
7. For three years from after the date of project completion, grantees must notify the Commission within five days of determining that the grantee is planning to sell or transfer its assets. The grantee shall notify the Director of the CD in writing of its intent to sell or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and ownership of meeting the requirements of and compliance with the CASF award and rules of the program. The new entity shall agree in writing to such.

### **3.3. Liquidity Requirements**

As noted previously, the OIR asked parties to comment on the safeguards that would be necessary if the eligibility requirements are modified to permit non-telephone corporations to participate since the Commission does not have the same tools at its disposal to secure compliance from unregulated entities as it does with regulated entities. In addition to safeguards we had used previously for ARRA-funded projects, we asked specifically whether there were additional

safeguards that the Commission should consider adopting that would appropriately strike a balance between protecting ratepayer monies and encouraging a greater pool of applicants to apply and potentially participate in the CASF program.

Unfortunately, parties' comments provided little in the way of concrete examples of safeguards. Thus, in the ALJ's Ruling we sought comment on whether to use a liquidity requirement to ensure that unregulated broadband service providers receiving CASF support are capable of meeting start-up expenses over and above those covered by a CASF grant or loan or any external source of funding.<sup>55</sup> We noted that currently, CASF applicants are required to submit information that enables the Commission to assess the applicant's financial fitness, but they are not required to meet any specific financial requirement.<sup>56</sup> We proposed the liquidity requirement because a similar requirement is asked of CPCN holders at the time they apply for a CPCN and previously, the safeguards applied to ARRA grantees attempted to create parity between CPCN holders and unregulated entities.<sup>57</sup> The proposed level of liquidity was the greater of \$25,000 or 10% of the total project cost in cash or cash equivalents, capped at a total of \$100,000. We asked parties to comment on whether this amount is sufficient or excessive.<sup>58</sup> We asked whether, for example, this level of liquidity would be appropriate for an applicant seeking funds for a

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<sup>55</sup> ALJ's Ruling Soliciting Additional Comment on Issues Identified in R.12-10-012, March 18, 2013 at 8-9.

<sup>56</sup> *Id.* at 7-8.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 8-9.



project that is less than or equal to \$125,000 when the requirement would represent at least 20% of the project cost.<sup>59</sup>

In this proposed decision, we determine whether a liquidity requirement should be used and if so, of what amount.

### **3.3.1. Parties' Position**

TURN argued that entities must be able to demonstrate the financial, technical and operational capability to successfully construct, operate and maintain a local or regional broadband system.<sup>60</sup> However, TURN requests that the Commission propose a plan to conduct a review of an applicant's financial, technical and operational capability, rather than proposing its own specific safeguards or suggestions on what a "rigorous review" would entail.<sup>61</sup> ORA supports TURN's request as well.<sup>62</sup> Additionally, TURN also comments that while additional safeguards may be prudent, safeguards that are so onerous that they effectively would preclude prospective applicants from applying do not serve the public interest.<sup>63</sup>

In response to the proposed liquidity requirement in the ALJ's Ruling, TURN questions whether a cap of \$100,000 would be sufficient for large projects that are granted more than \$1 million.<sup>64</sup> Further, TURN questions whether this

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<sup>59</sup> *Id.*

<sup>60</sup> TURN Opening Comments at 2.

<sup>61</sup> *Id.*

<sup>62</sup> ORA Reply Comments at 4-5.

<sup>63</sup> TURN Reply Comments at 5-6.

<sup>64</sup> TURN Reply Comments on ALJ's Ruling at 3-4.

requirement is necessary for local governments and if so, whether the Commission should require same amount of liquidity.<sup>65</sup>

ORA asks the Commission to require non-certificated entities to agree in writing to Commission inspection of accounts, books, papers and documents related to the application and award of CASF funds as an additional safeguard.<sup>66</sup> Specifically, in response to the proposed liquidity requirement, ORA argues that whether a liquidity requirement is necessary should not be tied to whether a performance bond is required and advocates for a liquidity requirement of at least \$100,000 for two years following project construction.<sup>67</sup> It notes that this would be reasonable in light of the Commission's limited jurisdiction over unlicensed entities.<sup>68</sup> ORA suggests that parity between telephone corporations and non-telephone corporations is not required because of the uncertainty surrounding the Commission's enforcement authority over non-telephone corporations during the post-construction phase.<sup>69</sup>

Winters Broadband, a wireless internet service provider, comments that a method to ensure ratepayer funds are not subject to waste, fraud, or abuse would be to only grant funds to those companies who are financially viable and have a

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<sup>65</sup> *Id.*

<sup>66</sup> ORA Opening Comments at 8.

<sup>67</sup> ORA Opening Comments on ALJ's Ruling at 2-3.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 5.

proven track record for providing broadband services.<sup>70</sup> However, it provides no additional detail as to how to make such a determination.

AT&T comments that the Commission must ensure that the capabilities, finances and business plans of non-telephone corporation entities are fully detailed and then audited by the Commission before public funds are provided to such unregulated entities.<sup>71</sup>

Small LECs comment that if the Commission required applicants to provide a performance bond in the full amount, it should not require a liquidity requirement.<sup>72</sup> Otherwise, it advocates for a liquidity requirement of \$100,000 in unencumbered cash.<sup>73</sup>

CCTA argues that the Commission should not have a liquidity requirement if a financial review of the applicant indicates that the project is financially secured, particularly, if the provider is established, profitable, and seeking funds for an upgrade of existing facilities.<sup>74</sup> CCTA does not provide criteria or set a threshold on how to determine whether a provider is established or profitable. CCTA suggests that where a weaker financial standing is determined, the Commission should require a liquidity requirement or a letter of credit when it determines that a grantee is not established or profitable.<sup>75</sup>

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<sup>70</sup> Winters Broadband Opening Comments at 2.

<sup>71</sup> AT&T Reply Comments at 1-2.

<sup>72</sup> Small LECs Opening Comments on ALJ's Ruling at 3.

<sup>73</sup> *Id.*

<sup>74</sup> CCTA Opening Comments on ALJ's Ruling at 3.

<sup>75</sup> *Id.*

**3.3.2. Discussion**

We elect to not adopt a liquidity requirement for non-telephone corporations.

In response to TURN, ORA and AT&T's comments, we note that the CASF program rules already require each applying entity to submit information on its financial viability. The applicant's financial viability is one of the eight criteria used to calculate an applicant's overall total score and subsequently, in determining which projects receive funding. We agree with CCTA that where a financial review of an applicant shows it is financially secure, the Commission should not require a liquidity requirement. Based on past experience, we determine that all applicants should undergo a rigorous underwriting process to obtain a construction phase performance bond. A review of the applicant's cash flow will be included in this underwriting process. A key purpose for requiring the liquidity requirement was to ensure that the applicant would have sufficient funds to cover the start-up costs over and above what was provided by the CASF grant. We find that the rigorous underwriting process involved in obtaining a performance bond is a sufficient indicator.

We reject ORA's argument that uncertainty surrounding the Commission's enforcement authority over a non-CPCN holder in the post-construction phase means that parity is irrelevant. First, we note that in this proposed decision we find that the Commission does have the ability to penalize non-telephone corporations which violate CASF program rules which provides for assurances as to the Commission's enforcement authority. Thus, these penalties will ensure that all participants in the CASF comply with Commission orders and decisions. Second, we note that the purpose of this rulemaking is to allow non-telephone corporations to participate in the CASF because we have found evidence that

they may be well suited to serve underserved and unserved portions of the State. Therefore, as TURN states, it would be counterintuitive to expand eligibility to these entities and at the same time put them at a disadvantage by creating requirements which would effectively bar their entry into the program.

### **3.4. Penalty Provisions**

As noted previously, although the OIR asked parties to comment on the safeguards that would be necessary if the eligibility requirements for applicants were modified to permit non-telephone corporations to participate, the comments we received did not provide concrete examples of safeguards that would strike a good balance between protecting ratepayer monies and encouraging a greater pool of applicants to the CASF program.

Consequently, in the March 18, 2012 ALJ's Ruling we solicited additional comments on the issues identified in R.12-10-012, including whether we should contractually obligate entities to comply with Commission rules and statutes. We proposed that failure to comply with CASF program requirements would permit the Commission to use §§ 2111 and 2108 to impose penalties.

#### **3.4.1. Parties' Position**

In R.12-10-012, issued on October 25, 2012, we asked for comments on the use of additional safeguards. In response to that inquiry, we received some comments regarding the Commission's legal basis for enforcement. Frontier opines that the best way to ensure proper oversight and control over the CASF program is to make certain that the Commission has complete authority over all participants in the program.<sup>76</sup> TURN supports Frontier's stance and suggests

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<sup>76</sup> Citizens dba Frontier Opening Comments at 4.

that one way to ensure that the Commission has complete authority over all participants in the program is to condition the grant award on the recipient's agreement to abide by all the terms of the grant and submit to the Commission's authority for purposes of compliance.<sup>77</sup>

In response to the ALJ's Ruling, published March 18, 2013, which sought comments on the use of penalties as an additional safeguard, CCTA comments that non-telephone corporations should not be required to agree to be treated as telephone corporations as a condition of accepting grant funds by having to contractually agree to comply with all Commission rules and regulations.<sup>78</sup> CCTA argues that having all rules and regulations apply would contradict the purpose of the OIR, which is to expand eligibility.<sup>79</sup> However, CCTA specifies that all entities should have to comply with the rules specifically governing the CASF program.<sup>80</sup>

ORA argued in its comments in response to the ALJ Ruling that the Commission would need specific statutory language to ensure that the Commission can impose penalties and can enforce the terms and conditions of the grant post-construction.<sup>81</sup> Thus, according to ORA, in order for the Commission to rely on §§ 2108 and 2111, it would need additional legislative

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<sup>77</sup> TURN Reply Comments at 5.

<sup>78</sup> CCTA Opening Comments on ALJ's Ruling at 2.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> ORA Opening Comments on ALJ's Ruling at 6-8.

authority.<sup>82</sup> ORA also expressed concerns regarding other risks, such as the case of a transfer of assets, where the Commission would not be able to enforce CASF conditions.<sup>83</sup> ORA made these comments before the Legislature passed SB 740.

Small LECs ask the Commission to clarify that its enforcement authority applies to applicants and not just grantees.<sup>84</sup> They assert that this will ensure that applicants provide truthful information on applications to the Commission.<sup>85</sup> ORA agrees with this suggestion in its reply comments and recommends that an applicant's fiscal agent should sign an affidavit, under penalty of perjury and subject to Rule 1.1., that to the best of their knowledge all of the statements and representations made in the application are true and correct.<sup>86</sup> As ORA notes, this is already a requirement under the current CASF program.<sup>87</sup>

TURN argues that the Commission is able to use both contractual obligations and regulatory authority to ensure compliance with the obligations of its grant program.<sup>88</sup>

### **3.5. Discussion**

The Public Utilities Code gives the Commission the authority to penalize non-public utilities, sets for the range of fines the Commission may impose per

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 6.

<sup>84</sup> Small LECs Opening Comments on ALJ's Ruling at 4.

<sup>85</sup> *Id.*

<sup>86</sup> ORA Reply Comments on ALJ's Ruling at 6-7.

<sup>87</sup> *Id.*

<sup>88</sup> TURN Reply Comments on ALJ's Ruling at 4.

offense, and defines what constitutes an offense. Pub. Util. Code § 2108 provides:

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.<sup>89</sup>

Pub. Util. Code § 2111 states:

Every corporation or person, other than a public utility and its officers, agents, or employees, which or who knowingly violates or fails to comply with, or procures, aids or abets any violation of any provision of the California Constitution relating to public utilities or of this part, or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in the violation or noncompliance, in a case in which a penalty has not otherwise been provided for the corporation or person, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.<sup>90</sup>

We conclude that § 2111 permits the Commission to enforce the CASF requirements in both the construction and the post-construction phases against non-telephone corporations, i.e., entities which do not hold CPCNs or WIRs, through the use of penalties. Furthermore, we conclude that § 2108 permits penalties up to \$50,000 for each offense.

The Commission should not seek to treat as telephone corporations providers that the Commission has not deemed to be telephone corporations as a

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<sup>89</sup> Cal. Pub. Util. Code § 2108.

<sup>90</sup> Cal. Pub. Util. Code § 2111.



condition of accepting grant funds. Rather, we should enforce the requirements of the CASF program on non-telephone corporations and ensure that non-telephone corporations follow the same rules and regulations as telephone corporations with regard to the CASF program.

ORA comments that we would need specific statutory language to impose penalties and enforce the terms and conditions of the grant during the construction phase and post-construction. While we do not agree with ORA's statement, we note that the Legislature did, indeed, grant the Commission authority to penalize non-telephone corporation CASF applicants and grant recipients that violate the rules of the CASF program.<sup>91</sup> The Commission has ancillary jurisdiction over its own public purpose programs, including the CASF program, pursuant to SB 740, which amended Public Utilities Code § 281. Thus, we have the authority to give grants and to require applicants and grantees to "meet[s] the eligibility requirements and compl[y] with program requirements established by the Commission" to non-CPCN/WIR holders, which are not telephone corporations.<sup>92</sup> Because of our authority over this program and our responsibility to ensure that ratepayer money is protected from waste, fraud and abuse, the Commission may rely on § 2111 for purposes of enforcing all the requirements of the CASF program.

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<sup>91</sup> Section 281(e)(3) provides, in relevant part: "Notwithstanding subdivision (b) of Section 270, an entity that is not a telephone corporation shall be eligible to apply to participate in the program administered by the commission pursuant to this section to provide access to broadband to an unserved or underserved household, as defined in commission D.12-02-015, if the entity otherwise meets the eligibility requirements and complies with program requirements established by the commission."

<sup>92</sup> *Id.*

ORA also expresses concern that other risks exist, such as the transfer of assets, where the Commission would not be able to enforce CASF conditions. We agree that the transfer of assets may cause complications with the CASF program. Therefore we propose that the following language be added as a condition of accepting CASF grant funds:

For three years from project completion, grantees must notify the Commission within five days of determining that the grantee is planning to sell or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in writing of their intent to sell or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and ownership to meet the requirements and compliance of the CASF award. The new entity shall agree in writing to such."

Failure to comply with this requirement, as well as all other compliance and program requirements, may result in the Commission choosing to invoke the penalty provisions of § 2111.

We agree with the Small LECs and DRA that Rule 1.1 should apply to applicants and grantees to ensure that applicants provide truthful information on their CASF applications and grantees provide accurate information to the Commission. However as ORA notes, applicants are already required to sign an affidavit, under penalty of perjury, and subject to Rule 1.1 that, to the best of their knowledge, all of the statements and representations made in the application are true and correct. This requirement will continue to be in effect for both telephone corporations and non-telephone corporations.

Additionally, in order to accurately monitor compliance with CASF program requirements, the Commission requires grantees to timely respond to

all CD Staff data requests. An example of a Staff data request includes a request for the number of households within the grantee's project area that have subscribed to the project's deployed broadband service.

Thus, we propose the inclusion of the following language in the CASF rules applicable to non-telephone corporations to reiterate the CPUC's ability to use the penalty provisions of § 2111 to enforce the requirements of the CASF program:

If [Grantee Name] violates the terms and conditions of a CASF award or other program and project compliance requirements, it shall be subject to Public Utilities Code Sections 2108 and 2111. The Commission may impose the maximum penalties allowed under Public Utilities Code Sections 2108 and 2111 for failure to meet the program and project compliance requirements, as determined by the Commission.

#### **4. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

#### **5. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and W. Anthony Colbert is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. 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.

2. The Commission issued an OIR on October 25, 2012 proposing to expand applicant eligibility to non-CPCN/ WIR holders for the CASF program and examining what safeguards shall be applied to these newly eligible entities.

3. The ALJ's Ruling, issued March 18, 2013 sought additional comments on the issue of safeguards.

4. CD Staff's research on bond requirements determined that a post-construction bond requirement would be infeasible to implement.

5. Parallel to the instant rulemaking, the Legislature passed SB 740, which expanded CASF applicant eligibility to non-telephone corporations.

6. SB 740 includes additional requirements on how newly eligible entities may participate in the CASF program.

### **Conclusions of Law**

1. The Commission is authorized to implement measures necessary to enable qualifying applicants to seek funding for grants and loans under the CASF program in accordance with the provisions of SB 740.

2. Consistent with the Commission's authority under SB 740, the Commission may award grants and loans to both telephone corporations and non-telephone corporations.

3. The Commission has the authority to enforce the terms and conditions of the grant awards and to impose penalties under §§ 2111 and 2108.

4. Rules applicable to non-telephone corporations should be adopted for purposes of implementing the revisions to the CASF program addressed in this decision.

**O R D E R**

**IT IS ORDERED** that:

1. The rules permitting non-telephone corporations to participate in the California Advanced Services Fund (CASF) program and the rules to ensure that funds granted to non-telephone corporations are not subject to waste, fraud and abuse are adopted as set forth in Appendix 1 and are shown as revisions to the current rules.
2. The remaining issues raised by Senate Bill 740 and Assembly Bill 1299 are to be resolved in a subsequent phase of this rulemaking.
3. Rulemaking 12-10-012 remains open.

This order is effective today.

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

## APPENDIX 1

### Rules permitting non-telephone corporations to participate in the CASF Program and to ensure that funds granted to non-telephone corporations are not subject to waste, fraud and abuse

The following rules are adopted to implement the eligibility rules of Senate Bill 740 and ensure that adequate safeguards are available to the Commission.

- a. Non-telephone corporations, which are facilities-based broadband service providers, are eligible to apply to participate in the California Advanced Services Fund (CASF) program. The Commission shall use the National Telecommunications and Information Administration's (NTIA) definition of a facilities-based broadband service provider, which is generally defined as any entity providing internet access service or middle mile transport, over its own fixed or wireless facilities to residences, businesses, or other institutions.<sup>93</sup>
- b. A performance bond is required during the construction phase of the project to ensure timely completion of the project in accordance with the existing rules of the CASF program.
- c. Non-telephone corporations must comply with all existing CASF program rules.
- d. In addition, non-telephone corporations must comply with the following conditions:

For three years from project completion, grantees must notify the Commission within five days of determining that the grantee is planning to sale or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in

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<sup>93</sup> The NTIA's detailed definition can be found on pages 1 and 2 of the technical appendix of the NTIA's Notice of Availability of Funds for the State Broadband Data and Development Grant Program at <http://www.dhss.ny.gov/ocs/broadband/documents/nofa-with-technical-appendix-and-clarifications.pdf>.

writing of their intent to sale or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and ownership to meet the requirements and compliance of the CASF award. The new entity shall agree in writing to such.

If [Grantee Name] violates the terms and conditions of a CASF award or other program and project compliance requirements, it shall be subject to Public Utilities Code Sections 2108 and 2111. The Commission may impose the maximum penalties allowed under Public Utilities Code Sections 2108 and 2111 for failure to meet the program and project compliance requirements, as determined by the Commission.

**END OF APPENDIX 1**

## **APPENDIX 2**

Broadband Infrastructure Grant Account –  
Revised Application Requirements and Guidelines



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## **1. Background**

The California Advanced Services Fund (CASF), a two year program established by the Commission on December 20, 2007, under D.07-12-054, provides matching funding for the deployment of broadband infrastructure in unserved and underserved areas of California to qualifying applicants. The funding is used for projects that will first provide broadband services to areas currently without broadband access or with access only to dial-up service or satellite; and then second, build out facilities in underserved areas if funds are still available. Matching funds of 40% of total project costs are available to successful CASF applicants with the applicant providing 60% of the projects costs either from their internally generated funds or from external sources.

On September 25, 2010, Governor Schwarzenegger signed SB 1040 (Stats. 2010, c.317, codified at California Public Utilities (P.U.) Code § 281), which expanded the CASF and increased the CASF appropriation from \$100 million to \$225 million. The increase of \$125 million to be collected after January 1, 2011 is allocated to the following accounts: \$100 million to the Broadband Infrastructure Grant Account, \$10 million to the Rural and Regional Urban Consortia Account, and \$15 million to the Broadband Infrastructure Revolving Loan Account. The \$125 million will be funded by a surcharge to be assessed on revenues collected from end-users and collected at \$25 million a year beginning calendar year 2011.

On October 25, 2012, the California Public Utilities Commission (Commission or CPUC) issued an Order Instituting Rulemaking (OIR) R.12-10-012 proposing to change the CASF applicant eligibility rules to allow non-telephone corporations to apply for CASF grants and loans. The Commission acknowledged in that OIR that a legislative amendment would be needed because the rules governing eligibility for the CASF are in statute. Consequently, on October 3, 2013, Governor Brown signed SB 740 (Stats. 2013, ch. 522, codified at P.U. Code §281), which expanded the CASF applicant eligibility to include non-telephone corporations, among other program changes.

### **1.1. Amount Available for Grants**

While revenues of \$20 million per year will be allocated to the Broadband Infrastructure Grant Account, the actual amount available for infrastructure grants will be \$19 million as the Commission must deduct costs for administering the program from this account.

The grant funding limits are as follows:

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|                        | <b>Infrastructure Grant<br/>(% of total project cost)</b> | <b>Broadband Infrastructure Revolving Loan Account<br/>(% of total project cost)</b> | <b>Applicant(s) Funds<br/>(% of total project cost)</b> |
|------------------------|---|--|---|
| <b>A. With Loan</b>    |   |  |   |
| Unserved Areas         | 70%   | 20%  | 10%   |
| Underserved areas      | 60%   | 20%  | 20%   |
| <b>B. Without Loan</b> |   |  |   |
| Unserved Areas         | 70%   | 0%   | 30%   |
| Underserved areas      | 60%   | 0%   | 40%   |

Unserved areas are eligible for a 70% CASF matching grant amount as the Commission considers unserved areas as having the highest priority. Typically, these areas are totally devoid of broadband service, are sparsely populated, and are characterized by difficult terrain and geography -- with correspondingly high broadband infrastructure development costs and thus are not financially attractive to private investors. The Commission hopes that the higher CASF matching funds will attract private investments to these areas as the funds required from the private investor will only be 10-30%, (depending on whether the applicant also applies for and receives a loan from the Broadband Infrastructure revolving Loan Account).

Underserved areas are eligible for 60% CASF grants, 10% less than that allocated to unserved areas, as these areas already have broadband service and the funding from CASF will be used to construct broadband infrastructure projects geared towards increasing the broadband speed to at least 6 Megabits per second (mbps) download and 1.5 mbps upload.

An applicant who applies for both a grant and a loan, but who is deemed ineligible for the loan, will have to submit a new application if it intends to pursue the project and show how it will fund 30 - 40 % of the total project cost.

In areas where the Commission has already awarded a CASF grant, new CASF grant funding for broadband projects in the same area will be available only after 3 years from the start of broadband service of the first CASF- funded project in order to ensure that existing grantee(s) are able to realize returns on their investment.

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## **2. Definitions**

An “unserved” area is an area that is not served by any form of wireline or wireless<sup>94</sup> facilities-based broadband, such that Internet connectivity is available only through dial-up service.

An “underserved” area is an area where broadband is available, but no wireline or wireless<sup>94</sup> facilities-based provider offers service at advertised speeds of at least 6 mbps download and 1.5 mbps upload.

The Commission will consider all CASF funded projects in the determination of unserved and underserved areas, irrespective of the CASF funded project’s technology.

A California Interactive Broadband Map is posted on the CASF webpage to assist the applicant(s) in identifying areas that are still unserved and underserved. This map is based on the most current information collected as part of the federal broadband inventory mapping effort. Data used in this map were collected from California providers pursuant to a Recovery Act Broadband Mapping grant. Availability and maximum advertised speeds are shown by census block (for blocks 2 square miles or smaller), and by street segment (for larger blocks). The map will show the areas served, unserved or underserved, existing providers in areas where broadband service is available, the broadband technology offered in served areas, current speeds in the served areas, and population in the served and underserved areas.

Where a broadband infrastructure may have to pass or upgrade existing broadband facilities in already served, unserved or underserved areas to reach a remote unserved or underserved area, the project may be considered for funding. Applicants for middle-mile projects are required to submit all documentary requirements and will be evaluated based on their compliance with the guidelines and the evaluation criteria applicable to last mile unserved and underserved projects, including submission of proof that the backhaul or backbone construction is an indispensable part of their plan to reach unserved and / or underserved communities. The applicant will also have to pro-rate costs when projects include facilities in unserved, underserved, and “served” – areas, including a detailed explanation of the allocation of costs and a full accounting of that allocation at each funding phase of the project.

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<sup>94</sup> Wireless broadband means a wireless high-speed internet access or connection provided to households, businesses and/or anchor institutions that meet the speeds and program guidelines set forth in this decision. Wireless broadband can be mobile or fixed.

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For example, if a project (for an unserved area and the applicant is requesting a CASF grant only) will cost \$2.5 million and 20% of those costs are related to facility improvements that will benefit both unserved and served areas, applicants should prorate the amounts related to each area. Thus, if the common facilities will be used equally by unserved areas and by communities with broadband today, then the applicant should only include \$250,000 in the application for facility improvement costs. The applicant should thus ask for \$1,575,000 in CASF funds (\$1,400,000 for construction in the unserved area, and \$175,000 in common costs allocated to the unserved area). The applicant should fully explain the total cost of the project and the allocation that was made to arrive at the figures used in the application. <sup>95</sup>

### **3. Who May Apply**

CASF funding is available to entities with a Certificate of Public Convenience and Necessity (CPCN) that qualify as a “telephone corporation” as defined under P.U. Code section 234 or wireless carriers who are registered with the Commission (i.e., hold a WIR). Wireless carriers need not obtain a CPCN to qualify for CASF funding. CASF funding is also available to non-telephone corporations, which are facilities based broadband service providers. The Commission shall use the National Telecommunications and Information Administration’s (NTIA) definition of a facilities-based broadband service provider, which is generally defined as any entity providing internet access service or middle mile

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<sup>95</sup> a) Total Project Cost x 20% equals amount of facility improvements benefiting both Unserved and Served areas: ( $\$2,500,000 \times 0.20 = \$500,000$ ),

b) Equal proration of facility improvements: Unserved area = \$250,000 and Served area = \$250,000,

c) Common cost funded by CASF for facility improvements: Unserved area equals  $\$250,000 \times 0.70 = \$175,000$ ,

d) Project cost *exclusive* of facility improvements equals \$2,000,000 ( $\$2,500,000 - \$500,000$ ),

e) CASF funding of project costs *exclusive* of facilities improvements equals \$1,400,000 ( $\$2,000,000 \times 0.70$ ),

f) Thus, the applicant’s Total CASF funding request would be \$1,575,000 ( $\$1,400,000 + \$175,000$ ).

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transport, over its own fixed or wireless facilities to residences, businesses, or other institutions.<sup>96</sup>

~~The Commission will consider applications from satellite service providers provided that the applicants, are able to prove functionality, and are able to meet the speeds required.~~

The Commission also encourages applicants to offer basic voice service to customers within the service area of the broadband deployment subject to the CASF award. Any such voice service offering must, at a minimum, meet FCC standards for E-911 service and battery back-up supply.<sup>97</sup> For purposes of the CASF, “basic service” is defined to include any form of voice-grade service including that offered through a wireless or Voice Over Internet Protocol (VoIP) service.

### **3.1. Information Required From Applicants**

Applicants are required to submit the following information to the Commission for each proposed broadband project, where each “broadband project” is defined as deployment encompassing a single contiguous group of Census Block Groups (CBGs).

The application must be submitted online, with a hard copy sent to the CASF and the Division of Ratepayer Advocates. The applicant must submit each item as a document, unless otherwise specified, and in some cases also as data entered directly. The applicant must also fill out a checklist (attached as Attachment B) and include the completed checklist in hard copies of the proposal.

#### **3.1.1. Project Summary**

The applicant must submit a project summary which the Communications Division (CD) will post on the CASF webpage under Pending New Applications to Offer

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<sup>96</sup> The NTIA’s detailed definition can be found on pages 1 and 2 of the technical appendix of the NTIA’s Notice of Availability of Funds for the State Broadband Data and Development Grant Program at <http://www.dhSES.ny.gov/ocs/broadband/documents/nofa-with-technical-appendix-and-clarifications.pdf>

<sup>97</sup> D.07-12-054, Ordering Paragraph 16, pp. 62-63

Broadband. The applicant must also submit the project summary to the CASF application distribution list<sup>98</sup>. The summary must include the following information:

- Applicant's name
- Contact person
- Project title
- Proposed Project Area Location (Community / County)
- Project Type (Last Mile or Middle-Mile)
- CASF Funding Requested (Amount of Grant / Amount of Loan)
- Description of the Project
- Map of the Proposed Project
- List of Census Block Groups
- List of ZIP codes

The applicant may also use this summary information in its adoption and outreach efforts, i.e., in soliciting local government and community support for the proposed project, in disseminating information to the proposed communities/areas.

### **3.1.2. Funding Requested**

The applicant must indicate the funding requested, i.e., whether it is applying for a grant only or a combination of a grant and a loan.

### **3.1.3. Area applied for**

Applicant must specify whether it is applying for an unserved or underserved area.

### **3.1.4. CPCN / U-Number / CPUC Registration Proof (if applicable)**

*(As a single document)*

- Applicant's U-Number and/or  
Proof of applicant's Certificate of Public Convenience and Necessity  
(CPCN)
- In the absence of a CPCN -

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<sup>98</sup> Communications Division will provide instructions on how to sign up for this distribution list to parties in the CASF rulemaking proceeding (R.10-12-008) and post these instructions on the Commission website as soon as practicable.

Proof of CPCN application pending approval, or CPCN application number

- Wireless Carriers – CPUC Registration Number

### **3.1.5. Information sheet**

Applicant must submit the information sheet attached as Attachment A together with all supporting documents required.

### **3.1.6. Organizational Chart and Background**

The applicant must submit an organizational chart showing the parent organization, subsidiaries and affiliates.

The applicant must also submit a description of its readiness to construct and manage a broadband service network by listing all projects constructed and currently managed and operated.

### **3.1.7. CASF Key Contact Information**

- First Name
- Last Name
- Address Line1
- Address Line2
- City
- State
- ZIP
- Email
- Phone

### **3.1.8. Key Company Officers (list up to 5):**

- Position Title
- First Name
- Last Name
- Email
- Phone Number

Resumes of each key company and management personnel must be submitted.



### **3.1.9. Current Broadband Infrastructure Description**

Description of the provider's current broadband infrastructure and/or telephone service area within 5 miles of the proposed project, if applicable.

### **3.1.10. Current Broadband Infrastructure Shapefile**

Shapefile (.shp)<sup>99</sup> of current service area. A shapefile is not a single file, but a collection of seven files - .dbf, .prj, .sbn, .sbx, .shx, .shp, .xml. Without all of these, the data cannot be read.

The .shp format is compatible with the ArcGIS software used by the Commission.

### **3.1.11. Proposed Broadband Project Description**

- Description of proposed broadband project plan for which CASF funding is being requested, including the type of technology to be used
- Project size (in square miles)
- Download speed capabilities of proposed facilities
- Upload speed capabilities of proposed facilities

The proposed broadband description should include a description of the type of technology to be provided in the proposed service areas. The project description should provide enough construction detail to enable a preliminary indication of the need for a California Environmental Quality Act (CEQA) review. For example, when trenching is required, the applicant should so state and describe the manner in which the site is to be restored, post-trenching. The Commission established benchmark speed standards of advertised speeds of 6 mbps download and 1.5 mbps upload. Applicants may propose lower speeds; speed will be a criteria considered in evaluating the applications, with higher speeds being preferable.

### **3.1.12. Proposed Broadband Project Location**

- Geographic locations by CBG(s) where broadband facilities will be deployed
- List of CBG(s),
- Number of households per CBG,

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<sup>99</sup> This file format is compatible with ArcGIS software used by the Commission.

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- Median household income for each CBG that intersects the proposed project, to be based on most current Census data available, and
- List of ZIP Code(s) that intersect the proposed project.

CBGs and ZIP codes must be based on the 2010 census. CBGs must be in a twelve digit format as follows:

| <u>State CA</u> | <u>County</u> | <u>Tract</u> | <u>Block Group</u> |
|-----------------|---------------|--------------|--------------------|
| 2 digits        | 3 digits      | 6 digits     | 1 digit            |

*For example: a CBG near the town of Alturas in Lassen County: Lassen County Tract 401, Block Group 1 would have the following CBG:*

| <u>State CA</u> | <u>County</u> | <u>Tract</u> | <u>Block Group</u> |
|-----------------|---------------|--------------|--------------------|
| 06              | 035           | 401.00       | 1                  |

State: California is always denoted as 06.

County: Refer to County Code List

Tract: Can be denoted as 1) a number with decimal followed by 2 digits; then fill in zeroes in front to make 6 digits; or 2) as 4-6 digits, fill "0s" as needed. Drop decimal.

For the example cited; this tract/block group in Lassen would be expressed as 06-035-040100-1. For CASF purposes, we use the standard expression: 060350401001

Applicants are expected to target areas that are still unserved and underserved based on the latest available information. The most current Broadband Availability map that the applicant can use in preparing their applications is the California Broadband Interactive Map on the CASF webpage which shows the areas current served, the provider, the technology available in a particular area up to street level, the speeds in the areas served, as well as the population in these areas.

### **3.1.13. Proposed Broadband Project Location Shapefile**

Shapefile (.shp) showing boundaries of the specific area to be served by the project. A shapefile is not a single file, but a collection of seven files - .dbf, .prj, .sbn, .sbx, .shx, .shp, .xml. Without all of these, the data cannot be read.

The .shp format is compatible with the ArcGIS software used by the Commission.

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### **3.1.14. Assertion of Unserved or Underserved Area**

An explanation of the basis for asserting that, to the best of the applicant's knowledge, the area is unserved or underserved (i.e. a reference to the California Interactive Broadband Map or other published reports).

This includes figures, in mbps, of the current:

- average download speed by CBG(s);
- average download speed by ZIP Code(s);
- average upload speed by CBG(s); and
- average upload speed by ZIP Code(s).

### **3.1.15. Estimated Potential Subscriber Size**

- Estimated number of potential broadband households (i.e. total occupied housing units) in proposed project location.
- Estimated number of potential broadband subscribers (i.e. total population) in proposed project location.
- Documentation of all assumptions and data sources used to compile estimates.
- Adoption / Sustainability plan

Applicants must submit a plan to encourage adoption of the broadband service in the proposed area(s). The plan should include the total number of households in the area, the number of households the applicant estimates will sign up for the service (the take rate), the marketing or outreach plans the applicant will employ to attract households to sign up for the service.

### **3.1.16. Deployment Schedule**

Delineated schedule for deployment with commitment to complete build-out within 24 months of the approval of the application. The schedule shall identify major prerequisite(s), construction, and any other milestones that can be verified by Commission staff. Milestones will be listed using the following format:

- Milestone Start and Ending Date
- Milestone Description
- Milestone Comments
- Milestone Risks

In developing the schedule, applicant(s) must include the timeline required for the California Environmental Quality Act (CEQA) review.

If the applicant(s) is unable to complete the proposed project within the 24-month timeframe, it must notify the CPUC as soon as it becomes aware of this prospect. The Commission may reduce payment for failure to satisfy this requirement.

### **3.1.17. Proposed Project Budget**

Proposed budget for the project including:

- a detailed breakdown of cost elements;
- amount of cost elements;
- availability of matching funds to be supplied by applicant;
- amount of available funds from each individual funding source; and
- the amount of CASF funds requested, broken down into grant and loan components, if applicable.

*Note: See section II for the amounts required from the applicants.*

### **3.1.18. Economic Life of all assets to be funded**

The applicant must identify all the equipment to be funded by the CASF by category (buildings, outside plant, towers and poles, network and access equipment, operating equipment, customer premise equipment), the type of equipment (new building, prefabricated building, rehab of existing building, new towers or poles, modification of existing towers and poles, broadband switching equipment, office furniture and fixture, etc.), and the estimated useful life (10, 15, 20, etc years).

### **3.1.19. Local Government and Community Support (optional)**

The applicant may submit endorsements or letters of support from the local government, community groups, and anchor institutions supporting the deployment of the broadband infrastructure.

### **3.1.20. Performance Bond Documentation**

CPCN/WIR Holders:

The applicant must send an executed bond, equal to the total amount payable under the CASF award<sup>100</sup>, to the Executive Director and to the Director of Communications Division within five business days after the completion of the CEQA review. An

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<sup>100</sup> A CASF award includes both a grant and loan amounts.

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applicant is not required to post a performance bond if it certifies that the percentage of the total project costs it is providing comes from their capital budget and is not obtained from outside financing. The performance bond must be callable for failure to complete the CASF funded broadband project.

Applicants who will complete the project and front-end all the project costs before requesting for reimbursement may request exemption from the performance bond requirement.

Non-Telephone Corporations:

The applicant must send an executed bond, equal to the total amount payable under the CASF award, to the Executive Director and to the Director of Communications Division within five business days after the completion of the CEQA review. All non-telephone corporations are required to post a performance bond for the construction phase of the project in order to ensure completion of the CASF grant funded project. In order to ensure that non-telephone corporations comply with the other requirements of the CASF program, in both the construction and post construction phase of the project, the Commission will rely on its ability to invoke the penalty provisions of Public Utilities Code §2111.

**3.1.21. Proposed Pricing**

Proposed (two - years fixed) monthly subscription fee and waiver of installation and / or initial service connection fee for applicant's proposed broadband service(s). The monthly subscription fee should be the sum of all recurring rates and non-recurring charges (except the installation and/or initial service connection fees) the customer must pay to receive service during the initial two years of service, expressed as a monthly average. All services upon which the monthly subscription fee is based should be clearly itemized. The monthly subscription fee should not include discounts or any other promotional offerings. The monthly subscription fee should represent the maximum amount that customers will pay, on average, for the duration that this price is committed (according to Item 22).

Also indicate, if any: service restrictions; option to bundle with other services; commitments; any requirements that customers must meet, or equipment that they must purchase or lease, in order to receive the service.

For each type and/or bundle of services that you propose to offer (or for each monthly subscription fee, if you propose to commit to more than one), provide the following:

- Proposed (two- years) monthly subscription fee for applicant's proposed broadband service(s).

- Other recurring charges;
- All services and equipment upon which the monthly subscription fee is based;
- Service restrictions; option to bundle with other services;
- Any commitments and/or requirements that customers must meet, or equipment they must purchase or lease, in order to receive service.

### **3.1.22. Price Commitment Period**

The required Period of Commitment to which the initial price (listed in Item 21) is applicable for all households within the service area of the project. Minimum price guarantee period for each customer is two years.

If the applicant proposes to require customer commitments to more than one monthly subscription fee (i.e., one amount for six months and a different amount for the six month intervals, thereafter), list the duration and amount of each price guarantee separately (Note: you must make a separate showing for each amount in Item 21).

The period of commitment is on a per customer basis, such that a customer who signs up within two years from the beginning date of service can expect the same price guarantee from the day they signed up for service, which may not be for the entire two years. To illustrate, a customer who signs up for service on day 730 will be entitled to the same price for one month as a subscriber who signs up for service on day 1. The difference between the two customers is that the former's price is valid for one month while the latter's price is valid for 24 months.

### **3.1.23. Financials - Financial Qualifications to Meet Commitments**

**A. CPA Audited / Attested Financial Statements for the last three years.**

The statements are to include:

- ✓ Balance Sheet
- ✓ Income Statement
- ✓ Statement of Cash Flows

**B. Pro Forma Financial Forecast over the life term of the loan (i.e. 5 years) that includes a list of assumptions supporting the data. For projects applying for a grant only, the pro forma financial forecast will be over 5 years. Future projections must include the following financial statements:**

- ✓ Balance Sheet
- ✓ Income Statement

✓ Statement of Cash Flows

- C. Annual EBIT (Earnings Before Income and Tax) projection over 5 years
- D. Schedule of all outstanding and planned debt
- E. Collateral Documentation
  - i. Include Depreciation Schedule of Assets (applicable to an applicant applying for a grant / loan combination only).

The applicant must submit an analysis of the viability (B. above) of the project and the assumptions used in the analysis such as the funding sources, the adoption rates, subscriber data and adoption rates.

CPA Audited or Attested Financial Statements will be accepted from parent companies in lieu of financial statements from subsidiaries that have no audited or attested financial statements. If applicant has been in existence for less than three years, financial statements for as long as applicant has been in existence, e.g. one or two years, will be accepted.

**3.1.24. Providing Voice Service:**

- Availability of voice service that meets FCC standards for E-911 service and battery back-up;
- Listing of types of voice services offered;
- Timeframe of voice offering(s).

**3.1.25. CEQA Compliance**

The applicants must provide the Proponent's Environmental Assessment (PEA) prior to the first 25% payment. The PEA submission should include information on any land crossing sites requiring discretionary or mandatory permits or environmental review pursuant to CEQA (include the type of permit required, the name of the permitting agency/agencies and the Lead Agency if an environmental review is required). Also agree to identify, prior to the first 25% payment, any other special permits required with a cross reference to the government agencies from which the permits will be required for the project.

Any application should state whether the project is statutorily or categorically exempt from CEQA requirements and cite the relevant authority, as applicable.

Applicants should include the CEQA review timeline in its construction timeline.

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### **3.1.26. Affidavit of Application's Accuracy**

Applicants must submit an affidavit, under penalty of perjury, that to the best of their knowledge all the statements and representations made in the application information submitted is true and correct (Attachment C).

## **4. Submission and Timelines**

Applicants should electronically file their completed applications at <http://www.cpuc.ca.gov/puc/> and mail a separate hard copy to the Communications Division, Attn: California Advanced Services Fund, and mail another hard copy to the Division of Ratepayers Advocates. Since applications are not filed with the Commission's Docket Office, they will not be assigned proceeding number(s).

There will be three application windows in the initial round, as follows:

- First application window – for unserved projects
- Second application window – for underserved projects in areas with broadband service and where the existing infrastructure or broadband infrastructure under construction was not partially funded by CASF and broadband speed is less than advertised speeds of 6 mbps download and 1.5 mbps upload. This deadline will also include hybrid broadband projects<sup>101</sup> covering unserved and underserved areas (not partially funded by CASF).
- Third application window – in underserved areas with broadband service and where the existing infrastructure or broadband infrastructure under construction was partially funded by CASF and broadband speed is less than advertised speeds of 6 mbps download and 1.5 mbps upload. The third application window will also be open to other viable projects the Commission deems appropriate. CD is authorized to communicate the deadline for filing at a later time.

As specified in Section II, the Commission will evaluate new CASF applications in areas where CASF funding has been provided 3 years after the start of broadband service of the CASF funded project in order to ensure that grantee(s) are able to realize returns on their investment.

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<sup>101</sup> As referenced in section V, each “broadband project” is defined as deployment encompassing a single contiguous group of Census Block Groups (CBGs).



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If funds are still available, CD will open a second round, open up three application windows, and set new deadlines for submission of applications.

Applications submitted on the specified deadline dates will be evaluated and funding approved based on the evaluation and ranking of the proposals.

Applications for unserved areas will receive priority in funding. Applications received up to the deadline date will be evaluated and ranked according to the criteria adopted. CD will consider in the next application round applications submitted after the deadline as well as applications that were not funded during the first round application window(s) for the following reasons: submission of an incomplete application, failure to provide additional information as required by CD staff, and failure to provide additional information / clarification by the date set by CD staff. In the second and third application window, CD will consider only applications specified for those windows.

To illustrate, if the drop-dead deadline for unserved applications is May 15, 2012, CD will review and evaluate applications that are compliant with the requirements. CD will review and evaluate an application for unserved areas submitted after the May 15, 2012 deadline only after a second round is opened and will review and evaluate that post-May 15 application together with the applications submitted during the second round application window for unserved areas. This is true for applications for underserved areas submitted during the second and third application windows.

Any applicant whose application in any application window is held for a) late submittal, non-submittal of information requested or 3) additional information submitted late may withdraw its application and resubmit a new application when a second application round is opened.

The estimated timeline for application submission and evaluation is as follows:

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| <b><u>ESTIMATED TIMELINE FOR SUBMISSION AND EVALUATION</u></b> |   |   |
|--|---|---|
| <b>Start date</b>  | <b># of days</b>                                      | <b>Description</b>  |
| <b>For Unserved and Underserved Areas</b>                      |   |   |
| Day 1  |   | Deadline to submit funding requests   |
| Day 7  | 7 days after submission of applications               | Areas applied for, by Applicant Name, CBG's and shapefile, will be posted on the Commission's CASF website  |
| Day 22   | 14 days after web posting of CBGS, zip codes and maps | Deadline for submitting letter challenges   |
| Day 40   | 40 days from receipt of application                   | Evaluation of proposals <i>without</i> challenges <sup>102</sup>  |
| Day 42   | 42 days from receipt of application                   | CD responds to funding requests <i>without</i> challenges (through letter to applicant informing the applicant that application has been evaluated and that the project qualifies for CASF funding; however, Final Approval will be by Commission resolution) |
| Day 64   | 42 days after submission of letter challenges         | CD responds to funding requests <i>with</i> challenges (through letter to applicant informing the applicant that application has been evaluated and that the project qualifies for CASF funding; however, Final Approval will be by Commission resolution)    |
| Day 84 or earliest Commission date after 84 days               | 84 days from date of submission of application        | Resolution(s) adopted by Commission approving funding application(s) <i>without</i> challenges  |
| Day 106 or earliest Commission date after 106 days             | 106 days from submission of application               | Resolution(s) adopted by Commission approving funding application(s) with challenges  |

CD may create subsequent filing periods if applications do not exceed the available funds. After considering all of the applications for unserved areas received by the initial deadline

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<sup>102</sup> The evaluation period may be longer for applicants applying for a loan as the evaluation will include financial eligibility review which may be performed by an external government financial institution.

for the first application window and if funds are still available, CD will consider applications for underserved areas subject to the availability of remaining CASF funds.

Any party that challenges a proposed area or CBG as already served or not underserved must provide documentation that the area or CBG is in fact already served and not underserved (e.g., maps or a copy of a customer bill). CD will then investigate this information, along with the applicant's documentation supporting its assertion that the CBG is unserved or underserved. CD will inform the applicant of the challenges filed on its application and provide the challenger's name and all information submitted. Once CD makes a final determination, it will notify the applicant of its determination.

If the challenged CBG is determined to be "served" or not underserved, the application cannot be considered and will be rejected. The applicant, however, has the option to submit a modified application in subsequent rounds of proposals, either for the same area (provided that the parts of the CBG that are not "unserved" are omitted from project cost and budget considerations) or for only those parts of the CBG that are unserved

Entities who challenged applications submitted must submit maps of their service area(s) and addresses of households in their service area(s) to enable staff to verify the challengers' allegation that the area(s) are already served and not underserved.

#### **4.1. Proposal Checklist**

An applicant must complete the CASF Application Checklist Form (Attachment B and attach it to *each* project proposal.

#### **4.2. Scoring Criteria**

This section describes the method by which CD will evaluate applicants on how well they meet the goals of the CASF program outlined in D.07-12-054. CD will present its evaluation in the form of a numerical score. Once CD assigns applicants a score, CD will rank them in order from highest to lowest, with CASF money being allocated following this order until the entire fund has been allocated.

An evaluation team comprised of Commission staff will assess applications in each of the following areas: (i) Funds Requested per Potential Customer, (ii) Speed, (iii) Financial Viability, (iv) Pricing, (v) Total Number of Households in the Proposed Area, (vi) Timeliness of Completion of Project, (vii) Guaranteed Pricing Period, and (viii) Low-Income Areas, by applying the corresponding formula and assigning weights. Points will be awarded based on consensus of the evaluation team.

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The following table summarizes the adopted scoring criteria and weights:

**Scoring Criteria**

| <u>Criterion</u>                                      | <u>Weight<br/>(Points)</u> |
|---|----------------------------|
| i) Funds Requested per Potential Customers            | 35                         |
| ii) Speed   | 20                         |
| iii) Financial Viability                              | 15                         |
| iv) Pricing   | 10                         |
| v) Total Number of Households in the Proposed Area(s) | 5                          |
| iv) Timeliness of Completion of Project               | 5                          |
| vii) Guaranteed Pricing Period                        | 5                          |
| viii) Low-Income Areas                                | 5                          |
| <b>TOTAL:</b>   | <hr/> 100                  |

Applicants will be scored based on eight criterion with each criterion scored relative to the best offer, i.e., highest amount (Max) or lowest (Min). Relative scoring measures an applicant's performance by how well they do compared to all other applications. The application that does the "best" for each criterion is awarded more points and sets the standard for comparison with all other applications. Using points in the scoring formulas sets a limit on the effect each criterion will have on the total score and ensures that the optimum mix of CASF features sought by the Commission is made available by applicants.

Each criterion has a formula associated with it that determines its value and is scored accordingly. Applicants' data as reflected in their submission is entered in the formula for each criterion to generate the points for each criterion. Corresponding points for each of the criterion will be added together to determine each application's total score.

Example:

Among three applicants, with total number of households in the proposed area(s) at 100, 75, and 50 households respectively. The highest value is 100, therefore, each applicant will be scored relative to that. Thus, the first applicant's score for this factor would be  $(100/100)*5 = 5$ ; the second applicant's would be  $(75/100)* 5 = 3.75$ ; and, the third applicant's would be  $(50/100)* 5 = 2.5$ .

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Attachment D shows a sample scoring - scenario analysis for seven (7) - hypothetical proposed projects.

#### 4.2.1. Funds Requested per Potential Customers

Funds requested per potential customers is calculated based on the number of customers the applicant will be able to serve divided by the CASF grant funding amount requested. Points will be determined based on the following formula:

$$\text{Min}(a) / a_i * 35$$

Where "a" is the funding amount (\$) requested from the CASF divided by the number (#) of potential customers for the specific project being scored and Min(a) is the lowest funding amount (\$) requested from the CASF divided by the number (#) of potential customers among all the eligible projects submitted.

$$a = \text{Funds Requested} / \text{Potential Customers}$$

Customers is defined as households and defined in P.U. Code, section 5890(j)(3). Applicants can obtain data on households from the U.S. Census Bureau.

#### 4.2.2. Speed

This criterion represents the difference between the current average advertised speed per customer available and the average advertised speed per customer available after the proposal is complete in the proposed areas. Applicants are encouraged to offer a minimum of at least advertised speeds of 6 mbps download and 1.5 mbps upload. Points will be determined based on the following formula:

$$b_i / \text{Max}(b) * 20$$

Where "b" is the sum of the square roots of the differences in upload and download speeds (MB) between pre- and post-project for the specific project being scored and Max(b) is the highest sum of the square roots of the differences in upload and download speeds among all the eligible projects submitted.

$$b = \sqrt{\frac{NS}{U} - OSU} + \sqrt{NSD - OSD}$$

The square root of the average advertised speed increase is used to express the diminishing return to value associated with increasing speed. This encourages speed increases that are more noticeable and therefore valuable to the customer, but still rewards those who offer speeds far above the benchmark speed of at least advertised speeds of 6 mbps download and 1.5 mbps upload.

*Where:*

NSU = New Speed Upload

Average advertised upload speed (MB) per customer post-proposal in the proposed areas.

OSU = Old Speed Upload

Average advertised upload speed (MB) per customer pre-proposal in the proposed areas.

NSD = New Speed Download

Average advertised download speed (MB) per customer post-proposal in the proposed areas.

OSD = Old Speed Download

Average advertised download speed (MB) per customer pre-proposal in the proposed areas.

### **4.2.3. Financial Viability**

The average projected EBIT (Earnings Before Interest and Tax) over 5 years will be used as the measure of the applicant's financial position. Points will be determined based on the following formula:

$$h_i / \text{Max}(h) * 15$$

Where "h" is the average projected EBIT amount over five years for the specific project being scored ((EBIT Year 1 + EBIT Year 2 + EBIT Year 3 + EBIT Year 4 + EBIT Year 5)/5)) and Max(h) is the highest projected EBIT amount among all the eligible projects submitted.

### **4.2.4. Pricing**

This factor measures the price applicants will charge, on average, per Megabit. Points will be determined based on the following formula:

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$$\text{Min}(e) / e_i * 10$$

Where “e” is the price (\$/MB) of service for the specific project being scored and Min(e) is the lowest price of service among all the eligible projects submitted.

#### **4.2.5. Total Number of Households in the Proposed Service Area**

The total number of households in the applicants’ proposed areas is the number of households passed. Points will be determined based on the following formula:

$$c_i / \text{Max}(c) * 5$$

Where “c” is the number of households for the specific project being scored and Max(c) is the highest number of households among all the eligible projects submitted.

#### **4.2.6. Timeliness of Completion of Project**

This criterion measures the number of months the applicant will complete its proposal ahead of the 24 month cut-off date. Points will be determined based on the following formula:

$$d_i / \text{Max}(d) * 5$$

Where “d” is the number of months (Mo.) ahead of schedule for the specific project being scored and Max(d) is the highest number of months ahead of schedule among all the eligible projects submitted.

$$d = 24 - TT$$

where:

TT = Total Time (Mo.) to complete

The total amount of time the proposal will take to complete. Total Time may not exceed 24-months.

#### **4.2.7. Guaranteed Pricing Period**

This measures the amount of time the applicant can guarantee the price of service beyond the mandatory two years. Note: applicants must guarantee the price of their

services in the proposed areas for at least two years. Points will be determined based on the following formula:

$$f_i / \text{Max}(f) * 5$$

Where “f” is the length (Mo.) of price guarantee for the specific project being scored and Max(f) is the highest length (Mo.) of price guarantee among all the eligible projects submitted.

$$f = \text{Months Guaranteed} - 24$$

#### **4.2.8. Low Income Areas**

This will be determined based on the median household income of the potential customers in the applicant’s proposed area. Points will be determined based on the following formula:

$$\text{Min}(g) / g_i * 5$$

Where “g” is the median household income (\$) of the potential customers for the specific project being scored and Min(g) is the lowest median household income (\$) of the potential customers among all the eligible projects submitted.

\* Data on population and median household income per CBG can be obtained from the U.S. Census Bureau.

*Five (5) bonus points will be added to the score of an applicant who is able to submit local government and community support endorsements or letters of support.*

#### **4.2.9. Selection**

The Commission will award CASF grant funding to projects that receive the highest number of points based on the scoring criteria described above. The Commission will authorize individual awards for CASF grant funding via resolution.



#### **4.2.9.1. Reporting**

Grantees must submit quarterly progress reports on the status of the project irrespective of whether grantees request reimbursement or payment.

#### **4.2.9.2. Payment**

Payment to the CASF recipient will be on a progress billing basis with the first 25% to be made upon the proponent's submission to the Commission staff of a progress report showing that 25% of the total project has been completed. Subsequent payments shall be made on 25% increments showing completion at 50%, 75%, and 100%. The CASF recipient must submit a project completion report before full payment. Progress reports shall use both the schedule for deployment; major construction milestones and costs submitted in the proposals and indicate the actual date of completion of each task/milestone as well as problems/issues encountered, and the actions taken to resolve these issues/problems during project implementation and construction. Recipients shall also include test results on the download speed and upload speed on a per CBG and per ZIP Code basis in the final completion report. Recipients must certify that each progress report is true and correct under penalty of perjury.

CASF recipients shall notify the Commission as soon as they become aware that they may not be able to meet the 24-month timeline. In the event that the recipient fails to notify Communications Division of any delays in the project completion and the project fails to meet the approved completion date, the Commission may impose penalties to be adopted in a Commission resolution.

Payment will be based upon receipt and approval of invoices/other supporting documents showing the expenditures incurred for the project in accordance with the CASF funding submitted by the CASF recipient in their application.

Grantees shall submit final requests for payment 90 days after completion of the project.

Payment will be made in accordance with, and within the time specified in California Government Code section 927 *et seq.*

The Commission has the right to conduct any necessary audit, verification, and discovery during project implementation/construction to ensure that CASF funds are spent in accordance with Commission approval.

The recipient's invoices will be subject to a financial audit by the Commission at any time within three (3) years of completion of the work.

### **4.2.9.3. Execution and Performance**

CD staff and the CASF grant recipient shall determine a project start date after the CASF grant recipient has obtained all approvals. Should the recipient or Contractor fail to commence work at the agreed upon time, the Commission, upon five (5) days written notice to the CASF recipient, reserves the right to terminate the award.

In the event that the CASF recipient fails to complete the project, in accordance with the terms of approval granted by the Commission, the CASF recipient must reimburse some or all of the CASF funds that it has received.

The CASF grant recipient must complete all performance under the award on or before the termination date of the award.

### **4.3. Sales and Transfers of Assets**

Non-telephone corporations:

Construction Phase -

Grantees must notify the Commission within five days of determining that the grantee is planning to sale or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in writing of their intent to sale or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and ownership to comply with all the requirements of the CASF award. The new entity shall agree in writing to such. The grantee shall provide the Commission with any necessary documents requested in its review of the transfer. This will include all documents that are generally required of all entities applying for the CASF grants and loans. The grantee shall not transfer CASF funds or the built out portion of the project to the new entity prior to Commission approval via a Resolution. If the Commission does not provide approval, the grant or loan will be rescinded.

Post-Construction Phase -

For three years from project completion, grantees must notify the Commission within five days of determining that the grantee is planning to sale or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in writing of their intent to sale or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and ownership to comply with all the requirements of the CASF award. The new entity shall agree in writing to such.

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**ATTACHMENT A**

**Information Sheet to be submitted by Applicants Requesting for CASF Funding  
 BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

|  |
|--|
| 1 Application of:  |
| Name of Applicant  |
|  |
| for CASF Funding pursuant to Decision_____   |
| (Insert the full legal name of applicant in blank above; see instruction 1; attach fictitious names, if any) |
| Street address:  |
|  |
| Telephone: (    )                      Fax No.: (    )   |
| E-Mail:  |

|  |   |
|--|---|
| 2 Applicant is:<br>(Check only one;<br>see instruction 2.) | A corporation (attach good standing certificate) <input type="checkbox"/><br>A general partnership (attach good standing certificate) <input type="checkbox"/><br>A limited liability partnership (attach good standing certificate) <input type="checkbox"/><br>A limited liability company (attach good standing certificate) <input type="checkbox"/><br>A general partnership <input type="checkbox"/><br>A sole proprietor <input type="checkbox"/><br>A trust <input type="checkbox"/><br>Other (describe) <input type="checkbox"/> |
|  | Attach name, street address, and telephone number of applicant's registered agent for service of process<br><b>Attach list of the names, titles, and street addresses of all officers and directors, general partners, trustees, members, or other persons authorized to conduct the business of applicant at a similar level</b><br><i>Attach list of all affiliated entities (see instruction 2)</i>  |

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|                                   |  |  |
|-----------------------------------|--|--|
| 3 Legal domicile of applicant is: | California <input type="checkbox"/><br>Other (identify): <input type="checkbox"/><br><i>(Check only one; see instruction 3.)</i> |  |
|-----------------------------------|--|--|

|                                   |  |  |
|-----------------------------------|--|--|
| 4 Applicant will provide service: | In specific portions only (attach description and map) <input type="checkbox"/><br><i>(Check only one; see instruction 5.)</i> |  |
|-----------------------------------|--|--|

|  |   |  |
|--|---|--|
| 5. Applicant will provide broadband service only | True <input type="checkbox"/><br>Not true <input type="checkbox"/><br><i>(Check only one; see instruction 6.)</i> |  |
|--|---|--|

|  |  |  |
|--|--|--|
| 6. For the past 10 years, no affiliate, officer, director, general partner, or | True <input type="checkbox"/><br>Not true <input type="checkbox"/><br>person owning more than 10% of applicant, or anyone acting in such a capacity whether or not formally appointed, held one of these positions with any company that filed for bankruptcy or has been found either criminally or civilly liable by a court of appropriate jurisdiction for a violation of § 17000 et seq. of the California Business and Professions Code or for any actions which involved misrepresentations to consumers, and to the best of applicant's knowledge, is not currently under investigation for similar violations.<br><i>(Check only one; see instruction 2.)</i> |  |
|--|--|--|

|  |   |  |
|--|---|--|
| 7. To the best of applicant's knowledge, neither | True <input type="checkbox"/><br>Not true <input type="checkbox"/><br>applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission, or any state regulatory agency for failure to comply with any regulatory statute, rule or order, or convicted by any court for any criminal activity for the past 10 years. |  |
|--|---|--|

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|  |  |  |
|--|--|--|
| 8. Applicant has the required financial capability and technical expertise to build a broadband infrastructure and operate and maintain a broadband service. | True <input type="checkbox"/><br>Not true <input type="checkbox"/> | <input type="checkbox"/><br><input type="checkbox"/> |
|--|--|--|

I hereby declare under penalty of perjury under the laws of the State of California that the forgoing information, and all attachments, are true, correct, and complete to the best of my knowledge and belief after due inquiry, and that I am authorized to make this application on behalf of the applicant named above.

Signed:

**Name** \_\_\_\_\_

**:**

**Title:**

**Dated**

**:**

**Street  
Address**

**Telephone No.  
Fax No.**

**Principal Place of Business (if different from address on page 1).**

**Street Address  
City  
State  
ZIP Code  
Telephone No.**

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**Instructions:**

1. Enter the legal name of applicant exactly as it appears on its articles or certificate of corporation or similar charter document.
2. Specify the type of applicant's organization. Applicant must provide Good Standing Certificate is available from the office of the Secretary of State of the State of California and should be dated of a date not more than 60 days prior to the date of filing the application. An original certificate must be attached to the manually signed copy of the application. An affiliated entity is any entity under common control with applicant. Common control exists if the same individuals or entities have the direct or indirect power to determine the action of applicant and such entity through the right to vote shares, by contract or agreement, or otherwise. Note whether any such entity is a reporting company for purposes of the Securities Exchange Act of 1934, as amended.
3. For individuals, domicile is the place of legal residence; for entities, it is the state of incorporation or organization.
4. Specify the exact area for which authority is requested, i.e., Community and County.
5. Indicate whether the applicant will be providing broadband service only.

**Items 2, 6 and 7 are subject to confirmation by the Commission through the conduct of background check(s). For numbers 6 and 7, attach detailed description, if applicable.**

6. Detailed information should be provided for the past 10 years, if applicable.
7. Detailed Information should be provided for the past 10 years, if applicable.
8. Attach audited balance sheet for the most recent fiscal year and an unaudited balance sheet as of the most recent fiscal quarter, a bank statement as of the month prior to the date of filing the application, or a third-party undertaking to provide the required amounts on behalf of applicant. If the balance sheet shows current liabilities in excess of current assets or negative equity, explain how applicant will be able to maintain sufficient liquidity for its first year of operations. Attach detailed summary, if applicable.

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Material changes in the entries for this application , such as discontinuing operation or bankruptcy, or change of name (DBA), change of address, telephone, fax number or E-mail address should be reported by a letter to the CPUC, Director of the Communications Division, 505 Van Ness Avenue, San Francisco, CA 94102.

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**ATTACHMENT B**

**CASF APPLICATION CHECKLIST**  
 (Required for EACH proposed project)

To assist the Commission in verifying the completeness of your proposal, mark the box to the left of each item submitted.

|                          |   |
|--------------------------|---|
|                          | 1. Project Summary  |
|                          | 2. Type of Funds Requested (Check one only):  |
| <input type="checkbox"/> | Grant   |
| <input type="checkbox"/> | Grant Amount: _____   |
| <input type="checkbox"/> | Grant/Loan Combination  |
| <input type="checkbox"/> | Grant Amount: _____   |
| <input type="checkbox"/> | Loan Amount: _____  |
|                          | 3. Area Applied for   |
| <input type="checkbox"/> | Unserved  |
| <input type="checkbox"/> | Underserved, with existing broadband service below advertised speed of 6 mbps download and 1.5 mbps upload, Broadband infrastructure whether existing or ongoing construction not CASF funded |
| <input type="checkbox"/> | Underserved, with existing broadband service below advertised speed of 6 mbps download and 1.5 mbps upload, Broadband infrastructure whether existing or ongoing construction CASF funded     |
|                          | 4. CPCN / U-Number / CPUC Registration Proof (As a single document)(if applicable)  |
| <input type="checkbox"/> | Applicant's U-Number and/or Proof of applicant's Certificate of Public Convenience and Necessity (CPCN)   |
| <input type="checkbox"/> | Proof of CPCN application pending approval, or CPCN Application Number (in the absence of a CPCN)   |
| <input type="checkbox"/> | CPUC registration Number (wireless carriers)  |
|                          | 5. Information Sheet with a Certificate of Good Standing issued by the CA Secretary of State attached   |
|                          | 6. Organizational Chart, Company History and Readiness to Build, Manage and Operate Broadband   |
| <input type="checkbox"/> | Organizational Chart  |
| <input type="checkbox"/> | Company History   |
| <input type="checkbox"/> | Readiness to Build, Manage and Operate Broadband  |



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|   |   |
|---|---|
| 7. CASF Key Contact Information                 |   |
|   | First Name  |
|   | Last Name   |
|   | Address Line1   |
|   | Address Line2   |
|   | City  |
|   | State   |
|   | Zip   |
|   | Email   |
|   | Phone   |
| 8. Key Company Officers (list up to 5)          |   |
|   | Title   |
|   | First Name  |
|   | Last Name   |
|   | Email   |
|   | Phone Number  |
|   | Resumes of key officers and management personnel  |
| 9. Current Broadband Infrastructure Description |   |
|   | Description of the provider's current broadband infrastructure within 5 miles of the proposed project, if applicable.                     |
|   | List showing number of households per CBG and Zip Code  |
| 10. Current Broadband Infrastructure            |   |
|   | Shapefile (.shp) of current service area.   |
| 11. Proposed Broadband Project Description      |   |
|   | Description of proposed broadband project plan for which CASF funding is being requested, including the type of technology to be deployed |
|   | Project size (in square miles)  |
|   | Download speed capabilities of proposed facilities  |
|   | Upload speed capabilities of proposed facilities  |
| 12. Proposed Broadband Project Location         |   |
|   | Geographic locations by CBG(s) where broadband facilities will be deployed:   |
|   | List of CBG(s) and,   |
|   | ZIP Codes that intersect the proposed project.  |

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|   |   |
|---|---|
| 13. Proposed Broadband Project Location Shapefile   |   |
|   | Shapefile (.shp) showing boundaries of the specific area to be served by the project.             |
| 14. Assertion that area being proposed is Unserved or Underserved Area. This includes figures, in mbps, of the current: |   |
|   | (a) average download speed by CBG(s);   |
|   | (b) average download speed by ZIP Code(s);  |
|   | (c) average upload speed by CBG(s) and;   |
|   | (d) average upload speed by ZIP Code(s).  |
| 15. Estimated Potential Subscriber Size   |   |
|   | Estimated number of potential broadband households in proposed project location.                  |
|   | Estimated number of potential broadband subscribers in proposed project location.                 |
|   | Documentation of assumptions and data sources used to compile estimates.                          |
|   | Adoption Plan   |
| 16. Deployment Schedule   |   |
|   | Milestone Start and Ending Date   |
|   | Milestone Description   |
|   | Milestone Comments  |
|   | Milestone Risks   |
| 17. Proposed Project Budget   |   |
|   | a detailed breakdown of cost elements;  |
|   | the source of cost elements;  |
|   | amount of cost elements;  |
|   | availability of matching funds to be supplied by applicant; and                                   |
|   | the CASF funds requested.   |
| 18. Economic Life of Assets to be Funded  |   |
| 19. Local Government and Community Support ( <b>optional</b> )  |   |
| 20. Performance Bond Documentation (to be submitted after project award)  |   |
| 21. Proposed Pricing  |   |
|   | Proposed recurring retail price per MBPS for applicant's proposed broadband service(s).           |
|   | Initial service connection charges, if any and any bundling of equipment in the proposed pricing. |

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|  |   |
|--|---|
|  | Other recurring costs   |
|  | Other non-recurring costs   |
|  | 22. Price Commitment Period   |
|  | 23. Financials  |
|  | a) CPA Audited / Attested Financial Statements for the last three years<br>(if applicant has been in existence for less than three years, provide financial statements for as long as applicant has been in existence, e.g. one or two years) |
|  | Balance Sheet   |
|  | Income Statement  |
|  | Statement of Cash Flows   |
|  | b) Pro Forma Financial Forecast over 5 years  |
|  | Balance Sheet   |
|  | Income Statement  |
|  | Statement of Cash Flows   |
|  | c) Annual EBIT (Earnings Before Income and Tax) projection over 5 years   |
|  | d) Schedule of all outstanding and planned debt   |
|  | e) Collateral Documentation (include depreciation schedule of assets)   |
|  | f) Equity Requirement of 20% of the loan amount <b>(For Grant / Loan Combination only)</b> Equity requirement of 20% should be sustained throughout the life of the loan: 5 years   |
|  | g) Minimum TIER Requirement of 1.5 <b>(For Grant / Loan Combination only)</b><br>The Minimum TIER Requirement of 1.5 should be sustained throughout the life term of the loan: 5 years  |
|  | 24. Proof of Voice Service  |
|  | Availability of basic voice service that meets FCC standards for E-911 service and battery, including:  |
|  | Listing of types of services offered;   |
|  | Timeframe of offering.  |
|  | 25. CEQA Compliance   |
|  | Proponent's Environmental Assessment (PEA)  |
|  | 26. Notarized Affidavit   |

Applications will be considered beginning: \_\_\_\_\_  
 Submit completed applications online at <http://www.cpuc.ca.gov/puc/>  
 with hard copies mailed separately to:

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Communications Division

**Attn:** California Advanced Services Fund  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102

Division of Ratepayer Advocates

**Re:** California Advanced Services Fund  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102

*CASF - The Broadband Infrastructure Grant Account  
---Proposed Revisions to Application Requirements and Guidelines---*

*Date: November, 2013*

*Version 1.0*

---

**ATTACHMENT C  
Telephone Corporations  
NOTARIZED AFFIDAVIT**

Name of Carrier/Company \_\_\_\_\_  
Utility Identification Number \_\_\_\_\_ or \_\_\_\_\_ check here if Application for  
CPCN is pending and the CPUC assigned application no., if available.

My name is \_\_\_\_\_. I am \_\_\_\_\_ (Title) of  
\_\_\_\_\_ (Company). My personal knowledge of the facts stated  
herein has been derived from my employment with \_\_\_\_\_  
(Company)

I swear or affirm that I have personal knowledge of the facts stated in this Application for  
the California Advanced Services Fund, I am competent to testify to them, and I have the  
authority to make this Application on behalf of and to bind the Company.

I further swear or affirm that \_\_\_\_\_ [Name of Carrier/Company]  
agrees to comply with all federal and state statutes, rules, and regulations, covering  
broadband services and state contractual rules and regulations, if granted funding from  
the California Advanced Services Fund.

I swear and affirm that I agree to comply with Rules 1.11 and 2.2 of the California Public  
Utilities Commission's rules of practice and Procedure.

I swear or affirm, under penalty of perjury, and under Rule 1.1 of the California Public  
Utilities Commission's Rules of Practice and Procedure, that, to the best of my knowledge,  
all of the statements and representations made in this Application are true and correct.

\_\_\_\_\_  
Signature and title

\_\_\_\_\_  
Type or print name and title

**SUBSCRIBED AND SWORN** to before me on the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_.

Notary Public In and For the State of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

*CASF - The Broadband Infrastructure Grant Account  
---Proposed Revisions to Application Requirements and Guidelines---*

*Date: Aug. 2, 2011  
Version 4.0*

---

**ATTACHMENT C**  
**Non - Telephone Corporations**  
**NOTARIZED AFFIDAVIT**

Name of Carrier/Company \_\_\_\_\_  
Utility Identification Number \_\_\_\_\_ or \_\_\_\_\_ check here if Application for  
CPCN is pending and the CPUC assigned application no., if available.  
My name is \_\_\_\_\_. I am \_\_\_\_\_ (Title) of  
\_\_\_\_\_ (Company). My personal knowledge of the facts stated  
herein has been derived from my employment with \_\_\_\_\_  
(Company)

I swear or affirm that I have personal knowledge of the facts stated in this Application for the California Advanced Services Fund, I am competent to testify to them, and I have the authority to make this Application on behalf of and to bind the Company.

I further swear or affirm that \_\_\_\_\_ [Name of Carrier/Company] agrees to comply with all federal and state statutes, rules, and regulations, covering broadband services and state contractual rules and regulations, if granted funding from the California Advanced Services Fund.

I swear and affirm that I agree to comply with Rules 1.11 and 2.2 of the California Public Utilities Commission's rules of practice and Procedure.

I swear or affirm, under penalty of perjury, and under Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure, that, to the best of my knowledge, all of the statements and representations made in this Application are true and correct. If [Grantee Name] violates the terms and conditions of a CASF award or other program and project compliance requirements, it shall be subject to Public Utilities Code Sections 2108 and 2111. The Commission may impose the maximum penalties allowed under Public Utilities Code Sections 2108 and 2111 for failure to meet the program and project compliance requirements, as determined by the Commission.

\_\_\_\_\_  
Signature and title

\_\_\_\_\_  
Type or print name and title

**SUBSCRIBED AND SWORN** to before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*CASF - The Broadband Infrastructure Grant Account  
---Proposed Revisions to Application Requirements and Guidelines---*

*Date: November, 2013*

*Version 1.0*

---

Notary Public In and For the State of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

*CASF - The Broadband Infrastructure Grant Account  
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*Date: Aug. 2, 2011  
 Version 4.0*

**ATTACHMENT E**

| CASF Scoring - Scenario Analysis for 7 - Hypothetical Proposed Projects |             |             |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Raw Values  | Applicant A | Applicant B | Applicant C | Applicant D | Applicant E | Applicant F | Applicant G |
| <b>a No. of Potential Customers</b>                                     | 200         | 25          | 30          | 45          | 10          | 100         | 75          |
| <b>Funds requested (\$)</b>   | 100,000     | 50,000      | 50,000      | 60,000      | 20,000      | 50,000      | 45,000      |
| <b>Funds requested per potential customer (\$)</b>                      | <i>500</i>  | <i>2000</i> | <i>1667</i> | <i>1333</i> | <i>2000</i> | <i>500</i>  | <i>600</i>  |
| <b>b Speed (Mbps)</b>   |             |             |             |             |             |             |             |
| Current avg. download speed   | 4.50        | 8.20        | 3.50        | 1.00        | 3.10        | 3.10        | 5.30        |
| Proposed avg. download speed  | 5.48        | 12.48       | 10.00       | 1.03        | 4.80        | 5.23        | 12.23       |
| Square root of difference   | 0.99        | 2.07        | 2.55        | 0.18        | 1.30        | 1.46        | 2.63        |
| Current avg. upload speed   | 0.50        | 1.00        | 0.40        | 0.50        | 0.50        | 0.50        | 3.00        |
| Proposed avg. upload speed  | 0.98        | 4.28        | 6.50        | 1.00        | 1.70        | 2.13        | 6.93        |
| Square root of difference   | 0.70        | 1.81        | 2.47        | 0.71        | 1.10        | 1.28        | 1.98        |
| Sum of square roots   | <i>1.69</i> | <i>3.88</i> | <i>5.02</i> | <i>0.89</i> | <i>2.40</i> | <i>2.73</i> | <i>4.61</i> |
| <b>c Financial Viability ( 5 year avg. earnings) (k\$)</b>              | 100         | 200         | 300         | 400         | 500         | 600         | 700         |
| <b>d Price per Megabit ( \$ / Mbps)</b>                                 | 5           | 10          | 5           | 6           | 7           | 10          | 5           |
| <b>e Total Number of Households in the proposed Area(s)</b>             | 100         | 75          | 50          | 500         | 175         | 750         | 750         |
| <b>f Time to complete project (mo.)</b>                                 | 24          | 23          | 18          | 19          | 20          | 20          | 19          |
| Time saved  | <i>0</i>    | <i>1</i>    | <i>6</i>    | <i>5</i>    | <i>4</i>    | <i>4</i>    | <i>5</i>    |
| <b>g Guaranteed Pricing Period (mo.)</b>                                | 60          | 24          | 12          | 36          | 48          | 24          | 60          |
| Extra time  | <i>48</i>   | <i>12</i>   | <i>0</i>    | <i>24</i>   | <i>36</i>   | <i>12</i>   | <i>48</i>   |
| <b>h Low-Income Areas (median household income)</b>                     | 20,000      | 30,000      | 40,000      | 20,000      | 25,000      | 50,000      | 30,000      |



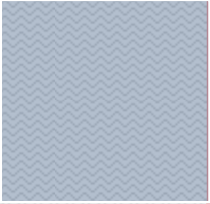
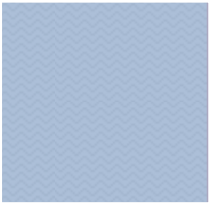
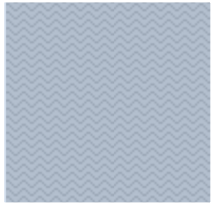
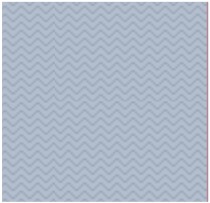
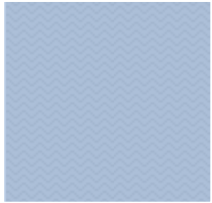
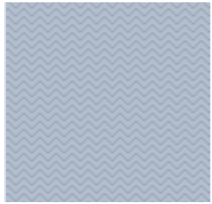
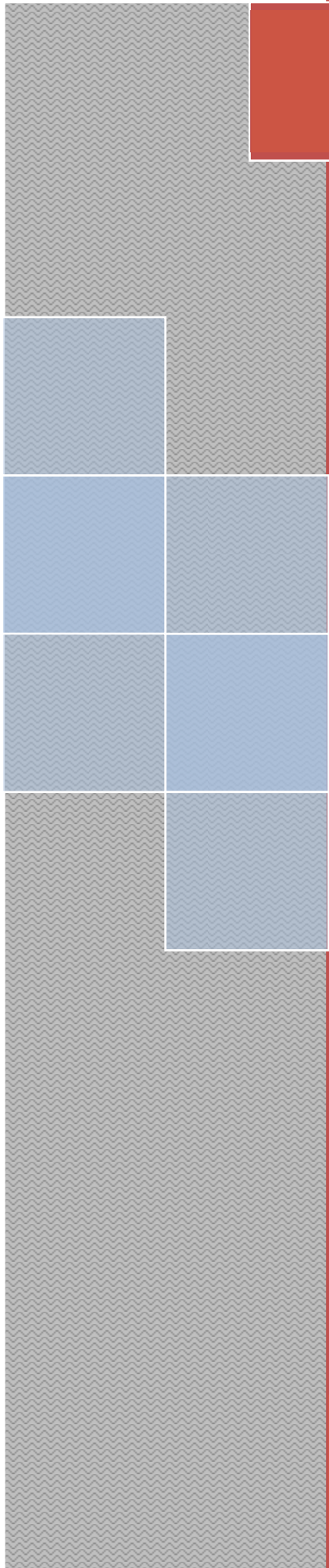
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 ---Proposed Revisions to Application Requirements and Guidelines---*

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 Version 4.0*

| Weighted Scores                 |  | Weight | Applicant A          | Applicant B | Applicant C          | Applicant D         | Applicant E | Applicant F          | Applicant G            |
|---------------------------------|--|--------|----------------------|-------------|----------------------|---------------------|-------------|----------------------|------------------------|
| a                               | Funds Requested                                    | 35     | 35<br><i>highest</i> | 9           | 11                   | 13                  | 9           | 35<br><i>highest</i> | 29                     |
| b                               | Speed  | 20     | 7                    | 15          | 20<br><i>highest</i> | 4                   | 10          | 11                   | 18                     |
| c                               | Financial Viability                                | 15     | 2                    | 4           | 6                    | 9                   | 11          | 13                   | 15<br><i>highest</i>   |
| d                               | Pricing  | 10     | 10<br><i>highest</i> | 5           | 10<br><i>highest</i> | 8                   | 7           | 5                    | 10<br><i>highest</i>   |
| e                               | Total Number of Households in the proposed Area(s) | 5      | 1                    | 1           | 0                    | 3                   | 1           | 5<br><i>highest</i>  | 5<br><i>highest</i>    |
| f                               | Timeliness   | 5      | 0                    | 1           | 5<br><i>highest</i>  | 4                   | 3           | 3                    | 4                      |
| g                               | Pricing Period                                     | 5      | 5<br><i>highest</i>  | 1           | 0                    | 3                   | 4           | 1                    | 5<br><i>highest</i>    |
| h                               | Low-Income Areas                                   | 5      | 5<br><i>highest</i>  | 3           | 3                    | 5<br><i>highest</i> | 4           | 2                    | 3                      |
| <b>Total Scores</b>             |  |        | 64.5                 | 39.4        | 54.8                 | 48.6                | 48.4        | 75.3                 | 90.0<br><i>highest</i> |
| <b>Rank</b>                     |  |        | 3                    | 7           | 4                    | 5                   | 6           | 2                    | 1                      |
| <b>Winning bid &gt;&gt;&gt;</b> |  |        |                      |             |                      |                     |             |                      | <b>45,000</b>          |

|             |             |             |             |             |             |             |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Applicant A | Applicant B | Applicant C | Applicant D | Applicant E | Applicant F | Applicant G |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|

(END OF APPENDIX 2)



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## **I. Background**

Senate Bill No. 1040 (Stats. 2010, c.317, codified at California Public Utilities (P.U.) Code § 281)), approved by Governor Schwarzenegger on September 25, 2010, expanded the California Advanced Services Fund (CASF) to include the Broadband Infrastructure Revolving Loan Account (Loan Account) (P.U. Code § 281(a)(3)). Pursuant to P.U. Code section 281(e), moneys in the Loan Account “shall be available to finance capital costs of broadband facilities not funded by a grant from the Broadband Infrastructure Grant Account. The commission shall periodically set interest rates on the loans based on surveys of existing financial markets.”

## **II. Loan Account Guidelines and Requirements**

### **A. Eligibility Requirements**

Applicant and project eligibility requirements for the CASF Broadband Infrastructure Grant Account (Grant Account) and the Loan Account will essentially be the same since the moneys in both accounts finance capital costs of broadband facilities. Adopting one set of requirements for both accounts will provide an efficient and simplified way for applicants to submit an application and avoid complications in determining what is needed for each type of funding. The Commission will award funds from the Loan Account as supplemental financing for projects also applying for funds from the Grant Account. In other words, the Loan Account will cover a percentage of the project’s total costs that are not funded by the Grant Account.

#### **1. Applicant Eligibility**

In this decision, the Commission adopts revised Broadband Infrastructure Grant Account applicant eligibility criteria. For the Loan Account, the Commission also adopts those revised Broadband Infrastructure Grant Account applicant eligibility criteria.

#### **2. Project Eligibility**

The Loan Account is intended to finance capital costs of projects deploying broadband facilities in **unserved** and **underserved** areas of California. The CASF Funds are only to be used for capital costs of the project and not for any recurring and/or maintenance costs. The Commission will use the current Broadband Infrastructure Grant Account project eligibility criteria for the Loan Account with some modifications to the definition of unserved and underserved areas. The Commission will set forth those revised definitions as part of the Grant Account modifications in this decision. All projects approved by the Commission must conform to Rule 2.4 (CEQA Compliance) of the Commission’s Rules of Practice and Procedure as set forth in Attachment B.

#### **3. Financial Eligibility**

In setting up the financial eligibility criteria for applicants to the loan account, it is the Commission’s responsibility to lend to entities that are capable of repaying its loans. Applicants must provide specific financial documents as listed below. As explained in further detail below,

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applicants must also meet specific financial eligibility criteria such as an equity requirement and a minimum Time Interest Earned Ratio of 1.5.

As used herein, **equity** refers to total assets minus total liabilities, as calculated from the applicant's balance sheet. The applicant must have equity in an amount equal to 20% of the requested loan amount at the time of application and at loan closing. For example, if the loan amount is for \$500,000, 20% of the requested loan amount is \$100,000. The applicant must then have equity in an amount equal to \$100,000 to meet the requirement. A 20% equity requirement ensures that the Commission only funds financially sustainable entities and provides a reasonable assessment of the long-term viability of the project. Further, the applicant must sustain the 20% equity requirement throughout the life term of the loan, e.g. 5 years.

**TIER (Time Interest Earned Ratio)** indicates how well a company can cover its interest payment on the borrowed funds. The larger the TIER, the more capable the company is at paying the interest on its debt. An applicant must meet the minimum TIER of 1.5 through the life term of the loan. As a general rule, when a company's time interest earned ratio is lower than 1.5, a lender should question the company's ability to meet interest expenses. If the ratio falls below 1, the company is not producing earnings to cover its interest expenses.

**Formula:  $TIER = (EBIT^{103} / Interest\ Expense)$**

It is the responsibility of the applicant to make sure it provides the Communications Division (CD) with the financial information requested to determine that the loan application sought meets all of the requirements set forth, will be feasible, and is adequately secured. If a newly formed or start-up entity is applying and does not have CPA audited or attested financial statements for the last three years, the applicant must provide CPA audited or attested financial statements for as long as the applicant has been in business.

As part of its application, the applicant must submit the following:

- a) Financial Documents Required<sup>104</sup>:
  - CPA audited or attested financial statements for the last three years. The statements are to include:
    - ✓ Balance Sheet
    - ✓ Income Statement

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<sup>103</sup> EBIT = Revenue – Operating Expenses

<sup>104</sup> If an applicant is a subsidiary without any CPA audited or attested financial statements, the applicant may submit CPA audited or attested financial statements of the applicant's parent company. If the parent company's financial statements are relied on or otherwise used in the financial viability review of the subsidiary (i.e. the applicant), the loan agreement will name the parent company as a financially responsible party.

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- ✓ Statement of Cash Flows
  - Pro Forma Financial Forecast over the life term of the loan (i.e. 5 years) that includes a list of assumptions supporting the data. For projects applying for a grant only, the pro forma financial forecast will be over 5 years. Future projections must include the following financial statements:
    - ✓ Balance Sheet
    - ✓ Income Statement
    - ✓ Statement of Cash Flows
  - Annual EBIT (Earnings Before Income and Tax) projection over 5 years
  - Schedule of all outstanding and planned debt over 5 years.  
The Commission may ask for documentation of the applicant's outstanding loans, including all loan agreements and security agreements.
  - Collateral documentation (applicable to applicants for loan/grant combination only): The applicant must list and identify all assets that will secure the loan. The applicant must also include a depreciation schedule that shows the economic life of each asset, equipment, and or facilities that is being used as a collateral for the loan only.
- b) Equity Requirement (applicable to applicants for loan/grant combination only): The applicant must demonstrate 20% of the loan amount equity requirement at the time of application and at loan closing. The applicant also must sustain the 20% equity requirement throughout the life term of the loan, e.g., 5 years.
- c) Times Interest Earned Ratio Requirement (applicable to applicants for loan/grant combination only): An applicant must meet the minimum TIER of 1.5 through the life term of the loan.

**Formula: TIER = (EBIT / Interest Expense)**

- d) Additional Financial and/or Other Documents (if needed): If the financial evaluation requires more information from the applicant, the CD and/or the partnering agency servicing and underwriting the loan will request such additional information (e.g. tax returns).

## **B. Application Requirements**

The Commission will adopt the current Grant Account application requirements checklist for the Loan Account, but modify it to include the financial requirements set forth above. The application must contain all the documentation/information required in the checklist to be

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considered a completed application. The Commission will set forth the application checklist as part of the Grant Account modifications in this decision.

### **C. Application Review and Evaluation**

CD will check all submitted applications for completeness, evaluate the applicant and project eligibility, and review a company's financial position. The Commission will adopt one set of scoring criteria for both the Broadband Grant Account and Loan Account. However, applicants applying for a loan will need to meet the two supplemental financial requirements set forth above: (1) an equity requirement of 20% and (2) a minimum TIER of 1.5. The Commission will use the proposed Grant Account scoring criteria and modify those criteria to include one more criterion: **Financial Position**. The Commission will reset the weight points to accommodate this additional criterion. A company's financial position will be based on the average projected **EBIT (Earnings Before Interest & Taxes)**<sup>105</sup> over five years. The Commission will set forth the scoring criteria as part of the Grant Account modifications in this decision.

If the loan applicant satisfies CD's initial evaluation, CD will forward the application to the partnering agency to conduct the detailed financial evaluation and issue a recommendation of the applicant's financial viability back to CD. Upon receipt of the recommendation, CD will determine if the loan should be approved. If CD determines that the loan should be approved, CD will recommend the approval of the loan to the Commission through the resolution process. If CD determines that the loan should not be approved, CD will send a rejection letter to the applicant explaining the reasons for the rejection. CD will reject the application as a whole, including the request for grant funding. The applicant however, can re-apply as a "Grant Only" applicant within the pre-set application windows set by the Commission; CD will process this "Grant Only" application as a new application for review.

### **D. Transparency and Public Notice**

In efforts to increase transparency and provide public notice in the application process, the Commission will modify the applicant information that is posted on the CASF website for the Broadband Infrastructure Grant Account. The Commission will post the same information for the Loan Account that is adopted for the Grant Account. The Commission will set forth the changes as part of the Grant Account modifications in this decision.

### **E. Loan Terms**

A direct, fixed rate loan will be available under the Broadband Infrastructure Revolving Loan Account. The Loan Account **will not** be considered a "lender of last resort". The term

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<sup>105</sup> EBIT is an indicator of a company's profitability and is also often referred to as operating income.

$$\text{EBIT} = \text{Revenue} - \text{Operating Expenses}$$

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“lender of last resort” typically applies to an agency that finances very risky loans and tends to attract financially unviable entities. In efforts to mitigate the high risk, the lender of last resort generally charges a higher interest rate to the total loan amount. The objective of the CASF Loan Account is to be a source of supplemental financing to eligible CASF projects to extend broadband infrastructure service to areas that do not have broadband service or have inadequate service based on the unserved and underserved definitions set forth in the program. An applicant who has any previous outstanding CASF loans will be able to apply for a new loan as long as all outstanding CASF loans are current and in good standing. The loan terms are as follows:

**1. Grant/Loan Combination Funding Percentages**

If an entity applies for a grant and a loan combination, the total combination of the loan/grant funds should not exceed 80%-90% of the project’s total cost. Applicants need to cover a minimum of 10%-20% of the total project cost on their own (i.e., with funds outside CASF). The current grant amount for CASF is 40% of the project’s total cost. The CASF grant amount will cover up to 60%-70% of an eligible project’s total cost depending on whether the project is for unserved or underserved areas, allowing for a loan to cover 20% of the total project budget. Requiring applicants to self- cover 10% -20% of the total project cost will help ensure that the Commission is loaning funds to applicants who are serious about their broadband project investment and long-term commitment to manage the infrastructure built. The following breakdown of CASF grant and loan funding will apply for unserved and underserved areas:

**a. Unserved Areas -**

| <u>Grant</u><br>(% of total project cost) | <u>Loan</u><br>(% of total project cost) | <u>CASF Total Funding</u><br>(grant + loan) | <u>Self-funding</u><br>(% of total project cost) |
|---|--|---|--|
| 70%                                       | 20%                                      | 90%   | 10%  |
| 0%  | 0%                                       | 70%   | 30%  |

If applicant does not apply for a .

**b. Underserved Areas -**

| <u>Grant</u><br>(% of total project cost) | <u>Loan</u><br>(% of total project cost) | <u>CASF Total Funding</u><br>(grant + loan) | <u>Self-funding</u><br>(% of total project cost) |
|---|--|---|--|
| 60%                                       | 20%                                      | 80%   | 20%  |
| 60%                                       | 0%                                       | 60%   | 40%  |

If applicant does not apply for a

**2. Interest Rate**

In reviewing existing revolving loan programs, interest rates on loans vary by agency and programs. Public Utility Code Section 281 (e) requires the Commission to periodically set interest rates on the loans based on surveys of existing financial markets. CD staff researched



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the following financial indices to determine what interest rates should be adopted for the loans:

- U.S. Prime Rate<sup>106</sup>
- U.S. Treasury securities for obligations of comparable maturity (i.e. 20-year constant maturity)

CD Staff undertook a side-by-side comparison from the last 30 years of these financial indices to recommend a stable, fair, and competitive interest rate for the Broadband Infrastructure Revolving Loan Account. The Prime Rate, as reported by the Wall Street Journal's bank survey, is the most commonly used financial indicator in setting rates on commercial loans. The Prime Rate has been low in recent years due to the Country's economic environment. In 2007, the Prime Rate peaked at 8.05% and has been dropping annually to 5.09% in 2008, and 3.25% in 2009 – April 2011<sup>107</sup>. The **U.S. Prime Rate** will be the fixed set interest rate used on CASF loans to offer applicant(s) a fair and competitive rate. The current U.S. Prime Rate is set at **3.25%** (and has been for the last two years). It will provide a fair, competitive rate to applicants. Pursuant to P.U. Code section 281(e), the Commission will periodically analyze the interest rate on new loans it approves, but will not change the rate of existing and/or already approved loans.

### **3. Loan Duration**

Setting a fixed repayment period on the loan requires an understanding of the average life of broadband technology. The loan repayment period will be **5 years** since 5 years provides a sufficiently long term for repayment while remaining within the range of the economic life of the equipment being funded, as set forth in Attachment A. (Attachment A shows the useful life of broadband technology such as broadband switching equipment and networks). Setting a repayment period of more than 5 years will deplete funds from the account due to a longer duration of administrative costs to service the loan. A longer repayment period also means that those funds are not available to the Commission to lend to other applicants. In other words, if borrowers repay its loans in a reasonable amount of time, those funds will then become available to finance other projects. If a borrower wants a repayment period of less than 5 years, the loan agreement will reflect that agreed-upon repayment period.

### **4. Loan Amount Maximum and Minimum**

Based on historical data from the original CASF Broadband Infrastructure Grant Account, the minimum grant approved by the Commission was \$2,420 with a maximum grant approved for \$19,294,717. The range is wide on how much money a project requests. The

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<sup>106</sup> U.S. Prime Rates as specified in the Wall Street Journal

<sup>107</sup> Time Period: 2009 – April 2011 Prime Rate has been constant at 3.25%

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Broadband Infrastructure Revolving Loan Account is expected to collect a maximum of **\$3,000,000 per year** over 5 years, totaling **\$15,000,000**. Based on these assumed set amounts, the maximum amount of a single loan is capped at \$500,000. This cap will allow for multiple applicants to access funds from the loan account and avoid the situation of one loan depleting all or most of the account's available funds. If and when the Loan Account grows, CD staff will revisit the currently set maximum loan amount and recommend resetting it as appropriate, subject to Commission approval.

### **5. Loan Security**

The Commission will require collateral, such as equipment assets, as security for the loan. The loan must be 100% secured. As part of the application, the Commission will require a collateral document that lists all assets that will secure the loan. The applicant must also submit a depreciation schedule that shows the economic life of each asset, equipment, and facility that is being used as collateral for the loan amount. The Commission may require the borrower to execute a security agreement with the Commission.

As a general rule, the collateral identified as security for the CASF loan must not be used as collateral for any other outstanding or future loan. However, we acknowledge Small LECs' concern that they rely extensively on loans from the United States Department of Agriculture's Rural Utilities Service (RUS), and that RUS requires its borrowers to secure RUS loans with all of the borrower's telephone company assets. Therefore, we set forth this exception to the general rule above: we will allow CASF loan account applicants to use as collateral assets already used to secure a RUS loan or loans, as long as (1) the total amount borrowed/to be borrowed -- that is, the amount of the outstanding RUS loan(s) plus the amount of the potential CASF loan -- does not exceed the total value of the assets encumbered, and (2) the Commission is able to and does enter into an agreement with RUS<sup>108</sup> where both RUS and the Commission have a first lien position on all identified collateral based on the amounts of each loan. The depreciation schedule that shows the economic life of each asset, piece of equipment, and facility that is being used as collateral for the CASF loan amount must show (1) the value of each asset that is used to secure the RUS loan(s) and (2) the value used to secure the potential CASF loan. We remind applicants that, as a general rule, the CASF loan can be secured by the assets purchased with the CASF loan funds as well as all other assets that are not used as collateral for other loans.

### **6. Loan Closing**

Once the Commission approves a loan via a resolution, the borrower must sign a loan agreement<sup>109</sup> that contains all the terms and conditions of the loan. If the required parties do not

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<sup>108</sup> RUS in the past has been able to accommodate other lenders and entered into a shared security arrangement.

<sup>109</sup> The Borrower will be required to sign a formal document that evidences the loan (hereinafter the "loan agreement").

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sign a loan agreement, the Commission will not execute the loan and will revoke the loan offer. The borrower cannot withdraw funds without a signed loan agreement in place.

### **7. Loan Funds Disbursement**

Once the Commission approves a loan via a resolution and the required parties sign the loan agreement, loan funds will be made available to the borrower based on a set **withdrawal schedule**. The withdrawal schedule will contain up to 4 payment windows based on the project's key milestones and generated in collaboration with the borrower. The withdrawal schedule containing the dates of the payment windows will be part of the loan agreement. The borrower must submit a withdrawal request form<sup>110</sup> to CD **two weeks prior to each set payment window** for CD's review and approval. If CD has any concerns regarding the progress of the project, such as a high risk of the borrower being unable to continue or complete the project, CD will not release the remaining loaned funds to the borrower. All projects must be completed and loans fully disbursed within 2 years from application approval.

### **8. Loan Funds Repayment**

The borrower will make all payments on the loan on a monthly basis as detailed in the signed loan agreement document. Repayment can begin as soon as funds are withdrawn by the borrower, but no later than the next immediate month following the withdrawal of any funds. A monthly repayment allows for simpler administration of all loans with outstanding balances since CD staff will know exactly when all loans are due and when late fees apply. A monthly repayment also allows for funds to revolve at a faster pace and become available for re-lending to future applicants. Repayment will include interest plus principal amortized over the term of the loan; i.e. 5 years. Interest will begin accruing when the first withdrawal of funds is made. Any subsequent withdrawals will be added to the balance due of the loan and subsequently amortized over the remaining term of the loan. If repayments are not received as specified in the loan agreement, a late payment charge will be added to the amounts due under the terms of the loan. A loan can be repaid in full or at an accelerated rate during the set loan terms; no prepayment penalty will apply.

### **9. Loan Default**

The borrower, CD staff, and the partnering agency servicing the loan will work together to discuss any issues that occur throughout the life-term of the loan. In the event of default by the borrower, e.g. non-payment or bankruptcy, the Commission may pursue all available legal remedies. In addition, the Commission may decide to take further action including (1) terminating any future funding of existing grants and/or loans and/or (2) deeming the applicant ineligible for future grant and loan funding.

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<sup>110</sup> Attachment C - CASF Broadband Infrastructure Revolving Loan Account Funds Withdrawal Form

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**10. Loan Servicing**

CD staff will conduct the technical project eligibility review of applicants but will require a partnering agency (with the staff and tools in place for lending) to perform the financial eligibility review and loan servicing piece. It is expected that a reasonable application fee and/or other fees will be charged to loan applicants. The application fee could be a fixed amount or a small percentage of the loan amount the applicant is seeking. The Commission will propose and approve fees associated with a loan application via a resolution. If the Commission does not approve the application, the application fee will not be reimbursed.

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**ATTACHMENT A – Estimated Useful Life of Equipment  
Broadband USA – Technology Useful Life Schedule Fact Sheet**

| Category                     | Type   | Estimated Useful life  |
|------------------------------|--|--|
| Buildings                    | ■ Construction of new buildings, prefabricated buildings, or concrete pads   | ■ 20 years   |
|                              | ■ Modification, rehabilitation, or outfitting of existing buildings  | ■ 15 years   |
| Outside Plant                | ■ Aerial coaxial plant, aerial copper plant, aerial fiber plant, buried copper plant, buried coaxial plant, buried fiber plant, underground plant, taps, amplifiers, drops, NIDs, etc.   | ■ 20 years   |
| Towers and Poles             | ■ Construction of new towers or poles or modifications of existing towers or poles   | ■ 20 years   |
|                              | ■ Emergency power generation equipment at tower site   | ■ 10 years   |
| Network and Access Equipment | ■ Broadband switching equipment, broadband routing equipment, broadband transport equipment, network broadband access equipment (e.g., CMTSs, DSLAMs, Radio Network Controllers, etc.), wireless base stations, antennas, emergency power supply equipment | ■ 10 years   |
| Operating Equipment          | ■ Billing/Operations systems   | ■ 10 years   |
|                              | ■ Office furniture and fixtures  | ■ 10 years   |
|                              | ■ Work equipment and vehicles  | ■ Five years for non-construction related motor vehicles; 10 years for work-related motor vehicles |
| Customer Premise Equipment   | ■ Customer broadband access equipment (e.g., cable modems, DSL modems, wireless modems, etc.), general purpose computers and peripheral equipment, office machinery  | ■ Five years   |

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**ATTACHMENT B – CPUC Rules of Practice and Procedure Specific Sections**

**(Rule 2.4) CEQA Compliance**

(a) Applications for authority to undertake any projects that are subject to the California Environmental Quality Act of 1970, Public Resources Code Sections 21000 et seq. (CEQA) and the guidelines for implementation of CEQA, California Administrative Code Sections 15000 et seq., shall be consistent with these codes and this rule.

(b) Any application for authority to undertake a project that is not statutorily or categorically exempt from CEQA requirements shall include a Proponent's Environmental Assessment (PEA). The PEA shall include all information and studies required under the Commission's Information and Criteria List adopted pursuant to Chapter 1200 of the Statutes of 1977 (Government Code Sections 65940 through 65942), which is published on the Commission's Internet website.

(c) Any application for authority to undertake a project that is statutorily or categorically exempt from CEQA requirements shall so state, with citation to the relevant authority.

Note: Authority cited: Section 1701, Public Utilities Code.

**ATTACHMENT C – Funds Withdrawal Form**

CASF Broadband Infrastructure Revolving Loan Account

|  |  |
|--|--|
| <b>Date</b>  |  |
| <b>Borrower's Name / Organization</b>  |  |
| <b>Contact Information (address, phone number, email address)</b>  |  |
| <b>Resolution # Loan Awarded Under</b>   |  |
| <b>Total Loan Amount Awarded (\$)</b>  |  |
| <b>Requested Withdrawal Amount (\$)</b>  |  |
| <b>Withdrawal Payment Window # (1, 2, 3, or 4)</b>   |  |
| <b>Initial Withdrawal: Describe Specific Planned Project Activities for this Funding Withdrawal Window</b>   |  |
|  |  |
| <b>Subsequent Withdrawals: (A) Describe Specific Actual Project Activities and Describe Your Reasons for any Variance From the Previous Withdrawal Window Planned Activities (B) Describe Specific Planned Project Activities for this Funding Withdrawal Window</b> |  |

**Funds Withdrawal Form**

**(END OF APPENDIX 2)**

## **APPENDIX 3**

Staff Research



# Memorandum



**Date:** November 8, 2013

**To:** Administrative Law Judge Anthony Colbert

**From:** Communications Division – California Advanced Services Fund Program Staff

**File No:** N/A

**Subject:** Rulemaking 12-10-012 – Construction Phase Performance Bond and Post-Construction Phase Compliance Bond

## **Purpose:**

This memo provides Communication Division staff’s findings and conclusions from its independent research regarding the feasibility of imposing a post-construction phase compliance bond requirement on entities that are non-CPCN/WIR holders receiving a California Advanced Services Fund (CASF) grant as initially proposed in the March 18, 2013 ALJ ruling soliciting additional comments on Order Instituting Rulemaking (OIR) R.12-10-012.

## **Background:**

On October 25, 2012, the California Public Utilities Commission (Commission) issued R.12-10-012 proposing to change the CASF eligibility rules to allow non-CPCN/WIR holders to apply for CASF grants and loans. The rulemaking considers what safeguards should be applied to non-CPCN/WIR holders given that they are not subject to the Commission’s regulatory authority.

Consequently, on March 18, 2013, the Commission issued a ruling soliciting additional comments on the issues identified in R.12-10-012 that included adopting a bifurcated bond requirement: a bond covering the construction phase of the project (performance bond) and a bond covering the post-construction phase of the project (compliance bond). The ruling also sought comments on how the Commission might structure the bifurcated bond requirement and whether it is necessary to require non-CPCN/WIR grantees to maintain a bond equal to the full amount of a CASF award once a funded project has been completed. Additionally, the ruling discussed the Commission’s reservations about requiring a post-construction phase compliance bond for the full amount of the CASF award due to past experience with unregulated American

Recovery and Reinvestment Act (ARRA) grantees that received CASF awards, which were unsuccessful in securing a similar bond. In opening and reply comments, several parties supported the idea of requiring a post-construction phase compliance bond in an amount less than the full CASF award. Comments received from parties, however, did not address how the Commission might structure a bifurcated bond requirement or if in fact an entity would be able to obtain such a bond from a surety company, regardless of the amount.

Due to concerns about whether entities could in fact obtain a post-construction phase compliance bond from a surety company, CD staff conducted independent research by reaching out to two surety companies to discuss the requirements of a post-construction phase bond. The surety companies have in the past engaged with unregulated ARRA grantees that received CASF awards to try to fulfill a similar bond requirement and therefore are somewhat familiar with the CASF program and its requirements.

### **Findings:**

One of the surety companies had successfully issued a construction phase performance bond for a CASF project so it had experience with the program and the type of entities that would be seeking a bond. The second surety company had attempted to issue a bond, but was unsuccessful. In separate meetings with representatives from both surety companies held in May 2013 and June 2013, they stressed the importance of clearly identifying the requirements that non-CPCN/WIR holders grantees receiving a CASF award must comply with both during the construction phase as well as the post-construction phase. CD staff then proceeded to identify the compliance requirements expected during each phase. See attachment A for a list of the compliance requirements.

After further discussions with staff and the first surety company, it became apparent that just identifying each specific compliance requirement would not be sufficient for a surety company to consider issuing a post-construction phase compliance bond. Since a CASF compliance bond would not be a standard type of bond, it is critical to identify the monetary value associated with the risk for a failure to meet each specific compliance requirement in order for a surety company to determine the feasibility of issuing such a compliance bond, no matter the grantee's financial soundness. The surety company would need to know the monetary valuation of its risk exposure in case the grantee does not comply with any of the post-construction compliance requirements covered by the bond. Calling the full amount of the bond (even though the post-construction bond can be set up to be less than the full amount of the CASF award) does not represent the monetary value of the risk for failing to meet a specific compliance requirement. For example, if a grantee fails to meet one of the compliance requirements, such as providing a report to the Commission, such failure should not constitute calling the full amount of the bond.

CD staff agrees that failure to provide a report to the Commission does not justify calling the full amount of the bond. However, staff is unable to identify a specific monetary value for failing to meet each identified requirements because CD staff does not have sufficient data to quantify what cost is associated with non-compliance for most of the requirements. CD staff also finds it inappropriate to identify a precise amount for violation of specific compliance

requirements because each project differs in amount and complexity. Thus, CD staff concludes that it may not be feasible for an entity to secure a post-construction compliance bond from surety companies, given the compliance requirements that we would like to impose during the post-construction phase. Estimating the monetary value of non-compliance associated with each requirement is difficult to undertake before the fact for purposes of securing a bond. If and when non-compliance occurs, estimating the monetary value of such non-compliance is best served for Commission consideration of facts specific to each situation, on a case-by-case basis within the context of each grantee or project, rather than a one-size fits all.

The above findings also apply to a number of compliance requirements during the construction phase of the project outside of actual project completion. Thus, a construction phase performance bond should only obligate the grantee to complete the project as set forth in its application as well as in the CASF award resolution. The Commission may reduce or withhold payment of the CASF award and/or impose penalties in accordance with P.U. Code Section 2111 for failure to meet all other construction phase compliance measures.

**Recommendation:**

CD staff therefore recommends the following language for the proposed decision:

1. Non-CPCN/WIR holders are required to submit to the Commission a construction phase bond (performance bond). The performance bond shall obligate the grantee to complete the project as set forth in its application for CASF funds and in the award Resolution. The Commission may reduce or withhold payment of the CASF award and/or impose penalties in accordance with P.U. Code Section 2111 for failure to meet all other construction phase compliance requirements.
2. Non-CPCN/WIR holders will not be required to submit to the Commission a post-construction phase bond (compliance bond).
3. In lieu of requiring a compliance bond, CASF rules for non-CPCN/WIR holders shall include language stating the following:  
*“If [Grantee Name] violates the terms and conditions of a CASF award or other program and project compliance requirements, it shall be subject to Public Utilities Code Section 2111. The Commission may impose penalties for failure to meet the program and project compliance requirements.”*

CD staff believes that such language will allow the Commission to penalize non-CPCN/WIR grantees if they fail to meet the requirements of the program and/or project.

**ATTACHMENT A: COMPLIANCE REQUIREMENTS**

[Entity name] is required to comply with all the guidelines, requirements, and conditions associated with the grant of CASF funds as specified in D.12-02-015 and award Resolution T-#####. Such compliance includes, but is not limited to:

| Compliance Requirement                      | Construction Phase  | Post-Construction Phase  |
|---|---|--|
| California Environmental Quality Act (CEQA) | <p>All CASF grants are subject to CEQA requirements unless the project is statutorily or categorically exempt pursuant to the CEQA Guidelines.</p> <p>If the project is not exempt from CEQA, the applicant must provide the Proponent’s Environmental Assessment (PEA) prior to the first 25% payment. The PEA submission should include information on any land crossing sites requiring discretionary or mandatory permits or environmental review pursuant to CEQA (including the type of permit required, the name of the permitting agency/agencies and the Lead Agency if an environmental review is required). Also, the applicants must also agree to identify, prior to the first 25% payment, any other special permits required with a reference to the government agencies which grants these permits.</p> | None   |
| Deployment Schedule                         | <p>The Commission expects applicants to complete the project within 24 months from the start date. If the applicant is unable to complete the proposed project within the 24-month timeframe requirement established by the Commission, it must notify the CD’s Director as soon as it becomes aware of this prospect. The Commission may reduce payment for failure to notify CD’s Director and timely complete the project.</p> <p>Note: If the applicant states in its application that the project will be completed in less than 24 months, the applicant must complete the proposed project within that timeframe.</p>  | None   |
| Execution and Performance                   | CD and the CASF grant recipient shall determine a project start date after the Commission has granted all approvals to  | CASF grant recipient shall carry out the plan submitted as part of its application that encourages adoption of the |

| Compliance Requirement                  | Construction Phase   | Post-Construction Phase   |
|---|--|---|
|   | <p>the CASF grant recipient. Should the recipient or Contractor fail to commence work at the agreed upon time, the Commission, upon five days written notice to the CASF recipient, reserves the right to terminate the award.</p> <p>In the event that the CASF recipient fails to complete the project in accordance with the terms of approval granted by the Commission, the CASF recipient must reimburse some or all of the CASF funds that it has received.</p> <p>The CASF grant recipient must complete all performance under the award on or before the termination date of the award.</p> | <p>broadband service the proposed project area(s). The plan includes the total number of households in the project area, the number of households the applicant estimates will sign up for the service (the take rate), the marketing or outreach plans the applicant will employ to attract households to sign up for the service.</p>                                 |
| Performance Bond                        | All non-CPCN holders are required to issue a construction phase performance bond for the full amount of the CASF award for completion of the project   | None.   |
| Price Commitment Period                 | None   | <p>The minimum required price commitment period for broadband service to all households within the project area is two years.</p> <p>Note: If the applicant states in its application that their price commitment will be higher than the minimum CASF requirement of two years, the applicant must uphold to its higher timeframe price commitment.</p>                |
| Project Audit                           | <p>The Commission has the right to conduct any necessary audit, verification, and discovery during project implementation/construction to ensure that CASF funds are spent in accordance with Commission approval.</p> <p>The recipient's invoices will be subject to a financial audit by the Commission at any time within three years of completion of the work.</p>  | <p>The Commission has the right to conduct any necessary audit, verification, and discovery during project implementation/construction to ensure that CASF funds are spent in accordance with Commission approval.</p> <p>The recipient's invoices will be subject to a financial audit by the Commission at any time within three years of completion of the work.</p> |
| Providing Voice Service (if applicable) | None   | If the grantee is providing voice service in the project area, it must meet the FCC standards for E-911 service and battery   |

| Compliance Requirement             | Construction Phase  | Post-Construction Phase  |
|------------------------------------|---|--|
| Reporting                          | <p>Grantees must submit quarterly progress reports on the status of the project irrespective of whether grantees request reimbursement or payment. Before full payment of the project, the CASF recipient must submit a project completion report. Progress reports shall use both the schedule for deployment, major construction milestones and costs submitted in the proposals; indicate the actual date of completion of each task/milestone as well as problems/issues encountered, and the actions taken to resolve these issues/problems during project implementation and construction; and identify future risks to the project. Recipients shall also include test results on the download speed and upload speeds on a CBG and zip code basis in the final completion report. Recipients must certify that each progress report is true and correct under penalty of perjury.</p> | <p>backup.</p> <p>Grantees shall submit a response to all CD staff data request(s) post-construction. Such requests may include how many households within the proposed project area have subscribed to the project's deployed broadband service.</p>  |
| Submission of Form 477             | None  | <p>The Federal Communications Commission (FCC) currently requires broadband providers to biannually submit the Form 477, which includes speed data. While there is an imperfect match between the data that is reported in the Form 477 and to the CASF, Form 477 data will be useful in documenting CASF deployment for the new service area of the carrier. CASF recipients shall submit a copy of their Form 477 data directly to the Commission, under General Order 66-C, when they submit this data to the FCC for a five-year period after completion of the project.</p> |
| Sale or Transfer of Company Assets | <p>Grantees must notify the Commission within five days of becoming aware that the company is planning to sale or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division (CD) in writing of their intent to sale or transfer company assets and seek approval for the CASF award to be carried out and deployed by the new entity. The grantee shall provide</p>  | <p>Within 3 years from project completion, grantees must notify the Commission within five days of becoming aware that the company is planning to sale or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in writing of their intent to sale or transfer company assets within five days of becoming aware of these plans. The grantee shall</p>  |

| Compliance Requirement | Construction Phase   | Post-Construction Phase   |
|------------------------|--|---|
|                        | <p>the Commission with any necessary documents requested in its review of the transfer. This will include all documents that are generally required of all entities applying for CASF grants and loans. The grantee shall not transfer the built-out/deployment of the CASF award to the new entity prior to Commission approval via a Resolution. If the Commission does not provide approval, the grant or loan will be rescinded.</p> | <p>also provide documentation stating that the new entity will take full responsibility and ownership to meet the requirements and compliance of the CASF award. The new entity shall agree in writing to such.</p> |

**(END OF APPENDIX 3)**