

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband, Video and Market Branch**

**RESOLUTION T- 17515
June 9, 2016**

R E S O L U T I O N

RESOLUTION T-17515: Approval of funding for the public housing infrastructure grant applications of the Housing Authority of San Bernardino County (the Lynwood and North E St. projects), Community Housing Works (Northwest Manors II on E. Mountain St. and Northwest Manors II N. on Raymond Ave. projects), and Eden Housing, Inc. (Hayward Senior, Warner Creek, Jasmine Square, Monticelli, Rancho Park, Royal Court, Wheeler Manor 650 5th Street, Wheeler Manor 651 6th Street projects) from the California Advanced Services Fund (CASF) Broadband Public Housing Account (BPHA) Infrastructure Grant Program in the amount of \$239,793. Modifies D.14-12-039, Appendix B, delegating to CD staff the authority to approve applications through expedited review for properties that are wired.

I. SUMMARY

This Resolution approves grant funding in the amount of \$239,793 from the California Advanced Services Fund (CASF) Broadband Public Housing Account (BPHA) in response to the public housing infrastructure grant applications from the Housing Authority of the County of San Bernardino (HACSB) for its Lynwood and North E Street projects, Community Housing Works (CHW) for its Northwest Manors II projects, and from Eden Housing, Inc. (Eden) for its Hayward Senior, Warner Creek, Jasmine Square, Monticelli, Rancho Park, Royal Court, Wheeler Manor 650 5th Street Wheeler Manor 651 6th Street projects. These 12 projects will be capable of offering Internet service speeds of at least 6 mbps download and 1.5 mbps upload for 548 living units in these Publicly Supported Communities (PSCs). All 12 projects were challenged by two Internet Service Providers (ISPs) based on services already being available¹ to all units within the building. This Resolution denies these challenges and modifies the Expedited Review Criteria in D.14-12-039, Appendix B, delegating to CD staff the

¹Challenges are based on the grounds that an ISP already provides services at the PSC (the PSCs are “wired”).

authority to approve applications through expedited review for properties that are wired.

II. BACKGROUND

On October 3, 2013, Governor Brown approved Assembly Bill (AB) 1299. AB 1299 created the BPHA under CASF to support the deployment of broadband infrastructure and adoption programs in eligible publicly supported communities (PSC). Public Utilities (P.U.) Code § 281(f)(2) limits CASF Broadband Public Housing Account Funding to subsidized multi-family housing developments owned by either of the two following:

- 1) A public housing agency that has been chartered by the state, or by any city or county in the state, and has been determined an eligible public housing agency by the United States Department of Housing and Urban Development (HUD).
- 2) An incorporated nonprofit organization as described in Section 501 (c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that is exempt from taxation under Section 501 (a) of that code (16 U.S.C. Sec. 501(a)), and that has received public funding to subsidize the construction or maintenance of housing occupied by residents whose annual income qualifies as “low”-or “very low” income according to federal poverty guidelines².

On December 18, 2014, the Commission approved D.14-12-039 which implements the rules and guidelines for the BPHA including: eligibility and application requirements, types of activities and costs to be funded by CASF, criteria for expedited review approval of project applications by Communications Division (CD) staff, and quarterly deadlines for applications beginning January 15, 2015 through October 1, 2016. Key provisions of the decision relevant to this Resolution include:

- The Commission delegated to CD staff the authority to approve applications through expedited review that meet all of the expedited review criteria.³ Where an application does not meet the above expedited review criteria, it may still be considered for a grant but it must go through the traditional Commission Resolution approval process.

²P.U. Code § 281(h)(1)(B)(i) and (ii).

³D.14-12-039, CASF Broadband Public Housing Account Application Requirements and Guidelines, Appendix B, (“Guidelines” or “Appendix B”), p. B13. References hereafter may be a part of the Guidelines/Appendix B adopted by D.14-12-039.

- The Commission can award grants to finance up to 100 percent of the installation costs, but not maintenance or operation costs.

The Commission has approved projects where locations are “wired.”⁴ CD has also approved projects using the rules for expedited review where locations are “wired.” Additionally, CD has upheld challenges on similar grounds.⁵ According to D. 14-12-039,

A unit is “wired” for broadband Internet if it is possible to subscribe to a commercially available broadband Internet service, such as via Digital Subscriber Line (DSL), cable modem or another protocol, utilizing the existing “wired” facilities. A unit having such wiring is considered as having broadband service “available.” An “unwired property” has at least one unit that is not “wired.”⁶

The expedited review requirements are silent with respect to how a wired facility should be treated.⁷ Projects approved to date are typically low-cost Wi-Fi installations, which provide service at speeds as low as 1.5 Mbps down during peak hours. Such limited services are not comparable to commercially available ISP services that typically offer higher speeds. 29 of the 147 approved infrastructure projects utilized xDSL (wired) technology, which could replace a commercial ISP service offering.⁸ In addition, a few Wi-Fi projects have been approved for installation during building construction.

Nearly all public housing application locations received by CD to date are wired. Staff arrived at this conclusion based on descriptions of existing building wiring, staff review of project engineering documents and photos, and staff inspections of several urban public housing locations. A representative from the contractor Connected Community Solutions (the contractor for 63 of the approved 147 infrastructure projects) stated that only one of the 73 projects funded in 2015 utilizing his company’s services was

⁴ T-17506 “Approval of funding for the public housing infrastructure grant applications of Better Opportunity Builder (Brierwood project), Silvercrest Inc. (Pacific Gardens and Yosemite Village projects), Housing Authority City of Los Angeles (San Fernando Gardens project), and Self-Help Enterprises (Rancho Lindo, Rolling Hills and Solinas Village projects) from the CASF BPHA Infrastructure Grant Program in the amount of \$421,257,50.”

⁵ Of the 372 projects received, 54 were challenged by an ISP based on the grounds that an ISP already provides services at the PSC (the PSCs are “wired”). Two challenges were upheld on the grounds that the ISP provides service to existing customers and that the ISP can provide service to 100% of the units.

⁶ D.14-12-039, Appendix B.

⁷ D.14-12-039, Appendix B. P.U. Code section 281(h)(3) further states, “Not more than twenty million dollars shall be available to grants and loans to a publicly supported community to finance a project to connect a broadband network to that publicly supported community.” This section does not define the meaning of “to connect a broadband network” nor is it clear that this would limit the program only to the repair of inadequate wiring.

⁸ The public housing contractors have stated that their deployments do not interfere with the continued availability of pre-existing ISP services to residential units.

unwired, per the definition above. A representative from the contractor InnovativeIT (the contractor for 44 of the approved 147 infrastructure projects) stated that all of the projects submitted using their services were for wired buildings. The deployments funded through this program are dependent on the purchase of a digital circuit from an existing ISP which is already servicing the area.⁹ Additionally, following their projects being “challenged” by an ISP, applicants never stated that the locations could not be served by that ISP. Further, in response to a staff inquiry to an ISP of whether it could serve a sample of project locations reported to be “unwired,” the ISP indicated that it could indeed serve the locations and had existing customers within the building.

In sum, Public Housing projects approved to date are providing facilities grants to PSCs that allow them to offer residents limited broadband services at no charge despite the existing availability of commercial services within the building units.

III. APPLICANT REQUEST

On January 15, 2015, HACSB (Lynwood and North E Street projects) submitted applications for CASF funding. On October 1, 2015, CHW (Northwest Manors II projects at two locations) and Eden (Hayward Senior, Warner Creek, Jasmine Square, Monticelli, Rancho Park, Royal Court, Wheeler Manor 650 5th Street Wheeler Manor 651 6th Street projects) submitted applications for CASF funding.

Applicants: HACSB (established in 1941), is a public housing agency that administers 1,700 public housing units and 8,400 Housing Choice Voucher units.¹⁰ The agency serves up to 30,000 people and has a waitlist of 54,000 (for all major HACSB programs).¹¹ HACSB is participating in the HUD ‘Moving to Work’ program. This program allows public housing authorities to use federal funds to design and implement innovative strategies to help residents find employment and become self-sufficient.

CHW has been approved by the IRS as a 501(c)(3) nonprofit organization for providing affordable housing since 1992. CHW has over 2,400 rental apartments in 34 communities statewide, has a less than 1% vacancy rate and a wait list of 36,000.¹²

⁹ D.14-12-039, Appendix B, p. B14, which requires the applicant to identify its bandwidth source, either at the MPOE or its wireless equivalent.

¹⁰ Housing unit numbers provided by HUD. The housing choice voucher program is a federal government program which assists very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market.

¹¹ Number served indicated in the HACSB 2015 annual report (<http://ww2.hacsb.com/news-reports/annual-reports>); Waitlist number provided by HACSB Deputy Director Rishad Mitha.

¹² As indicated by the applicant through provided circulars and direct communication.

Eden has been approved by the IRS as a 501(c)(3) nonprofit organization for providing affordable housing since 1968. According to its 2014 Annual Report, Eden has a 1% vacancy rate and a wait list of 17,000.¹³ The 2014 report states that Eden has 1,963 homes that Eden has “built, acquired and preserved” for 5,260 low-income residents (and above).

Projects: HACSB requests funding for the installation of Ethernet over existing category 5 cable and includes equipment for broadband signal routing. HACSB will be building alternate facilities for the backhaul with outside funding.¹⁴ According to HACSB, this installation will be able to provide a minimum download speed of 6 mbps during peak use hours.

CHW requests funding for the installation of a low cost xDSL (wired) network that utilizes existing copper (inside) wiring and includes equipment for broadband signal routing.¹⁵ According to CHW, this installation will be able to provide a minimum download speed of 2 to 2.5 mbps during peak use hours.

Eden requests funding for the installation of a low-cost, wireless mesh WiFi 802.11n network architecture consisting of gateway routers and repeaters as wireless access points.¹⁶ According to Eden, this installation will be able to provide a minimum download speed of 1.5 mbps during peak use hours.

For both the WiFi and xDSL installations, CHW and Eden will be purchasing backhaul from existing ISPs such as Charter Communications (Charter) or Comcast Corporation (Comcast).

Pricing: HACSB will be providing broadband connectivity to residents at the cost of \$20 per month. Residents will have the opportunity to purchase greater bandwidth at a cost premium.¹⁷

¹³ Accessible on the Eden Housing website, <http://www.edenhousing.org/>.

¹⁴ Backhaul refers to the side of the network that communicates with the global Internet. In this situation, backhaul is provided by the contractor who will build out a point-to-point wireless system (not part of the grant) to deliver the backhaul to the property.

¹⁵ The installation of DSL may occur in buildings where there is existing DSL offered by an ISP. Such installation does not impact any existing service.

¹⁶ A mesh network is composed of small radio transmitters (nodes) that function in the same way as a wireless router. Nodes use a common WiFi standard (802.11n) to communicate wirelessly with end users and with each other. These nodes dynamically route communications from the end user to the gateway router, finding the shortest and safest route.

¹⁷ Contractor Greenfield Communications tier rates download/upload: Basic: \$20 per month 10 mbps/5 mbps; Intermediate: \$32.99 per month 15 mbps/10 mbps; Unlimited: \$40 per month 20 mbps/10mbps.

CHW and Eden will be offering the installed connectivity at no charge to residents.

III. NOTICES AND CHALLENGES

On February 2, 2015, CD posted a list of proposed projects on the Commission’s CASF Public Housing account webpage,¹⁸ and sent notices regarding the proposed projects to its email distribution list. CD staff received challenges to two HACSB projects from Charter. On October 8, 2015, CD posted a list of proposed projects and sent notices regarding the proposed projects to its email distribution list. CD received challenges from Charter for CHW’s two projects. CD also received challenges to Eden’s projects from Charter (six projects) and Comcast (two projects).

Table 1, below, lists the 12 projects challenged by the ISP.

TABLE 1. Challenged CASF Public Housing Account Projects

Applicant	Project	City and Zip Code	Units	Grant	Challenged By
Housing Authority of the County of San Bernardino	1470 Lynwood	San Bernardino 92404	15	\$8,960.34	CHARTER
Housing Authority of the County of San Bernardino	4181 North E Street	San Bernardino 92407	24	\$14,396.55	CHARTER
Community Housing Works	Northwest Manors II (Mountain)	Pasadena 91104	26	\$15,600.00	CHARTER
Community Housing Works	Northwest Manors II (Raymond)	Pasadena 91103	18	\$10,800.00	CHARTER
Eden Housing, Inc	Hayward Senior	Hayward 94541	60	\$24,375.00	COMCAST
Eden Housing, Inc	Warner Creek	Novato 94947	61	\$25,357.50	COMCAST
Eden Housing, Inc.	Jasmine Square	Morgan Hill 95037	72	\$28,028.50	CHARTER
Eden Housing, Inc.	Monticelli	Gilroy 95020	52	\$23,195.00	CHARTER
Eden Housing, Inc.	Rancho Park	Hollister 95023	54	\$24,194.50	CHARTER
Eden Housing, Inc.	Royal Court	Morgan Hill 95037	55	\$19,027.50	CHARTER
Eden Housing, Inc.	Wheeler Manor 650 5th	Gilroy 95020	21	\$10,150.50	CHARTER
Eden Housing, Inc.	Wheeler Manor 651 6th	Gilroy 95020	90	\$35,707.50	CHARTER

¹⁸ <http://www.epuc.ca.gov/General.aspx?id=908>

IV. PROJECT REVIEW

A. Project Eligibility

A PSC may be eligible for CASF BHPA grant funding only if it can verify to the commission that it has not “denied a right of access to any broadband provider that is willing to connect a broadband network to the facility for which the grant or loan is sought.”¹⁹ HACSB, CHW and Eden state that they have not denied an ISP access to its property to provide broadband Internet service and no ISP challenged this statement.

Challenges: Challenges submitted were based on services already being available within the building (the PSCs are already “wired”). Charter and Comcast have provided documentation that services are available to 100 percent of residents in these challenged properties. They have submitted the number of customers living on the property that subscribe to their service, billing documents and speed tests to prove that they provide residents broadband Internet services at speeds equal to or greater than what the applicants propose to provide. They submitted documentation to show that an average of 25% of the residents in the project locations listed in Table 1 subscribe to available ISP services.

HACSB, CHW and Eden responded to the challenges. They asserted that although the units may have wiring to support broadband Internet service, residents do not subscribe to that service because they cannot afford the services.

B. Project Criteria Evaluation

D.14-12-039 delegates to staff the authority to approve applications under the BPHA that meet all expedited review criteria. CD evaluated these projects with respect to the expedited review criteria as defined in D.14-12-039 and listed below:

- Applicant meets the eligibility requirements under P.U. Code § 281 (f)(2).
- Applicant declares that it has not denied an ISP access to its property to provide broadband Internet service and no ISP challenged this statement; if an ISP challenged an application alleging it was denied access to a PSC, CD staff determined the denial was reasonable.
- Applicant requests a grant of less than \$75,000 in CASF Housing Account infrastructure grant funds per project.

¹⁹ P.U. Code § 281(h)(3).

- For projects connecting 51-100 PSC units, proposed project costs \$450 per unit or less.
- For projects connecting 101 PSC units and more proposed project costs \$300 per unit or less.
- The buildings included in the application meet standards for acceptable basic living conditions as determined under HUD's Uniform Physical Condition Standards or similar guidelines provided by other housing funding agencies in the State.
- Existing property infrastructure requires no significant upgrades to install wiring, equipment and other electronics funded under this grant
- Applicant expects property to be in residential use for at least the next 10 years.
- Property qualifies for an exemption pursuant to CEQA Guidelines § 15300.2.
- For wireless networking projects, equipment will at least meet the 802.11n standard.
- Applicant attests it will operate and maintain project equipment and technology for at least five years after completion and that it has sufficient funds and warranty to do so, including replacing equipment as needed, and a maintenance agreement and budget have been submitted.
- Proposed project network is capable of offering residents Internet service speeds of at least 6mbps downstream/1.5mbps upstream which is supported with appropriate documentation.
- Applicant commits to provide residents with minimum download speeds of 1.5 mbps per unit, during average peak utilization periods, subject to reasonable network management practices.
- Residents will be charged no more than \$20 per month for Internet service.
- Applicant has signed an affidavit agreeing to abide by Commission rules of practice and procedure; P.U. Code §§ 2111 and 2108; and to quarterly reports and submission of annual recertification/audit documents.
- Applicant agrees to complete project within 12 months.
- Applicant has identified its bandwidth source, either at the MPOE or its wireless equivalent.
- Applicant agrees to secure project funded hardware to prevent theft and vandalism.²⁰

All projects meet the 18 expedited review requirements.

²⁰ D.14-12-039, Appendix B, pp. B13-14.

C. Wired/Existing Broadband Service and Challenges

The rules governing applicant eligibility under the BPHA are in P.U. Code Section 281(h)(2), which states, “moneys in the BPHA shall be available for the commission to award grants and loans pursuant to this subdivision to an eligible publicly supported community if that entity otherwise meets eligibility requirements and complies with program requirements established by the commission.” Section 281(h)(3) further states that a PSC may be eligible for CASF BHPA grant funding only if it has not “denied a right of access to any broadband provider that is willing to connect a broadband network to the facility for which the grant or loan is sought.”²¹ P.U. Code Section 281(h)(3) is, however, silent with respect to whether the PSC is [wired] or whether denial of access is the only basis for Public Housing challenges.

As discussed above, D.14-12-039 delegates to staff the authority to approve applications under the BPHA that meet all expedited review criteria. D.14-12-039 is consistent with Section 281(h)(3), stating that the applicant declares that it has not denied an ISP access to the property to provide broadband service, and no ISP has challenged this statement. D.14-12-039 is also consistent with the statute to the extent that it is silent with respect to staff’s delegated authority for purposes of approving projects that are wired under expedited review.

Nearly all public housing application locations, however, are wired (see above). Furthermore, in almost all application locations, an existing ISP needs to be servicing the area with sufficient capacity in order for the PSC to acquire its bandwidth source since all public housing project applications are for inside wiring or WiFi only.

CD further notes that Section 281 and D.14-12-039 lack clear guidance with respect to challenges to applications under the BPHA.²² Specifically, D.14-12-039 merely provides that ISPs have two weeks to challenge applications. CD notes that while it made a recommendation in the Final Staff Report to consider whether the PSC is wired as a basis for challenging an application, D.14-12-039 did not adopt the Final Staff Report.²³

²¹ P.U. Code § 281(h)(3)

²² P.U. Code § 281(h)(3); D.14-12-039, Appendix B, p. B13.

²³ CD staff released its Final Staff Report Proposing Rules to Implement Program Changes to the California Advances Services Fund Initiated by AB 1299 in September 2014. (D.14-12-039, Attachment A.) The Final Staff Report further proposed a challenge process for BPHA for provider claims that they already provide access to the property in question; however, D.14-12-039 did not adopt this recommendation. In D.14-12-039, the Commission adopted the Guidelines, which further amend the Final Staff Report and which represent requirements for eligibility under the BPHA.

In fact, the only basis for a challenge to the applicant's eligibility indicated in D.14-12-039 and in Section 281 is a denial of access.²⁴ The rules do not describe any other challenge process, nor do they indicate that a "wired" facility should be treated any differently than an unwired facility.²⁵

Therefore, this Resolution presents an opportunity for the Commission to address whether staff has the delegated authority to approve applications via expedited review for buildings that are wired. This Resolution further presents the Commission with the opportunity to address the public housing challenge process, and whether a denial of access is the only basis on which an application can be challenged under the BPHA.

In approving this Resolution, the Commission modifies Appendix B, Section VII (Expedited Review), to add the following to the list of criteria: "Property the application proposes to serve is wired as defined in Section III or unwired", which if met, allows CD staff to approve an application via Expedited Review.²⁶

Based on the above discussion, CD recommends approval of the projects listed in Table 1 (despite all projects to be completed in wired facilities) and a denial of the ISP challenges since all listed projects meet the requirements of the expedited review and all challenges provided were not supported in D.14-12-039 or in P.U. Code Section 281(h).

D. Staff Recommendation for Funding

CD has determined that these projects qualify for funding. Further, CD's evaluation of these projects finds that they meet the requirements of D.14-12-039, and supports the deployment of broadband infrastructure in eligible PSCs.

V. COMPLIANCE REQUIREMENTS

HACSB, CHW and Eden are required to comply with all the guidelines, requirements, and conditions associated with the grant of CASF funds as specified in D.14-12-039. Such compliance includes, but is not limited to the following:

²⁴ P.U. Code § 281(h)(3); D.14-12-039, Appendix B, p. B13.

²⁵ CD notes that Section 281(b)(2) states "In approving infrastructure projects, the commission shall give priority to projects that provide last-mile broadband access and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area..." CD distinguishes this provision from the BPHA, and acknowledges there is specific criteria set forth for the BPHA that differs from the statute as a whole. (Section 281(h)(3).) CD further believes that Section 281(b)(2) does not apply to the BPHA nor does it serve as a basis to challenge an application given that the BPHA does not include projects that provide last mile broadband access to households that are unserved, and the actual levels of broadband service in the project areas are lower than levels required for other accounts.

²⁶ D.14-12-039, Appendix B, pp. B 13-14.

A. California Environmental Quality Act (CEQA)

All CASF grants are subject to CEQA requirements unless the projects are statutorily or categorically exempt pursuant to the CEQA Guidelines.

All 12 projects require limited modifications of existing structures. The HACSB and CHW projects require the installation of network switching and routing equipment in existing structures and use existing wiring. Such inside wiring may be replaced if found deficient. The Eden projects are based on a mesh WiFi 802.11n wireless network architecture consisting of ISP Modem, network switching and routing equipment and wireless access points. This requires installation/mounting of equipment in existing structures such as rooftops.

Based on the above information, these projects meet the criteria of the CEQA categorical exemption for existing facilities (CEQA Guidelines § 15301) and CEQA Guidelines Section 15303 – New Construction or Conversion of Small Structures, involving construction, installation, and/or conversion of limited numbers of new and/or existing facilities/structures.

B. Execution and Performance

HACSB, CHW and Eden must complete all performance under the award on or before 12 months from the date this Resolution is approved. If they are unable to complete the proposed projects within the 12 month time frame requirement, they must notify the Director of CD as soon as they become aware of this possibility. If such notice is not provided, the Commission may reduce payment for failure to satisfy this requirement by timely notifying CD's director.

In the event that the recipient fails to complete the performance in accordance with the terms of the CPUC approval, as set forth in this Resolution, the recipient shall reimburse some or all of the CASF funds it has received.

C. Project Audit

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.²⁷

²⁷ P.U. Code § 270.

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

D. Reporting

HACSB, CHW and Eden must submit quarterly progress reports on the status of the project irrespective of whether grantees request reimbursement or payment. Quarterly progress reports should be submitted on January 1, April 1, July 1 and October 1. Before full payment of the project, the recipient must submit a project completion report. HACSB, CHW and Eden must also identify foreseeable risks that might prevent it from meeting future milestones. HACSB, CHW and Eden shall also include speed test results in its completion report. HACSB, CHW and Eden must certify that each progress report is true and correct under penalty of perjury.

HACSB, CHW and Eden are required to maintain the broadband network for five years after it has been installed. After installation, for a five year period, they must also submit quarterly reports showing the percentage of up time, the number of unique log-ons (either by individuals or by units) and the amount of data used.²⁸

E. Payments

Submission of invoices from and payments to HACSB, CHW and Eden shall be made at completion intervals in accordance with Section X of Appendix B of D.14-12-039 and according to the guidelines and supporting documentation required in D.14-12-039. As referred to in Section X, payment to HACSB, CHW and Eden will be on a progress billing basis with the first 25 percent to be made upon the proponent's submission to the Commission staff of a progress report showing that 25 percent of the total project has been completed. Subsequent payments shall be made on 25 percent increments showing completion at 50 percent, 75 percent, and 100 percent. HACSB, CHW and Eden must submit a project completion report before full payment.

Payment to HACSB, CHW and Eden shall follow the process adopted for funds created under P.U. Code 270. The Commission generally processes payments within 20-25 business days, including CD and Administrative Services review. The State Controller's Office (SCO) requires an additional 14-21 days to issue payment from the day that requests are received by SCO from Administrative Services.

²⁸ D.14-12-039, Appendix B, p. B15.

VI. SAFETY CONSIDERATIONS

The deployment of affordable broadband in public housing will improve access to government and e-health services, which improves safety.

VII. COMMENTS

In compliance with P.U. Code Section 311(g)(1), a Notice of Availability was e-mailed on May 6, 2016, informing all parties on the CASF Distribution List and parties of record in the underlying proceeding, R.12-10-039, of the availability of the draft of this Resolution for public comments at the Commission's website at <http://www.cpuc.ca.gov/> and is available for public comments. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at this same website.

Opening comments, due by May 24, 2016, were submitted by Eden, the Non-Profit Housing Association (NPH), the California Emerging Technology Fund (CETF), the Southeast Community Development Corporation (SCDC) and Charter. CD also received late-filed comments from Southern California Association of NonProfit Housing (SCANPH).²⁹ Eden submitted reply comments, due May 30, 2016.

The comments and reply comments are discussed below.

Opening Comments

Eden, NPH, CETF and SCDC

Eden, NPH, CETF and SCDC supported the draft resolution. They noted that the only basis for a challenge to the applicant's eligibility indicated in D.14-12-039 (expedited review requirements) is a denial of access and agreed that the expedited review requirements are silent with respect to how a "wired" facility should be treated. For example, NPH stated:

"Challenges submitted were based on the grounds that an ISP provides services at the properties (they are "wired"), but the expedited review requirements do not state how a wired facility would be treated and the law does not say a wired property should be disqualified. According to the law, the only reason for

²⁹ SCANPH supported the draft resolution but its comments were not served on the CASF Distribution List.

disqualification would be if a housing organization has denied access to an ISP without a justifiable cause.”³⁰

Eden, NPH, CETF and SCDC also explained that all 12 projects meet the expedited review requirements and therefore should qualify for funding.

Additionally, Eden, CETF and SCDC stated that the majority of publicly-subsidized property residents do not subscribe to the existing internet service for three reasons:

1. Residents cannot afford the market price;
2. Discounted internet programs have a narrow eligibility; and
3. The process is often difficult.

They further explained that housing organizations do not intend to replace existing broadband infrastructure. For instance, CETF noted:

“There is a critical need to connect residents of publicly-subsidized properties to high-speed Internet and provide them with resources they need to adopt technology at home. The Public Housing Account for infrastructure and adoption grant is addressing this need within the [CASF]. It is set-up for housing organizations to hire vendors that can set-up or enhance networks that will reach individual units that are affordable, while providing the funds for Digital Literacy training, and computing devices with technical support.”³¹

Charter

Charter opposed the draft resolution on the grounds that the properties are neither unserved or underserved and therefore the properties are ineligible for CASF funding. Charter stated that the Commission is required to follow both its enabling statues and its own rules and decisions as set forth in D. 12-02-015,³² and D.14-12-039.³³ Charter stated that it had provided documentation that the buildings (the 12 projects in this draft resolution) are both served and “wired.” Charter further opposed the draft

³⁰ NPH comments, p. 2.

³¹ CETF comments, p. 1.

³² D. 12-02-015 defines an area “served” if current broadband providers can provide speeds of at least 6 mbps download and 1.5 mbps upload. An “unserved” area is ‘an area that is not served by any form of wireline or wireless 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 facilities-based provider offers service at advertised speeds of at least 6 mbps download and 1.5 mbps upload.”

³³ Charter comments, p. 1.

resolution on the grounds that providing CASF funds to a location that is served by existing broadband providers violates the statute and the intent of the CASF program.³⁴

Additionally, Charter explained that it is their policy to provide a low cost alternative to those residents who qualify.³⁵ Charter stated that the eligibility requirements include those households with children in the Federal free or reduced lunch program as well as seniors, 65 or older, who are receiving social security benefits. Further, Charter noted that it has a practice of negotiating discounted bulk rates when requested from locations such as the ones listed in this resolution.

Lastly, Charter noted that it is not aware of any contract or estimate provided to Eden or its representatives. Charter stated that it does not offer its internet services for this type of "resale" distribution even if there is no cost to the recipients, and any such unauthorized use would violate Charter's "Acceptable Use" policy.³⁶

Reply Comments

Eden

In response to Charter's comments, Eden stated that CASF "was designed to support efforts in connecting all Californians, especially those impeded by costs and lack of affordability."³⁷ Eden further stated that "the nature of the CASF Broadband Public Housing Account inherently includes considerations of low income level and affordability of service."³⁸ Eden presented the subscribership data for their properties within Charter's service area, which showed "only slightly more than 25% of their residents are currently served" because they cannot afford the market price, even at the reduced rate. Eden further explained that discounted internet programs have very narrow eligibility requirements and are often difficult for PSC residents to navigate the sign up process. Eden further reiterates that PSCs do not intend to replace existing infrastructure.

Additionally, Eden agreed with CD staff's interpretation of the law.

³⁴ Charter argues that 'CASF was created in order to spur the deployment of broadband facilities in unserved and underserved areas of California.

³⁵ Charter stated that they are committed to offering of speeds 30 mbps down and 4 mbps up at a price of \$14.99 per month within twelve months of completion of its acquisition of Time Warner Cable and Bright House Networks.

³⁶ Charter comments, p. 3.

³⁷ Eden reply comments, p. 3.

³⁸ *Id.*

A. Staff Responses on Comments and Reply Comments

As discussed in this draft resolution, staff agrees with Eden, NPH, CETF and SCDC that the Public Housing projects approved to date are providing facilities grants to PSCs that allow them to offer residents limited broadband access at no charge despite the existing availability of commercial services within the building units. Such provisioning of redundant facilities may be akin an “adoption” program given the issue of affordability that arises in public housing.³⁹

Staff agrees with Charter that the buildings for the 12 projects in this draft resolution are both served and “wired,” and Charter has provided the necessary documentation to support this contention and the PSCs did not dispute this contention. However, staff disagrees with Charter’s contention that funding these projects would violate the statute, D.12-02-015 and D.14-12-039, and the intent of the CASF program. The draft resolution and the other commenters agreed that the statute and expedited review requirements do not state how a wired facility should be treated. Charter however focuses on whether the properties are unserved or underserved, and should instead look at the specific rules and guidelines pertaining to the BPHA. Staff believes that unserved and underserved status does not apply to the BPHA.⁴⁰ Instead, D.14-12-039 contemplates approving wired projects⁴¹ or projects not meeting the expedited review criteria.⁴² The statute requires eligible applicants under the BPHA to be public supported communities wholly owned by either public housing agencies or incorporated non-profit organizations, not ISPs,⁴³ and requires the applicant to identify the bandwidth source from an ISP serving the area which assumes the area is already served by an ISP.⁴⁴ Further, staff believes that the intent of the BPHA is different from the Infrastructure Grant Account, as the BPHA is to provision funds to connect PSCs to the internet⁴⁵ and not to create last-mile access. By contrast, if staff accepts Charter’s interpretation that if a building in the area is already served by an existing provider and if the building is wired, then staff believes there would be few, if any, eligible BPHA infrastructure projects since staff believes nearly all PSCs are wired.

³⁹ See CASF 2015 Annual Report, issued on April 1, 2015, p. 24-26.

⁴⁰ Charter’s arguments go beyond what was known at the time D.12-02-015 was approved. In fact, the BPHA was not envisioned when D.12-02-015 issued and therefore the Commission could not consider the (applicability?) of unserved or underserved in the context of the BPHA.

⁴¹ D.14-12-039, p. 9.

⁴² D.14-12-039, Guidelines p. B14.

⁴³ P.U. Code § 281(h)(1)(B)(i)(ii).

⁴⁴ D.14-12-039, Guidelines p. B14.

⁴⁵ P.U. Code § 281(h)(3), which states “Not more than twenty million dollars shall be available for grants and loans to a publicly supported community to finance a project to connect a broadband network to the a publicly supported community.

Charter also stated that it does not offer internet service for WiFi deployment to residential units such as the ones planned for by Eden. However, staff is aware of Charter offering its internet services for this type of “resale” distribution.⁴⁶ If Charter has decided not to provide Eden with backhaul, staff learned that there may be other options for Eden, though they may be limited. For example, for the Rancho Park project located in Hollister, CPUC records show that AT&T service may be available and for the Monticelli project in Gilroy, Etheric Networks may be able to provide network connections.⁴⁷ However, it is unclear if these options would materialize, given that CPUC information is not specific to an address and the contractor/applicant has not inquired with these providers regarding possible service.

In short, while staff believes that some of Charter’s comments have merit, none change staff’s opinion that awarding these grants is consistent with the statute for the CASF Public Housing Account, D.12-02-015 and D.14-12-039. Therefore, staff continues to recommend approval of all 12 projects and the modification of the Expedited Review Criteria in D.14-12-039, Appendix B, delegating to CD staff the authority to approve applications through expedited review for properties that are wired.

VII. FINDINGS

1. On December 18, 2014, the Commission approved D.14-12-039. This decision established the rules for implementing BPHA. This decision delegates to CD the authority to approve applications through an expedited review that meet expedited review criteria. Projects not qualified for expedited review may still be considered for a grant through the Commission Resolution approval process.
2. D.14-12-039 states that a PSC may be an eligible applicant if it has not denied an ISP access to its property to provide broadband Internet service and no ISP challenged this statement.
3. On January 15, 2015, HACSB (Lynwood and North E Street projects) submitted applications for CASF funding. On October 1, 2015, CHW (Northwest Manors II projects at two locations) and Eden (Hayward Senior, Warner Creek, Jasmine

⁴⁶

⁴⁷ Information acquired from the California Broadband Availability Map (<http://www.broadbandmap.ca.gov/>)

Square, Monticelli, Rancho Park, Royal Court, Wheeler Manor 650 5th Street Wheeler Manor 651 6th Street projects) submitted applications for CASF funding.

4. HACSB, CHW and Eden have declared that they have not denied an ISP access to its property to provide broadband Internet service and no ISP challenged this statement.
5. CD staff received challenges to two HACSB projects from Charter Communications. CD received challenges from Charter for CHW's two projects. CD also received challenges to Eden's projects from Charter Communications (six projects) and Comcast Corporation (two projects).
6. Challenges submitted were based on grounds that an ISP already provides services at the PSC (the PSCs are "wired").
7. HACSB, CHW and Eden asserted that although the units may have wiring to support broadband Internet service, residents do not subscribe to that service because they cannot afford the services.
8. Based on CD's review of project engineering documents and photos, research and staff having inspected urban public housing locations, CD concludes that nearly all Public Housing application locations are wired.
9. The expedited review requirements do not state how a wired facility should be treated.
10. Based on its review, CD determined that all 12 projects meet eligibility requirements. CD further determined that the proposed projects qualify for funding under D.14-12-039.
11. The Commission has determined that these projects are categorically exempt from CEQA review, under section 15301 regarding exemption for existing facilities and section 15303 regarding minor modifications to existing structures.
12. The applicants are required to comply with all guidelines, requirements, and conditions associated with the granting of CASF funds as specified in D.14-12-039.
13. A notice letter was e-mailed on 05/06/2016 informing all applicants filing for CASF funding, parties on the CASF distribution list of the availability of the draft

of this Resolution for public comments at the Commission's website <http://www.cpuc.ca.gov/PUC/documents/>. This letter also informed parties that the final confirmed Resolution adopted by the Commission will be posted and available at this same website. Five timely comments, one late-filed comments and one reply comment were received and were addressed in Section VII of this Resolution.

THEREFORE, IT IS ORDERED that:

1. The Commission shall award \$23,357 to the Housing Authority of the County of San Bernardino for the Lynwood (\$8,960) and North E Street projects (\$14,397); \$26,400 to Community Housing Works for the Northwest Manors II (Mountain) (\$15,600) and Northwest Manors II (Raymond) (\$10,800) projects; \$190,036 to Eden Housing, Inc. for the Hayward Senior (\$24,375), Warner Creek (\$25,358), Jasmine Square (\$28,029), Monticelli (\$23,195), Rancho Park (\$24,195), Royal Court (\$19,028), Wheeler Manor 650 5th Street (\$10,151); a grant total award of \$239,793. All awards are based on the descriptions of the projects as described herein and summarized in Appendix B of this Resolution.
2. Grant payments of up to a total of \$239,793 for these public housing projects shall be paid out of the CASF Public Housing Account in accordance with the guidelines adopted in D.14-12-039, including compliance with CEQA.
3. Payments to the CASF recipient shall be in accordance with Section X of Appendix B of D.14-12-039 and in accordance with the process defined in the "Payments" section of this Resolution.
4. The CASF fund recipients shall comply with all guidelines, requirements and conditions associated with the CASF funds award as specified in D.14-12-039.
5. The Commission denies the challenges of Charter and Comcast.
6. The Commission adopts the revised Expedited Review Criteria as set forth in Appendix A of this Resolution, which delegates to CD staff the authority to approve applications via expedited review even if the facility is wired.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on June 9, 2016. The following Commissioners approved it:

TIMOTHY J. SULLIVAN
Executive Director

APPENDIX

APPENDIX A
Resolution T-17515
Revised Expedited Review Criteria

VII. Expedited Review

The Commission delegates to CD staff the authority to approve applications that meet all of the following criteria:

Infrastructure Projects

- Applicant meets the eligibility requirements under P.U. Code § 281 (f)(2).
- Property the application proposes to serve is wired as defined in Section III or unwired.
- Applicant declares that it has not denied an ISP access to its property to provide broadband Internet service and no ISP challenged this statement; if an ISP challenged an application alleging it was denied access to a PSC, CD staff determined the denial was reasonable.
- Applicant requests a grant of less than \$75,000 in CASF Housing Account infrastructure grant funds per project.
- For projects connecting 51-100 PSC units, proposed project costs \$450 per unit or less.
- For projects connecting 101 PSC units and more proposed project costs \$300 per unit or less.
- The buildings included in the application meet standards for acceptable basic living conditions as determined under HUD's Uniform Physical Condition Standards or similar guidelines provided by other housing funding agencies in the State.
- Existing property infrastructure requires no significant upgrades to install wiring, equipment and other electronics funded under this grant
- Applicant expects property to be in residential use for at least the next 10 years.
- Property qualifies for an exemption pursuant to CEQA Guidelines § 15300.2.
- For wireless networking projects, equipment will at least meet the 802.11n standard.
- Applicant attests it will operate and maintain project equipment and technology for at least five years after completion and that it has sufficient funds and warranty to do so, including replacing equipment as needed, and a maintenance agreement and budget have been submitted.

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- Proposed project network is capable of offering residents Internet service speeds of at least 6mbps downstream/1.5mbps upstream which is supported with appropriate documentation.
- Applicant commits to provide residents with minimum download speeds of 1.5 mbps per unit, during average peak utilization periods, subject to reasonable network management practices.
- Residents will be charged no more than \$20 per month for Internet service.
- Applicant has signed an affidavit agreeing to abide by Commission rules of practice and procedure; P.U. Code §§ 2111 and 2108; and to quarterly reports and submission of annual recertification/audit documents.
- Applicant agrees to complete project within 12 months.
- Applicant has identified its bandwidth source, either at the MPOE or its wireless equivalent.
- Applicant agrees to secure project funded hardware to prevent theft and vandalism.

APPENDIX B
Resolution T-17515
HACSB, CHW and Eden Public Housing Infrastructure Projects
CASF Applicant Key Information

Housing Authority of the County of San Bernardino (public housing agency) Projects	
<i>Project Plan</i>	Installation of Ethernet over existing category 5 cable and includes equipment for broadband signal routing.
<i>Project</i>	1470 Lynwood
<i>Location</i>	1470 E. Lynwood Dr., San Bernardino CA 92404
<i>Number of Units</i>	15
<i>Price per Unit</i>	\$597
<i>Total Grant Amount</i>	\$8,960.34
<i>Project</i>	4181 North E Street
<i>Location</i>	4181 North E Street, San Bernardino CA 92407
<i>Number of Units</i>	24
<i>Price per Unit</i>	\$600
<i>Total Grant Amount</i>	\$14,396.55

Community HousingWorks (501(c)(3) nonprofit organization) Projects	
<i>Project Plan</i>	xDSL (wired) network that utilizes existing copper (inside) wiring and includes equipment for broadband signal routing
<i>Project</i>	Northwest Manors II (Mountain)
<i>Location</i>	700 East Mountain Street, Pasadena CA 91104
<i>Number of Units</i>	26
<i>Price per Unit</i>	\$600
<i>Total Grant Amount</i>	\$15,600.00
<i>Project</i>	Northwest Manors II (Raymond)
<i>Location</i>	965 North Raymond Ave, Pasadena CA 91103
<i>Number of Units</i>	18
<i>Price per Unit</i>	\$600
<i>Total Grant Amount</i>	\$10,800.00

Eden Housing (501(c)(3) nonprofit organization) Projects	
<i>Project Plan</i>	Mesh WiFi 802.11n wireless network architecture consisting of ISP Modem, network switching and routing equipment and wireless access points.
<i>Project</i>	Hayward Senior
<i>Location</i>	568 C Steet, Hayward CA 94541
<i>Number of Units</i>	60
<i>Price per Unit</i>	\$406
<i>Total Grant Amount</i>	\$24,375.00
<i>Project</i>	Warner Creek
<i>Location</i>	806 Diablo Ave., Novato CA 94947
<i>Number of Units</i>	61
<i>Price per Unit</i>	\$416
<i>Total Grant Amount</i>	\$25,357.50
<i>Project</i>	Jasmine Square
<i>Location</i>	16530 Monterey Road, Morgan Hill CA 95037
<i>Number of Units</i>	72
<i>Price per Unit</i>	\$389
<i>Total Grant Amount</i>	\$28,028.50
<i>Project</i>	Monticelli
<i>Location</i>	841 Monticelli Drive, Gilroy CA 95020
<i>Number of Units</i>	52
<i>Price per Unit</i>	\$446
<i>Total Grant Amount</i>	\$23,195.00
<i>Project</i>	Rancho Park
<i>Location</i>	12300 Rancho Park Drive, Hollister CA 95023
<i>Number of Units</i>	54
<i>Price per Unit</i>	\$448
<i>Total Grant Amount</i>	\$24,194.50
<i>Project</i>	Royal Court
<i>Location</i>	17925 Monterey Road, Morgan Hill CA 95037
<i>Number of Units</i>	55
<i>Price per Unit</i>	\$346
<i>Total Grant Amount</i>	\$19,027.50
<i>Project</i>	Wheeler Manor 650 5th
<i>Location</i>	650 5th Street, Gilroy CA 95020
<i>Number of Units</i>	21
<i>Price per Unit</i>	\$483
<i>Total Grant Amount</i>	\$10,150.50
<i>Project</i>	Wheeler Manor 651 6th
<i>Location</i>	651 6th Street, Gilroy CA 95020
<i>Number of Units</i>	90
<i>Price per Unit</i>	\$397
<i>Total Grant Amount</i>	\$35,707.50

APPENDIX C

Resolution T-17515 Public Housing Projects Locations

