

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

**RESOLUTION T-17583
December 14, 2017**

R E S O L U T I O N

RESOLUTION T-17583: Requiring Grantees of the California Advanced Services Fund (CASF) Related to the Rural and Urban Regional Consortia Account to comply with the Attestation Report Requirement pursuant to Decision (D). 11-06-038 and Modifying CASF Grant Awards Authorized in Resolutions T- 17529, T-17537, T-17538, T-17544, T-17550 and T-17561 to Provide for Reimbursement of Reporting Requirement Costs.

I. SUMMARY

This Resolution requires CASF consortia grantees to comply with the Attestation Report requirement adopted in D.11-06-038, and modifies grant awards authorized in Resolutions T-17529, T-17537, T-17538, T-17544, T-17550 and T-17561 (collectively referred to as "2016 Consortia Grants,"¹), in order to provide for reimbursement of these reporting requirement costs. This Resolution requires the Consortia groups that received 2016 Consortia Grants to submit revised budgets to include a line item in their fiscal agent budget for the costs of the Attestation Report Requirement.

II. BACKGROUND

On June 23, 2011, the Commission adopted D.11-06-038, which implemented the provisions of Senate Bill (SB) 1040 (Padilla, Stats 2010, Chapter 317) relating to the CASF Consortia program and outlined the application filing process, and payment reimbursement methods for the program. On September 2, 2015, the Governor signed

¹ Resolutions T-17529, T-17537, T-17538, T-17544, T-17550 and T-17561 were approved over the course of 2016 and 2017, but will be referred to as the 2016 Consortia Grants as the submission date for proposals was in 2016.

Assembly Bill (AB) 1262 (Wood, Chapter 242, Statutes of 2015) that reallocated \$5 million from the CASF Broadband Infrastructure Revolving Loan Account to the CASF Consortia Account, thus making additional funds available for consortia activities. The total authorized amount for the Consortia Account is \$15 million.

During the first grant solicitation process, 17 consortia groups were funded totaling \$8,873,476². Of the \$8,873,467, \$8,523,106 has been disbursed.³ The second solicitation process (2016 Consortia Grants) had a January 29, 2016 deadline and approved another 17 consortia groups totaling \$4,611,114. Table 1, below, is a breakdown of the 2016 Consortia Grants.

Table 1

Consortia 2016 Grants

| CONSORTIUM | Approved Amount | Resolution | Date Approved |
|--|-----------------|------------|---------------|
| East Bay Broadband Consortium | \$272,160 | T-17529 | 8/18/2016 |
| Tahoe Basin Projects | \$200,000 | T-17529 | 8/18/2016 |
| Central Coast Broadband Consortium | \$264,500 | T-17529 | 8/18/2016 |
| Inyo-Mono Broadband Consortium | \$105,216 | T-17537 | 10/27/2016 |
| Redwood Coast Connect Consortium | \$208,000 | T-17537 | 10/27/2016 |
| San Joaquin Valley Regional Broadband Consortium | \$180,000 | T-17537 | 10/27/2016 |
| Inland Empire Broadband Consortium | \$300,000 | T-17538 | 11/15/2016 |
| Connected Capital Area Broadband Consortium | \$298,750 | T-17538 | 11/15/2016 |
| Gold Country Broadband Consortium | \$300,000 | T-17538 | 11/15/2016 |
| North Bay/North Coast Broadband Consortium | \$250,000 | T-17544 | 12/1/2016 |
| Central Sierra Connect Consortium | \$249,000 | T-17544 | 12/1/2016 |
| Los Angeles County Regional Broadband Consortium | \$600,000 | T-17544 | 12/1/2016 |
| Eastern Sierra Connect Consortium | \$126,700 | T-17550 | 1/19/2017 |
| Broadband Consortium of the Pacific Coast | \$250,000 | T-17550 | 1/19/2017 |
| Northeast California Connect Consortium | \$289,343 | T-17550 | 1/19/2017 |
| Upstate California Connect Consortium | \$267,445 | T-17550 | 1/19/2017 |
| Southern Border Broadband Consortium | \$450,000 | T-17561 | 4/6/2017 |
| | \$4,611,114 | In Total | |

To date, the Consortia Account has \$967,372 remaining (Table 2 below). This includes \$8,523,106 disbursed for the first solicitation process and an additional \$4,611,114 approved for the second solicitation process.

² Resolutions T-17349, T-17355, T-17440, and T-17445

³ California Advanced Services Fund Annual Report, April 2017, p. 17.

Table 2

| Approved Budget | Total Disbursements | Outstanding Encumbrances | Total Expenditure | Budget Balance |
|-----------------|---------------------|--------------------------|-------------------|----------------|
| \$15,000,000 | \$9,720,634 | \$4,311,994 | \$14,032,628 | \$967,372 |

On March 30, 2017, the State Controller’s Office (SCO) issued the second interim Performance and Financial Audit Report (Audit Report) of the CASF Program.⁴ The Audit Report found that the Commission is not in compliance with the CPA Attestation Report requirement for all consortia accounts, as required by D.11-06-038.⁵ The Attestation Report requirement for all consortia requires the fiscal agent to agree that the work outlined in the Consortium Work Plan will be completed and verified by an Attestation Report, prepared by an independent licensed Certified Public Accountant (CPA), and submitted annually to the CPUC’s Communications Division (CD).⁶

Before issuing its Audit Report, the SCO met with CD staff in November 2016, to discuss this finding and necessary changes to ensure the Attestation Report requirement was in place. Subsequently, on January 19, 2017, the Commission adopted Resolution T-17550 which approved/awarded four consortia totaling \$933,488 and required the consortia to comply with the annual Attestation Report requirement as specified in D.11-06-038. Specifically, Ordering Paragraph No. 3 of Resolution T-17550 states:

The Fiscal Agent for Eastern Sierra Connect Regional Broadband Consortium, Broadband Consortium of the Pacific Coast, Northeast California Connect Consortium, and Upstate California Connect Consortium must each submit a letter stating the fiscal agent’s commitment to act as a Fiscal Agent for the Consortium. The letter must include: the name and contact information of the responsible party within the agency, including the person responsible for the administrative tasks, if different; and affirmation that the work outlined in the Consortium Work Plan will be completed and verification by an Attestation Report prepared by an independent, licensed Certified Public Accountant will be submitted annually to the Communications Division. The letter must also state the Consortium’s acceptance of the Fiscal Agent’s rights, duties, and responsibilities.

⁴ CASF Second Interim Performance and Financial Audit Report, March 30, 2017; <http://www.cpuc.ca.gov/General.aspx?id=9226>

⁵ California Advanced Services Fund Second Interim Performance Audit, March 30, 2017, p. 8; see also D.11-06-038, p. 26.

⁶ D.11-06-038, p. 26.

During the 30 day comment period, no comments were received for Resolution T-17550.

On February 2, 2017, representatives from the 2016 Consortia Grants joined CASF staff in a conference call to discuss changes to the Consortia Administrative Manual as well as to discuss the Attestation Reporting requirement. During the conference call and in follow up communications with staff, all consortia groups approved during the 2016 Consortia Grant Solicitation Cycle were made aware of the reporting requirement for their annual 4th quarter submission. All groups agreed to follow these requirements.

On April 6, 2017 the Commission adopted Resolution T-17561 approving the final consortia of the 2016 Consortia Grants Cycle. Resolution T-17561 also contained an ordering paragraph similar to Resolution T-17550 Ordering Paragraph No. 3 above describing the Attestation Report requirement. No comments were received.

III. DISCUSSION

D.11-06-038 Section 6.4.4. Assignment of a Fiscal Agent, states:

Affirmation that the work outlined in the Consortium Work Plan will be completed and verification by an Attestation Report prepared by an independent, licensed Certified Public Accountant will be submitted annually to the Communications Division. The letter must also state the Consortium's acceptance of the Fiscal Agent's rights, duties, and responsibilities.⁷

However, this requirement was never imposed on the first round of Consortia Grantees (Table 3) beginning in 2011, or in the 2016 Consortia Grant Resolutions prior to T-17550 in early 2017.

⁷ D.11-06-038, pp. 25-26.

Table 3

| Consortium | Resolution | Date Approved |
|--|-------------------|----------------------|
| Central Coast Broadband Consortium | T-17349 | 12/1/2011 |
| East Bay Broadband Consortium | T-17349 | 12/1/2011 |
| Los Angeles County Regional Broadband Consortium | T-17349 | 12/1/2011 |
| Northeastern California Connect Consortium | T-17349 | 12/1/2011 |
| Redwood Coast Connect | T-17349 | 12/1/2011 |
| San Joaquin Valley Regional Broadband Consortium | T-17349 | 12/1/2011 |
| Upstate California Connect Consortium | T-17349 | 12/1/2011 |
| California's One Million New Internet User Coalition | T-17355 | 2/16/2012 |
| Central Sierra Connect Broadband Consortium | T-17355 | 2/16/2012 |
| Connected Capital Area Broadband Consortium | T-17355 | 2/16/2012 |
| Eastern Seirra Connect Regional Broadband Consortium | T-17355 | 2/16/2012 |
| Gold Country Broadband Consortium | T-17355 | 2/16/2012 |
| Inland Empire Regional Broadband Consortium | T-17355 | 2/16/2012 |
| San Diego Imperial Regional Broadband Consortium | T-17355 | 2/16/2012 |
| Tahoe Basin Project | T-17440 | 5/15/2014 |
| Broadband Consortium of the Pacific Coast | T-17445 | 6/12/2014 |
| Northbay/North Coast Broadband Consortium | T-17445 | 6/12/2014 |

The Attestation Report requirement has only recently been included, in Resolutions T-17550 and T-17561, after the SCO's Audit Report was issued on March 30, 2017. Accordingly, in this Resolution, we modify grant awards authorized in the 2016 Consortia Grant Resolutions, as identified in Table 1 on page 2, to clarify that the consortia groups are subject to the Attestation Report requirement. Further, in this Resolution we are making it clear that D.11-06-038 requires an Annual Attestation Report, and that all consortia shall comply with this requirement going forward.

However, we note that consortia groups approved during the 2016 Consortia Grant Solicitation Cycle did not include costs for the Attestation Report in their budgets. Consequently, as the attestation reporting requirement for their annual 4th quarter submission drew near, some of the consortia approved in the 2016 Consortia Grant Cycle contacted staff indicating that their budgets did not account for costs associated with hiring independent CPAs for report preparation.

IV. PAYMENT

The Commission requires that all consortia groups approved during the 2016 Consortia Grant Solicitation Cycle resubmit their budgets to include a line item in their fiscal

agent budget that accounts for the costs of the Attestation Report Requirement. Consortia may request additional funding of up to \$10,000 per year, per Attestation Report.⁸

The amended budgets for the 2016 Consortia Grants should remain consistent with D.11-06-038, which states:

The Commission hereby authorizes eligible Consortia to apply for grants pursuant to the Rural and Urban Regional Broadband Consortia Account subject to annual funding caps of \$150,000 and three-year caps of \$450,000, in accordance with Public Utilities Code Section 281 and the ordering paragraphs below.⁹

D.11-06-038 requires that submission of invoices from and payments to the grantees shall be made at quarterly intervals. Specifically, D.11-06-038 states:

In order to receive a progress payment, the Consortium must first submit the Quarterly Progress Report to the Communications Division, together with all requests for payment and reimbursement supported by relevant invoices receipts, etc. ... Further, the Quarterly Progress Report shall indicate the actual date of completion of each task/milestone as well as problems/issues encountered and the actions taken to resolve these problems/issues. The Quarterly Progress Report will be submitted and certified under penalty of perjury.

Going forward, along with the 4th Quarterly Progress Report and relevant documentation, each consortium must submit the required Attestation Report and its supporting invoices and receipts. Furthermore, this Attestation Report should substantiate each consortium's claim that progress is consistent with its approved Action Plan, Work Plan, and budget. Billing should only be for activities related to broadband deployment, access, and adoption activities approved by the Commission.

⁸ CD Staff conducted independent research to determine an average cost for attestation reports.

⁹ D.11-06-038, Ordering Paragraph 1, p. 38; see also D.11-06-038, Ordering Paragraph 3, p. 38 which states, "This ordering paragraph refers to all regions, with the exception of Los Angeles, whose funding for the "the combined total size of grants for all Los Angeles sub-regional consortia shall not exceed \$150,000 for one year or \$450,000 for three years."

V. COMMENTS ON DRAFT RESOLUTION

In compliance with Pub. Util. Code § 311(g), a notice letter was emailed on November 14, 2017, informing all parties on the CASF Distribution List of the availability of the draft of this Resolution for public comments at the Commission's documents website at <http://www.cpuc.ca.gov/documents/>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at the same website.

On November 29th, CD received one informal comment from the Tahoe Basin Project (TBP).¹⁰ In the comment, TBP noted the frustration their organization has leading up to submitting the attestation report with little direction, and no guarantee of reimbursement. TBP requested that CD quickly develop timelines and directions for submitting revised work plans and attestation reports. TBP also noted that they appreciate the work done by CD staff to allow them to add line items in their work plans to address Attestation reporting costs.

CD's Response to TBP's Comments

After approval of this resolution, staff will propose a timeline for Consortia to follow regarding budget amendments to work plans. This resolution will also help provide clear guidance for TBP and other consortia.

VI. FINDINGS

1. On June 23, 2011, the Commission adopted D.11-06-038 to implement the provision of SB 1040 relating to the Consortia Grant program.
2. D.11-06-038 requires all Consortia Grantees to comply with Attestation Reporting requirements, which includes affirmation that the work outlined in the Consortium Work Plan will be completed and verified by an Attestation Report prepared by an independent, licensed Certified Public Accountant and will be submitted annually to the Communications Division.

¹⁰ See Notice of Availability dated November 14, 2017. Parties are required to serve a copy of the comments on the CASF Distribution List.

3. In November/December of 2016, the SCO met with CD staff to discuss its finding that the Commission is not in compliance with D.11-06-038 to require CPA Attestation Report for consortia.
4. On March 30, 2017, the SCO issued the second interim Performance and Financial Audit Report of the CASF Program.¹¹ The Audit Report found that the Commission is not in compliance with D.11-06-038, CPA Attestation Report requirement for consortia.
5. On January 19, 2017, the Commission adopted Resolution T-17550 which approved funding for 4 consortia groups, and reminded all Consortia Grantees to follow the Attestation Report requirements set forth in D.11-06-038.
6. On February 2, 2017, Staff held a conference call with Consortia Grantees to discuss the administrative manual and the Attestation Reporting requirement.
7. On April 6, 2017, the Commission adopted Resolution T-17561 which approved funding for one consortia group. This Resolution provided notice that Consortia Grantees follow the Attestation Report guidelines set forth in D.11-06-038.
8. Staff recommends that in order to comply with Attestation Reporting requirements, we modify grant awards approved in the 2016 Consortia Grant Resolutions in Table 1 to provide a budget line item for the Attestation Report costs in order to provide for reimbursement of these reporting requirement costs.
9. A notice letter was emailed on November 14, 2017, informing all parties on the CASF Distribution List of the availability of the draft of this Resolution for public comments at the Commission's documents website at <http://www.cpuc.ca.gov/documents/>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at the same website. CD received one informal comment, as discussed in Section V.

THEREFORE, IT IS ORDERED:

¹¹ <http://www.cpuc.ca.gov/General.aspx?id=9226>

1. The Commission shall accept amended fiscal agent budgets from all 2016 Consortia Grants approved in Table 1 to comply with the attestation requirements as described in D.11-06-038.
2. Payments to each consortia group shall be in accordance with guidelines adopted in D.11-06-038 and in accordance with the process defined in the "Payments" section of this Resolution.
3. Attestation Report reimbursement requests shall not exceed \$10,000 per year per consortia and shall not exceed total annual funding caps of \$150,000 and three-year caps of \$450,000, as outlined in D.11-06-038.
4. All Consortia Grantees shall comply with the Attestation Reporting requirements as required by D.11-06-038. The Fiscal Agent for each Consortia Group must submit a letter stating the fiscal agent's commitment to act as a Fiscal Agent for the Consortium. The letter must include: the name and contact information of the responsible party within the agency, including the person responsible for the administrative tasks, if different; and affirmation that the work outlined in the Consortium Work Plan will be completed and verification by an Attestation Report prepared by an independent, licensed Certified Public Accountant will be submitted annually to the Communications Division. The letter must also state the Consortium's acceptance of the Fiscal Agent's rights, duties, and responsibilities.
5. All consortia groups shall comply with all guidelines, requirements and conditions associated with the CASF funds award as specified in D.11-06-038, Resolutions T-17537, T-17538, T-17544, T-17550, T-17561, and this Resolution.
6. The disbursement of funds shall be subject to the requirements set forth in D.11-06-038 and this Resolution including the submission of quarterly progress reports and supporting documentation for payment reimbursement, yearly status reports for informing the legislature, and a completion report to be submitted with the final payment request.
7. By receiving a CASF grant from the Commission, each consortia group agrees to comply with the terms, conditions, and requirements of the grant and thus submit to the jurisdiction of the Commission with regard to disbursement and administration of the grant.
8. All consortia groups must use the grant funds solely for the approved project as described in the Consortia Commission-approved Action Plan and Work Plan, (or approved revisions to such Plans and budgets).

9. Any changes to the substantive terms and conditions underlying Commission approval of the grant (e.g., changes to Action Plan, Work Plan, budget or designated Fiscal Agent, etc.) must be communicated in writing to the Communications Division Director at least 30 days before the anticipated change, and may be subject to approval by either the Director or by Commission resolution before becoming effective.
10. The Commission may withhold or terminate grant payments to any consortium if the consortium does not comply with any of the requirements set forth in Decision 11-06-038 and this Resolution.
11. In the event that a consortium fails to complete the project in accordance with the terms of approval granted by the Commission and this Resolution, the consortium, represented by the Fiscal Agent, will be required to reimburse some or all of the CASF funds that it has received.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 14, 2017. The following Commissioners approved it:

TIMOTHY J. SULLIVAN
Executive Director