

**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

**CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION
COMMENTS ON THE PROPOSED DECISION IMPLEMENTING THE
CASF INFRASTRUCTURE ACCOUNT REVISED RULES**

November 29, 2018

JACQUELINE R. KINNEY
CALIFORNIA CABLE &
TELECOMMUNICATIONS ASSOCIATION
1001 K STREET, 2ND FLOOR
SACRAMENTO, CA. 95814
TEL: 916/701-5580
FAX: 916/446-1605
EMAIL: JKINNEY@CALCABLE.ORG

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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the California Cable and Telecommunications Association (“CCTA”)¹ hereby submits to the California Public Utilities Commission (“Commission”) these Comments on the Proposed Decision of Commissioner Guzman Aceves issued November 9, 2018 (“PD”) in the above-captioned rulemaking relating to the California Advanced Services Fund (“CASF”).

I. Summary

CCTA’s comments focus on ensuring that the PD and attached “Revised Application Requirements and Guidelines” (“Rules”) fully comply with Public Utilities Code Section 281,² as amended by AB 1665 (Garcia, 2017). It is legal error if the PD and Rules do not accurately implement the language and intent of the legislation or if they include provisions not based in statute. Such error is particularly harmful – and will jeopardize efforts to close the Digital Divide and achieve the CASF program goal -- with respect to the key provisions in the statute that *require* the Commission to:

¹ CCTA is a trade association consisting of cable providers that have collectively invested more than \$36 billion in California’s broadband infrastructure since 1996 and whose systems pass approximately 96% of California’s homes.

² All further Section references are to the Public Utilities Code.

- Establish a preference to fund infrastructure projects in completely unserved areas where Internet connectivity is available only through dial-up service, especially in consortia regions still lacking broadband access to 98 percent of households.
- Prohibit use of CASF funds to overbuild existing broadband infrastructure.
- Preserve the right of any party to challenge any infrastructure grant application for areas where broadband infrastructure already provides service at “served” speeds.

Moreover, even though the Rules are characterized as “guidance,” they have the force of law and govern the Commission’s distribution of more than \$300 million in funds derived from customer surcharges. Accordingly, CCTA submits detailed redline corrections to ensure that the Rules precisely align with Section 281 and AB 1665.

II. The Challenge Rules Need Modification to Avoid Legal Error.

The PD and Rule 11 correctly provide, as required by Section 281(f)(8), that each CASF application is subject to a challenge and that any challenger has “the opportunity to demonstrate actual levels of broadband service in the project area, which the Commission will consider in reviewing the application.”³ However, to avoid legal error, several details of Rule 11 must be modified to fully comply with Section 281.

A. A Challenge Must Be Allowed After Each Amendment to an Application.

Rule 11 requires that a challenge be filed “no later than 21 calendar days from the filing of the application” and that any challenge filed after the deadline be deemed denied. Given that Section 281 also provides for amending an application after it is filed,⁴ it would be legal error to not also allow a challenge to be filed 21 days after any amendment. Section 281(f)(8) allows a challenge to the application “project area.” If an amendment changes the “project area,” a challenge to the amended application must be allowed or the statutory right to challenge would be eviscerated.

³ PD at pages 57 to 59 and Rules at pages 24 to 25.

⁴ Section 281(f)(10) requires public notice of any amendment to an application.

In addition, because of the strict 21-day deadline for a challenge, any potential challenger must have notice that the application is filed simultaneous with that filing. Rule 8.1 requiring the applicant to send the public project summary to the CASF distribution list must specify that this mandatory distribution be on the same day of the application (or amendment) filing that triggers the 21 days.

B. Requiring A Challenger to Provide Subscriber Information Violates Customer Privacy and Statutory Eligibility and Overbuild Provisions.

Regarding the information to be included in a challenge, the PD and Rules must align with both Section 281(f)(8) allowing challenges and Section 281(f)(5)(A) specifying an eligible project area as census blocks where no other provider “offers access” to broadband at speeds of at least 6/1. Thus, the first bullet in Rule 11 should be corrected to require a challenger to submit the location of households in the project area where that provider “offers access,” not households “it serves.” Similarly, requiring a challenger to submit customer billing information from one subscriber in each census block of the challenge area exceeds the statutory eligibility standard of no existing provider *offering* access to broadband at served speeds. It also ignores information in the record stating that households to which a challenger “offers access” may, for a variety of reasons, have chosen not to subscribe.⁵ Awarding a CASF grant to a new provider in this circumstance would violate the prohibition against funding an overbuild.⁶ Moreover, requiring a provider to submit billing information about its customers sufficient to enable staff to contact those customers would violate state and federal customer privacy protections.⁷ The Commission can avoid these legal errors by deleting the second bullet in Rule 11 and instead simply rely on the required attestation of the challenger, which could include a statement that the challenger provides service to at least one customer in each census block.⁸

⁵ CCTA Comments (August 8, 2018) at pages 2 to 3.

⁶ AB 1665, Section 2(c). See CCTA Comments (August 18, 2018) at pages 2 to 3.

⁷ California Consumer Privacy Act; 47. U.S.C. Section 222.

⁸ For these same reasons, Finding of Fact 9 on page 78 of the PD is an inappropriate legal conclusion inconsistent with Section 281 and should be deleted.

C. Any Application Subject to a Challenge Requires a Commission Resolution.

Rule 11 states that “[t]he Commission has delegated to Communications Division staff the authority to uphold or deny a challenge” but provides no specific standards for staff to apply in making the decision except to say an “incomplete” or late challenge shall be deemed denied. The PD and Rules fail to acknowledge the CASF program history of challenges frequently being resolved with amendments to the application, and further fail to specify any process for amending an application.⁹ Thus, to the extent that a grant may be awarded by staff without a Commission Resolution after a challenge is filed, such action would constitute an unlawful delegation of authority.¹⁰ Moreover, the plain language of Section 281 provides for a challenge to each application and approval by Resolution.¹¹

Thus, to avoid legal error, Rule 11 should be modified to require a Commission Resolution for any application subject to a challenge. To ensure transparency and due process, Rule 11 must require (i) staff to notify the challenger, as well as the applicant, of the determination of the challenge, (ii) discussion in the Resolution about the challenge and the basis upon which staff upheld or denied the challenge pursuant to standards established by the Commission, and (iii) an opportunity to raise objections to staff’s disposition of the challenge in comments on the Draft Resolution.

III. Middle Mile Funding Rules Constitute Legal Error.

CCTA appreciates the PD acknowledging that the approach it adopts to determine whether middle mile facilities in a proposed CASF project are “indispensable” is both “problematic” and

⁹ See, for example, Resolution T-17581 approving Anza Electric Cooperative, Inc. CASF grant (June 19, 2018), and Resolution T-17548 approving Inyo Networks, Inc. CASF grant (March 24, 2017) where challenges led to amended applications. The PD and Rules provide no detail on when an amendment is allowed even in the absence of a challenge. If a challenge is acted on by staff without a Resolution, the public will be left in the dark regarding the challenge process.

¹⁰ See discussion of Ministerial Review in Section V.

¹¹ See CCTA Comments (September 21, 2018) at pages 4 to 6.

“complicated.”¹² Thus, CCTA provides modifications to Rule 5.3 to prevent legal error and more fully effectuate options the Legislature provided to avoid overbuilding existing middle mile facilities.

A. Rules Must Include All Options in Statute for Funding Middle Mile Facilities.

The Commission’s approach to middle mile funding must implement the precise language of the following two inter-related statutory provisions:

Section 281(f)(5) Projects eligible for grant awards shall meet all of the following requirements:

*

(B) All or a significant portion of the project deploys last-mile infrastructure to provide service to unserved households. Projects that only deploy middle-mile infrastructure are not eligible for grant funding. For a project that includes funding for middle-mile infrastructure, the commission shall verify that the proposed middle-mile infrastructure is indispensable for accessing the last-mile infrastructure.

Section 281(f)(11) A grant awarded pursuant to this subdivision may include funding for the following costs consistent with paragraph (5) of subdivision (f):

- (A) Costs directly related to the deployment of infrastructure.
- (B) Costs to lease access to property or for Internet backhaul services for a period not to exceed five years.
- (C) Costs incurred by an existing facility-based provider to upgrade its existing facilities to provide for interconnection.

The PD and Rule 5.3 focus on how the Commission can verify indispensability under Section 281(f)(5)(B), but without requiring the applicant to initially demonstrate that it has considered all options under Section 281(f)(11), especially options to seek grant funding to lease backhaul services or for an existing provider to upgrade its facilities to provide for interconnection.¹³ In addition, Rule 5.3 describes a process whereby staff requests documentation of an applicant if staff “finds” existing middle-mile infrastructure in a proposed project area, while the PD states that “the applicant, in its application, should include documentation demonstrating that it requested specific data and/or transport services from a provider and that provider was not able to meet that request and offered no

¹² PD at page 29.

¹³ Rule 7 lists these items as “reimbursable expenses” but does not sufficiently relate them to middle mile funding provisions in Rule 5.3.

other alternative.”¹⁴ Rule 8.3 requiring the application to describe “other providers’ infrastructure within the project area which can be leased, purchased or accessed via interconnection” also is inadequate to capture essential information to make determinations required by Section 281.

CCTA provides corrections to Rule 8.3 that, consistent with Section 281, properly require the applicant to include the following *in its application*:

- An attestation that the project (i) does not seek funding for only middle mile infrastructure and (ii) all or a significant portion of the project will deploy last-mile infrastructure to provide service to unserved households.
- An affirmative explanation as to why any new middle mile infrastructure for which funding is requested is “indispensable.”
- Documentation demonstrating that the applicant, in consultation with the owner of any existing middle mile infrastructure, reviewed all options for including in the grant application the costs of leasing backhaul services and/or upgrading the existing provider’s facilities to provide for interconnection.

B. A Challenge to Determine if Middle Mile Facilities are “Indispensable” Requires Information in the Public Project Summary of an Application.

The PD correctly recognizes the importance of the challenge process “to reduce the risk of using public funds to overbuild existing infrastructure,” which AB 1665 prohibits.¹⁵ However, the challenge process is effective only if sufficient information about each application is made public to enable a determination of whether a challenge is warranted.¹⁶ Accordingly, CCTA proposes corrections to Rule 8.1 to require the public summary of each application to include information about new middle mile infrastructure and why it is “indispensable.”

¹⁴ PD at page 30.

¹⁵ PD at page 30.

¹⁶ Rule 5.3 states that lack of a challenge “is a strong indication that the middle mile funding applied for is indispensable to the project.” The PD at page 30 states that an applicant should include documentation “demonstrating that it requested specific data and/or transport services from a provider and that provider was not able to meet that request and offered no other alternative” but makes no requirement that the provider receive notice that such documentation is submitted. It would violate due process and constitute legal error for the Commission to find middle mile facilities indispensable based on lack of a challenge when there is no adequate notice of the request for middle mile funding.

C. The Commission Lacks Authority to Determine “Reasonable Quality and Price Levels” of Broadband Service.

The PD and Rule 5.3 authorize the Commission to award CASF grants, including by staff under Ministerial Review, based on “a situation where a provider is unwilling to offer service, or only offers service at exorbitant prices”¹⁷ or based on an applicant submitting documentation “demonstrating that it requested specific data and/or transport services from a provider and that provider was not able to meet that request and offered no other alternative.”¹⁸ The PD further contemplates that the Commission will determine what are ‘reasonable’ prices, or terms and conditions” when “the applicant and challenger are unable to agree to terms for wholesale services.”¹⁹

These provisions constitute legal error given that Section 281 conditions eligibility for a CASF grant on lack of *availability* of existing infrastructure, *not the price or affordability* of existing infrastructure to any particular applicant. These provisions impermissibly construe the “indispensable” requirement for middle mile infrastructure into authority to set rates, terms and conditions for broadband service. This regulation of broadband service exceeds the Commission’s jurisdiction, doubly so with respect to middle mile facilities, which are interstate services.²⁰ Moreover, middle mile facilities that are tariffed already have been deemed reasonable by the Commission by function of the tariff review process.²¹ For middle mile facilities that are not tariffed, the PD’s approach amounts to interference with private contract negotiations and creates a policy disincentive for providers to negotiate. There is simply no legal foundation or precedent for the Commission to set prices and rates in this context, let alone determine what price would be “exorbitant,” an extremely subjective standard.

¹⁷ Rule 5.3 at page 11.

¹⁸ PD at page 30.

¹⁹ PD at page 30.

²⁰ Section 710; *Bell Atlantic Telephone v. FCC*, 206 F.3d 1, 5 (D.C.Cir. 2000); and *USTelecom Association v. FCC*, 825 F.3d 674, 730-31 (D.C.Cir. 2016).

²¹ D.07-09-005 and other decisions in R.05-04-005.

CCTA provides corrections to eliminate this legal error and instead encourage applicants to include in projects all costs the Legislature authorized to access middle mile facilities without funding overbuilds.

IV. Right of First Refusal Rule Needs Modification to Avoid Legal Error.

The PD and Rule 5.2 implement Section 281(f)(4), which allows an annual right of first refusal (“ROFR”) filing in order to prevent award of a CASF grant in an unserved area where an existing facility-based provider already plans to deploy broadband with private funds.²² To fully align with Section 281(f)(4) and avoid legal error, Rule 5.2 requires at least the following three modifications.

A. The Rules Cannot Limit Reasons for Renewal Beyond the Statutory Standard.

If a privately funded broadband project designated in a ROFR filing is not completed within 180 days, the PD allows for only one renewal by staff for 180 days and any additional 180-day renewal only by Commission Resolution. Rule 5.2 provides the following:

A ROFR may be extended for 180 days if deployment is held up due to permitting issues and environmental review, weather, or other acts of God. If the Commission finds that the provider is not making progress towards completing the deployment, the delineated unserved area will be eligible for CASF funding.²³

Section 281(f)(4) does not limit renewal to these or any other potential causes of delay but instead expressly allows for renewal if the Commission finds that the provider is “making progress toward completion of the deployment.” Many additional reasons not specified in Rule 5.2 could cause delay, such as circumstances related to a particular customer or an economic downturn, as was the case in 2008 when the housing crisis brought many broadband projects to an abrupt halt. Thus, the restrictive language in Rule 5.2 constitutes legal error and is factually imprecise and underinclusive.

Moreover, in contrast to Rule 5, Rule 14 relating to project completion deadlines for CASF grant recipients imposes no limitation on the potential reasons for delay. Rule 14 simply provides:

²² PD at pages 39 to 43 and Rules at pages 9 to 11.

²³ Rules at 10 to 11.

If the grantee cannot complete the project within the 24-month timeline, the grantee shall notify the Commission as soon as they become aware that they may not be able to meet the timeline and provide a new project completion date.²⁴

This discriminatory treatment, with no logical justification or rationale provided, is additional error.

B. The Commitment to Offer Minimum Speed Service Must be to the Delineated Area.

Rule 5.2 needs clarification regarding the requirement of a “commitment to ensure that all households within the *area* will have the capability to receive minimum speeds.” This requirement must be reconciled with Section 281(f)(4)(A) allowing the existing provider to demonstrate where it “will deploy broadband or upgrade existing facilities to a *delineated* unserved area” and the requirement to indicate that planned deployment by census block. CCTA does not object to the requirement to specify deployment by census block. However, the reference to “all households within the area” in Rule 5.2 must reflect the “delineated” unserved area, not the entire census block. Indeed, in many cases, privately funded deployment that qualifies for ROFR may be in a census block that already is partially served. CCTA provides technical corrections to Rule 5.2 to avoid this error.

C. The ROFR Process Has A Gap That Could Lead to Funding Overbuilds.

The annual January 15 ROFR filing option, combined with one annual April 1 application deadline, leaves a gap that creates the potential for awarding a CASF grant that funds a prohibited overbuild. An approved ROFR filing does not account for a deployment project that is underway by January but could not reasonably be expected to be completed until after the first 180-day period. Indeed, many privately funded projects are not completed in 180 days, just as CASF-funded projects are rarely finished in six months. In order to avoid legal error, the Commission must implement the ROFR and renewal process in a manner that avoids prohibited use of CASF grants to fund overbuilds.

²⁴ Rules at page 28. See also Rule 8.7, not limiting any potential reasons for delay.

D. The Requirement to Submit Proof of Existing Service in All Census Blocks in a “Delineated Unserved Area” Would Undermine the ROFR Policy.

Current Rule 5.2 requires “proof that the provider is an existing facility-based provider in the census block(s) for which it claims ROFR.” This chips away at the effectiveness of the ROFR policy and has no basis in the findings of the PD. Logically, a provider that already offers service in a census block would not need to submit a ROFR because that census block would already be “served.” The statute provides the ROFR opportunity to an “existing” provider, but there is no requirement that the existing provider already operate in every census block in the “delineated unserved area.” Resolution T-17590, which initially implemented the ROFR policy, has no similar proof requirement, and the PD has no findings to support it.

V. Ministerial Review Rules Constitute Unlawful Delegation of Authority.

The Ministerial Review process discussed in the PD and established in Rule 12 constitutes an unlawful delegation of authority because it authorizes staff to make *final discretionary* decisions about awarding CASF grants with no opportunity for review by the Commission.²⁵ As stated in the record, although the Commission “may delegate the performance of *ministerial* tasks, including the investigation and determination of facts *preliminary* to agency action, functions relating to the application of standards, and the making of preliminary recommendations and draft orders,” the Commission cannot delegate its power to make “final discretionary decisions.”²⁶ In response, the PD states conclusively that staff “may approve of applications after a ministerial review of specific standards set by the Commission” and cites as authority in footnote 50 on page 25, with no discussion, two CPUC decisions.²⁷ This minimal response not only fails to acknowledge the gravity of giving

²⁵ PD at pages 22 to 27 and Rules at pages 25 to 26.

²⁶ Application of Union Pacific Railroad Company and BNSF Railway Company for Rehearing of Resolution ROSB-002, D.09-05-020, mimeo at 2 to 3 (citations omitted)(emphasis added). See CCTA Comments (April 16, 2018) at page 9.

²⁷ PD at page 25.

staff full unchecked authority to hand out millions in funds the Legislature authorized to be collected from customers, it also fails to provide legal support for Rule 12.

The first decision cited -- D.09-05-020 at 2-3 -- is the same decision CCTA cited in its comments filed April 18, 2018, and quoted above, which the PD does not explain or distinguish. The CPUC's reliance on this decision is legal error because the authority to issue citations to rail carriers delegated to staff in that case was deemed permissible because the staff decision is "fully appealable." Throughout, the decision repeats that the staff action is "fully reversible on appeal" and describes the "ability of the rail carrier to appeal any and all of the proposed citations" with a process whereby a party contesting a citation could request a hearing leading to a resolution subject to a vote of the full Commission. The Ministerial Review process here, by contrast, allows staff to make the final decision to award an unlimited number of \$5 million grants *with no opportunity for anyone to seek further review or appeal*.

The second decision cited -- D.07-09-018 at 18, n.34 -- actually weighs against the PD's position because it upholds staff approval of a provider's action in a tariff "as long as the proposed action is squarely within the applicable statutes or Commission orders." That is precisely *not* the case here where, as explained below, the Ministerial Review "criteria" essential for staff to approve CASF grants are either not "squarely within" the applicable statute, directly contravene the statute's key provisions, or are not really standards at all capable of ministerial review by staff.

In this regard, Criteria #3 in Rule 12 authorizes staff approval of a CASF application only for a project with a specified cost per household for fiber to the home and fixed wireless deployment, but no other technologies, in clear violation of the technology-neutral requirement in Section 281(f)(1). The PD attempts to rebut this failure to be technology-neutral by asserting that it "may still award grants to fixed wireless project that fall outside these cost criteria, but it must be done through the resolution

process. Since the Commission may still award a grant, it is not in violation of the statutory requirement.”²⁸ This rebuttal, perhaps mistakenly referring to fixed wireless, does not make sense and fails to justify the impermissible discrimination against all other technologies.

Criteria #2 in Rule 12 authorizes staff approval only if an “application is not challenged, or Staff has dispensed with the challenge.” This asserted “criteria” is not really a standard for staff ministerial review at all, but effectively a denial of the statutory right of an existing provider to challenge any application and have the Commission, not staff, consider the challenge information in reviewing the application, as provided in Section 281(f)(8). As discussed in Section II above, the Rules do not specify clear standards for how staff may dispense with a challenge, including whether and when an amendment to the application may be allowed. Nor do the Rules provide for any Commission review of staff approval or denial of a challenge. Thus, the fact that staff “has dispensed with the challenge” cannot constitute a standard for staff to apply necessary for lawful delegated authority.

Similarly, Criteria #1 in Rule 12 allows staff to approve a grant after determining if the applicant “meets the program eligibility requirements herein and pursuant to [Section 281].” This determination does not equate to “ministerial review of specific standards” that are “squarely within” the applicable statute; this delegation gives staff wholesale authority to determine compliance with the entire statute.

Criteria #4 in Rule 12 setting a \$5 million grant total may be a specific standard, but it has no discernible basis in statute. In any event, without any parameters limiting how larger projects can be divided into separate applications, it invites applicants to engage in gamesmanship to achieve Ministerial Review eligibility by submitting multiple applications each under \$5 million.

²⁸ PD at pages 26 to 27.

Criteria #5 in Rule 12 could be a specific standard if it merely required that a project be CEQA-exempt. But the option for staff to “state that authorization to construct and release funds will be provided in a forthcoming resolution” indicates that such an application would require a resolution for approval, and thereby not actually qualify for approval under Ministerial Review. It is nonsensical for this to be a “required” criteria for Ministerial Review given the option for staff to simply state that a subsequent Resolution is required.

For all of these reasons, the Ministerial Review process is legally and technically flawed. Moreover, the PD makes a factual error with its statement that none of the many problems with Ministerial Review “overwhelm the advantages of shortening review times for unambiguously beneficial and cost-effective projects.”²⁹ This statement has no citation, and there is no factual foundation for claiming that the projects that qualify for Ministerial Review are “unambiguously beneficial and cost-effective.” In fact, projects for completely unserved areas are arguably the most “beneficial” in that they are subject to the mandatory preference and are essential to achieve the program goal, but yet they are not included in any criteria for Ministerial Review.

V. The Project Summary Must Include Information that May Warrant a Challenge.

Subject to the objection to Ministerial Review as an unlawful delegation discussed above, CCTA asserts further that, if the Ministerial Review as described in the PD is nonetheless adopted, due process requires, at a minimum, that the public project summary for every application include information clearly indicating that an applicant is seeking Ministerial Review and specifying how the application meets all requirements to be eligible for Ministerial Review. In addition, as discussed in Section III above, the public project summary must include specified information regarding middle mile facilities. It would exacerbate legal error to allow award of CASF grant funding by staff under

²⁹ PD at page 26.

Ministerial Review, with no Commission Resolution, if there is no public notice and transparency of these aspects of an application. Moreover, these shortcomings would lead to overbuilding in violation of Section 281.³⁰ CCTA provides modifications to Rule 8.1 to correct these errors.³¹

VI. Prioritization of Applications Must Follow Statutory Preference and Goal.

The PD directs staff to “prioritize review of Applications for low-income communities over high-income communities,” and Rule 2.3 requires staff to process applications on “a lowest-income-first basis” if more applications are filed than can be “adequately analyzed” within the time constraints specified in the Rules.³² Rule 9 directs that all applications are due annually on April 1 and deems an application to be denied unless, by October 1, staff has either (i) approved it by Ministerial Review, or (ii) published a draft resolution recommending Commission approval.

CCTA does not disagree with the policy choice to promote award of CASF grants to ensure broadband availability in low-income communities. However, it is legal error to elevate this policy choice above the express statutory direction in Section 281(b)(2)(B) that the Commission “shall ... [g]ive preference to projects in areas where Internet connectivity is available only through dial-up service that are not served by any form of wireline or wireless facility-based broadband service or areas with no Internet connectivity.” Moreover, to achieve the statutory goal in Section 281(b)(1)(A) by 2022, it is essential that the Commission prioritize eligible projects in consortia regions that have not yet achieved broadband access to 98 percent of households. This goal will not be achieved if CASF funds are first awarded for projects in low-income communities and/or in consortia regions

³⁰ See PD at page 26 indicating that under Ministerial Review “projects’ proponents will publicly identify their attributes relative to the very criteria for which they will be evaluated.” The Rules must be corrected to reflect this as a requirement.

³¹ CCTA’s corrections to Rule 8.1 also include a requirement that the public project summary indicate whether the applicant is disputing the Broadband Map depictions of “served” status pursuant to Rule 8.6 as it would violate due process if an existing provider had no notice that an applicant was seeking a grant to overbuild its facilities.

³² PD at page 56 and Rules at page 6.

already at 98 percent deployment.³³ Prioritizing projects in low-income areas, which is not based in statute, necessarily lowers the priority of projects in areas where the Legislature has mandated a preference.

VII. Other Issues Require Correction of Error.

CCTA provides additional corrections to address the following errors:

- The statements in Rules regarding availability of \$30 million for “unserved” areas to which no facility-based broadband provider offers broadband service at speeds of at least 10/1 to accurately reflect Section 281(f)(15).
- The requirements in Rules that a grantee provide an “affordable” offering and commit to pricing for two years, which exceed Commission jurisdiction.³⁴
- Language on page 23 of the Rules that appears to be error in that it is somewhat duplicative and refers to “underserved” areas and other outdated references.
- A revision to Finding of Fact 8 to ensure the line extension program is adopted as required by statute before the grant application window.

XI. Conclusion

CCTA looks forward to reviewing the comments of other parties and working toward final Rules that will fully implement AB 1665 and close the Digital Divide.

Respectfully submitted,

/S/ JACQUELINE R. KINNEY

JACQUELINE R. KINNEY
CALIFORNIA CABLE &
TELECOMMUNICATIONS ASSOCIATION
1001 K STREET, 2ND FLOOR
SACRAMENTO, CA. 95814
TEL: 916/701-5580
FAX: 916/446-1605
EMAIL: JKINNEY@CALCABLE.ORG

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³³ Section 281(b)(1)(A) “The commission shall be responsible for achieving the goals of the program.”

³⁴ CCTA Comments (September 28, 2018) at pages 4 to 6.

Appendix A

CCTA Proposed Corrections to CASF Broadband Infrastructure Account Requirements Guidelines and Application Materials (“Rules”)

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- Attachment A – Information Sheet
- Attachment B – Application Checklist
- Attachment C – Notarized Affidavit
- Attachment D – Consent Form

1. Background

On October 15, 2017, the Governor signed AB 1665 (Garcia)¹ into law. This urgency legislation amended the statutes governing the CASF program, Pub. Util. Code §§ 281, 912.2, and 914.7. On February 14, 2018, assigned Commissioner Martha Guzman Aceves issued an Amended Scoping Memo and Ruling (Amended Scoping Ruling) which set forth the amended procedural schedule and scope of this proceeding. In summary, AB 1665 makes the following specific changes to the Broadband Infrastructure Grant Account:

- Extends the date of the CASF goal from 2015 to 2022 and modifies the goal to approve funding for broadband infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region, as identified by the Commission as of January 1, 2017, instead of 98 percent statewide. Pub. Util. Code § 281(b)(1)(A)
- Requires the Commission to approve projects that provide last-mile broadband access to households that are unserved by an existing facility-based broadband provider. Pub. Util. Code § 281(b)(2)(A)
- Specifies that projects that only deploy middle-mile infrastructure are not eligible for grant funding. For a project that includes funding for middle-mile infrastructure, the Commission is required to verify that the proposed middle-mile infrastructure is indispensable for accessing the last-mile infrastructure. Pub. Util. Code § 281(f)(5)(B)
- Requires the Commission to give preference to projects in areas where Internet connectivity is available only through dial-up service that are not served by any form of wireline or wireless facility-based broadband service or areas with no Internet connectivity. Pub. Util. Code § 281(b)(2)(B)(i) However, the Commission is not prohibited from approving funding for projects outside of the areas that are designated as prioritized.

¹ Ch. 851, Stats. 2017.

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- Requires the Commission to recognize that broadband advanced communication services include both wireline and wireless technologies. Pub. Util. Code § 281(f)(1)
- Requires the Commission to annually offer existing facility-based providers the opportunity to demonstrate that they will provide broadband access to delineated unserved areas within 180 days and prohibits the Commission from approving funding for a project in those areas also known as right of first refusal (ROFR), provided the existing provider demonstrates that it will deploy broadband or upgrade existing broadband service throughout the project area. Pub. Util. Code § 281(f)(4)(A)(i)
- Specifies that Connect America Fund Phase II (CAF II) areas are ineligible for CASF funding until July 1, 2020, unless the existing facility-based broadband provider has notified the Commission before July 1, 2020 that it has completed its CAF deployment in the census block, however, an existing facility-based broadband provider is eligible to apply for CASF funding pursuant to the CAF II fund to expand broadband service within identified census blocks, as needed. Pub. Util. Code § 281(f)(5)(C)(i)
- Requires the provider to provide the Commission with information to demonstrate what progress has been made or challenges faced in completing the deployment if the existing facility-based broadband provider is unable to complete the deployment of broadband within the delineated unserved area within 180 days and allows the Commission to extend the time to complete the project beyond the 180 days if the Commission finds that the provider is making progress towards completing deployment. If the Commission finds that the provider is not making progress towards completing the deployment, the delineated unserved area shall be eligible for CASF funding. Pub. Util. Code § 281(f)(4)(A)(iii)
- Requires the Commission to not disclose public information submitted by the facility-based broadband provider that includes plans for future deployment but allows the Commission to disclose publicly information regarding the area designated for broadband deployment, the number of households or locations to be served, and the estimated date the deployment will be completed. Pub. Util. Code § 281(f)(4)(B)(i)

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- Requires projects eligible for grant awards to meet the following requirements: (a) deploy infrastructure capable of providing broadband access at speeds of a minimum of 10 megabits per second (Mbps) downstream and 1 Mbps upstream to unserved households in census blocks where no provider offers access at speeds of 6 Mbps downstream and 1 Mbps upstream; and (b) all or a significant portion of the project deploys last-mile infrastructure to provide service to unserved households. Pub. Util. Code § 281(f)(5)(A)
- Prohibits the Commission from granting projects that are already funded by the Connect America Fund program or other similar federal public program that funds that infrastructure, except for funding from the federal high-cost support programs that support operations, including High Cost Loop Support, Connect America Fund-Broadband Loop Support (CAF-BLS), or the Alternative Connect America Cost Model (A-CAM). Pub. Util. Code § 281(f)(12)
- Specifies that the Commission may award grants to fund all or a portion of the project, and the Commission shall determine funding on a case-by-case basis. Pub. Util. Code § 281(f)(13)
- Specifies that the Commission may require each infrastructure grant applicant to indicate steps taken to first obtain any available funding from the CAF program or similar federal public programs. Pub. Util. Code § 281(f)(14)
- Provides that, upon achievement of the program goal to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of households in each consortia region, Allocates not more than \$30 million of funds remaining in the Infrastructure Grant account shall be available for projects that provide last-mile broadband access to households at speeds of at least 10/1. Pub. Util. Code § 281(f)(15)
- Requires the Commission to post on the homepage of the CASF on its Internet website a list of all pending applications, application challenge deadlines, and notices of amendments to pending applications. Pub. Util. Code § 281(k)
- Requires the Commission to establish a service list of interested parties to be notified of any CASF applications. Any application and any

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amendment to an application for project funding will be served to those on the service list and posted on the Commission's Internet website at least 30 days before publishing the corresponding draft resolution. Pub. Util. Code § 281(f)(10)

2. Amount Available for Grants

2.1. Background

AB 1665, approved by the Governor on October 15, 2017, authorizes the Commission to collect an additional \$300 million to the Broadband Infrastructure Grant Account.² As of July 1, 2018, \$331 million remains in the Infrastructure Account's budget balance.³ ~~Upon the accomplishment of the program goal,~~ AB 1665 also ~~directs the Commission to reserve~~ provides that, upon achievement of the program goal to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of households in each consortia region, not more than \$30 million of remaining Infrastructure grant funds shall be available for infrastructure projects that provide last-mile broadband access to households to which no facility-based broadband provider offers broadband service at speeds of at least 10/1.

2.2. Funding Criteria

PU Code Sec 281 (f)(13) allows the Commission to fund all or a portion of a project, on a case-by-case basis. The Commission must consider "the location and accessibility of the area, the existence of communication facilities that may be upgraded to deploy broadband, and whether the project makes a significant contribution to achieving the program goal." The Commission may also consider any other factors it deems appropriate. Additionally, Pub. Util. Code Section (b)(2)(B)(i) requires the Commission to, "give preference to projects in areas where Internet connectivity is available only through dial-up service that are not served by any form of wireline or wireless facility-based broadband service or areas with no Internet connectivity."

To determine the funding level for a project, the Commission will consider the following factors:

- Areas with only dial-up or no Internet connectivity (Pub. Util. Code Section (b)(2)(B)(i) – project areas with no Internet connectivity are eligible

² This includes \$5 million set aside for the Line Extension program.

³ The \$3.2 million remaining in the Broadband Infrastructure Revolving Loan Account unencumbered as of January 1, 2018, will be transferred to the Broadband Infrastructure Grant Account.

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for up to 100 percent funding. Although the Commission does not consider mobile data services to be a substitute for broadband, for the purposes of this definition, they are considered a form of Internet connectivity.

- Location and accessibility of the area – Project areas meeting two of the following five characteristics:
 1. The proposed project area contains rugged or difficult terrain (e.g., mountains, desert, national or state forest);
 2. The proposed project area is an unincorporated community;
 3. The proposed project area is more than 10 miles from the nearest hospital;
 4. The proposed project area is more than 10 miles from the nearest state or federal highway; and/or
 5. The proposed project area is located in a rural census block, as defined by the U.S. Census Bureau.
- Existence of communication facilities that may be upgraded to deploy broadband – project areas in which the applicant relies primarily on existing infrastructure, including poles and conduit, and thus will be less expensive to build.
- Whether the project makes a significant contribution to achieving the program goal – project areas within a Broadband Consortium region that has not yet reached the goal of deploying broadband Internet service at speeds of 6 mbps download and 1 mbps upload to 98 percent of households are eligible for an additional 10 percent funding.
- Low-income service – project areas for which Staff determines that the latest Census Bureau American Community Survey (ACS) 5-year median household income falls below the California Alternate Rates for Energy (CARE) income eligibility limit for a family of four, shall be eligible for an additional 30 percent funding. The effective definition of a low-income area, through May 31, 2019, is a median household income no greater than \$50,200. Projects with low-income households that offer service to low-income customers at less than \$15/month shall be eligible for an additional 10 percent funding.

Summary of Funding Criteria

| |
|---|
| Maximum Funding Level: 100% |
| Baseline for Eligible Project: 60% of total construction costs |
| Presence of Dial-up Only: + 40% |
| Low Income: Up to + 40% <ul style="list-style-type: none"> • Median Household Income for community is less than CARE standard for a family of 4, which is currently \$50,200 (30%). • Applicant serves low-income customers for no more than \$15/month (10%). |
| PU Code Sec 281 (f)(13) Criteria: + 10% per criterion, up to + 20% <ul style="list-style-type: none"> • Inaccessible Location (10%) • Uses Existing Infrastructure (10%) • Makes a Significant Contribution to the Program Goal (10%) |

2.3. Prioritization

In the event that Staff receives more applications for CASF projects than can be adequately analyzed within the time constraints defined in this document, or that request more funding than is available, preference shall be given to applications proposing projects in the following priority order: (i) projects in areas where Internet connectivity is available only through dial-up service; (ii) projects in any consortia region that has not yet achieved broadband access to 98 percent of households; and (iii) projects in areas with the will be considered on a lowest- income-first basis.

3. Definitions

“Baseline Data” means the reported served status of broadband at or above 6 Mbps downstream and 1 Mbps upstream in California by Consortium as of December 31, 2016, published by the Commission. www.cpuc.ca.gov/General.aspx?id=6442455975

“Broadband Map” means the California Interactive Broadband Map showing served status and eligibility, maintained by the Commission.
<http://www.broadbandmap.ca.gov/>

“Consortium Map” means a static (pdf) map showing eligible areas in a Consortium’s region published by the Commission.
www.cpuc.ca.gov/General.aspx?id=6442455975

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“Eligible Project” means an area containing unserved households and that is not within a CAF II, ROFR or existing CASF project area. CAF II areas remain project

eligible to the corresponding existing facilities-based provider to extend service within its CAF II area. Eligible projects must be capable of offering broadband service at or above 10/1 Mbps, irrespective of the project's technology.

"Low-income areas" means areas identified by the median income within a Census Block Group having median income less than the CARE standard for a household of 4, which will be updated annually. Through May 31, 2019, this value is \$50,200.⁴

An "unserved" area means a census block for which no fixed facility-based broadband provider offers broadband service at speeds of at least 6 mbps downstream and 1 mbps upstream.⁵ ~~If a~~ After the Commission has approved funding for infrastructure projects that will provide broadband access to no less than 98 percent of households in each Consortia Region has met the goal 98 percent broadband deployment at served speeds of 6 mbps downstream and one mbps upstream, then the Commission shall make available no more than \$30 million in remaining Infrastructure Grant funds for projects where an "unserved" area will be a census block where no facility-based broadband provider offers broadband service at speeds of at least 10 mbps downstream and one mbps upstream.

"Unserved households with slow-service" means households' having service at speeds greater than 768 Kbps down or 200 Kbps up but less than 6 Mbps down or 1 Mbps up.

"Unserved households with no-service" means households' having speeds less than 768 Kbps down or 200 Kbps up, no service, or dial-up service.

4. Who May Apply

The following entities are eligible for a CASF Infrastructure Account grant:

⁴ The Commission's CARE program standard applies per household. We assume a household size of four persons. <http://www.cpuc.ca.gov/General.aspx?id=976>

⁵ Pub. Util. Code section 281(b)(1)(B). To determine if an area is unserved, the Commission will rely on ~~both~~ broadband deployment data ~~and subscriber data~~ submitted to the Communications Division as part of the annual broadband data collection efforts. ~~Staff will use subscriber data to validate a provider's deployment data.~~ For a census block to be served by a provider, the provider must submit deployment data indicating that it offers service speeds to at least one household in that census block ~~AND subscriber data indicating that it has one subscriber in that census block.~~

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- Entities with a Certificate of Public Convenience and Necessity (CPCN) that qualify as a “telephone corporation” as defined under Public Utilities (Pub. Util.) Code section 234; or
- Wireless carriers who are registered with the Commission (i.e., hold a Wireless Identification Registration (WIR))— wireless carriers need not obtain a CPCN to qualify for CASF funding; or
- Non-telephone corporations that are facilities-based broadband service providers—the Commission uses 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 residence, businesses, or other institution— must also meet the CASF eligibility requirements and comply with program requirements. (*See* D.14-02-018, T-17443 and _____[insert decision number of the PD]_____)
- A local governmental agency if no other eligible entity applied.⁶

In addition, the Commission will consider applications from satellite service providers able to meet the minimum performance criteria. 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.

The statute allows a Publicly Supported Community (PSC) eligible for funding via the Public Housing Account to submit an application for funding from the Infrastructure Account only after all funds available for the Public Housing Account have been awarded.⁷ Those applications will continue to be reviewed subject to the rules and guidelines established for the Public Housing Account.

⁶ For the purposes of this program, tribal governmental entities may also apply for CASF grants. Because the statute does not address specifically tribal governmental entities, which are sovereign, and distinctly different, we will provide them with the same treatment as local government agencies.

⁷ Pub. Util. Code section 281(i)(2), (3).

5. Eligible Projects

In addition to serving an area defined as unserved, including “unserved households with slow service” and “unserved households with no service,” the following items also impact project eligibility.

5.1. Treatment of CAF II Areas

Pub. Util. Code Sec. 281(f)(5)(C) specifies that the CAF II areas are ineligible for CASF until July 1, 2020, unless the existing facility-based broadband provider has notified the Commission before July 1, 2020, that it has either completed or elected not to build its CAF II deployment in the census block. Providers wishing to inform the Commission of their CAF deployment plans must submit a letter by January 15th of each year to the Communications Division Director with a copy to the CASF distribution service list, detailing the CAF II areas that have been completed and those that the provider is expressing its intent not to upgrade. The letter also must include the following information:

- Areas with CAF accepted locations by census block designated for planned broadband deployment in 2019, either in Excel or geospatial file format (.kmz, shapefile, etc.);
- Areas with CAF accepted locations by census block where broadband deployment has been completed as of December 31, 2018, either in Excel or geospatial file format (.kmz, shapefile, etc.); and
- Areas with CAF accepted locations by census block that the provider does not intend to build to and therefore releases as CASF eligible, either in Excel or geospatial file format (.kmz, shapefile, etc.).

5.2. Right of First Refusal

Any provider wishing to exercise its Right of First Refusal must submit a letter by January 15th of each year to the Communications Division Director with a copy to the CASF distribution service list, expressing its intent to deploy broadband or upgrade services existing facilities to a delineated unserved area within 180 days. The letter also must include the following information:

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- Area ~~designated~~delineated for broadband deployment by census block in Excel or census block geospatial file, such as .kmz or shapefile;
- The number of households or locations to be served;
- A commitment to ensure that all households within the delineated area will have the capability to receive minimum speeds;
- An estimate of the date (within the 180-day statutory requirement) by which the deployment will be completed with service available to the public;
- ~~Proof that the provider is an existing facility based provider in the census block(s) for which it claims ROFR. This proof may come in the following forms:~~
 - ~~The company submitted data during the most recent broadband data collection, or the most recent FCC Form 477 data submission that is publicly available, and its footprint includes the area in its ROFR claim;~~
 - ~~The company claiming ROFR has a video franchise under DIVCA, the area it claims in the ROFR submission is part of its DIVCA footprint, and it already offers video service in that area;~~
 - ~~The company claiming ROFR is an ILEC and the area it claims in the ROFR is an unserved area within its wire center region;~~
 - ~~If the company is a wireless internet service provider (WISP) and it has a subscriber in the claimed census block(s).~~

The Commission has delegated to Communications Division Staff the responsibility to approve or deny each ROFR filing. Staff will post determinations by January 31 of each year. and notify each provider that filed a ROFR if its filing was approved or denied. If denied, a provider will have 10 days to request a Commission Resolution to review the staff decision. Letters containing incomplete information or not filed in a timely manner will be denied.

As provided in Pub. Util. Code Sec. 281(f)(4)(A)(iii), if the existing facility-based broadband provider (“existing provider”) is unable to complete the deployment of broadband within the delineated unserved area within 180 days, the provider shall provide the Commission with information to demonstrate what progress has been made or challenges faced in completing the deployment. A ROFR may be extended for 180 days if the Commission finds

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~~that the provider is making progress towards the completion of the deployment is held up due to permitting issues and environmental~~

~~review, weather or other acts of God.~~ If the Commission finds that the provider is not making progress towards completing the deployment, the delineated unserved area will be eligible for CASF funding.

5.3. Middle Mile Funding

Pub. Util. Code Section 281 (f)(5)(B) requires that all or a significant portion of a project deploy last-mile infrastructure and states that projects that only deploy middle-mile infrastructure are not eligible for grant funding. For a project that includes funding for middle-mile infrastructure, the Commission is required to verify that the proposed middle-mile infrastructure is indispensable for accessing the last-mile infrastructure.

The Commission may approve a grant with funding for proposed new middle-mile infrastructure only with a Resolution that includes a finding that the infrastructure is indispensable. This finding shall be based upon review of information submitted by the applicant pursuant to Rule 8.35, information submitted with any challenge, and other relevant, timely and accurate information about existing infrastructure in the project area, which shall be described in the Resolution.

~~If Staff finds existing middle-mile infrastructure in a proposed project area where an applicant proposes to construct new infrastructure, Staff will ask the applicant to justify its request and explain why the existing middle-mile facilities cannot meet the needs of the last-mile infrastructure or the needs of the community. A project requesting middle-mile funding may also be challenged by owners of middle-mile facilities in the area. If an application proposing to build middle-mile infrastructure to offer last-mile service is not challenged, that is a strong indication that the middle-mile funding applied for is indispensable to the project.~~

~~In the event that there are relevant middle-mile facilities in the area, but the applicant and the owner of the middle-mile facilities are unable to agree to terms for wholesale services that will enable delivery of last-mile service at reasonable quality and price levels, the Commission will have to make a discretionary decision. Staff will draft a resolution for Commission approval on a case-by-case basis. Finally, in a situation where a provider is unwilling to offer service, or only offers service at exorbitant prices, the Commission will find that the proposed middle-mile build is indispensable to the project.~~

Regarding whether leasing or purchasing of middle-mile facilities and services for terms beyond five years (e.g., Indefeasible Right to Use (IRU) for 20 years) are allowable or even

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preferred over building new infrastructure, the Commission adopts rules to reimburse these services.

5.4. Previous CASF Areas

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 three 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.

6. Performance Criteria

At a minimum, all CASF Infrastructure projects must meet the performance criteria outlined below:

- Project Completion: All CEQA-exempt projects must be completed within 12 months, and all other projects shall be completed within 24 months after receiving authorization to construct.
- ~~Pricing: All applicants shall commit to serve customers in the project area at the prices provided in the application for two years after completion of the project.~~
- Speeds: All households in the proposed project areas must be offered a broadband Internet service plan with speeds of at least 10 Mbps download and 1 Mbps upload.
- Latency: All projects shall provide service at a maximum of 100 ms of latency.
- Data Caps: All projects implementing data caps shall provide a minimum of 190 GBs per month.
- ~~Affordability: All projects shall provide an affordable broadband plan for low income customers.~~

7. Reimbursable Expenses

Pub. Util. Code section 281(f)(11)(A-C) define the costs the Commission may reimburse as follows:

- Costs directly related to the deployment of infrastructure;
- Costs to lease access to property or for Internet backhaul services for a period not to exceed five years; and

- Costs incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.

Additionally, administrative expenses directly related to the project shall be capped at 15 percent of the grant amount.⁸

8. Information Required from Applicants

A single CASF Grant Application is to be submitted by each applicant for any eligible project areas. Non-contiguous project areas may be considered as a single project. Project applications can include either or both wireline and wireless technologies. Projects with middle-mile infrastructure must show that it is indispensable for accessing the last-mile infrastructure as required by Rule 8.35. In order to be reviewed, all applications must include the items listed below.

8.1. Application Item 1 – Project Summary (Distributed Publicly)

The applicant must submit a Project Summary, which Communications Division Staff will post on the CASF webpage. The applicant also must submit the Project Summary to the CASF Distribution List on the same day the application is filed, and an updated Project Summary on the same day any application is amended. The summary must include the following information:

- Company/Applicant's name.
- CPCN/U-Number or WIR or pending CPCN/WIR application number.⁹
- Contact person.
- Project title.
- Named project location (Community/County).
- Project type (Last-mile or Hybrid Last-mile/Middle-mile).
- Amount of CASF grant funding requested and project cost.

⁸ We define administrative costs as "indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with Commission administrative and regulatory requirements related to the grant itself." Applicants seeking additional funds will require a Commission exemption included in a draft resolution.

⁹ A CPCN or WIR authority is not necessary to apply or be awarded a CASF grant. CPCN/WIR information is available at www.cpuc.ca.gov/General.aspx?id=1019

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- Map of the proposed project area.
 - The number of unserved households with no-service and the number of unserved households with slow-service for which the project will provide service.
 - The maximum Mbps downstream and upstream speed currently offered to households.
 - Median Household Income of the project area.
 - The number of businesses, anchor institutions and public safety locations in the project area that will receive new or improved service.
 - A description of the major infrastructure to be deployed: miles of planned fiber, Central Offices used, number of remote terminals/fiber huts/wireless towers to be built, and if an IRU is used.
 - Estimated breakdown of aerial and underground installation.
 - Major equipment expenses (e.g., number of DSLAMs, multiplexers, etc.).
 - Estimated construction timeline.
 - Description of proposed broadband project plan for which CASF funding is being requested, including the type of technology to be provided in the proposed service areas:
 - Download speed capabilities of proposed facilities.
 - Upload speed capabilities of proposed facilities.
 - The project description will provide enough construction detail to enable a preliminary indication of the need for a California Environmental Quality Act (CEQA) review and if proposed project areas contains any environmentally sensitive areas. For example, when trenching is required, the applicant will state and describe the manner in which the site is to be restored, post-trenching.
 - Identification of the leveraging of existing available facilities (e.g., interconnection in lieu of overbuilding existing facilities of another provider).
-
- A statement of whether the applicant is disputing the Broadband Map depiction of served status pursuant to Rule 8.6.
 - A statement of whether the applicant is seeking Ministerial Review and, if so, information

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that the application meets all requirements for Ministerial Review.

- A clear identification of the exact amount of funding requested for constructing Middle Mile facilities, a description of those proposed Middle Mile facilities, and an explanation of why those Middle Mile facilities are “indispensable” for accessing the proposed last-mile infrastructure, including identification of any provider of existing Middle Mile facilities from which the applicant claims to have attempted unsuccessfully to obtain Middle Mile facilities prior to filing the application.

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 their proposed communities/areas.

8.2. Application Item 2 – Applicant Entity Information

The applicant must provide the following information, as necessary:

- Information Sheet (Attachment A to this document) with a Certificate of Good Standing issued by the Secretary of State;
- Organizational Chart, Company History, and Statement of Readiness to Build, Manage, and Operate Broadband;
- Key Contact Information (Name, Title, Address, Email Address, and Phone number);
- Key Company Officers.

8.3. Application Item 3 – Description of the Applicant’s Current Broadband Infrastructure and Existing Infrastructure in the Area

The applicant must provide:

- A description of the provider’s current broadband infrastructure and service within five miles of the proposed project;
- A description of other providers’ infrastructure within the project area which can be leased, purchased or accessed via interconnection.

8.35 Application Item 3.5 – Middle Mile Infrastructure

The applicant must provide:

- An attestation that the project (i) does not seek funding for only middle mile infrastructure and (ii) all or a significant portion of the project will deploy last-mile infrastructure to provide service to unserved households.
- An affirmative explanation as to why any new middle mile infrastructure for which funding is requested is “indispensable.”
- Documentation demonstrating that the applicant, in consultation with the owner of any existing middle mile infrastructure, and prior to requesting funding for any new middle mile infrastructure,

reviewed all options for including in the grant application the costs of leasing backhaul services and/or upgrading the existing provider's facilities to provide for interconnection.

8.4. Application Item 4 – Project Location Data

The applicant must provide the following:

- The geographic location of all households and housing units. This information will be provided in a plain-text, comma-separated values (CSV format) file, that contains geo-located street address information,

including latitude and longitude coordinates.¹⁰ Additional information about how to format this item is available on the CASF webpage;

- The geographic location of the project related key network equipment, such as; DSLAMs, wireless towers, router facilities, remote terminals, network interconnection, etcetera. Additional information about how to format this item is available on the CASF webpage.

8.5. Application Item 5 - Median Income

The applicant must report the median household income for each Census Block Group (CBG) that intersects the project area. The California Broadband Map (<http://www.broadbandmap.ca.gov/>) includes census derived population and income data and information regarding existing service providers and their reported service speeds. Using the census block group layer data return, the medium income and CBG code can be obtained. For reference, CBG codes are formatted as follows:

- CBG(s) must be based on the latest decennial census. CBG(s) must be in a twelve digit format, as follows:¹¹

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

8.6. Application Item 6 – Project Eligibility

The applicant must rely on the Broadband Map to identify project eligibility and that the project reported households (CSV file referenced in Application Item 4) are within eligible census blocks (unserved blocks that are not within a CAF II, ROFR or existing CASF project area). Eligible projects must offer broadband service at or above 10 Mbps downstream and 1 Mbps upstream, irrespective of the project’s technology. The applicant **must**:

¹⁰ There are a several possibilities for acquiring geolocated street address level data. This document from USAC provides an overview of geolocation methods:

http://www.usac.org/_res/documents/hc/pdf/tools/HUBBGeolocationMethods.pdf

¹¹ For example, a census block in the town of Fort Bidwell in Modoc County is 060490040001.

- ~~Must p~~Provide an assertion that the applicant reviewed the wireline, fixed- wireless and mobile served status on the Broadband Map and determined that the broadband project area proposed is eligible.
- ~~The applicant m~~May provide CalSPEED tests to show actual speeds or denials of service or other public feedback as evidence on unserved status. The Commission’s public feedback tools are available on the CASF website: www.cpuc.ca.gov/General.aspx?id=5868. Such evidence may be used to dispute the Broadband Map depictions of served status.

8.7. Application Item 7 - Deployment Schedule

The applicant must provide:

- A schedule for obtaining necessary permits prior to construction. The schedule must include the timeline required for the California Environmental Quality Act (CEQA) review, as applicable.
- A schedule for project construction following receipt of permits, to complete the project within 24 months, or within 12 months if the project is categorically exempt from CEQA. The schedule needs to identify and describe construction milestones and include start and end dates for each milestone.
- If the applicant is unable to construct and complete the proposed project within the approved timeline, it must notify CASF staff as soon as it becomes aware and explain reasons for the delay and when the project will be completed.

8.8. Application Item 8 - Proposed Project Expenditures

The applicant must provide:

- Identification of expense categories; direct and or indirect expenses;
- Identification of direct expenses; equipment/materials, labor/construction wages and permitting/CEQA review;
- Identification of individual cost elements and their cost amount. The applicant must identify all the equipment to be funded by the CASF by category, (buildings, towers and poles, network and access equipment, operating equipment, customer premise equipment, materials), and the

type of equipment (new building, prefabricated building, rehab of existing building, new towers or poles, modification towers and poles, broadband switching equipment, cable, etc.);

- Identification of allocated indirect costs; General and Administrative expenses, such as; repair & maintenance expenses for equipment and facilities, utilities, rent of equipment and facilities, administrative costs, indirect materials and supplies, insurance on equipment & machinery, indirect labor and contract supervisory wages, production period interest expense;
- Administrative expenses, including executive salaries, are limited to 15 percent of the total grant amount. We define administrative costs as indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with Commission administrative and regulatory requirements related to the grant itself.

8.9. Application Item 9 – 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).

8.10. Application Item 10 – Letter of Credit Requirement

An eligible applicant that does not hold a CPCN issued by the Commission is required to submit a Letter of Credit. The Letter of Credit must be irrevocable and will permit the Commission to immediately reclaim any funds provided in the event of non-compliance with the Commission's rules or requirements.

~~8.11.~~ Application Item 11 – Pricing Commitment

~~Applicants must submit the fixed monthly service subscription rates that it will offer to all consumers during a 24-month period following completion of the project. To encourage adoption, installation charges must be waived during the commitment period. After this 24-month period, the service provider may revise their generally applicable service rates and reinstate installation/connection charges for new service connections. The applicant shall identify in its application:~~

- ~~• Fixed monthly service level subscription rates.~~
- ~~• Waived installation/service connection charges.~~
- ~~• Specify any commitments and/or requirements that the customer must accept in order to receive equipment during the commitment period, such as return of equipment.~~

~~8.12.~~8.11. Application Item 12 – Marketing/Outreach Plan

The applicant must provide a plan to encourage subscription of the broadband service in the project location. The submission shall explain the marketing and outreach plans the applicant will employ to attract residents to sign up for service during the pricing commitment period.

~~8.13.~~8.12. Application Item 13 – Government and Community Support

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

~~8.14.~~8.13. Application Item 14 – Funding Sources

The applicant must identify each applicable project funding source, such as; loans, financial contributions from the service provider, public or private broadband adoption or deployment program funds, and federal and state grants or loans.

~~8.15.~~8.14. Application Item 15 - Financial Qualifications

The following must be submitted by applicant regarding the company:

- CPA Audited/Attested Financial Statements for the last three years:
 - Balance Sheet

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- Income Statement
- Statement of Cash Flows
- Pro Forma Financial Forecast for a five-year period, including a list of assumptions supporting the forecast. Projections must include:
 - Balance Sheet
 - Income Statement
 - Statement of Cash Flows
- Five-year annual EBIT (Earnings Before Income and Tax) projection for the company.

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.

8.16-8.15. Application Item 16 – Project Viability

The applicant must provide a five-year projected project business plan showing project profitability, revenues, and expenses. Include an EBIT for the project overall. The project viability forecast must include projected revenue from customers, showing changes in subscriptions and service rates and charges through the pricing commitment period and the period thereafter, years three through five, as applicable.

8.17-8.16. Application Item 17 – Providing Voice Service

The applicant must provide information about the following:

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

8.18.8.17. Application Item 18 – CEQA Attestation

The applicant must provide information about their project demonstrating how CEQA compliance is to be obtained. The applicant shall attest that they have contacted the Commission's Energy Division CEQA section in advance of the filing and have consulted with CEQA Staff regarding the process of developing and filing a Proponent's Environmental Assessment (PEA) or other CEQA documents and are aware of their responsibilities if their proposed project is not exempt from CEQA. Information on PEA and CEQA requirements is available on the Commission's website at: www.cpuc.ca.gov/ceqa.

8.19.8.18. Application Item 19 – Application Checklist

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

8.20.8.19. Application Item 20 – Affidavit

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. (See Attachment C to this document.)

9. Submission and Timelines

Applications are due annually on April 1. Staff then has six months to process all applications. If by October 1 an application has not been approved by Staff under its Ministerial Review authority, nor has Staff published a Draft Resolution recommending Commission approval, the application is deemed denied, though it may be eligible for approval the next year.

In the event the Commission receives a small number of applications, the Commission delegates to Communications Division Staff the option, but not the obligation, of opening a second shortened application round in a year.

Applications during this round must meet the criteria outlined in the Ministerial Review Section. Any applications submitted during this special round receiving a complete and timely challenge are automatically denied.

CASF Infrastructure Account Timeline

| Event | Date¹² |
|---|--------------------------|
| Broadband Availability Map Published | November/December |
| Right of First Refusal Submission Deadline | January 15 |
| Filing Deadline for CAF Providers to indicate blocks that will not be served using CAF support, blocks that will be served using CAF support and blocks that have not yet been determined | January 15 |
| Communications Division Staff Publishes ROFR Determination and Updates to Broadband Availability Map | January 31 |
| CASF Infrastructure Account Application Deadline | April 1 |
| Deadline for Challenge Submissions | April 22 |
| Deadline for Communications Division Staff to Announce if it will offer a second application round <u>and opportunity for challenges</u> | May 15 |
| Deadline for Application Approvals Under Ministerial Review | October 1 |
| Deadline for publishing Draft Resolutions | October 1 |

¹²In the event any date falls on a weekend or holiday, the deadline is the next business day.

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| | |
|-------------------------------|--|
| recommending Project Approval | |
|-------------------------------|--|

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 Public Advocates Office at the CPUC. Since applications are not filed with the Commission's Docket Office, they will not be assigned proceeding number(s).

~~Communications Division Staff 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 for the first application window and if funds are still available, Communications Division Staff 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). Communications Division Staff will then investigate this information, along with the applicant's documentation supporting its assertion that the CBG is unserved or underserved. Communications Division Staff will inform the applicant of the challenges filed on its application and provide the challenger's name and all information submitted. Once Communications Division Staff 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.~~

10. Posting of Applications

~~In addition to the distribution required of the applicant pursuant to Rule 8.1, t~~The Commission will post on the CASF webpage a list of all pending applications, ~~challenge deadlines, and~~ notices of all amendments to pending applications, ~~and challenge deadlines for applications and amendments to applications. on the CASF webpage.~~ The Commission already has a CASF distribution list of interested parties, and will continue to notify the distribution list of interested parties for any CASF applications. The Commission will serve applications and any amendments to an application for project funding to those on the service list and post on the CASF webpage at least 30 days before publishing the corresponding draft resolution.

11. Project Challenges

Pursuant to Public Util. Code Sec. 281(f)(8), the Commission shall provide each applicant, and any party challenging an application (as filed or subsequently amended), the opportunity to demonstrate actual levels of broadband service in the project area, which the Commission will consider in reviewing the application.

An entity challenging a CASF Infrastructure Grant application must submit its complete challenge no later than 21 calendar days from the filing of the application or from the date of any amendment to the application that changes the project area. Challengers must provide a public notice of the challenge to the CASF Distribution List and submit the confidential challenge report to the Communications Division Director, inclusive of the following:

- The geographic location of all households ~~it serves~~ to which it offers access to broadband at minimum speeds in the challenged area(s). This information must be provided in a plain-text, comma-separated values (CSV) file, that contains geo-located street address information, including latitude and longitude coordinates.
- ~~Customer billing from one subscriber in each census block of the challenge indicating that the customer received served speeds at least one day prior to the application filing. Additionally, the billing statement must contain sufficient information so that Staff can verify it with the customer.~~
- An attestation that the households identified ~~in (a)~~ are offered service and have the capability to receive minimum speeds of 6 Mbps download and

1 Mbps upload.

The Commission has delegated to Communications Division Staff the authority to uphold or deny a challenge. However, any grant for which a challenge is filed may be approved only by Commission Resolution, which shall describe the challenge and the basis upon which staff upheld or denied the challenge pursuant to standards established by the Commission. Staff will inform the applicant and the challenger of its determination of the challenge based on the confidential challenge report. Incomplete challenges or challenges filed after the deadline will be deemed denied.

12. Ministerial Review

~~The Commission delegates to Communications Division Staff the authority to approve applications, including determinations of funding, that meet all of the following criteria:~~

~~1. Applicant meets the program eligibility requirements herein and pursuant to Pub. Util. Code section 281.~~

~~The application is not challenged, or Staff has dispensed with the challenge.~~

~~2. The project meets the following cost thresholds:¹³~~

~~. For projects building fiber to the home, proposed project costs \$6,000 per household or less.~~

~~a. For fixed wireless projects, proposed project costs \$1,500 per household or less.~~

~~2. The total grant does not exceed \$5,000,000.~~

~~2. The project must be CEQA exempt, or the approval letter from Staff must state that authorization to construct and release funds will be provided in a forthcoming resolution.~~

~~Applications not meeting these criteria may only be approved by the Commission via resolution. All applications shall be approved, denied, or marked for further review by the Commission (through a Resolution) within three months. If an application is neither approved nor marked for further review by the Commission, it shall be presumed denied.~~

¹³CASF Workshop on Reform Report May 25, 2017, presented average project cost per household by technology type, Page 72, Table 11. <http://www.cpuc.ca.gov/General.aspx?id=9226>

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| Ministerial Process | Resolution Process |
|---|---|
| Maximum Cost / HH | Does not meet all criteria under Ministerial Process |
| • \$6,000 for wireline | |
| • \$1,500 for fixed | |
| Maximum Grant Amount: | |
| Must be CEQA exempt, or approval letter must state that authorization to construct and release funds will be provided in | |

13.12. Semi-Annual and Completion Reporting

Grantees are required to file progress reports on a bi-annual basis. Progress reports are due on March 1 and September 1 of each year. In the event either date falls on a weekend or holiday, the reports are due the following business day. Progress reports shall contain the following:

- Description of project accomplishments during this period.
- Identification of project milestones and the percent complete to date. If the percent completed is different from the estimated target milestones from the CASF application, it is necessary to provide a narrative description explaining what occurred.
- Major construction milestones (including a reporting on all CEQA mitigation implementation and monitoring activities, if CEQA review was required), date of completion of each task/milestone as well as problems/issues encountered, and actions taken to resolve these issues/problems during construction (including CEQA compliance, if applicable).
- Description of any challenges or issues and any risks faced during this past quarter in achieving planned progress on the project, including environmental compliance and permitting challenges if applicable.
- Description of significant project milestones or accomplishments planned for next quarter.

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- Subscribership information to date.
- Certification that each progress report is true and correct, under penalty of perjury.

Grantees also must submit completion reports prior to receiving the final payment. These reports shall contain the following:

- Comparison of approved versus actual costs of construction.
- Description of the project, including any changes in the project construction and alignment, if applicable.
- Milestones and completion dates for each milestone.
- Final date of completion of the project, problems/issues encountered since last semi-annual report and actions taken to resolve these issues/problems during construction (and comprehensive reporting on CEQA mitigation compliance, if applicable).
- Speed test data for the Census Block, including:
 - Test results for download and upload speeds;
 - Samples at dispersed locations in the project area; number of tests will vary based on project;
 - An attestation that all households within the project area are offered service at minimum speeds of 10 Mbps download and 1 Mbps upload or higher;
 - A screenshot of results of CalSPEED speed tests, which can be accessed at <http://calspeed.org/index.html>;
 - Maps of the areas covered;
 - The geographic location of all households that are served. This information will be provided in a plain-text, comma-separated values (CSV) file, that contains geo-located street address information, including latitude and longitude coordinates;
 - Documentation of advertisements, billing inserts and marketing information, by speed tier and prices;

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- Projected subscribers versus actual subscribers, as of the date of the completion report;
- Identification of the number of served households in the project area that have broadband availability at or above the aforementioned minimum speeds;
- A copy of the FCC Form 477 data submitted directly to the Commission.

14.13. Payment

Requests for payments may be submitted as the project is progressively deployed. The prerequisite for first payment is the submittal of a progress report to the Commission showing that at least 10 percent of the project has been completed.

Subsequent payments are made at the following deadlines: 35 percent completion, 60 percent completion, 85 percent completion and 100 percent completion. The final 15 percent payment request (from 85 to 100 percent) will not be paid without an approved completion report. Payments are based on submitted receipts, invoices and other supporting documentation showing expenditures incurred for the project in accordance with the approved CASF funding budget included in the CASF grantee's application.

~~If an application also meets the ministerial review criteria, a~~ A provider with a CPCN that wishes to front the full costs of a project in exchange for reduced reporting burdens may request an alternative payment structure. The one-time payment request must include a project completion report and receipts/invoices of major equipment and materials purchased, with labor costs and other items being line items reflecting the remaining total amounts charged to CASF. CASF Staff must conduct a site visit to confirm project completion prior to authorizing payment and these reimbursements are still submit to audit.

Grantees shall submit the final request for payment within 90 days after completion of the project. If the grantee cannot complete the project within the 24- month timeline, the grantee shall notify the Commission as soon as they become aware that they may not be able to meet the timeline and provide a new project completion date.

In the event that the recipient fails to notify the 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. Invoices submitted will be subject to a financial audit by the Commission at any time within 3 years of completion of project. If portions of reimbursements are found to be out of compliance, Grantees will be responsible for refunding any disallowed amounts along with appropriate interest at rates determined in accordance with applicable Commission decisions.

15.14. CEQA Payment

CEQA consultant costs shall be paid directly by the Commission to the contractor. Following award of a grant the Energy Division CEQA Section Staff will obtain a contractor to review the CEQA documents for the project. The CASF will pay directly the project's CEQA PEA preparation costs, but those costs will be identified as costs associated with the grant and will have no effect on the applicable shares of grantee assigned and program supported total project costs.

The applicant may file with the Energy Division's CEQA Section a completed CEQA review conducted by another agency acting as the Lead Agency pursuant to CEQA. Should this occur, grantees may request funds to pay for preparation of a PEA.

16.15. Execution and Performance

Staff and the CASF grant recipient shall determine a project start date after the CASF grant recipient has obtained all approvals, commonly 30 days after approval of the resolution or ministerial review approval. 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.

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.

16.1. Construction Phase

A grantee 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 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 to comply with 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. The grantee shall not transfer CASF funds or the built portion of the project to the new entity prior to Commission approval via a resolution/order. If the Commission does not provide approval, it will rescind the grant.

16.2. Post-Construction Phase

For three years after project completion, a grantee 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 comply with the requirements of the CASF grant. The new entity shall agree in writing to such.

17.16. Compliance Changes Pursuant to CASF Performance Audit

All applicants are required to sign a consent form agreeing to the terms stated in the resolution authorizing the CASF award. The agreement will provide the name of the applicant, names of officers and members, and must be signed by the applicant. The proposed wording of the consent form is in Attachment D to this document.

18.17. Penalties

Non-telephone corporations, grantees must agree to the following language in the affidavit found in Attachment C to this document.

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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.

Appendix B

CCTA Proposed Corrections to Findings of Fact and Conclusions of Law

Findings of Fact

- Revise Finding of Fact 8 to state: “The LEP pilot required by Pub.Util.Code Section 281(f)(6) will be considered in a future Commission issued prior to April 1, 2019, or no later than the application window for infrastructure grant applications.”
- Delete Finding of Fact 9

Conclusion of Law

- Delete Conclusion of Law 2