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12/13/2018 Item #33

Decision **PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**  
(Mailed 11/9/2018)

**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

**DECISION IMPLEMENTING THE CALIFORNIA ADVANCED SERVICES FUND  
INFRASTRUCTURE ACCOUNT REVISED RULES**

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**DECISION IMPLEMENTING THE CALIFORNIA ADVANCED SERVICES FUND  
INFRASTRUCTURE GRANT ACCOUNT PROVISION****Summary**

In this decision, we implement programmatic changes to the California Advanced Services Fund's broadband Infrastructure Grant Account and introduce the Line Extension Grant Account, as required by Assembly Bill 1665. Revisions to the Infrastructure Grant Account include, among other items, the following subjects: project eligibility, application challenges, determining funding levels, reimbursing grantees, a new ministerial review process whereby staff may approve certain projects and establishing additional minimum performance standards for grantees.

This proceeding remains open.

**1. Relevant California Advanced Services Fund  
Procedural Background**

On October 15, 2017, the Governor signed Assembly Bill (AB) 1665 (Garcia)<sup>1</sup> into law. This urgency legislation amended the statutes governing the California Advanced Services Fund (CASF) program.<sup>2</sup> 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. Due to the requirement that the CASF's Broadband Adoption Account begin accepting applications by July 1, 2018, the Amended Scoping Ruling bifurcated the proceeding into two phases. The Amended Scoping Ruling also contained draft Staff Proposals, prepared by

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<sup>1</sup> Ch. 851, Stats. 2017.

<sup>2</sup> Pub. Util. Code §§ 281, 912.2, and 914.7.

the Commission's Communications Division (CD) in order to implement Phase I and Phase II of the program. In addition to the Adoption Account, Phase I of the instant proceeding also addressed the implementation issues related to the CASF program's Public Housing and Loan Accounts. Phase II seeks to resolve the Broadband Infrastructure, Line Extension, and Rural and Urban Regional Broadband Consortia Grant Account issues. The Commission issued a decision containing the revised Consortia Account rules on October 25, 2018.

Comments on the draft Staff Proposal (Phase II) were due no later than April 16, 2018 and reply comments were due no later than May 1, 2018. Assigned Commissioner Guzman Aceves issued a Ruling on July 11, 2018, setting a date for a workshop in Sacramento and seeking comment on eligibility for and prioritization of broadband infrastructure funds. Comments on that Ruling were required to be filed no later than August 8, 2018. Assigned Administrative Law Judge Colbert (ALJ Colbert) subsequently issued a Ruling on September 5, 2018, requesting comments on the eligibility for and prioritization of broadband infrastructure funds. Opening comments were due by September 21, 2018, and reply comments were due by September 28. Finally, because there was not a period for reply comments on the Assigned Commissioner's Ruling (ACR) in July/August, some parties included replies to the ACR in their comments on ALJ Colbert's ruling in September.

Parties filing comments and reply comments included telephone corporations, a cable industry group, consumer groups, government entities,

Consortia, the California Emerging Technology Fund (CETF), and other regional and community groups focused on broadband deployment.<sup>3</sup>

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).

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<sup>3</sup> The following parties filed comments/reply comments: AT&T, California Cable & Telecommunication Association (CCTA), California Internet, L.P. DBA GeoLinks (GeoLinks), Frontier Citizens Telecommunications Company of California (Frontier), CETF, Center for Rural Policy (CCRP), Central Coast Broadband Consortium (CCBC), Conifer Communications (Conifer), Corporation for Education Network Initiatives in California (CENIC), Gold Country Broadband Consortium (GCBC), Joint Consumers (The Utility Reform Network and The Greenlining Institute), Joy Sterling, North Bay North Coast Broadband Consortium (NBNCBC), Northeastern California Connect Consortium (NCCC), Race Telecommunications Inc. (Race), Rural County Representatives of California (RCRC), Small Local Exchange Carriers (Small LECs), The Public Advocates Office at the California Public Utilities Commission (formerly Office of Ratepayer Advocates (ORA) now Cal Advocates), Upstate California Connect Consortium (UCCC).

- 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.
- Requires the Commission to award infrastructure grants on a technology-neutral basis, including 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).
- 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).
- 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

- that it has completed its CAF deployment in the census block;<sup>4</sup> however, an existing facility-based broadband provider is eligible to apply for CASF funding to supplement CAF II funds to expand broadband service within identified census blocks, as needed. Pub. Util. Code § 281(f)(5)(C).
- Prohibits the Commission from granting projects that are already funded by the CAF 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). PUC § 281(f)(12).
  - 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).
  - 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

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<sup>4</sup> According to the U.S. Census Bureau, a census blocks are the smallest geographic area for which the Bureau collects and tabulates decennial census data, are formed by streets, roads, railroads, streams and other bodies of water, other visible physical and cultural features, and the legal boundaries shown on Census Bureau maps. In cities, a census block may correspond to a city block, but in rural areas where there are fewer roads, blocks may be limited by other features. The population of a census block varies greatly. In California there are roughly 300,000 census blocks without households or population. It is also possible that a block may be entirely occupied by an apartment complex with several hundred inhabitants.

- infrastructure to provide service to unserved households. Pub. Util. Code § 281(f)(5)(A).
- 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).
  - Upon attainment of the main CASF goal, allocates \$30 million remaining in the Infrastructure Grant account for projects that provide last-mile broadband access to households that are not served with 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 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).
  - Requires the Commission to develop a Line Extension Program (LEP) in which an individual household or property owner may apply for a grant to offset the costs of connecting the household or property to an existing or proposed facility-based broadband provider, to consider limiting funding to households based on income so that funds are provided only to households that would not otherwise be able to afford a line extension to the property, to limit grants on a per-household basis, and to require a percentage of the project to be paid by the household or owner of the property. Specifies that the aggregate amount available for awards is \$5 million dollars. Pub. Util. Code § 281(f)(6)(B)(ii).

**2. Revised Infrastructure Grant Account Rules**

In this decision, we amend rules, application requirements and guidelines for the Infrastructure Grant Account, as summarized below.

**2.1. Determination of Eligible Areas and Served Status**

As previously noted, AB 1665 revised the definition of when a home is considered “served” as relates to broadband services from the previous standard of 6 mbps download and 1.5 mbps upload to 6 mbps download and 1 mbps upload (except in Consortia regions that are already 98 percent served at speeds of 6/1). AB 1665 also established other eligibility requirements for CASF program funding which were designed to limit overbuilding. Under previous practice, ineligible census blocks were largely determined by a service provider’s claim(s) of serving households within such census blocks and information indicating subscriptions within these census blocks.<sup>5</sup> However, not all households within such census blocks have Internet service available to them. Additionally, parties to this proceeding, other applicants and grantees, as well as the Legislature, have all expressed that the CASF application review process takes too long.

In an effort to expedite the review of infrastructure grant applications, AT&T, in its opening comments proposed that the Commission create a single definitive list of CASF-eligible census blocks, relying on deployment data

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<sup>5</sup> For wireline service. For most fixed wireless service, we display their propagation using EdX software and on tower location data submitted by wireless internet service providers (WISPs). Mobile service relies on a propagation model using semiannual tests a roughly 2,000 points throughout the state.

submitted as part of the Federal Communications Commission's (FCC) Form 477 data collection (the Commission's broadband data collection requires similar data), and that challenges and Right of First Refusal (ROFR) submissions be concurrent.

Given the potential overstatement of ubiquitous availability within census blocks, the July 2018 ACR requested comment regarding whether a census block should only be CASF-eligible if the subscription rate within that census block is less than 51 percent of all households. The ACR proposed to count a census block as served if a majority of households in that block subscribe to wireline or fixed wireless Internet service. The ACR saw value in using this approach, but only if Staff is able to make determinations regarding eligibility in a prompt manner. Thus, the Commission would need clear and well-defined rules for determining eligibility. The ACR also asked the following questions:

- Should the Commission rely on subscriber information to determine if an area is served? If yes, how many subscribers at served speeds must a census block have in order to be deemed served?
- If the adoption rate for a particular census tract is 50 percent, are all blocks within that tract served?
- Are there other methods the Commission could use to confirm quickly that an area is served?

#### **2.1.1. Parties' Comments**

Parties do not agree on AT&T's proposal to create a list of eligible census blocks before the application window. Frontier and the NBNCBC support it, while CCRP, RCRC, UCCC, NCCC do not. CCTA does not object, while CETF asserts that the proposal would work only if the Commission receives updated broadband deployment and subscriber data every six months.

Parties also disagree over what data the Commission should use when determining the served status of census blocks. AT&T argues that the Commission should not determine a census block's eligibility based on subscribership for five reasons:

1. AB 1665 does not allow the Commission to determine the eligibility of a census block based on subscribership levels because eligibility is based on the availability of 6/1 or faster;
2. Using subscribership rather than availability would conflict with the goals of the statute;
3. There is no evidence to prove a correlation between low subscribership and lack of availability;
4. Determining eligibility based on subscribership would be administratively inefficient; and
5. The National Telecommunications and Information Administration is also addressing the issue of the national broadband availability map.<sup>6</sup>

Conifer and Race also oppose using subscriber data to indicate deployment, while CCTA, CCRP, RCRC, UCCC, NCCC, and Cal Advocates support using it. GeoLinks and CETF note that subscription data and availability are not necessarily correlated; the lack of a subscriber may be due to issues unrelated to access; Joint Consumers note that overstating availability harms broadband adoption and CASF participation. Conifer asserts that if subscription data is used to determine eligibility, the Commission should use the data for all technology types, including homes historically served; if service is available but the subscriber chose a slower speed it should be considered covered, providers

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<sup>6</sup> AT&T ACR Comments August 8, 2018 at 5

who recently increase their coverage be given one year to gain subscription. Although Race does not support using subscriber data as a proxy for served status, the company agrees that providers should submit more granular data to help determine for served and unserved census blocks.

The CCBC disagrees with AT&T's assertion that the Commission should solely rely on deployment data submitted on FCC Form 477 to determine eligibility, citing inaccuracies in AT&T's deployment data, most likely due to miscoding in certain census blocks.<sup>7</sup> CETF appears to agree with CCBC on this matter, noting that CD Staff have acknowledged that the FCC Form 477 deployment data is inaccurate and chronically overstates broadband service.<sup>8</sup>

CCRP, RCRC, UCCC, NCCC , CETF, Joy Sterling and Joint Consumers all support using an adoption percentage as a proxy for served, though that support varies from 40 percent adoption to 60 percent.

### **2.1.2. Discussion**

The Commission must balance timely processing of applications, including challenges to those applications, with accuracy of the data used to determine grant eligibility. It is clear that, in certain instances, the deployment data submitted by providers overstates broadband availability and that the submitted data is inaccurate in other ways, including the miscoding identified by the CCBC. We note that the FCC and United States Department of Agriculture (USDA) are also wrestling with this issue. Both agencies award public funds supporting broadband deployment. The trend of providers consistently failing

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<sup>7</sup> CCBC Phase II Reply Comments May 1, 2018 at 3.

<sup>8</sup> CETF Phase II Opening Comments April 2018 at 9.

to correct these errors has led to significant expenditure of staff effort to create a more accurate depiction of broadband availability in the State, as well as time spent reviewing applications and challenges to the applications. This in turn has led to significant frustration and confusion in communities hoping to improve broadband service using a CASF grant.

While it is a fair point that subscriber data does not necessarily represent all areas where broadband Internet service has been deployed or where service is available, providers both large and small need to submit more accurate data in order for the Commission to be more comfortable solely using deployment data. For the time being we believe the most responsible approach to ensure that broadband truly is available in a census block is to validate deployment data using the presence of one subscriber in that census block. Concerns that using subscriber data to validate the level of broadband deployment may lead to overbuilding of networks may be addressed as part of the challenge process.

## **2.2. Funding Criteria**

Prior to the passage of AB 1665, the Commission limited Infrastructure Account grants to a maximum of 70 percent of a project's costs. AB 1665 amended Pub. Util. Code § 281(f)(13) to authorize the Commission to fund all or a portion of a project, on a case-by-case basis. To determine the funding level for a project, the Commission shall consider the following factors, among others:

- Location and accessibility of the area;
- Existence of communication facilities that may be upgraded to deploy broadband; and
- Whether the project makes a significant contribution to achieving the program goal.

In awarding grants, Pub. Util. Code § 281(b)(2)(B)(i) instructs the Commission to give preference to communities with broadband service at dial-up speeds only, or without the presence of any form of wireline or wireless facility-based broadband service.

Both the February Scoping Memo and the July 2018 ACR contain proposals and questions for parties regarding how the Commission may best incent investment in low-income communities. The Staff Proposal included a \$100 million set-aside for unserved low-income communities as well as the Commission delegating to staff the authority to approve projects that met certain standards in low-income areas. The July 2018 ACR also proposed increased funding for project applications in low-income areas, as well as for projects offering Internet service plans for low-income individuals.

### **2.2.1. Parties' Comments**

Parties offered comments regarding how much to fund grant applications and the criteria for making those determinations.

AT&T and Frontier oppose linking funding levels to meeting criteria, and instead propose 100 percent funding for all projects approved by the Commission. Frontier asserts that "AB 1665 requires consideration of the combination of factors for each application that could justify full funding, which will be unique in each case."<sup>9</sup> CCTA and the Small LECs also oppose the quantification and precise definitions requested by Staff, suggesting that doing so would detract from the need to determine funding on a "case-by-case" basis. Similarly, AT&T contends that "once winning applications are selected under

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<sup>9</sup> Frontier Phase II Opening Comments April 16, 2018 at 6.

that scoring process, the presumption should be that funding will be for 100 percent of the costs.”<sup>10</sup> By contrast, the Joint Consumers assert that it is poor public policy to hand over public money to finance construction by wholly owned private companies that will, in turn, charge the same taxpayers for access to infrastructure they paid for.<sup>11</sup> Joint Consumers recommend that the Commission set a high bar for full funding, by generally expecting providers to bear more of the capital costs than AT&T and Frontier have requested, and by insisting upon greater benefits for the public, such as high service quality, affordable plans, or open access rules.<sup>12</sup> Similarly, Cal Advocates asserts that “requiring applicants to have a financial stake in a project is necessary to ensure that the expenditures of ratepayer funds are prudent, necessary, and cost effective,” and that grants for full funding should also require affordable plans for low-income households.<sup>13</sup> CCTA agrees, arguing that applicants should have at least some “skin in the game.” Race contends that the baseline for CASF projects should be raised from 60 percent to 80 percent, and that grants for more than 80 percent should be “an unusual occurrence and not routine,”<sup>14</sup> though there should be multiple paths to 100 percent and the determination should be based on necessity (e.g., an applicant will not break even after seven years absent 100 percent grant funding). CENIC, CETF and Race assert that grant awards in

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<sup>10</sup> AT&T ALJ Ruling Opening Comments September 21, 2018 at 4.

<sup>11</sup> Joint Consumers ALJ Ruling Opening Comments September 21, 2018 at 1.

<sup>12</sup> *Ibid.* at 1-6.

<sup>13</sup> Cal Advocates Phase II Opening Comments April 16, 2018 at 4.

<sup>14</sup> Race ALJ Ruling Opening Comments September 21, 2018 at 6.

the 90-100 percent range should be made exclusively to grantees that provide service to anchor institutions.

Many parties offer interpretations of the specific factors for consideration in Pub. Util. Code § 281(f)(13). With respect to location and accessibility, CCBC suggests sorting projects into “accessible,” “remote,” and “inaccessible,” on the basis of how many relevant factors, such as lack of usable pole routes or conduit, unpaved roads, terrain constraints, and distance from public safety resources, schools, health care and commercial centers are applicable to the location.<sup>15</sup> CETF interprets “location and accessibility” to mean that “the CPUC has to verify that the subject area in the application meets the new definition of ‘unserved.’”<sup>16</sup> Frontier suggests considering, “remoteness, population density, and high-cost nature.”<sup>17</sup> Cal Advocates states that an inaccessible location is one with unserved households.<sup>18</sup> The Small LECs believe inaccessible areas should be a priority, but have not offered a precise definition of the term. Race argues that an inaccessible location is any unserved location.

With respect to the “existence of communication facilities,” CCBC recommends the Commission should only consider facilities that will be used to lower the cost of installing new and superior technology.<sup>19</sup> CETF writes that this means an incumbent ISP has telecommunications or Internet service in part of

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<sup>15</sup> CCBC ALJ Ruling Opening Comments September 21, 2018 at 2-4.

<sup>16</sup> CETF ALJ Ruling Opening Comments September 21, 2018 at 4.

<sup>17</sup> Frontier ALJ Ruling Opening Comments September 21, 2018 at 2.

<sup>18</sup> Cal Advocates ALJ Ruling Opening Comments September 21, 2018 at 3.

<sup>19</sup> CCBC ALJ Ruling Opening Comments September 21, 2018 at 2-4.

the census block, but not all locations, has middle-mile backhaul to or through the areas, or serves the area immediately adjacent to (contiguous with) an unserved area, and that the applicant must make use of these facilities to be credited for doing so.<sup>20</sup> Frontier suggests this criterion be determined by whether a provider has the facilities necessary to transport and deliver service already deployed, as determined on a case-by-case basis, and that this should be a required inclusion in each CASF application, but that providers should not be required to use communication facilities to receive credit for doing so.<sup>21</sup> Cal Advocates opposes considering use of existing infrastructure, and prefers incentivizing low-cost projects directly.<sup>22</sup> Similarly, Race states that existing infrastructure should only be rewarded insofar as it lowers the cost per household.

With respect to “significant contribution,” CCBC defines this term as any project that occurs in the area of a Broadband Consortium that has not yet reached the 98 percent goal.<sup>23</sup> CETF suggests that the Commission not define a “significant contribution,” and instead leave that to the judgment of the Consortia, as part of CETF’s proposal for “preferred scenarios.”<sup>24</sup> Conifer proposes that “1% of remaining households” would satisfy the “significant

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<sup>20</sup> CETF ALJ Ruling Opening Comments September 21, 2018 at 4.

<sup>21</sup> Frontier ALJ Ruling Opening Comments September 21, 2018 at 2-3.

<sup>22</sup> Cal Advocates ALJ Ruling Opening Comments September 21, 2018 at 4.

<sup>23</sup> CCBC ALJ Ruling Opening Comments September 21, 2018 at 2-4.

<sup>24</sup> CETF ALJ Ruling Opening Comments September 21, 2018 at 5-6.

contribution” criterion.<sup>25</sup> Frontier argues that every contribution is a significant contribution.<sup>26</sup> Cal Advocates defines a “significant contribution” as deploying to 10 percent of remaining households in a Consortia region with less than 98 percent deployment. Like CETF, Race suggests relying upon the Consortia (or Commission-led stakeholder conventions) to determine which projects would make significant contributions, but also specifies that such projects must serve all households, anchor institutions, businesses, and working farms in the project area.<sup>27</sup>

With respect to dial-up only, CCTA states that, “the Commission should consider whether a project area is completely unserved as an extremely relevant factor in its full funding determination.”<sup>28</sup> Cal Advocates asserts that any project receiving 100 percent funding should be an ideal project, which is defined by many attributes, including that it is located in a dial-up only area.<sup>29</sup>

With respect to additional funding criteria, Race suggests considering whether: the project brings a Consortium close to 98 percent coverage; serves a below-median-income community, a disadvantaged community, or connects anchor institutions; is a high-speed project; and the applicant’s financials show it will not break even after 7 years. Joint Consumers have suggested a requirement that projects receiving more than 60 percent funding provide open access.

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<sup>25</sup> Conifer ALJ Ruling Opening Comments September 21, 2018 at 4.

<sup>26</sup> Frontier ALJ Ruling Opening Comments September 21, 2018 at 2.

<sup>27</sup> Race ALJ Ruling Opening Comments September 21, 2018 at 5.

<sup>28</sup> CCTA ALJ Ruling Opening Comments September 21, 2018 at 2.

<sup>29</sup> Cal Advocates ALJ Ruling Opening Comments September 21, 2018 at 2-3.

CENIC, CETF and Race have suggested that 90-100 percent grants should go exclusively to those who serve 98 percent of households and provide service to anchor institutions. Conifer asserts that unconnected public safety infrastructure should not be considered.<sup>30</sup>

Frontier supports low-income projects receiving full funding but also argues that “low-income status cannot be a mandatory condition for full funding, nor the only factor that justifies full funding.”<sup>31</sup> Joint Consumers supports prioritizing low-income communities, requests that the Commission define the percentage of a project that must be low-income in order to qualify as a low-income project,<sup>32</sup> and supports setting aside \$100 million for projects benefitting low-income communities, if provided greater clarity about how those funds will be used.<sup>33</sup> CCTA also requests clarification on the definition of low-income. Race suggests using the median household income (\$63,783) as the definition of low-income, or showing that the majority of census blocks fall below a median household income of \$49,200, instead of all census blocks falling below that level.<sup>34</sup> CCRP, RCRC, UCCC, and NCCC suggest using a low-income definition of \$49,200 median household income when determining what areas are priorities.<sup>35</sup> NBNCBC states that low-income areas should be priorities.<sup>36</sup>

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<sup>30</sup> Conifer ALJ Ruling Opening Comments September 21, 2018 at 4.

<sup>31</sup> Frontier Phase II Opening Comments April 16, 2018 at 4.

<sup>32</sup> Joint Consumers Phase II Opening Comments April 16, 2018 at 8.

<sup>33</sup> *Ibid.*, at 10.

<sup>34</sup> Race Phase II Opening Comments April 16, 2018 at 6.

<sup>35</sup> CCRP, RCRC, UCCC, and NCCC ACR Opening Comments August 8, 2018 Appendix A, 1.

<sup>36</sup> NBNCBC ACR Comments August 8, 2018 at 5-6.

Cal Advocates suggests prioritizing low-income communities, with a definition of \$49,200 median household income.<sup>37</sup> CETF supports considering household incomes and prioritizing low-income communities, with a funding bonus of 10 percent for low-income areas, and a cutoff of the statewide household median income.<sup>38</sup>

### **2.2.2. Discussion**

We reject the argument made by Frontier and CCTA that the Commission is prohibited from making funding level determinations in the manner proposed in the July ACR by assigning specific values to the four criteria specified in statute and, consistent with statute, the two additional criteria focused on low-income service. Using these criteria will ensure different funding determination outcomes for different applications. We conclude that we are following both the letter and the intent of the law. We also believe that adopting this approach is a preferred public policy outcome rather than that advocated by Frontier and CCTA. The proposed criteria provide applicants with clear and transparent guidance regarding their funding requests. In addition, adopting this approach will also avoid the significant use of staff and Commission time spent negotiating with grantees and applicants, were these clear criteria not in place.

While we appreciate the policy arguments against using clearly-defined criteria that have been presented by CCTA, Frontier, the Small LECs, and other parties and recognize that in some instances it may make more sense to offer

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<sup>37</sup> Cal Advocates ALJ Ruling Opening Comments September 21, 2018 at 2.

<sup>38</sup> CETF ALJ Ruling Opening Comments September 21, 2018 at 10.

staff greater flexibility in reviewing grants, staff will not be permitted to make a decision regarding funding without clear criteria. In essence, Staff will be implementing Commission instruction that it *must* approve a specific funding amount for a project application meeting specific criteria.

The Commission is required by Pub. Util. Code § 281(b)(2)(B)(i) to “give preference to projects in areas... that are not served by any form of... facilities-based broadband service.” We agree with CCTA’s recommendation that the “dial-up only” criterion remain at the core of the funding criteria. Statute instructs the Commission to give preference for these areas.

We have carefully considered parties’ comments regarding the need for grantees to have “skin in the game.” The relevant statute requires the Commission to consider funding “all or a portion” of projects on a case-by-case basis, and the concern that less than 100 percent funding will make projects in the lowest-income and most rural areas of the state unviable, thus we cannot impose a general requirement that applicants provide matching funds. However, we can restrict 100 percent funding to those we consider the most consistent with the “priority” and “consideration” criteria provided in statute. As noted elsewhere, only projects in low-income areas or without any service from an existing facilities-based provider (a “dial-up only” area) are eligible to receive up to 100 percent funding, while all other projects will be eligible for up to 80 percent funding. We believe that this appropriately balances the need for full funding in rural and low-income areas with the goal of ensuring prudent use of public funds.

Pub. Util. Code §281(f)(13) requires the Commission to consider the following three factors:

- Location and accessibility of the area;
- Existence of communication facilities that may be upgraded to deploy broadband; and
- Whether the project makes a significant contribution to achieving the program goal.

We interpret “location and accessibility of an area” to mean the Legislature wants us to award higher funding levels in remote areas. Therefore, we instruct Staff to award more funding if an applicant proves a proposed project area meets 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.

Similar to the recommendations of many parties, we interpret the “existence of communication facilities that may be upgraded to deploy broadband” to mean that the proposed project relies primarily on existing infrastructure, including poles and conduit, and thus will be less expensive to build. We instruct Staff to award more funding if an applicant meets this criterion.

With respect to what is a “significant contribution” to the program goal, we agree with the CCBC and define this term as any application where the proposed project area is within a Broadband Consortium region that has not yet

reached the goal of deploying broadband Internet service at speeds of at least 6 mbps download and 1 mbps upload to 98 percent of households.

We instruct Staff to award an additional 10 percent to applications meeting one of those criteria and 20 percent to applications meeting two or more of those criteria.

After considering the suggestions for additional criteria submitted, and how they could or could not be implemented within the confines of Staff's delegated authority, we have decided to introduce only two additional funding criteria: 1) whether the proposed project serves a low-income area; and 2) if it offers a plan to low-income individuals.

Several other criteria discussed in the comments, such as the presence of public safety infrastructure and anchor institutions, or more expansive definitions of disadvantaged communities, are unimplementable within the current funding criteria, given that the CASF Infrastructure Account is focused on residential service. Although we will not be including these additional factors in the funding criteria, applicants have presented such factors to the Commission in the past to support the case for approval and may do so in the future. Table 1, below, summarizes the funding level determinations.

**Table 1. Summary of Funding Level Determinations**

<b>Maximum Funding Level: 100%</b>
<b>Baseline for Eligible Project: 60% of total construction costs</b>
<b>Presence of Dial-up Only: Up to + 40%<sup>39</sup></b>
<b>Low Income: Up to + 40%</b>
<ul style="list-style-type: none"> <li>• Median Household Income for community is less than \$50,200 (30%).<sup>40</sup></li> <li>• Applicant serves low-income customers for no more than \$15/month (10%).</li> </ul>
<b>Pub. Util. Code § 281 (f)(13) Criteria: + 10% per criterion, up to + 20%</b> <ul style="list-style-type: none"> <li>• Inaccessible Location</li> <li>• Uses Existing Infrastructure</li> <li>• Makes a Significant Contribution to the Program Goal</li> </ul>

### 2.3. Ministerial Review

The February Scoping Memo contained a proposal where the Commission would delegate to Staff the ability to approve applications meeting certain criteria. Both the July 2018 ACR and the September 2018 ALJ Ruling contained refinements of that proposal and requested comments. The revised proposal in the September ALJ Ruling provides that the Commission shall delegate to Staff the authority to approve applications that meet all of the following criteria:

1. Applicant meets the program eligibility requirements.
2. The application is not challenged, or Staff has dispensed with the challenge.

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<sup>39</sup> The percentage of additional funding awarded will be proportional to the percentage of households in the project area that only have access to dial-up Internet service at best.

<sup>40</sup> The median income within a Census Block Group having median income less than the CARE standard for a household of four, which will be updated annually. Through May 31, 2019, this value is \$50,200. See <http://www.cpuc.ca.gov/General.aspx?id=976> for CARE program requirements.

3. The total grant does not exceed \$5,000,000.
4. The project must be CEQA-exempt, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution.
5. Costs per household are low:<sup>41</sup>
  - a. For projects building fiber to the home, the costs are in the range of \$4,000-\$8,000 per household or less.
  - b. For fixed wireless projects, proposed project costs are \$1,500 per household or less.

All applications shall be approved, denied, or have a published draft resolution by October 1, six months after applications are submitted. If an application is neither approved nor awaiting the Commission's approval as part of a draft resolution, it shall be presumed denied without prejudice in the existing application review period and may be refiled for consideration by the subsequent application filing due date.

### **2.3.1. Parties' Comments**

Frontier, CCTA, AT&T, Race and Cal Advocates provided especially detailed criticisms of the proposal. AT&T's comments offered an extensive proposal to reform the rules of the program. One principle of AT&T's proposal is that, "all applications be due at the same time... [to] allow the Commission to evaluate all applications against one another and as part of a single process."<sup>42</sup> CCTA argues that ministerial review would, "undermine due process and fail to

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<sup>41</sup> CASF 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>

<sup>42</sup> AT&T Phase II Opening Comments April 16, 2018 at 3.

recognize the time and stakeholder input needed to ensure vetted, sustainable, long-term solutions.”<sup>43</sup> CCTA further argues that, “the Commission cannot delegate its power to make ‘final discretionary decisions,’”<sup>44</sup> and that the criteria for ministerial review would not be “technology-neutral as required by Pub. Util. Code § 281(f)(1).”<sup>45</sup> Frontier criticizes the methodology behind the per-household price caps, and recommended that ministerial review be targeted more towards low-cost projects and less towards low-income areas.<sup>46</sup> Cal Advocates opposes ministerial review due to concerns that it would undermine the oversight, transparency, and public scrutiny built of the Resolution process. Additionally, Cal Advocates argues against the cost limits for expedited review (as high as \$15,650 per household for new fiber projects), and asserts that the benefits of ministerial review will be less than expected, because the months required by the Resolution process are only a portion of the overall time required by applications.<sup>47</sup> GeoLinks argues that the cost per household caps should be technology-neutral.<sup>48</sup>

Race generally supports the proposed ministerial review process, but recommends expanding the definition of low-income to \$63,783 median household income (the household median income for California), instead of

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<sup>43</sup> CCTA Phase II Opening Comments April 16, 2018 at 9.

<sup>44</sup> D.09-05-020, mimeo at 3.

<sup>45</sup> CCTA Phase II Opening Comments April 16, 2018 at 9.

<sup>46</sup> Frontier Phase II Opening Comments April 16, 2018 at 5-6.

<sup>47</sup> Cal Advocates Phase II Opening Comments April 16, 2018 at 10-11.

<sup>48</sup> GeoLinks Opening Comments; GeoLinks Reply Comments; GeoLinks August Comments; GeoLinks September Comments.

\$49,200 (then the CARE definition of low-income for a family of four).<sup>49</sup>

Similarly, CETF supports the ministerial review and recommends using \$63,783 instead of \$49,200, but also suggests removing the cost per household limits, and extending eligibility to other disadvantaged communities (in addition to low-income communities).<sup>50</sup> CCRP supports ministerial review, recommends extending it to all unserved areas, and encourages Staff to seek letters of support during ministerial review from regional consortia. Joint Consumers recommend use of a cost-modeling equation to determine the threshold for expedited review, instead of flat costs per household for each technology. Finally, CETF proposes that the Commission revise the project grant limit under Ministerial Review from \$5,000,000 to \$20,000,000.

### **2.3.2. Discussion**

We reject the arguments made by CCTA and other parties that the Commission lacks the authority to delegate to Staff the ability to approve applications meeting specific criteria. Staff may approve of applications after a ministerial review of specific standards set by the Commission.<sup>51</sup> The Commission does this with several public purpose programs, including CASF Public Housing applications and CASF Adoption Account applications. Additionally, CASF Infrastructure Account rules already grant Staff authority to determine if a proposed project area in an application is served. The area of greatest concern to providers, the determination of project area eligibility,

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<sup>49</sup> Race Phase II Opening Comments April 16, 2018 at 5-6.

<sup>50</sup> CETF Phase II Opening Comments April 16, 2018 at 12-13.

<sup>51</sup> See D.09-05-020 at 2-3; D.07-09-018 at 18, n.34.

already is ministerial. Further, in Resolution T-17590 the Commission granted Staff the authority to implement the interim ROFR rules without objection from providers.

We are, however, sympathetic to many of the criticisms articulated against the ministerial process proposal, in relation to the transparency provided in the Resolution process; however, none of these concerns overwhelm the advantages of shortening review times for unambiguously beneficial and cost-effective projects. Further, the ministerial process will be transparent. In this decision, the Commission identifies and adopts the criteria which projects must adhere to in order to receive ministerial approval, and projects' proponents will publicly identify their attributes relative to the very criteria for which they will be evaluated. Staff will notify applicants of their approval via letter, and will include its determination that the proposed project area is unserved, in the event the application receives a challenge. The letter will be e-mailed to all members of the CASF Distribution List and posted on the Commission website.

We agree with parties seeking to focus Staff on approving more cost-effective projects. In total, we revise the proposal such that we delegate to Staff the authority to approve applications that meet all of the following criteria:

1. Applicant meets the program eligibility requirements.
2. The application is not challenged or Staff has determined that the project area is unserved.
3. The total grant does not exceed \$10,000,000.
4. The project must be California Environmental Quality Act (CEQA)-exempt, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution.

5. There must be no competing applications for the same project area in the same application period.
6. Costs per household are low:
  - a. For projects building wireline connections, proposed project costs \$9,300 per household or less.
  - b. For fixed wireless projects, proposed project costs \$1,500 per household or less.

Regarding concerns that a separate cost threshold for wireline and fixed wireless does not implement the program in a technologically-neutral manner, we assert that the Commission 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.

#### **2.4. Middle-Mile Funding**

Pub. Util. Code §281(f)(5)(B) limits the Commission's ability to award Infrastructure grants for middle-mile projects. Projects that only deploy middle-mile infrastructure are not eligible for grant funding. For an application requesting funding for middle-mile infrastructure, the applicant must prove that the proposed middle-mile infrastructure is indispensable for accessing the last-mile infrastructure. Both the February Scoping Memo and the July 2018 ACR requested comments for how the Commission should interpret statute.

The July 2018 ACR asked the following questions:

- How should the Commission verify that a middle-mile build included in the proposed project is "indispensable" to that project, as required by statute?

- Should Commission Staff rely on the middle-mile location information providers submitted as ordered in D.16-12-025, Ordering Paragraph 2?
- If middle-mile infrastructure already exists near the proposed project area, under what circumstances may an applicant build its own middle-mile infrastructure?
- If middle-mile infrastructure already exists near the proposed project area, should there be a limit on how much infrastructure may be built? (e.g., 10 miles, 5 miles, etc.)
- For purposes of grant funding, is leasing or purchasing middle-mile facilities for terms beyond five years (e.g., Indefeasible Right to Use (IRU) for 20 years) allowable or even preferred over building new infrastructure?
- Is a challenge to the project application sufficient to prove it is not indispensable, or a lack of a challenge sufficient to prove that it is?

#### **2.4.1. Parties' Comments**

AT&T asserts that middle-mile infrastructure should be deemed “indispensable” if providers are unable to deliver at least 10/1 service at reasonable quality and price levels.<sup>52</sup> CCRP, RCRC, UCCC, NCCC state that middle-mile infrastructure is often indispensable even if there is existing infrastructure.<sup>53</sup> CCTA defines infrastructure as “indispensable” if the applicant can document that they contacted all known providers in the area, and no one challenges the project.<sup>54</sup> CENIC asserts that any middle-mile infrastructure

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<sup>52</sup> AT&T ACR Comments August 8, 2018 at 15.

<sup>53</sup> ACR Comments August 8, 2018.

<sup>54</sup> CCTA ACR Comments August 8, 2018 at 6-8.

connecting an anchor institution is indispensable.<sup>55</sup> CETF considers middle-mile to be indispensable if the applicant documents that it cannot access middle-mile services for a ten year period cost-effectively.<sup>56</sup> Conifer believes middle-mile is indispensable if a challenger cannot prove that an applicant did not reach out to request middle-mile service.<sup>57</sup> Frontier considers middle-mile indispensable if the applicant shows that the last mile cannot be completed without it.<sup>58</sup> GeoLinks opines that middle-mile infrastructure is indispensable if the applicant documents that all other options were considered and are not cost-effective or viable.<sup>59</sup> NBNCBC considers middle-mile infrastructure indispensable if it makes the last mile project feasible.<sup>60</sup> Cal Advocates asserts that the Commission should determine indispensability on a case-by-case basis, and not rely upon challenges.<sup>61</sup> Race opposes arbitrary limits on middle-mile facilities for CASF.<sup>62</sup> Joint Consumers opines that in order for middle-mile infrastructure to be indispensable, there must be no nearby alternatives willing to interconnect at reasonable rates.<sup>63</sup>

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<sup>55</sup> CENIC ACR Comments August 8, 2018 at 4.

<sup>56</sup> CETF ACR Comments August 8, 2018 at 13-14.

<sup>57</sup> Conifer ACR Comments August 8, 2018 at 7-8.

<sup>58</sup> Frontier ACR Comments August 8, 2018 at 8-9.

<sup>59</sup> GeoLinks ACR Comments August 8, 2018 at 8-9.

<sup>60</sup> NBNCBC ACR Comments August 8, 2018 at 7-8.

<sup>61</sup> Cal Advocates ACR Comments August 8, 2018 at 8-10.

<sup>62</sup> Race ACR Comments August 8, 2018 at 9-10.

<sup>63</sup> Joint Consumers ACR Comments August 8, 2018 at 15-16.

**2.4.2. Discussion**

We agree with the parties opining that middle-mile infrastructure should be deemed “indispensable” to a last-mile project if applicants are, absent building additional infrastructure, unable to deliver last-mile service at reasonable quality and price levels. However, making the determination of what is “reasonable” is more problematic and answering that question in certain instances may be complicated.

The data collection ordered in D.16-12-025, Ordering Paragraph 2 gives Commission Staff a general baseline to determine if infrastructure already is in the area. If Staff finds existing middle-mile infrastructure in a proposed project area where an applicant proposes to construct new infrastructure, Staff should 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. For example, the applicant, in its application, should include documentation demonstrating that it requested dark fiber or specific data and/or transport services from a provider and that provider was not able to meet that request and offered no other alternative. Under this scenario, the application should not be denied due to the presence of middle-mile infrastructure. Further, if the application meets the other criteria under the Ministerial Review process the Commission adopts with this decision, the application should still be approved under Ministerial Review.

Another source Staff may rely on to reduce the risk of using public funds to overbuild existing infrastructure is the challenge process. If an application proposing to build middle-mile infrastructure to offer last-mile service is not challenged, that is a strong indication that it should go forward. If it meets the

other criteria under the Ministerial Review process the Commission adopts with this decision, the application should still be approved under Ministerial Review.

The more complicated scenario is if an application receives a challenge and the applicant and challenger are unable to agree to terms for wholesale services. For example, the challenger offers backhaul services, but not at the prices, terms or conditions the applicant desires. We have heard of allegations that a provider challenged an application and then declined to offer any services. Staff has also encountered applicants who harbor unreasonable expectations, including access to infrastructure at little or no cost. Resolving situations like these are discretionary decisions and Staff will need to draft a resolution for Commission approval, if it intends to recommend the Commission approve an application. At this point it is not clear based on the record what “reasonable” prices, or terms and conditions are, so the Commission instructs Staff to approach these challenges as they arise on an individual basis until it has a sufficient record to draft a resolution to recommend modifying these rules. That said, we want to make clear to providers simply attempting to block reasonable and otherwise eligible CASF Infrastructure applications without attempting to improve service in the communities that are part of the proposed project areas will not be viewed favorably. In a situation where a provider is unwilling to offer service, or only offers service at an exorbitant price, it seems appropriate to 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., IRU for 20 years) are allowable or even preferred over building new infrastructure, the Commission adopts rules to reimburse these services.

**2.5. Reimbursement**

Pub. Util. Code § 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.

The September ALJ Ruling requested comment on whether the Commission should, consistent with other public purpose programs, institute a limit of 15 percent on administrative expenses and define what those expenses should be.

**2.5.1. Parties' Comments**

AT&T asserts that administrative expenses should not be arbitrarily capped<sup>64</sup> while the Small LECs argue that administrative cost limitations would disadvantage small companies as it is likely that these expenses would be higher for small companies as a percentage of total costs.<sup>65</sup> CCTA indicates that the ALJ Ruling does not specify what facts or policy rationale underlies the limitation on administrative expenses, but it supports the Commission's efforts to ensure that CASF funds are spent on infrastructure.<sup>66</sup> CETF generally supports a 15 percent cap on administrative expenses and also recommends allowing for some flexibility with projects facing unusual circumstances to be

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<sup>64</sup> AT&T ALJ Ruling Opening Comments September 21, 2018 at 9.

<sup>65</sup> Small LECs ALJ Ruling Opening Comments September 21, 2018 at 5.

<sup>66</sup> CCTA ALJ Ruling Opening Comments September 21, 2018 at 6.

eligible for a cap of up to 20 percent.<sup>67</sup> Similarly, Race supports having leeway in extraordinary circumstances where a project has something unusual or very unexpected occur that drives this cost higher (maximum 20 percent).<sup>68</sup> Frontier offers that administrative expenses should be defined in accordance with FCC plant operations administrative expense accounting procedures codified at 47 C.F.R. § 32.6534 and should include costs incurred in the general administration of plant operations, specific to the project being funded<sup>69</sup> and that no cap should be imposed as the administrative cost may vary by grant applicant and application.<sup>70</sup> CCBC supports the 15 percent limit on administrative expenses and recommends defining “administrative expenses” as “indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with CPUC administrative and regulatory requirements related to the grant itself.”<sup>71</sup> Conifer agrees that the Commission should limit the reimbursements of service providers’ claimed administrative expenses in CASF Programs just as they do in programs funded by California’s universal service fund programs.<sup>72</sup> Cal Advocates asserts that administrative expenses are operating expenses and should not be eligible for

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<sup>67</sup> CETF ALJ Ruling Opening Comments September 21, 2018 at 12.

<sup>68</sup> Race ALJ Ruling Opening Comments September 21, 2018 at 12.

<sup>69</sup> Frontier ALJ Ruling Opening Comments September 21, 2018 at 6.

<sup>70</sup> *Ibid.*

<sup>71</sup> CCBC ALJ Ruling Opening Comments September 21, 2018 at 10.

<sup>72</sup> Conifer ALJ Ruling Opening Comments September 21, 2018 at 6.

CASF funding. Currently, the CASF program only funds capital expenses of a proposed project and does not fund operating expenses.<sup>73</sup>

### **2.5.2. Discussion**

Limits on administrative expenses are a normal and reasonable cost check for public purpose programs and, in general, for grant programs overall. After reviewing comments, we find nothing that dissuades us from implementing the similar limits for the CASF Infrastructure Account. 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.” We adopt a 15 percent cap on administrative expenses. Applicants seeking additional funds will require a Commission exemption included in a draft resolution.

### **2.6. Preference for Areas Without Broadband Service**

Pub. Util. Code §281(b)(2)(B)(i) requires the Commission, as it awards broadband infrastructure grants, 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.” While the Commission must “give preference” to these areas, statute does not prohibit the Commission from approving funding for projects outside of these specified areas.

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<sup>73</sup> Cal Advocates ALJ Ruling Opening Comments September 21, 2018 at 8.

**2.6.1. Parties' Comments**

Both Frontier and AT&T encourage the Commission to prioritize the truly unserved areas of the State, those households that lack even basic broadband service or have, at best, only dial-up service.

**2.6.2. Discussion**

We agree with the sentiments expressed by Frontier and AT&T. To encourage applications in those areas, the Commission will offer applications offering service entirely in those areas the opportunity for full funding.

**2.7. Information Required of Applicants**

The proposal in the February Scoping Memo retains most of the existing requirements on infrastructure grant applications. Proposed changes include allowing applications for non-contiguous project areas, eliminating the performance bond requirement, requiring more information in the project details section, changes to the deployment section and a specification that applicants must provide financial details for both the company and the project (including earnings before interest and taxes (EBIT) information).

The current rules require the applicant to complete the project within two years following receipt of grant authorization. However, many projects are delayed by the CEQA permitting process. The project is required to be completed following receipt of grant authorization and all construction permits, including CEQA. The February Staff Proposal required the applicant provide:

- A schedule for obtaining necessary permits prior to construction. The schedule must include the timeline required for the CEQA review, as applicable.
- A schedule for project construction following receipt of permits, to complete the project within 24-months. 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 24-months, it must notify CASF staff as soon as it becomes aware and explain reasons for the delay and when the project will be completed.

Additionally, the September ALJ Ruling includes a proposal to require the following information in the project summary:

- Identify major infrastructure: miles of planned fiber, Central Offices used, number of remote terminals/fiber huts/wireless towers to be built, and if an IRU is used.
- Identify major equipment expenses (e.g., Digital Subscriber Line Access Multiplexer (DSLAMs), multiplexers, etc.).
- Estimated breakdown of aerial and underground installation and if the poles or conduits are already in place.
- Estimated construction timeline.

### **2.7.1. Parties' Comments**

CETF and CCRP support eliminating or revising the performance bond requirement to reduce barriers for potential applicants to submit applications. Joint Consumers and Cal Advocates and CCTA support continuing to require performance bonds to ensure no loss of CASF funds in the event of a provider default, or at least requiring a performance bond for applicants "without a financial or operational track record."<sup>74</sup>

AT&T supports exempting Certificate of Public Convenience and Necessity/Wireless Identification Registration (CPCN/WIR) holders from

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<sup>74</sup> CCTA Phase II Reply Comments May 1, 2018 at 5.

providing a performance bond or allowing them to provide a letter of credit instead, similar to how the FCC administers CAF.<sup>75</sup> Race Telecommunications supports waiving the performance bond requirement for CPCN holders and providers with three years of experience and a financial track record.<sup>76</sup>

AT&T, Race Telecommunications, CCTA and Frontier do not support the proposed additions to the project summary, asserting that the information listed is either already required elsewhere or confidential. The Small LECs believe including an “estimated construction timeline” in the project summary is reasonable but that the Commission can rely on staff to follow up with prospective grant applicants to gather additional information as needed.<sup>77</sup> CCBC noted pros and cons of the proposal, in that it could be a useful indicator of applicant competence, though publishing certain construction details could be used by project opponents to block an application.<sup>78</sup>

Conifer supports requiring applicants to provide the following information in the project summaries:

- Identify major infrastructure;
- Miles of planned fiber;
- Central Offices and nodes used;
- Number of remote terminals/fiber huts/wireless towers to be built;

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<sup>75</sup> AT&T Phase II Opening Comments April 16, 2018 at 15-16.

<sup>76</sup> Race Phase II Reply Comments May 1, 2018 at 4.

<sup>77</sup> Small LECS ALJ Ruling Opening Comments September 21, 2018 at 6.

<sup>78</sup> CCBC ALJ Ruling Opening Comments September 21, 2018 at 15.

- An infrastructure mapping plan with terrain evaluation:
- Estimated breakdown of aerial and underground installation for fiber and if the poles or conduits are already in place;
- Wireless propagation maps.
- Identification of equipment expenses;
- Estimated construction timeline; and
- Estimated service roll-out timeline.<sup>79</sup>

No parties commented on the proposed changes to the deployment schedule.

### **2.7.2. Discussion**

We adopt the proposed changes to the deployment schedule and the proposal to exempt CPCN holders from providing a performance bond, on the basis that the company submitted a performance bond to the Commission to maintain its CPCN and that the Commission has other means to enforce compliance if an entity has a CPCN. Given the difficulty of obtaining a performance bond, applicants that do not possess a CPCN may instead provide a letter of credit, similar to how the FCC administers its CAF. A letter of credit is 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. The applicant must provide a letter of credit covering the full CASF grant amount issued to the applicant. The letter of credit must be valid throughout the entire 24-month project construction period.

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<sup>79</sup> Conifer ALJ Ruling Opening Comments September 21, 2018 at 7.

The intent behind the proposal to require additional information in the Project Summary section of the application is to reduce the back-and-forth between Staff and applicants. Most parties agree that the application review process takes too long and this is another effort to reduce that timeframe. Additionally, we believe providing increased transparency regarding what ratepayers are funding is good public policy. Finally, some applicants have been resistant to providing this information when staff requests it, adding to the application review timeline. Including these expectations explicitly in the rules makes clear what applicants must provide, reduces the application review time and provides for a better accounting of public funds. That said, the CCBC raises a good point regarding the unintended consequences of releasing competitively sensitive information that could be used against the applicant. Due to that caution, we revise the rules in the manner described below.

In addition to existing requirements, project summaries must now include the following items:

- Estimated timelines for construction and when the company will begin offering service (projects dependent on environmental or CEQA review should indicate how much time after receiving the appropriate approvals; and
- A general indication of how much of the deployment will rely on existing facilities and what those facilities are (e.g., 75 percent of the project will be an aerial installation on existing poles)

Additionally, the Project Description section of the application must:

- Identify major infrastructure: miles of planned fiber, Central Offices used, number of remote terminals/fiber huts/wireless towers to be built, and if an IRU is used.
- Identify major equipment expenses (e.g., number of DSLAMs, multiplexers, etc.).

- Provide an estimated breakdown of aerial and underground installation and if the poles or conduits are already in place.
- Provide an estimated construction timeline.
- Include a discussion regarding the terrain evaluation.

## **2.8. Request for Proposal**

The February Scoping Memo included a proposal to use a Request for Proposal (RFP) process for high-priority areas.

### **2.8.1. Parties' Comments**

Many parties oppose the proposed RFP process. For example, Frontier notes that it “is unclear why a provider would participate in a complex RFP process rather than just file an application.”<sup>80</sup> Many parties express similar sentiments.

### **2.8.2. Discussion**

Given the near unity of opposition to the RFP proposal, we do not adopt this proposal at this time.

## **2.9. Right of First Refusal**

Pub. Util Code §281(f)(4)(A)(i) requires that the Commission offer annually an existing facility-based broadband provider the opportunity to demonstrate that it will deploy broadband or upgrade existing facilities to a delineated unserved area within 180 days (called a “Right of First Refusal” or ROFR).

As provided in Pub. Util. Code §281(f)(4)(A)(iii), if the existing facility-based broadband provider (“existing provider”) is unable to complete the

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<sup>80</sup> Frontier Phase II Opening Comments April 16, 2018 at 6.

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 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.

### **2.9.1. Parties' Comments**

Several parties support tightening the ROFR process by enforcing deadlines and limiting renewals. Cal Advocates supports the conditions stated in Resolution T-17590 and maintaining those rules, including a 180-day limit on ROFRs, with one renewal under specific conditions.<sup>81</sup> GCBC urges the Commission to avoid anti-competitive behavior. GeoLinks has urges the Commission to “implement rules that limit a carrier’s ability to file multiple ROFR letters for the same area,” by limiting providers to one renewal of a 180-day ROFR, without accepting ordinary, avoidable construction delays, or trouble securing funding, as explanations.<sup>82</sup> CETF, CCRP, Joint Consumers and Race all make similar comments, supporting a limit of one renewal, which should not be granted as a matter of course. Race requests that ROFR renewals be made under penalty of perjury<sup>83</sup> and GeoLinks urges the Commissions to

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<sup>81</sup> Cal Advocates ALJ Ruling Opening Comments September 21, 2018 at 12.

<sup>82</sup> GeoLinks Phase II Opening Comments April 16, 2018 at 5-6.

<sup>83</sup> Race Phase II Opening Comments April 16, 2018 at 7.

consider penalties for providers that do not meet their ROFR obligations, such as exclusion from participating in the CASF program.”<sup>84</sup>

By contrast, CCTA supports multiple extensions if the provider demonstrates progress.<sup>85</sup> In reply comments, AT&T notes that the proposal to limit ROFR extensions to one renewal and the possibility of imposing penalties for failing to follow through on ROFRs is “inconsistent with AB 1665 and should be rejected.” Instead, AT&T proposes that ROFR extensions be indefinitely renewable “if the Commission finds that a provider is making progress toward completion but needs more time for actual completion.”<sup>86</sup>

### **2.9.2. Discussion**

To fulfill this requirement, the Commission directs providers wishing to exercise their ROFR to submit a letter by January 15 of each year to the CD Director with a copy to the CASF distribution service list, expressing its intent to upgrade services within 180 days. The letter also must include the following information:

- Area designated for broadband deployment by census block or 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 area will have the capability to receive minimum speeds;

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<sup>84</sup> GeoLinks Phase II Opening Comments April 16, 2018 at 6.

<sup>85</sup> CCTA Phase II Opening Comments April 16, 2018 at 10.

<sup>86</sup> AT&T Phase II Reply Comments May 1, 2018 at 25.

- 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 one of the following forms:
  - 1) 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;
  - 2) The company claiming ROFR has a video franchise under the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), the area it claims in the ROFR submission is part of its DIVCA footprint, and it already offers video service in that area;
  - 3) The company claiming ROFR is an incumbent local exchange carrier (ILEC) and the area it claims in the ROFR is an unserved area within its wire center region; or
  - 4) 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 CD Staff the responsibility to approve or deny each ROFR filing. Staff will post determinations by January 31 of each year. Letters containing incomplete information or not filed in a timely manner will be denied.

While AT&T may be correct that the ROFR process created in statute allows for renewals beyond 180 days “if the Commission finds that a provider is making progress toward completion but needs more time for actual completion,” and does not provide a limit on renewals, we do not believe that legislators intended for the Commission to allow for indefinite renewals, regardless of circumstance. Thus, we instruct Staff to approve one ROFR renewal for up to

180 additional calendar days. Renewals beyond the 180 additional calendar days must be approved by the Commission as part of a resolution. Additionally, if a provider claims ROFR for the same census blocks it claimed during the previous year this constitutes a renewal request. Staff is to deny such a request unless the provider files notice with the Commission by November 30 of the previous year, allowing Staff the opportunity to review the request and the option to recommend the Commission approve it as part of a draft resolution. Finally, consistent with statute, if Staff finds that the provider is not making sufficient progress, the delineated area shall be eligible for CASF funding.

### **2.10. Treatment of CAF II Areas**

Pub. Util. Code § 281(f)(5)(C) specifies that the CAF II areas are ineligible for CASF funding until July 1, 2020, unless the existing facility-based broadband provider in the CAF II area 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. However, the facility-based broadband provider is eligible for CASF funding to supplement a CAF II grant to expand broadband service within identified census blocks, as needed.

In the February Amended Scoping Memo the Commission requested comments on the following:

1. How can the Commission incentivize existing facilities based broadband providers to build out their CAF II obligations in a timely manner?
2. How and what is the process for existing providers to notify the Commission before July 1, 2020, that it has either completed or elected not to expand broadband service within identified census blocks in its CAF areas?

In the July 2018 ACR the Commission asked:

1. Providing Access to Broadband Service to Areas Adjacent to CAF II Areas

The number of eligible CAF II locations exceeds the number of required locations to which CAF II providers must offer service. Many census blocks may have more households than CAF II eligible locations, meaning that some households will not benefit. How can the Commission incentivize CAF II providers to build beyond their commitments to the Federal Communications Commission? In order to incentivize CAF II providers to deploy throughout the community and in areas adjacent to CAF II areas, should the Commission:

- a. Provide an expedited review process to approve supplemental grants to expand CAF II-related projects?
- b. Should there be a separate process or set-aside of funding for these supplemental builds?
- c. Should supplemental grants be tied to the release of CAF II plans? Should areas where CAF II providers do not commit to build out be reclassified as eligible?
- d. How should the interests of the CAF II providers to choose which CAF II areas they build out to with federal funding while also requiring them to complete other projects in the state be balanced with competitor interest in bidding to build out in those same communities?

In ALJ Ruling of September 5, 2018, the Commission has requested further comments on the following:

1. How should the Commission treat CAF providers seeking CASF funds? How should the Commission treat satellite broadband service?
  - a. Public Utility Code §§281(f)(12) and 281(f)(5)(C)(i) prohibits CASF funding in census blocks with Connect America Fund accepted locations, except, as noted in 281(f)(5)(C)(ii), when the provider receiving Connect America Fund support applies to build beyond its CAF accepted locations. How should the

Commission require applicants submitting applications under these circumstances separate CASF and CAF financing?

2. How should the Commission treat satellite providers receiving CAF support?
  - a. Is a satellite provider an "existing facility-based provider," as that term is used in Pub. Util. Code §281(f)(5)(C)(i)? (Note this is particularly important because the FCC recently awarded CAF funding to a satellite provider.)

If a satellite provider is an existing facility-based provider, should the Commission revise CASF rules to include satellite service in the definition of a served area? (Note that currently, an area served by satellite is considered served only if that service was provided through a CASF grant.)

#### **2.10.1. Parties' Comments**

In terms of incentivizing CAF II recipients to build out in a timely manner, the parties' responses rarely directly addressed the question. Frontier and AT&T believe that penalties under FCC rules incent providers to build out in a timely manner.<sup>87</sup> CCRP believes that no incentives should be provided to facilities based providers in CAF II areas as they have already received incentives from the federal government.<sup>88</sup> Other commenters including Cal Advocates , CETF, GCBC, NBNCBC and Race imply that incentives can occur, and transparency of public funding is enhanced by requiring that CAF II providers designate blocks that are not built should be released in a timely manner, reported to the

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<sup>87</sup> Frontier Phase II Opening Comments April 16, 2018 at 8 and AT&T at 19.

<sup>88</sup> CCRP Phase II Opening Comments April 16, 2018 at 8.

Commission and become CASF grant-eligible.<sup>89</sup> NBNCBC and Race support reporting to the Commission by January 15, 2019 and bi-annually, respectively.

Parties commented a range of processes that can be used for CAF II providers to notify the Commission before July 1, 2020, that it has either completed or elected not to build within identified census blocks. AT&T and Frontier do not support any additional reporting requirements.<sup>90</sup> Cal Advocates believes that carriers should submit progress reports concurrent with their ROFR filings.<sup>91</sup> NBNCBC believes that nothing precludes the Commission from requiring reports by January 15, 2019 on where providers with CAF II funding plan to deploy before July 1, 2020.<sup>92</sup> GeoLinks believes that providers can “game” the system by waiting until after July 1, 2020 to report on CAF II blocks that are to be released and then immediately applying for CASF funding to build out those blocks. They go further to suggest that any provider that waits until after July 1, 2020 to inform the Commission of its election not to complete its deployment commitments should be subject to a Rule 1 violation.<sup>93</sup>

A number of parties support requiring a 90-day window be established, before CASF applications are accepted, to ensure that all Internet service providers (ISPs) have a fair opportunity to apply for CASF funding for areas

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<sup>89</sup> Cal Advocates Phase II Opening Comments April 16, 2018 at 13, CETF at 9, GCBC at 3, NBNCBC at 11, and Race at 7.

<sup>90</sup> AT&T Phase II Reply Comments May 1, 2018 at 26 and Frontier at 6.

<sup>91</sup> Cal Advocates Phase II Opening Comments April 16, 2018 at 13.

<sup>92</sup> NBNCBC Phase II Opening Comments April 16, 2018 at 10.

<sup>93</sup> GeoLinks Phase II Opening Comments April 16, 2018 at 7.

where the incumbent releases a CAF II area.<sup>94</sup> Race further requests that the Commission require the existing facilities-based provider to file verified construction reports every six months of its intended CAF II builds and areas in which it does not intend to build out, so that these latter areas may be promptly marked eligible for CASF grants by Staff on a rolling basis. Existing facilities-based providers should be required to report their updated construction plans every six months to the Commission under penalty of perjury. Any false statements in the reports should be subject to Commission Rule 1.1.<sup>95</sup>

With respect to an expedited review process to approve supplemental grants, Frontier believes that the time and resources it takes to file and gain approval of a CASF application would not make an appealing test case for any new complex, cumbersome and unvetted “expedited review” processes. However, a process that simplifies and streamlines project review would provide an incentive for filing applications for CASF grants to fill in CAF II census blocks.<sup>96</sup>

Joy Sterling believes that providing access to broadband service to areas adjacent to CAF II areas will leverage CAF II funding to tie in with CASF funding as an innovative way to fill the “holes.” The best incentive would be expedited review, so the providers can meet their federal deadlines. And, this

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<sup>94</sup> Race Phase II Opening Comments April 16, 2018 at 7.

<sup>95</sup> *Ibid.*

<sup>96</sup> Frontier Opening Comments on ACR August 8, 2018 at 7.

should allow for a new level of transparency such that areas where CAF II providers do not commit to build out can be reclassified as eligible.<sup>97</sup>

CETF has made expedited review part of a preferred scenario but only if the CAF II applicant has shared all its CAF II build plans in the interests of transparency. CETF suggests that expedited review may be an opportunity to provide an incentive for transparency about what will be built to make CASF-eligible any areas that the incumbent CAF II provider is not going to upgrade.<sup>98</sup>

Race disagrees with allowing CAF II providers expedited review for supplemental CASF grants to expand CAF II-related projects. Race contends that every CASF applicant should go through the same submission and challenge process, unless it is determined to be a priority area after a proper convening of the Regional Consortia, stakeholders, providers and local governments.<sup>99</sup>

AT&T believes that if the Commission wants to incent CAF providers to build beyond their CAF II commitments to the FCC, the best way to do that is to make participation in the CASF program as attractive as possible, including by adopting the proposals made by AT&T, such as 100 percent funding of amounts requested for projects, a streamlined application process based on a single definitive list of eligible census blocks, reduced reporting requirements (especially when the per household funding amounts requested are below Staff's proposed thresholds), and monthly payments during projects. This framework

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<sup>97</sup> Joy Sterling Opening Comments on ACR August 8, 2018 at 2.

<sup>98</sup> CETF Opening Comments on ACR August 8, 2018 at 11.

<sup>99</sup> Race Opening Comments on ACR August 8, 2018 at 6.

allows all providers – whether they participate in CAF II or not – to make rational business decisions on whether to apply for CASF. CAF II providers should be subject to the same application process as all other applicants.

With respect to a separate process or set-aside for supplemental build, CETF does not believe there should be a separate process or set-aside of funding for supplemental builds, otherwise there would be a non-technology neutral bias towards these projects versus other worthy projects vying for scarce CASF dollars.<sup>100</sup>

CCRP et al., Cal Advocates, Race and Conifer believe that there should be no separate process or set aside of funding, as it is duplicative and creates new administrative functions for the Commission and may unduly advantage incumbent providers at the expense of the applicants.<sup>101</sup> In addition, because the Commission does not know the level of demand for supplemental funds or the current funding gap, establishing a funding set-aside would be arbitrary and, therefore, inappropriate.<sup>102</sup> Joint Consumers agree with CCRP, Cal Advocates, Race and Conifer that no additional financial incentives or subsidies should be provided to existing providers in CAF II areas to meet minimum service standards. However, they also posit that in limited cases offering incentives to CASF applicants to leverage CAF II funding in building out to adjacent unserved

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<sup>100</sup> CETF ACR Comments August 8, 2018 at 12.

<sup>101</sup> CCRP et al., ACR Comments August 8, 2018 at 9. Cal Advocates at 11. Race at 6. Conifer at 6.

<sup>102</sup> Cal Advocates ACR Comments August 8, 2018 at 11.

households could be considered if the areas were served at higher than minimum speed requirements.<sup>103</sup>

AT&T believes that the best way to incent providers to build out beyond their CAF II area into adjacent areas is to leverage CAF requirements using rules patterned after CAF rules, streamline approval and reporting processes and suggests 100% funding of amounts requested for projects.<sup>104</sup>

GeoLinks sees benefit in offering CASF incentives to CAF II providers who are forthcoming with this information. Namely, if a CAF II provider is willing to provide the Commission with detailed information regarding what locations within an eligible census block it plans to provide service to, pursuant to its CAF II obligations, then the Commission could offer the CAF II recipient incentives to build out to the remaining locations within an eligible area with CASF matching funds. Then GeoLinks would support the ability for the CAF II provider to apply for CASF funding on an expedited basis to provide service to the entire eligible area. However, GeoLinks believes that the incentives should diminish the longer a CAF II recipient waits to provide information to the Commission.<sup>105</sup>

Frontier believes that the Commission should not condition CASF grants on the release of CAF II plans and the Commission cannot take actions to add to or undermine the federal rules and remove incentives to apply for future CAF

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<sup>103</sup> Joint Consumers ACR Comments August 8, 2018 at 1.

<sup>104</sup> AT&T ACR Comments August 8, 2018 at 10.

<sup>105</sup> GeoLinks ACR Comments August 8, 2018 at 7-8.

funding. Moreover, the CPUC does not have authority under current law to reclassify CAF II areas as eligible for CASF grants prior to July 1, 2020.<sup>106</sup>

Supplemental CASF grants may be an opportunity to provide an incentive in exchange for complete transparency about what will be built in CAF II areas. Further supplemental grants can also be an incentive to promote 98 percent of a CAF II area be built out by the CAF II provider. Also, CETF agrees that any area that a CAF II provider does not commit to build out should be reclassified as CASF eligible. Any provider should be able to bid on those released CAF II areas.<sup>107</sup>

Cal Advocates believes that if a CAF II provider does not commit to build out an area, then the Commission should reclassify that area as eligible for CASF funding. However, the Commission will still need to ensure that any CASF funding provided to that area does not duplicate funds already received to build out that area. In addition, as another commenter has suggested, the Commission should impose a 90-day waiting period before it accepts new CASF infrastructure applications for newly-released CAF II areas, to ensure other service providers, have enough time to develop an application, should they choose to do so.<sup>108</sup>

Race, Conifer and Joy Sterling believe that any areas where CAF II providers do not commit to build out should be reclassified as eligible for CASF. Race posits that those areas should be opened to application by any broadband

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<sup>106</sup> Frontier ACR Comments August 8, 2018 at 7.

<sup>107</sup> CETF ACR Comments August 8, 2018 at 12.

<sup>108</sup> Cal Advocates ACR Comments August 8, 2018 at 12.

provider. It is in the interest of the state for each resident to obtain access to broadband service at the earliest date possible, and if a CAF II provider is going to decline to provide service in a CAF II area, it should be ordered to inform the Commission immediately so that the area can be marked eligible for CASF funding.<sup>109</sup>

AT&T believes that balancing the interests of CAF II providers to build to the areas they choose and the interests of competitors in building out to those same areas is already provided for by AB 1665. The Legislature struck a balance by requiring competing carriers to wait until after July 1, 2020, or at least until a CAF II provider notifies the Commission that it has completed its deployment in a census block, before a competitor can bid on that census block. Regardless of whether others might agree with that balance, it is required by the statute and cannot be modified here. Nothing prevents CAF providers from voluntarily informing the Commission when they decide they will not build out a census block in their CAF II area. Once a CAF provider voluntarily reports such a census block to the Commission, that census block can come back into consideration for all providers in the next application cycle when the Commission is creating its single list of CASF-eligible census blocks.<sup>110</sup>

There is general agreement among parties that CAF providers building beyond their CAF II locations must separate CASF and CAF funding on a proportional basis, and that there should be no overlap in funding.

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<sup>109</sup> Race ACR Comments August 8, 2018 at 7, and Conifer at 7. Joy Sterling at 2.

<sup>110</sup> AT&T ACR Comments August 8, 2018 at 11.

Regarding the comments on whether a satellite provider is an "existing facility-based provider," as used in Pub. Util. Code § 281(f)(5)(C)(i), parties generally agreed that satellite providers should not be eligible for CASF funding.<sup>111</sup> CCBC also notes that satellite Internet service is ubiquitous and if it were a sufficient method of delivering broadband service to 98 percent of households it would obviate the need for the CASF program. CCBC asserts that was not the intent of the Legislature in passing AB 1665 and it follows that satellite broadband service is not eligible for funding.<sup>112</sup>

Both the Small LECs and Frontier add that satellite services still have significant latency concerns and do not have the reliability attributes inherent in their facilities-based infrastructure. Further, if satellite providers are considered in defining what is served, it may foreclose a wide range of otherwise viable projects.<sup>113</sup>

### **2.10.2. Discussion**

There is a compelling interest in requiring CAF II funded providers to build out to their obligations as soon as possible and to report on that progress and on the blocks that the provider elects not complete, in order to meet the 98 percent CASF goal. Reporting will:

1. Increase transparency and accountability for how public funds are used

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<sup>111</sup> CCTA ALJ Ruling Opening Comments September 21, 2018 at 7, Frontier at 7, Race at 13, Cal Advocates at 8, Race at 12, and Small LECs at 6.

<sup>112</sup> CCBC ALJ Ruling Opening Comments September 21, 2018 at 13.

<sup>113</sup> Small LECs ALJ Ruling Opening Comments September 21, 2018 at 6, and Frontier at 7.

2. Provide more accurate information for the California Interactive Broadband Map.
3. Allow competitors to have a fair opportunity to apply for CASF funding where the incumbent releases a CAF II area.

Nothing precludes the Commission from requiring a reporting requirement on incumbent facilities based broadband providers prior to July 1, 2020. Therefore, by January 15, 2019 providers must submit a report that details the completed CAF II blocks, the census blocks with locations that the provider has elected not to build to (and therefore may be eligible for CASF funding) and the blocks the provider has not determined if it will build. This report will be submitted annually on January 15 to allow time for competitors and incumbents to formulate applications by the April 1 application deadline, as requested by several parties.

We do not adopt a separate application process, expedited or otherwise, for supplemental grants that expand on CAF II builds. Applicants that also receive CAF support already have the opportunity to apply for CASF to build out their networks to households that are not CAF II locations. They simply must ensure that the funds are kept separate.

In terms of how the Commission should separate CASF and CAF financing for applications submitted to build beyond the CAF II locations, there is agreement by multiple parties.<sup>114</sup> We agree with parties stating that funding must be apportioned by the percentage of households that will be served by

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<sup>114</sup> AT&T ALJ Ruling Opening Comments September 21, 2018 at 12, AT&T at 10, CCBC at 11, Cal Advocates at 8, Race at 12.

funding by grant type and agree that there should be no overlap in funding.<sup>115</sup> For example, a provider receiving CAF II support for three locations in an unserved and otherwise eligible census block with ten households may apply for CASF to serve the other seven households in the census block. The applicant must provide the Commission with the entire cost of the project. CASF would pay for 70 percent of the project.

The Commission does not adopt the Cal Advocates proposal to require that a CAF provider seeking to supplement CAF support with a CASF grant in a CAF area deploy broadband to 100 percent of households in the census block. While this is a desirable goal it may not be practical at this time.<sup>116</sup> The Commission wants CAF II recipients to serve all of the households in a census block to the best extent possible and will look favorably on proposals that serve 100 percent of households in the census block in considering the level of funding.

CASF rules do not include satellite service in the definition of a “served” area (except for areas that satellite service has been provisioned under an existing CASF grant). As AT&T noted, if satellite internet service is counted in identifying areas eligible for CASF support, virtually every census block would be deemed “served” and therefore ineligible for CASF funding.<sup>117</sup> Additionally, as CETF notes, a provider must meet the minimum broadband speeds and any new latency requirements and while current satellite broadband service may not

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<sup>115</sup> CETF ALJ Ruling Opening Comments September 21, 2018 at 12, AT&T Reply Comments September 28, at 12.

<sup>116</sup> Cal Advocates ALJ Ruling Opening Comments September 21, 2018 at 8.

<sup>117</sup> AT&T ALJ Ruling Opening Comments September 21, 2018 at 11.

meet those requirements at this time, they are confident that the Commission can adopt a policy that ensures reliable and quality service to consumers and that will take into account future changes in technology.<sup>118</sup>

## **2.11. Submission and Selection Timelines**

CASF Infrastructure Grant applications currently are accepted on a rolling basis. The February Scoping Memo included a proposal to accept applications once annually and approve in batches.

### **2.11.1. Parties' Comments**

Parties were not in agreement on this proposal. Frontier, Race and CETF support retaining the current rolling admissions process, with Frontier recommending at least four application windows per year. AT&T recommends accepting applications in batches, once per year and that the Commission grant or deny all applications within 120 days of the application date. CCTA supports allowing one application window per year. GeoLinks supports two application batches per year. CCBC notes that limited application windows will prevent attainment of CASF goals by incentivizing bureaucracy over enterprise and giving corporate planning cycles priority over community needs.

### **2.11.2. Discussion**

Combining an annual data collection with an annual ROFR, in addition to the expectation that the Commission approve applications promptly leads us to conclude that applications should be accepted on an annual basis. This will avoid the problem of reviewing applications against ROFR submissions and

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<sup>118</sup> CETF ALJ Ruling Opening Comments September 21, 2018 at 12.

broadband availability data submitted after the application. To avoid this scenario, we also adopt a proposal similar to AT&T's and require all applications to have a staff disposition within six months.

Applications will be due annually on April 1. Staff will then have 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, without prejudice, so that it may be eligible next year. We direct the Communications Division to prioritize review of Applications for low-income communities over higher-income communities. Table 2 below summarizes the new timelines.

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. Staff must announce its determination by no later than May 15.

Finally, with the adoption of this Decision, to ensure that applications are reviewed relying on the same data, we will immediately institute a freeze on accepting and reviewing applications ahead of the April 1 deadline.

**Table 2. CASF Infrastructure Account Timeline**

<b>Event</b>	<b>Date<sup>119</sup></b>
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
CD Staff Publishes ROFR Determination and Updates Broadband Availability Map	January 31
CASF Infrastructure Account Application Deadline	April 1
Deadline for CD Staff to post Application Summaries and Maps to CPUC website and notify CASF Distribution List	April 15
Deadline for Challenge Submissions	May 6
Deadline for CD Staff to Announce if it will offer a second application round	May 15
Deadline for Application Approvals Under Ministerial Review	October 1
Deadline for publishing Draft Resolutions recommending Project Approval	October 1

### **2.12. Project Challenges**

Pursuant to statute, the Commission shall provide each applicant, and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area, which the Commission will consider in reviewing the application. The February Scoping Memo includes a proposal to increase the challenge period from 14 days to 21 days.

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<sup>119</sup> In the event any date falls on a weekend or holiday, the deadline is the next business day.

### 2.12.1. Parties' Comments

In order to provide a quicker, more reliable application process, Staff initially proposed a 21 calendar day limit for challenges, starting from the filing of the application. GeoLinks and CCBC support this initiative, urging the Commission to strictly enforce the 21-day period. CCRP, RCRC, UCCC, NCCC, GeoLinks, and NBNBC have all stated support for a strictly enforced 21-day limit. CCTA supported the 21-day limit, with the revision of "21 calendar days from service upon the service list" [emphasis CCTA's].<sup>120</sup> Race recommends a single 21-day challenge period with no late challenges, and a deadline for resolving challenges. NBNBC requests clarification about whether challenges can be filed without an ROFR. Joint Consumer suggests expanding the challenge period to 45 days and allowing parties to challenge CASF grants for reasons besides pre-existing service.

Parties also commented on using subscription data to validate deployment, either directly on the Eligibility Map or as part of the challenge process. AT&T, CETF, Conifer, GeoLinks, Joy Sterling, Cal Advocates, and Race all oppose the use of subscribership data to determine Census Block eligibility directly. However, CETF is in favor of using subscribership data for challenges. CCTA, CCRP, RCRC, UCCC, and NCCC supported the Commission using subscribership data to determine Census Block eligibility. If the Commission uses subscribership data in this way, CCRP, RCRC, UCCC, NCCC, and Joy Sterling recommend using a 51 percent rate to determine eligibility. CETF and GeoLinks suggest 40 percent. Joint Consumers suggest 60 percent.

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<sup>120</sup> CCTA Phase II Opening Comments April 16, 2018 at 11.

Finally, CCRP, RCRC, UCCC, NCCC, and Joint Consumers all support requiring challengers to provide speed test results using CalSPEED, the Commission's speed test application, from multiple times of day and to indicate service quality. NBNBCB, CCRP, RCRC, UCCC, and NCCC assert that the challenge process should involve feedback from local governments, the community, rural providers, consortia, individual residents and the public.

### **2.12.2. Discussion**

We revise the CASF challenge rules and adopt the following. An entity challenging a CASF Infrastructure Grant application must submit its complete challenge no later than 21 calendar days from notice of the application being served on the CASF Distribution List. Challengers must provide a public notice of the challenge to the CASF Distribution List and submit the confidential challenge report to the CD Director, inclusive of the following:

- a) The geographic location of all households that are served. This information shall be provided in a plain-text, comma-separated values (CSV) file, that contains geo-located street address information, including latitude and longitude coordinates. (*See Appendix 1 for data submission format*)
- b) Customer billing from one subscriber in each census block challenged indicating that the customer received served speeds at least one day prior to the application filing. Also, there must be sufficient information on the billing statement that Staff can verify it with the customer.
- c) 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.

Incomplete challenges or challenges filed after the deadline will be denied. In the unlikely event that an applicant proposes to expand its proposed project

area after the challenge period has passed, and Staff decides to consider this revision, the revised application must be served on the CASF Distribution List to allow interested parties the opportunity to challenge what essentially is a new application for only the expanded areas of the project.

### **2.13. Minimum Performance Standards**

The September ALJ Ruling requests comment on a proposal to replace the existing scoring criteria with minimum performance standards that all grantees must meet. Those performance standards are outlined as follows.

- **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.

#### **2.13.1. Parties' Comments**

AT&T and Frontier oppose minimum performance standards as deterrents to investment, with AT&T arguing that anything but providing 100 percent funding and minimal requirements, as long as providers meet low cost per

household goals, will deter investment.<sup>121</sup> The Small LECs oppose minimum performance standards, focusing on the effects on the most rural areas. AT&T argues that the objectives of the minimum performance standards are already better achieved through the scoring criteria and the funding criteria, and Frontier opposes both the scoring criteria and the minimum performance standards. AT&T is particularly opposed to the obligation to serve all households in a project area, and all incumbents oppose the requirement to provide affordable plans for low-income customers in CASF project areas. CCTA has argued that the minimum performance standards in general, and the affordability requirement in particular, are bad policy and exceed the program's statutory authority.

AT&T also suggests eliminating timeliness and pricing period as criteria, and replacing speed with latency. The most important criterion, according to AT&T, is cost per household, broken out by technology. In Frontier's opening comments, they stated that the number of criteria should be reduced, including by moving letters of support from the scoring criteria to the funding criteria. Race and GeoLinks recommend increasing the number of points available for speed, and GeoLinks states that all criteria should be technology-neutral.

The Joint Consumers recommend eliminating or at least minimizing the importance of costs or grant per household, and adding points to the low-income and pricing criteria. They have also suggested that Staff clarify how the points are calculated for speed, and that "future-proof" projects using fiber be prioritized. CCTA, CCBC, and NBNCBC have all recommended considering

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<sup>121</sup> AT&T ALJ Ruling Opening Comments September 21, 2018 at 8.

latency as a scoring criterion. NBNCBC has also stated that the scoring criteria are generally unclear and should be clarified.

GeoLinks supports regulating consumer prices for CASF projects but suggests using the FCC's "Comparable Rates" standard, which is two standard deviations above the median price for equivalent service in an urban area, instead of using a qualified low-income price. Joint Consumers suggests using a low-income discount rate, and making it mandatory for five years after project completion.<sup>122</sup> Cal Advocates suggests requiring low-income pricing for all projects receiving increased funding levels.<sup>123</sup>

### **2.13.2. Discussion**

We adopt the minimum performance standards proposal, which were created based on comments submitted in previous rounds of the instant proceeding. We believe that when combined with the funding level determination and ministerial review criteria, the minimum performance standards provide guidelines for what constitutes a "good" project; namely broadband Internet service for individuals who would not normally be offered access, at the speeds required in statute, with solid service quality (low latency and large data caps), low prices for low-income customers, and built at a cost-effective price for ratepayers.

The Commission disagrees with AT&T and Frontier's recommendations regarding the minimum performance standards, including affordability. Given that CASF grants will now cover up to 100 percent of capital costs, we do not

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<sup>122</sup> Joint Consumers Phase II Opening Comments April 16, 2018 at 12.

<sup>123</sup> Cal Advocates Phase II Opening Comments April 16, 2018 at 4.

believe that the minimum performance standards impose an undue burden on providers. Furthermore, the affordability requirement is particularly reasonable given that areas with large numbers of low-income residents, and thus the areas where the affordability requirement might otherwise be unduly burdensome for providers, will qualify for 100 percent funding. Finally, Frontier and AT&T already offer nationwide low-income plans that would meet our criteria.

With respect to GeoLinks' suggestion that the Commission use the FCC's "Comparable Rates," which are the maximum prices permitted for all consumers under CAF, the Commission considered proposing something like this. The Commission is attempting to balance the interests of ensuring that service in CASF project areas is affordable for all Californians, including low-income Californians, and enabling investors to receive a sufficient rate of return to invest in CASF projects. Now that AB 1665 requires the Commission to consider providing up to full funding for projects, there is less concern about how to entice providers to provide matching funds for investment in CASF areas, and more concern about maximizing the return to the public on those investments. After much discussion, it has been decided that qualified low-income pricing, combined with market rates for most consumers, is more likely to achieve the Commission's goals than setting a price ceiling for all customers, as the FCC does.

#### **2.14. Priority Areas**

The July 2018 ACR asks about how best to prioritize projects and areas for support. The September ALJ Ruling requests comment on a proposal to replace the existing scoring criteria with an evaluation process focusing on funding levels and minimum performance standards.

**2.14.1. Parties' Comments**

Frontier and AT&T recommend that the Commission focus on factors contained within the statute, such as consortia regions that are not yet at the 98 percent goal, and areas that have exclusively dial-up service. To the extent that other factors are considered, they should be posted to the California Interactive Broadband Map prior to accepting applications.

CCRP, RCRC, UCCC, NCCC, Cal Advocates, and Joint Consumers have stated that low-income communities should be prioritized. CCRP, RCRC, UCCC, and NCCC have further specified that any community of more than 50 households, without 6/1 service, and with median household incomes below \$49,200, should be prioritized. CCRP, RCRC, UCCC, NCCC, and Iron Horse Vineyards have stated that areas harmed by natural disasters should be prioritized, and NBNCBC has emphasized updating the California Interactive Broadband Map following natural disasters. NBNCBC and Iron Horse Vineyards have both recommended prioritizing public safety, water and agriculture, and fairgrounds. CENIC has recommended prioritizing unserved census blocks containing anchor institutions.

Three CASF Regional Consortia submitted specific census blocks and communities they recommend the Commission prioritize. CENIC submitted specific locations it wants the Commission to prioritize.

**2.14.2. Discussion**

We cannot adopt priorities that are not eligible for CASF funding and many of the specific communities and locations nominated for priority designation are located in ineligible census blocks. Pub. Util. Code § 281 (f)(2) requires the Commission to consult with stakeholders in developing

cost-effective strategies to meet the 98 percent program goal, including in one workshop each year to be held before April 30. We encourage Staff to develop a list of priority-communities for broadband deployment for that consultation. We also ask Staff to solicit input on options for stakeholder access to middle mile or backhaul lit and dark fiberoptic route information<sup>124</sup> and strategies, and solutions, for providing stakeholder and public access to this information.

### **2.15. Compliance Changes Pursuant to CASF Performance Audit**

The February Scoping Memo included a proposal that the applicant is 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 Appendix 1-D Consent Form.

#### **2.15.1. Parties' Comments**

No comments were received on this issue.

#### **2.15.2. Discussion**

We adopt this proposal. Applications approved under Ministerial Review also will be subject to this Consent Form.

### **2.16. CEQA Payment**

The February Scoping Memo included a proposal that CEQA consultant costs be paid directly by the Commission to the contractor following the award of a grant, prior to the first 25 percent of project being completed. Following

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<sup>124</sup> Any solicitation would be conducted in conformance with the Commission's confidentiality procedures.

award of a grant the Energy Division CEQA Section Staff will obtain a contractor to prepare any applicable CEQA Proponent's Environmental Assessment (PEA) 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.

### **2.16.1. Parties' Comments**

Various parties, including Frontier, CCRP, and Race, expressed support for streamlining the CEQA review and to disburse funds ahead of the 25 percent project completion that is required in the current rules. CCRP noted that the proposal "is a positive solution to reduce financial burden in broadband infrastructure projects."<sup>125</sup> However, Frontier expressed concern that "requiring too much preliminary CEQA review before a grant is awarded will deter providers from submitting applications."<sup>126</sup> Similarly, CETF echoed these concerns. Frontier's recommendation to address this issue is to reimburse the applicant for the CEQA "pre-application" steps even if the grant is not awarded.<sup>127</sup>

With regards to the proposal for the Energy Division's CEQA Section to obtain a contractor to review CEQA documents for the project, Frontier expressed concern that this process would cause delays, additional analysis,

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<sup>125</sup> CCRP Phase II Opening Comments April 16, 2018 at 11.

<sup>126</sup> Frontier Phase II Opening Comments April 16, 2018 at 8.

<sup>127</sup> *Ibid.*

confidentiality issues, and that it would be unappealing to certain providers.<sup>128</sup> CETF in its reply comments agrees with Frontier that there may be “many unintended consequences.”<sup>129</sup>

### **2.16.2. Discussion**

Due to the generally lengthy nature of the CEQA process, we believe that the proposed solution of paying the CEQA consultant directly and prior to the 25 percent project completion will minimize the financial cash flow burden to some grantees. Although, Frontier raised concerns that this new process will discourage providers from submitting applications, we are not convinced that it is appropriate for the program to pay for efforts related to identification of CEQA issues and possible costs before a grant is awarded. We believe it reasonable that we rely on project applicant estimates of costs, and that later the CASF program pay for the actual CEQA PEA documents once a grant is awarded.

### **2.17. Semi-Annual Reporting and Completion Reports**

Pursuant to D.12-02-015, the program currently requires quarterly reports beginning the first quarter following the issuance of the resolution approving a grant. Often these reports contain little additional information compared to prior reports, in particular when projects are waiting on environmental review.

The February 2018 Scoping Memo includes a proposal that reports be due on a bi-annual basis instead of quarterly reporting. This would require a minimum of four reports if the project immediately begins construction

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<sup>128</sup> *Ibid.*

<sup>129</sup> CETF Phase II Reply Comments May 1, 2018 at 16.

following receipt of the grant and is completed within 24 months. Bi-annual reports will reduce the number of reports otherwise received, thereby reducing regulatory burden on the applicant and Staff. Bi-annual reports shall contain the following:

1. Description of project accomplishments during this period
2. 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.
3. Description of any challenges or issues and any risks faced during this period in achieving planned progress on the project, including environment compliance and permitting challenges if applicable.
4. Description of significant project milestones or accomplishments planned for next 6 months.
5. Subscribership information to date.
6. Certification that each progress report is true and correct, under penalty of perjury.
7. 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 problems/ issues during construction (including, CEQA compliance, if applicable).

Completion reports must be submitted prior to receiving the final payment, and shall contain the following:

1. Comparison of approved versus actual costs of construction.
2. Description of the project, including any changes in the project construction and alignment, if applicable.
3. Milestones and completion dates for each milestone.

4. Final date of completion of the project, problems/issues encountered since last semi-annual report and actions taken to resolve these problems/issues during construction (and comprehensive reporting on CEQA mitigation compliance, if applicable).
5. Speed test data for the census blocks.
  - a. Test the download and upload speeds.
  - b. Sample at dispersed locations in the project area; number of tests will vary based on project.
  - c. An attestation that all households within the project area are offered service and minimum speeds of 10 Mbps download and 1 Mbps upload or higher.
  - d. Use online CalSPEED speed test tool – <http://calspeed.org/index.html>; take a screen shot of each test result and include them with your final report.
  - e. Maps of the areas covered.
  - f. 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.
  - g. Documentation of advertisements, billing inserts and marketing information; by speed tier and prices.
  - h. Number of subscribers that actually signed up as of the date of the request for reimbursement versus the projected number of subscribers.
  - i. Identification of the number of served households in the project area that have broadband availability at or above the aforementioned minimum speeds.

Submit a copy of Form 477 data directly to the Commission.

### 2.17.1. Parties' Comments

In its comments, AT&T asserts that “too-frequent reports, such as the quarterly reports previously required, add little value and impose unnecessary burdens”<sup>130</sup> and proposes following the FCC’s approach and use annual reporting. Others have not presented comments on the requirement to submit semi-annual reports. Regarding completion reports, the CCRP affirms their support for the completion report attestation that all households in the project area are offered service and minimum speeds of 6Mbps/1Mbps or higher for network upgrades and minimum speeds of 10Mbps/1Mbps or higher for new deployments.<sup>131</sup> AT&T disagrees with requiring use of CalSPEED in providing speed test results as it measures speed from a customer location to one of two servers on either side of the country (one in California and one in Washington, DC). As the data travel, they traverse facilities over which the provider has no control and this can lead to significantly slower speed readings.<sup>132</sup> Contrarily, Joint Consumers asserts that the Commission can and should continue to rely on CalSPEED and that tests should be done at peak hours<sup>133</sup> and is a valuable application to measure actual broadband speeds.<sup>134</sup>

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<sup>130</sup> AT&T Phase II Opening Comments April 16, 2018 at 26.

<sup>131</sup> CCRP Phase II Opening Comments April 16, 2018 at 11.

<sup>132</sup> AT&T Phase II Opening Comments April 16, 2018 at 27.

<sup>133</sup> TURN Greenlining (Joint Consumers) Phase II Reply Comments May 1, 2018 at 8.

<sup>134</sup> *Ibid.*

**2.17.2. Discussion**

We believe that quarterly reporting is unnecessary. Further, we see value in requiring only bi-annual progress reports. Since projects are set to conclude within 24 months this approach would result in a grantee submitting three during the pendency of the project with a fourth and final report upon project completion.

Regarding completion report requirements, the CASF uses data it collects via the CalSPEED app to validate broadband availability and publishes the information it receives as public feedback on the State Broadband Map.<sup>135</sup> Staff believe that the CalSPEED app the best provides information targeted to the CASF Infrastructure Grant program and feedback on deployed projects. Staff shall review and track projects using the semi-annual schedule of March 1 and September 1 and shall require completion reports, as described above, prior to final payment.

**2.18. Payment Reimbursement Intervals**

Although the February Amended Scoping Ruling did not contain a proposal for changing the frequency of reimbursement payments to grantees, some parties submitted comments encouraging the Commission to revise payment frequency and reporting timelines. AT&T in particular proposed monthly payments with reduced reporting and invoicing requirements. The July 2018 ACR requested further comment on this proposal and asked the following questions:

- Should the CASF reimbursement process change?

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<sup>135</sup> <http://www.broadbandmap.ca.gov/>

- Is it possible to use a new process and still be in compliance with the State Administrative Manual?
- Are there other state programs the Commission could use as an example? Additionally, given current Staff resources, would payments every two months be acceptable?

### **2.18.1. Parties' Comments**

AT&T asserts that the State Administrative Manual Section 8422.1 does not prevent the Commission from providing monthly or bimonthly disbursements to CASF Broadband Infrastructure Fund grant recipients since it does not address the frequency of payments.<sup>136</sup> NBNCBC agrees with AT&T's proposal and believes grantees should receive funding on a more frequent basis, either monthly or bi-monthly as this would benefit small organizations with tighter cash flow.<sup>137</sup> CCRP states that the Commission should develop a process under which grantees with limited resources, who are not incumbent providers, can access funding earlier in project development.<sup>138</sup>

CETF suggests that there should be some limited upfront funding, for example 25 percent, to allow infrastructure grantees to get started, but payments based on milestones achieved supported by full documentation (e.g. receipts, invoices, and purchase orders) is appropriate.<sup>139</sup> CCBC states the current reimbursement process has proven effective in safeguarding public funds and

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<sup>136</sup> AT&T ACR Comments August 8, 2018 at 14.

<sup>137</sup> NBNCBC ACR Comments August 8, 2018 at 7.

<sup>138</sup> CCRP ACR Comments August 8, 2018 at 11.

<sup>139</sup> CETF ACR Comments August 8, 2018 at 13.

that a monthly payment would disproportionately benefit large incumbents.<sup>140</sup> CETF does not see obvious benefits of AT&T's suggestion of monthly funding, absent the grantee reaching performance milestones in the project.<sup>141</sup> Race opposes AT&T's suggestion of monthly funding as it is not linked to milestones/progress and thus may result in waste, fraud and abuse.<sup>142</sup> Race agrees with CETF's suggestion that there should be some allowed upfront funding, for example 25 percent, to allow infrastructure grantees to get started and agrees that milestone-based payments supported by full documentation is acceptable.<sup>143</sup> Conifer suggests no alternation to the payment process in order to be in compliance with the State Administrative Manual.<sup>144</sup> Frontier does not have any specific recommendation but would not oppose changes to the payment process if they are based on actual experience with the program and that any change must not be overly complex so as to create burden and delay in implementation.<sup>145</sup> Joint Consumers urge the Commission to require demonstrated performance prior to payment and states that if the Commission makes grant payments monthly (or every two months) without tying the payments to deployment progress, as AT&T suggests, then the Commission essentially waives or greatly reduces its ability to ensure program compliance.<sup>146</sup>

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<sup>140</sup> CCBC ACR Comments August 8, 2018 at 6.

<sup>141</sup> CETF ACR Comments August 8, 2018 at 13.

<sup>142</sup> Race ACR Comments August 8, 2018 at 8.

<sup>143</sup> *Ibid.*

<sup>144</sup> Conifer ACR Comments August 8, 2018 at 7.

<sup>145</sup> Frontier ACR Comments August 8, 2018 at 8.

<sup>146</sup> TURN Greenlining (Joint Consumers) ACR Comments August 8, 2018 at 14.

**2.18.2. Discussion**

We agree with CETF's point that the CASF program is designed to reimburse based on performance. This protects ratepayers by limiting the risks of waste, fraud and abuse. Staff has extensive experience in reviewing project payments and understands the time requirements and State Administrative Manual's steps to getting these payments processed. Monthly or bi-monthly payments will unnecessarily burden Staff with time-consuming tracking of projects and review of payment processing when administering other aspects of the CASF program is a more effective use of Staff time and would further CASF goals. Staff will use the incremental payment steps above and will verify project completion and withhold 15 percent, if necessary, to ensure proper deployment of CASF funds.

That said, we want to find ways to accommodate applicants whose participation in the program is necessary to ensure we meet the 98 percent goal. Thus, we adopt two payment options going forward.

The first method is similar to our current standard payment process, except that we revise it to allow for reimbursement at an earlier time in the project schedule. 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. Staff will then be able to reimburse at least 10 percent of the grant amount. Subsequent payments will be 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 and a site

visit by Staff. 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.

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.

For providers that wish to front the full costs of a project in exchange for reduced burdens, we offer an alternative proposal. For proposed projects from applicants in possession of a CPCN that meet the ministerial review criteria, the Commission shall permit a one-time grant payment that is paid in full at the completion of the project. 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 subject to audit.

### **2.19. Execution and Performance**

Current CASF rules stipulate that Staff and the CASF grant recipient shall determine a project start date after the CASF grant recipient has obtained all approvals, generally 30 days after approval of the resolution or expedited 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 pursuant to the award on or before the termination date of the award.

**Construction Phase:** Current CASF rules stipulate that 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 CD in writing of its intent to sell or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and ownership 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 and loans. 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.

**Post-Construction Phase:** Current CASF rules stipulate that a grantee must notify the Commission within five days of determining that the grantee is planning to sell or transfer its assets for three years after project completion. The grantee shall notify the Director of the Commission's CD 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.

### **2.19.1. Parties' Comments**

CCBC supports the recommendation made in the execution and performance section of the infrastructure grant program. AT&T asserts that clarification should be made to this section "that this applies *only* to a sale of *all* the provider's assets...[and] also make clear that the notice requirement applies only to the sale or transfer of assets that have been deployed using the CASF funds or are used to serve the locations added by the CASF-funded project."<sup>147</sup>

### **2.19.2. Discussion**

We agree and have added language to clarify that the notification applies only to a sale or a transfer of all a provider's assets and/or the sale or transfer of assets that have been deployed using the CASF funds or are used to serve locations included in the provider's service territory as a result of CASF funds.

## **3. Comments on Proposed Decision**

The proposed decision of Commissioner Martha Guzman Aceves in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. The following parties filed comments on November 29,

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<sup>147</sup> AT&T Phase II Opening Comments April 16, 2018 at 34.

2018: AT&T, Race Telecommunications, Frontier, CCTA, CETF, Joint Consumers (Greenlining Institute and TURN), Cal Advocates, Small LECs, GeoLinks, and the Central Coast Broadband Consortium. The following parties filed reply comments on December 4, 2018: AT&T, Race Telecommunications, CCTA, CETF, Greenlining Institute, TURN, Cal Advocates, Small LECs, GeoLinks, and the North Bay/North Coast Broadband Consortium.

In opening comments, several parties reiterated their opposition to validating deployment data using subscriber data.<sup>148</sup> We are not persuaded by these arguments and instead agree with the reply comments submitted by the Greenlining Institute, which note that the statute does not define the method the Commission should use to determine whether a provider “offers access.”<sup>149</sup> Further, Greenlining notes that “The statute does, however, state the Commission will be responsible for identifying unserved areas, achieving the program goals and implementing and administering the CASF program in a way that encourages deployment of communication services to *all* Californians.”<sup>150</sup> We believe this is a sensible approach to the improving the accuracy of the data providers submit and is within the Commission’s statutory authority.

Joint Consumers request in opening comments several modifications.<sup>152</sup> We have revised page 22 of this Decision and page 6 of Appendix 1 to state that

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<sup>148</sup> See *e.g.*, CCTA Opening Comments, November 29, 2018 at 2; AT&T Opening Comments, November 29, 2018 at 1-2.

<sup>149</sup> Greenlining Institute Reply Comments, December 4, 2018 at 1, citing Pub. Util. Code § 281(f)(5)(A).

<sup>150</sup> *Id.* at 1-2 (citations omitted, emphasis in original).

<sup>152</sup> Joint Consumers Opening Comments November 29 2018 at A-1 and A-2.

the percentage of additional funding available to a project will be proportional to the percentage of households in the proposed project area with only dial-up Internet service at best. We also clarified that low-income service offerings must be offered throughout the entire project area and comply with all CASF performance criteria. Page 14 of Appendix 1 was revised to state that projects requesting dial-up-only funding must identify in their application the number of households that are eligible and ineligible.

CETF and Frontier requested clarification that all wireline technologies are eligible for Ministerial Review (not just fiber), a higher maximum grant, and a higher cost per household threshold.<sup>153</sup> We revised page 26 of this Decision, and pages 25 and 26 of Appendix 1. The cost per household threshold for wireline projects is now \$9,300, and the maximum grant for a Ministerial Review project is now \$10,000,000. The \$9,300 threshold is derived from the 2016 CASF Annual Report's average cost of fiber-to-the-home projects.<sup>154</sup>

CCTA argues in reply comments that the Ministerial Review process is less transparent than the Resolution process, particularly as it relates to challenges.<sup>155</sup> We are continuing to implement Ministerial Review, but have revised page 59 of this Decision, and page 25 of Appendix 1, in order to state that Staff's determinations regarding challenges to projects undergoing Ministerial Review will be posted on the Commission website and e-mailed to the CASF Distribution

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<sup>153</sup> CETF Opening Comments November 29, 2018 at 4, Frontier at 4.

<sup>154</sup> CASF 2016 Annual Report, April, 2017 at 43.

<sup>155</sup> CCTA Reply Comments December 4, 2018 at 4.

List. In the event the application is challenged, this letter will include a determination regarding if the area is unserved.

The Central Coast Broadband Consortium notes that the PD may be unintentionally limiting in its interpretation of “indispensable” middle mile resources by not including dark fiber as an example of the wholesale services offered by middle mile providers. There may be circumstances where Layer 1 middle mile facilities, such as dark fiber, are indispensable to a project.<sup>156</sup>

Accordingly, page 30 is revised to read as follows: “If Staff finds existing middle mile infrastructure in a proposed project area where an applicant proposes to construct new infrastructure, Staff should 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. For example, the applicant, in its application, should include documentation demonstrating that it requested dark fiber or specific data and/or transport services from a provider and that provider was not able to meet that request and offered no other alternative. Under this scenario, the application should not be denied due to the presence of middle mile infrastructure.”

AT&T and CETF made competing recommendations about how to select among competing applications for the same project area within the Ministerial Review process, with CETF supporting the application proving higher speeds and AT&T supporting the application with the lowest cost.<sup>157</sup> We have revised

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<sup>156</sup> Central Coast Broadband Consortium Opening Comments November 29, 2018 at 2.

<sup>157</sup> AT&T Reply Comments December 4, 2018 at 4, CETF Opening Comments November 29, 2018 at 7.

page 26 of this Decision and page 25 of Appendix 1 to make clear that competing applications for the same project area will not be considered using the Ministerial Review process.

Cal Advocates request in opening comments that the PD be amended to require letters of credit to cover the full amount of the CASF grant for a 24-month construction period, and that applications include information about the low-income broadband plan.<sup>158</sup> We have revised page 37 of this Decision and page 18 of Appendix 1 accordingly.

In opening comments, Race and CETF request that the PD be modified so that the challenge submission deadline is 21 calendar days “from notice of the application being served on the service list.”<sup>159</sup> We revised pages 57 and 59 of this Decision, and pages 22 and 24 of Appendix 1. Staff will have 14 calendar days to post application summaries and maps to the CPUC website, and email the CASF Distribution List. After that, challengers will have three weeks to submit challenges to applications.

CCTA asserts in its opening comments that a “challenge must be allowed after each amendment to an application.”<sup>160</sup> We revised pages 60-61 of this Decision and page 25 of Appendix 1 so that, only in the unlikely event that an applicant proposes to expand its proposed project area after the challenge period has passed, and Staff decides to consider this revision, the revised application must be served on the CASF Distribution List to allow interested parties the

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<sup>158</sup> Cal Advocates Opening Comments November 29, 2018 at 6-10.

<sup>159</sup> Race Opening Comments November 29, 2018 at 4, CETF at 6.

<sup>160</sup> CCTA Opening Comments November 29 2018 at 2.

opportunity to challenge what essentially is a new application for only the expanded areas of the project. Otherwise, there is only one opportunity to challenge a project.

CCTA also raised the issue that Rule 17 requires grantees to sign a consent form that refers to the Resolution number of the grant.<sup>165</sup> Because projects approved through Ministerial Review will not have Resolutions, the Consent Form (and corresponding sections of the Decision) have been amended. All applicants are required to sign the Consent Form agreeing to the terms and conditions of the CASF Infrastructure Grant Account. These will be stated either in the Resolution approving the project, or in an approval letter sent by Staff to the successful applicant. We have revised page 65 of this Decision, pages 30-31 of Appendix 1, and Attachment D of the Appendix accordingly.

Cal Advocates recommends that the Commission adopt a cost-per-household threshold for DSL as part of the Ministerial Review criteria. Specifically, Cal Advocates suggests a threshold of \$500 per household or less.<sup>166</sup> We appreciate the point Cal Advocates raises: DSL projects should cost considerably less than fiber. Still, we decline to adopt this standard. One key goal of the Commission is to encourage CAF providers, specifically Frontier and AT&T, to build out beyond their CAF commitments. In some instances, that may mean awarding a grant for DSL service to more remote households, which may cost more per household than the threshold recommended by Cal Advocates. It is in an effort to connect those households that we choose to not adopt the

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<sup>165</sup> *Ibid.*

<sup>166</sup> Cal Advocates Opening Comments November 29, 2018 at 4.

threshold proposed by Cal Advocates because it may discourage applications proposing to serve those remote households. In doing so, we note that our granting of ministerial review authority to Staff does not preclude Staff from seeking Commission approval of a grant application via resolution. DSL projects that appear to cost outside the norm may be good choices for Commission approval instead of Staff approval.

AT&T and CETF made competing recommendations about how to select among competing applications for the same project area within the Ministerial Review process. We have revised page 23 of this Decision and page 25 of Appendix 1 to make clear that competing applications for the same project area will not be considered using the Ministerial Review process.

#### **4. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and W. Anthony Colbert is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. On October 15, 2017, the Governor signed AB 1665 into law which amended Pub. Util. Code §§ 281, 912.2, and 914.7, the statutes governing the CASF program.
2. The February 14, 2018 ACR bifurcated the proceeding, into Phase I and Phase II. This Decision addresses Phase II of the proceeding, specifically the Broadband Infrastructure Grant Account.
3. The ACR includes the Phase II Staff Proposal in Appendix C, prepared by the Commission's CD, in order to implement Phase II of the program.
4. The Phase II Staff Proposal contains rules and guidelines for the Broadband Infrastructure Account and the LEP pilot including: determination of

eligible areas and served status; funding criteria; ministerial review; middle-mile funding; reimbursement; preference for areas without broadband service; eligible applicants; application process; information required of applicants; request for proposal; right of first refusal; treatment of CAF II areas; submission and selection timelines; posting of applications; project challenges; minimum performance standards; scoring criteria; compliances changes; CEQA payment; reporting; payment; execution and performance.

5. Public forums and workshops regarding the CASF program were held in Oroville, California on March 14, 2018 and in Madera, California on March 16, 2018.

6. Both this Decision and Appendix 1 have been revised and updated in response to parties' comments and reply comments as well as feedback from the workshops/public forums held in this proceeding.

7. Rules, application requirements, and guidelines for the Broadband Infrastructure Grant Accounts are contained in Appendix 1.

8. The LEP pilot required by Pub. Util. Code § 281(f)(6) will be considered in a future Commission decision.

9. Relying on broadband subscriber data to validate broadband deployment data is a reasonable and expeditious method to ensure a more accurate depiction of broadband availability.

10. Pub. Util. Code § 281(f)(5)(C)(i) provides recipients of FCC CAF II support until July 1, 2020 to notify the Commission of where the companies intend to build using that support.

11. It is in the best interest of State broadband planning efforts that those providers who are recipients of FCC CAF II support notify the Commission of the locations they do not intend to build before then, as much as they are able to.

### **Conclusions of Law**

1. The rules, application requirements and guidelines set forth in Appendix 1 for the Broadband Infrastructure Grant Accounts are consistent with the intent and objectives of Pub. Util. Code §§ 281(f)(1) - (15) and should be adopted.

2. The Commission has the authority to delegate to Staff the ministerial review of CASF Infrastructure Grant Account applications meeting the criteria specified in the Ministerial Review Section of this Decision and it is reasonable that it do so in this proceeding.

3. Pub. Util. Code § 281(f)(13) requires the Commission to award grants to fund all or a portion of a CASF Infrastructure Grant Account project depending on various criteria.

4. The criteria listed as part of the Funding Level Determination process are in compliance with Pub. Util. Code § 281(f)(13).

## **O R D E R**

### **IT IS ORDERED** that:

1. The programmatic changes to the California Advanced Services Fund program as set forth in Appendix 1 (Broadband Infrastructure Account Requirements, Guidelines and Application Materials), attached hereto, are hereby adopted.

2. The deadline to file applications for the Right of First Refusal is January 15, 2019.

3. The deadline to file applications for the next round of the California Advanced Services Fund Infrastructure Grant Account is April 1, 2019.

4. Rulemaking 12-10-012 remains open.

This order is effective today.

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