

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

Order Instituting Rulemaking Regarding)	
Revisions to the California Advanced)	R.20-08-021
Services Fund.)	(Filed August 27, 2020)
_____)	

**COMMENTS OF THE CALIFORNIA EMERGING TECHNOLOGY FUND
ON STAFF PROPOSAL ON STATE-FEDERAL
BROADBAND INFRASTRUCTURE FUNDS LEVERAGING**

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In compliance with an October 1, 2020 email from Assigned Administrative Law Judge Joanne Gubman, in the above-referenced California Advanced Services Fund (“CASF”) Order Instituting Rulemaking No. (R.) 20-08-021, (“Staff Proposal”), the California Emerging Technology Fund (“CETF”) hereby files comments on the questions posed therein.

Background. A non-profit organization formed by this Commission whose mission is to close the Digital Divide in California, CETF is a formal party to this proceeding and the prior CASF rulemaking, R.12-10-012. CETF is also the only non-state agency member to the California Broadband Council. Its role there was advocated by the author (Senator Alex Padilla) of the enabling legislation because CETF is the only statewide entity directed to be established by the Commission to close the Digital Divide in California and which also is required by State law to report to the Legislature through the CPUC. CETF represents broadband consumers in California and advocates for broadband infrastructure to be made available for all residents. At this unprecedented time with the pandemic emergency, the importance of broadband is paramount, and it has become an essential service that each resident should have access to for economic and social justice.

Summary

CETF applauds the intent of the Staff Proposal to leverage federal broadband infrastructure funding programs. CETF sees many positive aspects in the Staff Proposal:

- “Kicker” funds that can enhance the ability of California Internet Service Providers (ISPs) to be successful in the Phase I FCC Rural Digital Opportunity Fund (RDOF) auction beginning later this month.
- Increased ability for California to win its fair share of RDOF funds, given this state still has unserved areas given our vast geographic expanse.
- Allowing successful RDOF bidders to apply for CASF grants for unserved areas along the route or path to the approved RDOF project.

However, CETF also sees some serious drawbacks of the Staff Proposal approach. Consumers in unserved areas need broadband as soon as possible. The main goal of CASF should be to fund projects at scale that drive to 98% infrastructure deployment, and to build broadband in strategic corridors. It is not to obtain maximum federal funds although that would be preferable. CETF’s main beef with the Staff Proposal is it must not cause any additional delays in funding the meritorious May 4th Applications.

Thus, CETF’s most important recommendation is that the “kicker” funds should be taken from next year’s CASF funds, or from a different and perhaps entirely new fund. ¹ Funding sources should be identified in the new Broadband for All OIR, with help from the Governor’s office and the Legislature.

Here are the drawbacks to the Staff Proposal:

- The current May 4th CASF applicants will be severely penalized by the approach suggested in the Staff Proposal because it takes up to \$150 million in current CASF funds off the table for grants this year. Non-incumbent ISP applicants finally were eligible to file new CASF applications on May 4, 2020 after the long hiatus imposed by the AB1665 prohibition on applications in the FCC Connect America Fund (CAF) II areas so that incumbents holding CAF II grants could complete those build outs until June 2020. To now, strip away up to \$150 million of current CASF funds for the May 4th applications is imprudent and unfair to these May 4th Applicants who prepared applications in good faith. Preparing and filing applications is expensive. The June 5, 2020 letter from CD Director Osborn

¹ The Legislature could form a new fund for the purpose of matching federal broadband infrastructure funds.

suggests there is only about \$178 million left in this year's CASF fund. Thus if \$100 million - \$150 million is removed, this leaves at most \$78 million for the May 4th Application pool. This is patently unfair. Thus, CETF strongly recommends that the meritorious May 4th applications should be granted in November 2020, which marks six months of processing. The Commission should encourage the grantees to build as fast as they can and facilitate permitting.

- Any May 4th applicant who also applied for RDOF can ask to pull its CASF application and resubmit it next year. Such applicant can apply for the new “kicker” funds for grant next year from next year's CASF funds.
- Further, CETF reminds the Commission that there are some long standing areas that need focused attention and additional CASF funding that are strategic corridors. Two examples are Kern River Valley and the Digital 299 corridor. Yes, maximizing federal dollars is important, but not by failing to move forward with full funding on these important strategic corridors.

Part I. Background

(a) Should the Commission consider additional aspects, rationale, or interpretation of Public Utilities Code section 281 to facilitate CASF-RDOF leveraging?

An aspect to be considered is the eligibility for the RDOF program versus the CASF programs. Under the January 20, 2020 RDOF Report and Order, the FCC determined that the Phase I auction, which is scheduled to begin on October 29, 2020, will target over six million homes and businesses in census blocks that are entirely unserved by voice and broadband with download speeds of at least 25 Mbps download and 3 Mbps. upload or better. So, the eligibility for the FCC RDOF auction is for areas that are “unserved” by voice and broadband with download speeds of at least 25 Mbps.

In contrast, under the Commission's CASF program, eligibility is for speeds of 6 Mbps. download and 1 Mbps. upload.² CASF grantees must build infrastructure at speeds of at least 10

² Requires projects eligible for grant awards to meet the following requirements: (a) deploy infrastructure capable of providing broadband access at speeds of a minimum of 10 megabits per second (Mbps) downstream and 1 Mbps upstream to unserved households in census blocks where no provider offers access at speeds of 6 Mbps downstream and 1 Mbps upstream; and (b) all or a significant portion of the project deploys last-mile infrastructure to provide service to unserved households. See Pub. Util. Code § 281(f)(5)(A).

Mbps. download and 1 Mbps. upload. *Id.* Thus, a CASF grant will not automatically disqualify a grantee from an FCC RDOF grant, depending on the speeds currently serving the project area and the proposed speed of the new broadband infrastructure. Further, the FCC RDOF v. CPUC CASF speed differential means that much more geographic areas are eligible for FCC RDOF funding than CASF funding. As a factual matter not all California ISPs who applied for RDOF funding also applied for CASF funds. Such California ISPs should have an opportunity to obtain “kicker” funds also if they win in the RDOF auction.

The Legislature in AB82 clearly directed the Commission to grant CASF subsidies to projects funded in whole or in part from the federal RDOF fund. AB82 was signed into law by the Governor. Thus, this Commission has clear authority to use CASF funds for assistance to RDOF winning bidders. Similarly, in the past, the Legislature and the Commission encouraged California ISPs to seek federal NTIA’s American Recovery and Reinvestment Act (ARRA) broadband funding and wisely provided CASF funds to be matching funds for ARRA grants. CETF applauds action to bring the maximum federal dollars to the state for broadband.

In Decision No. (D.) 20-08-025 (Aug. 6, 2020), this Commission gave Staff delegated authority to set additional application windows and timeline, via letter from the Communications Division to the CASF Distribution and Service Lists for Tribal Areas and/or other eligible applicants to incorporate federal broadband funding opportunities, such as RDOF. Staff is to process such applications within six months.

It appears that the Commission has everything it needs to create the “kicker” program in terms of authority, and the Staff may administrate it without further Commission decision.

However, leveraging federal funds should be done in a way that does not penalize and discourage the May 4th CASF applicants who in good faith submitted CASF applications. CETF recommends the Commission grant as many of the May 4th applications as it can with the available funds, assuming the applicants met the current CASF Infrastructure rules. Shovel ready projects should be approved to begin immediate construction. Given the speed differentials of the programs, May 4th Applicants who have RDOF areas in the project should have the option to withdraw their applications or have them held until after the RDOF auction results are announced by the FCC.

https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_and_Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf at page 3

The Staff Proposal makes much of the potential to obtain federal RDOF dollars due to the fact that CASF funds are currently limited,³ and CASF legislation to bring additional funding did not come to fruition in 2020. The “kicker” approach is meant by Staff to “expedite” build out of a gigabit-capable broadband infrastructure.⁴ Thus, ISPs who win RDOF grants should only get kicker funds if they propose gigabit or near gigabit speed service.

(b) Does the proposal accurately capture that state infrastructure awards before RDOF would likely disqualify or remove the state-funded locations from the federal auction?

The Commission should only delay a CASF May 4th application *if it clearly would disqualify the RDOF area from getting federal funds under FCC rules*. The Staff will need to study the speeds in the proposed applications to determine this disqualification due to the speed disparities in the FCC RDOF and CASF programs.

(c) Should the proposal be modified to better confirm with PU 281(f)(13) which states “This paragraph does not authorize the commission to reject a grant application on the basis that an applicant failed to seek project funding from the Connect America Fund program or another similar federal public program”

The above quoted section clearly indicates that the Legislature did not want the Commission to reject a CASF application because the applicant chooses not to seek federal funding (example Connect America Fund or RDOF). This makes good sense to CETF because some ISPs are small, local, independent businesses and may not have the resources or expertise to seek federal funding, which is a complex and expensive process.

At the same time, the Staff Proposal is to make CASF May 4th applicants wait approximately six plus months for a decision on their CASF applications if there is a census block overlapping an FCC RDOF area. In the CASF program, there is an expectation that the Commission should grant CASF infrastructure applications within six months. This additional delay may discourage an applicant, may cause it to lose its funding source, and cause it to withdraw an application without any guarantee that the RDOF auction will bring a winning

³ Staff Proposal, at page 9.

⁴ Staff Proposal, at page 12.

bidder to that service area. Further as noted above, a CASF application does not automatically disqualify an area for RDOF as it depends on the proposed speeds in the CASF application and selected speed tier in the RDOF application for that census block.

Part 2. Rationale for State-Federal Leveraging. Do additional or other rationales for State-Federal leveraging apply?

CETF supports the rationale that using CASF funds to leverage RDOF bids may make California ISPs more competitive and more likely to win in the FCC RDOF auction. In the ARRA era conducted by NTIA, CASF funds were allowed to be used to provide matching funds to ARRA grants. This infusion of state funding assisted California applicants to obtain broadband grants, most notably the large scale CBC Digital 395 middle mile grant for the Eastern Sierra project. The RDOF program, however, is a different program because it is being conducted as a reverse auction commencing at the end of this month.

The CostQuest Associates February 24, 2020 analysis on page 13 of the Staff Proposal posits that if the CPUC was to make \$100 to \$150 million total available as ‘kicker’ dollars, every California dollar may leverage more than \$4 of FCC federal funding for the state of California. The Staff intends for it to provide incentives for the bidder to bid in the highest 1 Gigabit tier, remain in the auction longer (and hopefully prevail), and to build out faster than what is required by the FCC. In order to better understand this, it is helpful to know how much is remaining in the CASF Infrastructure fund to understand how much the \$100 million to \$150 million represent as a percentage of the fund.⁵ This is an important factor.

The main factor that CETF does not see in the criteria is the “opportunity cost” of delaying the May 4th grants for projects with RDOF census blocks in them. Non-incumbent ISPs already waited a long time period between passage of AB1665 until 2020 for the CAF builds to be completed by incumbents; the May 4th applications were the first time they could put in CASF applications. More delay for the May 4th applications with RDOF areas is unnecessary.

⁵ CETF has reviewed the latest 2019 CASF Annual Report, dated April 2020. Given the authorized amount since 2008 for infrastructure is \$565 million, and the total awarded for infrastructure projects to date is \$270,733,063, CETF estimates there is about \$294,266,937 left in the fund. In the June 5, 2020 letter from CD Director Robert Osborn, he states that the May 4th applications requested about \$533 M in total funding which was “three times” the balance of the remaining CASF funds. This suggests there is about \$178M left in the fund.

Unserved consumers need broadband now. This is a real opportunity cost during the pandemic with distance learning, telework and telehealth requiring affordable and fast broadband.

3. Proposed Criteria for the State Kicker funds.

(a) Will this proposal work to incentivize additional RDOF bids or deployment than would otherwise occur in California?

CETF is not able to comment on this question because it is not a provider, but it does commend the provision of kicker funds in the 10% range of the total RDOF amount per census block group to help bidders achieve RDOF winning bids in the auction. CETF does not know if 10% is adequate to win in the RDOF auction, and asks what data underlies this choice of the percentage. CETF prefers to see a 20% match if feasible.

Further, as to census blocks that are RDOF eligible, what will happen to the usual CASF grant for those census blocks? Is that CASF grant money not available anymore for those RDOF census blocks, and only the kicker funds of approximately 10% of the total 10-year RDOF amount per census block group? Or is the usual CASF amount available in addition to the kicker funds? This issue was unclear to CETF in the Staff Proposal.⁶

Also, CETF commends the Level 1 support for both middle mile and last-mile funding (consistent with RDOF rules). The CASF prohibition on funding middle mile imposed in AB1665 makes no sense and makes it even more difficult to reach remote and rural areas that lack middle mile facilities.

Finally, CETF supports the open access requirement, particularly on the middle mile components.

(b) Should different criteria for CASF-RDOF leveraging be considered?

The consultation policy with Tribes is a positive requirement but the language of the requirement in Level 1 should be made clearer. The consultation should be within the first six months after RDOF approval. The Level 2 support language as to an IRU offer is preferable and should be put into Level 1 also.

(c) Should the criteria be modified to better support faster deployment?

⁶ See Staff Proposal, at page 15.

The faster build out requirement is a positive incentive because time is of the essence for broadband buildout to unserved areas. However fast deployment depends on many criteria, including environmental review and speed of permitting from various local, state and federal agencies, some of which is outside of the grantee's control.

(d) In light of the proposal to add California requirements on top of RDOF requirements, should fewer or other criteria be considered to simply complying with state and federal requirements? CETF observes that the RDOF program impose many federal requirements on grantees. It would be best to have streamlined CASF “kicker “requirements, with straightforward incentives to build fast, offer open access, consult with Tribes and an obligation to offer an IRU to Tribal authorities.

3.3 Support Criteria Definitions.

(a) Should the definitions be modified for accuracy or clarity?

No.

4. Additional Benefits for Kicker Qualifying Entities.

4.1 Letter of Credit for Kicker Qualifying Entities.

(a) Should the Commission consider other financing support for kicker fund applicants?

CETF supports the Letter of Credit approach. It is open to hearing about other approaches from ISPs.

(b) Should additional requirements or safeguards be included in the support for California kicker funds applicants to meet Letter of Credit requirements and secure financing?

CETF does not have any further suggestions.

5. Proposed Kicker Budget and Status of May 4, 2020 Applications.

(a) Should other prioritization or prioritization factors be considered?

The listed prioritization factors at pages 19-20 of the Staff Proposal are generally acceptable except CETF would exclude “Other May 4 CASF applications.” Those CASF applications without RDOF areas should be granted or denied on their merits in November 2020

(six months from the May 4th filing date). These applications should not be held hostage to the RDOF process. (They can always be refiled in the future should new CASF funding be approved.)

On the low-income communities standard contained in Footnote 37 of the Staff Proposal, CETF finds it acceptable, but recommends that the Staff prioritize only project applications with substantial low income presence, such as 40%.

(b) If a grantee (kicker recipient) cannot complete the project within the specified RDOF Phase 1 timeline, the grantee must notify the Communications Division Director. Should more detail on the form of the notification be specified?

CETF recommends that the grantee discuss what factors have delayed the project, specifically which are within or not within their control. The grantee should also provide a new deadline for completion.

5.1 Action on May 4th CASF Applications After RDOF Phase I Awards.

(a) Should a different approach to May 4 CASF Applications be considered?

CETF requests clarification if the CASF grant will include the usual CASF grant amount for the non-RDOF census blocks. For RDOF census blocks, will only the FCC RDOF grant be allowed, with the “kicker amount” for those census blocks only? This is not clear in the Staff Proposal and more explanation would be appreciated.

(c) The proposal contemplates penalties in the event a grantee fails to notify the Commission of any delays and the project fails to meet the approved completion date. What criteria should be considered with respect to the imposition of penalties in this section?

CETF agrees that the CASF Staff should keep tabs on progress of the project and suggests quarterly reporting should be required. If there is a failure to comply with reporting and a failure to complete the project on time, the Commission could impose penalties but should look at what factors caused the delay. Were they due to the grantee’s fault or by exogenous factors beyond the grantee’s control?

(c) What other factors or approaches should be considered in evaluating May 4 CASF Applications with RDOF blocks where the CASF Applicant is not awarded RDOF support?

CETF recommends that the evaluation should be the normal CASF Infrastructure rules set forth in D. 18-12-018.

5.2 Requests for Payment

(a) Should other approaches be considered for payment of kicker funds?

CETF has no comment on this proposal.

(b) The proposal contemplates penalties in the event a grantee fails to notify the Commission of any delays and the project fails to meet the approved completion date. What criteria should be considered with respect to imposition of penalties in this section?

The Commission should look to see if there are any mitigating factors that were beyond the grantee's control, such as unusual delays in permitting, litigation or other exogenous factors.

6. Timing

(a) Is the timing outlined in Section 6 appropriate? Why or why not? If not, please suggest an alternative schedule and explain why it is preferable?

CETF has no comment.

7. Proposed Process

7.1 Kicker Process for May 4 Applications and Other RDOF Winners

(a) Should a different or modified process be considered If so, how and why?

CETF does not have any objections to this process. It is important to put rules in place that provide incentives to build in the first through third years as noted in Section 6 Timing of the Staff Proposal (at page. 22).

7.2 Process for May 4th Application Areas without Kicker Requests.

(b) Should a different or modified process be considered. If so, how and why?

CETF agrees with this process to handle May 4th applications without kicker requests under the normal D.18-12-018 rules. They should be granted within the six month window since the filing date of May 4th.

(c) Do commenters have suggestions to better clarify or explain how this process would

be implemented?

CETF does not have further comments.

7.3 Application Window for Nearby CASF-Only Eligible Blocks

(d) Should the proposed process and opportunity to apply for CASF-only eligible census blocks be adopted?

CETF strongly supports the proposal in Section 7.3 to allow winning RDOF bidders to request “kicker” funds to serve CASF eligible households that are not RDOF eligible in census blocks that are adjacent to census blocks that include, or along the route to, census blocks that include RDOF locations. CETF agrees the CASF process in D.18-12-018 should generally apply but that these applications be prioritized as the cost will be lower to serve these areas due to the larger project.

(e) Should information, items or criteria be added to the staff review process?

(f) The proposal contemplates a limited set-aside for CASF Applications from RDOF winners for areas near the CASF applicants’ RDOF winning bid census blocks. If the amount should be set-aside, what amount should be set – aside for this section of the proposal and why?

CETF suggests a set aside of 10%-15% for this purpose, and these areas must be unserved. This is a modest amount of the total but helps achieve the state goal of 98% deployment

8. Reporting

(a) Should other or different reporting be required?

CETF has no comments on this.

Comments on appendices.

CETF has no comments on the appendices.

WHEREFORE, CETF respectfully requests that the Commission consider its comments on the Staff Proposal.

Respectfully submitted,

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