

SUBJECT INDEX

Introduction: The Proposed Rules are Contrary to the Commission’s Current Rules..... 1

The September 24, 2014 Filing Does Not Provide A Right of First Refusal, But Only The Provider’s Existing Infrastructure Plans 2

The Commission’s Rules Provide a 45 Day Timeline for Counteroffers..... 3

The Commission’s Rules Provide for a 24 Month Completion Date for Infrastructure Builds..... 4.

SUMMARY..... 5

Redlined Draft Resolution with Proposed Changes Appendix

TABLE OF AUTHORITIES

Public Utilities Codes and Statutes:

Senate Bill 740 1, 2,3,4,5

P.U. Code Section 281 1

Commission Decisions and General Orders:

D. 07-12-054, *Interim Order Implementing California Advanced Services Fund*, December 21, 2007, *Order Instituting Rulemaking into the Review of the California High Cost Fund B Program*, R. 06-06-028 3, 4



June 11, 2014

Ryan Dulin, Director
Communications Division,
Broadband Policy and Analysis Branch
California Public Utilities
505 Van Ness Avenue
San Francisco, CA 94105

Re: Draft Resolution T-17443 Implementation of New Timelines for California Advanced Services Fund Applicants

Dear Mr. Dulin:

I am writing on behalf of the California Cable & Telecommunications Association (CCTA) regarding Draft Resolution T-17443 (DR), which establishes new rules for the participation of non-telephone corporations, provides new timelines for applicants to the California Advanced Services Fund (CASF) and lists areas in California that various CASF-funded regional consortia groups and state agencies have identified as priorities for broadband infrastructure deployment. Specifically herein, CCTA addresses its concerns regarding the proposed rules describing the existing provider's opportunity to demonstrate its willingness to upgrade its existing facilities within a reasonable time frame (its "right of first refusal"), and the timeline provided by the DR to an existing provider to upgrade its infrastructure in compliance with that demonstration. As discussed, the proposed rules cannot be adopted unless they are modified to achieve a right of first refusal to a proposed project, and a reasonable timeframe to upgrade existing facilities, as required by Senate Bill (SB) 740 (Public Utilities Code §§281 (e)(3)(B) and 281 (e)(3)(C)) and the Commission's own rules.

Pursuant to SB 740, the goal of the CASF program is, "no later than December 31, 2015, to *approve funding for infrastructure projects* that will provide broadband access to no less than 98 percent of California households." (P.U. Code § 281(b)(1), emphasis added). To this end, SB 740 authorized non-telephone corporations to participate in the CASF program if they otherwise meet the program requirements. These requirements include, among other provisions, that funding *shall not be approved* until after any existing facilities-based provider has an opportunity to demonstrate to the commission that it will, within a reasonable time frame, upgrade existing service ("right of first refusal") (281(e)(3)(B)) and that the commission provide each applicant, and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area (281 (e)(3)(C)).

To implement the requirements of SB 740, new rules have been proposed (Appendix 1) that require existing broadband providers to submit a letter by September 26, 2014, to the Director of the Communications Division, to indicate their intent to upgrade their broadband networks. According to the DR, the filing of this letter of intent by September

26, 2014 constitutes the existing provider's right of first refusal (DR at 5). The proposed rules also provide that the existing provider will then have until April 1, 2015, to complete the project by upgrading its network to served speeds. During those six months, the CPUC will not grant CASF funds to any other broadband provider in that same project area. This provision allegedly constitutes the "reasonable timeframe" provided to the existing provider to upgrade its network, pursuant to SB 740.

Of course, by September 24, 2014, any letter of intent to upgrade existing facilities will, more likely than not, reflect little more than current projections to upgrade existing infrastructure, since applications for CASF grants will not yet have been submitted. While CCTA's members may be willing to file such a letter under appropriate confidentiality provisions,¹ the filing of current projections to upgrade facilities hardly constitutes a right of first refusal, which is considered specific and which prohibits a transaction unless the right to the option is refused. In order for the Commission to provide for a true right of first refusal specific to a project, the rules would necessarily provide the opportunity to the existing provider to demonstrate that it will, within a reasonable timeframe, upgrade existing service for a project area for which a grant has been sought. Asking for a provider's current projections to upgrade facilities merely provides information of the provider's existing plans, even assuming that no other entity submits an application for a CASF grant to fund a project, and it thus fails to allow the existing provider the right to demonstrate to the commission that it is willing to exercise its right to upgrade the existing facilities in a proposed project area as an alternative to granting the CASF application.

The DR supports its decision to substitute the filing of a "letter of intent" in lieu of filing a response to an application for a CASF on the rationale that the "longer the Commission gives an existing provider to make a decision regarding its intent delays projects that can be completed before the 2015 deadline," (DR at 5) and the speculation that because applications can be a very lengthy process and require significant resources, most, if not all "companies" will wait to see which areas are claimed by existing providers before expending those resources to apply for a CASF grant (*Id.*)

The rationale for limiting an existing provider's ability to demonstrate its willingness to upgrade its facilities in the face of a CASF grant fails to meet both the legal requirements of SB 740 and its public interest goals. First, the rules fail legally because they do not offer a right of first refusal, as required by SB 740, but ask only for current plans to upgrade in the normal course of business. There is no opportunity to demonstrate that the existing provider is willing to upgrade its system in the proposed project area within a reasonable time, other than the misassumption that current infrastructure plans indicate an unwillingness to build or upgrade anywhere else. Second, the goal of the CASF, as provided by SB 740, is not to ensure that projects are completed by 2015, but rather *to approve funding for infrastructure projects by December 31, 2015*. In other words, the DR

¹ Projections and plans to build and upgrade communications infrastructure are proprietary in nature and disclosure of those plans could pose a competitive disadvantage.

mistakes the goal for one that assumes that the network must be in place by the end of 2015, rather than one where the CASF grant must be approved by the year-end.

Last, the rationale ignores and is contrary to current CASF rules providing a 45 day day timeframe for responses to an application for CASF funds that present a counteroffer to meet the proposed broadband commitment under different terms.² The Draft Resolution's determination that it cannot provide the time for a right of first refusal after the submission of an application also ignores the fact that once the CASF application is submitted, existing providers and all other parties have the opportunity to demonstrate actual levels of broadband service in the project area within 30 business days. Thus the requirement that existing providers file plans to upgrade their facilities by September 26 2014 does not and cannot ensure any CASF applicant that its proposed project will be unchallenged or approved because the Commission's current rules provide both an opportunity to challenge the application within 30 days, and an opportunity to file a counteroffer within 45 days. There is no rationale basis to eliminate the current ability of the existing provider to demonstrate that it is willing to upgrade existing service within a reasonable time at the same time it is allowed to submit a counteroffer. Moreover, eliminating the right of first refusal is not only contrary to the intent of SB 740, it encourages the use of public money where private capital may be willing to provide broadband service within a reasonable timeframe.

Accordingly, the rules adopted by the Commission to implement the goals and the rights provided by SB 740 must be revised to allow a provider an opportunity to demonstrate its willingness to upgrade its existing facilities pending approval of a CASF grant. This opportunity will not unreasonably delay implementation of infrastructure contemplated pursuant to a CASF application and grant, and can be accomplished within the Commission's current rules by including the right of first refusal within the 45 day period from the date the CASF application is posted on the Commission's website.³

Similarly, the new rules implementing SB 740 provide an existing provider six months, or until April 1, 2015, to complete the project in its plans by upgrading its network to served speeds. Where an existing provider fails to finish a project to provide served speeds or 6 mbps downstream and 1.5 mbps upstream by April 1, 2015, the Commission may grant CASF funds for a broadband project in that area. The supporting rationale for these rules rests on the conclusion that if an existing provider were able to continuously delay the completion date of its upgrade, it could possibly prevent the CPUC from ever granting funds to another provider in that area, resulting in an area not obtaining broadband in a timely manner when it otherwise might have been able to through a CASF-funded project (DR at 6).

Contrary to the rationale in the DR, existing providers expending private capital to provide upgrades in their networks have little or no incentive to delay project

² D. 07-12-054, Ordering Paragraph 8, December 20, 2007.

³ In the alternative, the Commission could impose a response time based on its rules in General Order 96 that require a protest to an Advice Letter within 20 days.

completion, even if an application for CASF grant is pending in the geographical area. Moreover, delays in infrastructure upgrades are seldom in the control of the provider. Projects to upgrade networks can be delayed by CEQA reviews, permitting requirements, and even applications to attach to poles or occupy conduit. In some cases, CCTA's members have had delays of over a year just to attach to existing utility poles. This does not mean that the provider has caused the delay or even has the motivation to delay, since delay costs time and money, and can result in a significant competitive disadvantage. There is no reason to suggest that the CASF recipient might not face the same delays or encounter similar burdens to building infrastructure, so that awarding a CASF grant to the CASF applicant on the basis that an ongoing upgrade is incomplete does not ensure that the infrastructure in that area will occur faster. Moreover, the Commission's own rules provide that CASF funded infrastructure projects must be completed within 24 months in order to receive funding.⁴ Thus the rule limiting construction to 6 months for existing broadband providers is both unreasonable and discriminatory.

In addition, SB 740 also provides that existing providers upgrading their systems may, but are not required to, apply for CASF funding to make that upgrade. The rules seem to suggest that if an existing provider applies for a CASF grant to upgrade its facilities, and fails to complete its project within six months, that another CASF grant may be awarded for the same project. If this is not the case, then the rules even more clearly show how the existing provider, expending its own capital budget, is disadvantaged over the CASF applicant that has no similar limitation on its own infrastructure construction schedule.

The award of a CASF grant to an alternative provider while construction is ongoing to upgrade existing facilities only ensures that public dollars are wasted on a project that will ultimately be redundant and inefficient. Clearly there are areas in California that remain unserved where a provider cannot or will not extend its plant or upgrade existing facilities with private funds. These are the areas where CASF grants have proved to be an appropriate public investment. Private providers are not in a business to expend monies to upgrade infrastructure and then purposely delay the upgrade simply to ensure that high-speed broadband does not occur in a specific project area. To the contrary, once an area is targeted for upgrade, the operator has every motivation to ensure that the upgrade is accomplished as quickly and economically as possible.

CASF grants are largely designed to encourage the deployment of high-quality advanced communications technologies in the most remote areas of the state that still lack high-speed Internet access. The implication that the Commission will now award grants to an alternative provider in the face of an ongoing upgrade of facilities by an existing provider because the upgrade has not been completed within six months is not economically justifiable – it is a waste of public funds that can be expended where investment is truly absent. CCTA urges the Commission to reevaluate this time line and rule to ensure that the existing provider has the opportunity and ability to proceed in good faith to upgrade its facilities in a proposed area within 24 months. Any concerns regarding undue delay

⁴ D. 07-12-054, Finding of Fact, 32.

can be remedied by obligating the existing provider to file a 6th month progress report on construction, including a list of barriers to completion, that will satisfy the Commission's need to verify that the project is still viable.

Summary and Conclusion:

The proposed rules must be rejected unless modified to comply with CASF existing rules. The submission of current upgrade plans by existing providers by September 24, 2014, does not equate to a "right of first refusal required by SB 740. The Commission must allow a "right of first refusal" that provides for a meaningful demonstration of a willingness to upgrade existing facilities in light of a CASF grant application. This can be accomplished with the Commission's own rules, by including the "right of first refusal" within the existing 45 day period from the date the CASF grant application is posted on the Commission's website provided for counteroffers. Providing the ability to respond to CASF applications will not delay broadband projects, rather, it will promote private over public investment, and prevent duplication of facilities, waste and inefficiency.

In addition, the timeline provided to allow for a reasonable time frame to upgrade existing service is far from reasonable, and is contrary to the Commission's current provision allowing 24 months to construct a project. Thus, the time frame for upgrading facilities places burdens on the existing provider that are not placed on the CASF applicant. The six- month timeframe is unworkable and infeasible because it ignores the realities of infrastructure builds that can require CEQA review, permitting, and pole and conduit applications before construction can even begin. Ultimately, the new rules could promote waste and misallocate CASF funds to particular projects because they encourage public expenditures where private capitol may ensure that broadband access is available in previously unserved or underserved areas. If the Commission has concerns regarding completion of the project, it could instead adopt an obligation that an existing provider file a 6th month progress report on construction, including a list of barriers to completion, that will satisfy the Commission's need to verify that the project is still viable.

Respectfully Submitted

California Cable & Telecommunications Assoc.

Lesla Lehtonen
California Cable & Telecommunications Association
1001 K Street, 2nd Floor
Sacramento, CA 95814-3832
(p) 916-446-7732
(f) 916-446-1605
lesla@calcable.org

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband Policy and Analysis Branch**

**RESOLUTION T- 17443
June 26, 2014**

R E S O L U T I O N

**Resolution T-17443 Implementation of New Timelines for California
Advanced Services Fund Applicants**

SUMMARY

This Resolution implements new timelines for applicants to the California Advanced Services Fund (CASF), including how and when local government agencies and non-telephone corporations may apply pursuant to Senate Bill (SB) 740. It also describes how existing providers may exercise their right of first refusal as provided under SB 740. In addition, this Resolution lists areas in California that various CASF-funded regional consortia groups and state agencies have identified as priorities for broadband infrastructure deployment. Broadband providers are encouraged to target these areas in their applications for CASF funding in order for the California Public Utilities Commission (CPUC or Commission) to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households by no later than December 31, 2015.

BACKGROUND

The preliminary scoping memo included in the Commission's Order Instituting Rulemaking (OIR) 12-10-012 issued on October 25, 2012, indicated that the issues in this proceeding are whether eligibility for CASF grants should be extended to facilities-based broadband providers, which are not telephone corporations and do not have a Certificate of Public Necessity and Convenience (CPCN) or a Wireless Identification Registration (WIR) and if so, what safeguards should be implemented to ensure compliance from those providers.¹

¹ *Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund* (2012) Cal. P.U.C. Rulemaking (R.) 12-10-012 at 23.

After reviewing the comments, an Administrative Law Judge's (ALJ) Ruling, issued March 18, 2013, sought additional comments from interested parties in order to supplement the record on the issue of safeguards.²

The OIR acknowledged that any change in eligibility requirements was contingent upon legislative action because these requirements are defined in statute.³ During the 2013-2014 Legislative Session, the Legislature passed SB 740 to expand eligibility.⁴ Through the legislative process, SB 740 was amended several times and ultimately its passage resulted in changes to other aspects of the CASF Program, in addition to eligibility.⁵ These changes required that the Commission give priority to last mile projects serving unserved households, newly eligible non-CPCN/ WIR holders must provide a last mile connection to an unserved household, the CPUC must give existing providers the opportunity to upgrade their networks in areas serving underserved households before funds are awarded to a new provider, and local governments may apply for funds only if its project provides a connection to an unserved household or business and no other eligible entity has applied.⁶

Additionally, during the 2013-2014 Legislative Session, the Legislature passed AB 1299.⁷ AB 1299 created an additional account under the CASF called the Broadband Public Housing Account to support projects to deploy local area networks and to increase adoption rates in publicly supported housing communities.⁸ These efforts will be funded through \$20 million from the CASF Broadband Infrastructure Account and \$5 million from the Revolving Loan Account, respectively.⁹

After receiving additional comments on safeguards, the Commission determined that it had built a sufficient record to issue a Decision to implement the provisions proposed through the initial OIR and the ALJ's Ruling.¹⁰ The Decision took into account the comments on the OIR and the ALJ's Ruling previously filed by parties in this proceeding, as well as additional Staff research.¹¹ And by this time, SB 740 had amended the statutory definition of eligibility for the CASF program and permitted the CPUC to amend its eligibility rules for the CASF Program accordingly. The Commission issued Decision (D.) 14-02-018 on February 27, 2014.

In order to address the additional issues raised by SB 740 and AB 1299, the Assigned Commissioner issued a Revised Scoping Memo and Ruling, on January 17, 2014, which

² *Administrative Law Judge's Ruling Soliciting Additional Comments on Issues Identified in Order Instituting Rulemaking 12-10-02*. (2012) Cal. P.U.C. (ALJ's Ruling).

³ R. 12-10-012 at 2.

⁴ Senate Bill (SB) 740 (Padilla) Stats. 2013 Ch. 522, amending Public Utilities (P.U.) Code § 281.

⁵ *Id.*

⁶ *Id.*

⁷ Assembly Bill (AB) 1299 (Bradford) Stats. 2013 Ch. 507, amending P.U. Code § 281.

⁸ *Id.*

⁹ *Id.*

¹⁰ D.14-02-018. at 38.

¹¹ *Id.*

expanded the rulemaking to add two additional phases. The first phase will implement the additional requirements of SB 740, aside from eligibility. The Assigned Commissioner determined that this is a matter of implementation of an existing program to be accomplished by a Communications Division (CD) Staff Resolution. The second phase will implement the requirements of AB 1299 establishing a new program through a Proposed Decision.

This Resolution implements the remaining issues, in addition to eligibility, raised by SB 740. Changes to the CASF Broadband Infrastructure Program rules as a result of this Resolution are reflected in Appendix 1 and 2.

NOTICE/PROTESTS

In compliance with Public Utilities (P.U.) Code Section 311(g), a copy of this proposed Resolution was either mailed or e-mailed to all parties of record in R. 12-10-012 and the CASF distribution list on May 27, 2014.

DISCUSSION

SB 740 made the following changes to the CASF program:

1. A program goal to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households by no later than December 31, 2015.
2. Authorization for the Commission to collect an additional \$90 million which will be deposited into the Broadband Infrastructure Grant Account; supplementing the \$200 million previously authorized for CASF broadband infrastructure grants.
3. Entities that are not a telephone corporation shall be eligible to apply to participate in the CASF program to provide access to broadband to an unserved or underserved household. Such entities must meet the CASF eligibility requirements and comply with program requirements. These requirements shall include all of the following:
 - A. Entities must provide last-mile broadband access to households that are unserved by an existing facilities-based broadband provider and only receive funding to provide broadband access to households that are unserved or underserved, as defined in Commission Decision D.12-02-015.
 - B. Funding for a CASF project proposing to provide broadband access to an underserved household shall not be approved until after any existing facilities-based provider has had an opportunity to demonstrate to the Commission that it will, within a reasonable timeframe, upgrade existing service. An existing facilities-based

provider may, but is not required to, apply for CASF funding to make that upgrade.

- C. A local governmental agency may be eligible for an infrastructure grant only if the infrastructure project is for an unserved household or business, the Commission has conducted an open application process, and no other eligible entity applied.¹²

As stated previously, the Commission determined that it had built a sufficient record to issue D.14-02-018 to implement the eligibility provisions under item 3 above and the safeguard provisions proposed through the initial OIR and the ALJ's Ruling.¹³ The safeguards implemented included a construction phase performance bond and a liquidity requirement.¹⁴ The Commission also determined that it would rely on penalty provisions of Public Utilities Code § 2111 to enforce other requirements of the program.¹⁵ On January 17, 2014 the Assigned Commissioner's Scoping Memo and Ruling (Commissioner's Scoping Memo) determined that of the remaining requirements instituted by SB 740, items 1 and 2 regarding the CASF program goals and funding authorization do not affect current program operations.¹⁶ However, items 3A through 3C do affect current program operations. The Commissioner's Scoping Memo determined that the Commission can implement these changes without alterations to existing CASF rules and guidelines.¹⁷ Specifically, these changes can be implemented by setting a new timeline for CASF applications. Therefore, the Commissioner's Scoping Memo determined that this is an implementation issue that can be resolved through a Resolution issued by the CD Staff for Commission approval.¹⁸ This Resolution resolves those issues.

Existing Providers – Right of First Refusal

Although non-telephone corporations are now eligible to apply for funds, existing broadband providers, which may include telephone corporations, are entitled to a "right of first refusal" in their current service territories which serve underserved households. Staff is also mindful of the statutory goal of **awarding to approve funding for** projects that will provide broadband access to no less than 98% of California households by the end of 2015.

~~After the Commission passes this Resolution, existing broadband providers will have three months or until September 26, 2014 to signify to the Commission that they intend to upgrade their broadband networks in their existing service territory if it is in an area which is identified as encompassing underserved households according to the California~~

¹² SB 740 (Padilla) Stats. 2013 Ch. 522, amending Cal. Pub. Util. Code § 281.

¹³ *The Proposed Decision Implementing Revised Eligibility Criteria for the California Advanced Services Fund Program* (2012)) Cal. P.U.C. Decision (D.) 14-02-018
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M084/K556/84556127.PDF>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Scoping Memo and Ruling of Assigned Commissioner* (2012) Cal. P.U.C. Rulemaking (R.) 12-10-012.

¹⁷ *Id.*

¹⁸ *Id.*

Broadband Availability Map.¹⁹ Staff believes that three months is sufficient time for an existing provider to confer with its staff and to declare its intent to exercise its option to increase broadband speeds in the area to served speeds or 6mbps downstream/ 1.5mbps upstream (6/1.5). The longer the Commission gives an existing provider to make a decision regarding its intent delays projects that can be completed before the 2015 statutory goal. The existing provider must submit a letter to the Director of the Communications Division and must email a copy to the CASF distribution list to declare its intent. An example of an acceptable letter is attached in Appendix 3.

As stated previously, we set these deadlines mindful that “the goal of the program is, no later than December 31, 2015, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households.” An application for a CASF grant can be very a lengthy process and require significant company resources. Thus, most, if not all, companies will wait to see which areas are claimed by existing providers exercising their right of first refusal before expending those resources to apply for a CASF grant. This reasoning is also why we decline to let existing providers exercise their right of first refusal after applications are submitted. However, all applications received following the right of first refusal period will be considered and will compete among other project applications, in particular, those received to serve the same area.

We note that our existing rules provide an opportunity within 45 days for responses to an application for CASF grants to present a counteroffer to meet the proposed broadband commitment under different terms (D. 07-12-054). We conclude that this 45 day timeframe provides a reasonable period for an existing provider to exercise its right of first refusal pursuant to the provisions in SB 740, and we adopt that timeline here for that purpose.

Our current rules also require that CASF projects be completed within 24 months. Thus we conclude that it is reasonable for an existing provider exercising its right of first refusal to be provided the same time timeline for completion of its alternate project, whether the existing provider receives CASF funding or not. In addition, in order to monitor the progress of the project, we will require a 6th month progress report to be submitted to the Communications Division that identifies the status of the project and any barriers to completion. During the construction of the project, the CPUC will not award a CASF grant to fund a broadband project in that same project area. An existing provider will have six months (which will encompass the first two application rounds) from October 1, 2014 until April 1, 2015 to complete the project by upgrading its network to served speeds. During those six months (or first two application rounds), the CPUC will not award a CASF grant to fund a broadband project in that same project area.

CD established the six month timeline based on several CASF project applications we have received in the past for projects that upgrade existing facilities and the December 31,

¹⁹The California Broadband Availability Map can be found at: <http://www.broadbandmap.ca.gov/map/>.

~~2015 statutory goal. If an existing provider were able to continuously delay the completion date of its upgrade, it could possibly prevent the CPUC from ever granting funds to another provider in that area. This could result in an area not obtaining broadband in a timely manner when it otherwise might have been able to through a CASF-funded project. Additionally, as discussed below, we must also set a time after which local government entities may apply for funds and for the same reasoning, we do not want to unduly delay their ability to apply for funds either.~~

At project completion, the Commission will require the provider to submit documents showing the project area, broadband availability and the speed tiers available with speed tests showing that the project indeed meets the program requirements. Where an existing provider fails to finish a project to provide served speeds within six months, staff may complete their review and bring for Commission consideration other competing projects applications in that same area.

Timing of Applications

Previously, the Commission set three application deadlines.²⁰ The first deadline was for projects in unserved areas and the second was for projects in underserved areas where the existing infrastructure or broadband infrastructure under construction was not partially funded by CASF.²¹ The application deadline for underserved projects included hybrid unserved and underserved projects.²² The third application deadline was for projects in underserved areas where the existing infrastructure or broadband infrastructure under construction was partially funded by CASF.²³ Those deadlines have passed.

Going forward, the Commission will take applications on a quarterly basis and permit projects in both unserved and underserved areas to apply at the same time. However, we will continue to give priority to unserved areas by considering those projects for funding first. The first applications will be due by October 1, 2014. If an existing provider wishes to apply for CASF grant funds to upgrade its network, it must apply by October 1, 2014. The Commission will review its application and score it according to the existing CASF rules. However, this does not guarantee that the project will be funded and the Commission reserves its right to reject an application as it always has under the CASF program rules. The existing provider may still use its own funds to upgrade its network.

The next round of applications will be due by January 1, 2015. ~~After these first two application rounds, if an existing provider has not finished a project as it indicated it would in September, Staff may review applications received for projects that would serve part or the same entire area for Commission consideration. Additionally at this time, As~~

²⁰ *Decision Implementing Broadband Grant and Revolving Loan Program Provisions* (2012) Cal. P.U.C. Rulemaking (R. 10-12-008).

²¹ *Id.*

²² *Id.*

²³ *Id.*

long as no entity has applied for funds in a particular unserved area, a local entity may apply for funds to provide broadband service in that area. The next round of applications will be due quarterly, on April 1, 2015 through January 1, 2016, or until all funds are expended. If a deadline falls on a weekend or holiday, the next business day will be deadline.

The following table outlines the deadlines for the above mentioned actions.

CASF Application Schedule	Deadline
Last Date for Existing Providers to Declare their Intent to Exercise Right of First Refusal	September 26, 2014
1 st Application Deadline	October 1, 2014
2 nd Application Deadline	January 1, 2015
3 rd Application Deadline	April 1, 2015
4 th Application Deadline	July 1, 2015
5 th Application Deadline	October 1, 2015
6 th Application Deadline	January 1, 2016

Non Telephone Corporations – Project Requirements

Non-telephone corporations are now eligible to apply for funds to serve unserved or underserved households. The Commission implemented the eligibility requirements for non-telephone corporations in the latest decision in this rulemaking, D. 14-02-018.²⁴ However, SB 740 also required that a project proposed by a non-telephone corporation must “provide last-mile broadband access to households that are unserved by an existing facilities-based provider and only receive funding to provide access to households that are unserved or underserved.”²⁵

Local Government Entities

SB 740 states that a local government entity “may be eligible for an infrastructure grant only if the infrastructure project is for an unserved household or business, the commission has conducted an open application process, and no other eligible entity applied.” The statute does not indicate at what point the open application process ends.

Again, we consider that “the goal of the program is, no later than December 31, 2015, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households.” ~~Additionally, we consider the fact that some non-telephone corporation providers may wait until the second application deadline to apply since they may not have a chance to put together an application for the October deadline after existing providers invoke their first right of refusal by September 26, 2014. Therefore, we propose that non-local government entities will have two application cycles, or until January 1, 2015 to apply for funds. If, at that time~~ **If, by the end of each**

²⁴ D. 14-02-018 at 38.

²⁵ Cal. Pub. Util. Code. § 281(e)(3)(A).

application period, no entity has applied for funds for an unserved area, the CPUC may award a CASF grant to a local government entity to fund a broadband project in that area.²⁶

Priority Areas

Based on each consortium's familiarity with the broadband availability in its region, CD asked currently existing regional consortia to determine priority areas for broadband projects in each of their regions for the purposes of SB 740. These consortia as well as four unrepresented counties designated 180 communities in 46 different counties as priority areas in their regions.²⁷ These priority areas were presented at the CASF's Annual Consortia Learning Summit in March 2014.²⁸ The consortia identified these priority areas based on several considerations that include social and economic impact, feasibility, anchor institutions, income levels, opportunities for resource management, and number of households without broadband access at served speeds. We note that this Resolution would not limit staff's ability to bring projects that meet the goals and objectives of CASF in front of the Commission and the Commission designates Staff with the flexibility to implement these priorities to meet the goals and objectives of the CASF.

SB 1040 (Padilla), which the Legislature enacted in September 2010, authorized CASF funding for regional consortia. SB 1040 expanded the CASF into three accounts, including one for the Rural and Urban Regional Broadband Consortia Account (Consortia Grant program) funded with \$10 million. The Legislature stated that this account was "to fund the cost of broadband deployment activities other than the capital cost of facilities, as specified by the Commission."

The Commission opened an OIR (R.10-12-008) in October 2010 to implement the provisions of SB 1040 and to address possible changes to the program based on CASF's three-year implementation experience.²⁹ The first phase of the rulemaking implemented a process to select eligible consortia and set guidelines to award and disburse funds for qualifying Consortia Grant program activities.³⁰ On June 23, 2011 the Commission issued D.11-06-038 which adopted rules governing the Consortia Program.³¹ The Commission awarded grants to 14 consortia groups in Resolutions T-17349 and T-17355, issued in December 2011 and February 2012, respectively.

²⁶ Cal. Pub. Util. Code. § 281(e)(3)(D).

²⁷ Of these 180 designated communities, Staff is continuing to work with Consortia to determine geographic coordinates for three designated communities and therefore these three are not shown in Appendix 4 which lists all priorities.

²⁸ Consortia presentations available at:

<http://www.cpuc.ca.gov/PUC/Telco/CASF+Consortia/CASF+2014+Annual+Summit+Presentations.htm>.

²⁹ *Decision Implementing Broadband Consortia Grant* (2011) Cal. P.U.C. Decision (D.) 11-06-038.

³⁰ *Id.*

³¹ *Id.*

Grant funds under the Consortia Account have been used to promote ubiquitous broadband deployment and to advance broadband adoption in unserved and underserved areas by:

- Increasing sustainability of broadband infrastructure and projects;
- Promoting broadband deployment (availability) for residences in California;
- Promoting broadband access and adoption (knowledge of service options and ability to utilize services as well as subscription of services) for residences in California;
- Increasing the rate of broadband adoption by facilitating the impact of consumer education, outreach, and training;
- Supporting those community-based parties, especially anchor institutions, who are working to increase deployment, access, and adoption.

The priority areas were named by community or by multiple communities and included a set of coordinates that generally represents the geographical center of the area. Where a consortium failed to identify a set of coordinates, Staff designated one based on the name of the community. Consortia also listed whether they believed the priority area is unserved or underserved and whether they had received public feedback regarding the area's level of service.

Staff performed a high-level validation of the consortia's submitted data by comparing the coordinates for each priority area with the California Broadband Availability Map.³² Staff concedes that there may be areas identified as served in the Broadband Availability Map that have been deemed actually underserved or unserved by mobile speed tests or public feedback. We also acknowledge that there may be areas without any mobile speed tests or public feedback that could actually be underserved or unserved areas. However, the high level validation only serves to alert broadband providers, consortia or other interested stakeholders to the general broadband status of these communities as currently identified by Staff. Staff believes that this information can be used to spur "ground-truthing" efforts in areas without adequate data to determine actual levels of service. Lastly, Staff recognizes that this validation was performed with specific coordinates and that a project may be proposed which does not encompass or overlap those exact coordinates. Again, this list and the high level validation performed by Staff is meant to spur information gathering which in turn can facilitate broadband deployment in these priority areas.

Additionally, Staff sought input from other state agencies to determine whether they had designated any areas as high priority for broadband infrastructure and whether those areas overlapped with the priority areas designated by the regional consortia. The CPUC received input from the California Environmental Protection Agency (Cal EPA), California Department of Food and Agriculture, and Governor's Office of Business and Economic Development (GO Biz). The California Department of Food and Agriculture

³² The California Broadband Availability Map can be found at: <http://www.broadbandmap.ca.gov/v2.0/>.

identified the communities of Orange Cove, Reedley, Parlier, and Coalinga. It especially highlighted Coalinga because West Hills Community College is located there and is a Farm of the Future hub. Farm of the Future deploys applied agricultural technology career education in an economically disadvantaged area, and works in alliance with University of California, Merced; California State University, Fresno; California Polytechnic State University, San Luis Obispo and six San Joaquin Valley community colleges. These areas had not been designated by any consortia as a priority area and do not overlap. Therefore, these areas do not appear in the table in Appendix 4 listing priority areas.

The Cal EPA and the Office of Environmental Health Hazard Assessment released the draft version 2.0 of its California Communities Health Screening Tool in April 2014. This Tool shows which portions of the State have higher pollution burdens and vulnerabilities than other areas, and therefore are most in need of assistance. The tool uses existing environmental, health, demographic and socioeconomic data to create a screening score of communities across the State. An area with a high score would be expected to experience much higher impacts than areas with low scores. These scores were then ranked based on their overall score. A percentile for the overall score is then calculated from the ordered values. An area's CalEnviroScreen percentile equals the percentage of all ordered CalEnviroScreen scores that fall below the score for that area. Using the percentile given to all census tracts in California, Staff ranked each community identified as a priority by the regional consortia. A higher rank corresponds to a higher CalEnviroScreen percentile or an area that has higher impacts than others.

GO Biz provided Staff with two types of priority areas; Geographically-Targeted Economic Development Areas (G-TEDAs) and areas with the highest unemployment and poverty rates. California has four types of Geographically-Targeted Economic Development Areas, which include Enterprise Zones (EZs), Local Agency Military Base Recovery Areas (LAMBRAs), Manufacturing Enhancement Areas (MEAs), and Targeted Tax Area (TTAs). Each of these areas has related tax incentive benefits as well as a variety of locally provided incentives and benefits. Designated EZs provide tax incentives to businesses and allow private-sector market forces to revive the local economy. The LAMBRA designations are similar to EZs but focus on closed military facilities. Additionally, there is a TTA in Tulare County and two MEAs in Imperial County which are similar to the EZ program. The areas with the highest unemployment and poverty rates were determined using 2010 US Census Bureau data. The data were collected by census tract and were ranked. GO Biz designated areas in the highest quartile as priority areas. Staff received this information as a geographic information system shapefile which was intersected with the geographic coordinates of each consortia-designated priority area to determine any overlap. In the GO Biz category of the priority list, we have labeled any areas which overlap with consortia priorities with an "E" for economic development areas, "P" for areas with the highest unemployment and poverty rates, and "B" for areas which are both.

The list of priority areas is shown in Appendix 4.

FINDINGS

- ~~1. It is reasonable to require an existing broadband provider to submit a letter by September 26, 2014 to the Director of the Communications Division, as shown in Appendix 3, to declare its intent to upgrade its network in an existing territory for the reasons discussed above.~~
2. It is reasonable to require an existing provider to upgrade its facilities by April 1, 2015 **within 24 months** and submit documents showing the project area, broadband availability and the speed tiers available with speed tests showing that the project indeed provides served speeds or 6 mbps downstream and 1.5mbps upstream for the reasons discussed above.
- ~~3. It is reasonable for the Commission to grant CASF funds for a project in an area where an existing provider fails to finish a project by April 1, 2015 for the reasons discussed above.~~
4. Applications will be taken on a quarterly basis with the first applications due by October 1, 2014, then January 1, 2015; April 1, 2015; July 1, 2015, October 1, 2015; and January 1, 2016.
5. Pursuant to SB 740, if, after an open application process, no entity has applied for funds for an unserved area, a local government entity will be permitted to apply for funds for that unserved area. ~~We find that it is reasonable to permit non-local government entity providers two application cycles or until after January 1, 2015 to apply for funds for the reasons discussed above. If, at that time no entity has applied for funds for an unserved area, the CPUC may award a CASF grant to a local government entity to fund a broadband project in that area.~~
6. Pursuant to SB 740, a non-telephone corporation is only eligible to apply for projects which "provide last-mile broadband access to households that are unserved by an existing facilities-based provider."
7. Regional Consortia and four unrepresented counties have designated 180 areas as priority for broadband infrastructure projects, some of which overlap with other California priority areas.

THEREFORE, IT IS ORDERED that:

- ~~1. An existing broadband provider must submit a letter by September 26, 2014 to the Director of the Communications Division, as shown in Appendix 3, to declare its intent to upgrade its network in an existing territory to served speeds or 6mbps downstream and 1.5mbps upstream.~~
2. The CPUC will accept applications on a quarterly basis with the first applications due by October 1, 2014, then January 1, 2015; April 1, 2015; July 1, 2015; October 1, 2015 and January 1, 2016.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on June 26, 2014. The following Commissioners approved it:

PAUL CLANON
Executive Director

APPENDIX 1

Rules on the participation of non-telephone corporations in the California Advanced Services Fund

The following rules are adopted to implement rules initiated by Senate Bill 740, which places conditions on the participation of non-telephone corporations in the California Advanced Services Fund.

1. ~~An existing broadband provider must submit a letter by September 26, 2014 to the Director of the Communications Division, as shown in Appendix 3, in order to indicate its intent to upgrade its broadband network in its existing territory.~~
2. The existing provider will have ~~until April 1, 2015~~ **24 months** to complete the project by upgrading its network to served speeds. **During construction of the project**, ~~those six months (or first two application rounds)~~, the CPUC will not grant CASF funds to any other broadband provider in that same project area.
3. At project completion, the Commission will require the provider to submit documents showing the project area, broadband availability and the speed tiers available with speed tests showing that the project indeed provides served speeds or 6 mbps downstream and 1.5mbps upstream.
4. Where an existing provider fails to finish a project to provide served speeds or 6 mbps downstream and 1.5mbps ~~upstream by April 1, 2015~~, **within 24 months**, the Commission may grant CASF funds for a broadband project in that area.
5. A non-telephone corporation is only eligible to apply for projects which “provide last-mile broadband access to households that are unserved by an existing facilities-based provider.”
6. ~~If, after six months (or two application rounds)~~, no entity has applied for funds for an unserved area, **or indicated that it will exercise its right of first refusal without a CASF grant**, a local government entity will be permitted to apply for funds to serve that unserved area.
7. The CPUC will accept applications on a quarterly basis with the first application round opening October 1, 2014, then January 1, 2015; April 1, 2015; July 1, 2015; October 1, 2015; and January 1, 2016.

nd of Appendix 4 -----