

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

**THE PUBLIC ADVOCATES OFFICE'S REPLY COMMENTS  
ON THE PROPOSED DECISION IMPLEMENTING THE  
CALIFORNIA ADVANCED SERVICES FUND  
INFRASTRUCTURE ACCOUNT REVISED RULES**

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## I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("CPUC") Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission ("Cal Advocates"), formerly the Office of Ratepayer Advocates,<sup>1</sup> submits the following comments on the November 9, 2018 *Proposed Decision Implementing The California Advanced Services Fund Infrastructure Account Revised Rules* ("PD") in the Rulemaking 12-10-012 proposing changes to the California Advanced Services Fund ("CASF").

To ensure the rules and guidelines for the CASF Broadband Infrastructure Account are consistent with Public Utilities Code ("P.U. Code") § 281, the PD should adopt the following recommendations. First, the PD should clarify that the validation process to confirm broadband availability will use subscriber data that meet the Commission's minimum requirement for served broadband speeds of at least 6 Megabits per second ("Mbps") download and 1 Mbps upload ("6/1 Mbps"). Second, the PD should require CASF applicants to provide detailed low-income broadband plans as part of their pricing commitments, identifying broadband speeds and prices to be offered. The broadband speeds offered to low-income customers should be at minimum 25 Mbps download and 3 Mbps upload ("25/3 Mbps"), allowing low-income customers to access high-quality advanced communications. Third, the PD should revise the Ministerial Review process to include cost per household requirements for more technologies in addition to the fiber and fixed wireless costs per household in the Ministerial Review process. Fourth, the PD should limit CASF funding of middle mile leases to no more than five years to be consistent with P.U. Code § 281 requirements. Finally, the PD should clearly state that an applicant's letter of credit must cover the full grant amount authorized and must be valid for the full 24-month project construction period.

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<sup>1</sup> The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which was signed by the Governor on June 27, 2018 (Chapter 51, Statutes of 2018).

## II. DISCUSSION

### A. **Subscription Data Used to Validate Broadband Availability Should Meet Broadband Speed Requirements of 6/1 Mbps.**

P.U. Code § 281 defines an unserved household, eligible for CASF funding, as one for which no facility-based broadband provider offers broadband service at speeds of at least 6/1 Mbps.<sup>2</sup> To more accurately identify areas with CASF eligible households, the PD proposes to validate broadband availability data at the census block level using subscription data. The PD states that broadband availability in a census block will be validated by ensuring “the presence of one subscriber in that census block.”<sup>3</sup> In proposing this validation process, the PD fails to note that subscriptions used to validate broadband availability must meet the statutory speed requirements of 6/1 Mbps. The PD should state that the subscribers used in the data validation process must receive broadband speeds of at least 6/1 Mbps. This will provide clarity and avoid confusion on what type of subscription data is being used in the validation process.

### B. **The Commission Should Specify Minimum Speeds to be Offered by Low-Income Broadband Plans to Ensure Access to High-Quality Advanced Communications.**

The PD states that “all projects shall provide an affordable broadband plan for low-income customers,”<sup>4</sup> and applicants offering low-income broadband plans for no more than \$15.00 a month will receive additional 10 percent funding.<sup>5</sup> Requiring low-income broadband plans is an important stipulation that will encourage broadband adoption among low-income communities. In addition to this requirement, the PD should require that low-income broadband plans provide broadband speeds of at least 25/3 Mbps. Without requiring minimum broadband speeds for low-income plans, the PD fails

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<sup>2</sup> P.U. Code § 281(b)(1)(B).

<sup>3</sup> PD at p. 12.

<sup>4</sup> PD at p. 60.

<sup>5</sup> PD at p. 22.

to bridge the digital divide<sup>6</sup> by not ensuring low-income customers access to high-quality advanced communications as required by P.U. Code § 281 (a). Broadband speeds of 25/3 Mbps should be the benchmark by which high-quality advanced communications are assessed as this is the benchmark used by the Federal Communications Commission (“FCC”) in analyzing broadband deployment of advanced communications capability nationally.<sup>7</sup>

Furthermore, by requiring speeds of 25/3 Mbps, the Commission can ensure low-income customers will not be limited to slower speeds than those offered to non-low-income customers. CASF applications have typically provided broadband speeds ranging from 25 to 1,000 Mbps download.<sup>8</sup> In contrast, the low-income broadband plans offered by companies like AT&T California and Frontier Communications, both CASF grant recipients, provide slower speeds. AT&T California offers 10 Mbps for \$10.00<sup>9</sup> and Frontier Communications offers 7 Mbps for \$13.99.<sup>10</sup> Low-income customers should have access to faster speeds than those provided by AT&T and Frontier’s low-income programs.

Requiring speeds of 25/3 Mbps at \$15.00 a month for low-income broadband plans is reasonable and appropriate, especially when the CASF funds 100 percent of the project build. The requirement to provide low-income customers with speeds of 25/3 Mbps at \$15 a month should be in Appendix 1 of the PD, section “8.11: Pricing Commitment.” This will make it clear that applicants must provide information on the low-income broadband plans as part of their pricing commitments. Finally, a discrepancy needs to be corrected in section “2.2: Funding Criteria” of Appendix 1 of the PD.

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<sup>6</sup> P.U. Code § 709 (d).

<sup>7</sup> See FCC 2018 Broadband Deployment Report, <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2018-broadband-deployment-report>. Accessed November 21, 2018.

<sup>8</sup> See CASF Approved Projects in 2017 and 2018. <http://www.cpuc.ca.gov/General.aspx?id=1057>

<sup>9</sup> See Access from AT&T, <https://www.att.com/shop/internet/access/#!/>. Accessed November 26, 2018.

<sup>10</sup> See D.15-12-005 at Attachment A at p. 3.

Currently, on page 5, the Guidelines state, “Projects with low-income households that offer service to low-income customers at less than \$15/month shall be eligible for an additional 10 percent funding.” The language should be corrected so that it is consistent with the rest of the PD: “Projects with low-income households that offer service to low-income customers *for no more than* \$15/month shall be eligible for an additional 10 percent funding.”

**C. The Ministerial Review Process Should Include Costs per Household for Digital Subscriber Line and Coaxial Cable Projects.**

The PD adopts a Ministerial Review process by which staff can autonomously review and approve projects. Such projects must meet five criteria including a low cost per household criterion. The PD states that fiber projects must have a cost per household of \$6,000 or less and fixed wireless projects must have a cost per household of \$1,500 or less.<sup>11</sup> The PD errs by only listing cost criteria for these two technologies under the Ministerial Review process. As cost per household thresholds are not given for other technologies, such as Digital Subscriber Line (“DSL”), the PD’s current approach is not technology-neutral as other technologies would not be eligible for Ministerial Review. P.U. Code § 281 states that the “commission shall award grants from the Broadband Infrastructure Grant Account on a technology-neutral basis, including both wireline and wireless technology.”<sup>12</sup> Therefore, the PD should provide cost-per-household thresholds that other technologies must meet for Ministerial Review eligibility. For DSL projects, the PD should adopt a threshold of \$500<sup>13</sup> per household or less. For greenfield coaxial cable projects, the Commission should adopt a threshold of \$6,000 per household or less as greenfield coaxial cable projects may have comparable costs to fiber projects.<sup>14</sup>

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<sup>11</sup> PD at p. 26.

<sup>12</sup> P.U. Code § 281(f)(1).

<sup>13</sup> This amount is calculated using an average of the total costs of projects and total households data from 20 DSL projects funded by CASF.

<sup>14</sup> The CASF program has received one coaxial/fiber hybrid project, the CalNeva Coalinga Huron Project, approved May 11, 2017. The project was a brown-field project that utilized existing infrastructure with a cost per household of \$155.00.

**D. The CASF Program Can Only Fund Costs to Lease Middle Mile Infrastructure for up to Five Years Pursuant to P.U. Code § 281.**

The PD approves CASF reimbursement to grantees that purchase or lease middle mile infrastructure for CASF projects on a long-term basis (e.g. Indefeasible Right of Use for 20 years). However, P.U. Code § 281 states that the CASF can fund “costs to lease access to property or for Internet backhaul services for a period not to exceed five years.”<sup>15</sup> Therefore, the Commission cannot provide funding for leases longer than five years. The PD should be revised to reflect the P.U. Code § 281 requirements.

**E. The PD Needs to Clarify the Letter of Credit Requirement to Safeguard Ratepayer Funds.**

The PD proposes to require a non-CPCN applicant to provide a letter of credit instead of a performance bond as part of its application.<sup>16</sup> The requirement is incomplete as it does not provide details on the grant amount the letter of credit will cover and the length of time the letter of credit will cover. To address these issues, the PD should explicitly require that the letter of credit must cover the full amount of the CASF grant issued and must cover the 24-month project construction period. This will safeguard ratepayer funds and ensure that the Commission can recover the full CASF grant amount in instances where projects are not completed. Furthermore, these two requirements align with the FCC’s requirements for its Connect America Fund (“CAF”).<sup>17</sup>

**III. CONCLUSION**

The Commission should ensure the validation process to confirm broadband availability data uses subscription data that meets the 6/1 Mbps requirement. To help bridge the digital divide and ensure low-income customers have access to high-quality advanced communications, the Commission should require low-income broadband plans to provide broadband speeds of at least 25/3 Mbps. Section “8.11: Pricing Commitments” of Appendix 1 to the PD should note this requirement and should require

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<sup>15</sup> P.U. Code § 281(f)(11)(B).

<sup>16</sup> PD at p. 37.

<sup>17</sup> See FCC Phase II Auction Order, [https://docs.fcc.gov/public/attachments/FCC-16-4A1\\_Rcd.pdf](https://docs.fcc.gov/public/attachments/FCC-16-4A1_Rcd.pdf)

applicants to provide detailed low-income broadband plans identifying speeds and prices to be offered. Further, the Commission should provide cost per household thresholds for DSL and other technologies in the Ministerial Review process. Pursuant to P.U. Code § 281, the Commission should not reimburse middle mile lease payments for more than five years. Finally, the Commission should stipulate that the letter of credit provided by an applicant must cover the full amount of the CASF grant and must be valid for the entire project construction period.

The following sections provide the proposed language changes to the PD and its Appendix 1 that reflect the above recommendations.

**A. Public Advocates Office Recommended Changes to Proposed Decision**

This section provides the proposed language changes to the sections in the PD. Additions are shown in underline and deletions are shown in ~~striketrough~~.

**2.1.2. Discussion**

...

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. The subscriptions used to validate the deployment data must receive broadband speeds of at least 6/1 Mbps. 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.

**2.2.2 Discussion**

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: + 40%</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>39</sup></li> <li>• Applicant serves low-income customers for no more than \$15/month <u>at broadband speeds of at least 25/3 Mbps</u> (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>        |

### 2.3.2 Discussion

We agree with parties seeking to focus Staff on approving more cost-effective projects and have reduced the per-household cost threshold to \$6,000 for fiber 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 dispensed with the challenge.
3. The total grant does not exceed \$5,000,000.
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. Costs per household are low:
  - a. For projects building fiber to the home, proposed project costs \$6,000 per household or less.
  - b. For fixed wireless projects, proposed project costs \$1,500 per household or less.
  - c. For Digital Subscriber Line (DSL) projects, proposed project costs \$500 per household or less.

d. For greenfield coaxial cable projects, the proposed project costs \$6,000 per household or less.

## **2.4.2 Discussion**

...  
~~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.~~

Leasing or purchasing middle mile facilities are allowable or even preferred over building new infrastructure. Pursuant to P.U. Code § 281, the Commission adopts rules to reimburse leasing or purchasing middle mile facilities and services for up to five years.

## **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.

### **B. Public Advocates Office Recommended Changes to Appendix 1 of the Proposed Decision**

This section provides the proposed language changes to the sections in Appendix 1 of the PD. Additions are shown in underline and deletions are shown in ~~striketrough~~.

## 2.2 Funding Criteria

...

Low-income service – project areas for which Staff determines that the latest Census Bureau American Community Survey (ACS) 5-year median household income falls below the California Alternate Rates for Energy (CARE) income eligibility limit for a family of four, shall be eligible for an additional 30 percent funding. The effective definition of a low-income area, through May 31, 2019, is a median household income no greater than \$50,200. Projects with low-income households that offer service to low-income customers ~~at less than~~ for no more than \$15/month at broadband speeds of at least 25/3 Mbps shall be eligible for an additional 10 percent funding.

## 5.3. Middle Mile Funding

~~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.~~

Leasing or purchasing middle mile facilities are allowable or even preferred over building new infrastructure. Pursuant to P.U. Code § 281, the Commission adopts rules to reimburse leasing or purchasing middle mile facilities and services for up to five years.

## 8.10. Application Item 10 – Letter of Credit Requirement

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

### **8.11. Application Item 11 – Pricing Commitment**

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

Fixed monthly service level subscription rates.

Waived installation/service connection charges.

Specify any commitments and/or requirements that the customer must accept in order to receive equipment during the commitment period, such as return of equipment.

Low-income broadband plan detailing prices and speeds to be offered. At minimum, the low-income broadband plan must offer speeds of 25 Mbps download and 3 Mbps upload for no more than \$15 a month.

### **12. Ministerial Review**

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

1. Applicant meets the program eligibility requirements herein and pursuant to Pub. Util. Code section 281.
2. The application is not challenged, or Staff has dispensed with the challenge.
3. The project meets the following cost thresholds:
  - a. For projects building fiber to the home, proposed project costs \$6,000 per household or less.

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

c. For Digital Subscriber Line (DSL) projects, proposed project costs \$500 per household or less.

d. For greenfield coaxial cable projects, the proposed project costs \$6,000 per household or less.

Respectfully submitted,

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