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Decision PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES
(Mailed 7/3/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Consider Modifications to the
California Advanced Services Fund.

Rulemaking 12-10-012

**DECISION REVISING RULES OF THE CALIFORNIA ADVANCED SERVICES FUND
AND CLOSING RULEMAKING 12-10-012**

TABLE OF CONTENTS

Title	Page
DECISION REVISING RULES OF THE CALIFORNIA ADVANCED SERVICES FUND AND CLOSING RULEMAKING 12-10-012.....	2
1. Relevant Background	2
1.1 Infrastructure Grant Account	2
1.2. Technical Assistance Funds for Tribes	4
1.3. Public Housing Account.....	5
1.4. The March 26, 2020 Assigned Commissioner’s Ruling.....	5
2. Staff Assigned to Set Additional Infrastructure Application Windows.....	7
2.1. Additional Application Windows.....	7
2.1.1. Parties’ Comments and Reply Comments in Response to the ACR	8
2.2. Federal Funds and Other Funding Sources	9
2.2.1. Parties’ Comments and Reply Comments in response to the ACR	10
2.3. Tribal Priority Window Infrastructure Applications	13
2.3.1. Parties’ Comments and Reply Comments in response to the ACR.....	13
2.4. Discussion.....	13
3. Technical Assistance Funds for Tribes.....	15
3.1. Parties’ Comments and Reply Comments in response to the ACR	15
3.2. Discussion.....	16
4. Revisions to the Public Housing Account.....	17
4.1. Parties’ Comments and Reply Comments in response to the ACR.....	18
4.2. Discussion.....	19
5. Closing the Proceeding	21
5.1. Parties’ Comments and Reply Comments in response to the ACR.....	21
5.2. Discussion	21
6. Comments on Proposed Decision	22
7. Assignment of Proceeding.....	22
Findings of Fact.....	22

Conclusions of Law24
ORDER25

**TABLE OF CONTENTS
CONT.**

Title	Page
Appendix 1 - Tribal Technical Assistance Guidelines	
Appendix 2 – Broadband Public Housing Account Revised Application Requirements and Guideline	

**DECISION REVISING RULES OF THE CALIFORNIA ADVANCED
SERVICES FUND AND CLOSING RULEMAKING 12-10-012**

Summary

In this decision, we modify Decision (D.) 18-12-018 to assign to and authorize Commission Communications Division Staff (CD Staff), limited to the criteria set forth in this Decision, the responsibility and tasks of setting additional infrastructure application windows and timelines for the California Advanced Services Fund Broadband Infrastructure Grant Account (Infrastructure Account). In addition we authorize CD Staff to utilize state operations funds to provide technical assistance¹ for Tribes and implementing programmatic changes to the Broadband Public Housing Account rules and guidelines set forth in D.18-06-032.

This decision closes Rulemaking (R.) 12-10-012 on September 10, 2020 or upon the issuance of a new order instituting rulemaking that addresses issues related to the California Advanced Services Fund, whichever is later. All unresolved matters in R.12-10-012 will likely be transferred to a new proceeding, wherein we will take notice of the existing record developed in R.12-10-012.

1. Relevant Background

1.1 Infrastructure Grant Account

On March 9, 2017, the Commission reopened this proceeding, Rulemaking (R.) 12-10-012, to implement changes to the Broadband Public Housing Account (BPHA) set forth in Senate Bill (SB) 745 (Chapter 710, Statutes of 2016). On October 15, 2017, the Governor signed Assembly Bill (AB) 1665 (Chapter 851, Statutes

¹ Communications technical assistance includes but is not limited to market studies, feasibility studies, and/or business plans.

of 2017) into law.² This urgency legislation amended the statutes governing the California Advanced Services Fund (CASF) program.³ For example, CASF eligible areas were changed significantly: the underserved designation was eliminated, designating more of the state as “unserved,” and the speed threshold for eligible areas was lowered. Significant parts of the state eligible for Connect America Fund Phase II (CAF II) funding were also deemed ineligible.⁴ AB 1665 also presents challenges in leveraging federal funding. Taken together, this reduced the number of areas eligible for CASF infrastructure grants and, hence, the number of Infrastructure Account applications the Commission has received.

On December 20, 2018, the Commission adopted Decision (D.) 18-12-018 implementing the Infrastructure Account revised rules. Among other things, D.18-12-018 established timelines for submission of applications for the Infrastructure Account and set the program requirements for the application cycle to begin in calendar year 2019. In the 2019 funding cycle, the Commission approved 11 infrastructure grant applications, for a total funding amount of \$24.8 million.⁵ Currently, the CASF program has awarded approximately \$271 million of the

² Ch. 851, Stats. 2017.

³ Pub. Util. Code Sections 281, 912.2, and 914.7.

⁴ Pub. Util. Code Section 281 (f)(5)(c) specifies project eligibility requirements such as a check of areas in the Right of First Refusal filings and areas receiving funding from the CAF II, “...until July 1, 2020, the project is not located in a census block where an existing facility-based broadband provider has accepted federal funds for broadband deployment from [CAF II], unless the existing facility-based broadband provider has notified the commission before July 1, 2020, that it has completed its Connect America Fund deployment in the census block.”

⁵ <https://www.cpuc.ca.gov/General.aspx?id=1057>.

\$570 million allocated for infrastructure projects.⁶ Due to the COVID-19 public health emergency and in response to individual stakeholder's requests, the Commission postponed the 2020 CASF infrastructure application deadline. Pursuant to Rule 16.6 of the Commission's Rules of Practice and Procedure the Commission's Executive Director issued a letter on March 20, 2020 to move the deadline for applications from April 1 to May 4, 2020.⁷

On May 4, 2020, the Communications Division (CD) received 54 applications requesting approximately \$533 million in total funding from the Infrastructure Grant Account.⁸

1.2. Technical Assistance Funds for Tribes

The Federal Communications Commission (FCC) adopted a Tribal Priority Window for rural, federally recognized Tribes to apply for 2.5 GHz spectrum over their Tribal lands.⁹ The Commission requested comments¹⁰ on assisting Tribes with technical assistance and a potential for another infrastructure funding solicitation to maximize the federal and state opportunities for funding Tribal broadband needs

⁶ This does not include the \$5 million for Line Extension. AB 1665 eliminated the Infrastructure Revolving Loan Account and required the transfer of the remaining unencumbered moneys as of January 1, 2018, and moneys collected into the Infrastructure Account.

⁷ See:

https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Postponement%20of%20CASF%20Deadline%202020.pdf.

⁸ <https://www.cpuc.ca.gov/General.aspx?id=1040>.

⁹ Transforming the 2.5 GHz Band Report and Order WT Docket No. 18-120.

¹⁰ Assigned Commissioner Ruling Requesting Comments on Broadband Infrastructure Rules and Application Windows [R.12-10-012] March 26, 2020.

including the 2.5 GHz spectrum Tribal Priority Window for rural, federally recognized Tribes; the Rural Digital Opportunity Fund; and the US Department of Commerce Economic Development Administration (EDA).¹¹

1.3. Public Housing Account

The Commission adopted the BPHA Application Requirements and Guidelines in D.14-12-039. On June 21, 2018, the Commission issued D.18-06-032, which implemented programmatic changes to the CASF program including the BPHA. The BPHA provides grants for broadband connectivity and adoption in publicly supported housing communities (PSCs). The moneys set aside for broadband adoption have been fully committed. Less than half of the money available for broadband connectivity (infrastructure) projects has been awarded. This is because the deployments funded through BPHA infrastructure are dependent on the purchase of a digital circuit from an existing ISP which is already servicing the area.¹² Most public housing locations do not qualify under existing rules as these locations would not be unserved housing developments as defined by Pub. Util. Code Sections 281(i)(3)(B)(i) and 281(i)(3)(B)(ii) and D.18-06-032. The Commission has only received one application for BPHA infrastructure since October 2016. Any money from the BPHA

¹¹ <https://www.commerce.gov/news/press-releases/2020/05/us-department-commerce-announces-availability-15-billion-cares-act#:~:text=%E2%80%99CEDA%20CARES%20Act%20Recovery%20Assistance,impacted%20by%20the%20coronavirus%20pandemic.%E2%80%9D&text=Trump%20signed%20the%20%242%20trillion,is%20available%20for%20grant%20making.>

¹² Some BPHA infrastructure projects were challenged by ISPs on grounds that an ISP already provides services at the Publicly Supported Community; some BPHA infrastructure projects also experienced issues on the purchase of a digital circuit.

not awarded by December 31, 2020, shall be transferred back to the Infrastructure Account.¹³

1.4. The March 26, 2020 Assigned Commissioner's Ruling

On March 26, 2020, the Assigned Commissioner issued an Assigned Commissioner Ruling (ACR)¹⁴ requesting comments on Infrastructure Account rules and application windows. The ACR sought to gather information on potential changes to program rules partially as a result of the current health emergency, the smaller than desired number of submitted applications in the 2019 CASF funding cycle by incumbents, and the anticipated changes to federal programs that impact CASF funding.

The ACR also included the Staff's proposed technical assistance for Tribes and modifications to BPHA application requirements and guidelines.¹⁵ Comments were due on April 15, 2020. Reply comments were due on April 27, 2020.

Eleven parties filed comments:¹⁶ Frontier Citizens Telecommunications Company of California Inc. (Frontier), California Internet, L.P. dba GeoLinks (GeoLinks), the California Emerging Technology Fund (CETF), LCB Communications, LLC (LCB), the Public Advocates Office, the California Cable and Telecommunications Association (CCTA), the Greenlining Institute (Greenlining), The Utility Reform Network (TURN), the Central Coast Broadband Consortium (CCBC), Race

¹³ Pub. Util. Code Section 281(i)(7).

¹⁴ Assigned Commissioner Ruling Requesting Comments on Broadband Infrastructure Rules and Application Windows [R.12-10-012] March 26, 2020.

¹⁵ See ACR, Question 25.

¹⁶ Some parties' comments did not specifically address every question/issue.

Telecommunications, Inc. (Race), and the Rural County Representatives of California (RCRC).

Eight parties filed reply comments:¹⁷ Frontier, GeoLinks, Crown Castle Fiber LLC (Crown Castle), CETF, CCTA, Public Advocates Office, TURN, and Race.

2. Additional Infrastructure Application Windows

Existing rules in D.18-12-018 allow for Staff to recommend opening a second application window for infrastructure grant proposals:

In the event the Commission receives a small number of applications, the Commission delegates to [CD] Staff the option, but not the obligation, of opening a second shortened application round in a year. Applications during this round must meet the criteria outlined in the Ministerial Review Section. Any applications submitted during this special round receiving a complete and timely challenge are automatically denied. Staff must announce its determination by no later than May 15.¹⁸

Recognizing that the 2020 application cycle or additional application cycles may present the opportunity to enhance broadband infrastructure deployment, Question 7 of the ACR focused on issues pertaining to Staff's delegated authority to set additional infrastructure application windows. Specifically, Question 7 stated, "[s]hould the Commission increase the Staff's delegated authority to set additional infrastructure application windows?" Questions 5 and 8 also asked if review timelines should be adjusted to allow additional application windows, and if the

¹⁷ Some parties' reply comments did not specifically address every question/issue.

¹⁸ D.18-12-018 at 56.

Commission should assign Staff the authority to specify whether applications submitted during additional rounds must meet the criteria for Ministerial Review.¹⁹

2.1. Parties' Comments and Reply Comments

In response to Question 5, multiple parties supported adding additional application windows and revising the timeline to accommodate review of additional applications. There was general agreement that the Commission should revise the rules to remove the "deemed denied by October 1st" language, but to maintain a six-month application review period.²⁰ These comments suggested additional application windows that could have approval dates after October 1st in an application year.

In response to Question 7, the overwhelming majority of parties, with exception of the CCTA, supported direction to Staff to set additional applications windows.²¹ Parties described the manner that Staff may determine the structure and timing of additional application windows as necessary.

¹⁹ Question 5 asked, "How should the CASF Infrastructure Application review timeline in D.18-12-018 be adjusted to accommodate the additional application window? At this time, the rules contained "deemed denied" language if applications are not acted upon by October 1st. Should that language be modified, and if so how?" Question 8 asked, "Should the Commission assign Staff's authority to specify whether Applications submitted during additional rounds must meet the criteria outlined in the Ministerial Review section of the rules? If so, how should the Ministerial review process and criteria be revised to ensure the timely processing of CASF Infrastructure Grant applications? For instance, should any application submitted during additional application windows that receive a complete and timely challenge be automatically denied?"

²⁰ Opening comments of GeoLinks at 3, the CCBC at 4, LCB at 3 and Race at 3. Reply comments of TURN at 6.

²¹ Opening comments of CCTA at 7.

GeoLinks' comments provided a succinct statement why flexibility is needed in the CASF program at this time, "Especially considering the rapidly changing events surrounding the COVID-19 pandemic, it is clear that the CASF program should be able to adapt if broadband needs change throughout the state.

Granting Staff the authority to change application windows to meet changing needs just makes good administrative sense."²² Parties also recommended a variety of options up to and including a "rolling applications window."²³

In response to Question 8, the majority of commenters agreed that applications submitted during additional rounds should not be limited to review by the Ministerial Review process nor be automatically rejected due to a complete and timely challenge.²⁴ Specifically, LCB and Race pointed out that providers could game the Ministerial Review process coupled with automatic denial for complete and timely challenges, which would reduce the effectiveness of the program.²⁵

2.2. Federal Funds and Other Funding Sources

The Commission recognizes the impact of other current and future federal, state and local programs on our ability to grant funding using the Infrastructure Account. For example, Questions 4, 9, 11, and 13 of the ACR solicited input from parties with

²² Opening comments of GeoLinks at 4.

²³ Opening comments of CETF at p. 6, LCB at 4 and Race at 3.

²⁴ Opening comments of GeoLinks at 4, CCBC at 5 and the CETF at 7. Reply comments of TURN at 8.

²⁵ Opening comments LCB at 4 and Race at 4.

respect to the relationship between the Federal Communications Commission's (FCC)'s Rural Digital Opportunity Fund (RDOF) and CASF funding and timing. These questions collectively addressed how the CASF applications may or may not be affected by federal funds and other funding sources.²⁶

2.2.1 Parties' Comments and Reply Comments

Parties generally agreed that providers should leverage federal funding, with the caveat that duplicate funding for the same infrastructure is prohibited by statute.²⁷ Several parties commented on the addition of application periods with respect to federal funding deadlines.²⁸ Moreover, most parties provided comments on the relationship between CASF and federal funding programs, and

²⁶ Question 4 was, "In addition to the CAF II program, provide comments on other similar federal funding programs, such as the RDOF, that may affect the 2020 CASF application process. For example, the RDOF Phase I Reverse Auction (Auction 904) of [FCC] is slated to begin October 22, 2020. Staff estimates the FCC "Short Form" filing deadline for participation in Auction 904 will be set by FCC for approximately August 22, 2020. If the Commission were to provide financial incentive via CASF grants to bidders seeking RDOF funding for areas in California, could the Commission inform bidders prior to the Short Form deadline, or by a later date prior to the opening of Auction 904, that winning bidders for California areas will be awarded CASF grants contingent upon certification by FCC of winning bids? How would this process work?" Question 9 stated, "Does Pub. Util. Code Section 281 (f)(12) and (f)(5)(A) or any other provision of Pub. Util. Code § 281 prohibit a CASF Infrastructure applicant from receiving both federal (such as from the RDOF) and state CASF funds for the same project for which the applicant seeks CASF Infrastructure funding?" Question 11 was, "Should the Commission require CASF awardees to bid for RDOF?" Question 13 stated, "Can and should CASF be used to match other grants including local government grants?"

²⁷ Opening comments of GeoLinks at 7, CCBC at 6, CETF at 13, RCRC at 3, and TURN at 10 and 14.

²⁸ Opening comments of GeoLinks at 3 and LCB at 3.

several parties supported the need to establish rules to govern how these funding sources could be used together.²⁹

In response to Question 4, GeoLinks proposed that the Commission create a later infrastructure grant application period to allow for the implementation of rules to be developed regarding the RDOF program, which would be finalized after the May 4, 2020 CASF filing deadline.³⁰ GeoLinks further proposed that timing is such to “[e]nsure that any award is either awarded AFTER the RDOF auction is complete or in a manner that shows the award is contingent upon receipt of RDOF funding as to not risk interference with a service providers ability to participate in the RDOF auction.”³¹ However, Race warned that CASF deadlines tied to any other federal broadband program could delay CASF funding to needy areas, just as AB 1665’s provisions regarding Phase II of the Connect America Fund (CAF II) effectively froze applications in CAF II areas for years.³²

In Question 9, the Commission requested comments on whether the statute prohibits a CASF infrastructure applicant from receiving both federal and CASF funds for the same project. Most parties agreed that the statute does not explicitly limit a project from receiving both federal and CASF funding, with the exception of Pub. Util. Code Section 281(f)(5)(C) which has a sunset date of

²⁹ Opening comments of GeoLinks at 3, CBCC at 7, and CETF at 4.

³⁰ Opening comments of GeoLinks at 3.

³¹ *Id.*

³² Opening comments of Race at 2.

July 1, 2020. CETF stated, "...[Pub. Util. Code] section 281 explicitly encourages the leveraging of CASF grants with other sources of funds, especially and specifically federal monies."³³ TURN noted that "[s]ection 281(f)(12) would prohibit a project from receiving CASF funding for the *cost already funded* by another public purpose program. However, the statute does not prohibit a project from pooling funds to pay for the cost of a project so long as the monies that support the project are paying for different costs."³⁴

A. Question 11

In Question 11, the Commission requested comment on whether CASF awardees should be required to bid for RDOF. The parties overwhelmingly disagreed with a requirement that CASF awardees must apply for RDOF funding. CETF's comments encapsulated the reasons from several parties in disagreeing with such a requirement, including: tying CASF grants to federal programs may delay projects; applying for RDOF is time-consuming; it would favor larger national carriers with more experience and resources; and Section 281(f)(14) does not mandate that a grantee apply for federal funds, or to reject it on that basis.³⁵

In response to Question 13, Parties that commented on this issue generally supported allowing CASF funding as matching grants for any other grant

³³ Opening comments of CETF at 7.

³⁴ Reply comments of TURN at 10.

³⁵ Rely comments of CETF at 11.

award.³⁶ For example, RCRC stated, “[t]he Commission should not prohibit CASF monies from being utilized as a match to other grants, loans, local government bonds or private contributions for broadband projects.”³⁷ GeoLinks supported allowing CASF funding as matching grants for any other grant award for the same purpose.³⁸

2.3. Tribal Priority Window Infrastructure Applications

The FCC adopted a Tribal Priority Window for rural, federally recognized Tribes to apply for 2.5 GHz spectrum over their Tribal lands. The Tribal Priority Window is February 3, 2020 to August 3, 2020. Question 15 of the ACR focused on issues pertaining to the Tribal Priority Window. Specifically, Question 15 asked, “[i]s there a reason that infrastructure applications to deploy at least one location using 2.5 GHz spectrum (obtained through the Tribal priority window) should not be accepted on an ongoing basis? How would the Commission review and process these rolling CASF infrastructure applications in light of the timeline and updates to the Broadband Availability Map?”

2.3.1. Parties’ Comments and Reply Comments

Most parties did not specifically comment on Question 15. CCTA noted that any change to the application window/review process should apply equally

³⁶ For example, *see* opening comments of RCRC at 3, and TURN reply comments at 11.

³⁷ Opening comments of RCRC at 3.

³⁸ Opening comments of GeoLinks at 7.

to all applicants. Current rules only allow prioritization based on criteria related to the unserved status of an area.³⁹

2.4. Discussion

There is ample support to revise the CASF program rules with the respect to: increasing the assignment to and authorization for Staff to set additional infrastructure application windows, removing the requirement that additional rounds of applications must meet the criteria for Ministerial Review, removing the requirement that applications submitted during additional rounds that receive a complete and timely challenge are automatically denied, and using state and federal funding sources in combination to build and deploy broadband infrastructure.

While most parties disagreed that CASF awardees be required to bid for RDOF, we strongly urge current and potential CASF infrastructure applicants to apply for funding from RDOF to address the issue of limited CASF funding.⁴⁰ The requested amount of funding in the May 4, 2020 application cycle is more than twice the balance of the remaining CASF funds. Therefore, not all proposed projects will be funded even if all CASF rules and requirements are met. Further, even if all 54 applications

³⁹ Opening comments of CCTA at 10.

⁴⁰ On June 5, 2020, CD Director sent a letter to the CASF Distribution and Services Lists, and current and potential infrastructure applicants regarding the FCC RDOF Option. Note that Pub. Util. Code § 281 (f)(14) states in part that “[t]he commission may require each infrastructure grant applicant to indicate steps taken to first obtain any available funding from the Connect America Fund program or similar federal public programs that fund broadband infrastructure.”

from the May 4, 2020 application cycle met CASF rules and requirements, there would not be a guarantee that the goal of the program would be met.⁴¹

In this decision, we assign to and authorize Staff to set additional infrastructure application windows in 2020 and/or subsequent years should funding still be available in order to maximize broadband infrastructure deployment and leverage multiple funding sources, to better meet the goals of the program. Specifically, Staff may set additional application window(s) and timeline, via a 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. Applications during additional window(s) need not meet the Ministerial Review criteria. Further, applications submitted during additional application window(s) receiving a complete and timely challenge are not automatically denied. Staff will determine and maintain a six-month review and approval timeline for applications submitted during subsequent application window(s). All other extant rules provided in D.18-12-018 will continue to apply.

3. Technical Assistance Funds for Tribes

In ACR Question 6, the Commission requested comments on using CASF funds for technical assistance for California Tribes, “regional consortia, stakeholders, local governments, existing facility-based providers, and consumers” on ways to maximize RDOF, CASF, and other potential broadband investments in their communities in order to develop strategies and achieve the

⁴¹ Pub. Util. Code § 281 (b)(1)(A) set the goal of the CASF program to reach 98 percent of households in each consortia region by 2022.

CASF goal to increase broadband access in Pub. Util. Code Section 281(b)(1)(A). In particular, to support California Tribes that need technical assistance in order to determine how to pursue federal and state broadband grant funding. 'Should the Commission consider such a proposal? If so, how best could such a proposal be implemented? For example, should the technical assistance be capped at a certain amount, such as \$100,000 per technical assistance recipient? Should the overall amount be capped (*e.g.*, not to exceed \$10 million)?'

3.1. Parties' Comments and Reply Comments

CCTA and Frontier proposed using the Rural and Urban Regional Broadband Consortia Grant Account (Consortia Account) funding to support grant applications, but not to provide technical assistance.⁴² CETF underscored the need to assist California Tribal Governments in applying for CASF and TURN acknowledged that simple awareness by Tribes that the CASF program exists will not meet the need.⁴³ CETF commented that funds for planning and preparation should be included in both the CASF Infrastructure Account grant awards with a maximum limit.⁴⁴ TURN disagreed with CCTA, citing Pub. Util. Code Section 281(e) for authority to use CASF operations funds to provide technical assistance. TURN supports using funds in a transparent manner, including the submission of an annual report on expenditures. TURN supported an approach where no more than 10% of the CASF total funds should

⁴² Opening comments of CCTA at 6 and 7.

⁴³ Opening comments of CETF at 5 and 6; Opening comments of Frontier at 4. Opening comments of TURN at 10.

⁴⁴ Opening comments of CETF at 5 and 6.

be used for technical assistance, while CETF supported no more than 10% of the total CASF funds be used for administration of the CASF fund, including technical assistance.⁴⁵

3.2. Discussion

We agree with TURN that the Commission should provide technical assistance through its State Operations budget for the CASF program. The Commission's objective is to cost effectively achieve the CASF Public Utilities Code Section 281 goal. To this end, supporting plans and technical assistance for Tribes that want to leverage CASF and non-CASF funding, and specifically federal funding, is necessary.

To advance the Pub. Util. Code section 281 goal through supporting Tribes on their reservations, trust lands and surrounding areas to leverage CASF and non-CASF funding, this Decision assigns to staff the option to use CASF state operations to fund technical assistance for Tribes. Staff shall utilize the criteria specified in Appendix 1 to assist Tribes.

4. Revisions to the Public Housing Account

In ACR Question 25, the Commission requested comments on Staff's proposed modifications to the BPHA Application Requirements and Guidelines (ACR Appendix 1). The proposed modifications were intended to clarify programmatic processes and procedures. Specifically, the statute states that

⁴⁵ Opening comments of TURN at 10; Reply comments of CETF on PD at 5-6.

only unserved housing developments are eligible for grant funding.⁴⁶ In D.18-06-032, the Commission further specifies that a housing unit is ‘not offered broadband service’ if the unit does not have access to a commercially available broadband Internet service, such as Digital Subscriber Line (DSL), a cable modem, or another protocol, available at the unit. Staff proposed that the definition of “not offered broadband internet” be modified to state that a housing unit is “not offered broadband internet” if an internet service provider (ISP) already provides access to all units on the property in question.⁴⁷

No explicit challenge process is currently defined in D.18-06-032. Staff proposed that a new challenge process be introduced to allow for an ISP to challenge an application based on an ISP’s claim that it already serves 100 percent of the residents at the property or that an ISP was denied access to the property for the provision of broadband internet services.

Additionally, Staff clarified and elaborated on the project submission and reporting requirements to better assist applicants in their project submission and in meeting their reporting requirements. Staff also made changes to BPHA Application Requirements and Guidelines (ACR Appendix 1) in order to clarify processes and procedures.

⁴⁶ A housing development is unserved when at least one housing unit within the housing development is not offered broadband Internet service. (Pub. Util. Code, Section 281(i)(3)(B)(ii).)

⁴⁷ D.18-06-032, Appendix 1, at 3.

4.1. Parties' Comments and Reply Comments

Only three parties provided opening and/or reply comments to Question 25.⁴⁸ CCTA stated concerns with both the process and substance of the proposed changes to the BPHA requirements and guidelines document, stating that that there was "lack of adequate notice in the Ruling as to the background and rationale for the proposed changes."⁴⁹ In its reply comments and referring to CCTA's comments, TURN stated that the provided material (ACR Appendix 1) "did not provide enough information for parties to provide meaningful comment on the proposed changes."⁵⁰ CCTA also stated that the changes to the term "unserved housing development" are substantive and does not follow the intent of SB 745.⁵¹ CCTA raised a related issue of CASF funding for unbuilt public housing units, stating that such funding is not in accordance with statute.⁵²

CETF supported the proposed changes and encouraged the Commission and Staff to do whatever is necessary to use the remaining funds in the BPHA "in a manner that is consistent with spirit and intent of AB 1299." CETF recommended that the Commission issue declarative findings regarding the lack of progress in improving broadband Internet connectivity in public housing since the passage of AB 1665 in 2017 and to declare to be unserved public

⁴⁸ CCTA, TURN and CETF.

⁴⁹ Reply comments of CCTA at 9.

⁵⁰ Reply comments of TURN at 8.

⁵¹ Opening comments of CCTA at 15.

⁵² Reply comments of CCTA at 10.

housing locations which do not have “available Internet connectivity in every unit.” CETF further recommended that the Commission reactivate applications that “were pending in 2017” when AB 1665 went into effect.⁵³ CCTA rejected CETF’s proposed requests for such findings to be made and questioned CETF’s reasoning for doing so.⁵⁴

4.2. Discussion

We disagree with CCTA and TURN concerning process and the substance of the proposed changes. Parties were provided sufficient information to allow parties to consider the proposed revisions and comment. For example, pages 15 and 16 of the ACR discuss the proposed modifications and clarifications to the BPHA Application Requirements and Guidelines and sought input on these changes. TURN requested additional information on the current challenge process in order to provide meaningful comment. We do not find this request useful given that we stated in the ACR that there is no explicit challenge process. In addition, all parties were given 20 days to comment on the ACR. CCTA waited 11 days post issuance of the ACR to request a redline version of ACR Appendix 1. While the Commission is not legally required to provide a redline version of proposed revisions, CD promptly complied with CCTA’s request and provided a redline version one day after receiving the request. As such, parties had an opportunity to comment on the proposed revisions and due process was met.

⁵³ Opening comments of CETF at 10.

⁵⁴ Reply comments of CCTA at 9-10.

We disagree with the CCTA because the proposed changes to the term “unserved housing development” are not substantive and follows the intent of SB 745. In its comments, CCTA conflates the term access with subscription by stating, “The current rules, as required by SB 745, focus on whether an existing provider already *offers* broadband services to all units of a public housing development, not whether every unit in the development already *subscribes* to that service offering.”⁵⁵ When we state that an ISP already provides access to all units, it does not mean that the residents in the units subscribe to that service. In response to CCTA’s comments, we made further clarifications to Appendix 2 (PD Appendix 2) in order to make it clear that the term unserved housing development is based on whether or not an ISP already provides broadband access to the property and is not based on actual subscription. Appendix 2, Section III (Definitions) attached to this decision has been clarified to state, “An “unserved” housing development is a housing development where at least one housing unit within the housing development is not offered broadband Internet service.⁵⁶ All units within a housing development are offered broadband internet service if an ISP already provides access to all units. Further, Section VII (Challenge Process) of the Appendix 2 in this decision has been clarified to state “ISPs have three weeks from the date of the posting of the application to the BPHA website to challenge the application. An ISP who challenges an

⁵⁵ Opening comments of CCTA at 15.

⁵⁶ Pub. Util. Code Section 281(i)(B)(i) and (ii).

application on the grounds that it already provides broadband internet access to 100 percent of the residents at the property...”

We do not find CCTA’s comment regarding unbuilt housing units relevant to the modifications made to the BPHA Applications Requirements and Guidelines nor do we find a benefit from CETF’s recommendation that the Commission make broad statements regarding connectivity in public housing.

The Commission adopts Appendix 2, attached hereto, as the revised BPHA Application Requirements and Guidelines.

5. Closing the Proceeding

In ACR Question 2, we asked if the Commission should close this proceeding and open a new rulemaking to consider rules established in prior CASF decisions.

5.1. Parties’ Comments and Reply Comments

The majority of parties supported closing R.12-10-012 and opening a new rulemaking. Notably, the Public Advocates Office encapsulated other parties’ comments and outlined sound reasoning for opening a new rulemaking. Public Advocates Office’s recommendations included: allowing organizations the chance to fully participate as intervenors and be provided the financial resources to contribute meaningfully to the CASF rulemaking process, address CASF program modifications in a new proceeding, incorporate the record of R.12-10-012 in the new proceeding, and develop more background and details on specific CASF program issues that require modification.

5.2 Discussion

The Commission believes that revisiting the whole of the CASF program rules at this time, as evidenced by the breadth of the responses to the ACR and the magnitude of the 2020 application cycle, is not efficient and instead will initiate a further rulemaking on the subject. We will likely take notice of the existing record developed in R.12-10-012 in a future proceeding. Accordingly, we hereby close R.12-12-010 on September 10, 2020 or upon the issuance of a new order instituting rulemaking that addresses issues related to CASF, whichever is later.

6. Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code section 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by CCTA and Frontier on July 23, 2020. Reply comments were filed by TURN, CETF, and CCTA on July 28, 2020.

CETF and TURN support Tribal assistance but CETF shares CCTA concerns that a cap should be placed on the amounts for Tribal assistance.⁵⁷

We agree with the goals of transparency and accountability and have provided more information and detail to the Tribal Technical Assistance Guidelines in Appendix 1 accordingly.

In terms of the existing rules allowing Staff to recommend opening a second application window for infrastructure grant proposals, Frontier offered

⁵⁷ CETF Reply Comments on PD at 3.

support in opening comments stating that “..where circumstances are rapidly changing, providing additional opportunities for new proposals will best serve the public and ensure that the Commission has the benefit of a full range of proposals, even if needs are identified or proposals coalesce at later dates.”⁵⁸

CETF offered support for allowing further application windows. CETF supports the delegated authority to Staff and would broaden the authority to set additional infrastructure application windows for Tribal governments for instance.⁵⁹

Frontier supports removal and opines that “..while these limitations may facilitate faster processing of applications, these requirements could come at the expense of overlooking beneficial and much-needed projects in some of the most difficult to reach areas.”⁶⁰ In reply comments, CCTA likewise supports removal of the Ministerial Review requirements for applications received through additional application windows.⁶¹ In opening comments, Frontier notes that the Proposed Decision declines to require that applicants pursue Rural Digital Opportunity Fund (“RDOF”) support as a condition of CASF eligibility and states that “..while these synergies should be encouraged, it would be unduly limiting to require them.”⁶²

⁵⁸ Frontier Opening Comments on PD at 2.

⁵⁹ CETF Reply Comments on PD at 4.

⁶⁰ Frontier Opening Comments on PD at 2-3.

⁶¹ CCTA Reply Comments on PD at 3.

⁶² Frontier Opening Comments on PD at 2.

Only two parties provided comments on the revisions to the BPHA. In opening comments, CCTA stated that the Commission was adding in new and ambiguous language into the definition of an “unserved housing development” by introducing the term “access” and that this language contravenes statute⁶³ while in reply comments, CETF supported this revision, saying that the change makes sense.⁶⁴ Given that the proposed modification is not adding the term “access” as this term is already employed in the determination of whether or not a location is an “unserved housing development” in the current decision, no modification will be made in response to CCTA’s comment.

- In terms of the closing this proceeding and opening a new rulemaking, CCTA and Frontier agree but with some reservations. CCTA has concerns that the Proposed Decision does not fully address issues raised in the ACR and suggests that “given the significant record on these issues, it would not be “efficient” to fail to address these issues now, or, at a minimum, require that this record be noticed in a new proceeding.”⁶⁵ Frontier proposes that the Commission defer a new rulemaking until the current application cycle and pending Legislative activity completes.⁶⁶ However, in reply comments CETF disagrees with Frontier on waiting until after several pending Legislative activity completes and notes that broadband is a necessity in dealing with the current COVID-19.⁶⁷ In

⁶³Opening comments of CCTA on PD at 2-8.

⁶⁴ CETF Reply Comments on PD at 2-3.

⁶⁵ CCTA Opening Comments on PD at 9.

⁶⁶ Frontier Opening Comments on PD at 2.

⁶⁷ CETF Reply Comments on PD at 1-2.

response to comments and reply comments, we make the following revisions and clarifications throughout the Decision, Appendix 1 and Appendix 2: Clarify CETF's comments on the March 26 ACR to state that CETF supported no more than 10% of the total CASF funds be used for administration of the CASF fund, including technical assistance;

- Clarify the Staff's authority and application criteria for grant of Tribal technical assistance in Appendix 1.
- Added the July 1, 2020 application due date (which already occurred) in Appendix 2
- Clarify that this rulemaking should be closed on September 10, 2020 or upon the issuance of a new order instituting rulemaking that addresses issues related to CASF, whichever is later.

7. Assignment of Proceeding

Commissioner Martha Guzman Aceves is the assigned Commissioner and Brian Stevens is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Currently, the CASF program has awarded approximately \$271 million of the \$570 million allocated for infrastructure projects.
2. Due to the COVID-19 public health emergency and in response to individual stakeholder's requests, the Commission postponed the 2020 CASF infrastructure application deadline.
3. On May 4, 2020, the CD received 54 applications requesting approximately \$533 million in total funding from the Infrastructure Grant Account.
4. Even if all 54 applications from the May 4, 2020 application cycle met CASF rules and requirements, there would not be a guarantee that the goal to reach

98 percent of households in each consortia region by 2022 of the program would be met.

5. In response to comments on the March 26, 2020 ACR, multiple parties supported adding additional application windows and revising the timeline to accommodate review of additional applications.

6. In response to comments on the March 26, 2020 ACR, the overwhelming majority of parties supported increasing Staff's authority to set additional applications windows.

7. In response to comments on the March 26, 2020 ACR, the majority of commenters agreed that applications submitted during additional rounds should not be limited to review by the ministerial review process nor be automatically rejected due to a complete and timely challenge.

8. In response to comments on the March 26, 2020 ACR, parties overwhelmingly disagreed with a requirement that CASF awardees must apply for RDOF funding.

9. In response to comments on the March 26, 2020 ACR, some parties proposed that Consortia Account funds should be used for technical assistance for Tribes while The Utility Reform Network (TURN) agreed that the Commission should provide technical assistance to Tribes. The majority of parties' comments and reply comments did not address the issue of providing technical assistance to Tribes. The FCC adopted a Tribal Priority Window for rural, federally recognized Tribes to apply for 2.5 GHz spectrum over their Tribal lands.

10. The term unserved housing development is based on whether or not an ISP can provide broadband access to the entire property and is not based on actual

subscription. A challenge process to consider whether an ISP can provide broadband access to the entire property is reasonable.

11. If an ISP already provides access to all units of a multifamily housing development, it does not mean that the residents in the all units must subscribe to that service.

12. An unserved housing development is a housing development where at least one housing unit within the housing development is not offered broadband Internet service.

Conclusions of Law

1. The Guidelines set forth in Appendix 2 are consistent with the intent and objectives of the Broadband Public Housing Account as stated in Pub. Util. Code Section 281(i)(1)-(i)(7).

2. The Public Utilities Code does not explicitly limit a project from receiving both federal and CASF funding, with the exception of Pub. Util. Code Section 281(f)(5)(C) which has a sunset date of July 1, 2020.

3. Pub. Util. Code § 281 (b)(1)(A) set the goal of the CASF program to reach 98 percent of households in each consortia region by 2022.

4. Commission CD staff should have the authorization to set additional infrastructure application windows in 2020 and/or subsequent years in order to maximize broadband infrastructure deployment and leverage multiple funding sources, to better meet the goal of the program.

5. Commission CD staff should be authorized to set additional application window(s) and timeline(s), via a 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. Applications during additional window(s) should not be required to meet the Ministerial Review criteria. Further, applications submitted during additional application window(s) receiving a complete and timely challenge should not automatically be denied. Staff should be authorized to determine and maintain a six-month review and approval timeline for applications submitted during subsequent application window(s).

6. The changes to the CASF Broadband Public Housing Account Application Requirements and Guidelines as set forth in Appendix 2 attached hereto should be adopted.

7. ISPs should have three weeks from the date of the posting of the application to the BPHA website to challenge the application.

8. This rulemaking should be closed on September 10, 2020 or upon the issuance of a new order instituting rulemaking that addresses issues related to CASF, whichever is later.

O R D E R

IT IS ORDERED that:

1. The Commission's Communications Division is assigned responsibility and authority to perform the task of setting additional infrastructure application windows and timelines for the California Advanced Services Fund Broadband Infrastructure Grant Account.

2. The Commission's Communications Division is assigned responsibility and authority to use California Advanced Services Fund state operations funds to provide technical assistance for Tribes. Staff should utilize the criteria specified in Appendix 1

to assist Tribes. Staff shall prepare and submit an annual report with a summary of how operations funds were utilized to provide technical assistance to tribes.

3. The programmatic changes to the California Advanced Services Fund program as set forth in Appendix 2 (Broadband Public Housing Account Application Requirements and Guidelines) attached hereto are hereby adopted.

The Commission may revisit the whole of the California Advanced Services Fund program rules in a future proceeding. The entire record in Rulemaking 12-10-012 will likely be noticed for consideration in a further rulemaking as needed.⁵ Rulemaking 12-10-012 will be closed on September 10, 2020 or upon the issuance of a new order instituting rulemaking that addresses issues related to the California Advanced Services Fund, whichever is later.

This order is effective today.

Dated _____, at San Francisco, California

Appendix 1

Tribal Technical Assistance

Application Requirements and Guidelines

1. Background

To advance the California Advanced Services Fund (CASF) goal of Pub. Util. Code section 281(b)(1)(A) to increase broadband access, technical assistance grants will be made available support Tribes on their reservations, trust lands and surrounding areas to leverage non-CASF broadband deployment funding., The Commission authorizes Communications Division Staff (Staff) to approve applications for CASF administrative funds (for example, state operations) to provide technical assistance for Tribes. The following criteria details the process and guidelines for requesting, reviewing, and approving “Technical Assistance Grants.”

a. Amount Available for Grants

CASF administrative funds (for example, State Operations) will be available for communications technical assistance, including but not limited to, feasibility studies, market studies, and/or business plans, not to exceed \$150,000 per Tribe, per fiscal year.

The aggregate amount available for awards is not to exceed \$5,000,000 until funds are replenished and/or exhausted.

2. Definition of Tribal Technical Assistance

For the purpose of Tribal Technical Assistance Grants, technical assistance means assistance in developing market studies, feasibility studies, and/or business plans which support Tribes in their pursuit of improved communications.

3. Eligible Applicants/Eligibility for Technical Assistance

Tribes are deemed to be eligible applicants for the Technical Assistance Grants. An eligible Tribe is a California Tribe, with or without federal recognition, that demonstrates Tribal leadership support. Staff shall consider Tribal support to be established, for example, by the furnishing of a letter from the Tribal administrator, chair, or council.

4. Subsidy Level

For projects that meet Ministerial Review criteria (Section 7 below), the Commission may subsidize 100 percent of the cost of Technical Assistance, not to exceed \$150,000 per assistance, study, or plan per Tribe, in any one fiscal year.

For projects that do not meet Ministerial Review criteria (Section 7 below), the Commission will conduct a reasonableness review and may adjust budgets via the Resolution Review (Section 8 below) process.

5. Information Required from Applicants

The Tribal applicant must provide a proposed contract (“the contract”) or written estimate with scope of work from the Tribe’s approved contractor for the purpose of the Technical Assistance. This contract or estimate must state details of the proposed work, including a statement of work, detailed cost estimate and proposed timeline for completion.

6. Submission and Timeline

To be considered, applicants must submit the Commission-provided application form to apply. Applicants may electronically file their completed application, along with required documentation, using the Commission’s email address at CASF_Application_Questions@cpuc.ca.gov or mail a separate hard copy to (postmarked by the quarterly application due dates):

Communications Division
Attn: California Advanced Services Fund, Technical Assistance
Grant
505 Van Ness Avenue
San Francisco, CA 94102

Applications may be submitted at any time. However, Communications Division will consider applications submitted on or before each deadline listed below as a batch, quarterly and ongoing, until the funding is exhausted.

- October 1, 2020

- January 1, 2021
- April 1, 2021
- July 1, 2021 and so on.

Any deadline which falls on a holiday or a weekend will be extended to the following business day.

Notice of applications received will be published on the Commission's website on a quarterly basis.

7. Ministerial Review

The Commission authorizes Communications Division Staff to approve applications that meet each of the following criteria:

- The requested amount per Technical Assistance does not exceed \$150,000 per fiscal year per Tribe.
- The application specifies that the technical assistance will advance the CASF program goal to "provide broadband access to no less than 98 percent of California households in each consortia region" where broadband access is defined as service at 6 megabits per second download and 1 megabit per second upload. (Public Utilities Code section 281(b)(1)(A)).
- If approved, the Technical Assistance must be completed within 24 months.
- The application meets all the other requirements of a Technical Assistance grant included in Sections 2, 3, 5, and 6 of this Appendix.

8. Resolution Review

9. When an application does not meet the ministerial review criteria, Staff may refer the application to the Commission for review and approval via the Resolution process.

10. Reporting and Public Posting

Upon completion of the Technical Assistance and before payment, the applicant must provide a signed completion form stating that the Technical Assistance work has been completed. This form should include

a short description of the work suitable for posting on the Commission's web page.

Upon completion of the work, Tribes should provide Staff a copy of the final report(s), plan(s), studies, etc. The final report will be presumed confidential.

Notifications of awards will be made by letter from the Communications Division Director. Award letters will be regularly posted to the Commission's website. A short summary of the funds utilized for Tribal Technical Assistance will be posted on the Commission's website.

11. Payment

Payment will be made directly to the Tribe. Payment will be based upon receipt and approval of the invoice submitted by the Tribe showing the expenditures incurred for the Technical Assistance along with the documents detailed in the Section 9 "Reporting."

The invoice must be supported by documentation such as cost of labor and any other expense that will be recovered by the grant.

12. Execution and Performance

The Commission has the right to conduct any necessary audit, verification, and discovery for work proposed or completed under the Technical Assistance for Tribes to ensure that CASF funds are spent in accordance with Commission rules.

Invoices from the Tribe or its approved contractor will be subject to financial audit by the Commission at any time within 3 years of completion of the work.

In the event that the applicant or contractor fails to complete the work in accordance with the approval granted by the Commission, and as described in the contract, the Tribe must reimburse some or all of the funds that it has received.

All grantees are required to sign a consent form agreeing to the terms stated in the resolution or award letter authorizing the CASF award. The agreement will provide the name of person who is managing the consulting contract and must be signed by the grantee.

Appendix 2

APPENDIX 2
Broadband Public Housing Account
Revised Application Requirements and Guidelines

I. Background

AB 1299 (Bradford) was signed into law on October 3, 2013. AB 1299 expanded the CASF Program by adding a fourth account, the Broadband Public Housing Account (BPHA), dedicated to broadband access and adoption in publicly supported communities (PSCs).

In 2016 the Legislature passed SB 745 (Hueso). SB 745 extended the date when remaining funds from the BPHA are transferred back to other CASF Accounts from December 31, 2016, to December 31, 2020. SB 745 further limited the Commission's awarding of grants for BPHA infrastructure projects to only unserved housing developments.

In 2017, the Legislature passed AB 1665 (Garcia) that authorized PSCs eligible for funding via the BPHA, only after all funds available for the BPHA have been awarded, to submit a CASF application for funding from the Broadband Infrastructure Account and/or Broadband Adoption Account.

II. Amount Available for Grants

The BPHA provides \$20 million for grants and loans to finance infrastructure projects connecting PSCs with broadband Internet. The Account provides \$5 million for adoption projects for residents in PSCs. To date, the \$5 million allocated for grants for PSCs has been fully committed. Therefore, the Commission can no longer accept applications for these projects unless the statutory cap is raised. However, eligible PSCs can apply for funds for broadband adoption projects from the CASF Broadband Adoption Account.

The Commission will award grants to finance up to 100 percent of the costs to install inside wiring¹ and broadband network equipment but will not finance operations and maintenance costs.

The Commission will reimburse the following project-related expenses after a review of the project progress or completion reports and supporting documentation:

- All broadband networking equipment (hardware and software), wireless access points, wireless bridge(s), modem(s), switches, router(s), and firewall(s) for network security but not personal computers, laptops, handheld or human interface devices.
- Low voltage contracting work including the installation of inside wiring, network cabinets, NEMA boxes², conduits, patch panels, cable tray or ladders, and other cabling requirements to provide power and connectivity for the broadband network equipment funded as part of the project. Major rehabilitation, demolition or construction work will not be funded.
- Broadband network engineering and designing documentation.
- Hardware warranty of broadband network equipment as needed.
- Installation, provisioning, and configuration labor costs at the Minimum Point of Entry (MPOE), MDFs (Main Distribution Frame), IDFs (Intermediate Distribution Frame), WAPs (Wireless Access Point), Wireless Bridges such as P2P and P2MP (Point to Point and Point to Multi-point) Radios, Switched Ethernet, and xDSL (Digital Subscriber Line) modems.
- Taxes, shipping and insurance costs (if applicable) that are directly related to broadband network equipment deployed under the BPHA.

For wireless networking projects, equipment must meet at least the 802.11n

¹Telephone wiring inside a residential unit or multi-dwelling unit (MDU) building.

² The National Electrical Manufacturers Association defines standards used in North America for various grades of electrical enclosures typically used in industrial applications.

standard³. For wireline networking projects, equipment must meet at least ADSL2+ standard⁴ or the 10BASE-X standard⁵.

III. Definitions

“Project” is a publicly subsidized multifamily housing development that is requesting funds under one application from the BPHA.

“Publicly subsidized” means either that the housing development receives financial assistance from the United States Department of Housing and Urban Development (HUD) pursuant to an annual contribution contract or is financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants and the rents of the occupants, who are lower-income households, do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

“Publicly supported community” (PSC) is a publicly subsidized multifamily housing development that is wholly owned by either of the following:

- (i) A public housing agency that has been chartered by the state, or by any city or county in the state, and has been determined to be an eligible public housing agency by the United States Department of Housing and Urban Development.
- (ii) An incorporated nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that is exempt

³ A widely used wireless computer networking protocol standard by IEEE (The Institute of Electrical and Electronics Engineers) for Wi-Fi communication that operates on 2.4 GHz and 5 GHz frequency bands.

⁴ G.992.5 is an ITU-T (International Telecommunication Union - Telecommunication) standard for asymmetric digital subscriber line (ADSL) broadband Internet access with a maximum theoretical download speed of 24 Mbit/s and an upload speeds of 3.3 Mbit/s can be achieved.

⁵ Classic Ethernet is a family of first generation 10 Mbit/s Ethernet standards. 10 represents its maximum throughput of 10 Mbit/s, BASE indicates its use of baseband transmission, and X indicates the type of medium used.

from taxation under Section 501 (a) of that code (16 U.S.C. Sec. 501(a)) and that has received public funding to subsidize the construction or maintenance of housing occupied by residents whose annual income qualifies as “low” or “very low” income according to federal poverty guidelines.

A “minimum point of entry” (MPOE) is either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings.

An “unserved” housing development is a housing development where at least one housing unit within the housing development is not offered broadband Internet service.⁶ ~~A housing unit “is not offered broadband Internet service” if an ISP already provides access to all units on the property in question~~ **All units within a housing development are offered broadband internet service if an ISP already provides access to all units.**⁷

IV. Eligible Applicants

CASF Broadband Public Housing Account funding is limited to an eligible publicly supported community (PSCs) owned by either of the following two entities:

- A public housing agency that has been chartered by the State, or by city or by county in the State, and has been determined to be an eligible public housing agency by the United States Department of Housing and Urban Development.
- An incorporated nonprofit organization as described in Section 501 (c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that is exempt from taxation under Section 501 (a) of that code (16 U.S.C. Sec. 501(a)) and that has received public funding to subsidize the construction or maintenance of housing occupied by residents whose annual income qualifies as

⁶ Pub. Util. Code, § 281(i)(3)(B)(i) and (ii).

⁷ The applicant must attest that the project meets this definition and the ISP must demonstrate, in the challenge process, that the ISP already provides access to all units on the property in question.

“low”-or “very low” income according to federal poverty guidelines.

Non-profit housing developers involved in limited partnerships with for-profit entities participating may also be eligible since the IRS considers an exempt organization's participation as a general partner in a limited partnership with for-profit limited partners as consistent with the organization's exempt status under Internal Revenue Code Section 501(c)(3).

For PSCs applying for infrastructure funds, a PSC may be eligible for funding only if the PSC can verify to the Commission that the PSC has not denied a right of access to any broadband provider that is willing to connect to a broadband network to the facility for which the grant or loan is sought⁸ and the publicly supported community is unserved as defined in Section III.

V. Information Required from Applicants

In order to be reviewed, Applicants must submit the following information to the Commission for each proposed project. Application forms can be found on the CASF BPHA webpage. Applications and supporting material must be submitted online with a hard copy mailed to the CASF Housing Account Coordinator and one sent to the Office of Ratepayer Advocates. Staff will post a list of applications submitted by the deadline on the CASF webpage.

A. Infrastructure Project Application

Applicants must complete and submit a project application form. Staff will post all project summaries on its website after the date of application submission and will notify the CASF Distribution List⁹ of the submission(s), allowing ISPs three

⁸ Pub. Util. Code, § 281(i)(3)(A).

⁹ The CASF Distribution List is maintained by Staff and is generally used for informal CASF matters (e.g. draft resolutions, notice of applications/project summaries.) The CASF Distribution List is available at <http://www.cpuc.ca.gov/General.aspx?id=8246>.

weeks from the date of posting the application to challenge an application as discussed in Section VIII.

A public housing agency applying for BPHA funds must include in its submission the Annual HUD Contributions Contract and HA Code, allowing staff to verify its certification along with its most recent HUD Public Housing Assessment System (PHAS) score.

Non-profit applicants must submit an IRS letter approving the applicant's status as a 501(c)(3) entity incorporated for the purposes of providing affordable housing, which must include the applicant's Tax Identification Number, along with an award letter from a public agency such as the California Tax Credit Allocation Committee (TCAC), proving its receipt of public funding for affordable housing purposes.

For PSCs applying for infrastructure funds, the Commission shall award grants only to housing developments that are unserved as defined in Section III.

Applications must contain the following information.

1. Funds Requested

The applicant must indicate the amount of funding requested.

2. Project Location

The applicant must include a physical address for each project location along with an image of the location on the map. The Commission will accept a screenshot image from online maps or similar images.

3. Key Contact Information

- First name
- Last name
- Physical mailing address
- Email ID
- Phone number(s)

4. Key PSC Management

- Position title
- First name
- Last name
- Email ID
- Phone number(s)

5. Key Vendor Contact Information (if the applicant already has identified its vendor)

- First name
- Last name
- Company name
- Physical mailing address
- Email ID
- Phone number(s)

6. Assertion of Unserved

The applicant must attest to whether or not the housing development that will be connected through the proposed project is unserved, as defined in Section III. The applicant also must verify that it has not denied an ISP access to its property in order to provide broadband service to any unit. An applicant's previous denial of access for cause (e.g., the ISP's service cost to the resident or the applicant were unreasonably high) does not constitute a denial of a right of access.

7. Proposed Project Description

An applicant must provide a detailed description of the broadband project that will be funded under the CASF BPHA program, including but not limited to the elements listed below.

Detailed broadband project plan proposal that includes:

- The type of technology that will be used on the project with all technical specifications, network topology, schematic diagram, engineering, and design documentation.

- Project plan showing the number of residential units in the PSC to be connected.
- Entities that will provide broadband Internet service on the project site (E.g., The type of Internet service and the bandwidth offered by a named ISP)
- Download and upload data rate/speed capabilities for an average user within the property at a given time of peak and off-peak hours must meet at least 6 Mbps downstream and 1 Mbps upstream.
- Project budget outlining all the budget costs, both actual line items and the matching funds.

Actual budget cost line items funded by the grant that includes:

- The cost for all eligible equipment as listed in Section II.
- The cost for low voltage contracting work as described in Section II.
- Broadband network engineering and designing cost with required supporting documentation.
- The cost of any required hardware warranty of broadband network equipment.
- The cost of installation, provisioning, and configuration labor as described in Section II.
- Any applicable taxes, shipping, and insurance costs that are directly related to broadband network equipment deployed under the BPHA.

Matching funds to be provided by the applicant that includes:

- Monthly recurring Internet bandwidth cost for the five-year project period, post-project completion.
- Operations and Maintenance (O&M) cost to ensure the network and broadband services are operational for at least five years post completion of the project.

Project milestones with a delineated deployment schedule that includes:

- A commitment timeline to complete the project within 12 months of Commission approval of the application.

- The schedule identifying major prerequisites such as a detailed project plan with a timeline including low voltage construction, network installation, provisioning and configuration, testing, submission of closeout package with project completion report, and any other milestones that can be verified by the Commission staff.
- While developing the schedule, the applicant must include the timeline required for California Environmental Quality Act (CEQA) or other relevant government agency permit review, if needed.

8. Organizational Chart and Background

The applicant must submit an organizational chart showing the parent organization, subsidiaries, and affiliates.

9. Economic Useful Life of Assets to be Funded

The applicant must identify the expected economic useful life of the assets funded by the BPHA grant.

10. Proposed Billing

An applicant must commit to charging residents no more than \$20 per month per residential unit for broadband Internet service.

11. Financials

Applicants must submit the most recently prepared annual reports and audits that it submitted to the HUD, in the case of chartered public housing authorities, or another government entity, in the case of non-profits submitted to the HUD, California Tax Credit Allocation Committee, etc.

12. Permitting Compliance

The applicant should state whether the project is statutorily or categorically exempt from CEQA requirements and cite the relevant authority, as applicable. If a project does require review under CEQA, the grantee must provide the Proponent's Environmental Assessment (PEA) prior to the first 25 percent payment. The PEA submission should include

information on any land crossing sites requiring discretionary or mandatory permits or environmental review pursuant to CEQA (include the type of permit required, the name of the permitting agency/agencies and the Lead Agency if an environmental review is required).

Additionally, applicants must include any applicable permit review timeline in its construction schedule, with a reference to the government agencies that will issue the permits. Grantees must provide staff with proof of permit approvals before seeking reimbursement.

13. Affidavit

An applicant must submit an affidavit, under penalty of perjury, that to the best of their knowledge all the statements and representations made in the application information submitted is true and correct (Attachment A). Additionally, an applicant must also agree to abide by the CASF program rules established by the Commission, Commission's Rules of Practice and Procedure and statues, be subject to Public Utilities Code sections 2108 and 2111 and to submit quarterly reports and annual recertification or audit documents.

B. Adoption Project Application

To date, the \$5 million allocated for grants for PSCs has been fully committed. Therefore, the Commission can no longer accept applications for these projects unless the statutory cap is raised. However, eligible PSCs can apply for funds for broadband adoption projects from the Broadband Adoption Account.

VI. Submission and Timelines

Applicants must electronically file their completed applications using the Commission's FTP file server (<https://kwftp.cpuc.ca.gov>) and mail hard copies to:

1. California Public Utilities Commission
Communications Division
Attn: California Advanced Services Fund, Housing Coordinator
2. California Public Utilities Commission
Office of Ratepayers Advocates
Re: California Advanced Services Fund

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

Applications may be submitted at any time until all funds available for BPHA infrastructure projects have been awarded. However, staff will consider applications submitted on or before each deadline listed below as a batch.

Staff shall notify an applicant by a letter specifying reasons for rejection should an application fails to meet the BPHA eligibility criteria.

Deadlines:

- July 1, 2020
- ~~July~~ **September** 1, 2020
- October 1, 2020

Any deadline falling on a holiday or a weekend will be extended to the following business day. Staff will notify the CASF Distribution List when all funds available for BPHA infrastructure projects have been awarded, and an eligible PSC may submit an application for funding from the Infrastructure account using the same criteria set forth here.

Additionally, after each deadline, staff will post all applications on its website to give ISPs three weeks from the date of posting to challenge the application (See

Section VIII).

VII Expedited Review

The Commission assigns staff the task of approving applications that meet all of the following criteria:

Infrastructure Projects

- Applicant meets the eligibility requirements under Pub. Util. Code, § 281(i)(1), § 281(i)(2) and (i)(3).
- Applicant attests that the housing development is “unserved” as defined in Section III, which is a housing development where at least one housing unit within the housing development is not offered broadband Internet service.¹⁰
- Applicant declares that it has not denied an ISP access to its property to provide broadband Internet service and no ISP challenged this statement.
- The application is not challenged.
- Applicant requests a grant of less than \$75,000 in BPHA infrastructure grant funds per project.
- For projects connecting 50 PSC units or less, the proposed project costs \$600 per unit or less.
- For projects connecting 51-100 PSC units, the proposed project costs \$450 per unit or less.
- For projects connecting 101 PSC units or more, the proposed project costs \$300 per unit or less.
- The buildings included in the application meet standards for acceptable basic living conditions as determined under HUD’s Uniform Physical Condition Standards or similar guidelines provided by other housing funding agencies in the State.
- Applicant must attest that it expects the property to be in residential use as public housing for at least the next 10 years.
- The property qualifies for an exemption pursuant to CEQA Guidelines.

¹⁰ Pub. Util. Code, § 281(i)(3)(B)(i) and (B)(ii).

- For wireless networking projects, the equipment must meet at least 802.11n standard.
- For wireline networking projects, the equipment must meet at least ADSL2+ or 10BASE-X standard.
- Applicant attests it will operate and maintain project equipment, broadband technology, and internet services for at least five years after successful completion of the project and that it has sufficient funds to do so. In addition, the Applicant attests that it will acquire the necessary hardware warranty and service agreement to support the operation of the proposed network for the five-year period.
- The proposed project network is capable of providing broadband internet service speeds of at least 6 Mbps downstream and 1 Mbps upstream (supported by submitted documentation).
- Applicant will charge residents no more than \$20 per month per residential unit for broadband internet services.
- Applicant has signed an affidavit agreeing that the statements and representations made in the application are true and correct, to abide by the CASF program rules established by the Commission, Commission rules of practice and procedure and statutes, and Pub. Util. Codes, §§ 2111 and 2108.
- Applicant agrees to complete the project within 12 months from the date of the Commission approval.
- Applicant has an identified ISP source and its required internet bandwidth capacity at the MPOE (Minimum Point of Entry).
- Applicant agrees to secure project funded hardware to prevent theft and vandalism.

Applications not meeting the above expedited review criteria may only be approved by the Commission via Resolution. All applications shall be approved, denied, or marked for further review by the Commission through a Resolution.

VIII. Challenge Process

ISPs have three weeks from the date of the posting the application to the BPHA website to challenge the application. An ISP who challenges an application on

the grounds that it already provides broadband internet service access to 100 percent of the residents at the property or it was denied a right of access in question must submit documentation evidence no later than three weeks from posting of the application. To the extent that any information submitted is claimed to be confidential, the submitter must provide a public redacted version, in addition to the confidential version, and comply with the confidentiality requirements in G.O. 66-D including providing the requisite confidentiality declaration to the Communication Division (CD). The challenger must also provide public notice of the challenge to the CASF Distribution list.

The ISP must provide the following information to justify their challenge:

For 100 percent residents already served

- The number of customers living on the property that subscribed to its service, billing documents and speed tests to prove that it provides broadband Internet service at speeds of at least 6 Mbps downstream and 1 Mbps upstream to each residential unit.
- A backhaul capacity test report(s)¹¹ proving that it has an adequate capacity to serve all the residents with broadband internet service with a minimum speed of 6 Mbps downstream and 1 Mbps of upstream to all residential units.

For denial of right of access

- Written documentation showing who made the denial, the date of the denial, and the reason for the denial. i.e., letters, e-mails or other written documentation.

CD will investigate all submitted challenges. Incomplete challenges or challenges submitted after the deadline will be deemed denied. CD will inform the applicant of the challenges submitted on its application and provide the challenger's name and information submitted. Applicants may rebut the

¹¹ Reports showing capacity test results of backhaul network (SONET/SDH, T1, T3, OC3, OC12, IP and Ethernet backhaul over Fiber, Microwave, and Satellite) to ensure that the ISP transmission network is capable of serving a reliable and committed data rate/internet speed in the served area to a growing number of residential units.

challenge by providing sufficient documentation showing that services are not available to 100 percent of the residents. CD will base its decision on the material submitted. If it is found that the ISP who is challenging the application cannot prove it can serve 100 percent of the residents, then the challenge will be rejected, and the application may be considered by resolution. If it is found that the ISP can serve 100 percent of the residents, then the application will be denied. CD will inform the applicant and the challenger of the outcome of its decision.

IX. Project Status and Reporting

Infrastructure project grantees are required to submit a project status report within six months of the project award date if the project has not been completed, irrespective of whether the grantee requests reimbursement or payment. The project status report must include the following:

- Project Plan and deployment schedule showing major milestones with planned and actual completion dates.
- Any variance between planned and actual dates need to support with proper reasoning.
- Project Risk Mitigation plan.¹²
- Budget Plan with a cost line item matched with the application.

Grantees must certify that each project status report submitted is true and correct under penalty of perjury.

Infrastructure project grantees must submit a project completion report with all required supporting documentation in order to receive final payment. The project completion report contains, total project cost, project cost summary breakdown, project milestone deployment details, CalSPEED¹³ test results, bill of

¹² Plan that identifies, evaluates, selects, and implements options in order to balance the BPHA project cost and schedule implications associated with risk response or mitigation plan by setting risk at acceptable levels given program constraints and objectives.

¹³ CalSPEED is an open source, non-proprietary, network performance measurement tool and methodology created for the Commission, funded originally via a grant from the National Telecommunications and Information Administration

materials (BOM), invoices supporting BOM, network and low-voltage engineering and design documentation, installation and commissioning checklist, provisioning and configuration files, as-built documentation with pictures showing labels and annotations, and project expenses summary. The project completion report template can be found on the BPHA website.

Infrastructure project grantees are required to maintain the broadband network for a period of five years after the network is installed and internet services turned on for residential use. From the date broadband network and internet services are turned on the grantees are required to submit a KPI (Key Performance Indicator) report¹⁴ every quarter for a period of five years. The KPI report and its supporting system data can be submitted through an online portal that can be found on the Commission website under the CASF BPHA hyperlink.

The KPI report includes the following:

1. Monthly Percentage Uptime of network and internet services
2. Monthly Bandwidth Utilization by the residents (the amount of internet data transferred or the usage in gigabytes on the network)
3. Monthly Number of Unique User Devices Logged-in by the residents to access the broadband network for internet services

To support the above KPI report information, the grantee must submit the system data obtained from the network.

¹⁴ KPI report is to measure the broadband network service performance and to keep proper checks and balances on the BPHA program goals and objectives.

X. Sale or Transfer of Assets

Infrastructure project grantees must notify the Commission about any proposed sale or transfer of ownership of the project property that occurs prior to the completion of the five-year requirement. The grantee must require the new owner to assume grant obligations of operating and maintaining the broadband internet services for the remaining period of the five years term. The grantee shall notify the Director of the Communication's Division in writing of its intent to sell or transfer its assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity or owner will take full responsibility and ownership to comply with the terms of the CASF grant award. The new entity shall agree in writing to such.

XI. Payment Terms

Infrastructure project grantees are eligible to request the payment for the expenditures incurred during the first six months if the grantee submits a six-month project status report and certifies that the status report is true and correct under penalty of perjury.

Grantees shall submit final requests for payment no later than 90 days after completion of the project. If the grantee cannot complete the project within the 12-month timeline, the grantee must notify the Commission or Director of Communications Division as soon as they become aware that they may not meet the project timeline. In the event the grantee fails to notify the Commission or Director of Communications Division, the Commission may withhold or reduce payment.

Grantees must submit the project status and completion reports with all required supporting documentation for the staff to review in order to receive payment.

Payments are based on submitted receipts, invoices and other supporting documentation showing expenditures incurred and work done on the project in

accordance with the approved CASF funding budget included in the grantee's application.

Payment in full can be made for the entire project upon review of the submitted project completion report and supporting documentation and after staff approvals.

The payments will be made in accordance with, and within the time specified in California Government Code § 927 et seq.

Grantees are required to maintain records such as files, invoices, and other related documentation for three years after final payment. Grantee shall make these records and invoices available to the Commission upon request and agrees that these records are subject to a financial audit by the Commission at any time within three years after the final payment made to the Grantee.

The Commission has the right to conduct any necessary audit, quality check, verification, and discovery during project implementation and post-project completion to ensure that CASF funds are spent in accordance with the terms of approval granted by the Commission. Invoices submitted will be subject to financial audit by the Commission at any time within 5 years of the release of the final payment.

If any portion of reimbursement is found to be out of compliance, grantees will be responsible for refunding any disallowed amount along with appropriate interest rates determined in accordance with applicable Commission decisions.

XII. Execution and Performance

The infrastructure project grantee shall start the project within 30 days upon grant approval and complete the project execution within a 12-month timeframe. Should the grantee or Contractor fail to commence work within 30 days of grant approval, the Commission or Director of Communications Division, upon five (5) days written notice to the CASF recipient, reserves the right to terminate the award. If the grantee is unable to complete the proposed project within the required 12-month timeframe, it must notify the Commission as soon as it becomes aware of this prospect. The Commission reserves the right to reduce or withhold payment failure to satisfy this requirement. Grantees must operate and maintain the network for a minimum of five years after it has been installed.

The grantee must complete all the performance on the project before the termination date in accordance with the terms of approval granted by the Commission. In the event that the grantee fails to complete the project or subsequently operate and maintain the network service in accordance with the terms of approval granted by the Commission and compliance with CASF program guidelines, the grantee must reimburse some or all of the CASF BPHA funds that it has received.

Material changes in the entries for this application, such as discontinuing operation or bankruptcy, or change of name (DBA¹⁵), change of address, telephone, fax number or email address must be reported immediately by a letter to the CPUC, Director of the Communications Division, 505 Van Ness Avenue, San Francisco, CA 94102.

¹⁵ A DBA "Do Business As" is also known as a "fictitious business name," "trade name," or "assumed name."

XIII. Consent form or Compliance Changes Pursuant to CASF Performance Audit

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

XIV. Penalties

Grantees must agree to the following language in the affidavit found in Attachment A to this Decision.

If [Grantee Name] violates the terms and conditions of a CASF award or other program and project compliance requirements, it shall be subject to Public Utilities Code sections 2108 and 2111. The Commission may impose the maximum penalties allowed under Public Utilities Code sections 2108 and 2111 for failure to meet the program and project compliance requirements, as determined by the Commission.

Submit completed applications online at <https://kwftp.cpuc.ca.gov> with hard copies mailed separately to:

Communications Division
Attn: California Advanced Services Fund
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102

Office of Ratepayer Advocates
Re: California Advanced Services Fund
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102

Attachment A

ATTACHMENT A
NOTARIZED AFFIDAVIT

Name of Publicly Supported Community
(PSC) _____

My name is _____. I am _____ [Title] of
_____ [PSC]. My personal knowledge of the facts stated
herein has been derived from my employment with
_____ [Company]

I swear or affirm that I have personal knowledge of the facts stated in this Application for the California Advanced Services Fund (CASF), I am competent to testify to them, and I have the authority to make this Application on behalf of and to bind the Company.

I further swear or affirm that _____ [Grantee Name] agrees to comply with all federal and state statutes, rules, and regulations, covering broadband services and state contractual rules and regulations, if granted funding from the California Advanced Services Fund.

I swear or affirm that I agree to comply with Rules 1.11 and 2.2 of the California Public Utilities Commission's Rules of Practice and Procedure and CASF program requirements.

I swear or affirm that by receiving a CASF grant, [Grantee Name] agrees to comply with the terms, conditions, and requirements of the grant and thus submits to the jurisdiction of the Commission with respect to the disbursement and administration of the grant.

I swear or affirm, under penalty of perjury, and under Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure, that, to the best of my knowledge, all of the statements and representations made in this Application are true and correct.

If _____ [Grantee Name] violates the terms and conditions of a CASF award or other program and project compliance requirements, it shall be subject to Public Utilities Code sections 2108 and 2111. The Commission may impose the maximum penalties allowed under Public Utilities Code sections 2108 and 2111 for failure to meet the program and project compliance requirements, as determined by the Commission.

Adoption project applicants **only**: I attest that the _____ [PSC] is wired and broadband Internet service is available to all PSC units on the property.

Signature and title

Type or print name and title

SUBSCRIBED AND SWORN to before me on the ____ day of ____, 20____.

Notary Public In and For the State of _____

My Commission expires _____

(END OF ATTACHMENT A)

Attachment B

**ATTACHMENT B
Consent Form**

Name of Grantee:

The Grantee identified above hereby acknowledges receipt of the California Public Utilities Commission Resolution T-_____ or Approval Letter dated _____ and agrees to comply with all grant terms, conditions, and requirements set forth in the Resolution or Approval Letter.

The undersigned representative of _____ (Name of Grantee) is duly authorized to execute this Consent Form on behalf of the Grantee and to bind the Grantee to the terms, conditions, and requirements set forth in California Public Utilities Commission Resolution T-_____ or Approval Letter.

Dated this ____ day of _____, 20____.

Signature:

Printed Name: _____

Title: _____

Name of Organization or Company:

Business Address (street address, suite or apt number, city, state and zip code)

Telephone Number (include area code): _____

Email Address: _____

(END OF ATTACHMENT B)