



**APPENDIX A**  
**R.20-08-021 STAFF PROPOSAL - PHASE I REVISIONS FOR**  
**BROADBAND INFRASTRUCTURE GRANT ACCOUNT**  
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## 1. Phase I Revisions for Broadband Infrastructure Grant Account

### 1.1. Purpose

The purpose of this Staff Proposal is to address the following two issues raised in the Scoping Memo for this proceeding, R.20-08-021.

- Submission of necessary data related to exercising the Right of First Refusal and completion reports.
- Whether broadband service providers should be required to offer open access to infrastructure funded by CASF.

### 1.2. Background

The current rules regarding the submission of proof that a provider is an existing facility-based provider were adopted in Decision D.18-12-018 and are referenced in two sections of the California Advanced Services Fund Application Requirements and Guidelines (CASF Guidelines)<sup>1</sup>: Right of First Refusal (ROFR)<sup>2</sup> and the Semi-Annual and Completion Reporting<sup>3</sup>. A Right of First Refusal claim can be made by an existing facility-based provider to commit to providing broadband access to delineated unserved areas within 180 days. If successful, this prohibits the Commission from approving CASF funding for a project in those areas. Current rules allow the submission of a Federal Communications Commission (FCC) Form 477 as proof that the provider is an existing facility-based provider in the census block(s) for which it claims ROFR. Grantees are required to file progress reports (bi-annually) throughout the project term and must also submit a completion report prior to receiving the final payment. Currently the final report must contain a copy of the FCC Form 477 data that is submitted directly to the Commission.

Current rules do not obligate recipients of CASF grant funding to make available their middle mile infrastructure to last mile providers. This type of arrangement, known as “open access”, is a wholesale model wherein the infrastructure provider makes its network available for multiple last mile providers. An open access provider offers nondiscriminatory access to multiple providers on reasonable and equal terms.

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<sup>1</sup> *CASF - The Broadband Infrastructure Grant Account --- Revised Application Requirements and Guidelines*, available at [https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Utilities\\_and\\_Industries/Communications\\_-\\_Telecommunications\\_and\\_Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf)

<sup>2</sup> *Id.* Section 5.2, pg 10.

<sup>3</sup> *Id.* Section 13, pg 28

### 1.3. Definitions

- FCC Form 477 – A data collection form used by the FCC to determine areas that are served by providers<sup>4</sup>; the information reported is categorized by US census tract and block. It is the federal government’s main source of data used for identifying underserved areas. The FCC collects information about broadband connections to end-user locations, wired and wireless local telephone services, and interconnected Voice over Internet Protocol (VoIP) services in the 50 states, the District of Columbia, and the Territories and possessions<sup>5</sup>.
- ISP – Internet Service Providers: Companies providing Internet access to consumers and businesses, acting as a bridge between customer and infrastructure owners for dial-up, cable modem and digital subscriber line services.
- Last-mile – The final leg of a broadband connection between a service provider and the customer’s premises; the local ISP that supplies the customer are considered last mile providers.
- Middle-mile – The portion of the broadband network infrastructure that connects the last mile (local network) to other network service providers, major telecommunications carriers, and the core internet. It does not typically connect to end-users.
- Open access – An arrangement in which an open access provider offers nondiscriminatory access to independent service providers on reasonable and equal terms. It is a wholesale model wherein the infrastructure provider makes its network available for multiple last mile providers, who have the billing relationship with the end user.
- Broadband Map - the California Interactive Broadband Map showing served status and eligibility, maintained by the Commission. <http://www.broadbandmap.ca.gov/>.

### 1.4. Staff Recommendation: FCC Form 477

Staff recommends eliminating the requirement for providers to submit the FCC’s Form 477 as a requirement of both the ROFR and Project Completion. Facilities-based providers would continue to be obligated to provide subscribership data in the completion report and to submit the relevant data in the annual broadband data collection which is used to update the California Interactive Broadband Map<sup>6</sup>. An added benefit to removing the Form 477 requirement is that providers will need to be more diligent about submitting the appropriate subscriber information in a previous data collection cycle. The removal of the Form 477 requirement may incentivize ISP participation in the California data collection process because non-compliance may render providers unable to participate in the ROFR process. Therefore, an additional benefit of this added level of participation is improved accuracy of the broadband map.

<sup>4</sup> <https://transition.fcc.gov/form477/WhoMustFileForm477.pdf>

<sup>5</sup> 47 U.S.C. § 153(58)

<sup>6</sup> <https://www.broadbandmap.ca.gov/>

Staff recommends retaining and augmenting the remaining requirements for completion reporting noted in Section 13 of the CASF Guidelines (see Section 1.7 below). Staff expects the revisions detailed in Section 1.7 below to be sufficient and does not expect that eliminating submission of the Form 477 will negatively impact the CASF program. An item of importance to CD staff is the actual “take-rate” of customers; how many subscribers in an area signed up for broadband service as a ratio of total number of potential households that can be served. This information provides the Commission with measurable data on the penetration of broadband acceptance and whether the investment of public funds is deemed a success.

### **1.5. Staff Recommendation: Open Access for CASF projects**

The middle mile is the section of a network that connects local, last mile networks to the backbone of the Internet. Middle mile networks can cut across census tracts, municipal or even county boundaries and are able to transport large quantities of bandwidth between network endpoints. The infrastructure may also connect towers (wireless services), community anchor institutions, and other large customers. Staff recommends that all CASF-funded middle mile infrastructure (in all projects approved going forward) be deemed open access, with nondiscriminatory access to independent service providers on reasonable and equal terms and available to any ISP or entity that wishes to interconnect with that infrastructure<sup>7</sup>. An example of a CASF project in which this requirement exists is the Klamath River Rural Broadband Initiative (Resolution T-17418) which states: “The KRRBI middle mile network shall be made available for wholesale access to other potential CASF grantees at reasonable rates and terms. These reasonable rates shall be at cost.” Staff recommends that this be codified for the middle-mile segment(s) of all future CASF projects.

CASF grant recipients would be required to provide open access at any technically feasible point along the network (without exceeding current or reasonably anticipated capacity limitations). This duty includes, at a minimum, the physical interconnection of the recipient’s facilities to a requesting party’s facilities for the exchange of traffic. In addition, recipients may connect to the Internet directly or indirectly and must provide requesting parties with an ability to connect to the Internet. Rates and terms for interconnection shall be reasonable, equal and nondiscriminatory. Pricing and terms & conditions must be the same for all interconnected entities such as Wholesale (ISP) / Government / Public Anchor Institution. Pricing, tariffs (if applicable), and terms & conditions shall be publicly posted on the middle mile network’s publicly available website.

Recipients shall negotiate in good faith with all requesting parties (i.e., public, private, non-profit, or other parties) making a bona fide request for interconnection or wholesale services.

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<sup>7</sup> See, e.g., BroadbandUSA, Fact Sheet: Broadband Technology Opportunities Program, Nondiscrimination and Interconnection Obligations (Nov. 10, 2010), *available at* [https://www2.ntia.doc.gov/files/Interconnection\\_Nondiscrimination\\_11\\_10\\_10\\_FINAL.pdf](https://www2.ntia.doc.gov/files/Interconnection_Nondiscrimination_11_10_10_FINAL.pdf).

The high cost of building networks is a barrier for service providers to enter new markets, especially in rural and Tribal areas; costs are prohibitive and usually require outside funding (grant or other programs). Open access networks can offer an innovative and feasible solution for last-mile service providers that allows them to deploy service cost-effectively using the same physical middle mile network that was paid for with CASF funding.

Building open access networks has been successful at fostering broadband coverage (and in some cases, competition) and producing economic gains in communities. Open access networks make it easier to increase deployment in unserved areas and may lead to more competition for CASF grants among service providers. The increase of broadband coverage in unserved areas will provide vital internet connectivity to residents and will facilitate economic development for businesses and entities that require reliable, high-speed Internet access.

#### **1.6. Proposed Change to Section 5.2 of CASF Guidelines<sup>8</sup> (Right of First Refusal)**

Allowing Form 477 as proof for ROFR may result in ISPs not participating in the California data collection. Removing the Form 477 form as proof for ROFR will serve as an incentive for ISPs to participate in the CA broadband data collection.

Revising the geographical designations i.e., from “area” to “locations” will improve geospatial accuracy and precision and will overcome the limitations of census mapping that is prevalent in the Form 477. With point coordinates, proposed locations can be properly and accurately depicted on the map. The elimination of the Form 477 requirement, along with other language that staff proposes to remove from the CASF Guidelines, is noted in strikethrough below. Recommended additions are noted in underline

Any provider wishing to exercise its Right of First Refusal must submit a letter by January 15th of each year to the Communications Division Director with a copy to the CASF distribution service list, expressing its intent to upgrade services within 180 days. The letter also must include the following information:

- Area Locations designated for broadband deployment ~~by census block in a .csv Excel or census block~~ geospatial file, such as a kmz/kml file or shapefile;
- The number of ~~households~~ or locations to be served<sup>9</sup>;
- A commitment to ensure that all ~~households within the area~~ locations will have the capability to receive minimum speeds;

<sup>8</sup>[https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Utilities\\_and\\_Industries/Communications\\_-\\_Telecommunications\\_and\\_Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf)

<sup>9</sup> Changing from households to locations accounts for all potential subscribers including housing units, small business, enterprise, agricultural entities, healthcare providers, first responders etc.

- An estimate of the date (within the 180-day statutory requirement) by which the deployment will be completed with service available to the public;
- Proof that the provider is an existing facility-based provider in the ~~census block(s)~~ locations for which it claims ROFR. This proof may come in the following forms:
  - The company submitted data during the most recent California broadband data collection, ~~or the most recent FCC Form 477 data submission that is publicly available~~, and its footprint submittal includes completely contains the ~~area~~ locations in its ROFR claim;
  - The company claiming ROFR has a video franchise under DIVCA, the area it claims in the ROFR submission is part of its DIVCA footprint, and it already offers video service in that area;
  - The company claiming ROFR is an ILEC and the area it claims in the ROFR is an unserved area within its wire center region; or
  - If the company is a wireless internet service provider (WISP) and it has a subscriber in each claimed census block within which its claimed locations fall.

### 1.7. Changes to Section 13 of CASF Guidelines<sup>10</sup> (Completion Reporting)

As noted in Section 1.6 above, revisions to Section 13 below will remove the Form 477 requirement, improve location accuracy thereby providing higher quality maps and data. The proposed changes to Section 13 are noted text below: (~~strike through~~ font represents content that is to be removed, underlined font refers to replacement content).

#### (Completion Reporting)

Grantees also must submit completion reports prior to receiving the final payment. These reports shall contain the following:

- Comparison of approved versus actual costs of construction.
- Description of the project, including any changes in the project construction and alignment, if applicable.
- Milestones and completion dates for each milestone.
- Final date of completion of the project, problems/issues encountered since last semi-annual report and actions taken to resolve these issues/problems during construction (and comprehensive reporting on CEQA mitigation compliance, if applicable).
- Speed test data ~~for the Census Block~~<sup>11</sup>, including:
  - Test results for download and upload speeds;

<sup>10</sup>[https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Utilities\\_and\\_Industries/Communications\\_-\\_Telecommunications\\_and\\_Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf)

<sup>11</sup> Staff recommends removing the words “Census Blocks” and focusing on improving location accuracy using point coordinates over a representative sample of the project.

- Samples at dispersed locations in the project area; number of tests will vary based on project;
- An attestation that all households within the project area are offered service at minimum speeds of 10 Mbps download and 1 Mbps upload or higher;
- A screenshot of results of CalSPEED speed tests, which can be accessed at <http://calspeed.org/index.html>;
- ~~Maps and associated data of the areas covered;~~ speed test result locations in a kmz/kml file or shapefile.
- Maps and associated data of all locations served
  - The geographic ~~location~~ coordinates of all ~~households~~ locations that are served. This information will be provided in a plain-text, comma-separated values (CSV) file, or kmz/kml file or shapefile that contains geo-located street address information, including latitude and longitude; ~~coordinates;~~
  - Map(s) of served locations.
- Documentation of advertisements, billing inserts and marketing information, by speed tier and prices.
- Projected subscribers versus actual subscribers, as of the date of the completion report.
- Identification of the number of served households in the project ~~area~~ that have broadband availability at or above the aforementioned minimum speeds.
- ~~A copy of the FCC Form 477 data submitted directly to the Commission.~~

(END OF ATTACHMENT)