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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
(Filed October 25, 2012)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Pursuant to Rule 7.3¹ this Scoping Memo and Ruling sets forth the procedural schedule and addresses the scope of this proceeding, as well as other procedural matters. This ruling revises the scope of this proceeding to address additional changes, besides eligibility, to the California Advanced Services Fund (CASF) program instituted by Senate Bill (SB) 740 and Assembly Bill (AB) 1299.

1. Background

The preliminary scoping memo included in the Commission's Order Instituting Rulemaking (OIR) issued on October 25, 2012, indicated that the issues in this proceeding are whether eligibility for CASF grants should be extended to facilities-based broadband providers, which are not telephone corporations and do not have a Certificate of Public Convenience and Necessity

¹ All references to Rules are to the Commission's Rules of Practice and Procedure.

or a Wireless Identification Registration and if so, what safeguards the Commission should implement to ensure compliance from those providers.²

After reviewing the comments, an Administrative Law Judge's (ALJ) Ruling, issued March 18, 2013, sought additional comments from interested parties in order to supplement the record on the issue of safeguards.³

The OIR acknowledged that any change in eligibility requirements was contingent upon legislative action because these requirements are defined in statute.⁴ Thus, the Commission sought a statutory amendment during the 2013-2014 legislative session to expand eligibility through SB 740. Through the legislative process, this bill was amended several times and ultimately the bill's passage resulted in changes to other aspects of the CASF program in addition to eligibility.⁵

Additionally, during the 2013-2014 legislative session, the Legislature passed AB 1299.⁶ AB 1299 created an additional account under the CASF called the Broadband Public Housing Account to support projects to deploy broadband networks and to increase adoption rates in publicly supported housing communities.⁷ These efforts will be funded through \$20 million from the

² *Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund*, Rulemaking (R.) 12-10-012 at 23.

³ *Administrative Law Judge's Ruling Soliciting Additional Comments on Issues Identified in Order Instituting Rulemaking 12-10-02*. (2012) Cal. P.U.C. (ALJ's Ruling).

⁴ R.12-10-012 at 2.

⁵ SB 740 (Padilla) Stats. 2013 Ch. 522, amending Pub. Util. Code § 281.

⁶ AB 1299 (Bradford) Stats. 2013 Ch. 507, amending Pub. Util. Code § 281.

⁷ *Id.*

CASF Broadband Infrastructure Account and \$5 million from the Revolving Loan Account.⁸

The Commission determined that it had built a sufficient record to issue a Proposed Decision to implement the eligibility provisions and the safeguard provisions proposed through the initial OIR and the ALJ's Ruling.⁹ The Proposed Decision takes into account the comments on the OIR and the ALJ's Ruling previously filed by parties in this proceeding, as well as additional staff research.¹⁰ The assigned Commissioner issued the Proposed Decision for comments on January 6, 2014.

This revised scoping memo expands the scope of the rulemaking to implement the additional statutory requirements of SB 740 and AB 1299 and revises the procedural schedule.

2. New Phase Addressing Additional Program Changes Initiated by SB 740

As stated previously, SB 740 introduced a number of changes to the CASF Infrastructure Grant and Revolving Loan programs. Specifically, it added the following requirements:

1. A program goal to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households by no later than December 31, 2015.

⁸ *Id.*

⁹ The *Proposed Decision Implementing Revised Eligibility Criteria for the California Advanced Services Fund Program* was released for public comment on January 6, 2014. Opening Comments are due January 27, 2014 and Reply Comments are due February 3. A copy may be found at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M084/K556/84556127.PDF>.

¹⁰ *Id.*

2. Authorization for the Commission to collect an additional \$90 million which will be deposited into the Broadband Infrastructure Grant Account; supplementing the original \$200 million authorized for CASF broadband infrastructure grants.
3. Entities that are not a telephone corporation shall be eligible to apply to participate in the CASF program to provide access to broadband to an unserved or underserved household. Such entities must meet the CASF eligibility requirements and comply with program requirements, including the following:
 - A. Entities must provide last-mile broadband access to households that are unserved by an existing facilities-based broadband provider and only receive funding to provide broadband access to households that are unserved or underserved, as defined in Commission Decision 12-02-015.
 - B. Funding for a CASF project proposing to provide broadband access to an underserved household shall not be approved until after any existing facilities-based provider has had an opportunity to demonstrate to the Commission that it will, within a reasonable timeframe, upgrade existing service. An existing facilities-based provider may, but is not required to, apply for CASF funding to make that upgrade.
 - C. A local governmental agency may be eligible for an infrastructure grant only if the infrastructure project is for an unserved household or business, the Commission has conducted an open application process, and no other eligible entity applied.¹¹

The requirements regarding the CASF program goals and funding authorization (items 1 and 2) do not affect current program operations. As stated

¹¹ SB 740 (Padilla) Stats. 2013 Ch. 522, amending Cal. Pub. Util. Code § 281.

previously, the Proposed Decision issued on January 6, 2014, if adopted by the full Commission, will implement the changes to eligibility required by SB 740. The remaining requirements, (items 3A-3C), which apply to entities that are not telephone corporations, do affect current program operations. However, the Commission can implement the changes required by items 3A- 3C without alterations to existing CASF rules and guidelines. Specifically, these changes can be implemented by setting new timelines for CASF applications. Therefore, this is an implementation issue that can be resolved through the use of a Resolution issued by the Communications Division (CD) staff for Commission approval. CD staff is expected to issue a Draft Resolution for public comment by May 2014. This Draft Resolution will set forth proposed timelines for CASF applications to permit existing facilities-based provider to exercise their “right-of-first refusal” to upgrade existing service in underserved areas and to permit local government entities to submit CASF applications.

3. New Phase Addressing Additional Program Changes Initiated by AB1299

AB 1299 requires the Commission to establish the Broadband Public Housing Account, which will provide grants and loans to publicly supported communities for projects to deploy broadband networks and to increase broadband service adoption rates for residents in these communities. Therefore, AB 1299 expands the scope of the CASF to specifically target publicly supported communities throughout the State. Because the focus and eligibility requirement for this new program will be distinct from the current focus and eligibility requirements for the three existing CASF accounts, the Commission will need to consider the design of such a program, adopt new specific requirements and other implementation details, and determine how to allocate funds pursuant to

AB 1299, given the statewide distribution of those publicly supported communities in California.

For this phase of the rulemaking, the Commission asks parties to comment on the topics listed in Appendix 1 in order to guide the workshops that CD staff will hold during March and April 2014. Parties should file their comments with the Commission's Docket Office, in accordance with the Commission's Rules of Practice and Procedure, on or before February 10, 2014. In order to facilitate increased involvement by publicly supported communities in this rulemaking, entities that are not formal parties to this proceeding and do not wish to or are not able to formally participate may express their views by providing letters to CD staff via e-mail to CASF_Application_Questions@cpuc.ca.gov with the subject line "Public Housing Workshop Comments" on or before February 10, 2014. CD staff will post these comments on the CASF website¹² for parties and the interested public to review prior to the workshops. CD staff will use both formal comments from parties and letters from non-parties to organize the workshops and prepare pertinent materials for discussion. Specific information regarding these workshops will be sent out to the parties in subsequent ALJ Ruling(s) and to those responding informally via e-mail. CD staff will also post this information on the CASF website under CD staff announcements.

¹²<http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/CASF/index.htm>.

After the Commission holds the workshops, CD shall provide the ALJ with a workshop report with a summary of comments received before and during the workshop as well as and CD staff recommendations. The Commission intends to issue a Proposed Decision for public comment in May, 2014. The Commission hopes to issue a final Decision in July 2014 and hopes to accept publicly supported communities’ applications beginning August 2014.

4. Procedural Schedule

As set forth in today’s revised scoping memo and prior rulings, the procedural schedule shall be as follows:

Event	Date
<i>SB 740</i>	
Draft Resolution Issued for 30 Day Comment Period	May 2014
Final Resolution Adopted by Commission	July 2014
<i>AB 1299</i>	
Parties’ Comments on Workshop Topics Filed (or non-parties may provide by email) to Communications Division)	February 10
Workshops	March - April 2014
Communications Division Workshop Report to ALJ	April 2014
Draft Proposed Decision Issued for 30 Day Comment Period	May 2014
Final Decision Adopted by Commission	July 2014

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ in this proceeding.

6. Categorization and *Ex Parte* Communications

In the initial scoping memo, the Commission categorized this proceeding as quasi-legislative. The initial scoping memo determined that the issues in the proceeding could be resolved through comments without the need for evidentiary hearings. No one appealed that categorization or the preliminary hearing determination.

IT IS RULED that:

1. The scope of this proceeding is amended as set forth in sections 2 and 3 of this revised scoping memo.

2. Two new phases to implement additional program changes instituted by Senate Bill 740 and Assembly Bill 1299 are added to this proceeding. The Commission will implement these changes pursuant to the procedural schedule set forth in section 4 of this ruling.

Dated January 17, 2014, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

APPENDIX 1

APPENDIX 1

AB 1299 SCOPING MEMO QUESTIONS

Eligibility Requirements

Definition of Publicly Supported Community

AB 1299 or California Public Utilities (P.U.) Code §281 (f)(2) makes publicly supported communities eligible for grants and loans to fund infrastructure and adoption projects under the CASF. The statute defines the term “publicly supported community,” as “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 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. § 501(c)(3)) that is exempt from taxation under § 501 (a) of that code (16 U.S.C. § 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.”
 1. We have been informed that some publicly supported communities are owned by for profit entities. We ask whether this definition does, in fact, exclude these particular publicly supported communities from participating.
 2. Is this definition otherwise sufficiently clear to determine an applicant’s eligibility status?
 3. What document(s) should the Commission require for an applicant to prove its eligibility?

Denial of Right of Access – Infrastructure Projects Only

AB 1299 or § 281 (f)(3) states that a publicly supported community may be eligible for funds to connect a broadband network to that publicly supported community only if it can verify that it has not denied a right of access to any broadband provider that is willing to connect a broadband network to the facility for which the grant or loan is sought. In implementing this provision, the Commission asks for comments on the following issues:

4. What is the appropriate documentation the Commission should require to verify that a publicly supported community has not denied access to any broadband provider?
5. By what process may a broadband Internet provider submit documentation that a publicly supported community denied it access?

6. Should the Commission place limits on the time period in which access denials are valid? If yes, what should that time period be?
7. Should the Commission consider affordability of broadband service or other considerations when examining access denials?

Broadband Access – Adoption Projects Only

A publicly supported community may be eligible for funds for a broadband adoption project only if the residential units in the facility to be served have or will have access to broadband services at the time the funding for adoption is implemented.

8. The Commission proposes to define “the time funding for adoption is implemented” as the time that the application is approved. Is this a reasonable interpretation?
9. How should the Commission verify whether residential units in a facility have or will have access to broadband services at the time the funding for an adoption project is implemented?

Funding

Infrastructure Projects

AB 1299 or § 281 (f) (3) authorizes the Commission to make twenty million dollars (\$20,000,000) available for grants and loans to publicly supported communities to finance projects to connect a broadband network to these facilities. In implementing this and related provisions, the Commission must resolve the following issues:

10. Should the Commission offer grants, loans, or a combination of both to fund broadband infrastructure projects in publicly supported communities?
11. Currently the Commission provides grants to finance up to 60% of broadband Internet infrastructure projects in underserved areas and up to 70% in unserved areas. The Commission also provides loans for up to 20% of construction costs, with a maximum of \$500,000, but only in conjunction with infrastructure grant (i.e., loans are not provided on a stand-alone basis). Should there be a minimum and maximum amount for the grants and loans?

12. In the case of loans, should the terms and conditions used in the current CASF Revolving Loan Account also apply to publicly supported communities?¹³
13. What types of infrastructure projects should be funded by the program? What project costs should be eligible for funding?

Adoption Projects

AB 1299 or §281 (f)(4) authorizes the Commission to make five million dollars (\$5,000,000) available for grants and loans to publicly supported communities to support adoption projects, such as digital literacy training, awareness programs, and other projects that promote Internet usage within the publicly supported community.

14. Should the Commission offer grants, loans or a combination of both to fund adoption projects in publicly supported communities?
15. Should there be a minimum and maximum amount for the grants and loans?
16. In the case of loans, should the terms and conditions used in the current CASF Revolving Loan Account also apply to adoption projects for publicly supported communities?¹⁴
17. What types of adoption projects should be funded by the program? What project costs should be eligible for funding?

AB 1299 or § 281 (f)(5) requires the Commission, to the extent feasible, to approve projects, both adoption and infrastructure projects, for publicly supported communities “in a manner that reflects the statewide distribution of publicly supported communities.”

18. How should the Commission determine this distribution method? What would the most feasible or practical way of implementing this requirement? What data can be used to make this determination and where should the Commission obtain this data?

¹³ The application requirements and guidelines for the Broadband Infrastructure Revolving Loan Account can be found at

<http://docs.cpuc.ca.gov/PublishedDocs/PUBLISHED/GRAPHICS/159266.PDF>

¹⁴ Decision Implementing Broadband Grant and Loan Account Program Provisions (2012) Cal. P.U.C. Dec. No. 12-02-015 (D.12-02-015). The application requirements and guidelines for the Broadband Infrastructure Revolving Loan Account can be found at

<http://docs.cpuc.ca.gov/PublishedDocs/EFILE/PD/155031.PDF>.

Other Funding Sources

AB 1299 or §281 (f) (6), instructs the Commission to consider the availability of other funding sources for either adoption or infrastructure projects, any financial contribution from the broadband service provider to the proposed project, the availability of any other public or private broadband adoption or deployment project, including tax credits and other incentives, and whether the applicant has sought funding from, or participated in, any reasonably available project. The Commission may require an applicant to provide match funding, and shall not deny funding for a project solely because the applicant is receiving funding from another source.

19. In what manner should the Commission implement the Legislature’s instruction to consider the availability of funding sources for an infrastructure or adoption project?
20. Should the Commission use availability of other funding sources as one of the criteria in evaluating applications?

Partnering for Adoption Projects

AB 1299 or § 281 (f) (4)(B) states that a publicly supported community may contract with other nonprofit or public agencies to assist in implementation of a broadband adoption project.

21. Should the publicly supported community applying for the grant be responsible to the Commission for carrying out the project? Should the entity or entities the community contracts with also be responsible to the Commission?

CASF Public Housing Infrastructure Grant Program Application Evaluation Criteria

The Commission seeks to identify criteria for evaluating infrastructure grants for publicly supported communities. In evaluating CASF Broadband Infrastructure Grant requests, Communications Division staff currently assesses applications based on the following criteria:

- Funds Requested per Potential Customer;
- Speed;
- Financial Viability;
- Pricing;
- Total Number of Households in the Proposed Area;
- Timeliness of Completion of Project;
- Guaranteed Pricing Period;

- Low-Income Areas; and
 - Community Support¹⁵.
22. Should the Commission use similar criteria used in reviewing CASF Infrastructure Grant applications when evaluating infrastructure grants for publicly supported communities? What modifications should be made, if any?
23. Should the Commission adopt additional criteria for infrastructure grants for publicly supported communities?

In the past, the Commission has evaluated financial viability in order to determine that an applicant is able to fund the other costs of the project that are not funded by the grant or loan award and to ensure that it could continue to maintain the network after the infrastructure was deployed. In order to make this determination the Commission reviews information such as financial statements, showing income, cash flows and a balance sheet; a pro forma financial forecast for years; annual earnings before income and tax; and a schedule of all outstanding and planned debt.

24. Based on the above, how should the Commission evaluate the financial viability of a publicly supported community?

In implementing the CASF Public Housing Infrastructure Grant program, the Commission wishes to develop a set of criteria that will enable it to delegate to staff approval of grant applications meeting those Commission-approved criteria; thus, obviating the need for the Commission to approve every recommended application via the resolution process. To that end, the Commission asks for comments on the following questions:

25. What criteria should be included in such a checklist, if one is used?
26. The Commission will need to set a grant funding threshold, allowing staff to approve grant applications less than that amount. Is \$500,000 an appropriate threshold?
27. Even if a predetermined set of criteria is used, as discussed above, the Commission asks what special conditions would require Commissioners to approve applications through the resolution process rather than delegate the task to staff?

Currently, CASF Broadband Infrastructure Account grants are awarded on the basis of a scoring formula, with higher scoring projects obtaining priority.

¹⁵ D.12-02-015. More detailed discussion of the criteria used can be found at http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/159265.PDF.

28. If a checklist is used should there also be a method by which the Commission assigns priority to projects? Could this be used to ensure that the Commission approves projects for publicly supported communities “in a manner that reflects the statewide distribution of publicly supported communities”? Or should funding be awarded on a first come, first served basis?

CASF Public Housing Adoption Grant Application Evaluation Criteria

The Commission also wishes to develop a set of criteria that will enable it to delegate to staff approval of grant applications for adoption projects meeting Commission-approved criteria, similar to the process proposed above for infrastructure projects. However, unlike infrastructure projects the CASF has not previously administered funds for broadband adoption projects, except within the context of the regional consortia grants. Thus, we ask the following questions:

29. What criteria should be used to approve applications for adoption projects?
30. If a checklist is used the Commission will need to set a grant funding threshold, allowing staff to approve grant applications less than that amount. Is \$500,000 an appropriate threshold in this case as well?
31. Should the Commission use scoring criteria in order to prioritize projects? Could this be used to ensure that the Commission approves projects for publicly supported communities “in a manner that reflects the statewide distribution of publicly supported communities”? Or should funding be awarded on a first come, first served basis?

Post Award Project Monitoring and Compliance

Under existing rules for CASF Broadband Infrastructure Account projects, the Commission requires grantees to comply with a number of program rules. For example, grantees must submit quarterly progress reports and timely complete their project.¹⁶

32. Are quarterly progress reports sufficient to monitor publicly supported communities’ compliance? What milestones should be used?
33. How else should the Commission monitor publicly supported community grantees to ensure progress?

Additionally, the Commission notes that in the recent Proposed Decision permitting non-telephone corporations to participate in the CASF, it concluded that it would obtain post project

¹⁶ Id. at Appendix 1, p. 23, 25.

compliance from entities it does not traditionally have regulatory power over by imposing penalties.¹⁷

34. Currently, participating entities are required to agree to respond to Commission data requests and agree to audits for a period of three years after project completion. What post project completion compliance measures should be included for the infrastructure projects? For the adoption projects?
35. Are penalties applicable in this situation as well? What other methods of ensuring compliance are available to the Commission?

Processes Used in Handling Applications

36. What information should be included in the applications for infrastructure projects and for adoption projects?
37. What should be the timeline and process for application submission?
38. In what manner should the Commission make the applications available for public review?
39. Should the Commission require an applicant to provide additional public notice of its application to the specific publicly supported community it intends to serve?

(END OF APPENDIX 1)

¹⁷ The *Proposed Decision Implementing Revised Eligibility Criteria for the California Advanced Services Fund Program* was released for public comment on January 6, 2014. Opening Comments are due January 27, 2014 and Reply Comments are due February 3. A copy can be found at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M084/K556/84556127.PDF>.